

## **15.391 Early Stage Capital F10**

### **Framework I: Lawyer Simulation Rounds**

This document lays out the operating framework for how the simulations are run, the work product your team must prepare, as well as general approach and performance guidelines. If you are unclear with any part of the framework, please contact me.

#### **I. Premise**

Based on a provided set of facts and background, you and your team members will assume the role of founders in a startup company. You are to assume that your company has shaken hands on its first round of venture capital funding, and received a term sheet summarizing the terms of the VC's proposed investment. In the role of founders, you and your teammates will meet with your lawyer to review the term sheet proposed by the VC, and to discuss legal and negotiating strategy.

#### **II. Goals**

Your (and your lawyer's) goal will be to form a strategy so that you can close your first round on the best terms possible for your company. Your team will gain practical experience dealing with outside professional advisers and working knowledge of term sheet norms and practices.

#### **III. Mechanics**

- The background for the roles that you are to play in the simulation is contained in the "MIT/FIT Corp. Fact Packet for Simulations" document. Please review it carefully and prepare the work product outlined below.
- The term sheet that you will be analyzing with your lawyers (and later negotiating with your VCs) is also posted. After you have reviewed the term sheet individually, your team should meet to talk about the questions and issues it raises, and to define a set of priorities to discuss with your lawyer.
- The simulation will last approximately 60 minutes. This session is then immediately followed by 30 minutes of feedback and Q&A with the lawyer.
- The other information necessary to prepare all work products for this round is described in this document. (see below)
- The lawyer rounds will take place between Lecture 3 and Lecture 6. All simulations take place in the evening.
- You must provide James Luong, the course TA, with all pre-meeting documents (see below) 24 hours before your scheduled round. Please provide him with one hard copy of each document as well as electronic versions.

- James Luong will forward all documents to the individual lawyers with whom you will be meeting. He is the sole point person for contact with the lawyers. Do not contact your lawyers directly prior to the round.
- It is your responsibility to manage schedule conflicts among team members and to schedule sufficient time between your lawyer and VC rounds to allow adequate preparation.
- The meetings will take place at the lawyers' offices. You must coordinate transportation with your team members. Goodwin Procter and Brown Rudnick are downtown and easily accessible by T train. WilmerHale's offices are located in Waltham and can be reached only by car.
- We will notify you of all relevant security and clearance requirements for each firm.
- As you will only have 60 minutes for your simulation, use that time to get as much substance as possible. Arrive a little early.
- Many teams wear jacket and tie, to add to the seriousness of the exercise. Attire is at your discretion, however.

#### **IV. Work Product Overview**

##### **a. Pre-Meeting Work Product**

Teams will collectively prepare the following 3 pre-meeting documents. **Each should be submitted to James Luong at least 24 hours prior to your scheduled round. Please provide one hard copy of each document as well as electronic versions.**

1. *Firm profile.* This is a half-page summary of the roles your individual team members will be playing. The requirements are set out in Section V ("Firm Profile Specifics") section of this document.
2. *Meeting agenda.* This document articulates your team's priorities regarding the term sheet. There is no required template; use any format you deem appropriate. The other requirements are described in Section VI ("Agenda Overview").
3. *Term Sheet.* Your team should fill in the blanks contained in the "Term Sheet for Simulations" document in the "Simulation Materials" folder on Stellar. Don't change the terms; this is simply an exercise in filling in the blanks appropriately so that the lawyers and VCs can refer to it in your rounds. Thus, add in your team members' names, assign stock holdings to the team members, fill in your company name, etc., where there are blanks. This is a 5 minute typing exercise only.

### **b. Post-Meeting Work Product**

Teams will prepare the following post-meeting document. **It should be submitted to James Luong within 48 hours after your round. Electronic version only is sufficient.**

*Open Questions Shortlist.* After reviewing your team's notes, please collectively prepare a summary of issues that are still unclear, confusing or conflicting. Please also flag any other issues related to the substance or process of your meeting that you want me to be aware of. These will be used for classroom discussion on the Lawyer Round-Up session, so please list your team name and team member names.

### **c. End-of-Course Work Product**

*Peer evaluation.* Individual confidential appraisals of the constructive participation (or otherwise) of the other members of your team. This will take place at the end of the course and cover all aspects of team work. These will be done by email and be reviewed by me only.

## **V. Firm Profile Specifics**

- The firm profile is a half-page document that each team will prepare to supplement and personalize the standard Fact Packet document that all teams will be using. It is intended primarily as background and preparation for the lawyers and VCs you will be meeting. *In other words, they use it as a cheat sheet when they meet with you.*
- The Fact Packet uses the company name "MIT/FIT Corp.". Change "MIT/FIT Corp." ("Mi-Fi") to whatever company name your team adopts for all references.
- Each team member should be listed, as in a regular business plan, with the following blurb:
  - a Mi-Fi title
  - 2 or 3 key phrases summarizing your real work experience, education or other expertise.
- To this basic description, the items marked with an asterisk (\*) in the excerpt below from the "Operating History" section of the Fact Packet document should be assigned among the team members and added to the individual profiles:
  - You are each members of the board of directors\*, and together, you constitute the whole board.
  - After profitably closing out a 14-month holding of Apple stock in March 2010, one\* of you loaned the company around \$250,000.
  - Another\* of you has skipped paychecks altogether since the 4<sup>th</sup> of July as a way of contributing to the financial survival of Mi-Fi.
  - The CEO\* owns 300,000 shares of Mi-Fi common stock; the other founders\* each own 150,000 shares.

- You should each assume a Mi-Fi title that matches (or is close to) your actual skill set. The education/work experience should mirror as much as possible your team members' real backgrounds (please don't puff excessively).
- As a practical matter, you should name someone from your team the CEO; the lawyers and VCs will look for a decision maker. (The CEO's assumed background, however, should still be his or her actual background.) It is helpful to have a technical person or engineer (CTO or otherwise) as well. Assign other executive titles as your team sees fit.

***For example:***

- Sally Brewster: Mi-Fi Founder and CFO; member, Board of Directors; formerly Senior Manager, XXX finance department, 4 years. BBA, accounting, Georgetown University; MBA, Sloan; CPA. Sally owns 150,000 shares of Mi-Fi common stock. Sally has skipped paychecks since July as a way to contribute to the survival of Mi-Fi.
  - Dougal McPherson, Mi-Fi Founder and CMO; member, Board of Directors; formerly Marketing Director at XXX, 7 years. BSBA, University of Wichita. Dougal owns 150,000 shares of Mi-Fi common stock.
- Provide your profile (along with the filled-in term sheet and agenda) to James Luong at least 24 hours prior to your lawyer meeting. James Luong will provide copies of the profiles directly to both the lawyers and the VCs prior to their respective rounds for their reference.

**VI. Agenda Specifics**

- There is no "correct" agenda. It should be an outline or working script to keep your team and your lawyer focused during the meeting. One acceptable example of an agenda would call first for a quick overview of the 3 or 4 critical issues you are most concerned with, and then an exercise in "flipping the pages," going page by page over the entire document, asking questions as you go.
- You do not get extra points for controlling this meeting. The lawyers know more than you on the legal stuff, and you should follow their lead on which subjects to emphasize. But you should also flag the questions you really don't understand and make sure they are answered to your satisfaction.
- In fixing your priorities, avoid goals tied too closely to fact-specific issues. Focus rather on understanding the basic concepts that affect your ownership (current and future), your control, your obligations and the downside and upside implications of each. Keep the focus of your agenda on larger principles that will apply not only to these simulation rounds, but also to the real-life deals you will do in the future.

- Teams determine the roles and responsibilities of the members in the simulation. For example, each team member may speak for 15 minutes about a particular issue or concern, or one member may act as an obsessive CEO and do all the talking. This decision should be reflected in the agenda.
- Remember, your lawyer's day job is to work with real clients in sessions precisely like this one. He or she may have a different approach on how to get the most out of your client meeting, and you should listen hard to their advice on this one.

## **VII. Approach and Performance Guidelines**

- One of the goals of this simulation is to defuse some of the stereotypes and misconceptions that exist when entrepreneurs begin working with professional service providers. No one is born knowing how to use—and extract maximum value from—a lawyer. It is surprising how often clients waste their money trying to impress their lawyers. While it can be difficult to own up to areas of ignorance when you're a new CEO in "pitch mode," it is truly critical to do so with advisers to get the full benefit of their experience.

***Every dumb question you ask in this round  
will make you look smarter in your VC round.***

- It bears repeating that this is a cooperative meeting with your paid professional adviser. Your lawyer gets paid to educate you and advise you on things like blue skies and green shoes--things you've never paid much attention to or perhaps even heard of. Good lawyers are good teachers; they educate and inform easily and without arrogance. They are also good team players, able to contribute their skills and tools to your overall goal.
- The actual topics covered in the meeting usually center around the term sheet—for example, asking questions about unfamiliar terms or legal concepts, soliciting advice on negotiating strategy, discussing what's typical and what constitutes "market practice" in negotiations—but your team is in charge of setting the right agenda for your session.
- Come to the office "in character." Introduce yourselves as founders of your firm, not MIT students. (Receptionists will know only that you are new clients. Act the part.) This all enhances the value of the simulation, and makes it much easier to get the meeting started. (No awkward metamorphoses before the lawyer's eyes.)
- On the other hand, any simulation must balance the value of role-playing and verisimilitude against the goal of education. As this is not a course on negotiation, the role-playing should yield to opportunities to learn more, even if it takes you "out of character."

- The 30 minute feedback period, after the simulation, is not structured. The lawyer will give his or her impressions, and then allow for team members to ask questions. You should not be playing any roles. This is the time to exchange your real MIT business cards with the lawyer.
- Your work will be graded on your team's ability to articulate an agreed set of priorities in the agenda, discuss them constructively with your adviser, and as appropriate, integrate what you learn into your VC round.
- Remember, you're the client and you're paying for the meeting. Have the answers to your questions repeated or clarified until you are sure you understand.
- Going forward, your team will meet to discuss your lawyer's advice within the broader context of your business, as legal advice must always be kept in perspective. But an important first step in developing business judgment is knowing how to listen to a lawyer's pure legal advice and then translate that advice into data to assist you in reaching your own business-based decisions.

### **VIII. Resources**

- Visit your law firm's website. The participating law firms are high-profile, Boston-based practitioners with excellent experience in the venture and high-tech fields:  
  - Goodwin Procter, [www.goodwinprocter.com](http://www.goodwinprocter.com)
  - Brown Rudnick, [www.brownrudnick.com](http://www.brownrudnick.com)
  - WilmerHale: [www.wilmerhale.com](http://www.wilmerhale.com)
- We will in most cases be able to tell you the names of the individual lawyers you will be meeting with prior to the round. Check their backgrounds on the firm website.

### **IX. Power of Informal Networks, Release 2.0**

While we have participants at all levels of seniority, use this opportunity to make connections that will follow on after this course. In the time available, you may find a peer with whom you can build an informal network—they ping you with a business question, you ping back with an occasional law question. You're both smarter, for free, and you've got a good start on knowing a good lawyer when you're ready to do your next start-up.

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15.391 Early Stage Capital  
Fall 2010

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