



**Cooley**

# Comp Talks

## Late-Stage Through Liquidity Case Study: TempusAI

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A wide-angle photograph of the Chicago skyline, featuring a mix of classical and modern architecture. The Chicago River flows through the foreground, with a yellow boat moving towards the right. The word "Overview" is centered in white text over the middle of the image.

# Overview

# Overview

What is TempusAI?

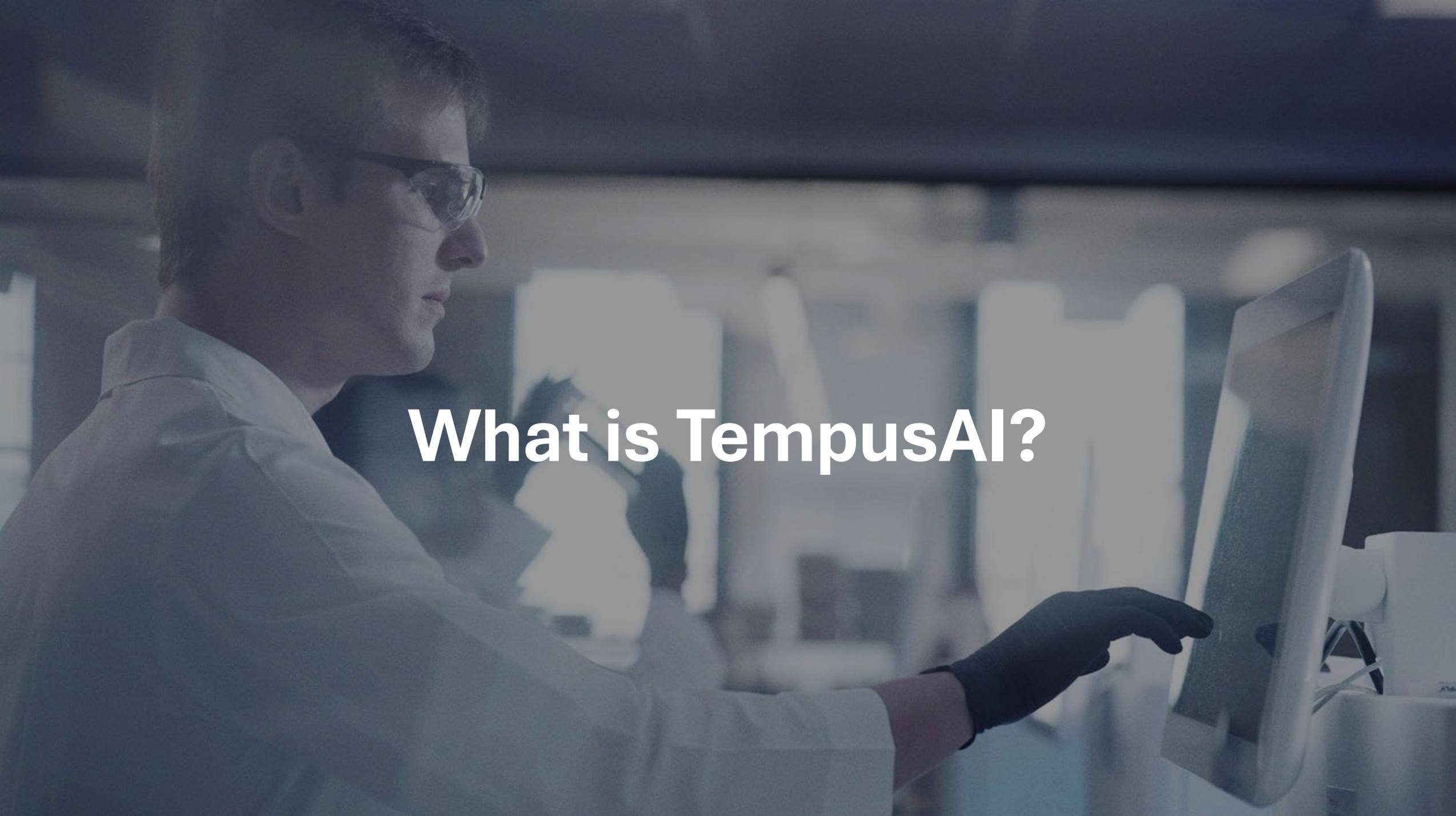
IPO Background

Equity Compensation Awards

RSU Settlement & Tax Withholding

Additional Considerations for using Sell-to-Cover

Key Takeaways

A scientist in a white lab coat and safety glasses is shown in profile, interacting with a computer monitor. The scene is set in a laboratory with various pieces of equipment visible in the background. The overall lighting is dim and blue-toned, creating a professional and technical atmosphere. The text "What is TempusAI?" is overlaid in the center of the image in a bold, white, sans-serif font.

**What is TempusAI?**

# TempusAI

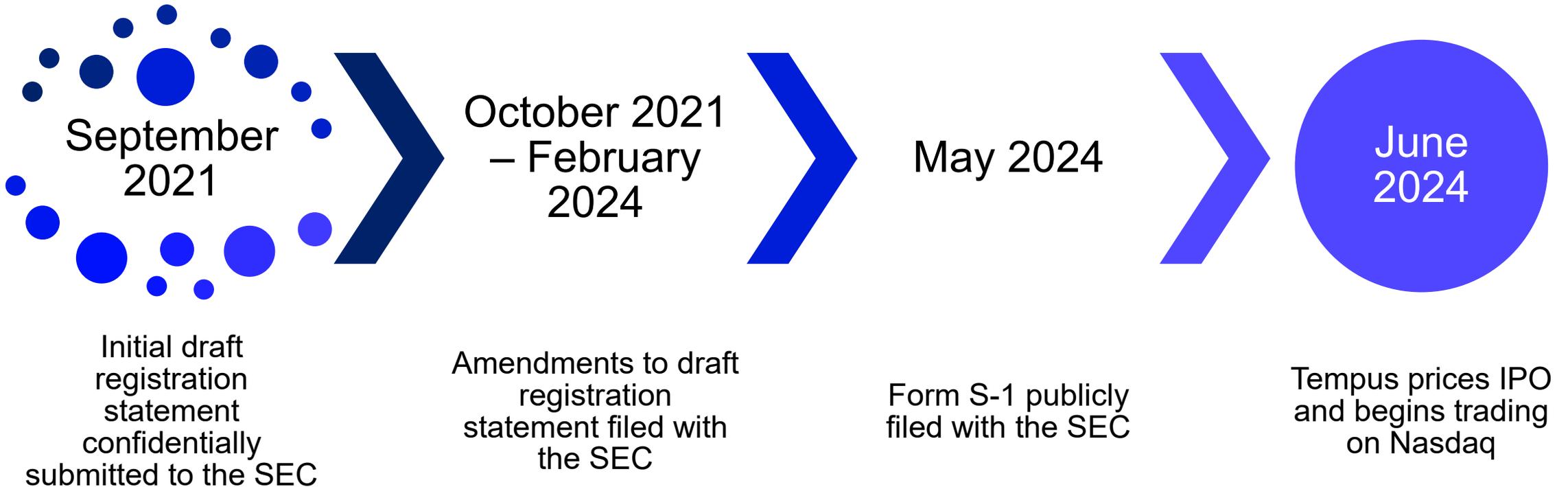
- TempusAI is a Nasdaq-listed healthcare technology company that strives to combine healthcare expertise with the power of artificial intelligence
- TempusAI had more than 2,400 employees as of December 31, 2024
- Cooley attorneys have worked with Tempus since well before IPO





# **IPO Background**

# IPO Timeline



**"TEMPUS**

The background consists of a dark blue field with a pattern of lighter blue triangles pointing upwards. The triangles are of various sizes and are arranged in a way that creates a sense of depth and movement. The text is centered and reads "Equity Compensation Awards" in a white, serif font.

# Equity Compensation Awards

# Background

- Started with stock options and restricted stock
  - Approximately 210,000 options outstanding at IPO
- Switched to RSUs leading up to IPO
  - Over 20 million RSUs issued prior to IPO
  - Over 15 million RSUs scheduled to fully vest upon IPO

# Liquidity Event RSUs

- Intended to delay vesting for tax purposes until the occurrence of a “liquidity event”
- Two-pronged approach to vesting:
  - Service-Based Requirement
  - Liquidity Event Requirement



# Liquidity Event RSUs

- If the Liquidity Event Requirement is satisfied upon the IPO:
  - A number of shares equal to service-vested RSUs are issued at IPO or by March 15 following year of the IPO
    - Depending on withholding method and timing of IPO, may require exception to the lock-up agreement
  - After IPO, remaining RSUs continue to vest based on service



A hand holding a smartphone displaying financial charts against a blue background with data lines.

# RSU Settlement & Tax Withholding

# Tax Withholding

- RSU settlement triggers tax withholding obligation
  - U.S. federal, state and local income tax
  - FICA/FUTA
- Two common methods of withholding on RSU settlement
  - Net Settlement
  - Sell-to-Cover
- “Next-day deposit” rule requires withholding taxes to be remitted to the IRS by the next business day after accumulating taxes of \$100,000+ on any day

# Net Settlement

- Pros:

- No open-market sales of stock
- May result in less dilution than sell-to-cover
- Potential to extend equity plan reserve

- Cons:

- Requires company cash



# Sell-to-Cover

- Pros:

- Does not require company cash



- Cons:

- May require early lockup release
- Must consider impact on trading volume / stock price
- Potential insider trading concerns
- Compliance with Section 16 requirements for executive officers

The background of the image is a complex financial market chart. It features a central candlestick chart with green and red bars, overlaid with several moving average lines in blue, red, and white. The chart shows a significant price dip followed by a recovery. The overall aesthetic is dark with a blue color scheme.

# Additional Considerations for using Sell-to-Cover

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# Rule 144

- Rule 144 is an SEC rule that provides a safe harbor for the public resale of restricted and control securities, allowing them to be sold without registration if certain conditions are met
- An “affiliate” of an issuer cannot sell more than 1% of the outstanding shares of the same class within any three-month period, or the average weekly trading volume of the last four weeks, whichever is greater
  - For purposes of Rule 144, an affiliate is a person, such as an executive officer, a director or large shareholder, in a relationship of “control” with the issuer
  - Control means the power to direct the management and policies of the issuer, whether through the ownership of voting securities, by contract, or otherwise

# Rule 10b5-1

- Rule 10b5-1 trading plans allow company insiders to trade company securities in a predetermined, specific way to avoid trading when in possession material nonpublic information (MNPI)
  - When properly executed, Rule 10b5-1 provides an affirmative defense against allegations of insider trading
- Rule 10b5-1 generally prohibits individuals from having multiple overlapping trading arrangements for open-market trades of company securities
  - There is an exception on this prohibition for “sell-to-cover” arrangements

A wall densely packed with hundreds of keys of various shapes, sizes, and colors (including blue, red, green, and silver). The keys are organized in rows and columns, creating a complex, textured background. The text "Key Takeaways" is overlaid in the center in a white, serif font. A desk lamp is visible in the bottom right corner, casting a warm glow on the keys.

# Key Takeaways

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