



**FENWICK & WEST LLP**  
**Trends in Terms of Venture Financings**  
**In Silicon Valley**  
**(First Quarter 2010)**

**Background** – We analyzed the terms of venture financings for 104 companies headquartered in Silicon Valley that reported raising money in the first quarter of 2010.

**Overview of Fenwick & West Results**

- 1Q10 results were similar to 4Q09, with up rounds exceeding down rounds in 1Q10 49% to 32%, with 19% of the rounds flat. In 4Q09 up rounds exceeded down rounds 47% to 30%, with 23% flat. This was the third quarter in a row in which up rounds exceeded down rounds.
- The Fenwick & West Venture Capital Barometer™ results for 1Q10 were also similar to 4Q09, with an average price increase of 21% in 1Q10, compared to 19% in 4Q09. This was the third quarter in a row in which the Barometer was positive.
- The foregoing results by industry are set forth below. In general the internet/digital media industry had the most positive valuation-related results in 1Q10 (e.g. 83% up rounds). The cleantech industry had the least positive results in 1Q10 (17% up rounds).

**Overview of Other Industry Data**

Third party reports on the venture industry in 1Q10 generally reported a reduction in venture investment, and a reduction in funds raised by venture funds, but an improvement in venture liquidity events, in the quarter. Detailed results are as follows:

- DowJones VentureSource (“Venture Source”) reported that the amount invested by venture capitalists in the U.S. in 1Q10 was approximately \$4.7 billion in 597 deals, a 32% decrease in dollars from the \$6.9 invested in 753 deals in 4Q09. The MoneyTree™ Report by PricewaterhouseCoopers and the National Venture Capital Association based on data from Thomson Reuters (the “MoneyTree Report”) reported that venture capitalists invested \$4.7 billion in 681 deals in 1Q10, a 9% reduction in dollars from the \$5.2 billion invested in 832 deals in 4Q09.
- VentureSource reported 77 acquisitions of venture-backed companies in the U.S. in 1Q10, for a total of \$4 billion, a significant reduction from the \$8.5 billion paid in 102 acquisitions in 4Q09. However, it should be noted that 4Q09 was the best quarter for M&A activity since 4Q07, and that the \$4 billion paid in acquisitions in 1Q10 was better than every other quarter of 2009. The MoneyTree Report reported 111 venture-backed M&A deals in 1Q10, which was the largest number of M&A exits in a quarter reported by the MoneyTree since the MoneyTree began keeping records in 1975.

Please note that when analyzing the foregoing results related to venture investment and acquisition activity, it appears that due to delays in obtaining information on the amount of some investments and acquisitions, initial reporting of these results for a quarter are somewhat understated. The results for a quarter are then later updated when the additional information becomes available. This can result in results for a current quarter appearing less favorable when compared to results for a prior quarter, as there has been more time to accumulate results from the prior quarter. We estimate such initial underreporting at approximately 5-15% of investments and acquisitions.

- VentureSource reported 8 venture-backed IPOs in 1Q10 raising a total of \$710 million, compared with 3 IPOs raising \$220 million in 4Q09. The MoneyTree Report reported that there were 9 venture-backed IPOs in 1Q10, raising \$936 million, which was more than double the amount they reported being raised in 4Q09. Three of the IPOs were in the biotechnology industry. The MoneyTree also reported that 43 venture-backed companies were currently in registration with the SEC for an IPO.
- VentureSource reported that venture capital funds raised approximately \$4.6 billion in 1Q10, compared to \$13.3 billion in all of 2009. The MoneyTree Report reported that venture capital funds raised approximately \$3.6 billion in 1Q10, the slowest first quarter since 1993.
- The Cambridge Associates L.L.C. U.S. Venture Capital Index® reported a 3.3% return for venture capital funds in 4Q09, and a 3.0% return for all of 2009. 1Q10 results have not been released.
- The Silicon Valley Venture Capital Index reported by Professor Mark Cannice at the University of San Francisco reported the confidence level of Silicon Valley venture capitalists at 3.65 on a 5 point scale, which is an increase from the 4Q09 reading of 3.48, and the fifth quarter in a row in which the index reported an improvement in confidence.
- Nasdaq was up 4.5% in 1Q10, but is down 2.7% in 2Q10 through May 16, 2010.

### **Detailed Fenwick & West Results**

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

Series	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
A	24%	23%	17%	8%	13%	16%	16%	15%
B	21%	22%	31%	27%	28%	26%	26%	31%
C	30%	21%	19%	35%	17%	29%	28%	20%
D	11%	17%	16%	13%	20%	14%	17%	19%
E and higher	14%	17%	17%	17%	22%	15%	13%	15%

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

Price Change	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
Down	32%	30%	36%	46%	46%	33%	12%	13%
Flat	19%	23%	23%	22%	29%	13%	15%	19%
Up	49%	47%	41%	32%	25%	54%	73%	68%

The percentage of down rounds by series were as follows:

Series	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
B	23%	24%	19%	16%	38%	21%	7%	3%
C	45%	25%	45%	51%	50%	43%	14%	23%
D	18%	47%	56%	67%	39%	22%	12%	14%
E and higher	27%	26%	39%	67%	60%	45%	15%	19%

**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 1Q10 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 Q1'10	Combined total for all Series for Q4'09	Combined total for all Series for Q3'09	Combined total for all Series for Q2'09	Combined total for all Series for Q1'09
Up rounds	+114%	+33%	+75%	+72%	+78%	+73%	+77%	+61%	+82%
Down rounds	-39%	-64%	-46%	-42%	-54%	-50%	-57%	-54%	-52%
Net result	+64%	-18%	+33%	+32%	+21%	+19%	+11%	-6%	-3%

**Results by Industry for Price Changes and Fenwick & West Venture Capital Barometer™** – The table below sets forth the direction of price changes and Barometer results for companies receiving financing in 1Q10, compared to their previous round, by industry group. Companies receiving Series A financings are excluded as they have no previous rounds to compare.

Industry	Number of Financings	Up Rounds	Down Rounds	Flat Rounds	Barometer
Software	27	44%	30%	26%	+8%
Hardware	10	50%	40%	10%	-5%
Lifescience	10	30%	20%	50%	-1%
Internet/Digital Media	18	83%	17%	0%	+90%
Cleantech	6	17%	67%	16%	-3%
Other	8	37%	50%	13%	-10%
<b>Total - All Industries</b>	79	49%	32%	19%	+21%

Please bear in mind that some industries have small sample sizes that reduce the statistical validity of the results.

**Liquidation Preference** – Senior liquidation preferences were used in the following percentages of financings:

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
38%	41%	49%	41%	45%	41%	45%	38%

The percentage of senior liquidation preference by series was as follows:

Series	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
B	23%	24%	38%	17%	35%	30%	35%	21%
C	42%	50%	40%	52%	38%	35%	48%	32%
D	36%	58%	63%	50%	56%	61%	59%	62%
E and higher	53%	37%	67%	53%	55%	50%	38%	50%

**Multiple Liquidation Preferences** - The percentage of senior liquidation preferences that were multiple preferences were as follows:

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
23%	19%	21%	24%	28%	23%	16%	11%

Of the senior liquidation preferences that included a multiple preference, the ranges of the multiples broke down as follows:

Range of multiples	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
>1x- 2x	86%	57%	89%	75%	80%	70%	50%	75%
>2x – 3x	14%	43%	11%	25%	10%	20%	50%	25%
> 3x	0%	0%	0%	0%	10%	10%	0%	0%

**Participation in Liquidation** – The percentages of financings that provided for participation were as follows:

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
48%	51%	53%	49%	51%	57%	62%	57%

Of the financings that had participation, the percentages that were not capped were as follows:

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
54%	54%	60%	67%	60%	51%	51%	55%

**Cumulative Dividends** – Cumulative dividends were provided for in the following percentages of financings:

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
7%	4%	7%	2%	10%	4%	4%	6%

**Antidilution Provisions** – The uses of antidilution provisions in the financings were as follows:

Type of Provision	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
Ratchet	5%	6%	3%	3%	3%	2%	7%	1%
Weighted Average	94%	94%	96%	97%	97%	98%	93%	99%
None	1%	0%	1%	0%	0%	0%	0%	0%

**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.

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
7%	10%	15%	15%	14%	15%	12%	7%

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.

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
86%	80%	93%	100%	73%	85%	60%	87%

- Shadow Preferred Stock.

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
14%	20%	7%	0%	27%	15%	40%	13%

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

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
24%	21%	19%	20%	24%	20%	23%	29%

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

Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08
14%	5%	8%	10%	10%	13%	4%	4%

For additional information about this report please contact Barry Kramer at 650-335-7278; [bkramer@fenwick.com](mailto:bkramer@fenwick.com) or Michael Patrick at 650-335-7273; [mpatrick@fenwick.com](mailto: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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