Developments In
Venture Capital Terms
2017

David S. Felman
Hill Ward Henderson
Tampa, Florida
David.Felman@hwhlaw.com
This outline summarizes developments in the terms of venture capital transactions, with an emphasis on deals in Florida and the southeastern United States. We base the outline on a combination of our own recent deal experience, conversations with other professionals, and surveys published by various sources.

In its report on the 2014 year, PWC Moneytree\(^2\) reported the following trends in venture capital investing:

- The number and dollar volume of VC deals in 2014 increased dramatically from 2013, at 4,356 deals raising approximately $48.3 billion, up 64% in dollars and 4% in deal volume from 2013. (By contrast, in 2000, there were 7,900 deals totaling over $100 billion.)

- Quarterly numbers and dollar volumes of deals trended up through 2014 from 1,027 deals raising $9.9 billion in the first quarter to 1,109 deals raising $14.7 billion in the fourth quarter. The fourth quarter total is the highest since 2000.

- The top five metro areas are the San Francisco, with roughly 32% of deals alone, San Jose, California, Boston, and the NY Metro.

- Funds raised in Florida increased substantially over the 2013 year, with 45 deals raising $862 million. In context, Florida hosted only about 1.7% of all VC deals nationally by dollar volume.

- Seed stage volume declined by 29% in 2014, and remains less than 2% of deals by dollar volume and about only 4.4% of the total number of deals. Funds are concentrated most in expansion, stage deals at 40% of all funds, followed by early stage and later stage deals. Dollar amount per deal in all stages of deals except seed stage increased in 2014 over 2013, most significantly in expansion stage companies (from $9.5 million to $17.1 million per deal).

- Software continued to be the leading industry sector by far, rising 44% over 2013 to $19.8 billion, and receiving the largest amount of dollars since 2000. Software alone

\(^{1}\) Dave Felman is a shareholder with Hill Ward Henderson and leads its corporate practice. In recent years, Mr. Felman and his law firm have advised companies or investors in over 100 completed venture investment transactions and companies in merger and acquisition transactions involving more than $1 billion. He is immediate past chair of The Florida Venture Forum and is a founder of The Florida Directors’ Institute, an annual program on corporate governance.

\(^{2}\) “Shaking the MoneyTree, Q4 and Full-year 2014 Update,” issued by PricewaterhouseCoopers and the National Venture Capital Association (the “MoneyTree Survey”). We also refer to the Fenwick & West, LLP Venture Capital Survey Third Quarter 2014 (the “Fenwick Survey”), which is focused on Silicon Valley Companies.
accounts for almost 41% of deals. Other areas of focus are biotech, media and entertainment, IT services, and industrial/energy.

- Corporate venture capital (“CVC”) investing had been trending upward. In 2013, 39% of the 100 largest VC tech deals included corporate participation, increasing from 22% of deals in 2009. CVCs participated in 14% of all 2013 venture capital deals, according to one source, and provided 9.3% of all venture capital funds in the first half of 2014.

Anecdotally, investors are competing to invest in later stage companies with strong management, attractive business models, and demonstrable financial results. Equity fundraising conditions for seed and earlier stage companies and those that are not standouts continue to be challenging, including (a) a reduced number of institutional venture capital sources and funding, (b) lower valuations both absolutely and as a cash flow multiple, and (c) use of participating preferred and senior liquidation preferences and other terms unfavorable to issuers for new investment rounds.

**Overall Deal Structure**

- Investors’ security of choice remains overwhelmingly convertible preferred stock, often in the “participating” form described below under “Liquidation Preference.” Convertible preferred stock offers investors the following favorable features:
  - Senior liquidation preference, to help protect against downside scenarios
  - Optional conversion to common stock, so that the investor can participate in upside scenarios

  Convertible preferred stock also usually features mandatory conversion to common stock on a “qualified” public offering and the other terms described below to both protect the investor’s minority shareholder position and assure that the investor participates in upside scenarios.

- Some investors use convertible debt or debt plus warrants, especially if the investors want collateral security for their investment. Convertible debt is especially prevalent in bridge financings.

- Investors are sometimes using staged financings in which they invest funds over time when the company needs funds or achieves specified milestones. Investors might require performance milestones for more funding of companies that are early stage or to resolve doubts over growth obstacles such as product development. Investors face difficulty in securing performance milestones for the funding of proven, performing companies, because other investors will fund them without the milestones. Conversely, these terms are more common in first round and down round deals, in which investors might need more assurance of performance. Common milestones include completing product development, hiring key managers, and achieving revenue or customer number targets.

---

3 Fenwick Survey, citing CB Insights.
4 Fenwick Survey, citing Techcrunch.
5 Fenwick Survey, page 7.
• More investors are willing to purchase stock owned by shareholders as an entrée to proven later stage companies.

Valuation

• **Improving since 2010.** Several factors have combined to improve valuations since 2010:
  
  o The economy is gradually improving.
  o Rising stock market valuations. The IPO market supported more VC-backed IPOs in 2014 than in any year since 2000.\(^6\)
  o The acquisition market is strong, with abundant debt financing available and well-heeled strategic and financial buyers. M&A proceeds for VC-backed companies were the highest since 2000 in the third quarter of 2014.\(^7\)

Only about 10-15% of deals were down rounds in 2013.\(^8\)

• **Adjusted value based on milestones.** In a minority of situations, investors are able to hedge on valuation, retaining a right to receive more equity or improved conversion terms if the company fails to meet operating targets. These arrangements mitigate risks of a high valuation. Full ratchet anti-dilution protection is also a hedge against a too-high valuation, but we rarely see it.

Liquidation Preference

• Investors often require a senior liquidation preference for later rounds, in about 30-40% of reported deals.\(^9\) Later rounds in companies with more than two series are especially likely to involve senior preferences. Companies with many rounds of preferred stock should consider working to simplify their capital structure and improve their presentation to prospective investors. For example, several series of preferred stock might be exchanged for Series A preferred shares in varying ratios that reflect their respective preferences and other rights. Relatively junior preferred series might be converted to common stock.

• **Use of “convertible participating preferred stock:”**
  
  o Provides for a return of the initial investment (or a multiple of the investment), *plus* a share of the residual return with common after all liquidation preferences are paid.

---

\(^6\) Fenwick Survey, page 4
\(^7\) Fenwick Survey, page 5.
\(^8\) Fenwick Survey, page 5.
Investors also should consider providing for a return of their invested capital on an initial public offering, to allow for parity between a public offering and sale event.

The participation element is among the first investor-friendly terms to be required by investors, if a company lacks the leverage of alternative financing sources.

Venture One reports the use of convertible participating preferred stock in about 63% of surveyed financings. Including both straight convertible preferred stock and convertible participating preferred stock financings, the total percentage of all financings involving preferred securities rises to almost 90% of reported institutional financings.

companies might seek to mitigate the impact of participating preferred by capping the participation. Effectively, when the investors’ return reaches a specified multiple, the participation phases out, and the security becomes straight convertible preferred stock. Venture One reports that threshold is most commonly set at two times (58% of the time) or three times (32% of the time). This threshold might increase over time.

Relatively few deals involved a multiple of liquidation preference – Venture One reports about 75% of deals provide for a single return of invested capital plus dividends. Fenwick reports 10-15% of deals with multiples of liquidation preferences in Silicon Valley. In the challenging 2009-2010 time frame, more deals featured multiples of liquidation preferences ranging between 1.25 and two times, even for initial rounds. An advantage of this structure for a later round by the same investor group is that the investor may preserve a flat valuation, avoiding a write-down of its existing investment triggered by a down round, but still improve its anticipated return on the new round.

Earlier round investors often give up or subordinate pre-existing liquidation preferences to make room for new investors and management equity incentives, especially if the company is not performing strongly or otherwise positioned to generate strong interest. Recapitalizations involving a conversion of pre-existing preferred stock into common stock are especially prevalent in down rounds, because of the strong negotiating leverage of new investors in these situations.

Dividends

Preferred stock dividends in the range of 6 to 10% that accrue cumulatively are routine in Florida deals, although perhaps less typical elsewhere. Nationally, about 50% of offerings include dividends, typically in the range of 8% to 10% of the invested amount.

---


11 Venture One Deal Terms Report, page 8.

12 Venture One Deal Terms Report, page 14.

according to the Venture One survey.\textsuperscript{14} Dividends are much less common in California deals.\textsuperscript{15}

- Dividends are sometimes payable currently in cash, but much more typically cumulate and are payable on certain events, including liquidation, redemption, or conversion of the preferred to common stock, so that the funds remain invested the business.

**Redemptions (also called “put options”)**

- Typically at the investor’s option after about five years.

- Often staged in two or three payments after five years, so that the company can fund payments over time. Under applicable state law, a company cannot redeem stock if it does not have available funds or if the redemption would render the company insolvent.

- Typically at an amount equal to the greater of investment cost plus dividends or fair-market value, generally determined by appraisal. Value might be determined as a multiple of earnings or EBITDA or based on another formula. Investors should ask for fair-market value to be determined without discounts for illiquidity or minority position, and accounting in the valuation for the rights and preferences of the investor’s redeemed preferred stock.

- Redemption rights are very common in deals outside of Silicon Valley. Venture One reports that an increasing number of companies granted this right, although still less than 50% of all surveyed deals.\textsuperscript{16} Venture One reports that of all venture investment terms, this term varied most between Silicon Valley deals and deals in the New York/New England market, with only about 15% of Silicon Valley deals including a redemption term, but about 55% of deals outside of Silicon Valley including the term.\textsuperscript{17}

- Redemption rights are much less important after the investor reaches a control position. At that point, the investor can cause the company to be sold or complete a recapitalization with a dividend to investors or repurchase of their shares.

- Investors report that they rarely exercise these rights in practice, but rather use them as a discussion point regarding plans for a company after five years.

**Conversion of Preferred Stock to Common Stock**

- Typically, conversion of preferred stock to common stock occurs automatically on the closing of a “qualified initial public offering.” This term generally means an offering with an established underwriter, minimum aggregate offering amount, and minimum total market capitalization, and at a price that is at least some multiple of the purchase

\textsuperscript{14} Venture One Deal Terms Report, page 9.
\textsuperscript{15} Fenwick Survey, Page 7, reporting dividends in about 6% of deals.
\textsuperscript{16} Venture One Deal Terms Report, page 23.
\textsuperscript{17} Venture One Deal Terms Report, page 26. Compare the Fenwick Survey, page 18, also at about 13% of Silicon Valley deals.
price paid for stock. These criteria are designed to assure that the converted stock enjoys sufficient market liquidity.

- We continue to see more company-friendly weighted average anti-dilution protection, rather than full ratchet protection. Even in deals that include full ratchet protection, the term is often later modified or waived in subsequent rounds to mitigate the heavily dilutive impact on management or to secure needed approvals. The Venture One survey reports that approximately 80% of deals feature anti-dilution protection, of which only about 15% were full ratchets.\(^\text{18}\) Full ratchet anti-dilution protection provisions should allow waiver of the provision by investors holding a majority of the shares of the benefiting class. The Fenwick Survey more closely matches our experience, reporting weighted average anti-dilution protection in 95% to 98% of deals, and that virtually all deals offer some form of protection.\(^\text{19}\)

- New investors must account for the impact of existing anti-dilution protection provisions on management’s relative post-money company stake, assuring that management retains a sufficient interest. These investors should also require adjustments to existing anti-dilution provisions so that future financing rounds do not trigger devastating adjustments, for example, eliminating full ratchet rights or reducing the trigger price for existing securities’ anti-dilution protection.

**Authorized Capital**

- The certificate of incorporation generally includes blank check preferred stock, which is important to assure that additional series of preferred stock may be issued without individual shareholder approval.

- Confirm that enough authorized capital stock is available, so that added shareholder approval for later financings, conversion, or anti-dilution protection is not required.

**Investment Agreement**

- Deals typically sign and close concurrently. In deals with a deferred closing, conditions precedent and termination rights are important. Conditions precedent include accuracy of representations, compliance with covenants, securing needed consents, absence of adverse change, and occurrence of a business related contingency, such as addition of a customer, execution of an important contract, or settlement of litigation.

- Requiring management shareholders to join in at least some representations is essential to assuring the absence of noncompete and confidentiality agreements or any “bad boy” history. In early stage companies, founders might be asked to provide personal support for company representations. These provisions are typically heavily negotiated, with the parties often compromising based on which representations management covers and knowledge qualifications.

\(^{18}\) Venture One Deal Terms Report, page 5.

\(^{19}\) Fenwick Survey, page 17.
Importance of Approvals and Amendments

- Approval rights have proved important and valuable over recent years, especially in troubled companies. Investors use these rights to prevent abusive transactions by the company in situations in which the investors remain minority shareholders. Examples of matters that typically need approval: new securities issuances, compensation changes, related party transactions, debt of more than a specified amount, and entry into a new business. Negotiations usually focus on whether approvals extend to operating decisions and whether the rights sunset at some point after a time period or when investor ownership declines below a specified level.

- On sale transactions, a common compromise is to allow sales without approval that exceed a specified multiple of the investment.

- Both companies and investors should focus on waiver and amendment provisions. Most documents allow waiver and amendment by a majority or a super-majority vote of the affected class. Focus areas: senior or parity liquidation preferences, conversions, redemptions, anti-dilution protections (especially if full-ratchet), amendments to governing documents, and waivers of approval rights. Provide for non-consenting shareholders to be bound by amendments, even if they do not consent.

- Amendments and waiver provisions are important for investors who make up a minority of all the investors, because their rights might be waived by other investors. This area creates a conflict potential for investors’ counsel representing several investors, because the majority investors’ interests differ from the minority’s in this area.

- Protect against amendments that eliminate rights through mergers. (Benchmark Capital Partners IV, L.P. v. Vague, C.A. No. 19719, Noble V.C. (Del. Ch. July 15, 2002.) Under Delaware law generally, preferred shareholders are limited to the contract rights that they negotiate. See LC Capital Master Fund Ltd. V. James (Quadramed), 990 A.2d 435 (Del.Ch. 2010); Fletcher International Ltd. V. ION Geophysical Corp., 2010 WL 2173838 (Del. Ch. May 25, 2010).

Registration Rights

- Less important because of the shortening of Rule 144 periods and the rarity of public offerings. These rights are generally included, but rarely used in practice. The rights are most often used by investors to gain liquidity for restricted securities received from a public company in an acquisition.

- Often drafted to apply only after initial public offering completed.

---

20 The Venture One Deal Terms Report states that approval rights were found in only about 44% of deals. Page 11. This number seems low, because approval rights are vital to protecting a minority investor. The explanation might be that the investors received majority or blocking control in the deals that did not include approval rights. The rights are more common in first (58%) and second (36%) rounds.
Stock Issuances and Transfers

- Continuing use of rights of first refusal and co-sale rights.
- Debate whether these rights should apply to investors’ shares. Investors typically agree to restrictions preventing transfers to competitors, but resist other restrictions.
- Continued use of preemptive rights enabling investors to maintain a pro-rata share of new securities offerings, with exceptions for acquisitions and employee stock grants and options.

Drag-Along Rights

- Provide that shareholders must participate in any sale transaction that is approved by a requisite majority of outstanding shares, with the needed majority varying between deals.
- Increasingly common in both investment and buy-out deals, as companies attempt to deal with dissenters’ rights that otherwise apply on a company sale. The rights assure all needed class approvals of sale transactions. Venture One reported this term in approximately 70% of surveyed deals, and our experience is consistent with this number.\(^\text{21}\)
- Deals vary on the triggering events, such as the shareholder approval needed to trigger the drag-along rights. (Might be tied to a majority of preferred or some other specified class or to a majority of all outstanding shares. Board approval is typically needed.)
- Sometimes include commitments to participate in sale agreement indemnities on a pro rata basis. (Consider negotiating caps on this potential liability.)
- Sometimes limited to use in specific situations, such as only if the deal reaches a specified size or investment return threshold. Otherwise, shareholders are not required to go along.
- For a Florida corporation, enforceability might be questioned as a waiver of statutory dissenters’ rights. See, e.g., Section 607.0732(1)(h), Florida Statutes.

Investors’ Fiduciary Responsibilities in a Sale Scenario – the Sale Rights Provision

In recent decisions in the *In re Trados Shareholder Litigation*, the Delaware Chancery Court raised concerns for VC-appointed directors in a company sale. In Trados, the VC-dominated Board voted to sell the company for $60 million, which was just shy of the amount needed for the common shareholders to participate in sale proceeds. In denying the Motion to Dismiss, the Court ruled that a Board might be in breach of its fiduciary duties to common shareholders by

---

\(^{21}\) Venture One Deal Terms Report, page 19.
electing to sell such a company if there is a reasonable probability that waiting until a later time might be in the best interests of common shareholders. In its final decision, the Court applied an entire fairness standard because of the perceived self-interest of VC-elected directors in facilitating a prompt company sale for liquidity purposes. Although the Court found that the transaction was fair to the common shareholders, the VC-elected directors incurred substantial cost in defending the case.

In response to *In re Trados*, the NVCA added a model Sale Rights Provision as an addendum to its form of Voting Agreement, 22 which allows the investor to trigger a sale process. This provision contains these material terms:

- The investor may require the company to initiate a sale process. Such a notice triggers company obligations to:
  - Engage a financial advisor and deal counsel reasonably satisfactory to the investor;
  - Cooperate in a number of respects with the sale process, including compiling a list of acquirers, setting up a data room, executing NDAs with prospective purchasers, providing incentive compensation to key managers, participating in meetings, and executing and delivering definitive agreements; and
  - Call a Board meeting to approve a transaction that arises from the sale process.

- If a sale is proposed and not adopted by the Board, the investor may force a redemption of its shares at a price equal to the proceeds that it would have received in the transaction.

Whether including this provision in investment documentation helps address the concerns raised by *In re Trados* remains to be seen. We are not seeing this provision widely used.

**Pay to Play**

- Provide for various penalties, such as conversion to common shares or loss of some combination of liquidation preference, anti-dilution protection, Board representation, preemptive rights, or approval rights, if an investor does not participate in a later financing round. Pay to play terms are declining as a percentage of all deals, according to Venture One (15% of all deals in the most recent report, compared to 30% in 2005 and 38% in 2004). 23 We see this term less often recently.

- Useful to force discipline among investors in subsequent rounds – product of negative experiences and investors failing to continue support for struggling companies.

---


23 Venture One Deal Terms Report, page 16. The Fenwick Survey reports pay to play terms in only about 7% of Silicon Valley deals.
• Often go away after an investor “plays” in later financing rounds for a certain minimum amount, such as the amount of the investor’s initial investment. This cap allows investors to reserve a limited fund amount for future investments in the company.

• This provision should be resisted by a strategic investor that invests in one round to gain a strategic relationship with the issuer, but does not desire to invest more funds.

Governance Matters

• Increasing trend to measures recommended for public companies:
  
  o Independent directors (usually one or two), especially to address conflict of interest situations.
  
  o Audit and Compensation Committees consisting of outside directors. Compensation Committee must approve increases in compensation.
  
  o Closer monitoring of financial matters and early use of audited financial statements.
  
  o Investment representations extend to GAAP compliance and internal controls, with a view to later public status or acquisition by a public company.

• Founder control is less likely after later rounds as founders are diluted through more stock issuances. Venture One reports a strong trend toward balanced boards of directors consisting of founders and management, investors, and outside directors, especially in the middle rounds, with independent directors holding the deciding vote. In later rounds, investors are much more likely to assume control, often dividing that control among investor representatives from the successive rounds, and limiting management to one representative, usually the CEO.24 Even in these companies, the investor group might retain some independent directors with industry experience to assist with the business and consider related party transactions.

Special Concerns in Follow-on Financing Rounds

Need to protect company and directors from alleged fiduciary duty breaches in subsequent financing rounds purchased by controlling shareholders, especially those priced at a discount to prior rounds. Potential plaintiffs’ counsel reviews the transaction history of successful companies for fiduciary duty breaches involving dilutive transactions. Plan ahead and if possible, follow these processes to help protect directors and controlling shareholders from shareholder claims:

24 Venture One Deal Terms Report, pages 11 to 13. Investors controlled the Board in about one-half of reported deals after the second round.
• Canvass for alternative financing sources to set arms’ length terms. Watch for overreaching terms (such as multiple liquidation preferences) that might not be justifiable in hindsight.

• Offer all shareholders rights to participate in the transaction on a pro rata basis, through a rights offering. Can be extended for a defined period after an initial closing, if timing does not allow the company to complete diligence beforehand.
  ▪ Pay attention to disclosing conflicts in the rights offering.
  ▪ Difficult choice whether to offer securities to unaccredited shareholders. (Would need to rely on a 4(2) exemption or satisfy disclosure requirements of Rule 502(b).)

• Secure approvals of disinterested shareholders and directors, after disclosure. In evaluating whether their approval satisfies statutes such as Section 144 of the Delaware General Corporation Law, closely consider whether approving directors or shareholders have conflicts of interests (e.g., compensation to management directors in or around the transaction).

• Secure a fairness opinion – rarely used, but helpful to add support, especially in conflict situations.

Bridge Financing Terms

• Continue to be common as funds struggle to keep portfolio companies alive.

• Typically short term, convertible into the next round at a discount or accompanied by warrants, so that investor receives an equity premium for the risk of extending bridge financing while permanent financing is being arranged.

• Often in the form of debt secured by at least some accounts receivable, and in some cases by a blanket lien.

• Deals vary in terms of due diligence and depth of covenants and representations.

• Typically, equity compensation increases over time if loan not repaid as promised.

• Watch for usury and original issue discount issues.

Employment Arrangements

• Continuing emphasis on non-compete, confidentiality provisions, to survive termination of employment. Key aspect of diligence is confirming absence of restrictions from prior engagement, which might prompt claims or litigation.
• Continued emphasis on performance based measures that have recently gained popularity with public companies and institutional investors, e.g., performance-vesting restricted stock or bonuses.

• The median amount of stock allocated to equity incentive plans as a percentage of total equity is reported to be 10%. In our experience, that amount typically ranges from 10% to 15%.

• Concern with vesting of options or restricted stock on a change of control. Investors prefer to avoid accelerated vesting, which makes the company less attractive to potential purchasers.

• Renewed emphasis from management employees on severance terms, especially if control is shifting to investor group. Consider including performance-based measures, so that severance would not be paid if the executive fails to meet performance milestones.

• If needed because of management deficiencies, secure advance founder agreement in investment documents to add key executives (e.g., Chief Executive Officer or Chief Financial Officer).

• In a minority of investments (about 16% according to the Venture One Deal Terms Report), investors require previously vested founders or employees to subject their shares to a new vesting regime. These are situations in which companies badly need capital and have little leverage and are most prevalent in early rounds.\textsuperscript{25}

\textsuperscript{25} Venture One Deal Terms Report, page 17.

\textsuperscript{26} Venture One Deal Terms Report, page 17. Eighty percent of these arrangements involved three or more years. These arrangements are much more common in down rounds, which often involve other restructurings.
Checklists for deal terms:

The investor friendly deal:

- Lower valuation; downward post-closing valuation adjustments for poor performance
- Staged investments, with funds tied to performance milestones, usually at the same valuation.
- Senior liquidation preference for the new round over prior rounds; in some cases, recapitalizations converting existing preferred stock to common stock.
- Multiple of investment participation on liquidation, without cap on the participation tied to overall return.
- Dividends.
- Full ratchet anti-dilution protection.
- Extensive approval rights.
- Redemption rights at investors’ option.
- Penalty for missing dividends or redemption, such as penalty return or right to elect Board majority. Possible ability to force sale of company on missed redemption.
- Preemptive rights for investors only
- Right of first refusal and co-sale rights applicable to existing shareholders.
- Drag-along rights tied to majority of all preferred stock and limited to founder and management stock.
- New vesting schedule for previously vested founder and management stock.
- Broad founder representations in the investment agreement, without knowledge qualifications.
- Investor control of the Board of Directors.

The company friendly deal:

- Higher valuation and multiple of earnings/revenues; value tied to expectations rather than historical performance; opportunity to increase valuation through post-closing performance.
- Funds received at closing, or even more favorable, right to call more funds if needed.
- Common stock securities or junior liquidation preference.
- Straight liquidation preference, without participation.
- No dividends.
- Weighted average anti-dilution.
- Minimal approval rights, limited to related party transactions.
- No redemption rights.
- No penalty for missing dividends or redemption.
- Preemptive rights for investors and founders.
- Right of first refusal and co-sale rights applicable to all shareholders
- No drag-along rights or the rights apply to all investors.
- Founder and management stock vested.
- No founder representations in the investment agreement.
- Founder control of the Board of Directors.
The mainstream deal:

- Fair valuation, without post-closing adjustments.
- Funds received at closing without staged funding.
- Senior liquidation preference over “angel” investors and early stage investors at lower valuations; parity to other recent institutional investor rounds.
- Participating preference, without multiple of investment.
- Dividends payable on liquidation and after specified time period.
- Weighted average anti-dilution.
- Approval rights, but not on core operational issues.
- Redemption rights after five years, payable over three years.
- Right of first refusal and co-sale rights applicable to existing shareholders.
- Drag-along rights applicable to founders and existing shareholders, but only if approved by a majority of common stock holders. Might or might not apply to investors.
- Founder and management stock vested.
- Founder representations in the investment agreement qualified by knowledge and/or limited to specified items.
- Balanced Board of Directors, with founder, independent, and investor representatives.