



Legal:GPS

Growth and Protection Strategies to Help Navigate Your Business Success

Doing the Deal: *Reading and Understanding the Fine Print Term Sheets and the Due Diligence Process*

March 12, 2008

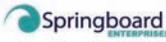



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Housekeeping Details

- Today's program will last one hour
- **Panelists:** Lauren Flanagan, CEO SCIO Corp. and Anne E. Ross, Partner, Foley & Lardner LLP
- Q&A will be addressed at the end of the program
- A recording and summary of the program will be available in the next few weeks on **Foley.com** and via a link on **Springboard's** Web site



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Today's Panelists

Lauren Flanagan

- Founder and CEO of SCIO Corp
 - Assists clients with strategic planning, partnerships, executive team/board development, corporate restructuring and financing
- Co-Founder and Managing Director of Phenomenelle Angels Fund I, LP
 - Invests in women and minority owned or managed high technology business



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Today's Panelists

Anne E. Ross

- Managing Partner of Foley's Madison office
- Member of the Private Equity & Venture Capital and Commercial Transactions & Business Counseling Practices
- Serves as counsel to public and private companies in a variety of technology-driven industries
- Represents venture capital funds and angel investors



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Doing the Deal:

Reading and Understanding the Fine Print Term Sheets and the Due Diligence Process



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First Things First

Make Sure Your Company is “Buttoned-Down”

- Invest in qualified legal and accounting advice
- Be organized in the appropriate form of legal entity
- Seek intellectual property protection ASAP
- Keep your books and records in pristine condition
- Elect one or more independent directors
- Put appropriate employment agreements in place
- Have your “due diligence” binder ready to go



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The Right Investors

Choosing the Right Investors

- Do deep due diligence on a select group of VCs
- Look for synergies with their portfolio companies
- Confirm capacity to meet the company's capital requirements (size and age of lead vc fund, syndication partners)
- Seek personal introductions through your network
- Consider issues of communication style and rapport
- Most important factor is mutual trust



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Term Sheet Negotiations

Get EXPERT LEGAL advice and representation from a firm experienced in doing deals in your industry

- Drive the negotiations with your lawyer at your side
- Know what you will & won't give up
- Cover all items in agreement before discussing the items in disagreement
- Disclose everything
- Address founders' role and compensation
- Make room for future rounds in all terms



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The Due Diligence Process

- Everything is open to scrutiny
- Documents and information should be organized in binders or in an “electronic data room”
- Investors will often require changes, clean up as condition precedent to closing on investment
- Can be an expensive and time consuming process
- May require cooperation of common stockholders, employees, third parties



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The Term Sheet

What's Important...What's Not!

- Nonbinding Provisions (Transaction to Close on these Terms Subject to Due Diligence and Negotiation of Definitive Agreements)
 - Total amount to be invested/milestones
 - Who will participate in round
 - Valuation



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The Term Sheet Continued

- Nonbinding Provisions continued
 - Type and Class of Securities
 - Convertible Debt
 - Common Stock
 - Preferred Stock
 - Warrants
 - Preferential Dividend/Liquidation Preference



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The Term Sheet Continued

- Nonbinding Provisions continued
 - Anti-Dilution Protection
 - “Full Ratchet”
 - “Weighted Average”
 - Carve Outs
 - Mandatory Conversion in Qualified Public Offering
 - “Put” Option
 - Board Representation and Observer Rights



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The Term Sheet Continued

- Nonbinding Provisions continued
 - Supermajority Voting Rights
 - Amendment to charter documents, investment contracts
 - Exit transaction
 - Creation of superior class of stock
 - Distributions, executive salary increases, etc.
 - Co-Sale Rights



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The Term Sheet Continued

- Nonbinding Provisions continued
 - Right of First Refusal
 - Drag-Along Rights
 - Preemptive Rights
 - Registration Rights
 - Information Rights



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The Term Sheet Continued

- Binding Provisions
 - Confidentiality
 - No-Shop
 - Expenses
 - Expiration Date



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Drafting and Negotiation of Definitive Documents

- Investor's counsel will typically provide first drafts
- Expect to see several contracts, e.g.:
 - Stock Purchase Agreement
 - Disclosure Schedule ties into reps and warranties
 - Investor Rights Agreement
 - Stockholders Agreement
 - Voting Agreement



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After the Champagne

What To Expect After The Papers Are Signed - Besides A Check

Always remember, the DEAL is NEVER DONE...

- New participants at Board meetings
- Investors may want to bring in new CEO
- Milestones must be met
- Follow on financing may require renegotiation
- Parties must agree on timing and form of exit



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Get Help

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Questions & Answers

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Survey

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