YLN Presents Taming the Unicorn: The Nuts and Bolts of Startup Advisory for a Young Lawyer
NAPABA 2016 National Conference CLE
Panelists: Amy Yeung, Christopher Y. Chan, Salman Alam
Moderator: Allen Chang
Program chairs: Allen Chang (Young Lawyers Network)

1. [7 min] Introduction
   a. Intro of panel (2 min)
   b. Intro of panelists (5 min)

2. [35 min] Panel Questions
   a. Question 1: What are some key issues that are unique to startups?
   b. Question 2: How to best position/differentiate yourself?
      i. Practice areas
      ii. Geographic market – industries, etc.
      iii. Skillsets/certifications
      iv. Generalist vs. Specialist role
   c. Question 3: Differences between role of an in-house lawyer regarding startups and an outside counsel regarding startups?

3. [15 min] Audience Q&A
   a. Can provide extra questions from a question bank if we don’t get enough participation

4. [10 min] Speaking on panel written materials –
   a. Equity structuring/vesting agreements
   b. Non-competes and employment agreements
   c. Deal sheets/investment legal documents

5. [3 min] Conclusion/Closing remarks
When To Hire In-House Legal Counsel For Your Startup

Published By

YEC
We cover startups, founders and entrepreneur lessons.
FULL BIO
Opinions expressed by Forbes Contributors are their own.

POST WRITTEN BY
Zach Robbins
Co-founder of Leadnomics.

After years of working with different law firms on a variety of business matters, it was time to stop and ask myself: Just how many lawyers does it take before hiring one in-house?

I didn’t keep an exact count, but I knew when I’d arrived at my breaking point. The costs and headaches associated with working with firms, which were both disconnected from one another and from the daily operations of my company, were rising. We needed help with matters such as establishing trademarks and drafting and
editing partnership contracts (at least four to five per day). Understandably, our legal matters were just one of many to-dos on an outside counsel’s list, which meant that our priority levels and timelines had to be balanced against their other clients’. It seemed clear that an investment in hiring a lawyer in-house would be the most economical and efficient decision.

But before I created an entirely new department, I wanted to check my thinking. My team and I evaluated our legal expectations and gaps and came up with five specific indicators that made the final decision to hire seem like a no-brainer.

If these problems sound familiar to you, then establishing a legal department may be a valuable next step for your business too.

1. **If your turnaround time on legal matters is too slow.** We were dealing with a significant number of contracts, and the amount of time it took to work and return markups from outside counsel was becoming excessive. Efficiency is critical when it comes to finalizing legal agreements with business partners, and any delay put valuable relationships at risk. A general counsel could exponentially speed up our turnarounds — moving from a phone tag process that could take a few hours to a one-minute casual conversation — and keep our promise of great support and service to our partners.

2. **If legal micromanagement is overshadowing other responsibilities.** Our employees were putting too much effort into managing legal considerations. It was beginning to detract from their primary responsibilities. We needed someone new to help manage legal
operations so that non-legal staff could fully commit to their designated obligations again.

3. **If legal consultation is becoming inconvenient.** Because we were so busy getting involved in the fine print of our

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time and energy planning for speculated risks didn’t seem to be as important as dealing with the palpable concerns of the present. We needed a more integrated method to streamline our risk analysis and avoid careless mistakes.

4. **If you’re lacking a cohesive and company-specific legal plan.** We did not have a definitive legal strategy that was in line with our overarching goals as a company. This was mainly because we were working with third-party sources, who, despite their expertise, weren’t familiar enough with our business to provide the goal-oriented support we needed. Someone integrated with the day-to-day operations and even the company’s in-office personality would be better equipped to give us the counsel we needed.

5. **If the financial expenses of working with external firms are building up.** We
were faced with an incrementally rising cost of legal assistance from a variety of outside counsels. For the amount of money we were spending on legal advice, we could afford a better return on investment and more specialized support by hiring for an internal role. Beyond the financial aspect, we would get tailored advice, speed and operational improvements — added even more to a general counsel’s worth.

Adding a legal department can be a daunting decision when you’ve been getting by with without one for so long, but if you’re experiencing the perfect storm of challenges like we were, an outside counsel may be the perfect way to clear the air.

Several months after our hiring decision, we’ve seen a noted improvement in the challenges we faced. We’ve become more agile, resourceful and efficient due to the hard work and tenacity of our general counsel. Our turnaround times are faster than ever, our plans are proactively vetted for risks, and we have the opportunity to run our ideas (and our lawyer jokes) by an expert who is just a few steps away.
Leadership Is Too Good To Be True? Why It's The Best Investment A Business Can Make

David K. Williams, CONTRIBUTOR

Before you expect your employees to fully embrace servant leadership, you must demonstrate the concept within your own day-to-day office management.

By creating an office culture of service, you will begin building a strong team of servant leaders.

Looking to strengthen your team at work, both in productivity and camaraderie? Chances are you’ve tried the Friday morning doughnut run, Bring Your Pet to Work Day, and even employee teamwork retreats—and yet that unique bond among your employees just isn’t there. But here’s an idea that’s likely to be the best investment you could ever make: Servant leadership, in which a company and employees join together in providing hands-on service to create a better community and world.
Servant leadership is not without its costs. In our own company, we dedicate a day of service to our community every year for a major project to help children, communities, and groups such as Native Americans,

The planning and preparation months before this special day. But the passion this creates and the bond it instills in a company makes it one of the best ROI decisions you could possibly make. Make this your first and highest strategic endeavor, even if your company is still a one-person, “Me, Inc.”

You might be saying, “There’s no way we can do this right now . . . maybe later.” But before you conclude that Fishbowl is crazy and move on to schedule your next team excursion, think about this:

Coined by Robert K. Greenleaf, founder of the Greenleaf Institute for Servant Leadership, the concept of servant leadership defines a leader who is, very literally, a servant first. “Servant leadership is a philosophy and set of practices that enriches the lives of individuals, builds

Fishbowl Day of Service, (Image courtesy of Provo Herald.com)
better organizations, and ultimately creates a more just and caring world,” states the Greenleaf Institute for Servant Leadership.

I believe that everyone in my company is a leader, and leading through service is something that we become stronger, more effective leaders when we learn how to serve both our employees and the community around us.

Since 2009, we’ve accomplished eight of these major service projects with the Fishbowl community. As a company, we restored a beautiful mountain amphitheater; cleaned up streams and ponds in a nearby natural water park; played games and wrote down personal stories of veterans at a veteran’s home; painted interiors and exteriors of a local high school and network of Head Start preschools; and helped update and organize the libraries of two elementary schools.

With dozens of employees, family members, and friends participating each year, these service projects are a great opportunity for employees to get out from behind their

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We do these projects without an expectation of monetary return, but the benefits we receive are profound. Based on our experience, here are three ways we—and by extension, your company, too—can experience the benefits of servant leadership.

1. **Be an example of what a servant leader should be.**

Before you expect your employees to fully embrace servant leadership, you must demonstrate the concept within your own day-to-day office management.
4 Big Legal Mistakes That Startups Make
Legal stuff you need to know

Since starting LawTrades, and especially thinking about the point where we have worked with a few dozens startups to get their legal work done, I’ve reflected on some of the biggest legal mistakes that they’ve made and later regretted.

When you start a company—especially during the early days when you don’t think that it will amount to anything—legal is probably the last thing on your mind. But not buttoning-down on legal issues from the start can have crippling consequences when your startup starts succeeding. So here’s a few things to keep in mind and consult with a lawyer about:

**Mistake #1: Forming the Wrong Corporate Structure**
Incorporating your startup at the early stages can be thought of as the nuts and bolts to keep your business machinery running. But in order to pick the right entity, you need to first ask yourself whether you are raising outside capital or not. If that answer is yes, then you almost certainly should be a Delaware C-Corp. Investors prefer this because they are structured both for large entities and external investment.

LLC’s are not geared for startups for a number of reasons: (1) VC’s hate pass-through entities (meaning that the taxable profits or losses for the business are passed through to the business owners, who record these as part of their personal tax filings); (2) the tax partnership rules are very complicated; (3) it doesn’t allow for stock option plans, convertible notes, etc., (4) it gets more costly and complicated down the road.

But why Delaware? Delaware has an efficient court system that favors businesses and corporate law. There’s also more administrative ease than other states and generally just establishes a level of credibility with investors and potential partners.

**Mistake #2: Not Managing your Intellectual Property Ownership Appropriately**

Be careful when working on your startup while you’re still employed by another company. Your employer may have rights to your intellectual property/invention if you’re using your facilities and resources to further your business.

Also, get used to using what’s called the Confidential Information and Invention Assignment Agreement. It basically ensures that any developer or co-founder that worked on coding or designing the site, assigns their rights back to the company.

Think about it this way: if the Winklevoss twins made Zuckerberg sign this agreement before he started coding “HarvardConnection”, Facebook might look very different today.

**Mistake #3: Not Doing Proper Research on Potential Investors**

You are essentially married to your investors for a number of years once you accept their money—so you must do your due diligence on them and make sure they’re a right fit for your company. There’s no real science to it. Get references from other founders who have done deals with them, grab a beer
with them, or simply just Google the firm and find out about their past investments.

Are they down to earth or total dicks? Do you see yourself counting on them? Will they be there in the trenches with you? Do they share the same vision as you? How did the treat their other portfolio companies.

**Mistake #4: Not Creating a Vesting Schedule**

Vesting schedules should be created in order to protect the other co-founders (VC’s often require it too). You don’t want one founder walking away with 25% of the company after he gets bored and wants to work on something else.

The typical vesting schedule is four years and set up on a monthly basis. A one-year cliff is appropriate if you don’t know your co-founder. Up-front vesting is also possible and you should talk to your startup lawyer about filing the 83(b) election—failing to make a timely 83(b) election with the IRS is something that could lead to disastrous tax consequences for a startup company founder or employee.

Questions? Say hi @r44d. If you’re thinking of starting a company or already started one, drop me a line at raad (at) lawtrades (dot) com. We’re a startup as well and love helping other startups navigate the legal process.
The Morning Risk Report: Startups Need to Keep Sight of Compliance

By STEPHEN DOCKERY
Feb 10, 2016 7:16 am ET

Startups and quickly expanding companies need to make sure their leaders have a strong grasp of compliance functions to avoid hot water with regulators.

Several quickly growing companies have recently hit turbulence after an apparent lack of attention to compliance. The chief executive of health-insurance brokerage Zenefits stepped down this week after the company was criticized for having lax internal controls and compliance systems. Similarly tech firm Barracuda Networks Inc. recently was fined about $1.5 million over alleged sanctions violations that occurred when the company didn’t have a sanctions compliance program. “Hiring a capable chief compliance officer who has buy in from senior management is key,” said Robert Ray from law firm Fox Rothschild. “It strikes me that Zenefits has run up against a double whammy; it’s now having to confront the risks associated, as a quickly growing startup, in doing business in two highly regulated industries: the insurance industry, and the health care field,” Mr. Ray said.

The seemingly large investment required for a compliance program that can keep up with a growing business can make some corporate leaders balk, but the extra attention and diverted resources for compliance trouble is something that quickly expanding young companies can hardly afford, experts point out. “It’s largely because everything is about revenue and growth and the bottom line first and the zeal to expand overseas and expand period,” said William Monks, a former Federal Bureau of Investigation special agent and a current director at the CohnReznick Advisory Group. “The compliance executives quickly find themselves steam rolled.” While smaller companies can feel they are below a regulator’s radar, the board has to step in and make sure that notion isn’t acted on, he said. “The board has to mandate that compliance has to grow along with the bottom line,” Mr. Monks said.
EXCLUSIVE ON RISK AND COMPLIANCE JOURNAL

What’s changed in culture? This is the final story in our series on the regulatory and compliance focus on “culture.” We asked some experts on culture and compliance how they think companies have changed their approach to culture in the wake of regulators’ focus on this aspect of business.

COMPLIANCE

Ruling favors low-cost drugs. A U.S. regulatory panel vote on Tuesday is a win for companies developing lower-cost copies of pricey biotechnology drugs, but it could be a while before patients see them, the WSJ reports. An advisory panel to the Food and Drug Administration voted to recommend the agency approve the sale of a knockoff version of Johnson & Johnson’s arthritis drug Remicade, which had U.S. sales of $4.45 billion last year. The copy was developed by Celltrion and licensed to Pfizer But the path to market for copies of Remicade and other top-selling biotech brands could be complicated.

Shipping companies to settle with EU. Leading shipping container groups Maersk, MSC and 13 other companies have offered to change their pricing practices to settle an EU antitrust probe and stave off possible fines, two people familiar with the matter told Reuters. The case is being closely watched by other sectors such as supermarkets and chemical firms which use similar methods to announce future price hikes to enable customers choose the best rates.

People walk along a corridor at the headquarters of Johnson & Johnson in New Brunswick, N.J., in July 2013.

MEL EVANS/ASSOCIATED PRESS
**David Green to stay at SFO.** David Green, director of Britain’s Serious Fraud Office, has secured a two-year extension of his contract to April 2018, the prosecuting body said, according to Reuters. “I am happy to continue as director, and the SFO will continue to take on the sort of cases for which it was designed,” Mr. Green said in a statement.

**Google driverless cars get boost.** A significant barrier to Google’s plan to put driverless cars on the roads without steering wheels or brakes has been removed, the Financial Times reports, after a U.S. transport regulator indicated that a robot could meet the legal definition of a driver. In a letter to Chris Urmson, the director of Google’s self-driving car project, the National Highway Traffic Safety Administration said it agreed with the Alphabet-owned company’s proposed interpretations of Federal Motor Vehicle Safety Standards, which every car must pass before being allowed on the roads.

**Japan adds to North Korea sanctions.** Japan widened sanctions against North Korea in response to the Kim Jong Un regime’s recent nuclear test and rocket launch, Bloomberg reports. The restrictions ban entry of all North Korean ships to Japan ports and add other limits to travel between the two countries, according to a statement from Chief Cabinet Secretary Yoshihide Suga on Feb. 10. Remittances of more than 100,000 yen ($870) are also banned, except for humanitarian aid, Mr. Suga said.

![North Korean leader Kim Jong Un watches a long-range rocket launch. KYODO/REUTERS](image)

**U.S. Senate due to approve North Korea sanctions.** The U.S. Senate is expected to approve tougher sanctions against North Korea as early as Wednesday, just days after Pyongyang launched a long-range rocket capable of carrying a nuclear payload, and weeks after it conducted a nuclear test. “It’s going to pass overwhelmingly,” Republican Bob Corker, the chairman of the Senate Foreign Relations Committee, told VOA.

**Staples gets EU backing for deal.** U.S. office supplies company Staples gained EU approval on Wednesday for its proposed $6.3 billion takeover of Office Depot after agreeing to sell some of its U.S. peer’s European activities, Reuters reports. The assets to
be sold off are Office Depot’s contract distribution business in Europe and its entire business in Sweden.

**RISK**

**Burberry sues over alleged knock-offs.** Burberry Group PLC accused J.C. Penney in a lawsuit Tuesday of infringing on its famous “check” pattern by selling exact copies of its designs, the WSJ reports. The British luxury brand said Penney sold a “scarf coat” and a quilted jacket that featured replicas of Burberry’s plaid pattern, according to the lawsuit filed in U.S. District Court for the Southern District of New York. A Penney spokeswoman declined to comment on the litigation. Burberry declined to comment.

![A model presents a creation from the Burberry catwalk show on Jan. 11. REUTERS](image)

**HSBC to decide on HQ location.** HSBC Holdings PLC’s board will meet on Sunday to decide whether to shift its headquarters from London, according to two people with knowledge of the decision, Bloomberg reports. The board, led by Chief Executive Officer Stuart Gulliver and Chairman Douglas Flint, started a review of the bank’s U.K. domicile in April, mulling tax systems, financial regulations and the ability to tap qualified staff among 11 factors outlined.

**HSBC sued over drug money.** HSBC has been sued by the families of U.S. citizens murdered by drug gangs in Mexico, claiming the bank let cartels launder billions of dollars to operate their business. The bank wasn’t available to comment.

**STRATEGY**

**Facebook global plans hit barriers.** For the better part of a year, Facebook Inc’s global ambitions have bumped up against this question: Is some Internet better than none? This week, India delivered a bruising answer, the WSJ reports. India’s telecommunications regulator on Monday banned programs that offer access to a
limited set of websites and apps, including Facebook’s Free Basics service. Free Basics still operates in 37 other countries. But the decision, in the world’s second-most-populous country, raises questions about Facebook’s effort to expand Internet use in developing countries.

Share this: http://on.wsj.com/1Rp1cZF
The legal structure under which you choose to operate should merit careful consideration. It is critical that you identify the structure that appropriately aligns with your short and long-term business goals and provides you optimal legal protection.

There are three general entity categories to consider when forming a new venture:

1. the non-profit entity;
2. the corporation; and
3. the tax flow-through entity (e.g., LLC or LP).

Entrepreneurs are increasingly interested in establishing some aspect of nonprofit contribution to fund philanthropic efforts or social ventures. We will be updating this website with more information on this and, in particular, the emergence of the “B” corporation.

The two primary entity structures used by entrepreneurs pursuing for-profit business ventures are the corporation and the tax flow-through entity, otherwise known as a limited liability company (LLC).
Corporation

A corporation is the most common entity structure utilized in the United States. From a tax standpoint, this entity is viewed as a living taxpayer. As such, it is responsible for filing tax returns at the federal and state levels, and paying tax on income generated (or carrying forward losses, if applicable). In simple terms, if a corporation makes money, it must pay income taxes at the federal and state level. If the corporation seeks to distribute its earnings to stockholders, it first declares and then pays a dividend to its owners or stockholders. Upon receipt of dividends, the recipient stockholder must pay taxes. These two levels of tax are commonly known as the curse of double taxation.

Since many startups do not expect to generate income in their early years, or pay dividends over the course of their life cycles, the curse of double taxation may be illusory. Further, as a company becomes profitable, there are steps it may be able to take to reduce its effective corporate tax rate. In the meantime, the advantage of a “corporation” is that it is a flexible, predictable and relatively inexpensive to form and manage. Prospective investors may also prefer or even require that the entity in which they invest be a “corporation.”

To the extent that a founder forms a “corporation,” he or she may have the ability to file an “S” election with the U.S. Internal Revenue Service (IRS). By doing so, the entrepreneur essentially elects to have the IRS treat the entity as a tax flow-through entity for tax purposes. In order to qualify as an “S” corporation, the entity must satisfy certain conditions, including having only individual U.S. citizen or resident stockholders, fewer than 100 stockholders, and only one class of stock outstanding. See http://www.irs.gov/pub/irs-pdf/i2553.pdf.

Tax Flow-Through Entities
From a taxation standpoint, a tax flow-through entity can include a limited partnership (LP), regular partnership, or a limited liability company (LLC). None of these entities are viewed by taxation authorities as taxpayers. Instead, the equity owners of each of these entities are deemed to be the recipients of any income or loss generated by these entities, and are thus responsible for income taxes attributable to the income generated by these entities. Instead of being paid by the entities that are generating the income, taxes on such income are instead owed by the entity's equity owners. As a result, these entities benefit from a single layer of taxation.

Intuitively, founders often conclude that an emerging company should be structured as a tax flow-through entity in order to take advantage of this inherent tax benefit. The opposite, however, is more often the case. This tax benefit may have no value to the equity owners when the entity is generating losses (as the equity owners must have qualified income from other sources in order to take advantage and offset such income with losses from the flow-through entity in which they are owners). Further, when income is generated the equity owners typically expect the entity that generated that income to distribute sufficient funds to address the tax owed on such income. However, there may be better uses for such funds. Also, certain institutional investors that manage ERISA funds may be prohibited from holding a direct equity interest in a flow-through entity.

With that in mind, a common practice is to form an emerging company as an LLC with the expectation that it can take advantage of the tax benefits in its early stage and re-file as a C corporation as the company seeks institutional investors. When considering this approach, be sure to factor in the additional costs as they may not outweigh the expected benefits.

**Choosing a State of Incorporation**

Choosing a domestic state in which to form your company and transact business is not a decision that should be taken lightly. Most states offer benefits to companies that are formed and subsequently operate under their jurisdictions. You should consult with local taxation authorities to see if these periodic incentives can benefit your startup.

That said, more entities are organized in Delaware than any other jurisdiction in the United States. The reasons for this include the fact that the corporate law promulgated by the Delaware legislature, when combined with its interpretations by the Court of Chancery, Delaware's highly-regarded business court, has evolved into the most comprehensive, well-understood body of corporate case law in the nation. This breadth and clarity of the laws governing the rights, obligations and liabilities of directors, officers and stockholders reduces the costs of operating a business.

There is also a less intellectual reason that entrepreneurs favor Delaware: prospective investors are most familiar with the laws governing Delaware corporations, and often prefer to invest in companies with common attributes. Many industry experts will tell you that prospective investors are searching for reasons to decline investment opportunities and the fewer reasons a startup gives such investors the easier it will be for the startup to raise external investments.
What Is It Like To Work As The General Counsel Of A Startup Company?

By DAVID LAT

Aug 11, 2014 at 3:37 PM

Last week, Betterment and Above the Law hosted a great panel discussion about working as an in-house lawyer at a relatively young company. The event, hosted at Betterment’s spacious and airy offices in New York’s Flatiron neighborhood, drew a standing-room-only crowd of around 200 people.

How can you get a job as an in-house lawyer for a startup? And what’s life like once you’re there?
Serving as panel moderator, I posed these and other questions to an all-star panel of five lawyers who are now working for some of the nation's hottest young companies:

- Craig Abruzzo, General Counsel, Birchbox
- Eli Broverman, Co-founder & COO, Betterment
- Heather Dietrick, General Counsel, Gawker Media
- Jeremy Schwartz, Business Development Manager, Squarespace
- Chris Travers, Chief Business Officer and General Counsel, Bonobos

The panel (left to right): myself, Craig Abruzzo, Eli Broverman, Heather Dietrick, Jeremy Schwartz, and Chris Travers.

How can you land an in-house job at a startup company? Networking and connections are key, according to the panel. Compared to older companies, startups rely less on recruiting firms and formalized job-search processes, so knowing someone on the inside assumes greater importance. Sometimes lawyers help launch startups, as Eli Broverman did with Betterment. Sometimes lawyers have connections to non-legal personnel; Heather Dietrick, for example, had close ties to Gawker’s chief technology officer.

Conventional wisdom holds that there’s a certain “sweet spot” — a few years after entering the legal profession, but not too many years afterwards — in terms of when to move from a law firm to an in-house position. I asked the panel: is there an ideal time to make the move from a law firm to a startup? When they hire junior lawyers, are they looking for attorneys with a certain amount of seniority?
house teams that cover, by necessity, a broad spectrum of issues, so generalists tend to be more desirable than specialists. And because startups are often leanly staffed even beyond the legal department, if you have additional non-legal skills — from accounting to coding to copy-machine repair, as Chris Travers joked — that’s great too.

What can you expect once you’re working at a startup? I asked the panelists to share their favorite and least-favorite aspects of their jobs. On the positive side of the ledger, Craig Abruzzo mentioned the fun of fundraising, Eli Broverman cited the ability to put your signature on a young and growing company, Heather Dietrick talked about the novel and interesting legal issues that constantly arise, and Jeremy Schwartz and Chris Travers discussed the satisfaction of coming up with creative solutions to challenging business issues.

As for the less appealing aspects of in-house life at a startup, Abruzzo said that the human-resources and employment-law issues aren’t always fun, and Broverman mentioned that startups can involve a lot of mundane legal work along with the exciting stuff. Dietrick noted that it can be tough working on a small team: compared to working at a law firm, there are fewer places to turn for guidance when you’re a startup lawyer. You can’t always ask a senior lawyer or a colleague in another department for their quick take on a problem, so it helps to have a good Rolodex (or lots of connections on LinkedIn) — you may find yourself calling up contacts to get their thoughts on various issues.

Schwartz and Travers talked about the business side when speaking about the best and worst aspects of in-house life. Schwartz mentioned that when a deal falls through, you feel it more acutely when you’re working at a startup rather than an outside law firm. Travers said that one of the toughest parts of his job is having to play the role of naysaying attorney to non-lawyer colleagues, explaining to them why a particular proposal won’t fly for legal reasons.

I asked the panelists to describe their relationships with outside firms — how they hire them, what they use them for, and some of their pet peeves with outside counsel. Most of the panelists said they hire individual lawyers, not firms, and that they are not averse to hiring small firms or solo practitioners over Biglaw shops, especially given the difference in cost. They turn to outside counsel typically for specialized matters — matters where, as Abruzzo put it, “you can’t make the call on a particular issue with confidence” — or for matters that are too big to handle internally.

As for pet peeves with outside counsel, the panelists had a fair amount to say — much of it related to billing. Abruzzo doesn’t like it when law firms abuse the practice of passing through overhead expenses to the client. Broverman doesn’t like it when lawyers talk too slowly — understandable when you’re being billed by the hour. Dietrick doesn’t like it when outside firms “nickel and dime” her, charging for a phone call that takes just a few minutes. Schwartz gets frustrated by lawyers who
quick phone call, there’s no need to follow up with a 30-page memo restating that advice (and no need to bill him for that memo either).

During the question-and-answer session with the audience, one young lawyer aspiring to move in-house asked about risk — a topic that recurred throughout the evening, not surprisingly, given the key role that in-house lawyers play in helping to manage risk. This lawyer wanted to know: given the fact that many startups fail, how can you protect yourself against downside risk if you leave a stable law firm job to work for a company still in its infancy?

Trimming your expenses, living within your means, and saving as much as possible before you make the jump are wise moves. Not all startups are flush with venture-capital money, especially in the early stages; as Chris Travers of Bonobos joked, for the first few weeks of his employment he was paid in pants. Eli Broverman of Betterment noted that you can also mitigate risk by getting the best experience possible once you’re at your startup, to give yourself the widest range of legal and business-world exit opportunities in the event that the company doesn’t flourish. If you’re willing to take the risk, the rewards of working for a startup — interesting and enjoyable work, the excitement of building a new enterprise, and perhaps post-acquisition or post-IPO riches — can be great.

Once again, thanks to Betterment for sponsoring such an enjoyable and enlightening event. If you’d like to learn about how Betterment can help you improve your financial picture and manage your money in a cost-effective manner, click here for a special offer for Above the law readers.

6 Tips for Becoming a Startup Company Lawyer [Betterment]

Earlier: Innovative Lawyers: A Night With NYC’s Premier Start-Up GCs

100 SHARES  

TOPICS
Advertising, Advice, ATL events, Betterment LLC, Billable Hour, Billable Hours, Birchbox, Bonobos, Career Advice, Chris Travers, Craig Abruzzo, David Lat, Eli Broverman, Events, Gawker Media, General Counsel, Heather Dietrick, In-House Counsel, Jeremy Schwartz, Job Searches, New York City, Personal Finance, personal finances, Shameless Plugs, Squarespace, Technology, This Is an Ad
WHAT IS A SECTION 83(B) ELECTION AND WHY SHOULD YOU FILE ONE?

POSTED BY
MIKE BAKER

founder equity, founder issues, section 83b, tax, vesting, US

Have you ever been in the grocery store check out line, reached into your pocket, and pulled out a coupon only to find that it had already expired? You may experience a similar feeling (magnified, perhaps, by the amount of money involved) if you are issued equity subject to vesting in a company and you don’t hear about tax code Section 83(b) until after 30 days have gone by, the de facto expiration date for filing the Section 83(b) election we’re about to discuss.

So what is a Section 83(b) election? It’s a letter you send to the Internal Revenue Service letting them know you’d like to be taxed on your equity, such as shares of restricted stock, on the date the equity was granted to you rather than on the date the equity vests. It’s important to note here that Section 83(b) elections are applicable only for stock that is subject to vesting, since grants of fully vested stock will be taxed at the time of the grant. Put simply, it accelerates your ordinary income tax.

A Little Background on Taxes

To provide some simple tax background, there are different types of tax rates. The maximum ordinary income tax rate in 2014 is 39.6%, whereas the maximum long-term capital gains rate in 2014 is 20%. Because the United States uses graduated tax rates (meaning the rates vary based on your income), you may actually be subject to lower rates, but in each case the long-term capital gains rate will be lower than the ordinary income tax rate.

Assuming you paid nothing for your restricted stock, you will be taxed on the value of your restricted stock as determined at grant (if a Section 83(b) election is filed), or at vesting (if no Section 83(b) election is filed), in each case at the applicable ordinary income tax rate. When you later sell your stock, assuming it’s been more than one year from the date of grant (if a Section 83(b) election is filed), or more than one year from the date of vesting (if no Section 83(b) election is filed), the additional gain will be taxed at the applicable long-term capital gains rate. Because the long-term capital gains rate will be lower, the goal here is to get as much of your gain as possible taxed using that rate, rather than the ordinary income tax rate.
Two Simple Examples

In each of the below examples, assume you receive 100,000 shares subject to vesting, worth $.01 per share at the time of grant, $1.00 per share at the time of vesting, and $5.00 per share when sold more than one year later. We’ll also assume you are subject to the maximum ordinary income tax rate and long-term capital gains rate. For simplicity, we will not discuss the employment tax or state tax consequences.

Example 1 – 83(b) Election: In this example you timely file a Section 83(b) election within 30 days of the restricted stock grant, when your shares are worth $1,000. You pay ordinary income tax of $396 (i.e., $1,000 x 39.6%). Because you filed a Section 83(b) election, you do not have to pay tax when the stock vests, only on the later sale. On the later sale which occurs more than one year after the date of grant you recognize a taxable gain of $4.99 per share (not $5.00, because you get credit for the $.01 per share you already took into income), and pay additional tax of $99,800 (i.e., $499,000 x 20%). Your economic gain after tax? $399,804 (i.e., $500,000 minus $396 minus $99,800).

Example 2 – No 83(b) Election: In this example you do not file a Section 83(b) election. So you pay no tax at grant (because the shares are unvested), but instead recognize income of $100,000 when the shares vest and thus have ordinary income tax of $39,600. On the later sale which occurs more than one year after the date of vesting you recognize a taxable gain of $4.00 per share (not $5.00, because you get credit for the $1.00 per share you already took into income), and pay additional tax of $80,000 (i.e., $400,000 x 20%). Your economic gain after tax? $380,400 (i.e., $500,000 minus $39,600 minus $80,000).

So in the above example, filing a Section 83(b) election would have saved you $19,404.

Filing a Section 83(b) election also has two other benefits. It would have prevented you from having a $39,600 tax hit when the stock vested, which may have been at a time you may not have had cash to pay the tax, and it also starts your long-term capital gains holding period clock earlier – meaning that you get the long-term capital gains rate as long as the sale of your shares occurs more than a year after grant, rather than a year after vesting.

So you ask, if Section 83(b) elections are so beneficial, why doesn’t everyone file one? If you receive restricted stock worth a nominal amount, it virtually always makes sense to file one. However, what if instead of receiving 100,000 shares of restricted stock worth $.01 per share, you received 100,000 shares of restricted stock worth $1.00 per share? Filing a tax code Section 83(b) election would immediately cause you tens of thousands of dollars of tax. And if the company subsequently fails, and in particular if it fails before your stock vests, you likely would have been economically better off to not have filed a Section 83(b) election.
Bottom line – discuss with your individual tax advisor, but remember that the filing must be made (if at all) within 30 days after the grant date of your restricted stock, as that is an absolute deadline that cannot be cured. And note that the grant date of your restricted stock is usually the date the board approves the grant, even if you don’t receive the restricted stock paperwork until later – so sometimes you need to be super efficient about making this decision and filing the correct paperwork.

**Steps to Filing a Section 83(b) Election**

- Send the original election form and cover letter to the Internal Revenue Service Center where you would otherwise file your tax return within 30 days after the date of grant.
  - For this purpose the date your letter is postmarked is considered the date filed.
  - Ask your tax advisor for the correct Internal Revenue Service Center address or you can also find it by searching for the term “where to file” on www.irs.gov or by calling 1 (800) 829-1040.
  - Sending the election via certified mail, requesting a return receipt, is also recommended.
- Deliver one copy of the completed election form to the company issuing the stock to you for whom you are providing services.
- Attach one copy of the completed election form to your federal personal income tax return (Form 1040) for the calendar year in which you received the stock, when you file it the subsequent year.
- Attach one copy of the completed election form to your state personal income tax return for the calendar year in which you received the stock, when you file it the subsequent year (assuming you file a state income tax return).
- Retain one copy of the completed election form for your personal permanent records and retain proof of mailing.
- And if you are the service provider, but not the recipient of the stock (because for example, it is being issued into a trust on your behalf), a copy of the completed election must also be provided to the recipient.
INSTRUCTIONS FOR FILING SECTION 83(b) ELECTION

Attached is a form of election under Section 83(b) of the Internal Revenue Code and an accompanying IRS cover letter. Please fill in your social security number and sign the election and cover letter, then proceed as follows:

(a) Make **five** copies of the original Section 83(b) election form.

(b) Send the original completed election form, one copy of the completed election form, the cover letter, and a self-addressed stamped return envelope to the Internal Revenue Service Center where you would otherwise file your tax return. Even if an address for an Internal Revenue Service Center is already included in the forms below, it is your obligation to verify such address. This can be done by searching for the term “where to file” on www.irs.gov or by calling 1 (800) 829-1040. Sending the election via certified mail, requesting a return receipt, is also recommended.

(c) Deliver one copy of the completed election form to the Company.

(d) Attach one copy of the completed election form to your federal personal income tax return (Form 1040) when you file it for the year.

(e) Attach one copy of the completed election form to your state personal income tax return when you file it for the year (assuming you file a state income tax return).

(f) Retain one copy of the completed election form for your personal permanent records.

*Please note that the election must be filed with the IRS within 30 days of the date of your restricted stock grant. Failure to file within that time will render the election void and you may recognize ordinary taxable income as your vesting restrictions lapse. The Company and its counsel cannot assume responsibility for failure to file the election in a timely manner under any circumstances.*
RETURN SERVICE REQUESTED

Department of the Treasury
Internal Revenue Service
CITY, STATE ZIP

Re: Election Under Section 83(b) of the Internal Revenue Code

Dear Sir or Madam:

Enclosed please find an executed form of election under Section 83(b) of the Internal Revenue Code of 1986, as amended, filed with respect to an interest in SAMPLE CO. INC..

Also enclosed is a copy of the signed form of election under Section 83(b). Please acknowledge receipt of these materials by marking the copy when received and returning it in the enclosed stamped, self-addressed envelope.

Thank you very much for your assistance.

Very truly yours,

_________________________

BOB FOUNDER

Enclosures

1 Per Treasury Regulation § 1.83-2(c), the Section 83(b) election must be filed with the IRS office where the person otherwise files his or her tax return. Click here (for taxpayers that are individuals) to find the correct address.
SECTION 83(B) ELECTION

Dated: __________

Department of the Treasury
Internal Revenue Service
[CITY, STATE ZIP]^{2}

Re: Election Under Section 83(b)

Ladies and Gentlemen:

The undersigned taxpayer hereby elects, pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares. The following information is supplied in accordance with Treasury Regulation § 1.83-2:

1. **The name, social security number, address of the undersigned, and the taxable year for which this election is being made are:**

   Name: Bob Founder
   Social Security Number: [###-##-####]
   Address: 123 Main Street
   { . . . } , California { . . . }
   Taxable year: Calendar year 20___

2. **The property that is the subject of this election:** 8000 shares of common stock of SAMPLE CO. INC., a Delaware corporation (the “Company”).

3. **The property was transferred on:** __________________, 20___.

4. **The property is subject to the following restrictions:** The shares are subject to forfeiture or repurchase at less than their fair market value if the undersigned does not continue to provide services for the Company for a designated period of time. The risk of forfeiture or repurchase lapses over a specified vesting period.

5. **The fair market value of the property at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in Treasury Regulation § 1.83-3(h)):** $[___] per share x [_____] shares = $[_____]..

6. **For the property transferred, the undersigned paid:** $[_____] per share x [_____] shares = $[_____]..

7. **The amount to include in gross income is:** $[_____]^{3}

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^{2} Per Treasury Regulation § 1.83-2(c), the Section 83(b) election must be filed with the IRS office where the person otherwise files his or her tax return. Click here (for taxpayers that are individuals) to find the correct address.

^{3} This should equal the amount in Item 5 minus the amount in Item 6.
The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed and the transferee of the property. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Very truly yours,

______________________
BOB FOUNDER
RESTRICTED STOCK PURCHASE AGREEMENT

THIS RESTRICTED STOCK PURCHASE AGREEMENT (the “Agreement”) is made as of ______________ by and between SAMPLE CO. INC., a Delaware corporation (the “Company”) and Bob Founder (“Purchaser”). Certain capitalized terms used below are defined in the terms and conditions set forth in Exhibit A attached to this Agreement, which are incorporated by reference.

Total shares of Stock purchased: 10,000 shares of Common Stock (the “Stock”)
Purchase Price per share: $0.0001
Total Purchase Price: $1.00
Form of Payment: Cash: $1.00

Vesting Schedule:

8,000 shares of the Stock (the “Restricted Stock”) are subject to the Repurchase Option as of the date of this Agreement. On the date 12 months from ______________, 20___ (the “Vesting Anniversary Date”), 12/48th of the Restricted Stock shall vest and be released from the Repurchase Option; thereafter, 1/48th of the Restricted Stock shall vest and be released from the Repurchase Option on a monthly basis measured from the Vesting Anniversary Date, until all the Restricted Stock is released from the Repurchase Option (provided in each case that Purchaser remains a Service Provider as of the date of such release).

[Remainder of page intentionally left blank]
Additional Terms/Acknowledgements: The undersigned Purchaser acknowledges receipt of, and understands and agrees to, this Restricted Stock Purchase Agreement, including the terms and conditions set forth in Exhibit A attached to this Agreement, which are incorporated by reference.

COMPANY:

SAMPLE CO. INC.

By: ____________________________

Name: Bob Founder
Title: Chief Executive Officer

Address: 123 Main Street
          Suite 321
          San Diego, California 92093

PURCHASER:

BOB FOUNDER

______________________________
(Signature)

Address: 123 Main Street
          { . . }, California { . . }
EXHIBIT A

TERMS AND CONDITIONS INCORPORATED INTO
RESTRICTED STOCK PURCHASE AGREEMENT

1. PURCHASE AND SALE OF STOCK. Purchaser agrees to purchase from the Company, and the Company agrees to sell to Purchaser, the number of shares of Stock for the consideration set forth in the cover page to this Agreement. The closing of the transactions contemplated by this Agreement, including payment for and delivery of the Stock, shall occur at the offices of the Company immediately following the execution of this Agreement, or at such other time and place as the parties may mutually agree.

2. INVESTMENT REPRESENTATIONS. In connection with the purchase of the Stock, Purchaser represents to the Company the following:

   (a) Purchaser is aware of the Company’s business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Stock. Purchaser is purchasing the Stock for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any “distribution” thereof within the meaning of the Securities Act of 1933, as amended (the “Act”).

   (b) Purchaser understands that the Stock has not been registered under the Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser’s investment intent as expressed in this Agreement.

   (c) Purchaser further acknowledges and understands that the Stock must be held indefinitely unless the Stock is subsequently registered under the Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the Stock. Purchaser understands that the certificate evidencing the Stock will be imprinted with a legend that prohibits the transfer of the Stock unless the Stock is registered or such registration is not required in the opinion of counsel for the Company.

   (d) Purchaser is familiar with the provisions of Rule 144 under the Act as in effect from time to time, that, in substance, permits limited public resale of “restricted securities” acquired, directly or indirectly, from the issuer of such securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions.

   (e) Purchaser further understands that at the time Purchaser wishes to sell the Stock there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144, and that, in such event, Purchaser may be precluded from selling the Stock under Rule 144 even if the minimum holding period requirement had been satisfied.

   (f) Purchaser further warrants and represents that Purchaser has either (i) preexisting personal or business relationships, with the Company or any of its officers, directors or controlling persons, or (ii) the capacity to protect Purchaser’s own interests in connection with the purchase of the Stock by virtue of the business or financial expertise of Purchaser or of professional advisors to Purchaser who are unaffiliated with and who are not compensated by the Company or any of its affiliates, directly or indirectly.
Purchaser acknowledges that Purchaser has read all tax related sections and further acknowledges Purchaser has had an opportunity to consult Purchaser’s own Tax, Legal and Financial Advisors regarding the purchase of common stock under this Agreement.

Purchaser acknowledges and agrees that in making the decision to purchase the common stock under this Agreement, Purchaser has not relied on any statement, whether written or oral, regarding the subject matter of this Agreement, except as expressly provided in this Agreement and in the attachments and exhibits to this Agreement.

If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the “Code”)), the Purchaser has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Securities or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Stock, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Stock. The Purchaser’s subscription and payment for and continued beneficial ownership of the Stock will not violate any applicable securities or other laws of the Purchaser’s jurisdiction.

3. RESTRICTIVE LEGENDS. All certificates representing the Stock shall have endorsed thereon legends in substantially the following forms (in addition to any other legend which may be required by other agreements between the parties to this Agreement):

(a) “THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED.”

(b) “THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S) AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

(c) “THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A TRANSFER RESTRICTION, AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

(d) “THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN OPTION SET FORTH IN AN AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED HOLDER, OR SUCH HOLDER’S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE CORPORATION. ANY TRANSFER OR ATTEMPTED TRANSFER OF ANY SHARES SUBJECT TO SUCH OPTION IS VOID WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE CORPORATION.”

(e) Any legend required by appropriate blue sky officials.

4. MARKET STAND-OFF AGREEMENT. Purchaser shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock or other securities of the Company held by Purchaser (other than those included in the registration), including the Stock (the “Restricted Securities”), during the 180-day period following the effective date of the Company’s first firm commitment underwritten...
public offering of its Common Stock (or such longer period as the underwriters or the Company shall request in order to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rule or regulation) (the “Lock Up Period”); provided, however, that nothing contained in this Section 4 shall prevent the exercise of the Repurchase Option during the Lock Up Period. Purchaser agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the managing underwriters that are consistent with the foregoing or that are necessary to give further effect to the foregoing provision. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to Purchaser’s Restricted Securities until the end of such period. The underwriters of the Company’s stock are intended third party beneficiaries of this Section 4 and shall have the right, power and authority to enforce the provisions hereof as though they were a party to this Agreement.

5. **INTELLECTUAL PROPERTY RIGHTS.**

   (a) Purchaser represents and warrants that except for intellectual property rights assigned pursuant to this Agreement or specifically disclosed to the Company on the appropriate schedule of Purchaser’s Confidential Information and Inventions Assignment Agreement with the Company (if applicable), Purchaser possesses no intellectual property and has made no inventions related to the Company’s business, as currently conducted or as proposed to be conducted. Purchaser further agrees that to the extent it is discovered that Purchaser has made inventions, patented or unpatented, or otherwise possesses intellectual property rights related to the Company’s business that were not properly assigned to the Company or specifically disclosed and excluded in Purchaser’s Confidential Information and Inventions Assignment Agreement (if applicable) (the “Additional Intellectual Property”), the Additional Intellectual Property is hereby assigned to the Company.

   (b) Purchaser agrees to assist the Company in every proper way to obtain, and from time to time enforce, United States and foreign proprietary rights relating to the Additional Intellectual Property in any and all countries. Purchaser agrees to execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Additional Intellectual Property and the assignment of such Additional Intellectual Property.

   (c) In the event the Company is unable for any reason, after reasonable effort, to secure Purchaser’s signature on any document needed in connection with the actions specified in the preceding paragraph, Purchaser irrevocably designates and appoints the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and on behalf of Purchaser to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by Purchaser.

6. **REPURCHASE OPTION.** The following provisions shall apply to the Restricted Stock, as provided in the cover page to this Agreement (the “Vesting Provisions”):

   (a) **Repurchase Option.** In the event Purchaser’s relationship with the Company (or a parent or subsidiary of the Company) terminates for any reason (including death or disability), or for no reason, with or without cause, such that after such termination Purchaser is no longer providing services to the Company (or a parent or subsidiary of the Company) as an employee, director, consultant or advisor (a “Service Provider”), then the Company shall have an irrevocable option (the “Repurchase Option”) for a period of 120 days after said termination (the “Repurchase Period”) to repurchase from Purchaser or Purchaser’s personal representative, as the case may be, at the lower of (i) $0.0001, or (ii) the Fair Market Value per share of such Restricted Stock as of the date of repurchase (such lower price,
the “Option Price”), up to but not exceeding the number of shares of Restricted Stock that have not vested in accordance with the Vesting Provisions as of such termination date. The Repurchase Option shall be exercised as provided in Section 6.(b). For purposes of the Repurchase Option, the “Fair Market Value” shall mean the value of the Restricted Stock as determined in good faith by the Company’s Board of Directors. The term of the Repurchase Option shall be extended to such longer period (A) as may be agreed to by the Company and the Purchaser, or (B) as needed to ensure the stock issued by the Company does not lose its status as “qualified small business stock” under Section 1202 of the Code (as defined below). Purchaser acknowledges that the Company has no obligation, either now or in the future, to repurchase any of the shares of Common Stock, whether vested or unvested, at any time. Further, Purchaser acknowledges and understands that, in the event that the Company repurchases shares, the repurchase price may be less than the price Purchaser originally paid and that Purchaser bears any risk associated with the potential loss in value.

(b) Exercise of Repurchase Option. The Company may exercise the Repurchase Option by giving notice to the Purchaser. In addition, the Company shall be deemed to have exercised the Repurchase Option as of the last day of the Repurchase Period, unless an officer of the Company notifies the holder of the Restricted Stock during the Repurchase Period in writing (delivered or mailed as provided in Section 7.(a)) that the Company expressly declines to exercise its Repurchase Option for some or all of the Restricted Stock. During the Repurchase Period, the Company shall pay to the holder of the Restricted Stock the Option Price for the shares of Restricted Stock being repurchased. The Company shall be entitled to pay for any shares of Restricted Stock purchased pursuant to its Repurchase Option at the Company’s option in cash or by offset against any indebtedness owing to the Company by Purchaser (including without limitation any Note given in payment for the Restricted Stock), or by a combination of both. Upon exercise of the Repurchase Option and payment of the purchase price in any of the ways described above, the Company shall become the legal and beneficial owner of the Restricted Stock being repurchased and all rights and interest in or related to the Restricted Stock, and the Company shall have the right to transfer to its own name the Restricted Stock being repurchased by the Company, without further action by Purchaser. The certificate(s) representing the shares of Restricted Stock that have been repurchased by the Company shall be delivered to the Company. It is the intention of the parties that the Company, upon exercise of the Repurchase Option and payment of the amount required by the Repurchase Option, pursuant to the terms of this Agreement, shall be entitled to receive the Restricted Stock, in specie, in order to have such Restricted Stock available for future issuance without dilution of the holdings of other stockholders. It is expressly agreed between the parties that money damages are inadequate to compensate the Company for the Restricted Stock and that the Company shall, upon proper exercise of the Repurchase Option, be entitled to specific enforcement of its rights to purchase and receive said Restricted Stock.

(c) Adjustments to Restricted Stock. If, from time to time, during the term of the Repurchase Option there is any change affecting the Company’s outstanding Common Stock as a class that is effected without the receipt of consideration by the Company (through merger, consolidation, reorganization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, change in corporation structure or other transaction not involving the receipt of consideration by the Company), then any and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser’s ownership of Restricted Stock shall be immediately subject to the Repurchase Option and be included in the meaning of “Restricted Stock” for all purposes of the Repurchase Option with the same force and effect as the shares of the Restricted Stock presently subject to the Repurchase Option, but only to the extent the Restricted Stock is, at the time, covered by such Repurchase Option. While the total Option Price shall remain the same after each such event, the Option Price per share of Restricted Stock upon exercise of the Repurchase Option shall be appropriately adjusted.
(d) Corporate Transaction. In the event of (a) an Acquisition (as defined below); or (b) an Asset Transfer (as defined below) ((a) and (b) being collectively referred to in the Agreement as a “Corporate Transaction”), then the Repurchase Option shall be assigned by the Company to any successor of the Company (or the successor’s parent) in connection with such Corporate Transaction. To the extent that the Repurchase Option remains in effect following such a Corporate Transaction, it shall apply to the new capital stock or other property received in exchange for the Restricted Stock in consummation of the Corporate Transaction, but only to the extent the Restricted Stock is at the time covered by such right. Appropriate adjustments shall be made to the Option Price per share payable upon exercise of the Repurchase Option to reflect the effect of the Corporate Transaction upon the Company’s capital structure; provided, however, that the aggregate Option Price shall remain the same. For the purposes of this Section 6.(d): (i) “Acquisition” shall mean (A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization; or (B) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company’s voting power is transferred; and (ii) “Asset Transfer” shall mean a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

(e) Termination of Repurchase Option. Sections 6.(a) through 6.(d) of this Agreement shall terminate upon the exercise in full or expiration of the Repurchase Option, whichever occurs first.

(f) Escrow of Unvested Restricted Stock. As security for Purchaser’s faithful performance of the terms of this Agreement and to insure the availability for delivery of Purchaser’s Restricted Stock upon exercise of the Repurchase Option herein provided for, Purchaser agrees, at the closing hereunder, to deliver to and deposit with the Secretary of the Company or the Secretary’s designee, including the person or entity named in Joint Escrow Instructions (“Escrow Agent”), as Escrow Agent in this transaction, two stock assignments duly endorsed (with date and number of shares blank) in the form attached to this Agreement as an Exhibit, together with a certificate or certificates evidencing all of the Restricted Stock subject to the Repurchase Option; said documents are to be held by the Escrow Agent and delivered by said Escrow Agent pursuant to the Joint Escrow Instructions of the Company and Purchaser attached to this Agreement as an Exhibit and incorporated by this reference (“Joint Escrow Instructions”), which instructions shall also be delivered to the Escrow Agent at the closing hereunder. Purchaser acknowledges that the Escrow Agent is so appointed as the escrow holder with the foregoing authorities as a material inducement to make this Agreement and that said appointment is coupled with an interest and is accordingly irrevocable. Purchaser agrees that Escrow Agent shall not be liable to any party hereof (or to any other party). Escrow Agent may rely upon any letter, notice or other document executed by any signature purported to be genuine and may resign at any time. Purchaser agrees that if the Escrow Agent resigns as Escrow Agent for any or no reason, the Board of Directors of the Company shall have the power to appoint a successor to serve as Escrow Agent pursuant to the terms of this Agreement. Purchaser agrees that if the Secretary of the Company resigns as Secretary, the successor Secretary shall serve as Escrow Agent pursuant to the terms of this Agreement.

(g) Rights of Purchaser. Subject to the provisions of Sections 6.(f), 6.(h), 4 and 6.(j) in this Agreement, Purchaser shall exercise all rights and privileges of a stockholder of the Company with respect to the Restricted Stock deposited in escrow. Purchaser shall be deemed to be the holder for purposes of receiving any dividends that may be paid with respect to such shares of Restricted Stock and for the purpose of exercising any voting rights relating to such shares of Restricted Stock, even if some or all of such shares of Restricted Stock have not yet vested and been released from the Repurchase Option.

(h) Limitations on Transfer. In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Restricted Stock while the Restricted Stock is subject to the Repurchase Option.
After any Restricted Stock has been released from the Repurchase Option, Purchaser shall not assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Restricted Stock except in compliance with the provisions herein, in the Company’s Bylaws and applicable securities laws. Furthermore, the Restricted Stock shall be subject to any right of first refusal in favor of the Company or its assignees that may be contained in the Company’s Bylaws. **Purchaser further acknowledges that Purchaser may be required to hold the Common Stock purchased hereunder indefinitely. During the period of time during which the Purchaser holds the Common Stock, the value of the Common Stock may increase or decrease, and any risk associated with such Common Stock and such fluctuation in value shall be borne by the Purchaser.**

(i) **Section 83(b) Election.** Purchaser understands that Section 83(a) of the Code, taxes as ordinary income the difference between the amount paid for the Restricted Stock and the fair market value of the Restricted Stock as of the date any restrictions on the Restricted Stock lapse. In this context, “restriction” includes the right of the Company to buy back the Restricted Stock pursuant to the Repurchase Option set forth above. Purchaser understands that Purchaser may elect to be taxed at the time the Restricted Stock is purchased, rather than when and as the Repurchase Option expires, by filing an election under Section 83(b) (an “83(b) Election”) of the Code with the Internal Revenue Service within 30 days from the date of purchase, a form of which is attached to this Agreement. Even if the fair market value of the Restricted Stock at the time of the execution of this Agreement equals the amount paid for the Restricted Stock, the 83(b) Election must be made to avoid income under Section 83(a) in the future. Purchaser understands that failure to file such an 83(b) Election in a timely manner may result in adverse tax consequences for Purchaser. Purchaser further understands that an additional copy of such 83(b) Election is required to be filed with his or her federal income tax return for the calendar year in which the date of this Agreement falls. **Purchaser further acknowledges and understands that it is Purchaser’s sole obligation and responsibility to timely file such 83(b) Election, and neither the Company nor the Company’s legal or financial advisors shall have any obligation or responsibility with respect to such filing.** Purchaser acknowledges that the foregoing is only a summary of the effect of United States federal income taxation with respect to purchase of the Restricted Stock hereunder, and does not purport to be complete. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser’s death. Purchaser assumes all responsibility for filing an 83(b) Election and paying all taxes resulting from such election or the lapse of the restrictions on the Restricted Stock.

(j) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any shares of Restricted Stock of the Company that shall have been transferred in violation of any of the provisions set forth in this Agreement or (ii) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so transferred.

(k) **No Employment Rights.** This Agreement is not an employment or other service contract and nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company (or a parent or subsidiary of the Company) to terminate Purchaser’s employment or other service relationship for any reason at any time, with or without cause and with or without notice.

7. **MISCELLANEOUS.**

(a) **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day; (iii) five calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one business day...
after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party to this Agreement at such party’s address hereinafter set forth on the signature page hereof, or at such other address as such party may designate by ten days’ advance written notice to the other party hereto.

(b) **Successors and Assigns.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon Purchaser, Purchaser’s successors, and assigns. The Repurchase Option of the Company hereunder shall be assignable by the Company at any time or from time to time, in whole or in part.

(c) **Attorneys’ Fees.** The prevailing party in any suit or action hereunder shall be entitled to recover from the losing party all costs incurred by it in enforcing the performance of, or protecting its rights under, any part of this Agreement, including reasonable costs of investigation and attorneys’ fees.

(d) **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The parties agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to, and does hereby, submit to the jurisdiction and venue of, the appropriate state or federal court for the district encompassing the Company’s principal place of business.

(e) **Further Execution.** The parties agree to take all such further actions as may reasonably be necessary to carry out and consummate this Agreement as soon as practicable, and to take whatever steps may be necessary to obtain any governmental approval in connection with or otherwise qualify the issuance of the securities that are the subject of this Agreement.

(f) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. This Agreement may not be amended, modified or revoked, in whole or in part, except by an agreement in writing signed by each of the parties hereto.

(g) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(h) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

[End of Exhibit A to Restricted Stock Purchase Agreement]
**YLN Presents Taming the Unicorn: The Nuts and Bolts of Startup Advisory for a Young Lawyer**

NAPABA 2016 National Conference CLE
Panelists: Amy Yeung, Christopher Chan, Salman Alam
Moderator: Allen Chang
Program chairs: Allen Chang (Young Lawyers Network)

Major Themes:
- Be adaptable
- Anticipate problems
- Build for scale

Major Issues to generate questions from:

1) Anticipate multiple rounds of funding
2) Make sure that the equity structure is sustainable for the future
3) Promote value creation through equity vesting (vesting agreements and cliffs)
4) What type of corporation? S corp, C corp, LLC, partnership?
5) Where to incorporate? California, home state, Delaware?
6) How to set up a board (how big should it ideally be? Why?)
7) Startup-specific issues
8) E-commerce advice – liability issues; terms of service
9) Platform advice – liability issues, DMCA, etc
10) IOT? AI?

Proposed Questions list to start from:

1. When does a startup hire in-house GC? (series D round of funding - when regulatory components are prevalent, hire earlier)
2. How did you find your positions?
3. In terms of corporate governance structuring, how do you think about it? Who’s in the room? Founders, Investors, BOD, advisors. Valuation – how does a GC contribute to that?
4. What do you do on a daily basis?
5. What do you like about your jobs? Pros-cons?
6. How you manage your relationships inside the company? Lessons learned along the way (how to work with business teams, how do you counsel clients on risk? What makes startups particularly challenging?
7. How did you get to where you are today? How’d you join the company you’re with?
8. How do you look for outside counsel? What types of work goes to outside counsel?
9. What do you think of your in-house legal teams? Are they robust enough? Should they be increased?
10. How do you think to protect IP before scaling, and dealing how do you deal with the international IP regimes?
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1. [7 min] **Introduction**
   a. Intro of panel (2 min)
   b. Intro of panelists (5 min)

2. [35 min] **Panel Questions**
   a. Question 1: What are some key issues that are unique to startups?
   b. Question 2: How to best position/differentiate yourself?
      i. Practice areas
      ii. Geographic market – industries, etc.
      iii. Skillsets/certifications
      iv. Generalist vs. Specialist role
   c. Question 3: Differences between role of an in-house lawyer regarding startups and an outside counsel regarding startups?

3. [15 min] **Audience Q&A**
   a. Can provide extra questions from a question bank if we don’t get enough participation

4. [10 min] **Speaking on panel written materials –**
   a. Equity structuring/vesting agreements
   b. Non-competes and employment agreements
   c. Deal sheets/investment legal documents

5. [3 min] **Conclusion/Closing remarks**