



Legal:GPS

Growth and Protection Strategies to
Help Navigate Your Business Success

Challenging Times: *Sustaining Your Business While Waiting for Financing*

January 14, 2009





Foley & Lardner LLP

- National law firm (19 domestic; 3 international offices) with over 1,000 attorneys and a full range of corporate legal services including:
 - Intellectual Property
 - Labor & Employment
 - Private Equity & Venture Capital
 - Tax & Employee Benefits – and more!
- Strong commitment to women both internally and externally
- Women Business Owners' Resource Guide
 - Information on legal topics when starting and growing a business
 - Visit: www.womenlegalresource.com



Housekeeping Details

- Today's program will last one hour
- A recording of the program will be available in the next few weeks on Foley.com and via a link on Springboard's Web site
- To view the presentation in full screen mode, please go to View on your Toolbar and select "Full Screen Mode"



To Ask a Question

- Enter your question into the text area of the Question Pane, and select Ask
- Time permitting, we will address Questions at the end of the presentation. Please indicate if you would like a particular speaker to address your question.

Questions and Answers

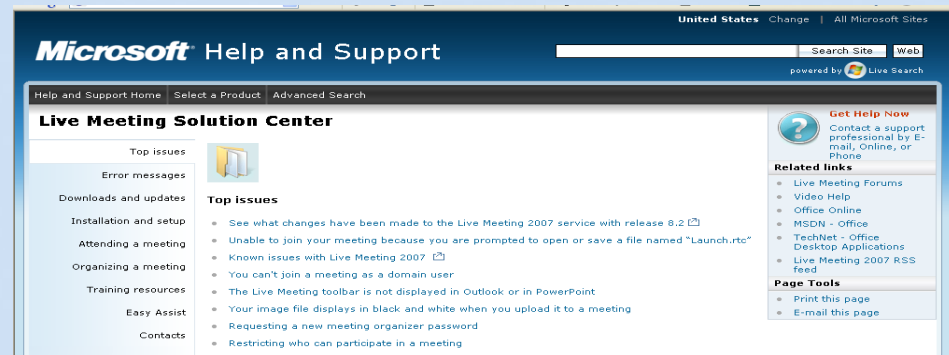
No questions have been answered yet in this meeting.

Ask Delete



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Today's Panelists

Dawn Fitzgerald

- Serial Entrepreneur & Consultant
- Extensive experience in managing multi-site global engineering teams and takes C-level roles in the start-up companies she works with
- Co-Founder of ChipWrights, Inc.
- Mentor in MIT's Venture Mentoring Service, Babson College's Entrepreneurship Intensity Track (EIT) program and the First Founder's organization





Today's Panelists

Carol A. Nancy, Ph.D.

- Founder and Chief Executive Officer, Sequella, Inc.
- Former
 - Chief Scientific Officer for Anergen, Inc.
 - Executive Vice President and Chief Scientific Officer at EntreMed, Inc.
 - Science Manager at the Walter Reed Army Institute of Research





Today's Panelists

Carolyn T. Long

- Partner with Foley and a member of the Transactional & Securities and Private Equity and Venture Capital Practices
- Focuses her practice in the area of securities law and mergers and acquisitions
- Earned her law degree from the University of Florida College of Law





Equity

- Standard: Angel Groups and VC
- Warrants
- Team
- Distributors
- Manufacturers
- Individual Angels



Loans

- Promissory Notes
- Bank Loans
 - 25-year, 7-year
 - LOC
 - AR
- Personal Loans
- Other/Hybrid



Government

- Grants
- SBA 501, 7A
- Incentive programs
- Targeted industries
- Woman-Owned business list



Operations

- Venders
- Supplies
- Customers



Creative Funding Opportunities

■ State Assistance

- A number of states have high tech and biotech seed and investment initiatives operated through their economic development departments
- Example: Maryland
 - TEDCO (<http://www.marylandtedco.org/>)
 - MD DBED (<http://www.choosemaryland.org/>)
 - Challenge Investment Program, Enterprise VCLP Fund
 - Biotechnology Investment Tax Credit
- States with investment programs: MD, VA, WI, MO, PA, NJ



Creative Funding Opportunities

- Federal Assistance
 - Many agencies have Small Business Innovation Research and Technology Transfer grant programs
 - \$100K - \$300K for Phase 1; \$750K - \$3M for Phase 2
 - 2-3 submission dates/year
 - A good Management tool: peer review, critical path for product development, milestones for go/no go decisions, defined budget to get from point A to B
 - **SUBMIT EARLY AND OFTEN**
 - Some agencies (i.e., NIH) provide commercialization resources for technologies developed with Phase 2 funding



Creative Funding Opportunities

- Federal Assistance (cont.)
 - Some agencies have product development assistance programs through agency-funded contracts
 - Example: National Institutes of Health (NIH)
 - Drug screens *in vitro* and *in vivo*, preclinical toxicology, drug or biologic process engineering and manufacturing, clinical trial support
 - NCI (<http://www.nci.gov/>)
 - NIAID (<http://www.niaid.gov/>)
 - No cash exchanges hands, but product development continues...
 - Example: Federal Drug Administration (FDA)
 - Provides clinical trial grants for orphan drug indications



Creative Funding Opportunities

- Sales of Product Royalties
 - If a product is on the verge of sales, or you receive royalties on products sold by others, you can sell a portion of your future income
 - Royalty Purchase Companies
 - Paul Capital (<http://www.paulcapital.com/>)
 - Royalty Pharma (<http://www.royaltypharma.com/>)
 - Investments can be closed in less time than a traditional equity investment
 - Concerns
 - Terms and terms of release from the agreement
 - Impact on future financings



Regulation D

- Rules 504 and 505 were adopted pursuant to SEC's exemptive authority under Sec. 3(b) of the 1933 Act.
 - Blue Sky law, securities registration provisions also apply.
- Rule 506 is a safe harbor provision for Sec. 4(2) statutory exemption.
 - Blue Sky law securities registration provisions are pre-empted by Sec. 18(b)(4)(D) of the 1933 Act.



Rule 504	Rule 505	Rule 506
No purchaser restrictions	35 unaccredited unlimited accredited	35 sophisticated unaccredited – unlimited accredited
\$1 million	\$5 million	No \$\$ limit
Private/Public	Private – no general solicitation or advertising	Private – no general solicitation or advertising



Determination of Accredited Investor Status

- Status determined at time of sale:
 - Investor must come within one of eight categories under Rule 501(a) definition, or Issuer must reasonably believe investor comes within accredited investor definition.



Accredited Investor Overview

INSTITUTIONS:

- Bank, S&L, broker dealer, insurance co., registered investment co., BDC, licensed SBIC, certain employee benefit and ERISA plans;
- Private BDC;
- Non-profit org., corporation, Massachusetts or similar business trust, LLC, partnership, each with total assets over \$5 million, not formed solely for purpose of the investment;
- Trust, with total assets over \$5 million, not formed solely for the investment, whose purchase is directed by a sophisticated person (revocable trust may qualify upon the grantor meeting the “individual” accredited investor test); and
- Any entity in which all of the equity owners are accredited investors.



Accredited Investor Overview

INDIVIDUALS

- Any director, executive officer or GP of the issuer, or any director, executive officer or GP of a GP of the issuer;
- Any person who has greater than \$1 million net worth, individual or jointly with spouse
- Any person who has greater than \$200,000 individual/\$300,000 joint annual income for past two years and reasonable expectation of having the same income level in the current year



“General Solicitation”

NOT ALLOWED

- Media advertising, cold-calling, e-mail spamming
- Mass mailing – such as mailing to a list of physicians
- Holding seminars open to the public
- Open Web Site Offers
- Agristar Global Networks, Ltd. (Feb. 9, 2004)

ALLOWED

- Issuer soliciting business contacts, relatives
- Broker contacting existing clients, or previously qualified accredited investors
- IPONET (July 26, 1996)
BD pre-qualifies investors on-line/password access to later offerings
- Lamp Technologies (May 29, 1997)



Filing/Good Faith Compliance

- File Form D within 15 days after first sale Rule 503
- Commission action for failure to file will result in future ineligibility for Reg D Rule 507
- Insignificant deviations won't result in loss of exemption Rule 508
- But, “good faith compliance” doesn't apply to general solicitation or general advertising, maximum dollar limits or number of purchasers



Certain Recommended Best Practices:

1. Provide a Securities Letter
2. Choosing the appropriate Disclosure Document and keeping it current
3. Reliance on Rule 506



Questions & Answers



Survey