“Why am I muted?”
Don’t worry. Everyone is muted except the presenter and host.
Thank you and enjoy the show.

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From ACS Industry Member Programs

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  ACS Member-only weekly newsletter with exclusive interviews with industry leaders and insights to advance your career.
  Preview & Subscribe: [acs.org/indnews](https://acs.org/indnews)

- **LinkedIn**
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ACS Career Navigator: Your Home for Career Services

Whether you are just starting your journey, transitioning jobs, or looking to brush up or learn new skills, the ACS Career Navigator has the resources to point you in the right direction.

We have a collection of career resources to support you during this global pandemic:

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- Virtual Career Consultants
- ACS Leadership Development System
- Career Navigator LIVE!
- ChemIDP
- College to Career
- ACS Webinars
- Virtual Classrooms

Visit [www.ACS.org/COVID19-Network](http://www.ACS.org/COVID19-Network) to learn more!

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https://chemidp.acs.org

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ACS Department of Diversity Programs

Advancing ACS’s Core Value of Diversity, Inclusion & Respect

We believe in the strength of diversity in all its forms, because inclusion of and respect for diverse people, experiences, and ideas lead to superior solutions to world challenges and advances chemistry as a global, multidisciplinary science.

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Diversity@acs.org

@ACSDiversity

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acsvoices.podbean.com/

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ACS Webinars

Starting a Company

Intellectual Property

Date: Wednesday, July 28, 2021 @ 2-3pm ET

Speaker: Kenneth Silberg, Carbon Inc. / H.N. Chang

Moderator: Jim Skinner, Teragen Inc. and ACS C&MA

What You Will Learn:
- The basics of intellectual property, how it must be protected, and the importance of filing date
- What are the pros and cons of a patent filing or a provisional patent
- What are the various types of patents and what is Freedom to Operate

Co-produced with: ACS Industry Member Programs, ACS President’s Guest, ACS Board Committee on Corporation Associates, ACS Committee on Technical Affairs, the ACS Division of Small Chemical Businesses, and the ACS Division of Business Development and Management.

Targeted Delivery of RNA-targeted Therapeutics

Date: Thursday, July 29, 2021 @ 2-3:30pm ET

Speaker: Puneet Sethi, Vice President, Ions Pharmaceuticals.

Moderator: Channan Naravat, Ions Pharmaceuticals.

What You Will Learn:
- What are the general principles for delivery of RNA targeted oligonucleotide drugs?
- How local delivery occurs to tissues such as the lung and the CNS
- How receptor-mediated delivery to hepatocytes, pancreatic beta cells, skeletal muscle and heart tissues occur

Co-produced with: ACS Division of Medicinal Chemistry, American Association of Pharmaceutical Scientists, and ACS Publications.

Industry’s Continuing Efforts to Diversify the Workforce

Date: Wednesday, August 4, 2021 @ 2-3pm ET

Speaker: Andre Argentino, Dow / Scott Collett, DuPont Mobility & Materials / Anuva Seth-Chenim, W.L. Gore & Associates

Moderator: Rebehkah Paul, American Chemical Society

What You Will Learn:
- The variety of ways companies promote diversity, equity, inclusion, and respect
- What programs companies are using to drive change
- Opportunities for the next generation workforce within industry

Co-produced with: ACS External Affairs & Communications and ACS Industry Member Programs.

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Chemistry Enterprise – Growth, Collaboration and Advocacy

• Chemistry is a central science. A strong and growing global chemistry enterprise is good for the profession and its members
• Some possible actions:
  – Innovation, application R&D
    • entrepreneurship, industrial engagement
  – Sustainability and New Frontiers
  – International collaboration
  – Collaboration among chemistry stakeholders
• Need continued public and government support
Innovation and Entrepreneurship

• Innovation is the engine of growth for any civilization and society
  • Innovation and discovery are at the core of ACS through the efforts of its members
  • The key is to translate these innovations and discoveries from bench to market
  • This requires entrepreneurial and business skills not usually taught in grad schools
• An innovation and entrepreneurship educational program is needed by ACS and its members
  • Educate our members on the skills needed for entrepreneurship and business management
  • Increase collaboration, networking/interactive relationships. Promote new enterprises
  • Recruit and retain members who see innovation and management as integral to their professional goals and recognition
  • Thanks are due to ACS Industrial Member Programs, ACS webinar team, SChB, BMGT, and also Corporation Associates and CTA on this collaborative effort.

Webinars for Entrepreneurship

• Webinars in 2020
  • “Starting a Company: Do You Need a Business Plan?”
  • “Starting a Company: Where Do You Get Funding?”
    https://www.acs.org/content/acs/en/acs-webinars/business-entrepreneurship/company-funding.html

• Webinars for 2021
  • 7/21/2021: Starting a Company: Sole Proprietorship to Incorporation
  • 7/28/2021: Starting a Company: Intellectual Property
  • 8/11/2021: Starting a Company: How to Organize Your New Firm
TEN DEADLY START-UP MISTAKES

BENJI JONES & JIM VERDONIK - INNOVATE CAPITAL LAW
Benji Jones and Jim Verdonik

- Start-up Planning
- Entity Selection and Organization
- Employees Equity Compensation
- Channel Partner Contracts
- Securities Law Advice Capital Raising

50 Years Combined Experience

TEN COMMON MISTAKES

**PEOPLE:**
- Wrong Co-Founders
- Family Issues

**VAGUE EQUITY PROMISES**

**NO FOUNDERS AGREEMENT**

**IP OWNERSHIP NOT DOCUMENTED**

**CHOOSE WRONG TYPE OF ENTITY**

**DON'T FOLLOW PROCEDURES OR DOCUMENT DECISIONS**

**EQUITY COMPENSATION:**
- Timing
- Valuation Documentation

**TREAT EMPLOYEES AS CONTRACTORS**

**USE FREE INTERNET FORMS INSTEAD OF CUSTOMIZED DOCUMENTS**

**NO LONG-TERM CAPITAL RAISING PLAN**

**SECURITIES LAW VALUATIONS**
**Audience Survey Question**

**ANSWER THE QUESTION ON BLUE SCREEN IN ONE MOMENT**

What portion of new businesses close within 5 years of start-up?

- About 1 in 10 close
- About 1 in 4 close
- About 1 in 2 close
- About 3 in 4 close
- About 9 in 10 close

---

**QUITTING: TIMING IS IMPORTANT**

- **Wait Too Long to Quit:**
  - Employer Owns Your Invention
  - May Lose Time Sensitive Opportunity
  - Unable to Raise Money or Recruit Other Team Members If not Fully Committed

- **Leave too Soon:**
  - Lose Income
  - Lose Security
  - Lose Contacts
  - Expertise Becomes Obsolete
Choice of Entity

- Do I really need a company NOW?
- Could I just use Legal Zoom?
- What type of Entity is best for me?

TYPES OF ENTITIES FOR DIFFERENT GOALS
It’s Complicated
There is No One-Size-Fits-All

Legal Structure Driven by Liability and Tax Choices:

- **C Corp:** Limited Liability & “Double” Taxation
- **Limited Liability Company/Partnership:** Limited Liability & “Pass Through” Taxation
- **S Corp:** Limited Liability & “Pass Through” Taxation
- **Sole Proprietorship or “Informal” Partnership:** No Limitation of Liability & Individuals Taxed; Risk of Oral Agreements

But that’s not all!

Taxation and Beyond

Key Questions to Think About

- Do we want pass-through taxation? Do I or other owners have passive to offset with business losses? Do we need to retain earnings?
- Do I want to raise outside capital? Do the investors care about legal structure? Are any of my investors non-US residents or entities?
- Will I want to give employees equity? Will they understand the LLC structure or be prepared to pay self-employment taxes? When is that going to start?
- How do I intend to “exit” the business – license IP? Retain for Family/Legacy? Acquisition or IPO?
Entity Choice is most important when there is a big difference between the corporate tax rate and the individual tax rate – relatively small difference in 2020.

Qualified Business Income (QBI) 20% exclusion

Self Employment Tax – Social Security and Medicare – 2.9% (plus 0.9% for high earners) Medicare Tax applies to all net earnings of the business (whether or not distributed)

Accountants often advise after crunching the numbers

SECTION 1202 QUALIFIED SMALL BUSINESS STOCK OF C- CORPORATIONS

• Exempts from Income Tax up to $10 Million of gains for each owner (or 10x investor’s tax basis if higher), if criteria met.
• Acquire stock for cash or “property”
• Company assets at all times before this stock issuance are less than $50 Million
• Company agrees to submit reports to IRS (no reporting requirement in 2020)
• Company actively conducts a “qualified trade or business.” (generally excludes investment, professional services, farming, hotel, motel, restaurant and similar businesses)
• Hold Stock for Five Years
PRIMARY GOVERNANCE ISSUES

Type of Entity

Which State Law

Form of Organizational Documents

<table>
<thead>
<tr>
<th>Documents Filed with State</th>
<th>CORPORATIONS</th>
<th>LIMITED LIABILITY COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles or Certificate of Incorporation</td>
<td>Articles or Certificate of Organization or Formation</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Documents</th>
<th>Bylaws</th>
<th>Operating Agreement</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Investor Agreements</th>
<th>Possibly (Voting; Shareholders; Investors Rights Agreements)</th>
<th>Typically not (in Operating Agreement) but possible</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Owners</th>
<th>Shareholders or Stockholders</th>
<th>Members or Economic Interest Owners</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Securities</th>
<th>Shares of Stock</th>
<th>Units or Interests</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Governing Body</th>
<th>Board of Directors (always; required by statute)</th>
<th>Members, Manager or Board of Managers (but can call them anything)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Officers</th>
<th>Chief Executive Officer, Chairman, President, Vice Presidents, Treasurer, Secretary (titles established in bylaws)</th>
<th>Manager or any officer defined in Operating Agreement</th>
</tr>
</thead>
</table>

COMPARING ENTITIES
## Comparing Entities (Continued)

<table>
<thead>
<tr>
<th><strong>Centralized Management</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory Shareholders elect Board and Board supervises officers</td>
<td>Optional; Either managers or Members can control</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Flexibility</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many rights and obligations defined in statute</td>
<td>Few Statutory Limits</td>
<td></td>
</tr>
<tr>
<td>Shares of same class have same rights</td>
<td>Contractual Freedom to define</td>
<td></td>
</tr>
<tr>
<td>Fiduciary Duties defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Voting and notice procedures</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Document Complexity</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple except where have multiple classes of convertible preferred stock</td>
<td>Very complex unless single member LLC, because of tax, P&amp;L allocation, distribution and governance provisions</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Document Secrecy</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic, Voting and other Rights in Certificate of Incorporation filed with State</td>
<td>Operating Agreement that contains most rights and duties is not filed with State</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Document Standardization</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Venture Capital Association Form Documents</td>
<td>Most Law firms use own Forms of Operating Agreements but forms vary</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Court Interpretations</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extensive litigation history</td>
<td>Few court cases</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Affect Investor Taxes</strong></th>
<th>Corporations</th>
<th>Limited Liability Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes, need Form K-1s</td>
<td></td>
</tr>
</tbody>
</table>

### Basic Legal Docs
- Charter & Bylaws for Corporation
- Operating Agreement for LLC
- Initial Organization Resolutions
- Tax: EIN and Related Elections

### Best Practices
- Non-Disclosure Agreement
- Standard IP Assignment (from the start!)
- Protect your IP (Trademarks & Patents)

### As You Grow
- Equity Compensation Plan (for stock options and restricted stock awards)
- Employee and Consultant Agreements
### STATE LAW AND CHARTER DOCUMENTS GOVERN

<table>
<thead>
<tr>
<th>Topic</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocation of Economic Rights Among Owners</td>
<td></td>
</tr>
<tr>
<td>Decision Making Processes</td>
<td></td>
</tr>
<tr>
<td>Fiduciary and Other Duties</td>
<td></td>
</tr>
<tr>
<td>Decision-Maker Liabilities</td>
<td></td>
</tr>
<tr>
<td>Buyouts and Transfer Restrictions</td>
<td></td>
</tr>
<tr>
<td>Other Owner Rights and Obligations</td>
<td></td>
</tr>
</tbody>
</table>

### BYLAWS – PROCEDURAL ISSUES

- How many directors and replacing
- Identity and Powers of each officer
- Meeting, Notice and Written Consent Procedures for Board of Directors and Shareholders
- Stock transfer restrictions
- Indemnification
ARE THEY EMPLOYEES OR INDEPENDENT CONTRACTORS?

Employees Trigger Many Tax and Employment Laws

Many laws do not apply to Independent Contractors

Businesses Minimize Number Employees and Maximize Number Independent Contractors

Government is Expanding the Definition of Employees (Uber)

Substantial Penalties if Government Catches You Being Wrong

Major Due Diligence Concern to Investors and Buyers

Get it Right before Raising Capital or Selling Company

PRIMARY DIFFERENCES

<table>
<thead>
<tr>
<th>EMPLOYEES</th>
<th>INDEPENDENT CONTRACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid Salary or Hourly</td>
<td>Paid Per Project</td>
</tr>
<tr>
<td>Benefits</td>
<td>No Benefits</td>
</tr>
<tr>
<td>CONTROL: Employer Determines When, Where How Work</td>
<td>Contractor Determines When Where How Work</td>
</tr>
<tr>
<td>Employer Deducts Social Security Medicare and Payroll Taxes</td>
<td>Contractor Owes Self Employment Tax</td>
</tr>
<tr>
<td>Employment Discrimination and Other Laws Protect</td>
<td>Rights primarily determined by Contract</td>
</tr>
</tbody>
</table>
TYPES OF CAPITAL RAISES

Bootstrap – work by day, innovate on nights and weekends

Bankroll – use your own savings and or credit card to purchase basics, and even fund payroll

Friends & Family – loans or seed money from your closest friends & family (people around your holiday dinner table) (relatively low returns)

Angel Investors – Accredited Investors (on a one-on-one basis or as a group) provide loans or seed money (3x-5x return, some control)

Crowdfunding – using the internet to pre-sell a product, get contributions or solicit investors (1.75x to 3.5x return)

Strategic Investors – corporate partner or customer loans or invests in company or a particular aspect of your business (license deals)

Venture Capital – convertible debt or preferred equity investment (10x return, lots of control)

Institutional Investment – private equity funds and family offices (investments similar to VC)

SECURITIES REGULATION 101

Find an Exemption or Register the Offering
   Each Exemption has different rules to follow

Selling Activities are Regulated
   Initial sale and resales; broker-dealer activities

Liability Attaches for Fraudulent Activity
   Includes material misstatements and omissions

States Also Regulate Securities Offerings and Selling Activities
   Similar to federal structure

KEY TAKE AWAYS:
   • Make sure you have an Exemption BEFORE you make any offers
   • No commissions to unregistered broker-dealers (including your employees)
Benji Jones and Jim Verdonik

- Start-up Planning
- Entity Selection and Organization
- Employees Equity Compensation
- Channel Partner Contracts
- Securities Law Advice Capital Raising

50 Years Combined Experience

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ACS SCHB Where all the elements come together for a successful chemical business

The ACS Division of Small Chemical Businesses helps chemists working in small enterprises, including self-employed, with the legal, social, educational, legislative, regulatory, and economic aspects of their unique professional status.

SCHB serves as a clearinghouse of information, a forum for discussion, and a liaison between small businesses and students.

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Co-Founder and Corporate Attorney, Innovate Capital Law

BENJI JONES
Co-Founder and Corporate Attorney, Innovate Capital Law

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Sole Proprietorship to Incorporation
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