



Trends in Terms of Venture Financings In Silicon Valley (Third Quarter 2010)

Background – We analyzed the terms of venture financings for 107 companies headquartered in Silicon Valley that reported raising money in the third quarter of 2010.

Overview of Fenwick & West Results

- Up rounds exceeded down rounds in 3Q10 52% to 30%, with 18% of rounds flat. That was generally consistent with 2Q10, when up rounds exceeded down rounds 55% to 27%, with 18% of rounds flat. This was the fifth quarter in a row in which up rounds exceeded down rounds.
- The Fenwick & West Venture Capital Barometer showed an average price increase of 28% in 3Q10. Again this was generally consistent with 2Q10 when the Barometer was 30%. This was also the fifth quarter in a row in which the Barometer was positive.
- The results by industry are set forth below. In general, the internet/digital media, and to a lesser extent, life science industries, had the best valuation-related results in 3Q10, while the cleantech and hardware industries trailed. From a valuation perspective internet/digital has significantly outperformed other industries in the first three quarters of 2010.

Overview of Other Industry Data

Third party analysis of the venture industry in the third quarter of 2010 reported a decrease in venture investment compared to the second quarter of 2010, but a continued improvement in venture funded company liquidity. Fundraising by venture capital funds continued to be difficult. Detailed results are as follows:

- DowJones VentureSource (“VentureSource”) reported that the amount invested by venture capitalists in the U.S. in the third quarter of 2010 was approximately \$5.5 billion in 662 deals, a decrease from the \$7.7 billion invested in 740 deals in 2Q10. The PwC/NVCA MoneyTree™ report based on data from Thomson Reuters (the “MoneyTree™ Report”) also reported a decrease in 3Q10 venture capital investment, with \$4.8 billion invested in 780 deals, compared to \$6.9 billion being invested in 962 deals in 2Q10. Despite the decrease in 3Q10, investments by venture capital funds in 2010 is on pace to modestly surpass the amount invested in 2009, although 2009 was the weakest year for venture investment since 2003.
- VentureSource reported 102 acquisitions of venture-backed companies in the U.S. in 3Q10, for a total of \$5.7 billion, an increase from the \$4.8 billion paid in 85 acquisitions reported for 2Q10. Thomson Reuters and the National Venture Capital Association reported 104 acquisitions of venture-backed companies in the third quarter of 2010, compared to 97 currently being reported for 2Q10. Acquisitions of venture-backed companies in the first three quarters of 2010 have almost already surpassed total acquisitions in all of 2009. The largest acquisition in 3Q10 was Walt Disney’s acquisition of Playdom for \$563 million.

- There were 14 venture-backed IPOs in the third quarter of 2010 raising a total of \$1.2 billion, compared to 17 in 2Q10 raising a total of \$1.3 billion, according to Thomson Reuters and the National Venture Capital Association. Although IPOs declined in the third quarter, there have already been significantly more IPOs in the first three quarters of 2010 (40) than in all of 2009 (12). VentureSource reported nine venture-backed IPOs in 3Q10 raising a total of \$723 million, compared to 15 IPOs raising \$900 million in 2Q10. The largest IPO in 3Q10 was by Green Dot Corp. raising \$164 million.
- Fundraising by U.S. venture capital funds increased in the third quarter, with 45 firms raising \$3 billion in the quarter, compared to 51 firms raising \$2.1 billion in the second quarter of 2010, according to Thomson Reuters and the National Venture Capital Association. The largest fundraising in 3Q10 was \$750 million by IVP. Both Thomson Reuters/NVCA and VentureSource report VC fundraising in 2010 to be behind the pace of 2009, which was the lowest year for fundraising in six years.
- Since the first quarter of 2009, venture capitalists have invested significantly more in companies (\$41.4 billion per VentureSource, \$34.9 billion per the MoneyTree) than new capital that has been committed to venture funds (\$22.7 billion per VentureSource, \$25.4 billion per Thomson Reuters/NVCA), which is not sustainable over a prolonged period.
- The Silicon Valley Venture Capital Confidence Index produced by Professor Mark Cannice at the University of San Francisco reported the confidence level of Silicon Valley venture capitalists at 3.7 on a 5 point scale, which was a significant increase from the previous quarter's reading of 3.28.
- Nasdaq was up 12.2% in Q3, and is up another 3.5% in Q4 through November 16, 2010.

Detailed Fenwick & West Results

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

Series	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
A	20%	18%	24%	23%	17%	8%	13%	16%
B	23%	22%	21%	22%	31%	27%	28%	26%
C	28%	28%	30%	21%	19%	35%	17%	29%
D	9%	20%	11%	17%	16%	13%	20%	14%
E and higher	20%	12%	14%	17%	17%	17%	22%	15%

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

Price Change	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
Down	30%	27%	32%	30%	36%	46%	46%	33%
Flat	18%	18%	19%	23%	23%	22%	29%	13%
Up	52%	55%	49%	47%	41%	32%	25%	54%

The percentage of down rounds by series were as follows:

Series	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
B	20%	14%	23%	24%	19%	16%	38%	21%
C	33%	29%	45%	25%	45%	51%	50%	43%
D	30%	36%	18%	47%	56%	67%	39%	22%
E and higher	38%	33%	27%	26%	39%	67%	60%	45%

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 3Q10 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 Q3'10	Combined total for all Series for Q2'10	Combined total for all Series for Q1'10	Combined total for all Series for Q4'09	Combined total for all Series for Q3'09
Up rounds	+116%	+65%	+40%	+58%	+81%	+86%	+78%	+73%	+77%
Down rounds	-47%	-53%	-46%	-41%	-47%	-65%	-54%	-50%	-57%
Net result	+74%	+13%	+6%	+7%	+28%	+30%	+21%	+19%	+11%

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 3Q10, 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	34	53%	32%	15%	+26%
Hardware	23	35%	35%	30%	+10%
Lifescience	11	64%	27%	9%	+44%
Internet/Digital Media	10	90%	0%	10%	+82%
Cleantech	5	20%	60%	20%	+5%
Other	3	67%	33%	0%	-8%
Total - All Industries	86	52%	30%	18%	+28%

Please note 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:

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
41%	40%	38%	41%	49%	41%	45%	41%

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

Series	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
B	32%	32%	23%	24%	38%	17%	35%	30%
C	27%	34%	42%	50%	40%	52%	38%	35%
D	60%	48%	36%	58%	63%	50%	56%	61%
E and higher	62%	53%	53%	37%	67%	53%	55%	50%

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

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
20%	17%	23%	19%	21%	24%	28%	23%

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

Range of multiples	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
>1x – 2x	85%	71%	86%	57%	89%	75%	80%	70%
>2x – 3x	0%	29%	14%	43%	11%	25%	10%	20%
>3x	15%	0%	0%	0%	0%	0%	10%	10%

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

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
53%	35%	48%	51%	53%	49%	51%	57%

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

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
58%	61%	54%	54%	60%	67%	60%	51%

The decrease in use of participating liquidation preference was due to a significant decrease in the use of that provision in Series A rounds this quarter.

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

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

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

Type of Provision	Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
Ratchet	4%	4%	5%	6%	3%	3%	3%	2%
Weighted Average	93%	94%	94%	94%	96%	97%	97%	98%
None	3%	2%	1%	0%	1%	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.

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
15%	16%	7%	10%	15%	15%	14%	15%

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.

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
81%	100%	86%	80%	93%	100%	73%	85%

- Shadow Preferred Stock.

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
19%	0%	14%	20%	7%	0%	27%	15%

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

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
22%	23%	24%	21%	19%	20%	24%	20%

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

Q3'10	Q2'10	Q1'10	Q4'09	Q3'09	Q2'09	Q1'09	Q4'08
9%	8%	14%	5%	8%	10%	10%	13%

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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