

# University Spin-outs and the Global Economic Crisis

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

Shalom Leaf  
ATTORNEY AT LAW

T: 646.861.7222  
F: 646.810.8785

sleaf@leaflegal.com  
www.leaflegal.com

# Co-Presenter, Viviane Martin, Ph.D

[martinv@mskcc.org](mailto:martinv@mskcc.org) – 212.639.6181

- 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.



# 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, tranced funding (milestones)

# Investor Responses to Lower Values

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

# 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

# University Spin-outs and the Global Economic Crisis

AUTM Eastern Regional Meeting

June 15, 2009 (Session 3A)

## Questions?

Shalom Leaf

ATTORNEY AT LAW

T: 646.861.7222

F: 646.810.8785

[sleaf@leaflegal.com](mailto:sleaf@leaflegal.com)

[www.leaflegal.com](http://www.leaflegal.com)

 corporate securities tech transfer