



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

Background – We analyzed the terms of venture financings for 103 companies headquartered in Silicon Valley that reported raising money in the third quarter of 2009.

Overview of Fenwick & West Results

- Up rounds exceeded down rounds in 3Q09, 41% to 36%, with 23% flat. This was the first time that up rounds have exceeded down rounds in 2009.
 - Series B rounds were the strongest rounds in 3Q09, with 56% up, 19% down and 25% flat.
 - The best performing industry was Digital Media/Web 2.0 – approximately 70% of the financings in that sector were up rounds.
- The Fenwick & West Venture Capital Barometer™ showed an average price increase of 11% in 3Q09, which was the first increase in the Barometer in 2009.
- The percentage of inside rounds decreased from approximately 42% in 2Q09 to 33% in 3Q09. Note that for purposes of our calculations a round is only considered an inside round if there are no new investors in the round.

Overview of Other Industry Data

The two main sources of nationwide data on the venture industry – Dow Jones VentureSource, and The MoneyTree™ Report by PricewaterhouseCoopers and the National Venture Capital Association based on data from Thomson Reuters (the “MoneyTree Report”), reported partially divergent data in 3Q09. That said, it is fair to say that investments by venture capitalists, liquidity for venture backed companies and fundraising by venture capitalists remained at low levels in 3Q09. But there is room for optimism as Nasdaq continued to improve, an index of venture capital confidence has stabilized, and anecdotal evidence indicates that the M&A and IPO markets seem to be improving.

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

- Dow Jones VentureSource reported that the amount invested by venture capitalists (including corporate investors) in the U.S. in 3Q09 was approximately \$5.1 billion in 616 deals, a slight decrease from the \$5.4 billion invested in 595 deals in 2Q09, and a significant decline from the \$8.2 billion invested in 663 deals in 3Q08. This would put 2009 on track to be the worst venture investment year since 2003.

The MoneyTree Report reported an increase in venture funding in 3Q09 compared to 2Q09 with

\$4.8 billion invested in 637 deals in 3Q09 compared to \$4.1 billion being invested in 657 deals in 2Q09.

- Dow Jones VentureSource reported 71 acquisitions of venture-backed companies in the U.S. in 3Q09 for a total of approximately \$2.3 billion, a decrease from 78 acquisitions totaling \$2.8 billion in 2Q09 and a significant decline from the 84 transactions totaling \$5.2 billion in 3Q08.

The MoneyTree Report reported that there were 62 acquisitions of venture-backed companies in the U.S. in 3Q09 for a total of \$1.2 billion, a decline from 64 transactions totaling \$2.5 billion in 2Q09, and a significant decline from 88 transactions totaling \$3 billion in 3Q08.

- There were two IPOs of venture-backed companies in the U.S. in 3Q09 raising \$0.5 billion. There have been five venture backed IPOs to date in 2009, compared to seven in all of 2008, which was the lowest annual number of IPOs since 1992.
- Dow Jones VentureSource reported that fundraising by venture capitalists was approximately \$3.5 billion in 3Q09, a significant increase from the \$2.3 billion raised in 2Q09. However, venture funds have only raised a total of \$8 billion in 2009 through 3Q09, compared to \$27.8 billion raised in all of 2008 and \$41.0 billion raised in all of 2007. 2009 is on track to be the lowest year for fundraising by venture capital funds since 2003.

The MoneyTree Report reported that venture capitalists raised approximately \$1.6 billion in 3Q09, a decrease from \$2.0 billion raised in 2Q09 and a significant decrease from the \$8.5 billion raised in 3Q08.

- 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, which is exactly flat with 2Q09.
- The San Francisco Bay Area received approximately 45% of all U.S. venture capital investment in 3Q09, an unusually high percentage, and the total dollar amount of venture investment in the Bay Area increased 15% from 2Q09 to 3Q09, from \$2.0 billion to \$2.3 billion. That said, 3Q09 venture investment in the Bay Area was down significantly from the \$3.5 billion raised in 3Q08.¹
- Nasdaq was up 9% in 3Q09, and is flat in 4Q09 through November 5, 2009.

Detailed Fenwick & West Results

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

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

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

Price Change	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
Down	36%	46%	46%	33%	12%	13%	19%	22%
Flat	23%	22%	29%	13%	15%	19%	9%	9%
Up	41%	32%	25%	54%	73%	68%	72%	69%

The percentage of down rounds by series were as follows:

Series	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
B	19%	16%	38%	21%	7%	3%	16%	11%
C	45%	51%	50%	43%	14%	23%	25%	11%
D	56%	67%	39%	22%	12%	14%	29%	47%
E and higher	39%	67%	60%	45%	15%	19%	10%	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 Q3'09 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 Q3'09	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
Up rounds	+66%	+116%	-50%	+75%	+77%	+61%	+82%	+80%	+83%
Down rounds	-74%	-55%	-42%	-64%	-57%	-54%	-52%	-54%	-49%
Net result	+23%	+22%	-11%	-4%	+11%	-6%	-3%	+25%	+55%

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

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
49%	41%	45%	41%	45%	38%	47%	39%

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

Series	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
B	38%	17%	35%	30%	35%	21%	38%	26%
C	40%	52%	38%	35%	48%	32%	46%	43%
D	63%	50%	56%	61%	59%	62%	36%	53%
E and higher	67%	53%	55%	50%	38%	50%	70%	40%

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

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

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

Range of multiples	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
>1x- 2x	89%	75%	80%	70%	50%	75%	100%	80%
>2x – 3x	11%	25%	10%	20%	50%	25%	0%	20%
> 3x	0%	0%	10%	10%	0%	0%	0%	0%

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

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
53%	49%	51%	57%	62%	57%	60%	59%

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

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

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

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
7%	2%	10%	4%	4%	6%	5%	4%

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

Type of Provision	Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
Ratchet	3%	3%	3%	2%	7%	1%	2%	3%
Weighted Average	96%	97%	97%	98%	93%	99%	98%	97%
None	1%	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.

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

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.

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
93%	100%	73%	85%	60%	87%	67%	89%

- Shadow Preferred Stock.

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
7%	0%	27%	15%	40%	13%	33%	11%

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

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
19%	20%	24%	20%	23%	29%	20%	21%

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

Q3'09	Q2'09	Q1'09	Q4'08	Q3'08	Q2'08	Q1'08	Q4'07
8%	10%	10%	13%	4%	4%	5%	5%

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.