



SIMPLE AGREEMENTS FOR FUTURE EQUITY (SAFE)

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Shareholder

Stradling Yocca Carlson & Rauth,
P.C.

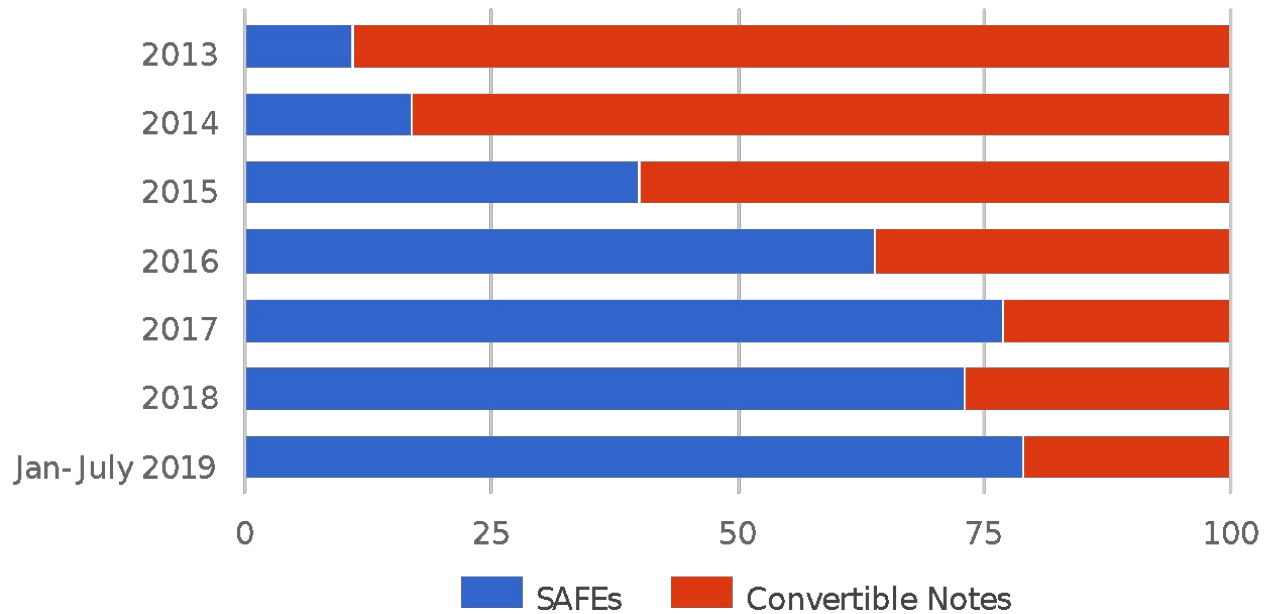
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Background

- Introduced by Y-Combinator in 2013 as an alternative to convertible notes
- Low transaction costs – form agreement
 - Required to represent that no changes have been made to the form

Popularity on Angel List



Similar to Convertible Notes

- Like a Note with no Maturity Date and No Interest Rate
- Converts into a later round at the lower of:
 - ***Post-Money*** Valuation Cap (more on this later)
 - Discount to Next Round Price
- Liquidity Event – receive the greater of:
 - Amount invested; or
 - Pro rata amount as if converted to Common Stock (at the Post-Money Valuation Cap)
 - paid a closing, likely without regard to any escrows, holdbacks or earnouts, but unclear

Different From Convertible Notes

- *No Minimum Deal Size to Force Conversion*
- No Events of Default
- Paid After Debt
- No Liquidation Preference Windfall
 - Shadow Preferred

Different From Convertible Notes

- Post-Money Valuation Cap
 - Not diluted by additional SAFEs
 - At closing of the next round, SAFE will represent an agreed percentage of the pre-money capitalization (excluding option pool increase)
 - If Invest \$1M via SAFE with a Post-Money Valuation Cap of \$5M, SAFE represents 20% of pre-money cap table before the next round, even if \$2M in total raised
 - *Caution: if sell \$5M in SAFEs with a Post-Money Valuation Cap of \$5M, SAFEs represent 100% of pre-money cap table before next round!*

SAFE Protections

- Pro Rata Rights (Optional)
 - Right to purchase pro rata portion of shares sold in the conversion round to maintain percentage ownership post-closing
- Dividends Paid Pro Rata

Additional Concerns with SAFEs and Notes

- Limited Representations and Warranties
- No Board Representative
- No fiduciary duties owed
- No protective provisions/negative covenants
- No information rights (contractual or statutory)

Tax Treatment of SAFEs

- Tax Treatment
 - May not be debt or equity, likely pre-paid forward contract unless conversion is imminent, then may be equity
 - Capital Gains/QSBS Holding Periods may not start until conversion to equity

Summary

- SAFEs vs Convertible Notes
 - Discount with a Cap
 - Cap is Calculated Post-Money
 - No maturity date or interest rate
 - No minimum deal size to force conversion
- Likely as good as Notes on the upside, but much worse on the downside
 - If only worried about upside, need to set minimum deal size for conversion (via side letter)

Amit Singh, Esq.

Corporate Shareholder

Amit is a shareholder in Stradling's corporate and securities law and technology transactions practices.

Amit is a corporate governance and business transactions expert, with over 20 years' experience in venture capital and private equity transactions, mergers and acquisitions, joint ventures, technology transactions and general corporate law.

Amit counsels companies and investors in a broad range of industries, including life sciences, software, hardware, communications and networking, internet, manufacturing and distribution and medical devices.

Amit earned an LL.M. (Corporate Law) from New York University School of Law in 1999 and a J.D. in 1998 from University of California, Hastings College of the Law.

He is a member of the State Bar of California and the State Bar of New York.



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EDUCATION

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PRACTICE AREAS

Corporate Law
Private Equity
Startups and Emerging Companies
Venture Capital
Mergers and Acquisitions
Technology Transactions