

# The Venture Capital Investment

Based on Presentation to  
Kenyon & Kenyon LLP

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# 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.



# Valuation

- Pre-money valuation
- Post-money valuation
- Valuate factors
- Other pricing terms
  - “Coupon” and other dividend terms
  - Liquidation preference
  - Conversion and anti-dilution terms
  - Qualified IPO



# Preferred Stock – typically preferred as to:

- Dividends
- Liquidation
- Redemption



# Dividends

- Accrual (aka “coupon”)
- Cumulation
- Participation



# Liquidation Preference

- Includes third-party mergers and acquisitions
- Preferred entitled to receive:
  - Purchase price
  - Multiple of purchase price
  - Accrued dividends
  - Participation rights



# Voting Rights

- Generally, Preferred Stock votes as one class with Common Stock
- Rights to elect “preferred” directors
- Special voting rights (aka “protective provisions”)
- Class voting rights



# Protective Provisions -- Board or Stockholder Vote

- Liquidation or dissolution
- Charter or by-law amendments
- Authorization or issuance of other securities
- Redemption of Common Stock or other junior stock
- Change in voting arrangements
- Change in business
- Other material decisions
- More or less onerous versions of rights





# Conversion Rights

- Optional
- Mandatory



# Anti-Dilution

- Weighted average
- “Full ratchet”
- “Half ratchet”
- Broad-based or narrow
- Issuances excluded from anti-dilution rights



# Redemption

- Time period
- Stages or installments
- Required vote or action



# Registration Rights

- Demand
- “Piggyback”
- Form S-3
- “Lock-up” (aka “market stand-off”)



# Informational Rights

- Access to management; inspection of books
- Financial statement delivery
- Budget and business plan
- Notices of defaults and other events
- Board observer



# Participation Rights (aka preemptive rights)

- Pro rata participation in future issuances
- “Top-up” rights
- Exceptions to participation rights



# Management/Employee Arrangements

- Employment and non-competition agreements
- NDAs and assignments of IP rights (all employees)
- Board composition (independent, Common & Preferred directors)
- Board meetings (scheduling, expenses of attendance)
- D&O insurance
- Key person insurance
- Stock option pool
  - Size of pool (percentage of outstanding shares)
  - Vesting schedule
  - Vesting events
- Share repurchases (from founders or other employees)



# Right of First Refusal

- On third-party sales by holders of Common Stock
  - Generally pro rata, with “top-up”
- “Co-sale” rights (aka “tag-along,” “take-along” or participation rights)
- Permitted transfers
- On sales by holders of Preferred Stock





# “Drag-Along” (aka “Bring-along”)

- Voting requirements
- Equal treatment
- Limits on representations, indemnification and liability
- Other limitations (*e.g.*, no restrictive covenants)



# Termination of Equity Rights

- Qualified IPO
- Deemed liquidation
- Change of control
- Amendment mechanisms



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## Questions?

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