Have Questions?

Type them into questions box!

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

Contact ACS Webinars ® at acswbindars@acs.org
Check out the ACS Webinar Library!
An ACS member exclusive benefit

Hundreds of presentations from the best and brightest minds that chemistry has to offer are available to you on-demand. The Library is divided into 6 different sections to help you more easily find what you are searching.

Professional Development
Learn how to write better abstracts, deliver more engaging presentations, and network to reach your next dream job. Brush up on your soft skills and set a new career path by mastering what you will not be taught in the lab.

Technology & Innovation
From renewable fuels to creating the materials for the technology of tomorrow, chemistry plays a pivotal role in advancing our world. Meet the chemists that are building a better world and see how their science is making it happen.

Drug Design and Delivery
The Drug Design Delivery Series has built a collection of the top minds in the field to explain the mechanics of drug discovery. Discover the latest research, receive an overview on different fields of study, and gain insights on how to possibly overcome your own medical roadblocks.

Culinary Chemistry
Why does food taste better when it is grilled or what molecular compounds make a great wine? Discover the delectable science of your favorite food and drink and don’t forget to come back for a second helping.

Popular Chemistry
Feeling burdened by all that molecular weight? Listen to experts expound on the amazing side of current hot science topics. Discover the chemistry of rockets, how viruses have affected human history, or the molecular breakdown of a hangover.

Business & Entrepreneurship
How do ideas create a product that goes from the lab to the real world? Discover the ins and outs of the chemical industry whether you are looking to start a business or desire a priceless industry-wide perspective.

https://www.acs.org/content/acs/en/acs-webinars/videos.html

Learn from the best and brightest minds in chemistry! Hundreds of webinars on diverse topics presented by experts in the chemical sciences and enterprise.

Edited Recordings are an exclusive ACS member benefit and are made available once the recording has been edited and posted.

Live Broadcasts of ACS Webinars® continue to be available to the general public several times a week generally from 2-3pm ET!

A collection of the best recordings from the ACS Webinars Library will occasionally be rebroadcast to highlight the value of the content.

www.acs.org/acswebinars
From ACS Industry Member Programs

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

- **ACS Innovation Hub**
  Connect, collaborate, and stay informed about the trends leading chemical innovation
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:

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

Visit www.ACS.org/COVID19-Network to learn more!

Join us in our efforts to increase the diversity of chemistry.

Valued donors like you have sustained ACS educational programs that are welcoming students from diverse backgrounds into our profession.

www.acs.org/donate

ACS Office of Philanthropy
Chemistry for Life®
ChemIDP is an Individual Development Plan designed specifically for graduate students and postdoctoral scholars in the chemical sciences. Through immersive, self-paced activities, users explore potential careers, determine specific skills needed for success, and develop plans to achieve professional goals. ChemIDP tracks user progress and input, providing tips and strategies to complete goals and guide career exploration.

ACS Bridge Program

Are you thinking of Grad School?

If you are from an underrepresented racial or ethnic group, we want to empower you to get your graduate degree!

The ACS Bridge Program offers:

• A FREE common application that will highlight your achievements to participating Bridge Departments
• Resources to help write competitive grad school applications and connect you with mentors, students, and industry partners!

Learn more and apply at www.acs.org/bridge

Email us at bridge@acs.org
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.

Contact Us:
https://app.suggestionox.com/r/DI_R
Diversity@acs.org

@ACSDiversity
ACS Diversity
acsvoices.podbean.com/

www.acs.org/diversity

ACS Webinars®

Starting a Company
Intellectual Property

ACS President H.N. Cheng Presents
The Entrepreneurship Series

Date: Wednesday, July 28, 2021 @ 1-3:30pm ET
Speakers: Kenneth Silberg, Carbion Inc.; H.N. Cheng, 2021 ACS President and ACS Department of Agriculture
Moderator: Jim Skinner, Teragenix Inc. and ACS SCMB

What You Will Learn:
• The basics of intellectual property, how it must be protected, and the importance of filing dates
• 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-Elect, ACS Board Committee on Corporation Associates, ACS Committee on Technician 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, Janssen Pharmaceuticals
Moderator: Charan Nanavati, Janssen 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 @ 2-3:30pm ET
Speakers: Andre Argento, Dow; Scott Collins, DuPont Mobility & Materials / Advance Bath-Cheerinham, M.L., Zaree & Associates
Moderator: Rebekah 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

www.acs.org/acswebinars
Starting a Company
Sole Proprietorship to Incorporation

FREE Webinar | TODAY at 2pm ET

This ACS Webinar will begin shortly...

Starting a Company: Sole Proprietorship to Incorporation

H.N. CHENG
2021 ACS President and Research Chemist, US Department of Agriculture

JIM SKINNER
President & CEO, Terregera Inc. and Chair, ACS Division of Small Chemical Businesses

JIM VERDONIK
Co-Founder and Corporate Attorney, Innovate Capital Law

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

Presentation slides are available now! The edited recording will be made available as soon as possible.

www.acs.org/acswebinars

This ACS Webinar is co-produced with ACS Industry Member Programs, ACS President-Elect, ACS Board Committee on Corporation Associates, ACS Committee on Technician Affairs, the ACS Division of Small Chemical Businesses, and the ACS Division of Business Development and Management
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
TEN COMMON MISTAKES

PEOPLE:
- WRONG CO-FOUNDEES
- 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
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

- Sole Proprietorship
- General Partnerships
- Limited Partnerships
- Professional Corporations (PA’s) for licensed professionals
- Limited Liability Partnerships
- Limited Liability Companies
- Corporations (C and S)
- B Corps and Benefit Corporations
- Non-Profits (501 (c) (3) and other)
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

### CORPORATIONS
- Articles or Certificate of Incorporation

### LIMITED LIABILITY COMPANIES
- Articles or Certificate of Organization or Formation

## Which State Law

### CORPORATIONS
- Possibly (Voting; Shareholders; Investors Rights Agreements)

### LIMITED LIABILITY COMPANIES
- Typically not (in Operating Agreement) but possible

## Form of Organizational Documents

### CORPORATIONS
- Bylaws

### LIMITED LIABILITY COMPANIES
- Operating Agreement

## Comparing Entities

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

<table>
<thead>
<tr>
<th></th>
<th>CORPORATIONS</th>
<th>LIMITED LIABILITY COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centralized Management</td>
<td>Mandatory Shareholders elect Board and Board supervises officers</td>
<td>Optional; Either managers or Members can control</td>
</tr>
<tr>
<td>Flexibility</td>
<td>Many rights and obligations defined in statute</td>
<td>Few Statutory Limits</td>
</tr>
<tr>
<td></td>
<td>Shares of same class have same rights</td>
<td>Contractual Freedom to define</td>
</tr>
<tr>
<td></td>
<td>Fiduciary Duties defined</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Voting and notice procedures</td>
<td></td>
</tr>
<tr>
<td>Document Complexity</td>
<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>
</tr>
<tr>
<td>Document Secrecy</td>
<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>
</tr>
<tr>
<td>Document Standardization</td>
<td>National Venture Capital Association Form Documents</td>
<td>Most Law firms use own Forms of Operating Agreements but forms vary</td>
</tr>
<tr>
<td>Court Interpretations</td>
<td>Extensive litigation history</td>
<td>Few court cases</td>
</tr>
<tr>
<td>Affect Investor Taxes</td>
<td>No</td>
<td>Yes, need Form K-1s</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
Allocation of Economic Rights Among Owners
Decision Making Processes
Fiduciary and Other Duties
Decision-Maker Liabilities
Buyouts and Transfer Restrictions
Other Owner Rights and Obligations

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

STATE LAW AND CHARTER DOCUMENTS GOVERN
**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 3.5 x 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)
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.

https://acs-schb.org
Presentation slides are available now! The edited recording will be made available as soon as possible.

www.acs.org/acswebinars

This ACS Webinar is co-produced with ACS Industry Member Programs, ACS President-Elect, ACS Board Committee on Corporation Associates, ACS Committee on Technician Affairs, the ACS Division of Small Chemical Businesses, and the ACS Division of Business Development and Management.
Starting a Company: Sole Proprietorship to Incorporation

Presentation slides are available now! The edited recording will be made available as soon as possible.

www.acs.org/acswebinars

This ACS Webinar is co-produced with ACS Industry Member Programs, ACS President-Elect, ACS Board Committee on Corporation Associates, ACS Committee on Technician Affairs, the ACS Division of Small Chemical Businesses, and the ACS Division of Business Development and Management
Learn from the best and brightest minds in chemistry! Hundreds of webinars on diverse topics presented by experts in the chemical sciences and enterprise.

**Edited Recordings** are an exclusive ACS member benefit and are made available once the recording has been edited and posted.

**Live Broadcasts** of ACS Webinars® continue to be available to the general public several times a week generally from 2-3pm ET!

A collection of the best recordings from the ACS Webinars Library will occasionally be rebroadcast to highlight the value of the content.

ACS Webinars® does not endorse any products or services. The views expressed in this presentation are those of the presenter and do not necessarily reflect the views or policies of the American Chemical Society.

Contact ACS Webinars® at acswebinars@acs.org