



FENWICK & WEST LLP
Trends in Terms of Venture Financings
In Silicon Valley
(First Quarter 2009)

Background – We analyzed the terms of venture financings for 92 companies headquartered in the Silicon Valley that reported raising money in the first quarter of 2009.

Overview

- Down rounds exceeded up rounds 46% vs. 25%, with 29% flat. This was the first time since 4Q03 that down rounds exceeded up rounds and the largest amount by which down rounds exceeded up rounds since 1Q03.
- The Fenwick & West Venture Capital Barometer™ showed an average price decrease of 3% for companies receiving venture capital in 1Q09 compared to such companies' prior financing round, the first decrease since we began reporting the Barometer in 1Q04.
- The decline in valuations is especially notable given the significant reduction in venture investment in 1Q09, as described below. In other words, even with venture capitalists being very selective in the deals they funded, valuations still decreased.
- One potential bright spot is that the percentage of up rounds increased each month during the quarter (January – 17%, February – 29%, March – 35%).

Other U.S. venture industry-related results for the quarter include the following:

- The amount invested by venture capitalists in the U.S. in 1Q09 was approximately \$3.8 billion in 470 deals, a significant decline from the \$5.9 billion invested in 590 deals in 4Q08 and the \$7.3 billion invested in 680 deals in 1Q08. This was the lowest amount invested in a quarter by venture capitalists since 1998, and the lowest quarterly deal total since 1996. The decline in investment was across all industries.¹
- Fundraising by U.S. venture capitalists was \$3.2 billion in 1Q09, which was the lowest amount raised in a quarter since 2003.¹
- There were 68 acquisitions of venture-backed companies in the U.S. in 1Q09, for a total of \$3.2 billion, a significant decline from 79 transactions totaling \$4.7 billion in 4Q08 and 104 transactions totaling \$8.8 billion in 1Q08. This was the lowest dollar volume of acquisition transactions since 2003.¹
- There were no IPOs of venture-backed companies in the U.S. in 1Q09. There have been two venture backed IPOs to date in 2Q09.

- The Silicon Valley Venture Capitalists Confidence Index™, produced by Professor Mark Cannice at the University of San Francisco, reports the confidence level of Silicon Valley venture capitalists at 3.03 on a 5 point scale. This was an increase from last quarter's reading of 2.77 and the first increase in the index in six quarters.
- Nasdaq was down 3% in 1Q09, but is up over 10% in 2Q09 through May 26, 2009.

Financing Round – The financings broke down according to the following rounds:

Series	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
A	13%	16%	16%	15%	17%	16%	13%	14%
B	28%	26%	26%	31%	29%	26%	38%	34%
C	17%	29%	28%	20%	22%	27%	28%	25%
D	20%	14%	17%	19%	13%	16%	12%	18%
E and higher	22%	15%	13%	15%	19%	15%	9%	9%

Price Change – The direction of price changes for companies receiving financing this quarter, compared to their previous round, were as follows:

Price Change	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
Down	46%	33%	12%	13%	19%	22%	14%	11%
Flat	29%	13%	15%	19%	9%	9%	7%	8%
Up	25%	54%	73%	68%	72%	69%	79%	81%

The percentage of down rounds by series were as follows:

Series	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
B	38%	21%	7%	3%	16%	11%	13%	5%
C	50%	43%	14%	23%	25%	11%	14%	10%
D	39%	22%	12%	14%	29%	47%	8%	17%
E and higher	60%	45%	15%	19%	10%	33%	33%	27%

The Fenwick & West Venture Capital Barometer™ (Magnitude of Price Change) –Set forth below is (i) for up rounds, the average per share percentage increase over the previous round, (ii) for down rounds, the average per share percentage decrease over the previous round, and (iii) the overall average per share percentage change from the previous round for all rounds taken together. Such information is broken down by series for Q1'09 and is provided on an aggregate basis for comparison purposes for the prior four quarters. In calculating the “net result” for all rounds, “flat rounds” are included. For purposes of these calculations, all financings are considered equal, and accordingly the results are not weighted for the amount raised in a financing.

Percent Change	Series B	Series C	Series D	Series E and higher	Combined total for all Series for Q1'09	Combined total for all Series for Q4'08	Combined total for all Series for Q3'08	Combined total for all Series for Q2'08	Combined total for all Series for Q1'08
Up rounds	+63%	+84%	+140%	+34%	+82%	+80%	+83%	+91%	+78%
Down rounds	-42%	-45%	-60%	-60%	-52%	-54%	-49%	-56%	-36%
Net result	+8%	-7%	+16%	-33%	-3%	+25%	+55%	+53%	+49%

Pay-to-Play Provisions - The use of pay-to-play provisions in the financings was as follows:

Percentages of financings having pay-to-play provisions.

Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
14%	15%	12%	7%	6%	9%	13%	10%

Note that anecdotal evidence indicates that companies are increasingly using contractual “pull up” provisions instead of charter based “pay to play” provisions. These two types of provisions have similar economic effect but are implemented differently. The above information includes some, but likely not all, pull up provisions, and accordingly may understate the use of these provisions.

The pay-to-play provisions provided for conversion of non-participating investors’ preferred stock into common stock or shadow preferred stock, in the percentages set forth below:

- Common Stock.

Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
73%	85%	60%	87%	67%	89%	57%	77%

- Shadow Preferred Stock.

Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
27%	15%	40%	13%	33%	11%	43%	23%

Redemption – The percentages of financings providing for mandatory redemption or redemption at the option of the venture capitalist were as follows:

Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
24%	20%	23%	29%	20%	21%	26%	22%

Corporate Reorganizations - The percentages of post-Series A financings involving a corporate reorganization were as follows:

Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07	Q2'07
10%	13%	4%	4%	5%	5%	9%	3%

For additional information about this report please contact Barry Kramer at 650-335-7278; bkramer@fenwick.com or Michael Patrick at 650-335-7273; mpatrick@fenwick.com at Fenwick & West. The contents of this report are not intended, and should not be considered, as legal advice or opinion.

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¹ Information in this paragraph obtained from Dow Jones VentureSource.