



# Unique Considerations When Forming A CleanTech Venture

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## RISE 2010

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# Determine Proper Entity for Venture



- CleanTech, GreenTech, Alternative Energy, Renewable, Sustainable, Socially Aware, etc. are very broad categories that have many existing analogs to traditional businesses
- Is your entity like a technology, service, manufacturing, real estate, retail, etc. company?
- Typical type of entity and financing strategies will often mirror those of the traditional entities
  - However, financing sources (private and governmental and non-governmental) will differ

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Agriculture</b>	➤ Bio-based materials; farm efficiency technologies; micro-irrigation systems; bioremediation; non-toxic cleaners and natural pesticides. [may include organic, health food, or natural health or clothing products.]
<b>Air &amp; Environment</b>	➤ Air purification products and air filtration systems, energy efficient HVAC; universal gas detectors; multi-pollutant controls; fuel additives to increase efficiency and reduce toxic emissions.

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Materials</b>	➤ Biodegradable materials derived from seed proteins; micro-fluidics technology for conducting biochemical reactions; nano-materials; composite materials; thermal regulating fibers and fabrics; environmentally-friendly solvents; nano-technology components for electronics, sensor applications and energy storage; electrochromic glass; thermoelectric materials.
<b>Energy Generation</b>	➤ Distributed and renewable energy generation and conversion, including wind, solar/photovoltaics, hydro/marine, biofuels, fuel cells, gasification technologies for biomass, and flywheel power systems.

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Energy Storage</b>	➤ Batteries e.g. thin film and rechargeable; power quality regulation; flywheels; electro-textiles.
<b>Energy Infrastructure</b>	➤ Wireless networks to utilities for advanced metering, power quality monitoring and outage management; integrated electronic systems for the management of distributed power; demand response and energy management software.

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Energy Efficiency</b>	➤ Energy management systems; systems that improve output of power generating plants; intelligent metering; solid state micro-refrigeration; control technology for HVAC systems; automated energy conservation networks; cooling; LED and other lighting
<b>Recycling &amp; Waste</b>	➤ Recycling technologies; waste treatment; internet marketplace for materials; hazardous waste remediation; bio-mimetic technology for advance metals separation and extraction.

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Manufacturing / Industrial</b>	➤ Advanced packaging; natural chemistry; sensors; smart construction materials; business process and data flow mapping tools; precision manufacturing instruments & fault detectors; chemical management services.
<b>Transportation</b>	➤ Hybrid vehicle technology; lighter materials for cars; smart logistics software; car sharing; temperature pressure sensors to improve transportation fuel efficiency; telecommuting.

# Basic Classes of CleanTech Ventures



<b>Cleantech Segment</b>	<i>Example Technologies</i>
<b>Water &amp; Wastewater</b>	➤ Water recycling and ultra-filtration systems (e.g. UV membrane & ion exchange systems); sensors and automation systems; water utility sub-metering technology desalination equipment.

Source: Cleantech Venture Capital: How Public Policy Has Stimulated Private Investment (May 2007)

Principal Author: James Stack; Contributing Authors: John Balbach, Bob Epstein, Teryn Hanggi

# L3C Corporations



- L3C = Low profit limited liability companies
  - cross between a nonprofit and for-profit corporation
  - Authorized in Vermont, Michigan, Utah, Illinois, Wyoming at present
- Must satisfy the following requirements:
  - company must “significantly further the accomplishment of one or more charitable or educational purposes,”
  - No significant purpose of the company is the production of income or the appreciation of property (though the company is permitted to earn a profit)
    - Generally permits profit from 0 to 5%
  - The company must not be organized “to accomplish any political or legislative purposes.
- L3Cs are like LLCs
  - have the liability protection of a corporation, the flexibility of a partnership.
- Unlike basic LLC, L3Cs are specifically formed to further a socially beneficial mission and can qualify as a “program related investment” (PRI)
  - Allows foundations and charities to make investments / contributions
  - While the L3C is designed to facilitate PRIs by private foundations, these foundation investments are governed by the federal tax rules applicable to PRIs.
- As an LLC, L3Cs are not tax-exempt
  - investments in L3Cs are not tax-deductible
  - Income taxable at members’ rates

# Commercial Considerations



- When seeking investment, remember that this is still a business first
- While it may have appeal to cleantech funds and “socially aware” / “socially responsible” investors, it must be a “real” business with the profit motives and margins and size and scaling of traditional businesses
- Passion and belief are no substitutes for business model
- Does your management team have the requisite experience for the venture?
- Likely to require management / advisors with much more experience and contacts in governmental, regulatory and administrative circles
- Ignore traditional players (e.g. BigOil) at your peril

# Early Stage Capital Requirements



- Sufficient early stage capital to get through the “valley of death”
- If you build it (the prototype), will you have enough capital to commercialize it?
- Be wary of government funding sources
  - Political process can be arbitrary, long and create artificial incentives or distort your long-term business model
  - However, significant alternative funding exists (more later in presentation)

# Choosing Wrong Attorney for Type of Venture



- The business model should drive entity selection, financing structure, and choice of advisors
- Should be able to represent your type of company, not just a “cleantech” company generally
  - E.g., Is this a project finance? If so, do you have a bona fide project finance lawyer?



- There are a number of unique funding options available to cleantech start-ups (in addition to traditional angel, venture, strategic investor models)
- Alternative financing can reduce or delay (but likely will not eliminate need for) traditional equity and debt financing
- Many of the alternative sources come with “strings”

- <https://www.fedconnect.net/Fedconnect/>
- ARRA (the “Stimulus Act”)
  - Grants, loan guarantees, etc.
  - Usually for projects that can scale up fairly quickly
  - Long and often expensive process
  - Must pay prevailing union wages in an area
  - Opportunities issued pursuant to well defined Funding Opportunity Announcements (“FOAs”)
  - Can be very helpful for project development
- SBIRs and other Research Grants

- Texas Emerging Technology Fund (ETF)
  - Must submit paperwork to committee located in your area
  - Often several presentations to committees
  - Must raise matching funds—sometimes before receiving ETF funds—otherwise within 12-18 months
  - State gets a warrant exercisable for the next round security
  - Can be a lengthy process

# Thank you!

## Open Discussion / Q&A



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# Bio – Matt Lyons



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Matt Lyons is a partner with Andrews Kurth, where he specializes in representing private and public emerging growth companies and entrepreneurial interests. He advises on all aspects of forming new businesses, raising capital, M&A, and securities laws & regulations. He also regularly counsels companies and their boards on corporate governance and executive compensation. Matt represents and maintains relationships with a number of prominent venture capital, private equity and investment banking firms.

Matt has consistently been named as one of the leading lawyers in Texas for the area of Technology: Corporate and Commercial in the Chambers USA Rankings. He also has been Martindale-Hubbell "Peer Review Rated" for Ethical Standards and Legal Ability. Matt has been named a "Texas Rising Star" in the area of Securities and Corporate Finance by Texas Super Lawyers and Texas Monthly Magazine. Matt received his undergraduate and law degrees from the University of Texas at Austin.

## **ANDREWS KURTH LLP**

### **Technology and Emerging Companies Group**

Andrews Kurth's Technology and Emerging Companies Group is a leading business law firm for entrepreneurs, emerging growth companies and venture capital and private equity investors. Our attorneys develop business structures, help to secure financing, take companies public, advise on acquisition and strategic alliances, counsel on executive compensation, and help our clients protect their intellectual property.

We represent clients in the areas of clean technology/renewable energy, semiconductors, telecommunications, computers and electronics, enterprise software, life sciences, aerospace, Internet and e-commerce, consumer products and retail. We also represent and have extensive contacts with market leading investment banking, private equity and venture capital firms from coast-to-coast.

The materials included herein provide a general description of certain legal and business matters and should not be construed as providing specific legal advice or establishing an attorney-client relationship.

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# Bio – Alan Bickerstaff



## Alan Bickerstaff, Partner

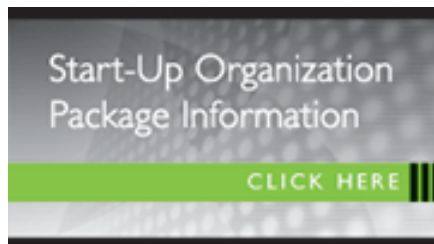
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Alan Bickerstaff is a Corporate and Securities partner who focuses on representing entrepreneurs and public and private emerging growth companies on formation, operations and corporate governance matters; securities law reporting and compliance matters; private equity and venture capital financings; public offerings and mergers and acquisitions.

Alan represents companies in a wide variety of industries, including the software, cleantech, internet, energy, semiconductor, renewable energy, life sciences, and telecommunications industries.

Alan has also represented numerous institutional investors in venture capital financings and private equity transactions as well as underwriters in various public securities offerings.

Alan has represented companies, venture capitalists and private equity sponsors in raising over \$600 million in capital in more than 100 venture capital and private equity financings. He has advised companies and underwriters in raising over \$2 billion in capital through initial public offerings, public equity and debt offerings and Rule 144A transactions, acquirers and targets in over \$2 billion of public and private company merger and acquisition transactions.

## ANDREWS KURTH LLP Technology and Emerging Companies Group

Andrews Kurth's Technology and Emerging Companies Group is a leading business law firm for entrepreneurs, emerging growth companies and venture capital and private equity investors. Our attorneys develop business structures, help to secure financing, take companies public, advise on acquisition and strategic alliances, counsel on executive compensation, and help our clients protect their intellectual property.

We represent clients in the areas of clean technology/renewable energy, semiconductors, telecommunications, computers and electronics, enterprise software, life sciences, aerospace, Internet and e-commerce, consumer products and retail. We also represent and have extensive contacts with market leading investment banking, private equity and venture capital firms from coast-to-coast.

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