

The background is a dark blue and purple gradient with numerous glowing bokeh circles of various sizes and colors. A large, prominent, glowing sphere with a spiral pattern is positioned in the upper right quadrant. The overall aesthetic is futuristic and digital.

Morgan Lewis

FOUNDERS' AGREEMENTS, CONVERTIBLE NOTES AND SAFES

Presented by:

Michael K. Barron, Partner, Morgan Lewis

Sheri Yano, Associate, Morgan Lewis

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FOUNDERS' AGREEMENTS

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What is a Founders' Agreement?

- Typical Provisions:

1. Governance (e.g., how to elect the Board and who the officers will be; protective provisions)
2. Transferability of Shares (e.g., ROFR in favor of the Company or other founders; tag along rights)
3. Buyouts (e.g., death, disability or termination)
4. Drag Along
5. Market Standoff



Do you need a Founders' Agreement?

Establishes roles and responsibilities

Guidance in certain circumstances (e.g., a founder wants to sell, a founder is no longer able to dedicate the same amount of time to the business)

Protects minority stockholders

Helps stabilize the Company in the event of the departure of a founder

Alternatives to Founders' Agreement

Corporations

1. Bylaws

- For a Right of First Refusal in favor of the Company and Transfer Restrictions

2. Restricted Stock Purchase Agreements

- For Vesting and Market Standoff

Limited Liability Companies

1. Operating Agreement



What Happens to the Founders' Agreement upon a VC Financing?

- Founders' Agreement will likely be superseded by:
 1. Investors' Rights Agreement
 2. Voting Agreement
 3. Right of First Refusal and Co-Sale Agreement
- Consider:
 - Amendment Provision
 - Terminates upon a VC Financing



CONVERTIBLE NOTES VS. SAFES

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What's my Company Worth?

Valuation Issues:

What's in the mind of the founders?

What's in the mind of the investors?



Forms of Investment

1. Convertible Notes
2. "SAFEs" Simple Agreement For Future Equity
3. Common Stock
4. Seed or other Preferred Stock



Convertible Note vs. SAFE vs. Stock

- **Convertible Note** - a debt instrument that {may} convert into future equity
 - Allows deferral of valuation discussion
- **SAFE** – essentially like a convertible note, but is never repayable and can be considered and be treated like equity
- **Stock** – a direct equity investment, with current economic and voting ownership
 - This is “a priced round” – valuation must be set

CONVERTIBLE NOTES

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Principal Terms of Convertible Notes

- Convertible notes are a well-known vehicle for investment and generally used when you can't agree on a pre-money valuation
- “Qualified Financing”
- Conversion discount
 - Conversion cap?
 - Warrants?
- Interest rate
- Maturity
- Interim acquisition protection?



SAFES



Principal Terms of SAFEs



- SAFEs are new and the idea is to keep costs down
- Only applicable for c-Corps
- You only need to fill out a few variables
 - Amount of your investment
 - Post-money valuation cap
 - Discount rate
- <https://www.ycombinator.com/documents/>

Convertible Notes vs. SAFEs

No interest rate

No maturity date

Treatment in a
Liquidation/Dissolution
event

Tax Consideration

Tax consideration for choosing a SAFE over a Convertible Note

SAFEs may look to be more like equity than debt so for the purposes of Section 1202 of the Internal Revenue Code a SAFE may start the 5 year clock for holding “qualified small business stock”



Types of SAFEs



1. Valuation Cap, no Discount
2. Discount, no Valuation Cap
3. MFN, no Valuation Cap, no Discount
4. Pro Rata Side Letter

Consistency

1. Convertible Notes v. SAFEs
2. Principal Terms



QUESTIONS?



Biography



Michael Barron

Partner

T +1.617.951.8850

michael.barron@morganlewis.com

Michael K. Barron represents life sciences and technology companies and advises companies, entrepreneurs, and investors in the areas of formation and governance, early and later stage debt and equity financings, mergers and acquisitions, employment and executive compensation, and intellectual property matters, including trademark and technology licensing.

Michael serves on the board and as general counsel to several trade associations that focus on promoting and developing companies and professionals in the life sciences and technology industries. One of these organizations is the Massachusetts Innovation & Technology Exchange (MITX), a trade association, which is now a part of the Greater Boston Chamber of Commerce, serving more than 7,000 New England professionals involved in Internet and digital technologies industry. Michael founded MITX in 1995 to help promote the development and growth of the Internet and digital technologies industry in New England.

Biography



Sheri Yano

Associate

T +1.213.612.2617

sheri.yano@morganlewis.com

Sheri Yano advises life sciences and technology companies at all stages of development, from formation through exit.

Sheri focuses on corporate law, with an emphasis on venture capital financings, corporate strategic investments, international and domestic mergers and acquisitions, joint ventures, corporate governance, and commercial transactions.

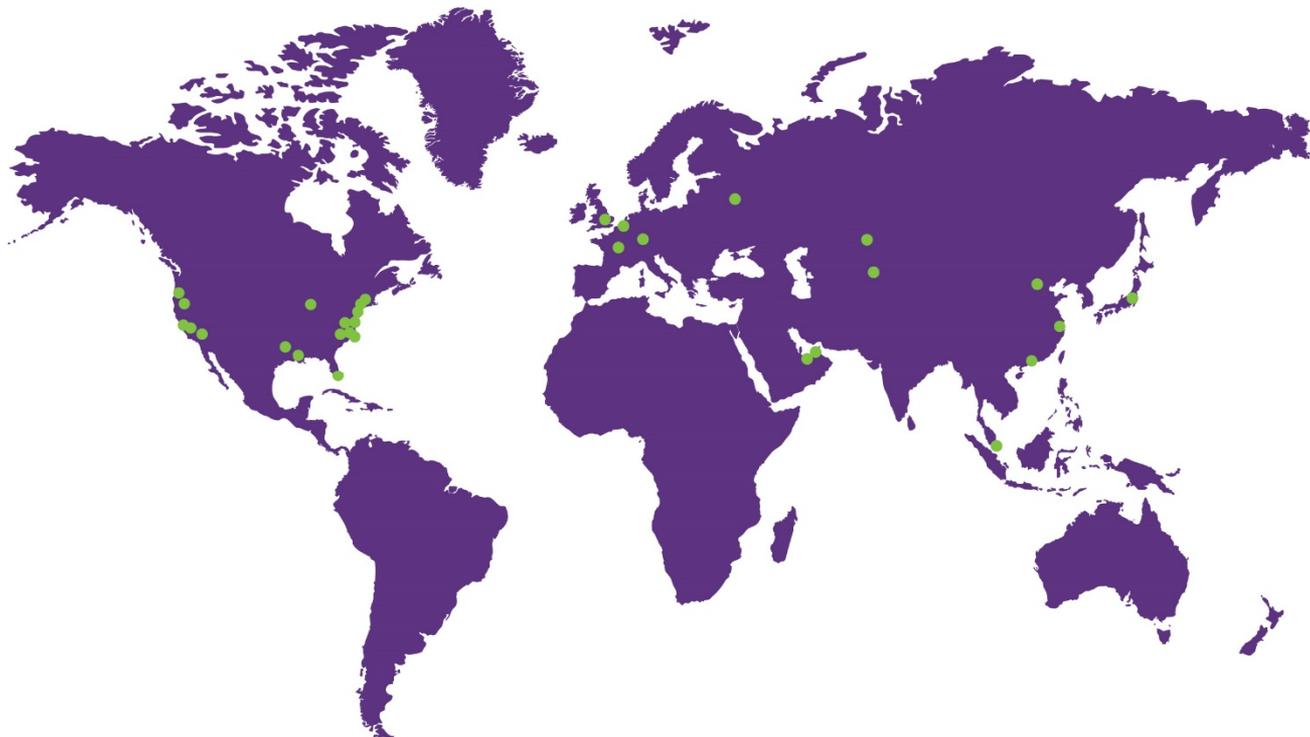
Sheri previously served as corporate counsel and director of business affairs at a privately-held mobile telecommunications company based in Los Angeles. Prior to law school, Sheri served as a law clerk and contracts coordinator for a publicly traded biopharmaceutical company in San Diego, California.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

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Frankfurt
Hartford
Hong Kong*
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Los Angeles
Miami
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