

TERM SHEETS AND EQUITY FINANCINGS

**What to expect when you're
expecting... (a financing round)**

Presented by: Eric Broad, CEO



TERM SHEETS – WHAT’S IT ALL ABOUT?

- Financings, represented initially by the high-level terms included in Term Sheets, are all about two main things?
 - **1 – Economics**
 - ❖ What are the commercial terms the parties are agreeing to (and how can investors protect those economics)
 - **2 – Control**
 - ❖ What rights do the investors get to “control” (often meaning prevent) company actions



TERM SHEETS – NVCA MODEL

NVCA Enhanced Model Term Sheet is an excellent resource

Rules of thumb in the model term sheet:



Where alternative options are present, assume the best/most standard option is the **first option** listed (e.g. the Dividends and Liquidation Preference sections).



Where an entire provision is bracketed, but no alternatives present, you might be able to assume it's not something you see all of the time, only some of the time (e.g. the protective provisions over equity compensation plans and the board size; pay to play; redemption).





**TERM SHEETS
– OFF TO A
BAD START!!**

- If any of the following are present in your term sheet know that they are pretty atypical, and the presence of these provisions is generally a **bad sign**
 - Redemption Rights
 - Participating Preferred or anything greater than 1X Liquidation Preference
 - Full Ratchet Anti-dilution
 - Cumulative Dividends
 - Investors gaining Board Control
 - Significant Operational controls beyond what are in the Model Term Sheet (more on this on next slide)

TERM SHEETS – INVESTOR CONTROL

Protective Provisions – Negative shareholder control in Charter (usually lead investor consent right/veto)

Investor Director Covenants – Negative covenants in IRA requiring investor director approval (see “Matters Requiring Preferred Director Approval” section of NVCA Term Sheet). In many, but not all, financings

Board Seat – control can be limited here unless/until the board is balanced or investor controlled.

Numerous other voting/consent rights:

- ❖ Waiver of Deemed Liquidation
- ❖ Drag Along
- ❖ Amendment and Termination provisions in IRA, ROFR and VA
- ❖ Waiver of anti-dilution protection / issuance of non-Exempted Securities
- ❖ Mandatory Conversion
- ❖ Other IRA covenants



**THE FINANCING - STILL
WORK TO DO!**

THE FINANCING - STILL WORK TO DO!



Due Diligence

- **Diligence** – Investor will make sure the company is properly organized, IP is properly owned and protected, equity is properly granted (and in most cases subject to vesting), that there are not material risks to the prospects of the business, and a variety of other things.
 - ❖ What investors find in diligence can affect the terms of the documents, including in some instances investors asking for changes to what was agreed in the term sheet!

THE FINANCING - STILL WORK TO DO!



➤ **Drafting and Negotiating the Financing Documents –**

The 5 Primary Financing Documents

1. Certificate of Incorporation,
2. Stock Purchase Agreement,
3. Investors' Rights Agreement,
4. Voting Agreement and
5. ROFR and Co-Sale Agreement.

Other key documents include the **pro forma cap table and the disclosure schedules.**

- ❖ Some, but not all, provisions in these are covered by the term sheet so there's still negotiating to come.

THE FINANCING - STILL WORK TO DO!



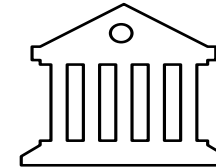
- **Filling out the Round** – Often the lead only takes part of the round, and you will need to fill out the rest of the round with other investors (and a minimum amount may be required by the lead to close).

THE FINANCING - STILL WORK TO DO!



- **Closing** – Once everything is final you will need to get board and stockholder approval, finalize the docs, and get everything signed. This process can take several days even after the main docs are form agreed.

THE FINANCING - STILL WORK TO DO!



- **Post-Closing** – Subsequent closings, post-closing covenants (D&O insurance?), Securities filings (Form D)

CONTACT US!



Legal for Entrepreneurs by Entrepreneurs

Reach out by phone or email for a free consultation!

Eric Broad, CEO



215-696-6278



eric@bowerylegal.com