

October 15, 2012

**Lee R. Petillon & Robert Joe Hull, Representing
Start-Up Companies Sect. 2:39 (Supp. Oct.
2012), citing Bigler & Tillman's Void or Voidable?
-- Curing Defects in Stock Issuances Under
Delaware Law**

Seth Barrett Tillman

Representing Start-Up Companies
Database updated October 2012
Lee R. Petillon and Robert Joe Hull

Chapter 2. Formation of the Venture

§ 2:39. Curing defects in stock issuances.

Counsel may encounter issuances of stock that may have procedural defects raising questions whether stock has been validly issued. Confronted with such irregularities, counsel may attempt to cure such defects by board or shareholder ratification.

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Since this is a state corporation law issue, counsel needs to research the law of the state of incorporation to determine the likely outcome of a lawsuit to test the validity of a curative issuance. For an excellent review and discussion of the Delaware law of this issue, see **“Void or Voidable — Curing Defects in Stock Issuances Under Delaware Law”**, by C. Stephen Bigler and Seth Barrett Tillman, **The Business Lawyer**, Vol.63, August, 2008, page 1109.