

DOYENNE

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INVESTOR ACCELERATOR PROGRAM: WORKSHOP #3

Investor Rights and Term Sheet Negotiations

PROCESS

- *Preliminary stuff*
- *Diligence*
- *Term sheet*
- *Diligence*
- *Long form legal docs*
 - *Stock Purchase Agreement*
 - *Voting Agreement*
 - *Amended & Restated Certificate of Incorporation*

TIPS

- *Start with the term sheet!*
- *Know your negotiating leverage*
- *Negotiate the agreement as a whole*
- *Set your priorities*
- *Like the leadership, but negotiate with the company*
- *Use your attorney, not theirs*

CATEGORIES

- *Economic*
- *Control*
- *Information*
- *Other*

ECONOMIC RIGHTS

- *Price*
 - Valuation
 - Pre or post?
 - Investment size
 - Number of shares/per share price
- *Anti-dilution*
 - Full-ratchet
 - Weighted average
- *Class of Stock*
 - Common
 - Preferred
 - Liquidation Preference
 - Liquidation Cap
 - Participation Rights
 - Pay to play

...the holders of the Series [A, B, C, etc.] Preferred shall be entitled to receive in preference to the holders of the Common Stock a per share amount equal to [1, 1.5, 2 etc.] times the Original Purchase Price plus any declared but unpaid dividends (the Liquidation Preference).

Series A Preferred shall be convertible into one share of Common (subject to proportional adjustments for stock splits, stock dividends and the like) at any time at the option of the holder.

LIQUIDATION PREFERENCE ONLY

- *Assumptions:*
 - Pre-money: \$10mm
 - Series A Raise: \$5mm
 - Post-money: \$15mm
 - Series A equity: 33.3%
 - Stock rights:
 - 1x liquidation preference
 - Non-participating
- *Exits*
 - *Scenario 1: \$15mm exit*
 - If take liquidation, get \$5mm
 - If convert get \$5mm
 - *Scenario 2: \$30mm exit*
 - Liquidation = \$5mm
 - Convert = \$10mm
 - *Scenario 3: \$100mm exit*
 - Liquidation = \$5mm
 - Convert = \$33.3mm

LIQUIDATION MULTIPLE

- *Assumptions:*
 - Pre-money: \$10mm
 - Series A Raise: \$5mm
 - Post-money: \$15mm
 - Series A equity: 33.3%
 - Stock rights:
 - 2x liquidation preference
 - Non-participating
- *Exits*
 - *Scenario 1: \$15mm exit*
 - If take liquidation, get \$10mm
 - If convert get \$5mm
 - *Scenario 2: \$30mm exit*
 - Liquidation = \$10mm
 - Convert = \$10mm
 - *Scenario 3: \$100mm exit*
 - Liquidation = \$10mm
 - Convert = \$33.3mm

After the payment of the Liquidation Preference to the holders of the Series A Preferred, the remaining assets shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on a common equivalent basis.

PARTICIPATING PREFERRED

- *Assumptions:*
 - Pre-money: \$10mm
 - Series A Raise: \$5mm
 - Post-money: \$15mm
 - Series A equity: 33.3%
 - Stock rights:
 - 1x liquidation preference
 - Participating
- *Exits*
 - *Scenario 1: \$15mm exit*
 - Get liquidation of \$5mm
 - And convert to get \$3.3mm
 - Total: \$8.3mm
 - *Scenario 2: \$30mm exit*
 - Get liquidation of \$5mm
 - Convert = \$8.3mm
 - Total = \$13.3mm
 - *Scenario 3: \$100mm exit*
 - Liquidation = \$5mm
 - Convert = \$31.35mm
 - Total = \$36.35mm

...the remaining assets shall be distributed ratably to the holders of the Common Stock and the Series A Preferred on a common equivalent basis, provided that the holders of Series A Preferred will stop participating once they have received a total liquidation amount per share equal to [1, 2, 2.5 etc.] times the Original Purchase Price...

CAPPED PARTICIPATING PREFERRED

- *Assumptions:*
 - Pre-money: \$10mm
 - Series A Raise: \$5mm
 - Post-money: \$15mm
 - Series A equity: 33.3%
 - Stock rights:
 - 1x liquidation preference
 - 3x participation cap
- *Exits*
 - *Scenario 1: \$15mm exit*
 - Get liquidation of \$5mm
 - And convert to get \$3.3mm
 - Total: \$8.3mm
 - *Scenario 2: \$30mm exit*
 - Get liquidation of \$5mm
 - Convert = \$8.3mm
 - Total = \$13.3mm
 - *Scenario 3: \$100mm exit*
 - Liquidation = \$5mm
 - Plus convert = \$31.35mm
 - Cap limit = \$15mm
 - Convert only total = \$33mm

VOTING/CONTROL RIGHTS

- *Veto rights*
 - Issue more shares
 - Change terms of shares
 - Issue senior stock
 - Change articles/bylaws
 - Change size of board
 - Declare dividends
 - Borrow money
 - License IP
 - Declare bankruptcy
 - Sell company

...consent of the Required Percentage of the Series A Preferred shall be required for any action...that (i) alters or changes the rights, preferences or privileges of the Series A Preferred, (ii) increases or decreases the authorized number of share of Common or Preferred Stock, (iii) creates...any new class or series of shares having rights, preferences, or privileges senior to or on a parity with the Series A Preferred...

...(iv) results in the redemption or repurchase of any shares of Common stock...(v) results in any merger, other corporate reorganization, sale of control, or any transaction in which all or substantially all of the assets of the Company are sold, (vi) amends or waives any provisions of the Company's Certificate of Incorporation or Bylaws, (vii) increases or decreases the authorized size of the Company's Board of Directors...

VOTING/CONTROL RIGHTS

- *Board seats*
- *Automatic conversion*
 - 1:1
 - Minimum exit value
- ***Drag-along*** →
 - Minority
 - Common
 - Founders

The [holders of the Common Stock] [Founders] and Series A Preferred shall enter into an agreement whereby if a majority of those holders of the Series A Preferred agree to a sale or liquidation the holders of the Series A Preferred and Common Stock shall consent to and raise no objections to such sale.

INFORMATION RIGHTS

- *May require share threshold and confidentiality*
- *Reporting*
 - Frequency (e.g. annual audited, quarterly unaudited)
 - Financial information
 - Milestones
 - Key hires/exits
 - Highs and lows
- *Special info*
 - Environmental, social, corporate governance (ESG) information
 - Diversity, equity, and inclusion (DE&I) information

OTHER RIGHTS

- *Pro-rata/ROFR*
- *Voting rights*
- *Proprietary info/IP agreement*
- *Indemnification*
- *Conditions precedent to financing*
- *Founders' activities*
- *Assignment*
- *Co-sale*
- *Dividends*
- *Redemption rights*

NEXT WEEK: LOSSES & GAINS, ANGEL GROUPS & FAMILY OFFICES