



RAISING CAPITAL SEMINAR SERIES





RAISING CAPITAL SEMINAR SERIES

Module 5: The Term Sheet: The Details Matter

Oct. 28, 2020



TODAY'S PRESENTER

Joe Leo – BrownWinick

Joe Leo is a partner with BrownWinick. Joe practices mainly in the areas of securities law, startup law and corporate transactions. Joe represents many early stage and high growth companies along with four Securities and Exchange Commission publicly registered companies. Joe helps his clients in various aspects of their operations, including organization and planning, restructuring, equity and debt offerings and compliance, and corporate governance matters. In addition, Joe is an adjunct professor of Securities Law at Drake University Law School.



A JOINT COLLABORATION



**GREATER DES MOINES
PARTNERSHIP**

LWBJ[®]

INTELLECTUAL CAPITAL AT WORK



BROWNWINICK
LAW



**GREATER DES MOINES
PARTNERSHIP**

WELCOME

- Thank you for joining us!
- Logistics:
 - Mute your microphone
 - Turn on your video!
 - Open the chat window and use this for questions
- A recording of this will be available

AGENDA



- **Module 1:** The Fundraising Journey: Steps to Raising Capital
 - Oct. 7 from 8:30 – 11:30 a.m.
- **Module 2:** The Pitch: Telling Your Story
 - Oct. 7 from 1 – 4:30 p.m.
- **Module 3:** The Proforma: Building a Strong Financial Model
 - Oct. 14 from 8:30 – 11:30 a.m.
- **Module 4:** The Cap Table: Who Owns Your Company
 - Oct. 21 from 8:30 – 11:30 a.m.
- **Module 5:** The Term Sheet: The Details Matter
 - Oct. 28 from 8:30 – 11:30 a.m.

DES MOINES, IOWA



Term Sheets

Joe Leo

Joe.leo@brownwinick.com



Simple Company Led Term Sheet

- See handout in Appendix

Term Sheet

The term sheet is the document that outlines the basic terms by which an investor (angel or venture capital investor) will make a financial investment in your company.

Term Sheet Includes

- Financial terms
 - Amount raised
 - Pricing / valuation
- Investor preferences / rights
 - Dividends
 - Liquidation
 - Anti-dilution
- Corporate governance
 - Board seats
 - Voting / approval rights
 - Information rights

Valuation / Pricing

- Pre-money Valuation
 - Value of a company prior to investment or financing
- Post-money Valuation
 - Value of a company after an investment has been made. This value is equal to the sum of the pre-money valuation and the amount of new financing received.

Liquidation Preference

- Determines the payout order in case of a corporate liquidation and / or sale of the company
- Investors often make it a condition for their investment that they receive their investment money back first before other shareholders

Option Pool

- Pool of shares available to be granted
- Average pool approximates 10% of outstanding shares
- Employee is granted a certain amount of shares that vest over a period of time, priced at today's share price

Most investors require that the pool be established prior to their investment and may require a certain amount be available so as to not be diluted by the option pool.

Key Employees

- Founders salaries - influx of cash can alter the incentives and behavior in a company, including such major items as founder compensation as well as minor items like benefits
- Term sheets may dictate how much or if the founder can give themselves as a raise
- Likely will require that founders vest their equity, even if they have previously vested their equity

Board / Governance

- New money means new bosses / governance
- If no board exists, term sheet will call for its establishment
- Term sheet will outline number of board seats required by new investors into this round
- Generally 1 seat based upon 5 member board
- Negotiable

Preferred Shareholder Protective Provisions

- Preferred shareholder approval required for *fundamental* transactions
- Carefully consider the list and thresholds
- Blocking versus affirmative rights
- Minimum ownership requirement?

Management and Information Rights

- Major investors want or require certain rights
- Financial statements, budget, tax returns, etc.
- Carefully consider the list
 - Balance need with interference

Matters Requiring Preferred Director Approval

- Preferred director approval required for certain *operational* decisions
- Carefully consider the list and board makeup
- Blocking versus affirmative rights
- Minimum ownership requirement?

Right of First Refusal (ROFR) and Co-Sale

- ROFR typically runs to company and certain (all?) investors
- Consider which shares are covered by ROFR
- Consider which shares are benefitted by co-sale
- Minimum ownership requirement?

Drag-Along and Tag-Along Rights

Drag Along

- Requires shareholders to vote in favor of specified events – generally exit transactions
- Consider balance of power

Tag Along

- Provides minority interest(s) with protection
- Allows the minority owners to sell a pro rata amount of shares in a sale initiated by the majority
- Designed to prevent majority from stranding the minority in the company

Anti-Dilution Rights

- Broad-based Weighted Average Protection
- Full Ratchet

Term Sheet - Control

- Right to participate in future rounds
- Right to receive the same rights granted in the next round of financing.
- Dictate form of legal documents for the financing.

Term Sheet - Control

- All The Rest
 - Intellectual Property / Assignment of Inventions
 - Confidentiality and Restrictive Covenants
 - Employment Agreements
 - Reimbursement of Costs

Thank You

- Final thoughts
 - All content from these seminars is available
 - www.dsmpartnership.com/raisingcapital
 - Please complete our survey
 - Stay in touch
 - Plains Angels
 - www.plainsangels.com
 - Greater Des Moines Partnership
 - www.dsmpartnership.com
 - Mike Colwell
 - mcolwell@dsmpartnership.com

Raising Capital Seminar Appendix:

October 16, 2020

The Process & The Pitch:

- [How to Raise Money – It's a Journey Not an Event – Steve Blank](#)
- [Angels Tell the Truth: What Makes a New Company Fundable- Cathy Connett](#)
- [30 Questions Investors Ask During Fundraising – Alex Iskold](#)
- [4 Major Startup Funding Mistakes First-Time Entrepreneurs Make \(And How To Avoid Them\) - Tero Isokauppila](#)
- [Private SaaS Company Valuations: Q3 2020 Update - SaaS Capital](#)
- [11 Questions Founders Need to Ask Investors During the First Meeting](#)
- [Why No is the Next Best Thing After Yes – Alex Iskold](#)
- [Founders, Beware of Happy Ears – Alex Iskold](#)
- [25 epic, must-read blog posts about fundraising – Alex Iskold](#)
- [Your Startup's Competitive Advantage – Alex Iskold](#)
- [How a seed-stage company can run a simple and effective board meeting – Alex Iskold](#)
- [How to ask me \(and others\) for an intro – Alex Iskold](#)
- [Don't take intros from investors who aren't investing in you – Alex Iskold](#)
- <https://www.strictlyvc.com>

Pro Forma

- [Preparing a SaaS Company for a Capital Raise – SaaS Capital](#)
- [How to Read a Balance Sheet \(The Not-Boring Version\) - Andrew Youderian](#)
- [The Finance Function: Looking Back And Looking Forward](#)
- [What is LTV:CAC Ratio? – geckoboard.com](#)
- [The False Confidence of the LTV/CAC Ratio for Early Stage SaaS Startups – Tomasz Tunguz](#)
- [Unpacking the Deep Diagnostic Value of LTV/CAC for SaaS Startups](#)
- [The Math Behind SaaS Startup Customer Lifetime Value](#)
- [SaaS Cost of Goods Sold for Startups](#)

Cap Table & Term Sheet

- [Why Convertible Notes Are Sometimes Terrible for Your Startup. – Mark Suster](#)
- [Convertible Notes and Safe Notes – Fred Wilson](#)
- [National Venture Capital Association Model Term Sheet](#)
- [Summary of Equity Offering Terms – Joe Leo, BrownWinick Law](#)