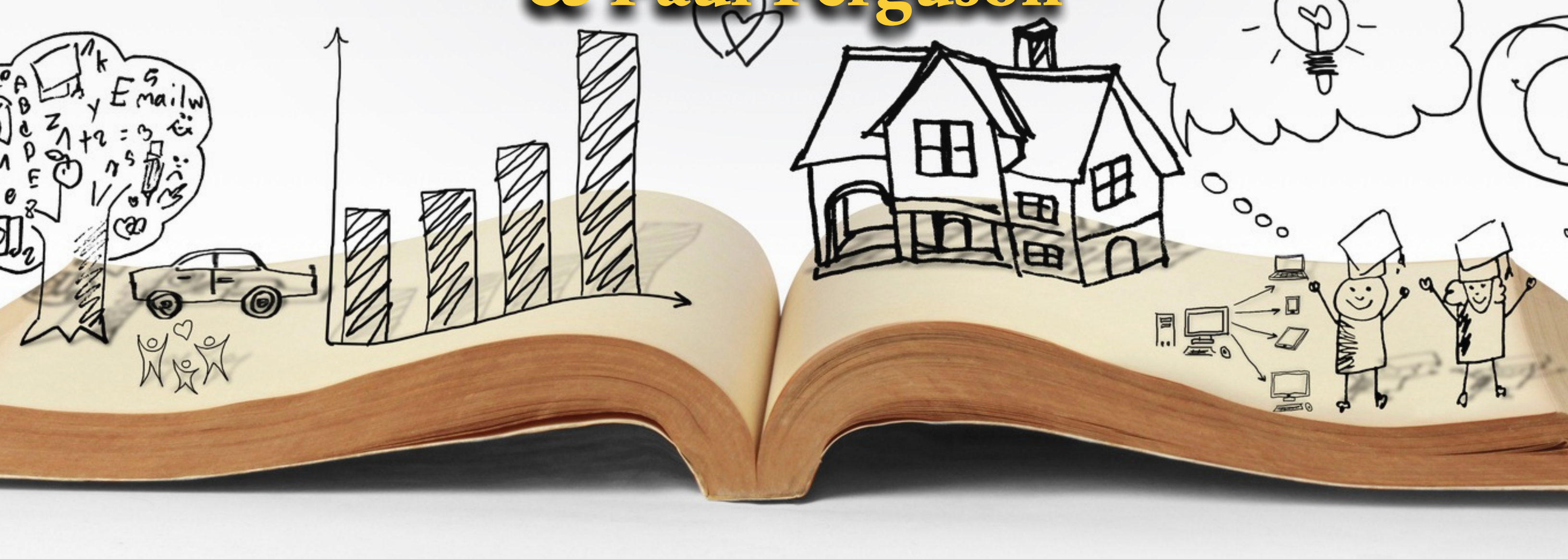
The Solari Report

MARCH 15, 2012

The Comfort Calls Story: Organizing the Legal Structure For Your Start Up

with Debbie Landers, Carolyn Betts & Paul Ferguson



The Comfort Calls Story: Organizing the Legal Structure For Your Start Up

March 15, 2012

C. Austin Fitts: I'm going to cut short our money markets discussion and "Ask Catherine" discussion tonight because I want spend a fair amount of time on the Comfort Calls story. Now, we have – I can't tell you how many people over the last year, both subscribers and clients have come to me and said, "I want to start a company," or, "Someone in my family is going to start a company," or, "Someone that I'm very close to is going to start a company, and I'm thinking about helping them," or, "I'm thinking about working with them," or, "I'm thinking about financing them."

It's been amazing to me the sort of entrepreneurial inspiration that our network is experiencing. Now, it's not surprising because if you look at the creative destruction going on, in the economy we're seeing new technology exploding and dramatically changing – first of all, reducing employment whether because it facilitates globalization or just the number of people you need to do a function is dropping dramatically where technology can intercede. So the creative destruction is going on, but technology is also financing a lot of globalization, which is the same thing: creative destruction of a lot of employment.

So many people are looking around and saying, "I don't need a job. I don't need employment. I need income." It's almost at this point easier to start a business and build income that way than it is to go get a job. So this business of inventing a business is very, very serious. It's on our minds. A lot of people are doing it, and a lot of people are impacted or supporting somebody who's doing it. And that's why what I wanted to do tonight was to create a toolkit that entrepreneurs could use. It's an audio, but it's also a very rich resources of links, and it includes a sample term sheet - a generic version of the term sheet that Comfort Calls used to organize and create their legal structure.

I want to create a toolkit that would make it easier and faster for entrepreneurs thinking of starting a business to understand the different issues involved in building a legal structure and in designing a business, that could would help them get clearer faster. It would help them get knowledgeable faster, and it would make sure that by the time they sit down with a really great attorney and a really great CPA that they could give clear direction.

When you create a business, you're literally creating a new living system. You're building an enterprise that produces a product or a service. It has a whole world of constituencies, whether it's the people and markets it serves or the employees who work there or the other people who somehow are touched. It is absolutely essential when you sit down to create a living system that to support that living system you create a governance, legal and financial structure. Hopefully it's one that will energize that enterprise and help take it from startup to successful operation.

So that's what we're going to talk about tonight. First, we'll speak with Debbie Landers on the Comfort Call story. Then I'm going to ask Carolyn Betts, my attorney and Solari's general counsel, to come in. Carolyn helped me work through and create a term sheet and legal structure for Debbie and Comfort Calls. Carolyn will describe a lot of the different issues involved in both the legal structure and the law as it relates to financing. Then I'm going to invite in Paul Ferguson, who is, a wonderful private investor and the treasurer of the First Ever Solari Circle, to talk about how this all looks from the investor's point of view.

We should go about probably an hour and a half. The audio will be on the blog with extensive links and other resources, including links to some of the other audio seminars and Solari Reports we've done on related topics. We'll have a transcript up sometime next week. So with that, let me – let's begin with our three guests, starting with Debbie Landers.

Debbie I first met several years ago when we did the Financial Permaculture Conference in Hohenwald, Tennessee. She's a mover and shaker in Hohenwald. She's started several businesses and a very successful association for private schools.

But what Debbie had on her heart, as Debbie would say, was the idea of starting a business. And over several years, she and I talked about it, but finally last year as she arranged for the necessary patents, Carolyn and I worked with her to create the legal structure, and Debbie launched Comfort Calls. So Debbie Landers, are you with us?

"Over several years, she and I talked about it, but finally last year as she arranged for the necessary patents, Carolyn and I worked with her to create the legal structure, and Debbie launched Comfort Calls."

DEBBIE LANDERS: I'm here.

C. AUSTIN FITTS: Thank you so much for joining us on the *Solari Report*.

DEBBIE LANDERS: Well, it's good to be with you, and I hope this all helps someone tonight.

C. AUSTIN FITTS: Well, I was just thinking.....you spent a lot of time with Carolyn and me learning about the different issues and making your decisions and putting together your governance structure and deciding on your state and legal structure – on and on and on and on and on. As I told you earlier, one of my hopes for tonight is that we can describe your story in a way that will help Debbie Landers two years ago go much, much faster.

DEBBIE LANDERS: Oh, wouldn't that have been great!

C. AUSTIN FITTS: Yes, wouldn't that have been great? So why don't you first tell us about Comfort Calls – what it is, what it does, and how it came to be.

DEBBIE LANDERS: All right. Well, as I've told many folks, when I was younger, my father passed away just before my tenth birthday, and several years ago – he was one of nine siblings, and I was sitting at the funeral of my last aunt, and there was one sibling who was left, and he was the non-talker of the group, I would say. And we were at visitation. It was about 8:00 p.m., and all of a sudden this man just starts talking. And I mean, he starts telling family stories and things that just started putting the pieces together for me, and it was like one of those life-changing moments because the stories he was telling I had hungered for my whole life.

And so we started looking around. Several of my cousins were there, and we were looking for something to write this down – maybe grab some sort of tape recorder or something to just capture this, and of course we couldn't find anything. So we just sort of sat there and listened to him, and he talked for probably well into an hour. And so I was so enriched by it, and that's the night that I got the idea – I thought, "You know, every funeral home in the world needs a way that as these families gather that they can capture all of their stories, all of their condolences," because a lot of times when people are in grief they can't capture everything that people are saying.

And that was – and that's when I got the initial idea. And I sat on it for a while, and then what gave me the push to actually do something about it was a dear friend of ours from over in Virginia, he was a minister, and he had traveled all over the world setting up orphanages and mission work, and he passed away from cancer. And at his funeral, there was probably 800 people there, and literally people from all over the world, and they passed by his widow and his children and his grandchildren, and all of these people were telling them all these marvelous stories about his life and what he had done.

And of course, they hadn't always had the opportunity to travel with him, and I was watching, and his widow, who is a dear friend of mine, I just saw the veil over here eyes, and I thought, "She is not going to remember these stories." And then his grandchildren were standing there, and I knew that they were too young to capture everything, having gone through that myself at a young age. And so my husband

and I were driving home, and I said, "You know, honey, I know I've about worn you out with ideas, but I've got one that literally I feel like if I don't move on it, I will regret it for the rest of my life," and I told him about the service.

And I really didn't know what to call it, but I said, "I just see this being in every funeral home, and I also see it where that if people can't make it to funerals, they could call in from all over the world." And then I said, "And then, honey, there's all these other occasions – there's birthdays, family reunions, anniversaries," and I said, "The voice is so powerful," and I said, "I just want to enable that. I want to enact it," and he turned to me, and he said, "That's Comfort Calls. Those are calls that are going to comfort people," and that's how we got the name. So that's pretty much the story in a nutshell.

C. AUSTIN FITTS: Well, I just want to say one of the reasons I was so intrigued with this business is I have seen – you know, I live also in a small town in Tennessee, and I have seen again and again where families come together, whether in person or by phone, around the death of a loved one, and they don't capture their history. And it's amazing – a family that doesn't know their history just loses so much power whereas if we know our history, it's a very powerful thing, particularly for the youngsters. And I realized, you know, as family members age, if we don't capture these histories and have them accessible to hand down, we're just going to miss the world's most wonderful opportunity.

DEBBIE LANDERS: Absolutely.

C. AUSTIN FITTS: So when you told me about this business, as you know, I just got so excited because if the Solari Report is about building family wealth, Comfort Calls are things that really build families' wealth when you capture your history and share it with everybody in the family. So I this is an incredible idea. And maybe you could say just a few words about Bouquet of Words?

DEBBIE LANDERS: Right – and as we were looking at just the one aspect of the funeral industry, again, I kept thinking about there's also the celebratory side of things – you know, the birthdays, anniversaries, babies coming, graduations – all those different things. And I was sitting, and I was trying to describe – we have the old saying here in the south, "A calf at a new gate." Well, I knew I was at a new gate, and I'm trying to put it into words, and that's when it came to me.

I'm like, you know, just like – we send flowers to all of these different occasions, and what I'm wanting to give the world is a bouquet of words. And so we just put everything together on the celebratory side of things – and actually Comfort Calls is one of those bouquets.

C. AUSTIN FITTS: Okay – so if I want to find you on the worldwide web, can you give me your URL?

DEBBIE LANDERS: I can. It will be www.BouquetOfWords.com.

C. AUSTIN FITTS: And if I want to find Comfort Calls?

DEBBIE LANDERS: www.ComfortCalls.com.

C. AUSTIN FITTS: Okay – so for people who need this service, they can go ahead and use it now?

DEBBIE LANDERS: Yes, they can.

C. AUSTIN FITTS: Okay – so you – what was the first thing you did – when you decided to start Comfort Calls, what was the first thing you did?

DEBBIE LANDERS: Well, the very first thing that I did was I knew that I had to get a lot of support. And so I started with my family, and we went on family vacation to Gatlinburg. And I have two sons; they're in their early 30s, and I – they're either my greatest fans or they're my biggest critics on any project I ever take. And so I gathered them at night and said, "I've got this idea. I really want to move on it, but I see it – it's going to – it's larger than I am, and I want it to be a family business."

And so I told them the idea, and they just kind of looked at me for a minute, and then they said, "That's a great idea!" And so I knew at that time that, okay, we've got something here. And so I started forward, and I thought, "You know, I don't know if this service exists anywhere in the world," and so I knew I wanted to patent it. So there was a fellow here in our town who had gotten two or three different patents, and so I contacted him, and he gave me the name of this patent lawyer.

I called him, and my first experience with a patent lawyer was not a good one, and so I will tell anybody that, you know, you need to find out because all patent lawyers are not the same. Some patents projects and ideas and technical areas, and then some are just into tangible things. And so my first experience was – and of course, here I am – everything that I've done up to this point had been in the nonprofit world, and so this was a little bit different. And so I contacted this patent lawyer. And like I said, it wasn't a good experience, and so I just sort of dropped it.

"Then I got a patent lawyer in Nashville that they sat down with me, and I can't tell you the respect – they honored my idea."

Then I got a patent lawyer in Nashville that they sat down with me, and I can't tell you the respect – they honored my idea. And so it was just a completely different experience with these guys, and they believed in me! And so we did an international search on the idea to see if it was patentable. And that took a little while, and it came back, and there wasn't anything like it in the world. And so it cost a little bit more. You could just do the patent search in the United States, but I wanted – I know that this has the possibility of being international, so we searched the world. And it came back it was patentable.

C. Austin Fitts: Fabulous! And how long did it take for you to get the patent?

Debbie Landers: It's still patent-pending. There was a huge – even though it was filed, this is going into the second year. There was a huge turnover I believe in the Patent Office, and so I should be hearing something just any day.

C. AUSTIN FITTS: Okay. So once the patent was patent-pending, then you and I sat down – the first thing I said – do you remember the first thing I said?

DEBBIE LANDERS: I don't right at the moment.

C. AUSTIN FITTS: The first thing I said is, "You need to create a governance structure." You need to decide who controls what decisions now and in the future. So who's going to run this thing, and how are you going to organize the power? So in a sense, that's tied up with what kind of legal entity are you going to have, but then who's going to have the power in that legal entity through time and space.

DEBBIE LANDERS: Right.

C. AUSTIN FITTS: So tell us about grappling with the governance structure.

DEBBIE LANDERS: Okay. Another thing – a few things that had happened before you and I talked about it was – I'm a researcher at heart. I just have this natural inclination to research, and I had read several years ago a book called *Think and Grow Rich*, and one of the concepts that was in there that just always struck me was about Henry Ford. Henry Ford said that he didn't have to know everything. He would just build a team around him that would know everything.

And so that's really the way that I've set up everything in my life. And so as I was looking at the whole process, I can – I'm pretty technically savvy, but I knew that I couldn't write the program and all those different things. So there are some friends of mine that I knew they had the skill and capability, and I had sat with them and just talked with them, and they said, "Yes, this is a marvelous idea," and they are in a cutting edge business anyway. And so I knew that with them coming onboard, they wanted to be a part of it, so they're on the development team, but they're part of the core team.

And then the other thing about it – I knew that as we went into business, I didn't really know what kind of structure I wanted to be. So

I had contacted several folks here in the community through the Chamber of Commerce and business centers and all, and here in Middle Tennessee, we have the Middle Tennessee Small Business Development Program that's out of MTSU. And so I called and got an appointment with one of the specialists there, and they give you an hour of time of counsel. And so he went through all of the different entities – you know, if I wanted to do a partnership, an LLC – all the different things.

And I just knew that incorporating was probably what I needed to do. And then it was right after this that that's where you and I had our first discussion. And everything that you were telling me was just very affirming to that fact. And so wanting it to be a family business, but I also knew that I wanted to give it to the world, and I wanted it to be very interactive. I just didn't know how to bridge that whole thing. I didn't know how to set it up. And then when you – you just started laying things out. And I remember one of the very first things you said – you sent me a link to an A/B share template.

And so coming from a background – a non-financial background, I was really – I was a little intimidated because I thought, "Oh, gosh, I'm not going to understand this at all." And when I got into it, though, I was like, "Yes, I understand this! And this is it! This is what I've been looking for." It just sort of put the model out there for me. And then my stepdad, who is just – he's a financial guy, and he just understands all these different things. He's a great – great with investments and all. He read through it with me, and he was like, "This is really, really good." And so that was –

C. Austin Fitts: Maybe we should tell – we should tell our audience what it is.

Debbie Landers: Oh, yes! Well, I'll let you tell them what it is.

C. Austin Fitts: Okay – well, I'll describe it in terms of where I got it. I worked at a firm named Dillon Read on Wall Street, and Clarence Dillon was the Dillon at Dillon Read, and his claim to fame was he was sort of an LBO great of the 20s, and one of the things he was known for was a two-series stock structure. I call it the Solari A-share/B-share model. But the two series of stocks which essentially allowed you to divide power from money. So the A shares, in this example, are the voting shares, and the B shares are the nonvoting shares.

And so you can divide up who controls versus who gets the financial profits from success in very granular ways. And this allows you the idea of – the way Dillon used it was he said, "You know, you need the managers to run the business, and the bankers can make money off of the business, but you can't give the bankers control." And the idea was literally to keep the financial people from messing up – you know, from driving the engineers out of the positions of control because you needed initially for the dodge – for the Dodge Brothers' business.

The idea was you needed the engineers and the founders to make great cars and not let the bankers muck that up. And we have – if you go to the blog and login, for this Solari Report we have a link to a generic version of the term sheet that Debbie and her team used for the Comfort Calls to kind of design the Comfort Calls model. And we also have up on the blog a wonderful piece that Carolyn Betts wrote, which is a review of independent media structures. A lot of the media corporations use an A-share/B-share model so that they can keep investors out of editorial control.

And the idea is to protect the editorial integrity of a media company, and we used that study to help capitalize a media company once upon a time. But both of those resources are linked at the private blog and I think will really help you understand the details of what we're talking about. Maybe also Debbie you could just say a few more words about why you chose to do a corporation. So you chose a legal structure that is – does not have partnership tax status. So you're not running the finances through your personal finances.

So you chose something that has – you know, it's really – if I could say it this way – you're assuming that you're going to be very successful. Is that fair?

Debbie Landers: Yes, that's very correct. You know, as I looked at all of the structures, they just didn't seem to fit except incorporating. And again, from the very beginning, I know that it has the capability of being international. And so it – nothing else seemed large enough to fit where I want to go with it, and one of the things – and just building off of my past – I was a clinical nurse for ten years. And then I went into Christian education, and so I've been in Christian education for about 25 years, and it seemed like everything that – up until that point, everything that I've done has been just that sole proprietorship or partnership or any – and it was always very limiting even to some of the schools that I've helped to set up until I got to the schools that had the international or "missions mindedness" to them.

"As I looked at all of the structures, they just didn't seem to fit except incorporating."

And a lot of times – of course, that's a different animal altogether because you're talking about 501c3's and all those different things. And so again, my huge learning curve was going from the nonprofit sector to a profit sector and going, "Okay, it's got to be incorporation." And it had the familiarity to it that my heart longed for, but it also had the objectiveness and the growth potential to it in a structured way that – and again, like you said, separating everything from my personal checkbook to, "Okay, I want this organization to be unlimited. I want it to grow. I want it to flourish, and I want a lot of people to profit from it."

C. Austin Fitts: Now, we were able to set you up with a capital structure that enabled you to sell nonvoting shares in a pretty significant amount for a startup and small business, and yet you chose really to keep the stocks very tightly held. Can you explain a little bit more about your decision?

Debbie Landers: Well, through the whole process, again, forming that team – that development team – and I have about four or five people that are on the development team, and we Skype meet every Thursday night, and we just have stayed so very closely connected. And of course, because they're developing the service and developing the product, they truly believe in it, and it just seemed natural that they should be the first shareholders of the company. And so as we were looking at it, I just said, "Okay, guys, are we going to do this, or do we look for outsiders? What do we want to do?" And so we decided that here at the very beginning to just see what we could do among ourselves.

C. Austin Fitts: Well, that's great, because when the founders believe that it's so valuable that they don't want to dilute their positions by selling stock, it can be a very good thing. And it's – I'm a great believer that the greatest way to develop a business is to just start marketing the product and see how you do and start small. Before we go on and bring Carolyn in, is there any other points you'd like to make? What do you think – if you could go back and do the whole thing over again, what would you change this time?

What did you learn that you could tell somebody else that would help them really get their mind around this and get these things figured out, designed and implemented faster than you did?

Debbie Landers: Move on the idea quicker. That's one regret that I have, because I sat on it for a couple of years, and since that time I've just always been kind of holding my breath thinking, you know, "Somebody else is going to come up with this idea until I move on it." So if you have an idea, and if I were – you told me to think back if I were talking to Debbie Landers, that's what I'd say, is, "Go for it, girl!" And again, get – build that core team of supporters that – because there's so many times of encouragement and discouragement, and the ones that have been a part of the core team – and sometimes when it – and we all work, so it's been a longer process of, you know, everybody working full-time and developing this at night and on our lunch breaks and all those different things.

So I would move on it a little quicker. The other thing is, again, like I said, if you need a patent, make sure that your patent attorney is in the right field for you, and get references, for sure! And I guess really move on the whole legal structure a little quicker maybe than what I did, because that way – when you put that structure together – and you had kept saying that to me. It really streamlined the function of our team once we did that. And it's brought a lot of clear definition, and it's helped me communicate legally and financially and with greater value with every team member. It just has.

C. Austin Fitts: Interesting. I've always said once a team sits down and has to do evaluation of their equity and look at the business plan in a very structured and clear way as it relates to the value of their equity up front and over time, it really does create a clear – not just a consensus, but a clarity that is very powerful.

Debbie Landers: It's huge. I'm a visionary, so I'm always warm and fuzzy by my vision, but maybe not too clear on all of the details of it. And when you just – you and Carolyn – I mean, such valuable information. I was just telling someone today – I said, "You know, in this world, it takes a lot to impress me, but there's two ladies that has totally impressed me, and that is you and Carolyn. And your knowledge and then –

What I was going to say is that you all broke everything down for me 'til I think that actually I could understand it and grasp it and go with it. And I would be so amazed at that because you could break it down – such complex ideas. And then there were other times when we would be on conference calls, and you two would be talking your jargon, and I would be thinking, "Oh, my!" But you both would sense that and sort of help bring me up to speed until I didn't feel like I was drowning. So that was good.

C. Austin Fitts: Well, I think the most important thing when you sit down to design a legal structure is if any – there's no person starting a company in this world who can't understand all the issues involve. So it's really important, and you did this to slow people like me and Carolyn down so that you can get the intellectual mastery you need to really be in control – because the idea of the Solari A-share/B-share model is to give the entrepreneur and the founder or the founding group control. But part of that control has to come from mastery of what you're doing and why you're doing it. That's where it starts.

DEBBIE LANDERS: Absolutely.

C. AUSTIN FITTS: Okay – so with that, let me first bring in and introduce Carolyn Betts. Carolyn Betts is an attorney practicing in Ohio. She has been a very successful partner in a Washington law firm. She left the practice of law in the mid '90s to come join Hamilton Securities Group, my company, and was a very successful investment banker. We used to always laugh because once in a while we'd have a project that was so complicated and hard. It required reading thousand-page documents of highly complex transactions. That was always, "Oh, this is a Carolyn Betts job."

So Carolyn has a reputation for extraordinary ability to deal with legal and financial complexity. But when I think of Carolyn, I'm reminded – I worked for Goldman Sachs for a summer when I was in between years in business school. And one of the things that I did was I would ask the partners in corporate finance if I could follow them around for a day just to understand what an investment banker did. And the first one I asked was a guy named Ken Brody who later became a golden partner and headed the Ex-Im Bank during the Clinton administration.

So I sat in Ken's office all day and watched him smoke a cigar while he did Merger transactions. At the end of the day, he said – he put the phone down, lit up another cigar, and he said, "Kid," he said, "Here's the bottom line. If you want to be successful in business, you need two things: you need a good attorney and a good accountant. If you don't have those, you'll never be successful." And as a result, I took his words very much to heart, and I always made sure that I had a really great attorney. And when we shut Hamilton Securities down, obviously Carolyn was no longer going to be a Hamilton investment banker.

I walked up to her and said, "Would you be our in-house counsel?" And I will tell everyone on this call, anybody who asks, that decision is one of the reasons I'm alive today, because Carolyn Betts literally not only did a great job as our general counsel in Hamilton's litigation, but was a person of extraordinary fearlessness and incredible personal integrity: a true lawyer. They do exist. And so she continues to be my attorney today and does many things to help me with the special Solari Reports and special reports in the blog – her latest one, the special report on the mortgage settlement. So she's a person of extraordinary intellectual background and research and breadth of practice.

But one of the things she did last year was when Debbie decided she wanted to create the capacity to create stock for Comfort Calls, I asked Carolyn if she would come in and help me design the capital and legal structure for Comfort Calls, which she did. So Carolyn, are you with us?

Carolyn Betts: Yes, hi! And I have to say Debbie Landers is like the perfect client. She is more hard working than any attorney I've ever known. She's so organized because she does like five different things at once. She started a coffee bar to help people in her church have jobs, and she's running a church organization, she's involved in a school, she's been a nurse, she does mission trips. It's just – it tires you out just listening – and the idea that somebody with that different a background could come in and talk to me about the bylaws of this company, and she understood everything. And she would do her homework.

"If you want to save legal time, you'll do some of the work yourself, and you'll present things in an organized manner to the attorney so your attorney doesn't have to create it from scratch."

And I would say, "Well, you write this," and she'd write it, and she'd do it on time. And that's the kind of client I will actually say – and it's a speech that I give people, and most people don't listen – if you want to save legal time, you'll do some of the work yourself, and you'll present things in an organized manner to the attorney so your attorney doesn't have to create it from scratch. And Debbie is somebody who really does that, and so it went very quickly from my perspective. It may have seemed slow to Debbie, but it went pretty quickly.

And she as at the point she – everybody was so excited about it that we were racing in the end to get all the documents ready for all the people who were interested in hearing about it. So it seems as it if just took off immediately, which is not my experience from doing real estate tax shelters and things like that.

DEBBIE LANDERS: Yes, I remember one night right before the trade show that you were putting one document together for us for the trade show the next day as we were launching in Tennessee.

CAROLYN BETTS: Yes, it was like vendor agreements. "Oh, Debbie, by the way, do you have a vendor agreement since you're doing a trade show?" So, you know, to some extent you do it by the seat of your pants, and you have to be – everybody needs to be patient with everybody else. And when everyone's working hard it becomes a labor of love, and the time just flies. But yes, and one of the things I wanted to say about doing – the process of doing a terms sheet is, you know, we may have gotten to the point where we did all this work, and we had this beautiful thing where strangers can invest, you know, from other states and all the disclosure is there, and angel investors could come in, and the fact is that once we went through the process other people around could see – you know, we focused our ideas.

Debbie really knew what she wanted to do. And going through the discipline of writing it all up, talking about the risk, talking about the competition – all the things that we needed to put into the disclosure document – and legally there are circumstances under which you don't have to actually have a disclosure document. But gosh, would you have ever wanted to do it without the disclosure document because that just got everything focused?

DEBBIE LANDERS: It really did.

CAROLYN BETTS: And I just think it's a wonderful discipline even if you didn't have to use it. And as a matter of fact, you know, in hindsight, we may decide we didn't have to use it, but it's so useful anyway that it was worth it. So you get a lot more than just being legal from going through and doing a disclosure document. And it also means that you're focused enough and you've anticipated things in a way that will allow you, if it really takes off – if it's the next Microsoft – you can bring in professional people and show this to them – angel investors or a merger partner or whatever – show this to them, and it happens quickly.

Whereas, if you kind of slug along, do it on your own and grow only from internal credit card debt and starving, you have so much work to do because you haven't gone through the discipline of setting it up in a way that will be sustainable later on.

C. Austin Fitts: Well, let's talk about the key areas in the legal structure that are captured in the term sheet that we've provided for the listeners. So let's start with the legal entity. There are two key decisions: which state you file in and then what the form of the entity is. And maybe you could walk us through the key questions.

Carolyn Betts: Right – now, you may know where you want to be because it's probably where you live or where you want to live. That doesn't necessarily determine where you form your entity. The main office may be wherever you want it, and this sort of goes to the question somebody else was asking – the reader was asking – whether we were going to talk about forming companies overseas. There are a lot of Italian firms, in particular, that have – they're formed offshore as tax havens or whatever, but the main office is in the United States.

And so I'm assuming we're talking about a business that's located in the United States, and we're not going to cover forming outside the United States. But when you're in a state – let's say you're in Tennessee, if you decide to form your entity in another state, that entity becomes a "foreign entity" to your state of Tennessee. So if you have a Delaware company, you form it in Delaware, and then you're a foreign company where you live or where you're doing business in Tennessee, and you need to register as a foreign business.

So you declare, "I'm here. This it the name I'm using. Here's how to find me." You're basically filing with the Secretary of State. You're usually giving consent to service of process, so someone can sue you in that state because otherwise, you know, it would be more difficult. And that's a requirement for doing business in that state. And so then you're asking the question, "So do I form in my state, do I form in Delaware, or do I form somewhere else?" Now, some people are loyal to their own state.

They say, "I want to pay whatever my state – in taxes whatever my state wants, I'm loyal to this state. I believe in it. I'm just more comfortable. It's easier to form in – you know, in my case, Ohio. And there'll be attorneys around here who are familiar with Ohio law, and that's fine." And that will work. There are two benefits to possibly forming your entity somewhere else. One is there may be tax reasons. I remember when I worked for a mutual fund – a money market mutual fund – we formed in Maryland because of a franchise tax issue.

The other benefit of being outside of your state is if you go to Delaware, Delaware has a very streamlined process for doing all sorts of things. They have very good law in terms of something you want to deal with as a business person. There are lots – because so many corporate – so many entities are formed in Delaware, there's a rich history of legal precedent there, so you can predict what the courts are going to do. And in particular, they have a limited liability statute that is very flexible and allows you to do pretty much anything you want.

And the smaller the state – generally speaking, the smaller the state – you go to somewhere like Minnesota or – not Minnesota – Montana or Alaska – you're not going to have – you may have legislatures that meet every other year, and they don't have a securities statute and – you know, they're corporate law. There are no cases, and it's just – you know, it's okay to be there, but if you're going to have a big, thriving business, you might want – you might choose to go to Delaware where you can kind of predict what's happening. There are all sorts of people who know how to do Delaware things because so many people form in Delaware.

So you decide – and there could be reasons to go into another state, as was the case in my mutual fund. The other thing you have to decide is what form you're going to – what kind of entity at state law. This is not federal law. This is state law, and a corporation or an LLC is a creature of state law, and you form the entity by going to the state – the Secretary of

State. You fill out whatever papers. You pay your fees, and you become legal in that state. And that will call their attention to your existence, and you'll end up paying probably franchise taxes, although in some states LLCs, because they're latecomers, don't have franchise taxes.

But a lot of them – sometimes they have other types of taxes, too. So there are other forms of doing business. A sole proprietorship is just you, and it's taxed as part of your income on a Schedule C or something. A partnership is if you have more than – if you run a business, and you have more than one person who owns it, you are a partnership. It's not because you've gone to the state and signed up and said, "I'm a partnership," and filled out forms. You are at law – at common law a partnership if you're not anything else and you're more than one person.

"There are some types of businesses that could run as trusts, but that's generally going to be a passive entity like something that holds mortgage-backed securities or something like that."

There are some types of businesses that could run as trusts, but that's generally going to be a passive entity like something that holds mortgage-backed securities or something like that. But if you're going to have an operating business, you're probably going to be either a corporation or an LLC. And I think Debbie gave some very good reasons – if you're going to be fantastically successful very quickly, you probably will end up as a corporation. If it's something that's a fairly small business, and you think you're going to have some losses that you want to take, you want to be taxed as a partnership, you may choose to form an LLC.

An LLC is an entity that didn't, well, certainly not when I was in law school, which was probably 30 years ago. They've become more common in the last ten years. They are essentially taxed as either a corporation. You can elect for an LLC to be taxed as a corporation, or you can elect to be taxed as a partnership. So there's no such thing as an LLC at tax law. Tax law only recognizes corporations, individuals and partnerships. And the LLC – usually people who form LLCs want to be taxed as partnership, which means there's no double-taxation basically as corporations are taxed with dividends.

So the benefit of the LLC is you have the more favorable taxation when it's small – you know, the direct taxation, but there is limited liability. When you have a partnership and you're a general partner – you're one of the officers; you're someone in control – you have unlimited liability. So if somebody slips and falls and sues your business, they can take your house if they get a judgment.

In an LLC and in a corporation, assuming that you keep your matters separate and the business is a real business and not mixed up with your personal affairs, you will have limited liability, and debts of the company will not become your debt.

So does that pretty much cover the entities, Catherine?

C. Austin Fitts: Yes, it does. So why don't we skip to the A-share/B-share model and describe a little bit about what's in the generic term sheet.

Carolyn Betts: Okay. The A-share/B-share model – you know, you cannot do an A-share/B-share S corporation. An S corporation is what people used to form a lot because it was – it basically had partnership taxation, and it is a type of corporation, but an S corporation you cannot have two classes of stock. And an A-share/B-share model has two classes of stock. So you can do an A-share/B-share structure within an LLC certainly in Delaware. In Delaware, you can do something that's really an LLC and has the taxation you want as a partnership, but it looks for all the world like a corporation.

I mean, ordinarily you have members of an LLC rather than shareholders. They're members, and the members are essentially the officers also. But if you want to call – if you want to have a president and a vice president and a board – a governing board, you can do that under Delaware law for an LLC. The point of the A-share/B-share structure is that – actually, the way Debbie did it is sort of the opposite of the way what most – most of them that I've seen, they call the B shares the control shares. But in this case, and in the term sheet – the generic term sheet – the A shares are owned by founders of the company – the people who want to retain control of the company.

And they're generally issued first, and so you could form your entity at state law and have just one share of stock, and then amend everything – amend the charter later on to create a second class of stock, if you want. But ordinarily, the first stock that you would have issued would be among the founders, and the founders may have close business associates who are also part of a founding team, and there may be some sweat equity in giving out some of those shares.

I think that the ideal thing is – well, it just depends on how you want to control it, but a lot of times the founding group will want to keep the voting shares – who controls, who's on the board, and the board controls who are the officers of the company and what dividends are paid out and all sorts of – how the money is spent, what type of business it is – those things are all determined by boards of directors and shareholders, depending on what the decision is. And the B-shares are, in this case, the nonvoting shares, or the shares with limited voting rights are the ones you – you could give to employees, but for the most part they're used to raise money.

So if you don't have an A-share/B-share structure, you may have to give away 75 percent of the control of the company in order to get enough money to operate, and you don't want to do that. If you have A shares and B shares, you can keep all the A shares and then issue B shares and raise $5 billion if you want, and you don't lose control because the B shares either aren't entitled to a vote, or they have limited voting rights. And you'll see if you read the article on the media structures that there are a number of alternative structures that have been used.

In some cases, the B shares or the non – the so-called – well, the passive shares will have one-tenth of a vote of the other vote – of the other shares. Sometimes they will have no vote, although – they're called nonvoting, but rarely do you have absolutely no vote. There will be votes as to certain things, and – like changing your accountant, voting to change the type of business, voting on a merger – merging with another company – conducting transactions that would be conflicts of interest with owners – like if the A-share or the founders were going to sell a piece of property to the company, it might provide that the B shares could vote on that.

How much the B shares get to vote is determined by what somebody who has a share of the profits in the company and puts up money wants to be able to control – you know, what that kind of person would insist on controlling. And there's certain things that you, as someone who has money in a company, would not want to get past you that you'd want to have a say in. And those are the ones – and it can be negotiated. You know, if you were actually having an angel investor coming in they might negotiate that for the B shares. But you might – in some cases, the B shares can elect on person to the board of five. There are just – it's very flexible what you can –

C. Austin Fitts: Yes, I wanted to point out in the structure and in the term sheet that they founders make their money from the B shares as well. So the A shareholders have a vote, but their money shares are B shares like everybody else.

Carolyn Betts: Yes, and you could actually make that different, too. You could have the A shares or have half of the profits per share that the B shares do. But yes, in the structures that I've worked on with Catherine, the A shares and the B shares are identical as to if there's a dividend declared, they all get the same amount per share. But you might – and you may have fewer number of A shares than B shares. You might have 1,000 B shares and 10 A shares. So you could – it's very flexible in terms of how much money the A shares get out of the company. And again, that's an investment decision.

The – there are also – you'll see in the term sheet certain types of things that we've dealt with perhaps in a different way than some in terms of dealing with potential liabilities. Boards of directors, particularly relatively recently, directors have had a lot of liability for things that have gone wrong in their companies, and people are very shy about wanting to take on that kind of liability and particularly if you can't pay people very much, it's not an attractive job to have to put in a huge amount of work for nothing. But there are more people who would be willing to serve on an advisory board.

And a lot of people are happy to learn about your company and help you out by – so you get the president of the local Chamber of Commerce or whatever – whatever it is – to sit on your advisory board, and they can help you come up with ideas and have rich experiences to draw on without that kind of liability. So we had – we made provisions for an advisory board. Errors and omissions insurance is another way to watch your liabilities. That's something that you can get protection in case certain things go wrong in the management of the company.

"There's also risk to the early people who are involved in the company if somebody dies – the big owner of shares dies, what happens to those shares."

Key man insurance – one of the big risks of investing in a new company is that the mover and shaker had something happen to him or her, and if you buy key man insurance, which of course is something that needs to be financed as part of your working capital, that's a way to help the bridge into the new company without the key person. There's also risk to the early people who are involved in the company if somebody dies – the big owner of shares dies, what happens to those shares. And you can buy insurance policies to buy out – to fund the buyout of the shares, which the surviving spouse or heirs don't necessarily want to have in terms of running a company.

C. AUSTIN FITTS: What I find with many, many people is they start a company, and they say, "Okay, I'm going to start a corporation. I'm going to start an LLC. I want to raise a little bit of capital, and the greatest obstacle is suddenly they realize if they're issuing securities that they are subject to a world of federal and state securities laws that's very complex. And this is a major obstacle after they get through the issues that you've described. So let's skip to that because I want to make sure we get to cover that properly before we go to Paul.

CAROLYN BETTS: Okay – one thing you should know if you are starting a company is that shares of your company are going to be securities, and even if you have investors coming in wanting to lend you money, unless it's in a commercial environment like by a bank, those loans can also be – in a lot of cases are securities. And it is not legal to sell a security unless that security is registered with the Securities and Exchange Commission and local and state laws, unless you have an exemption from registration. And registration is enormously expensive and enormously complicated, so you never want to register as a new company.

So securities law for small businesses is how do you find exemptions from the registration requirements? And there are a number of ways that you can do this. If you're only in one state, and that means all your investors are going to be in one state, you're going to do business in one state, you're not really going to have – you can't do a telecommunications business that's intrastate – that's in one state. You know, it just goes over state lines all the time. But if you're really a local business, and you don't live somewhere like I do where we have two different states right across the river and five miles away, you might want to avoid federal – the federal government having involvement by doing it under state law.

But usually, in most cases, people need to bring in some money or do business outside the state in a manner that will prevent them from doing a state law – something under state law. Whether that's good to do it under state law depends on what state you live in. There's some states with virtually no – little, tiny states that have virtually no securities structure, so you don't have to do a lot. In doing a federally exempt registration, the primary exemptive provision is Regulation D. It's called Regulation D. It's under the Securities Act of 1933, which is the one you register securities under.

And under Regulation D, there are three different rules – three different types of offerings that you can do. It used to be almost everybody wanted to do a Rule 506 offering because the other ones were so small they didn't raise enough money to be meaningful. And under a 506 offering, you are limited in – it's an unlimited amount of money you can raise, but you can only have 35 investors that are not what's called an accredited investor. An accredited investor under current law is somebody who owns – who has an income – in terms of individuals, has an income of $200,000 or less or has assets of $1 million or more not including their primary residence.

C. Austin Fitts: Is it 35 or 15? I thought it was 15.

Carolyn Betts: No, it's 35.

C. Austin Fitts: I always get confused.

Carolyn Betts: That's – I think you're thinking of a different act with the 15. That's in the investment company act. But so if you know a lot of rich people, you can do it without having any – you don't have to count at all if everybody is an accredited investor. But you can only offer to – you can only sell to 35 people who are not of some means. And that has been a stumbling block for people who are, you know, kind of middle class wanting to sell to family and friends and things like that. Now, more recently, this Rule 504 offering has been for – that's the smallest one – has a limit of $1 million over a 12-month period.

So you can't do four of them of $1 million in a year. You can only do one. And in that case, you've got $1 million that you can raise, and there isn't a limit on the number of purchasers. And then there's a 505 offering which is kind of between the two. That one you can raise $5 million with no more than 35 non-accredited investors. The difference among these have to do with whether you're allowed to – whether you have general solicitation limitations. There are certain circumstances in which you can advertise or have seminars if state law permits it.

Ordinarily, understand, you cannot have a meeting and invite a list of people who are not your close friends – you know, if you buy a mailing list or invite everybody in your church or whatever and sit down and do a dog-and-pony show and tell them how great it would be to invest in your investment. You cannot do that and have an exempt offering. The other thing is not a great idea, but is permitted under current law, is paying commissions to people for selling your securities. I don't recommend it, but it is legal now. It used to not be legal.

The shares that you sell are not going to be – generally speaking, they're going to be restricted shares, which means the people who buy them cannot just go out and sell them to anybody they want, particularly soon after they – they have to be willing to say that they're investing – they're investing for over a period of time, and they're not buying the shares in order to sell them right away. And in order for anybody who buys your shares to resell them, they're going to have to sell it pursuant to an exemption also. So this is a fairly long-term investment, and it's not liquid.

And the best way to – for people to be able to sell their shares is for you to go public later or for there to be a merger buyout by someone and have the shares sold that way. And if it's public, obviously, they could sell on an exchange or however the public shares are sold. But those are the three major types of offerings that you can do. And while in some cases a disclosure document is not required, the antifraud laws cover all types of sales of securities. And if you sell somebody a security without disclosing what they need to know to make a good investment decision, you can be – or you tell them something that isn't true, and it's material, and it would have made a difference in that person's decision whether to purchase or sell the security, then you can be found liable under antifraud laws.

And best case is that it's an unsuccessful offering and you have to pay the money back to the people who invested; worst case is that you go to jail. So these are things that are very – you have to be careful. The important thing is to organize your materials. I've got a whole list – I have a list of documents that you could collect for your attorney who you would – a securities attorney is the type of attorney who would help you with this sort of thing. If you look in the list of documents that we've provided, there's a list of possible documents for private offering, and you can go through there and see the kinds of things that you would need to collect: two years' of pro forma and financial statements.

The offering memorandum is what we've been talking about: the term sheet. It's called a prospectus when it's in a public offering. You might have – these are documents that your investors would want to be involved with: patent, trademarks, any big, legal issues, zoning applications. Depending – appraisals – depending on what type of business you are, geological studies – whatever the type of business it is. Whatever gives it value, you need to be sharing with people who are investing in the business. A suitability questionnaire is usually used to make sure that the investors qualify under whatever exemption you're using.

You want to make sure that you don't give away a whole lot of information about a private business. This is not a public business that you're starting, and you don't want to give away information so that somebody can compete with you. So it's a good idea to get some sort of confidentiality agreement from people who get to read about some of the trade secrets that you might have in your business. Resumes and other documentation that would show the qualifications of the people who are the key employees or founders or strategic partners – strategic partners might be lawyers, accountants, people who are going to do your IT.

"This is not a public business that you're starting, and you don't want to give away information so that somebody can compete with you. So it's a good idea to get some sort of confidentiality agreement from people who get to read about some of the trade secrets that you might have in your business."

They might be people who are going to become key employees. They might be vendors. They might be big customers. But information on what's going to make this business go, and to the extent you can document it and show it to potential investors, that's good. If you have particularly valuable employees, there might be an employment agreement, which you may or may not want to disclose to investors. But the fact that it exists is helpful. You're going to need financial statements. If it's a brand new business, it's going to be performance, but if you have a small operating business, and there's something to draw on, that's something.

If it's a fairly sophisticated business, before you actually go out and sell shares to investors, it'd be a good idea to do it in generally accepted accounting procedures. But depending on the size of the business, you're going to have to decide what's appropriate. And then I also included marketing studies. That's something that if you're selling something that's useful. I have –

C. Austin Fitts: So the document checklist is up on the blog, and we've also posted all tiers of other links that you recommended that describe Reg D offerings or other –

Carolyn Betts: Yes, the Form D, which is the fourth document here, is this form that you'll need to file if you're going to do one of those types of offerings that's filed within some states and also at the federal level when you sell the securities within a certain period of time. There's a directory of state securities regulatory agencies on the site of the North American Securities Administrators Association. So just so you can get a link to the webpage for the applicable securities agent in a particular state. You're going to need to check state laws of every state in which you have investors who are residents.

I have a sample form of member-managed limited liability company operating agreement, which is analogous to bylaws in the case of a corporation, so if you're a limited liability company, you're going to have something that looks something like this operating agreement. There's a form of independent contractor agreement that is just a sample. It's from a form book. It's not particularly good, but it'll show you the types of things that you need to have if you're going to have some 1099 people working with you early on. There's some generic bylaws for an A/B share company there.

And I pulled out Rule 504, something from the SEC, just so you can see that description. That's one of those three types of offerings I told you about. I also have a form, SB1, which is a new form registration statement for small businesses, but it's not that small. If you're raising

$10 million, you're somewhere between an exempt offering and a full-blown registered offering, and the disclosure document that you would do there is in a question-answer format provided by the SEC. And that's something that might be useful to look at just in order to see types of things that would be good to cover in your offering document.

C. Austin Fitts: And if you're running a business school, you can use this as a curriculum.

Carolyn Betts: Yes! And frankly, the best way to save money if you're starting a business is to really know what you're doing and read as much as you can, look at other offering documents for other types of businesses, start writing up some things, make lists of things, look at the types of agreements that govern – you know, confidentiality agreements and employment agreements – those types of things will give you ideas about, "Oh, yes, that'll apply to my company, too," so that when you sit down with your attorney, you can give as much information to that person in as organized a form as you can.

And I will also say the longer you take in terms of months or years to get an offering done, the more expensive it's going to be. It's not just a number of hours, it's the number of months it takes. So the quicker that you do it and the faster you turn things around, the more it'll be in the head of the person who's working with you, and you won't have to start things all over or try to remember what you decided to do four months ago.

C. Austin Fitts: Okay – well, Carolyn, there's so much more to talk about. But let's bring Paul in now. And I can't thank you enough for this because it was really a treat to produce all of this with the process we went through with Debbie and to watch, at this topic, one of the world's most experienced attorneys working with an entrepreneur who really this was their first time through creating a for-profit legal structure. So for me it was a very fascinating process and one in which you did an extraordinary job.

Carolyn Betts: Can I just add that I did not know this stuff off the top of my head after working with it for 30 years? That will tell you why you need somebody to help you.

C. Austin Fitts: Absolutely! It's funny because every time we go through this together, I literally – I can't retain it without – that's why the links to me are so important because I just cannot retain all of this. And, of course, it's evolving, so it gets changed and updated.

Carolyn Betts: Well, yes, and they tweak it every couple of years, too.

C. Austin Fitts: Yes, they tweak it a lot. And the frustrating thing for me, as those people who've listened to me know, you can go into any community in the country, you can play the Lotto and spend millions of dollars in every county in America on the lottery, but of course the securities regulators will tell us we can't create stock markets for small business because it's too risky.

Carolyn Betts: Yes, and they're very much opposed to crowd-funding legislation, so that's something that people should look at, so they can call their congressman and ask them to support that.

C. Austin Fitts: Okay – so with that, let me introduce Paul Ferguson. Paul hails from Massachusetts. He's a very successful businessman, entrepreneur and now private investor. And as I said before, he has since 2005 been a member of a small investment club with Carolyn and I. We meet by bridge call. Paul's very thorough. He's very astute, and he's worked through a lot of both angel and venture situations. So Paul, thank you very much for joining us.

Paul Ferguson: Well, thank you for having me, Catherine.

C. Austin Fitts: I wanted to explain Comfort Calls to you, and now we have.

Paul Ferguson: I just wanted to thank Debbie and Carolyn both for that incredible treasure trove of insights they just provided. I've been doing this for a while, as you know, and I wholeheartedly agree with everything they said, and there's a lot of great stuff in there.

C. Austin Fitts: Well, I thought we'd start off just with a few definitions. What – there are different names for people who invest in startups. We have angel investors, venture capitalists, private investors. Maybe you could walk us through some of the definitions and roles of investors in startups?

Paul Ferguson: Okay – well, it's usually like a set of concentric circles. So you start off with yourself, and I think there was some discussion earlier about that – you know, funding a business with credit cards or your savings. And then the next circle is friends and family. So usually when you're just getting to the point of hiring an attorney and getting the documents together before you have an entity, sometimes you need to raise money just to do that, so friends and family is another layer of investors that come in next.

"Usually when you're just getting to the point of hiring an attorney and getting the documents together before you have an entity, sometimes you need to raise money just to do that, so friends and family is another layer of investors that come in next."

And then when you're talking about people outside of that circle, you're talking about angel investors or venture capital. Now, angel investors usually invest in companies in amounts of anywhere from $10,000 to maybe $500,000 or $1 million up to – you know, you could do an angel round of up to maybe a few million dollars. Most venture capital firms will not look at deals that are smaller than that because they need to go through a process of due diligence that's very time-consuming and expensive. So – and they usually have a certain amount of money to invest over a certain period of time, and that will constrain the size of deals they can do on the small side.

So depending on where you are in the process, that's going to determine the types of investors that you're talking to. But I think for our purposes here tonight, we're probably talking about friends and family and angel investors.

C. Austin Fitts: Now, you've always been interested in startups and financing early stage companies.

Paul Ferguson: Right.

C. Austin Fitts: Why is that? What gets a person interested in the – sort of the early phase of an enterprise?

Paul Ferguson: That's a good question. Maybe I need my head examined. There's a lot of risks, and there's a lot of reward to it. And I think it's – you know, entrepreneurs are a special breed. It takes the ability to suspend disbelief and say, "I can make something from nothing. I can create something." An entrepreneur – I mean, investors are also looking for an opportunity to make something happen. You know, obviously, investors want to get a return of capital and hopefully a return on capital, and they can do that in the stock market or with fixed income or whatever.

But the reason why people get involved with small companies or startup companies is because they think – they have an opportunity to have a direct impact and to work together with a group of people to make something happen. And usually they're looking for people that they find attractive in terms of being energetic and excited about what they're doing and passionate and committed and just fun to be around. So they have an opportunity to participate in that and also to bring to bear their accumulated experience and networks and mentor entrepreneurs.

So it's really – you know, is it all about the money? No, absolutely not. That's really a part of it, but a relatively small part of it. It's really the opportunity to participate in making something happen I think is the real driver for investors.

C. Austin Fitts: I kind of think some people build cathedrals, and other people build businesses. It's really a way of creating your world.

Paul Ferguson: I agree with that.

C. AUSTIN FITTS: Franklin and I put the link up on the – Franklin and I several years ago did an audio seminar called "Building Real Wealth," and it's all about starting and building companies and other enterprises. Well, tell us when you look at a startup, Paul, what do you look at as the most important sort of criteria and issues when you're doing due diligence on a company? And then I'm going to ask you what are the common mistakes that startups make, particularly when seeking investment capital?

PAUL FERGUSON: Okay – I made a list of things that I look for – things that I would recommend to entrepreneurs, and I guess by mistake it would be the people doing the opposite of what the things I'm going to recommend, because I've seen – I've sat on both sides of the table. So I've raised money, and I've also invested, so I've had the opportunity to have both sets of experiences and see a lot of mistakes get made. And so you learn from each of those experiences, but here's what I've kind of come up with. Be prepared, you know.

You have to know your audience, know who you're talking to, try to understand a little bit about their background and what they're interested in. Know how much time you have to present to someone. Are you going to get five minutes with them, ten minutes, half an hour? You have to kind of understand what kind of opening you're going to have and then gear your presentation to that accordingly. Have follow-up steps prepared. Carolyn talked about having all the documents that you need prepared if possible, and that's important because if you get somebody excited, then the last thing they want to do is then wait for a long period of time while you get your act together.

So the more you can have ready to go or at least have in mind follow-up steps, that's incredibly useful. You have to be credible. You have to understand really what the market opportunity is. Carolyn suggested having marketing studies. I think that's a great idea. You can't just say, "There's a huge market, and all I need is one percent of it," because investors have heard that millions of times. So you really have to be able to credibly present what the opportunity is, explain why you're going to be successful in going after that opportunity and also understanding where the risks are and what you're going to do to mitigate them.

You know, if you just say, "This is a no-brainer, and we can't lose," then investors are going to think that you haven't really thought through where the pitfalls are going to be. And you can't be afraid to discuss them. The fact that you can demonstrate that you've thought about them is going to build confidence, not take it away. Investors aren't afraid of risks because there are always risks. It's how you manage them that is the key, and it's really investing in people in this kind of situation. Ideas are great, but if you don't have somebody that can execute on them, then they're not really worth very much.

So for particularly startup companies, the people behind it are absolutely critical. Be clear. Be clear on what you want from the investor. Be clear on what you need, where you're going, how you will get there. A lot of times, entrepreneurs just think, "All I need is money, and please don't burden me with any unsolicited advice. I know what I need to do; I don't need your help." Well, that may or may not be true. Sometimes you might think you know everything, but if you have people around you that you can – that can give you valuable experience – the benefit of that – then you should certainly avail yourself of it.

And on the other side of that is if investors get the sense that you either cannot or will not listen to them, then that is going to impact their inclination to fund you. So you need to show that you can hear people and understand what they're telling you. You don't necessarily need to agree with it, but you do need to hear them. Be concise; talk is cheap; time is money. People's time is valuable. You need to respect that by being able to communicate your ideas clearly and concisely. Be passionate; you've gotta be able to live, eat and breathe the business.

I know, for example, in Debbie's case that wasn't possible. They had to maintain their current jobs while they were getting it off the ground, and so it's not – you're not always able to do all these things, but if you can show that It's something – it's an idea that can't be contained – in her case, I think it was just something she felt that had to be done – that's what people need to see. I've seen a lot of investors, a lot of entrepreneurs go at it from the angle of, "Well, if I can raise money for this, then I'll jump into it with both feet."

No, you've gotta be committed – completely committed and basically demonstrate that this is something that you're passionate about and need to do. Be persistent without being pushy. You need to – investors have a lot of demands on their time from a lot of different sources, so sometimes it's hard to push yourself to the top of the priority queue. But – so in that case, if it takes several attempts to contact somebody or get an appointment with them, don't give up right away. You just have to be persistent and show them that you're really willing to put effort into it.

"If it takes several attempts to contact somebody or get an appointment with them, don't give up right away. You just have to be persistent and show them that you're really willing to put effort into it."

Oh the other hand, if you're definitely not getting a receptive signal you have to acknowledge that as well. And I guess the last thing I would say is be unflappable. Investors need to know how you're going to manage pressure and conflict. Things will go wrong along the way. The unexpected will happen – the impossible, the unthinkable. So it's not that problems are never going to occur. It's really how you manage them, how you deal with them and being able to basically keep your head about you when everything seems like it's falling apart, no matter what. And I think that's also a critical characteristic to have.

C. AUSTIN FITTS: One of the things I wanted to underscore was your statement about you don't just want money. What surprised me when we were at Hamilton in the '90s was I discovered how important it is to have investors who are philosophically aligned and can add real knowledge and networking value. So you're not just trying to raise money. You're trying to build your network and create partners who are really going to help you succeed. And so it's something more intimate – yes.

PAUL FERGUSON: Absolutely! I mean, Debbie said that she didn't need to know how to do everything. She would surround herself with people that did. And the same goes – your investors are part of that network. You're building an ecosystem, as you said, and the investors are certainly part of that.

They bring money, but in a lot of cases the contacts and the experience and the networks they can leverage are almost more valuable than the money.

C. AUSTIN FITTS: Right – and those networks and their knowledge can save you a lot of money.

PAUL FERGUSON: Absolutely. Absolutely – I mean, what Debbie said about getting the right IT firm, for example, is absolutely critical.

C. AUSTIN FITTS: Now, it was – I was talking with you earlier this week, and I was talking about the fact that I wasn't going to do a "Let's Go To the Movies." And you made an unbelievably fantastic suggestion, and now everybody is going to think that I'm recommended a TV show, but you recommended we put up *Shark Tank*, which I did. So maybe if you could just introduce *Shark Tank* and why it's so valuable for a new entrepreneur contemplating a startup?

PAUL FERGUSON: Okay – *Shark Tank* is a show on – I don't remember. It's some major network – but they have a panel of investors, and every show two or three entrepreneurs come in and pitch an idea. So they have about probably eight minutes to present their idea and convince one or more of these investors to back their business. So what you get to see is the entire process, which usually takes weeks or months, boiled down to eight minutes. And by the end of that slot, you know, each segment the investors have to determine whether or not they're willing to invest, on what terms they're willing to invest, make an offer, and then the entrepreneurs, on the spot, have to either accept or reject the offer.

So it's kind of exciting in that people are making very significant decisions on national TV in an eight-minute window, and it's exciting because, you know, I mean, you see – so you see what people are doing right, and what people are doing wrong, and what the impact of that is very, very quickly. These investors are trying to determine as quickly as possible why they don't want to invest in this business, for the most part. The inclination is to say "no" because you see so many more ideas than you can possibly invest in. So you want to rule things out quickly.

So people that don't make mistakes are the ones that make it through the process. And in some cases, this is what I wanted to mention, they will like the idea, but they will quickly determine that they can't work with the person. So what I've seen happen in a couple of situations now is they'll offer to buy the business or the idea on the spot for a certain amount of cash but basically tell the person that, "We can't work with you, but we like your idea; we want to buy it from you."

C. AUSTIN FITTS: I saw it once when two of the investors started competing with each other to invest in the company and trying to negotiate terms back and forth, and it got unbelievable brutal and blunt, and what I have to say is the few times I've watched it I thought it was incredible education for a new entrepreneur. First of all, the questions were really good. The investors were clearly very capable, and they asked great questions. And they were very aggressive in terms of trying to get the value for themselves, so you got a feel on what it was like to negotiate investment.

But the other thing is if you look at how long as an entrepreneur it takes you to go through that kind of process and get that education, if you're doing one company every eight minutes, you can have a lot of experience pretty quickly. And it's a much more economic way to get that experience by watching *Shark Tank* than having to go through it personally.

PAUL FERGUSON: Absolutely. I think it's a great education.

C. AUSTIN FITTS: Yes, it's a great education. There it is. Catherine Austin Fits recommended a TV show. Only you could get me to do that, Ferguson!

creating the right kind of legal structure that can take them from startup to successful enterprise. So Debbie, why don't you start? You've been listening to Carolyn and Paul; any comments?

Debbie Landers: Well, as I was listening to them, and I was thinking back, you know, everything comes back fresh to you, and one of the other things that I would just say to anyone who's going to start a business is do your research. Know the market. I can't tell you the number of hours and classes – there's so many free classes that are available. That's another thing that I wanted to tell you is there's business centers. There's mentors. There's groups that you can call, and there's retired folks that have been very successful in the business realm, and I have gleaned so much from all of them.

And then coming back to the whole legal structure is you just – you've gotta feel so comfortable with it. It has to be large enough to encapsulate your vision, and it has to be objective enough – and I know I keep coming back to that, but that was one of the clarity points for me was that it just made it so objective, and it became – you started the conversation off tonight by saying, "When you're starting a business, you're starting a system." And I could so clearly see the system, and it was outside of my head. It was outside of my heart. It was outside of my home. I could see it in the world, and I could see it functioning, and that's what the clarity of the whole legal system did for me.

C. Austin Fitts: Okay. Carolyn?

Carolyn Betts: You may find this strange coming from an attorney. I was just struck by how much what Catherine talks about the importance of trust is to this whole scheme. You know, a lot of the regulatory agencies and a lot of people commenting on the crowd funding proposals, which would allow the raising of smaller amounts of money from lots of people, they think of that as being an opportunity for a lot of people who can't afford it to be screwed. And, you know, the fact is that no lawyer and no offering document is going to make somebody honest and trustworthy and hardworking and genuine.

And so much of – and nothing is going to bring in investors – nothing you put on paper is going to bring in investors. It has to do with the magnetic thing that Debbie has – that excitement about the idea, the hardworking ethic, the years that you've put into living the right way, and the network you've built up. If you work – I mean, the biggest thing I can tell you to do if you want to start a business is get your network up and be talking to people because you know what – you have in your network people who can answer every question that you need answered and who can guide you and who can support you financially in terms of being investors.

And it's not a matter of going out and telling people why they should invest in you. It's living it and having the excitement infect other people and bringing in the best people in terms of your advisors, your team, the people you sell to, the people you're going to buy from, the people who are your lawyers, the people who are your accountants. If everybody thinks it's a wonderful idea, and everybody trusts each other, and it's just a formality to put it all in words and organize it, then it's going to take off, and it's going to work on its own.

C. Austin Fitts: And Paul?

Paul Ferguson: I absolutely agree with what Debbie and Carolyn both said, and I think for a young entrepreneur one of the best things they could do is really study the seminar that you put together and the materials that you're going to put out there because I think basically we covered all the fundamentals in a nice, concise way. So I would say take all of this to heart, study it, internalize it and then use it. Go forth and build.

C. Austin Fitts: Well, before we close there are two other things I wanted to say. One, Debbie, was you had something you wanted to share with the subscribers about the website?

Debbie Landers: Yes, what I want to do for your subscribers is I want to give them a discounted Bouquet of Words – a 50 percent discount. And if they find a Bouquet of Words that fits an occasion that they want, they just need to go on, click on there, make their order, and when they get to the payment section there's a discount code field, and if they'll just enter "Solari" there, they'll get their 50 percent discount.

C. Austin Fitts: Okay – well, I'll make sure we highlight that on the blog, and I'm sure we will really appreciate that, because I know just from knowing the subscribers they have a lot of events going on in their lives. Well, I want to thank each one of you. You're each amazing people, and you – every time I turn around you're bringing knowledge, you're brining justice, you're creating jobs, you're creating companies. You really are all three of you people who hold up the world, and you certainly make my world and the Solari world much, much richer.

And here you are doing it again tonight, and I can't tell you what a great opportunity it was for me to be able and to try and put together this body of information so that the subscribers who do want to start a business will really have a compact pool of information to get them going. Because I know the power of what a legal structure can do for a business, and I think after they've listened to this audio seminar, they're going to know, too, and know how to begin. So again, thank you – all three of you for doing this. It's been a real pleasure to do this *Solari Report* with you.