FENWICK & WEST LLP

Trends in Terms of Venture Financings
In Silicon Valley
(Second Quarter 2009)

Background – We analyzed the terms of venture financings for 89 companies headquartered in the Silicon Valley that reported raising money in the second quarter of 2009.

Overview

- Down rounds exceeded up rounds 46% to 32%, with 22% flat. This was slightly better than 1Q09 when down rounds outpaced up rounds 46% to 25%, with 29% flat. The past two quarters are the only quarters since 4Q03 in which down rounds have exceeded up rounds.

- The Fenwick & West Venture Capital Barometer™ showed an average price decrease of 6% for companies receiving venture capital in 2Q09 compared to such companies' prior financing round. This was a slight decline from 1Q09, when the Barometer registered a decrease of 3%. The past two quarters are the only quarters in which the Barometer has been negative since we began reporting the Barometer in 1Q04.

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

- Dow Jones VentureSource reported that the amount invested by venture capitalists in the U.S. in 2Q09 was approximately $5.3 billion in 595 deals, an increase from the $4.0 billion invested in 680 deals in 1Q09, but a significant decline from the $8.3 billion invested in 726 deals in 2Q08. The Money Tree™ Report by PricewaterhouseCoopers and the National Venture Capital Association based on data from Thomson Reuters also reported an increase in venture funding in 2Q09 compared to 1Q09, although at lower overall levels, reporting $3.7 billion of investment in 612 deals in 2Q09 compared to $3.2 billion in 603 deals in 1Q09.

- The health care industry received 42% of 2Q09 investment, and information technology attracted 37%, the first time on record that quarterly investment in health care exceeded investment in information technology. [1]

- Fundraising by U.S. venture capitalists was $1.7 billion in 2Q09, which was the lowest amount raised in a quarter since the first quarter of 2003. [2]

- There were 67 acquisitions of venture-backed companies in the U.S. in 2Q09, for a total of $2.6 billion, a decline from 70 transactions totaling $3.4 billion in 1Q09 and a significant decline from the 89 transactions totaling $6.5 billion in 2Q08. This was the lowest dollar volume of acquisition transactions since 1999. [1]

- There were three IPOs of venture-backed companies in the U.S. in 2Q09.

- In light of the currently reduced liquidity of venture investments, 75% of venture capital funds surveyed by Ernst & Young indicated in 1Q09 that they would be increasing their reserves for follow-on investments in current portfolio companies. This increase in reserves for current investments could make less funds available for new investments.

- The reduced liquidity for venture investments also appears to have resulted in increased interest in secondary venture funds, which purchase limited partnership interests in venture funds from limited partners who want liquidity for their investment, and private equity exchanges and marketplaces, which provide company insiders with the ability to sell stock in non-public companies.

- 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 3.37 on a 5 point scale. This was an increase from last quarter's reading of 3.03 and the second consecutive quarterly increase in the index.

- Nasdaq was up 22% in 2Q09, and is up 8% in 3Q09 through August 5, 2009.

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

Series	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
A	8%	13%	16%	16%	15%	17%	16%	13%
B	27%	28%	26%	26%	31%	29%	26%	38%
C	35%	17%	29%	28%	20%	22%	27%	28%
D	13%	20%	14%	17%	19%	13%	16%	12%
E and higher	17%	22%	15%	13%	15%	19%	15%	9%

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

Price Change	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
Down	46%	46%	33%	12%	13%	19%	22%	14%
Flat	22%	29%	13%	15%	19%	9%	9%	7%
Up	32%	25%	54%	73%	68%	72%	69%	79%

The percentage of down rounds by series were as follows:

Series	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
B	16%	38%	21%	7%	3%	16%	11%	13%
C	51%	50%	43%	14%	23%	25%	11%	14%
D	67%	39%	22%	12%	14%	29%	47%	8%
E and higher	67%	60%	45%	15%	19%	10%	33%	33%

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 Q2'09 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 Q2'09	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
Up rounds	+73%	+55%	+22%	+21%	+61%	+82%	+80%	+83%	+91%
Down rounds	-34%	-55%	-53%	-60%	-54%	-52%	-54%	-49%	-56%
Net result	+43%	-18%	-32%	-37%	-6%	-3%	+25%	+55%	+53%

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

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
41%	45%	41%	45%	38%	47%	39%	42%

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

Series	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
B	17%	35%	30%	35%	21%	38%	26%	23%
C	52%	38%	35%	48%	32%	46%	43%	48%
D	50%	56%	61%	59%	62%	36%	53%	69%
E and higher	53%	55%	50%	38%	50%	70%	40%	67%

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

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
24%	28%	23%	16%	11%	17%	15%	21%

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

Range of multiples	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
>1x- 2x	75%	80%	70%	50%	75%	100%	80%	100%
>2x- 3x	25%	10%	20%	50%	25%	0%	20%	0%
>3x	0%	10%	10%	0%	0%	0%	0%	0%

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

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
49%	51%	57%	62%	57%	60%	59%	54%

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

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
67%	60%	51%	51%	55%	56%	41%	39%

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

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
2%	10%	4%	4%	6%	5%	4%	4%

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

Type of Provision	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
Ratchet	3%	3%	2%	7%	1%	2%	3%	6%
Weighted Average	97%	97%	98%	93%	99%	98%	97%	94%
None	0%	0%	0%	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.

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

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.

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
100%	73%	85%	60%	87%	67%	89%	57%

- Shadow Preferred Stock.

Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07	Q3'07
0%	27%	15%	40%	13%	33%	11%	43%

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

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

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

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

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.

To be placed on an email list for future editions of this survey please go to our VC Survey sign up page.

[1] Information in this paragraph obtained from Dow Jones VentureSource.

[2] Information in this paragraph obtained from PwC/NVCA MoneyTree™ Report based on data from Thomson Reuters.

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