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Corporate Venture Capital Programs

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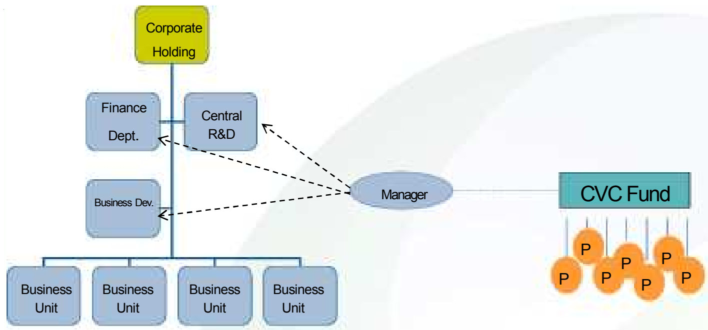
Panelists

- **Julie Cho**
  Lead Counsel, McKesson Corporation/McKesson Ventures
- **Christopher L. Rizik**
  Chief Executive Officer, Renaissance Venture Capital Fund
- **MJ Maloof**
  Investment Director, Saudi Aramco Energy Ventures - US
- **David Kantaros**
  Partner, Foley & Lardner LLP
- **Todd Rumberger, Jr.**
  Partner, Foley & Lardner LLP

Corporate VC (CVC) – Typical Structure (on balance sheet)



- CVC managers are usually a department reporting to finance, corporate development and/or R&D departments
- CVC managers rarely have a financial incentive linked to financial performance
- Strategy of a CVC may change depending on corporate strategy, business unit strategy or particular individuals involved
- Funding commitment may not be long term (annual budget or case by case)

Financial versus Strategic CVCs

- Financial CVC more comparable to a traditional VC as to deal terms and objectives, although difference may not be clear to the outside world (i.e., potential investors, customers and acquirers)
- Majority or controlling interest in the financing round and over investor rights may matter more for a financial CVC versus the ability to just "stay close" to the portfolio company
- Scope and nature of due diligence
- Financial CVC may have greater flexibility – and ability – to participate in subsequent financing rounds

For the Portfolio Company: Potential Benefits of a Strategic CVC over Traditional VC Investment

- Stamp of Commercial Approval – for the business plan and/or the product/service provided
- Access to Partner Channels
- Focus on product development over more immediate financial metrics
- Additional Strategic Guidance Specific to Industry

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For the Portfolio Company: Potential Downsides of a Strategic CVC versus Traditional VC Investment

- May not have capital set aside for follow on financing rounds; or may have limited flexibility for follow on funding under internal investment guidelines
- Strategic vision for the portfolio company which later differs from portfolio company management
- Difficulty in amending terms of stockholder agreements in later rounds to accommodate new investors
- Implication to future investors of reduced exit opportunities

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Steps in Venture Capital Financing – the Paradigm Case

- Negotiating Valuation
- Business due diligence – background checks, technical review, competitor reviews, investor interviews, market evaluation, financial
- Negotiating the term sheet
- Legal due diligence – capitalization, material contracts, IP audit, litigation and lien searches, and specialist review as applicable
- Negotiation of definitive agreements and equity purchase agreement, investors rights agreement, voting agreement, right of first refusal and co-sale agreement, and amended and restated certificate of incorporation . . . and with CVCs, a parallel negotiation of strategic commercial agreement

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Investor Rights of Significance for CVCs

- Right of First Notice, Negotiation and or Refusal for Portfolio Company sale events:
  - Rights may depend on CVC's participation on board of directors which will receive notice of potential sale offers or interest in any event
  - Focus on period of time after notice is provided in which the company must wait before entering exclusivity with acquirer: how quickly will the CVC be able to move internally approve a counter offer
  - Countervailing portfolio company concern of quelling acquisition interest
  - Use of a "CVC competitor" definition or schedule of designated CVC competitors to which right of notice, negotiation of refusal applies in the event of an acquisition offer
  - When do such rights spring back to life with respect to the initial acquisition offer – 60, 90, or 120 days after initial offer if closing has not occurred

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Investor Rights of Significance for CVCs (cont'd)

- Acquisition Drag-Along Conditions and Exclusions:
  - Consider whether drag-along trigger requires CVC approval or whether CVC can be excluded from the drag altogether
  - If subject to a drag-along, but without control over trigger, will a company proxy apply to CVC's equity in the event the CVC later claims a drag-along scenario is invalid and refuses to approve a sale or refuses to sign certain transaction agreements
  - Exclusions from drag-along to include standard set (see National Venture Capital Association recommendations), including requirement that CVC cannot be required to amend or terminate any commercial agreement with the company as part of the sale transaction

Investor Rights of Significance for CVCs (cont'd)

- Existence of a Drag-Along or Pay-to-Play with Respect to Future Financings
- Clarification that "Competitor" definitions (i.e., for purposes of being excluded from company information rights, rights of first offer, etc.) clearly exclude the CVC by name and any CVC affiliates the CVC might later transfer company equity to
- Board Observer Rights
- Company waiver in its Charter of corporate opportunities of the company which the CVC or CVC director may pursue on behalf of the CVC instead
- Limited publicity rights of the company as to the CVC's participation in the financing without the CVC's consent

Investor Rights of Significance for CVCs (cont'd)

- Non-impairment:
  - CVC may have a minority holding or may not otherwise control waivers or amendments of the company's financing agreements moving forward
  - Require that certain rights and terms, as applied to the CVC, may not be waived, amended or terminated without the CVC's consent so long as CVC holds a minimum (or any) equity in the company
    - Consider including any rights which were specifically negotiated for the CVC (i.e., right of first notice or limited publicity)
    - Consider including rights which apply generally to all investors, but are critical that the CVC maintain (i.e., the receipt of annual audited financial statements or the pro-rata right to invest in any future financing)
  - Financing agreements should generally provide that any waiver, amendment or termination approved by the majority (or supermajority) of investors apply similarly to all investors