

Title: Nonprofit, For-Profit, L3C, B Corp... How to Choose?

By: Marc J. Lane & Ben Wirz

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Date: August 24, 2011



With the availability of low-profit limited liability corporations (L3Cs) and B corporations in more and more states, choosing an organization type to achieve a charitable mission is no longer limited to nonprofits or for-profits. Learn from our expert panelists about what to consider when choosing a legal structure and the pros and cons of each form.

12:23

Sandy Pon:

Hello, welcome to today's live Q&A chat on how to choose between starting a nonprofit, for-profit, L3C, B corporation, or other social enterprise structure. We'll start at 1pm, but you can start submitting questions now.

 Share

Wednesday August 24, 2011

12:24

Sandy Pon:

NOTE!! The point of today's chat is NOT to define each of these entities. Today's chat will focus on what you need to consider as you choose your path. This assumes you already know what these paths are.

 Share

Wednesday August 24, 2011

12:24

Sandy Pon:

If you don't know what an L3C or a B corporation is, get a primer with these links:

* This blog article briefly describes both:

<http://nclawlife.com/2011/03/04/13c-and-b-corps/> -- click on for more info on:

-- L3Cs:

* Americans for Community Development:

<http://www.americansforcommunitydevelopment.org/concept.php>

* The L3C – 3 Years Later:

<http://www.nonprofitlawblog.com/home/2011/08/the-13c-3-years-later.html>

-- B corps:

* B Lab, the certifying entity: <http://www.bcorporation.net/why>

(see also “Become a B Corp” link on the left)

* Inc. article: <http://www.inc.com/guides/201106/how-to-become-a-benefit-corporation.html>

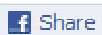
-- For profits and nonprofits:

* Two Basic Types of Organizations: For-Profit (Business) and Nonprofit:

<http://managementhelp.org/organizations/types.htm>

* What is a nonprofit?

<http://managementhelp.org/organizations/nonprofits.htm#anchor247079>



Wednesday August 24, 2011

12:24

Sandy Pon:

Please also see Ben Wirz's slideshow on choosing nonprofit vs for-profit – IMO (in my opinion), a great distillation of key questions to ask yourself:

<http://www.slideshare.net/benoitwirz/how-to-decide-non-profit-vs-for-profit-7957294>



Wednesday August 24, 2011

12:25

Sandy Pon:

2nd NOTE!! Today's discussion is for informational purposes only, without any representation that the information presented is accurate or complete. This discussion does NOT constitute legal advice. Laws change over time and vary from state to state. Consult an attorney to address your particular situation. If you need help to find an attorney, please see this Knowledge Base Article: <http://grantspace.org/Tools/Knowledge-Base/Nonprofit-Management/Consultants/Pro-bono-legal-assistance>.



Wednesday August 24, 2011

12:25

Sandy Pon:

I'll be back in appx 20 minutes!



Wednesday August 24, 2011

12:57

Sandy Pon:

Good morning/afternoon! I am Sandy Pon, a librarian with the Foundation Center. We will start in 3-4' but you can start submitting questions now.



Wednesday August 24, 2011

12:57

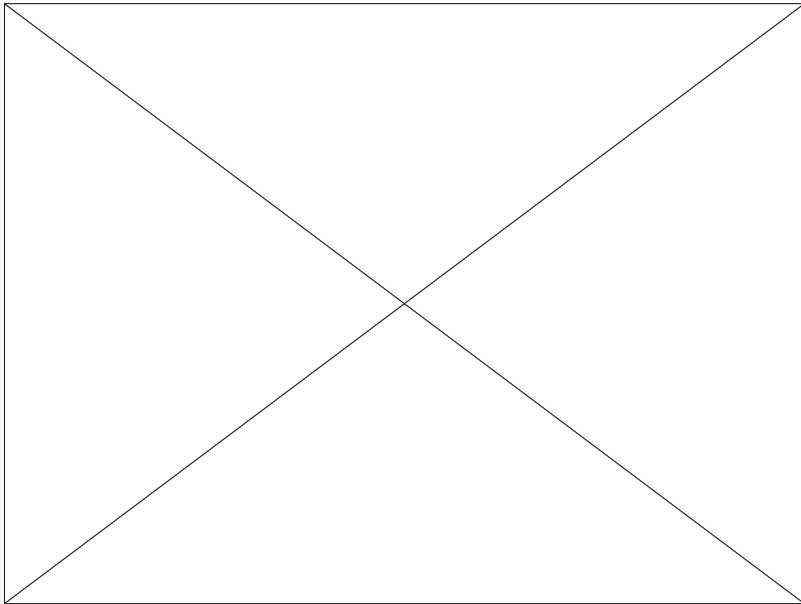
Sandy Pon:

If this is your first visit to GrantSpace, welcome! Take our 1-minute tour:



Wednesday August 24, 2011

12:57



 Share

Wednesday August 24, 2011

12:59

Sandy Pon:

Welcome to today's live Q&A chat! Today we'll talk about what to consider when deciding to start a nonprofit, for-profit, or something in between (L3C, B corp, or other social enterprise form).

 Share

Wednesday August 24, 2011

12:59

Sandy Pon:

We have a lot of readers in our audience today, but we'll try to take as many questions as we can in this hour. My Foundation Center colleague Katie Artzner is here to help, so don't be alarmed if you see responses from us.

 Share

Wednesday August 24, 2011

12:59

Sandy Pon:

Before we start, 2 reminders:

- 1) This is a text-based chat, so you will not hear any sound; and
- 2) Submit questions/comments at any time during the chat by typing in the field below. Our panelists will respond once I post them to the discussion. We will try to post as many questions as time allows.

 Share

Wednesday August 24, 2011

12:59

Sandy Pon:

Also, to repeat our DISCLAIMER: Today's discussion is for informational purposes only, without any representation that the information presented is accurate or complete. This discussion does NOT constitute legal advice. Laws change over time and vary from state to state. Consult an attorney to address your particular situation. If you need help to find an attorney, please see this Knowledge Base Article:

<http://grantspace.org/Tools/Knowledge-Base/Nonprofit-Management/Consultants/Pro-bono-legal-assistance>.

 Share

Wednesday August 24, 2011

12:59

Sandy Pon:

To our Twitter audience: If you want to tweet questions/comments to our Q&A chat, please include this hashtag so we can find them:
#GrantSpaceChat

 Share

Wednesday August 24, 2011

1:00

Sandy Pon:

The full transcript of today's chat will be at:

<http://grantspace.org/Multimedia-Archive/Live-Chats/Nonprofit-For-Profit-L3C-B-Corp-How-to-Choose-2011-08-24>



Wednesday August 24, 2011

1:01

Sandy Pon:

We're in the process of making a permanent home for our live chats! Read some of our recent chats in our Multimedia Archive:

<http://grantspace.org/Multimedia-Archive/Live-Chats>



Wednesday August 24, 2011

1:01

Sandy Pon:

Joining us to answer your questions today are:

* Marc J. Lane, nationally recognized business and tax attorney, and Founder of Marc J. Lane Wealth Group, based in Chicago, IL. He also teaches Social Enterprise at Northwestern University School of Law.

* Ben Wirz, director of business consulting for the John S. and James L. Knight Foundation based in Miami, FL, where he works with Foundation staff to develop programs based on realistic business plans.

To learn more about them, please see their bios below the chat window.

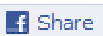


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1:02

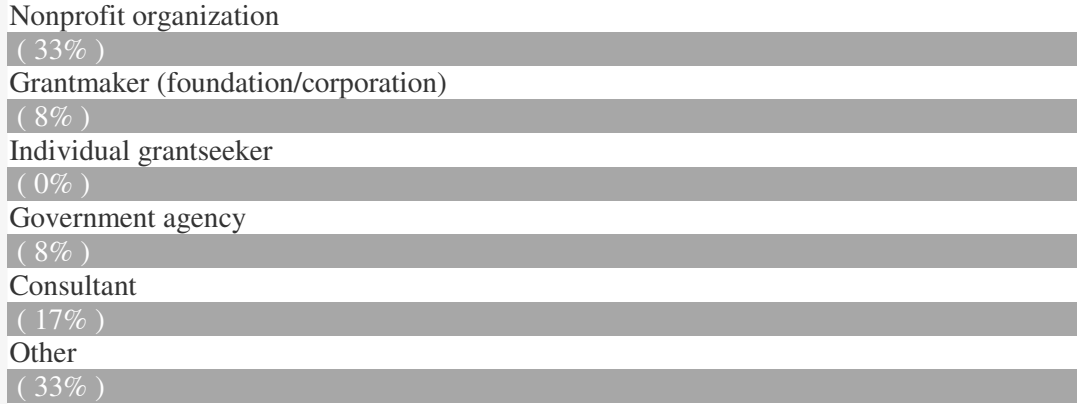
Sandy Pon:

Before we start our questions, let's see who's in our audience and where they are:



Wednesday August 24, 2011

1:02 Who do you represent? (Choose the one that most accurately describes you)



Wednesday August 24, 2011

1:02 Where are you located?



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1:03

Sandy Pon:

If you're joining us late, you still can vote in our polls, which are rotating below this chat window. Just click on "Vote" in the upper right of the poll window to take part.



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1:04

Sandy Pon:

OK, let's start our questions!



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1:05

Sandy Pon:

BEN, part of your job is to advise grantees on how to develop/expand their business models. Is this a growing trend among grantmaking foundations?



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1:05

Sandy Pon:

While Ben types his response, check out his slideshow on choosing nonprofit vs for-profit – IMO (in my opinion), a great distillation of key questions to ask yourself: <http://www.slideshare.net/benoitwirz/how-to-decide-non-profit-vs-for-profit-7957294>



Wednesday August 24, 2011

1:05

Ben Wirz:

SANDY, There are a few foundations which have started to provide more of this type of advice in house...



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1:06

Ben Wirz:

A recent article in the New York times profiled some of these efforts, notably at Omidyar Networks...



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1:08

Ben Wirz:

But overall Knight is still very much a trendsetter in this effort. Partially I think as a result of the dynamic nature of journalism and media where we focus a lot of our efforts, and where there is more need for this type of advice. NYT article here: <http://nyti.ms/oEd6h5>



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1:10

Sandy Pon:
Thank you Ben!

MARC, what do you think is the most important question that people should ask themselves when they're trying to choose what type of org to start?



Wednesday August 24, 2011

1:12

Marc Lane:
Sandy, delighted to be here!...



Wednesday August 24, 2011

1:12

Sandy Pon:
great to have you here, Marc!



Wednesday August 24, 2011

1:13

Sandy Pon:
Readers, while Marc types his response, you might find this podcast interesting for future listening:
“For-Profit/Not-For-Profit Dilemma: How to Choose The Right Legal form for Your Social Enterprise”: <http://grantspace.org/Multimedia-Archive/Podcasts/Program-Audio-NY-Legal-Forms-2010-10-07>



Wednesday August 24, 2011

1:13

Marc Lane:
As between a nonprofit and a for-profit, the first question is: will my org have exclusively a charitably purpose? If your org has a revenue model apart from philanthropy, a business choice comes into play. If the model depends exclusively on charity, it's a nonprofit and nothing else. If the charity wants to diversify IRS revenue and depend less on charity and government support, that's where a for-profit subsidiary or affiliate has an important function.



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1:16

Ben Wirz:

Some other resources people can check out on making the non-profit vs. for-profit decision are Jim Fruchterman's article, "For Love or Lucre", <http://www.benetech.org/about/awards.shtml#jf2>, and Citizen Media Law Project: <http://bit.ly/ok1oWC>.



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1:16

Sandy Pon:

Thanks Marc & Ben...

Perfect segue into my Q for Ben -- what compelled you to create your slideshow on choosing nonprofit vs for-profit?



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1:17

Ben Wirz:

So we have a number of grantees who wrestle with this question, notably in the Knight News Challenge which is an open ideas contest that attracts a lot of startups. Once they win, some struggle with how to define themselves...



Wednesday August 24, 2011

1:19

Ben Wirz:

We also support a number of nonprofits, that come across projects which provide significant potential for revenue. These organizations then have to decide whether and how to maintain and grow these projects.



Wednesday August 24, 2011

1:20

Sandy Pon:

OK, let's take 2 reader Qs about switching type of entities in the future...



Wednesday August 24, 2011

1:20

Sandy Pon:

a more general Q:



Wednesday August 24, 2011

1:20

Comment From Guest

Great. Thanks for organizing. It'd be great if the speakers can cover whether it's possible to change the nature of the entity we choose in the future.

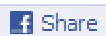


Wednesday August 24, 2011

1:20

Sandy Pon:

and more specific Q about 501c3 to L3C or vice versa:



Wednesday August 24, 2011

1:20

Comment From Guest

I'm a member of amateur sports league; we're currently sussing out how to incorporate. Either 501(c)3 or L3C. My question: if in the future our membership composition or circumstances change, is it easier to change from a 501(c)3 to L3C, or vice versa?



Wednesday August 24, 2011

1:22

Marc Lane:

As to changing form, it depends. A lawyerly answer :)...



Wednesday August 24, 2011

1:22

Marc Lane:

A switch from a (c) (3) is usually pretty messy, often requiring a sale of assets to the for-profit, with tax and fiduciary consequences. A switch from a for-profit to a (c) (3) often involves a sale or contribution.

Setting up a subsidiary of the (c)(3), perhaps as an L3C, can give the nonprofit the best of both worlds -- optimizing funding to include donations, grants and the sale of debt and/or equity... and the tax and fiduciary issues are avoidable. It's also a good asset protection move, isolating business activities and assets in a separate entity.



Wednesday August 24, 2011

1:22

Ben Wirz:

It is never easy to switch from a tax paying to non tax-paying entity or vice-versa. It is relatively easier to create for-profit or non-profit subsidiaries of existing entities. Often, if there is no change in control of the organization, this is how such a transition is handled.



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1:25

Sandy Pon:

To sum up: Think hard about your initial formation, and subsidiaries likely will be easier than changing your legal form. For more info:

* "Can I convert my for-profit business into a nonprofit organization?"

<http://grantspace.org/Tools/Knowledge-Base/Individual-Grantseekers/For-Profit-Enterprises/Converting-to-nonprofit-status>

* Nonprofit subsidiaries: <http://grantspace.org/Tools/Knowledge-Base/Nonprofit-Management/Establishment/Subsidiaries>



Wednesday August 24, 2011

1:28

Sandy Pon:

Ben & Marc, I'm going to direct a Q to each of you to answer separately...



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1:28

Sandy Pon:

For Ben...





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1:28 **Comment From Charlotte**
I am interested to learn more generally about how Knight is defining social enterprise and encouraging it across the spectrum of "social good" orgs. Can Ben talk about this?

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1:28 **Sandy Pon:**
For Marc...

Wednesday August 24, 2011

1:28 **Comment From Janet**
Can my for-profit corporation create a nonprofit to raise money for scholarships for our services?

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1:29 **Ben Wirz:**
Charlotte, thanks for the interest in Knight. We don't necessarily have a set definition of social enterprise...

Wednesday August 24, 2011

1:29 **Ben Wirz:**
Like many people we are interested in both for-profit and non-profit entities that use market mechanisms to solve social problems, and we have supported both types of entities in furthering our mission to promote informed and engaged communities....

Wednesday August 24, 2011

1:30

Ben Wirz:

Knight has supported a number of studies, particularly on the journalism side, that look at what types of information are and are not being provided by the private sector, and we look to identify gaps so that we can direct our charitable investments accordingly.



Wednesday August 24, 2011

1:31

Marc Lane:

Janet, good question -- Corporations often set up foundations for charitable purposes -- but I'd be careful about private benefit. The nonprofit, as any charity, must be organized and operated exclusively for charitable purposes -- not your corporation's enrichment.



Wednesday August 24, 2011

1:31 **Are you currently thinking about starting a nonprofit, for profit, or social enterprise?**

Yes

(42%)

No

(17%)

Not now, but maybe in future

(42%)



Wednesday August 24, 2011

1:33

Sandy Pon:

thank you both...here's a Q from Mimi about nonprofit LLCs:

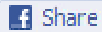


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1:33

Comment From Mimi Turchinetz

I am working with a Chicago 501c3 that will be using the LLC model to craft a board for a national "organization"-however-I have some concerns about the LLC model- Does it make sense to create an LLC in a 501c3 model? Has there been much written about using the LLC model for non-profits?



Wednesday August 24, 2011

1:36

Marc Lane:

Mimi -- good question. If your (c) (3) has, or will have, earned revenue, it might consider an L3C sub or affiliate. That's the pattern we're using for about half the L3Cs we set up around the nation. And Illinois has an L3C law. I drafted it. :)



Wednesday August 24, 2011

1:36

Ben Wirz:

The L3C form would make more sense, particularly if distributions to investors are contemplated. I am not sure what the advantages of an LLC 501(c)3 organization would be. I am not aware of any such entity that Knight has funded (although there may well be one or two). I would defer to Marc's expertise on this.



Wednesday August 24, 2011

1:37

Sandy Pon:

here's a Q about Bs vs L3Cs:



Wednesday August 24, 2011

1:37

Comment From Amber Vanderwarker

When it comes to benefit corporations are there differences in IRS guidelines or taxes, from L3Cs?



Wednesday August 24, 2011

1:39

Marc Lane:

Amber -- Benefit corps have no tax advantages. They are intended to shield management from shareholder claims when decisions are made for a social purpose that may not maximize financial returns to shareholders.



Wednesday August 24, 2011

1:40

Sandy Pon:

Ben, here's a Q that seems more for you as a grantmaker - though Marc, you're definitely welcome to respond as well:



Wednesday August 24, 2011

1:40

Comment From Renae

What are your thoughts on the future of foundations and the framework for primarily supporting 501c3 orgs? Do you think that will change in the coming years as social businesses of one kind or another begin to flourish?



Wednesday August 24, 2011

1:40

Ben Wirz:

AMBER, some more information on benefit corporations here: <http://www.changematters.com> from one of the first benefit corporations incorporated in Maryland.



Wednesday August 24, 2011

1:40

Ben Wirz:

Renae, thanks for the question. Legally, foundations are structured in such a way that giving money to non profits is much easier than giving money to for profits...



Wednesday August 24, 2011

1:42

Ben Wirz:

that said, there is certainly a lot of activity from for profit social enterprises that are looking to use market mechanisms to solve social problems. My sense is that they will constitute a growing % of what foundations look to support, but that the vast bulk of support will continue going to nonprofit enterprises.



Wednesday August 24, 2011

1:43

Marc Lane:

Renaë-- I would like to weigh in. More and more foundations are acting like social venture capitalists for social enterprises irrespective of form, a positive development in my view. And more and more nonprofits and social-purpose for-profits are embracing prudent business planning, a necessary step -- particularly today.



Wednesday August 24, 2011

1:43

Ben Wirz:

I think the growth of for profit social enterprises will also make non profits more accountable for the impact that they are looking to create, and in this sense will spur innovations like Social Impact Bonds, which seek to quantify and reward non profits for making impact in a way that is more market driven.



Wednesday August 24, 2011

1:45

Sandy Pon:

See also the Foundation Center's report on program-related investments (PRIs), which more and more grantmakers are doing - which ties into the interest in L3Cs:

http://foundationcenter.org/gainknowledge/research/pdf/pri_directory_excerpt.pdf



Wednesday August 24, 2011

1:46

Comment From Chuck

Do you think there is enough readily available education for people or organizations interested in pursuing a social enterprise? Where do folks turn to learn more or network with others involved in this space?



Wednesday August 24, 2011

1:47

Ben Wirz:

There are legions of organizations that are looking to support and invest in social enterprise...Investment conferences like SOCAP and trade organizations like More for Mission offer some help to social enterprises looking for investment...



Wednesday August 24, 2011

1:47

Marc Lane:

Chuck -- check out Social Enterprise Alliance, www.se-alliance.org. Also, if I may plug my book: "Social Enterprise: Empowering Mission-Driven Entrepreneurs" (American Bar Association, 2011).



Wednesday August 24, 2011

1:48

Ben Wirz:

Hub Ventures is an accelerator for social ventures based in San Francisco. Also, I would read THE FORTUNE AT THE BOTTOM OF THE PYRAMID, by CK Prahalad, which lays the ground work for much of this movement.



Wednesday August 24, 2011

1:49

Sandy Pon:

Please see Marc's full bio (link below) for more of his book titles related to social enterprise. See also our article on social enterprise for more links & titles: <http://grantspace.org/Tools/Knowledge-Base/Funding-Research/Definitions-and-Clarification/Social-enterprise>



Wednesday August 24, 2011

1:50

Sandy Pon:

Ben & Marc, here are separate Qs for each of you...



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1:50

Sandy Pon:

For Ben...

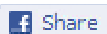


Wednesday August 24, 2011

1:51

Comment From Jeannette Privat

Please talk a little more about Social Impact Bonds. What are they and where is their market?



Wednesday August 24, 2011

1:51

Sandy Pon:
for Marc...



Wednesday August 24, 2011

1:51

Comment From Amber Vanderwarker

Since L3Cs have access to PRI's, what accountability or transparency mechanisms need to be followed, when they do receive a PRI?



Wednesday August 24, 2011

1:52

Ben Wirz:

JEANNETTE, Social Impact Bonds are awesome! Here is a link to the Nonprofit Finance Fund's site on the subject:

<http://nonprofitfinancefund.org/social-impact-bond-initiative>



Wednesday August 24, 2011

1:52

Ben Wirz:

They have been tried on a national scale in the UK and on a state level scale in the US



Wednesday August 24, 2011

1:53

Ben Wirz:

Basically, they involve raising a certain amount of money, either from government or private investors, to fund nonprofit activities which generate a social and, often, financial return...



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1:54

Ben Wirz:

For example, a nonprofit group that works with first offenders to reduce recidivism rates...Based on the amount of money saved (or alternatively amount of impact measured), these social return bonds pay a return to investors for having funded the socially beneficial activities. This money is then often re-invested to fund additional social enterprises.



Wednesday August 24, 2011

1:54

Marc Lane:

Great question, Amber. The foundation will require the L3C to comply with IRS expenditure responsibility standards. So the L3C's manager will be contractually obligated to use the money for charitable purposes as agreed, not to spend money on political campaigns or candidates, keep adequate books and records, etc. In Illinois (and, soon, elsewhere), the L3C also registers with, and annually reports, to the Attorney General. The L3C laws impose a fiduciary duty on L3Cs, so there are lots of safeguards.



Wednesday August 24, 2011

1:57

Marc Lane:

Jeannette, My firm is creating "transactional" social impact bonds that don't require special laws or government involvement, entirely a private-sector, contractual approach. These are put together for clients, tied to their missions and social metrics.



Wednesday August 24, 2011

1:57

Sandy Pon:

for more info on social impact bonds:

- <http://economix.blogs.nytimes.com/2011/02/08/what-are-social-impact-bonds/>



Wednesday August 24, 2011

1:58

Sandy Pon:

Alas, our time is up. I'm sorry we couldn't answer all questions that came in today, but many thanks to all of you for joining our live Q&A chat today.



Wednesday August 24, 2011

1:58

Sandy Pon:

Let's give a last big THANK YOU to our panelists. (They can see your comments!)



Wednesday August 24, 2011

1:58

Marc Lane:

Thanks to you, Sandy. It was a pleasure.

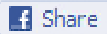


Wednesday August 24, 2011

1:58

Sandy Pon:

Ben & Marc, THANK YOU VERY MUCH for taking time from your busy schedules to share your expertise with us today!!



Wednesday August 24, 2011

1:59

Sandy Pon:

Readers, before you leave, would you kindly respond to 1 last poll:



Wednesday August 24, 2011

1:59

Ben Wirz:

Thanks all, for the MBA question (or any others) feel free to contact me via twitter @bthewirz or on email at: wirz@knightfoundation.org

Best



Wednesday August 24, 2011

1:59 Was today's chat helpful?

yes

(100%)

no

(0%)



Wednesday August 24, 2011

2:00

Marc Lane:

I'm at mlane@marcjlane.com.



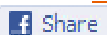
Wednesday August 24, 2011

2:00

Sandy Pon:

Also, please take 1-2 minutes to give us your feedback so we can produce more live chats that you want to see:

<http://www.surveymonkey.com/s/livechat-feedback>



Wednesday August 24, 2011

2:01

Sandy Pon:

FYI, on Mon 8/29 we'll have another live chat on business plans:

<http://grantspace.org/Classroom/Training-Calendar/Live-Chat-Discussions/What-Should-Be-In-Your-Nonprofit-s-Business-Plan-2011-08-29-Live-Chat>

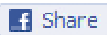


Wednesday August 24, 2011

2:01

Sandy Pon:

Thanks again to all of you for joining us this hour. Have a great day!
Goodbye!



Wednesday August 24, 2011

2:03

Comment From Michael DiFonzo

This was incredibly informative and answered many of my questions.
Thank you!



Wednesday August 24, 2011

2:03

Comment From Anne

Thank you for your time and energy! Great information! So motivating!



Wednesday August 24, 2011

2:18

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Marc J. Lane is the Founder of Marc J. Lane Wealth Group, based in Chicago, IL. He is a nationally recognized business and tax attorney who teaches Social Enterprise at Northwestern University School of Law and is an innovator in helping social entrepreneurs, investors, lenders, and philanthropists leverage capital to maximize financial results while driving positive social change. Marc championed Illinois' Low-profit Limited Liability Company (L3C) legislation, is a Director of Social Enterprise Alliance, and chairs its affiliate, The Center for Social Enterprise Accreditation. He is the author of 34 books on corporate organization, management, taxation, investment, personal finance, and social enterprise.

Ben Wirz is the director of business consulting for the John S. and James L. Knight Foundation based in Miami, FL, where he works with Foundation staff to develop programs based on realistic business plans. He also consults with select Knight grantees. Ben is a founder of US Global, where he helped take businesses from start-up to profitability.

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