University Spin-outs and the Global Economic Crisis

Based on Presentation to AUTM Eastern Regional Meeting June 15, 2009 (Session 3A)

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- Associate Director, Office of Industrial Affairs, Memorial Sloan Kettering Cancer Center (MSKCC), in New York City, where she manages six licensing professionals and several staff members.
- Received her Ph.D in Molecular and Cellular Pharmacology at the University Louis Pasteur in France.
- Pursued molecular biology research for four years, as a postdoctoral fellow at the University of Pennsylvania.
- Participated in a Business Development Training Program in the Life Science Group of the Center for Technology Transfer at Penn, before joining MSKCC in 2001.

University Spin-Outs and the Global Economic Crisis

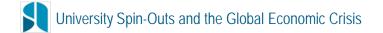
My Legal Practice

- Outside counsel to major national research institutions for more than 15 years.
- Independent practice focuses on representation of research institutions, emerging companies and venture funds in corporate, securities and licensing matters.
- Former partner at Squadron, Ellenoff and Hogan & Hartson.



State of the Spin-out Market – Trends

- Fewer investment dollars
- Lower values
- Narrower exits
- More risk
- Investor's/buyer's market



State of the Spin-out Market – Variations

- Sector variations
 - Bioscience
 - Computer tech
 - Green tech
- Timing of exits
- Regional variations
- Cross-border variations
 - Investment
 - Exits
 - Opportunities/arbitrage

Investor Responses to Fewer Investment Dollars

- Existing deals: First dollars; triage
- New deals: Greater selectivity, smaller deals
- Preference for deals with quicker exits?
- Tighter controls over funding and use of proceeds, tranched funding (milestones)



Investor Responses to Lower Values

- Lower valuations
- More stringent diligence, founders' reps
- Decreasing founders' stakes
- Warrants and discounts
 - Bridges
 - Funding rounds

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Investor Responses to Lower Values (cont'd)

- Greater liquidation preferences, participation, fewer and higher caps
- Greater dividend preferences, cumulation
- Greater anti-dilution protection
- Preemptive rights
- Greater priority and exclusivity on ROFR and co-sale

Investor Responses to Narrower Exits

- Increased venture debt
- Greater liquidation preferences
- Higher conversion thresholds
- More stringent redemption provisions
- More stringent drag-along provisions
- Alternative exits, including reverse mergers

Investor Responses to Greater Risk

- Greater board control
- Greater stockholder approval/control rights/ protective provisions
- Convertible debt, perhaps secured



Spin-out Responses

- More self-funding, friendly funding, cash management, deferred financing
- More team and platform building, networking and collaboration
- Greater emphasis on business and legal controls and transparency, elimination of "pass" factors
- Greater emphasis on incentivization
- Greater sensitivity to financing trends

University Responses: Business Trends

- "Bootstrapping"
 - Seed funds
 - Incubation
 - Mentoring
 - Alumni networks
- Increased collaboration
 - Within the institution
 - With other institutions
 - With investors and funds
- Alternative equity models

University Responses: Varied Models

- Greater collaboration/cooperation ("share and share alike")
- Tougher terms ("shrinking pie")
- TTO as service provider
- TTO as a revenue generator (budget justification)
- TTO/university and broader community



University Responses: License Terms

- More equity deals?
- Tougher milestones/diligence obligations
- Tougher restrictions on assignment and liens
- Cross-default provisions
- Tougher termination, insolvency, default and cure provisions
- Payments upon liquidity events



University Responses: Equity Terms

- Greater diligence and post-deal monitoring
- Convertible notes?
- Preferred stock?
- Redemption, reg rights for equity
- Preemptive rights
- ROFR and co-sale rights on sales by other stockholders; monetizing rights; more liberal permitted transfers
- Restrictions on drag-along provisions
- Greater sensitivity to financing trends

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Questions?

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