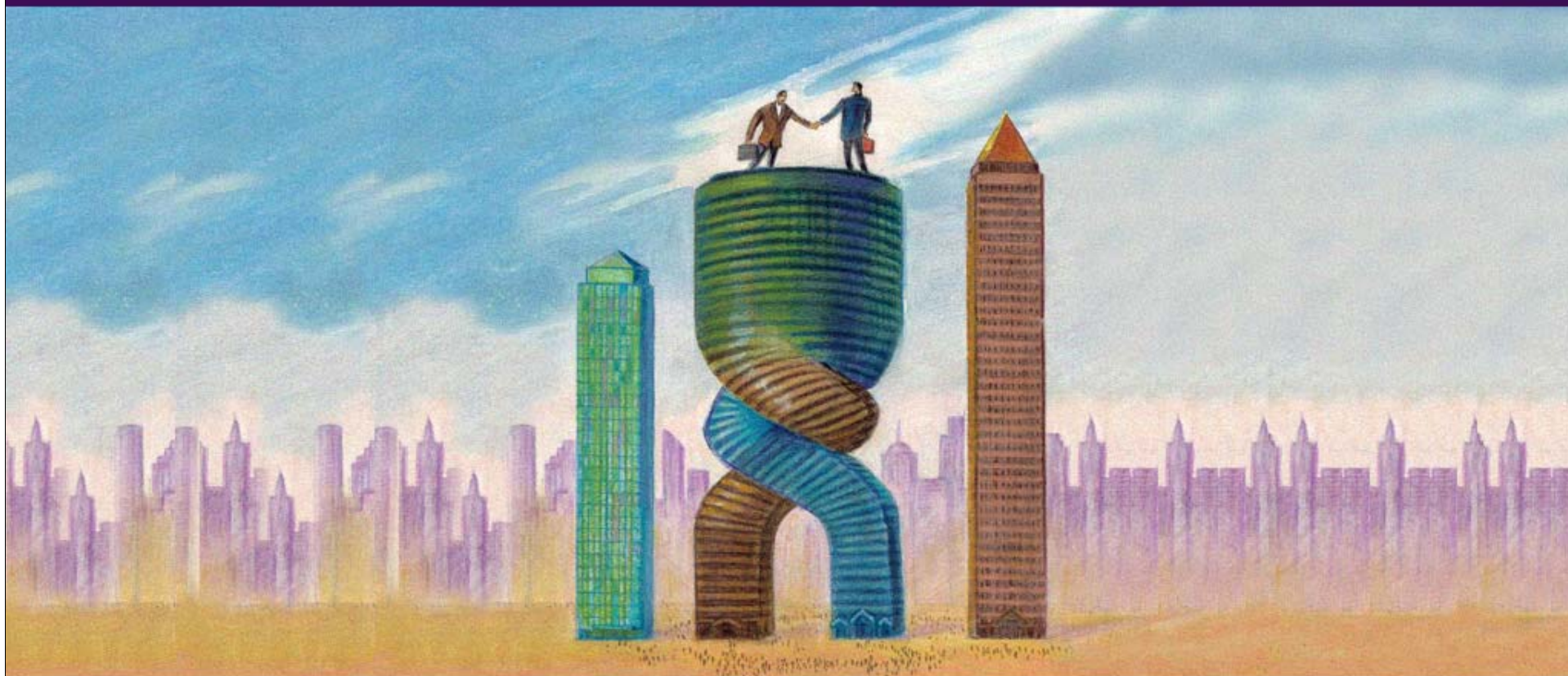


# Fusion: A Quarterly Exchange to Power Your M&A Deals



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# Fusion: A Quarterly Exchange to Power Your M&A Deals

## **SPACS, CAPS, APOS, PIPES, & AIM**

The ABCs of the Newest  
Financing Techniques



# Paul D. Broude



Paul D. Broude is a partner in Foley's Transactional & Securities and Private Equity & Venture Capital Practices, and the Emerging Technologies and Life Sciences Industry Teams.

He represents a wide range of publicly and privately held companies, entrepreneurs and private equity funds in technology and other business ventures including:

- issuers, investment banking firms and private equity investors in equity and debt financings, including public offerings, PIPE transactions and other private placements, venture capital and other financings
- a wide variety of buyers and sellers in merger and acquisition transactions, including acquisitions of publicly held companies
- management groups and boards of directors in "going private" transactions





# Edouard C. LeFevre



Edouard C. LeFevre is a partner with Foley & Lardner LLP. He is a member of the firm's Private Equity & Venture Capital and Transactional & Securities Practices, as well as the Emerging Technologies Industry Team. He has worked extensively with businesses in the software, life sciences, health care, and services industries.

Mr. LeFevre has worked with numerous public companies and underwriters. His public company experience includes:

- Representation of issuers and underwriters in public offerings, including SPAC's
- Assisting public companies with Exchange Act reporting
- Assisting directors, officers and significant shareholders with Section 16 reporting
- Counseling public companies and individual directors with respect to compliance with SEC, NYSE and NASDAQ governance requirements



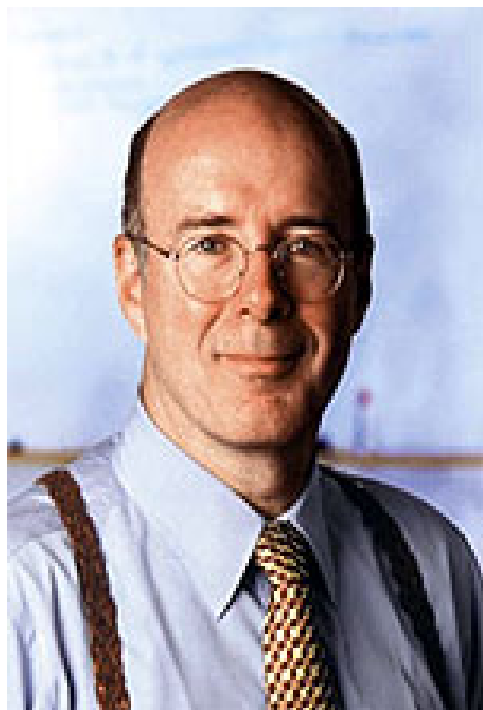
# Lance Lange



Lance Lange joined Robert W. Baird & Co. in 1996 and is a senior member of Baird's ECM origination team, responsible for the industrial and healthcare sectors. Mr. Lange also leads Baird's private placement practice, with a focus on PIPES and Registered Direct transactions. Since 2001, Mr. Lange has acted as advisor and agent on over \$1 billion of privately placed capital. Prior to his role in the Equity Capital Markets Group, Mr. Lange directed Baird's structured finance and utilities investment banking practice. Mr. Lange joined Baird from the Capital Markets Group of Firststar Bank, NA, where he concentrated on public and private debt offerings. He received a BA in Economics and Political Science from the University of Wisconsin and a JD from Marquette University Law School. Mr. Lange also serves on the Board of Directors of the Milwaukee Ballet Company.



# Ralph S. Sheridan



Ralph S. Sheridan has been the Chief Executive Officer and Secretary and a Director at Good Harbor Partners since August 2005. Mr. Sheridan is a frequent spokesman on technology solutions to complex security problems with particular emphasis on cargo crime and cross border trade, detection of nuclear materials and cyber threats to process control systems. Since June 2003, Mr. Sheridan has been the Managing Partner of Value Management LLC, which provides technology start-up assistance, realignment and business development advisory services.



# Today's Topics

- How special purpose acquisition companies (SPACs) raise money, identify targets, and close deals
- How public companies raise growth capital using private investment in public equity (PIPE) transactions
- How a PIPE coupled with a reverse merger can provide another APO option
- A comparison of London's Alternative Investment Market (AIM) to Nasdaq



# How SPACs Raise Money

- A “blank check” company is formed for the purpose of raising capital through an initial public offering of its securities and then completing a business combination with an operating business selected by the SPAC’s management team
- The SPAC goes public with an S-1, and the proceeds are put in a trust
- The management team must consummate a business combination within 24 months of the SPAC IPO, or the SPAC will be dissolved and its assets will be liquidated to the public shareholders
- The initial business combination must be with a target whose fair market value is at least equal to 80% of the SPAC’s net assets at the time of such business combination
- SPAC units begin trading on the OTC Bulletin Board or American Stock Exchange on or promptly after the effective date of the prospectus, distinguishing them from a blank check company formed under SEC Rule 419
- Offers the ability to participate in transactions typically restricted to private equity funds





# How SPACs Identify Targets and Close Deals

- The SPAC is led by an experienced management team with prior M&A and/or operating experience
- Management receives no cash compensation and cannot sell its stock (20%) until one to three years after the IPO
- Management does not participate in a liquidating distribution
- Targets include portfolio companies of private equity and venture capital firms
- Proxy statement disclosure and shareholder vote to approve or reject a proposed business combination
- The trust account provides a minimum liquidation value



# Snapshot of the SPAC Market

- 108 SPACs have gone effective since 2003 (~\$9.4B)
- Average size of deals has risen from \$84.5M last year to \$115.9M this year
- 26 companies have consummated acquisitions
- 24 companies have announced acquisitions that are pending completion
- 53 companies are seeking acquisitions
- 5 companies are liquidating
- 42 companies are in registration with the SEC



# What is a PIPE?

- A PIPE is a Private Investment in Public Equity – a private placement by a publicly-traded company to raise additional capital, typically for growth, to fund acquisitions or to repay debt.
- PIPEs are often used by smaller public companies as their primary financing vehicle, and by larger companies to fund specific transactions.
- Investors generally consist of a small group of institutional investors such as hedge funds, and/or accredited individual investors.
- In a PIPE financing, the company may issue common stock, convertible preferred stock, convertible debt, or a combination of these or other securities.
- Investors in PIPE transactions often receive warrants to purchase additional shares of common stock.
- Immediately following the closing of the PIPE transaction, the company typically files a registration statement with the SEC to enable the PIPE investors to re-sell the shares of common stock (or shares issuable upon conversion of convertible securities) purchased in the PIPE.



# Advantages of PIPE Transactions

- Speed to Market: Most PIPE transactions are completed within two to three weeks of beginning the process. Secondary public offerings can take several months.
- Confidentiality: No disclosure is required until the investors sign a definitive agreement with the company. In contrast, a secondary offering requires full disclosure early in the process.
- Less volatility in the stock price prior to closing reduces potential impact on pricing.
- No impact on public market of a failed transaction.
- Reduced expenses (placement agent, legal, accounting, printing).
- No SEC review of documents until post-closing registration statement is filed.
- Limited documentation.
- Limited due diligence by investors and placement agent.
- Infrequent road shows.





# Disadvantages of PIPE Transactions

- Significant discounts to current trading price.
- Warrants required as “sweetener” to investors.
- Penalties (typically 1-2% per month) for failure to timely register securities for resale after the PIPE closing (typically 10-30 days to register, 90-120 days to become effective).
- Frequently results in substantial dilution to current shareholders.
- May lead to concentration of ownership.
- Company typically required to maintain effectiveness of registration statement for up to two years.
- Risk of insider trading by potential PIPE investors.
- Risk of short selling leading to downward pressure in stock price.

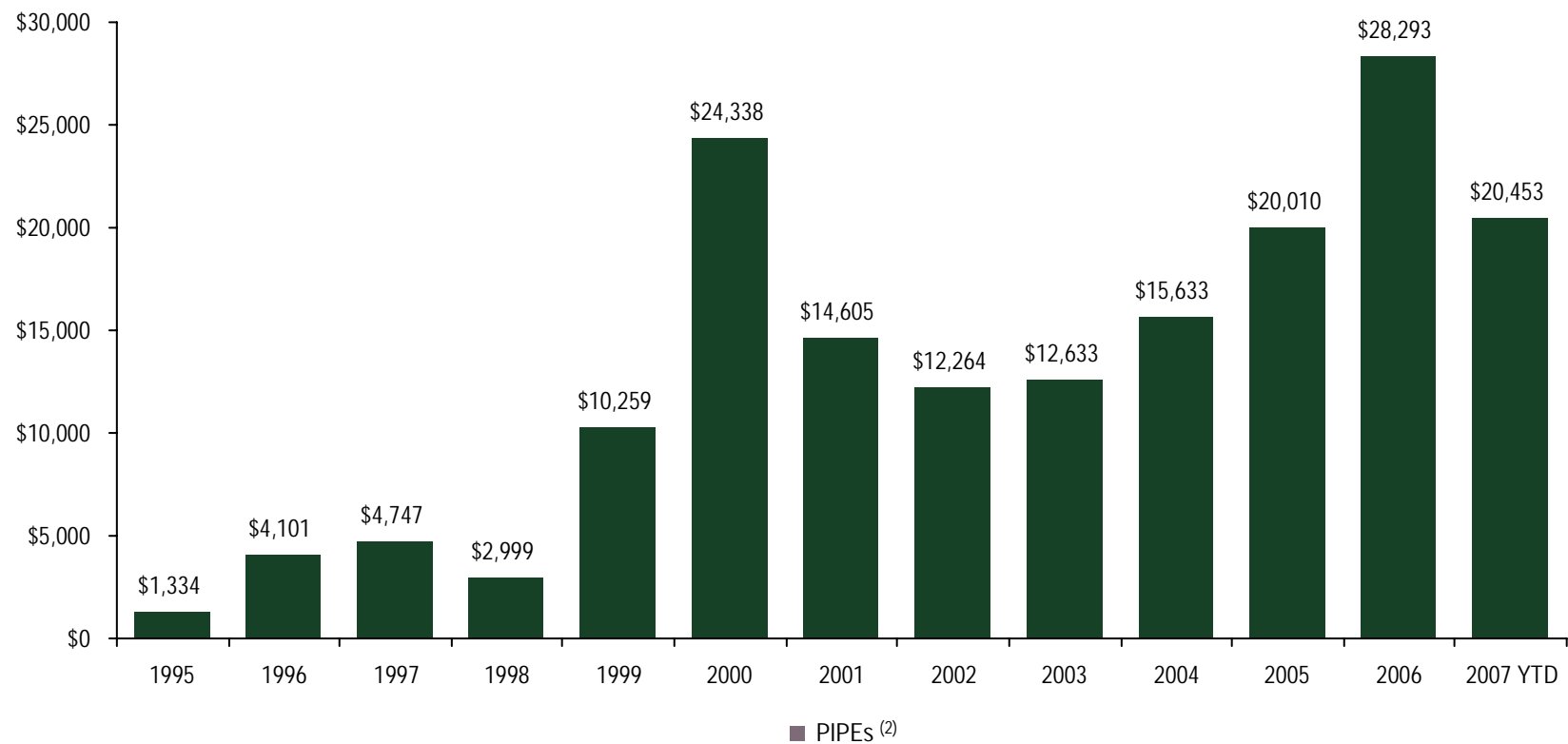


# The Size Of The PIPE Market

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## Total Dollars Raised By Year <sup>(1)</sup>

*(\$ in millions)*





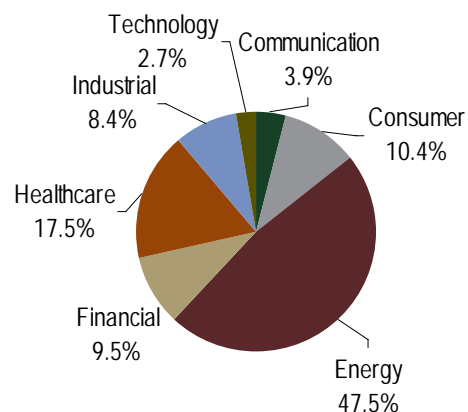
# Overall Common Stock PIPE Market Trends

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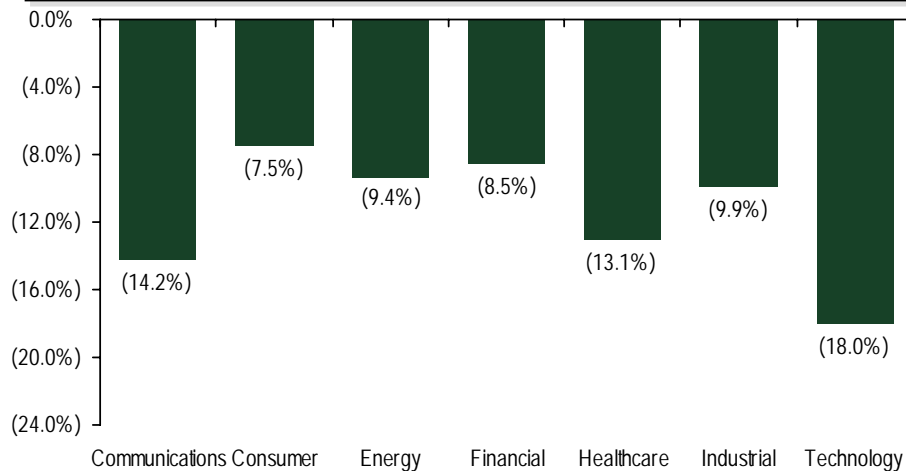
Market data for last twelve months

## Stratification by Sector (1) (2)

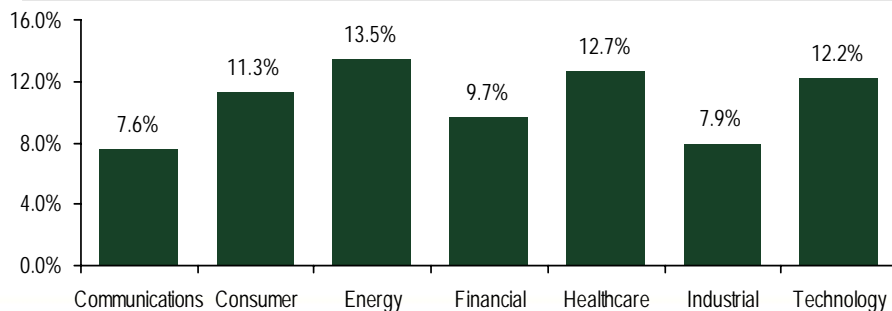
Total Common Stock PIPE – \$13,270.0



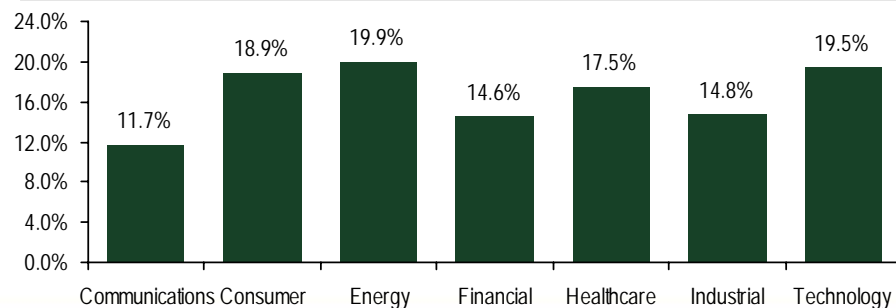
## Median Pricing Premium / Discount (2) (3)



## Median Gross Proceeds as a % of Market Cap (1) (2)



## Median Share Dilution (1) (2)





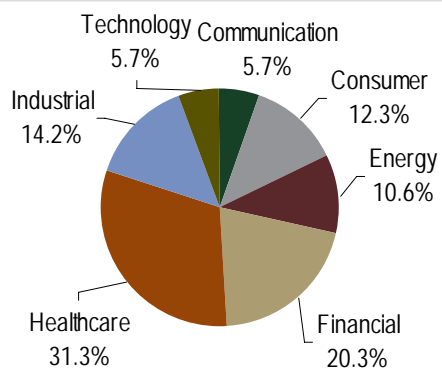
# Common Stock PIPE Market Trends

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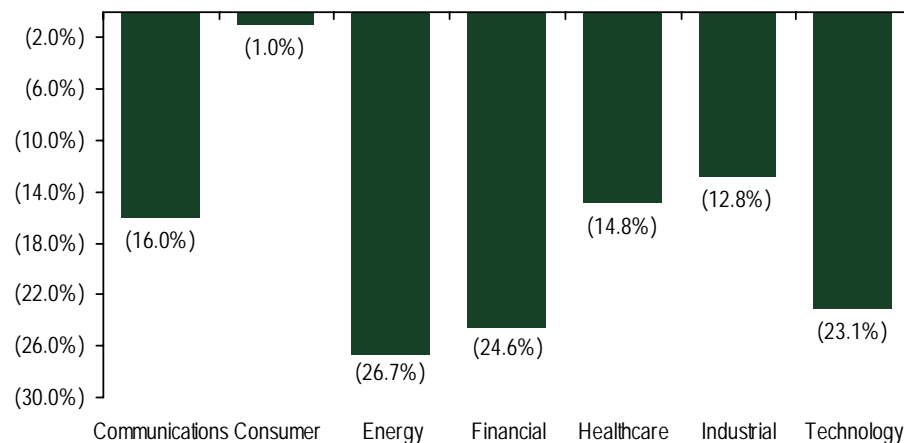
*Issuers with Market Cap less than \$150 Million, last twelve months*

## Stratification by Sector (1) (2)

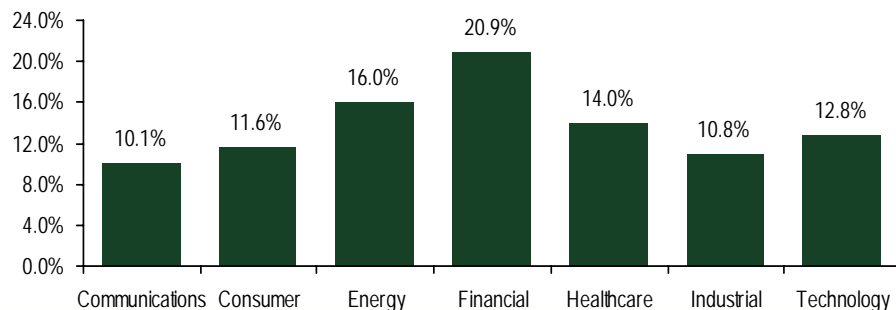
**Total Common Stock PIPE – \$3,760.6**



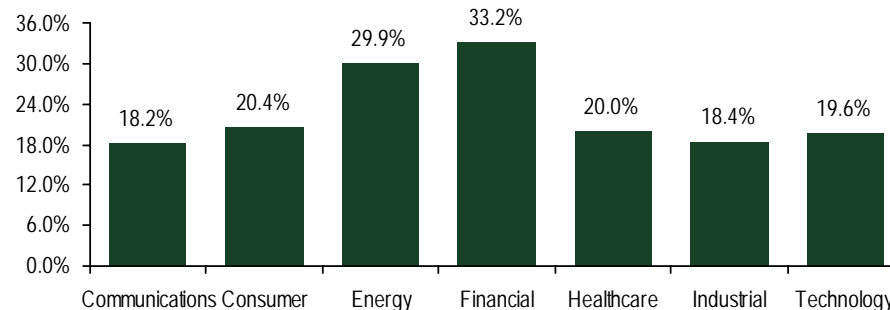
## Median Pricing Premium / Discount (2) (3)



## Median Gross Proceeds as a % of Market Cap (1) (2)



## Median Share Dilution (1) (2)







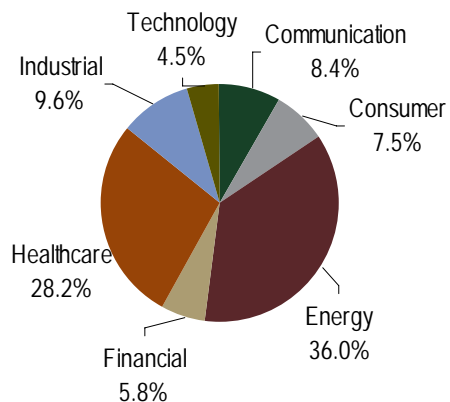
# Common Stock PIPE Market Trends

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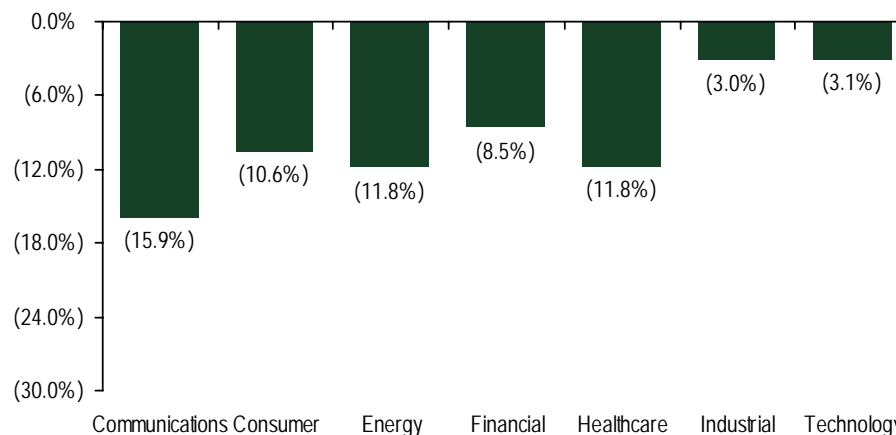
*Issuers with Market Cap between \$150 Million and \$500 Million, last twelve months*

## Stratification by Sector (1) (2)

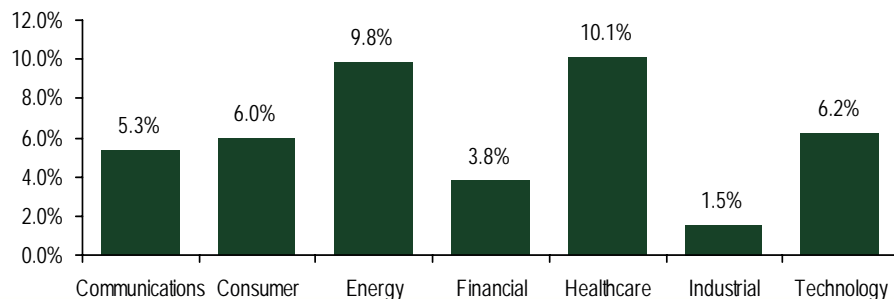
**Total Common Stock PIPE – \$2,294.4**



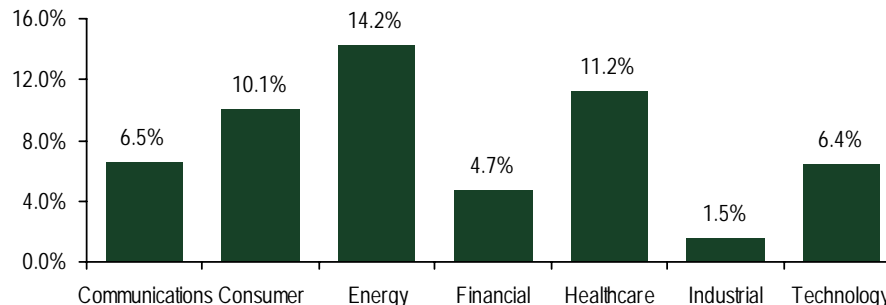
## Median Pricing Premium / Discount (2) (3)



## Median Gross Proceeds as a % of Market Cap (1) (2)



## Median Share Dilution (1) (2)





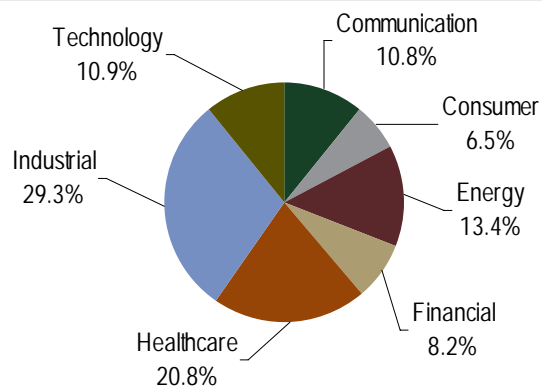
# Fixed Convertible PIPE Market Trends

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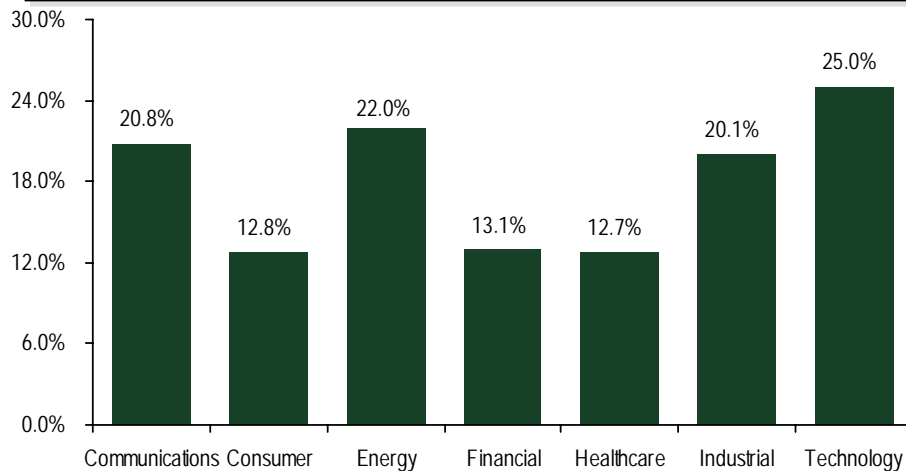
*Issuers with Market Cap between \$150 Million and \$500 Million, last twelve months*

## Stratification by Sector (1) (2)

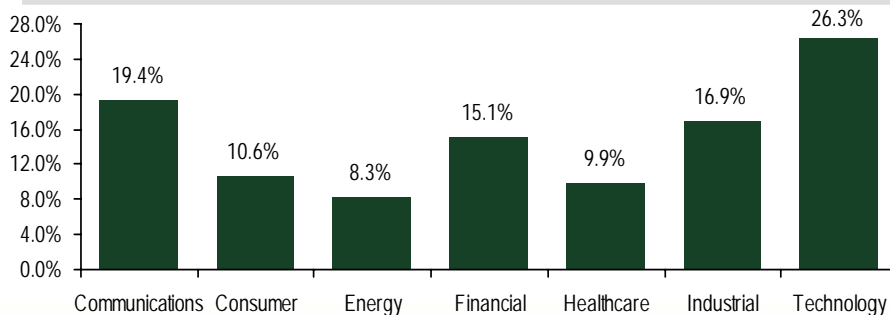
**Total Fixed Convertible PIPE – \$1,119.2**



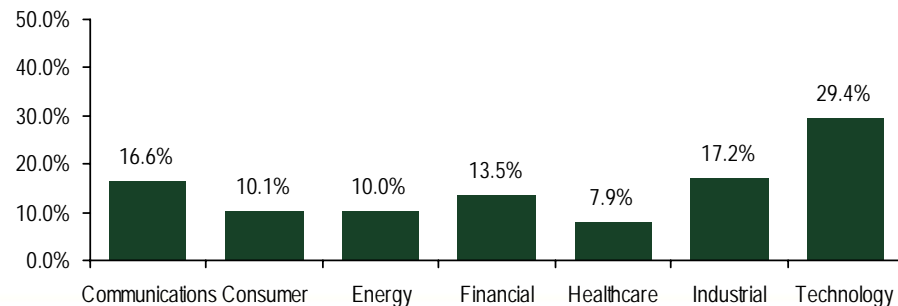
## Median Fixed Conversion Premium (1) (2)

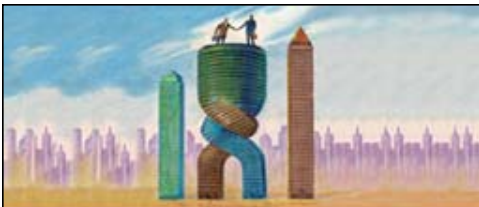


## Median Gross Proceeds as a % of Market Cap (1) (2)



## Median Dilution (1) (2)





# Reverse Merger Basics

- A reverse merger is a method by which a private company merges with a shell company and becomes public without a traditional public offering
- Public shells operate with the sole purpose to find a private company to merge with
  - Shell companies often hold cash balances to attract private companies
  - The shareholders of the private company typically receive 65% to 95% of the existing stock of the shell company

## *Advantages of Reverse Mergers*

- Presents the opportunity for micro/small-cap companies to become publicly traded
- Reverse mergers cost substantially less than IPOs
  - Generally less than \$1 million to complete a reverse merger
- Reverse mergers are usually completed in a matter of months, while IPOs often take a year or more
- Reverse mergers are subject to far less market risk during the time prior to execution
  - The artificial “IPO Window” does not affect the company’s ability to complete the transaction
  - The company can withdraw the transaction without negative publicity in the market

## *Disadvantages of Reverse Mergers*

- Less capital is generally raised in a reverse merger than in an IPO – limited ability to fund growth initiatives
- There is low visibility of initial liquidity in a reverse merger
  - When taking a company public, investment banks create interest in and elevate the profile of companies through the initial marketing effort, and subsequent research coverage
  - In the event of a lack of liquidity in the stock, initial investors in the reverse merger are locked into positions and susceptible to increased price volatility
    - Sales of small blocks of stock can significantly drive down share prices of thinly traded stocks
  - Risk of adding public company related expense burden without the benefits of being a public company

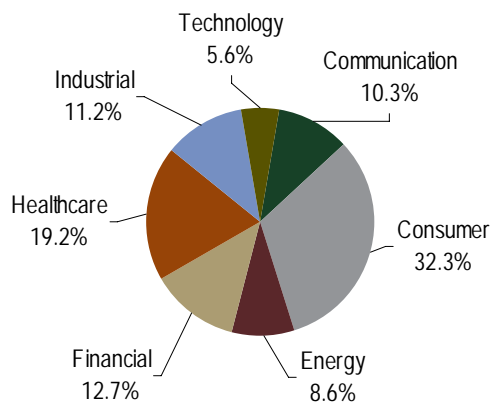


# Reverse Merger PIPE Market Trends

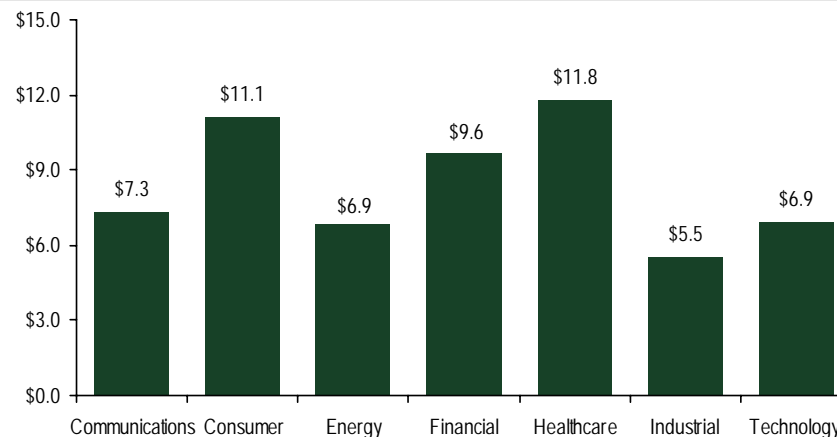
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*In the last twelve months, 68 reverse merger PIPEs have been completed to raise approximately \$761 million*

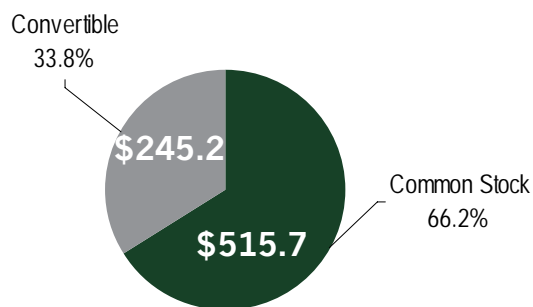
## Stratification by Sector



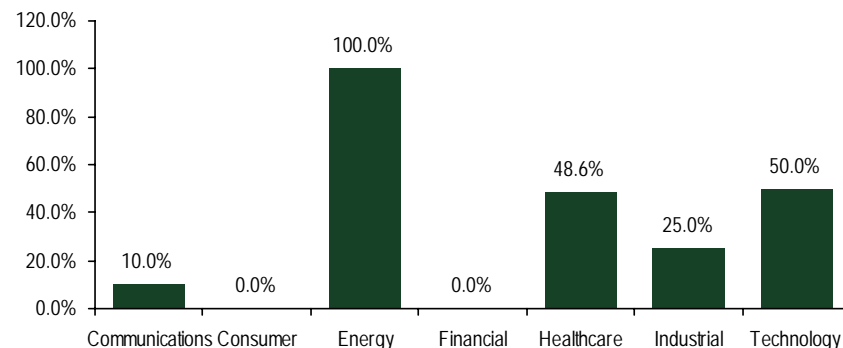
## Median Deal Value by Sector



## Stratification by Security Type



## Median Warrant Coverage







# Current Issues in PIPE Transactions

- Rule 415 – Background
  - Rule 415 permits resales of privately-placed securities by investors in registered secondary offerings at market prices.
  - Companies may use S-3 short-form registration statements for secondary offerings if they:
    - have been public for at least one year;
    - are current in their SEC filings; and
    - are traded on the NYSE, AMEX or NASDAQ.
  - Beginning in 2006, the SEC began questioning whether resales under Rule 415 by PIPE investors were actually primary offerings of stock by the company



# Current Issues in PIPE Transactions

- **Rule 415 - Current SEC Guidance**
  - SEC will question primary vs. secondary offering if shares registered exceed 33% of the company's pre-PIPE public float (shares held by non-affiliates).
  - Determined through the comment letter process on registration statements on a case-by-case basis. Factors considered include:
    - Size of transaction
    - Concentration of ownership
    - Other indicia of control (e.g. board seats)
    - Number and identity of investors
    - Discount to current trading price.
  - Impact of being treated as a primary offering:
    - Investors are deemed to be underwriters, and would need to conduct greater due diligence.
    - The company could not use an S-3 registration statement unless it had a public float of at least \$75 million.
    - Inability to rely on Rule 144 for resales as “statutory underwriters.”
  - Current trend for smaller companies is smaller deals and multiple registration statements.
  - SEC may treat APO transactions with more flexibility.



# Current Issues in PIPE Transactions

Current SEC proposals under consideration could significantly affect the PIPE market:

- Make S-3 registration statements available for use by all issuers.
- Reduce the holding period for Rule 144 sales from one year to six months.



# Introduction to AIM

- AIM was launched by the London Stock Exchange in 1995 for small cap growth companies not yet eligible for the LSE
- Over 1630 companies are listed on AIM; over 35 from the U.S.
- 8 SPACs are listed on AIM
- Regulation is determined and set by the London Stock Exchange (LSE), rather than an independent body
- LSE outsources regulation to NOMADs (approximately 100 of them)
- NOMADs also provide investment banking services, including M&A advice and ongoing analyst research and sales support





# AIM vs. NASDAQ

- 235 listings on AIM in 2006; average IPO offering size \$84M
- 148 listings on NASDAQ in 2006; average IPO offering size \$125M
- AIM is less technology-centric than NASDAQ
- AIM does not have a minimum market capitalization requirement
- Admission document is less comprehensive than an SEC registration statement
- AIM only requires half year and full year reporting, unlike SEC 10-K's, 10-Q's and 8-K's



## AIM and NASDAQ have different targets

- The average market cap of AIM companies is \$110M
- NASDAQ services companies with larger market caps



# Presenters

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- **September 20, 2007**  
Private Equity's Role in the Changing M&A and Corporate Finance Landscape
- **December 13, 2007**  
Intellectual Property Strategies to Maximize M&A Value and Generate Pre-Sale Cash

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