Overview

I. Incorporation Considerations

II. Proper Documentation and Record Keeping

III. Review and Align Incentives

IV. Building your Network

V. Right before you Exit
Incorporation Considerations
Incorporation Considerations

Understand Your Likely Exit

a. Asset Sale – Single product company, easy to sustain platforms, content companies

b. Acquisition/Merger – companies where the organization is required to maintain the value of the company.

c. IPO – High growth potential, dominant company
Incorporation Considerations

Understand Your Funding Sources

a. Friends and Family
b. Angel Investors
c. Venture Capital Investors
d. Private Equity
e. Government Grants
Incorporation Considerations

**Get Incorporated Properly**

a. Type of Entity (LLC, C-CORP, etc.)

b. Jurisdiction of Incorporation – where you incorporate will determine how easy it is to exit (take advantage of corporate laws)

c. Assign the IP from the start – IP in exchange for equity
Proper Documentation and Record Keeping
Proper Documentation and Record Keeping

Keep Corporate Records

a. Incorporation Documents (Certificate of Incorporation, Bylaws, etc.)

b. Board and Stockholder Actions (minutes, actions, special meeting notices)

c. Forms of Documents (Stock Plan, NDAs, etc.)
Proper Documentation and Record Keeping

**Employees and Independent Contractor Documents**

a. Offer Letters/Employment Agreements

b. Consulting/Independent Contractor Agreements

c. Confidential Information and Invention Assignment Agreements (properly filled out)
Proper Documentation and Record Keeping

Other Material Agreements and Documentation

a. Research Notes and Records

b. Any and all licenses and IP assignments (no matter how small)

c. Leases and real property related documents

d. Notes: All agreements you enter into should contemplate assignment upon a change of control
Review and Align Incentives
Review and Align Incentives

Vesting Acceleration

a. What is Vesting?
b. Single Trigger Acceleration – Acceleration on a single event (Change of Control or Involuntary Termination)
c. Double Trigger Acceleration – Acceleration on two successive events (Change of Control and Involuntary Termination)
d. What is the cost of acceleration? Who pays for acceleration?
e. Know what your Stock Plan states
Review and Align Incentives

**Liquidation Preferences**

a. What is Liquidation Preference?

b. Preferences complicate incentives at the inflection points
Examples of Liquidation Preferences

a. Typical Preferences

b. Participating Preferences

c. Participating Preferences with a Cap
Review and Align Incentives

**Funding Scenario**

a. 10,000,000 Shares of Common Stock issued at incorporation

b. Series A Financing - $10M pre, $5M raised, $15M post – 5,000,000 shares of Series A Preferred Stock issued at $1/share.

c. Series B Financing - $45M pre, $15M raised, $60M post – 5,000,000 shares of Series B Preferred Stock issued at $3/share.
## Liquidation Scenario 1

<table>
<thead>
<tr>
<th>Series</th>
<th>Outstanding Shares</th>
<th>Liquidation Preference</th>
<th>Seniority</th>
<th>Participating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common</td>
<td>10,000,000</td>
<td>n/a</td>
<td>3</td>
<td>n/a</td>
</tr>
<tr>
<td>Series A</td>
<td>5,000,000</td>
<td>$1/share</td>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>Series B</td>
<td>5,000,000</td>
<td>$3/share</td>
<td>1</td>
<td>No</td>
</tr>
</tbody>
</table>

At $15M exit:
- Series B gets $15M ($3/share), nothing for other Series

At $20M exit:
- Series B gets $15M ($3/share)
- Series A gets $5M ($1/share)
- Common gets $0
### Liquidation Scenario 2

<table>
<thead>
<tr>
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<th>Seniority</th>
<th>Participating</th>
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<tbody>
<tr>
<td>Common</td>
<td>10,000,000</td>
<td>n/a</td>
<td>3</td>
<td>n/a</td>
</tr>
<tr>
<td>Series A</td>
<td>5,000,000</td>
<td>$1/share</td>
<td>2</td>
<td>Yes – 2x cap</td>
</tr>
<tr>
<td>Series B</td>
<td>5,000,000</td>
<td>$3/share</td>
<td>1</td>
<td>Yes – 2x cap</td>
</tr>
</tbody>
</table>

At $40M exit:
- Series B gets $20M ($4/share)
- Series A gets $10M ($2/share)
- Common gets $10M ($1/share)

At $90M exit:
- Series B gets $30M ($6/share – capped)
- Series A gets $20M ($4/share - converted to Common)
- Common gets $40M ($4/share)
### Liquidation Scenario 3

<table>
<thead>
<tr>
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</tr>
<tr>
<td>Series A</td>
<td>5,000,000</td>
<td>$1/share</td>
<td>2</td>
<td>Yes – no cap</td>
</tr>
<tr>
<td>Series B</td>
<td>5,000,000</td>
<td>$3/share</td>
<td>1</td>
<td>Yes – no cap</td>
</tr>
</tbody>
</table>

At $60M exit:
- Series B gets $25M ($5/share)
- Series A gets $15M ($3/share)
- Common gets $20M ($2/share)

At $120M exit:
- Series B gets $40M ($8/share)
- Series A gets $30M ($6/share)
- Common gets $50M ($5/share)
Building your Network
Building your Network

**Identify Your Target**

a. Who is in your space?

b. Who would like to do what you do?

c. Who has the resources to acquire/purchase your Company?
Building your Network

**Build Strategic Relationships**

a. Use your target list to pursue strategic relationships

b. Research and Development Agreements – be very careful about IP ownership

c. Don’t poison your water – your strategic relationships may deter others from offering to acquire you
Right before you Exit
Right before you Exit

Non-Disclosure Agreements

- **Must** enter into an NDA with potential acquirers
- Disclose confidential information in layers
- Do not reveal key components of IP regardless of whether an NDA is in place.
Right before you Exit

**Accounting considerations**

a. Do you have audited financial statements? (note that if you will need audited financials, this process can be very time consuming, especially if they are needed for several prior years)

b. Do you comply with reporting company regulations?
Right before you Exit

Timing

a. Depending on your exit, you may need anywhere from 48 hours to 1 year to exit
b. For long term processes, be careful not to let the process interfere with your ability to run the Company
c. Determine how much work you will do on your own, and how much advisors, bankers, etc. will do for you
Right before you Exit

**Should you use a Banker to “Shop the Company”**

a. May widen the field of possible exits
b. Provides strategic insight into the process
c. *May* help with diligence review, production, and coordination
d. Typically takes a hefty fee for their services (a specific percent of the transaction proceeds rather than a flat fee)
Right before you Exit

**Diligence Review**

a. Look at all agreements, licenses, contracts, etc. and determine which, if any, need to be amended

b. Confirm that all corporate documents are in order – go through ratification process to fix anything that can be fixed

c. Understand where your employees are with respect to vesting, salary, etc., and what their intentions are

d. Review indemnification agreements and D&O insurance policy (consider tail coverage)
Thank You

Joseph Perkins
Managing Associate
Orrick, Herrington & Sutcliffe LLP
jperkins@orrick.com
(650) 289-7188
• Attorney Biography and Contact Information
Joseph Z. Perkins

Managing Associate, Corporate
Silicon Valley Office, (650) 289-7188
jperkins@orrick.com

Joseph Z. Perkins, a corporate associate in Orrick's Silicon Valley office, is a member of the Emerging Companies Group, which advises emerging companies and venture capital firms. Mr. Perkins's practice focuses on providing private venture financing and merger and acquisition services to Internet, bio-tech, and clean technology companies.

Some of Mr. Perkins's current and former clients include:

• APTwater (funded by Kleiner Perkins, XPV Water, and others)
• Bleacher Report (funded by Oak Capital, Crosslink Capital, and others)
• Greenplum (funded by Meritech, Sierra, Mission and others)
• Handmark (company-side acquisitions)
• Hara Software (funded by Kleiner Perkins, Nth Power, JAFCO and others)
• Instagram (acquired by Facebook)
• Kona Medical (funded by Essex Woodlands, Morgenthaler, and Domain Partners)
• LS9 (funded by Flagship Ventures, Khosla Ventures and Lightspeed Venture Partners)
• Ooma (funded by Worldview and others)
• Oraya Therapeutics (funded by Essex Woodlands, Domain Partners, and Synergy Life Science)
• SAY Media - fka VideoEgg (funded by August Capital and others)
• Xobni Corporation (funded by Khosla Ventures, First Round Capital, Baseline Ventures, Blackberry Fund and Cisco)
• WellnessFX (funded by Javelin Venture Partners, Floodgate and Voyager Capital)
Global Office Locations

BEIJING
Orrick, Herrington & Sutcliffe LLP
Beijing Representative Office
22nd Floor, South Tower
Beijing Kerry Centre
1 Guang Hua Road
Chaoyang District
100020
Beijing
People’s Republic of China
Tel: +86 10 8595 5600
Fax: +86 10 8595 5700

BERLIN
Orrick Hölters & Elsing
Kurfürstendamm 185
10707 Berlin
Germany
Tel: +49 (0)30 885742-0
Fax: +49 (0)30 885742-20

DÜSSELDORF
Orrick Hölters & Elsing
Heinrich-Heine-Allee 12
40213 Düsseldorf
Germany
Tel: +49 (0)211-36787-0
Fax: +49 (0)211-36787-500

FRANKFURT
Orrick Hölters & Elsing
Friedrichstrasse 31
60323 Frankfurt
Germany
Tel: +49 (0)69-71588-0
Fax: +49 (0)69-71588-588

HONG KONG
Orrick, Herrington & Sutcliffe LLP
43rd Floor, Gloucester Tower
The Landmark
15 Queen’s Road
Central, Hong Kong
Tel: +852-2218-9100
Fax: +852-2218-9200

LONDON
Orrick, Herrington & Sutcliffe (Europe) LLP
107 Cheapside
London
EC2V 6DN
United Kingdom
Tel: +44-20 7862 4600
Fax: +44-20 7862 4800

LOS ANGELES
Orrick, Herrington & Sutcliffe LLP
77 South Figueroa Street
Suite 3200
Los Angeles, CA 90017-5855
U.S.A.
Tel: +1-213-629-2020
Fax: +1-213-612-2499

MUNICH
Orrick, Herrington & Sutcliffe LLP
Piazza della Croce Rossa, 2
80331 Munich
Germany
Tel: +49 (89)383980-0
Fax: +49 (89)383980-99

MUNICH
Orrick, Herrington & Sutcliffe LLP
Rosental 4
80331 Munich
Germany
Tel: +49 (89)383980-0
Fax: +49 (89)383980-99

NEW YORK
Orrick, Herrington & Sutcliffe LLP
51 W 52nd Street
New York, NY 10019-6142
U.S.A.
Tel: +1-212-506-5000
Fax: +1-212-506-5151

ORANGE COUNTY
Orrick, Herrington & Sutcliffe LLP
2050 Main Street, Suite 1100
Los Angeles, CA 90017-5855
U.S.A.
Tel: +1-949-567-6700
Fax: +1-949-567-6710

PARIS
Orrick Rambaud Martel
31, avenue Pierre 1er de Serbie
75782 Paris Cedex 16
France
Tel: +33-1-5353-7500
Fax: +33-1-5353-7501

PORTLAND
Orrick, Herrington & Sutcliffe LLP
1120 NW Couch Street
Suite 200
Portland, OR 97209-4129
U.S.A.
Tel: +1-503-943-4800
Fax: +1-503-943-4801

ROME
Orrick, Herrington & Sutcliffe LLP
Piazza della Croce Rossa, 2
00181 Rome
Italy
Tel: +39-06-4521-3900
Fax: +39-06-6819-2393

SACRAMENTO
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall
Suite 3000
Sacramento, CA 95814-4497
U.S.A.
Tel: +1-916-447-9200
Fax: +1-916-329-4900

SAN FRANCISCO
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
U.S.A.
Tel: +1-415-773-5700
Fax: +1-415-773-5759

SHANGHAI
Orrick, Herrington & Sutcliffe LLP
Shanghai Representative Office
47/F Park Place
1601 Nanjing Road West
Shanghai 200040
People’s Republic of China
Tel: +86 21 6109 7000
Fax: +86 21 6109 7022

SILICON VALLEY
Orrick, Herrington & Sutcliffe LLP
155 Market Street
Menlo Park, CA 94025-1015
U.S.A.
Tel: +1-650-614-7400
Fax: +1-650-614-7401

TAIPEI
Orrick Foreign Legal Affairs
Attorneys at Law
Suite G, 12th Floor
No. 167 Tun Hua North Road
Taipei 10549
Taiwan
Tel: +886-2-2714-8100
Fax: +886-2-2714-8101

TOKYO
Orrick Tokyo Law Offices
a gakokusho joint enterprise
Izumi Garden Tower, 28th Floor
6-1 Roppongi 1-Chome
Minato-ku, Tokyo 106-6028
Japan
Tel: +81-3-3224-2900
Fax: +81-3-3224-2901

WASHINGTON, D.C.
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
Washington, D.C. 20005-1706
U.S.A.
Tel: +1-202-339-8400
Fax: +1-202-339-8500