

WIGGIN AND DANA  
*Counsellors at Law*

**Frank J. Marco**

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# **Venture Capital Deal Process and Key Terms**

**Connecticut Innovations, Incorporated  
Podcast**



*Principles discussed are fundamental to investments by institutional VC's, as well as other sophisticated investors such as angels*

## Strategy/Considerations in Financing the Business

- You should have first determined your financing strategy, based on:
  - Goals/The Business Plan
  - Need for capital
  - Willingness to take dilution
  - Time to market issues
  - Valuation/Stage of Business

# Strategy/Considerations in Financing the Business

- Personal issues – self-analysis
  - Willingness to share control and equity ownership
  - Value of “value added”
  - Interest in accepting advice
- Do you meet the venture capital profile?
  - Size up the management team/industry/size of market/proprietary edge
  - The business model
  - What’s hot/What’s not

# Choosing Your Investors

Based on the financing strategy, you will want to carefully execute:

- By choosing your investors
- Narrowing the field
  - Industry and Stage Considerations
- Doing your due diligence
- Approaching Investors
  - Introductions - from mentors, advisors, angel investors

# The Venture Transaction – Stages and Process

- Getting to Know You: Investor Meetings
  - Focus the Search
  - Referrals Best
  - Elevator Pitch
- Initial Business Due Diligence
  - Feasibility of Business Model
  - High Level Technology Review
  - Market Analysis
  - Management, Management, Management

# The Venture Transaction – Stages and Process (continued)

- Term Sheet/LOI
  - Basic Terms
  - Non-binding, but “no-shop” or “exclusivity” and fees
- Valuation
- Business and Legal Due diligence
  - Intellectual Property
  - Team
  - Business Model Assumptions
  - Business Partners/Customers
- Documentation and Closing

# The Venture Transaction – Stages and Process (continued)

- Life of the Investment
  - Monitoring
    - Regular board meetings/investor meetings
    - Avoid **surprises**
- Liquidity

## Long Term Cooperative Relationship

- At each step of the way, need to build a relationship - trust, shared goals and expectations

# The Venture Transaction - Process

Day 1.....30.....60.....90.....120.....150.....Day 180

‘ Investors Meeting

‘ Initial Business Due Diligence

‘ Term Sheet/ LOI

‘ Business/Legal Due Diligence

‘ Documentation and Closing



# The Venture Transaction - Documentation

- Key Concepts for VC Investments
  - Highly Structured
  - Downside Protection
  - Upside Equity Rights
  - Protection of the Enterprise
  - Liquidity Rights
  - Control

# The Venture Transaction – Key Terms

- Preferred Security
  - Debt v. Equity
  - Dividends
    - Accruing/When Paid
  - Liquidation Preference
  - “Participating Preferred”
  - Conversion/Anti-Dilution Adjustments
    - Proportional for splits/combinations
    - Price protection: full ratchet/weighted average (formula)
    - Carve outs
    - “Pay to Play”

# The Venture Transaction – Key Terms

(continued)

- Reps and Warranties – information about the company
  - Capitalization
  - Contingent liabilities
  - Its IP
  - Compliance with law
- Control
  - Board of Directors/Composition
  - “Protective Provisions”
  - Affirmative and Negative Covenants
  - Preemptive Rights
  - Rights of Refusal on sale of Common Stock

# The Venture Transaction – Key Terms

(continued)

- Liquidity Rights
  - Registration Rights
  - Redemption Rights
  - Drag Along
  - Tag Along

## Protection of the Franchise:

- Employment Contracts – for Key Founders (?)
- Non Competes
- Confidentiality/Invention Assignment

# The Venture Transaction – Key Terms

(continued)

You will work through these provisions with your advisors.

As indicated at beginning, this is a LT relationship, and you set the stage for the relationship—how you negotiate these issues

# Contact Information

Frank J. Marco, Esquire  
Phone: (203) 498-4344  
Email: [fmarco@wigin.com](mailto:fmarco@wigin.com)

Wiggin and Dana LLP  
One Century Tower  
265 Church Street  
New Haven, CT 06510  
Website: [www.wigin.com](http://www.wigin.com)

