Venture Capital Report

2020

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2020 Venture Capital Report – What's Inside

REVIEW

Venture capital deal flow and proceeds in 2019 retrenched from the record levels set in 2018, while escalating valuations in later-stage rounds drove the overall median pre-money valuation to a new high.

VC-backed company liquidity activity followed a similar pattern. The number of VC-backed IPOs and M&A transactions declined modestly from the 2018 tallies, but the median pre-money valuation at the time of IPO and the median acquisition price both reached record levels.

EQUITY FINANCING ACTIVITY

The number of reported venture capital financings contracted by 16%, from 6,618 in 2018 to 5,542 in 2019. Once all financings are counted, however, the total for 2019 is likely to exceed 6,000.

Total reported venture capital financing proceeds decreased by 10%, from $137.0 billion in 2018 to $123.7 billion in 2019, but were still one-third higher than the next-highest annual figure of $92.9 billion, recorded in 2000.

Overall, the median size of venture capital financings increased by 31%, from $5.4 million in 2018 to $7.2 million in 2019—the second-highest annual figure since 1996, behind only the $9.0 million seen in 2000. The median size of first-round financings increased by 15%, from $5.2 million to $6.0 million, as did the median size of second-round financings, which rose from $10.0 million to $11.5 million. The size of later-stage financings remained constant, at $20.0 million in 2018 and 2019.

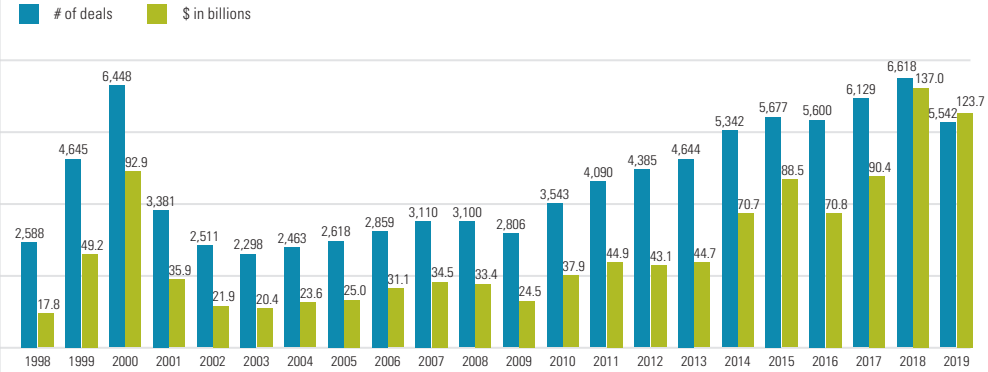
The median financing size for life sciences companies increased by 7%, from $8.4 million in 2018 to $9.0 million in 2019. For technology companies, the median financing size increased by 40%, from $5.0 million to $7.0 million—the highest annual figure since the $8.0 million median in 2008.

Driven largely by investments by private equity, crossover and hedge funds, the number of very large financings rounds continued its upward trajectory in 2019, a pattern that—other than a brief drop in 2016—has held steady since 2012, as VC-backed companies have increasingly relied on very large later-stage financing rounds. Between 2012 and 2015, the number of financing rounds of at least $50 million soared from 82 to 283. Following a decline to 184 rounds in 2016, the number of financing rounds of at least $50 million rebounded to 285 in 2017, then jumped by 70% to 484 in 2018 before edging up to 490 in 2019.

Similarly, the number of financing rounds of at least $100 million saw steady growth between 2012 and 2015, rising from 19 to 103 before dipping to 51 in 2016 and then recovering to 107 in 2017, increasing by 78% to 190 in 2018, and climbing to 201 in 2019. There were three billion-dollar financing rounds in 2019. This elite club was led by Rivian Automotive, with a $1.3 billion financing round, followed by Flexport and Verily Life Sciences, each with a $1.0 billion round.

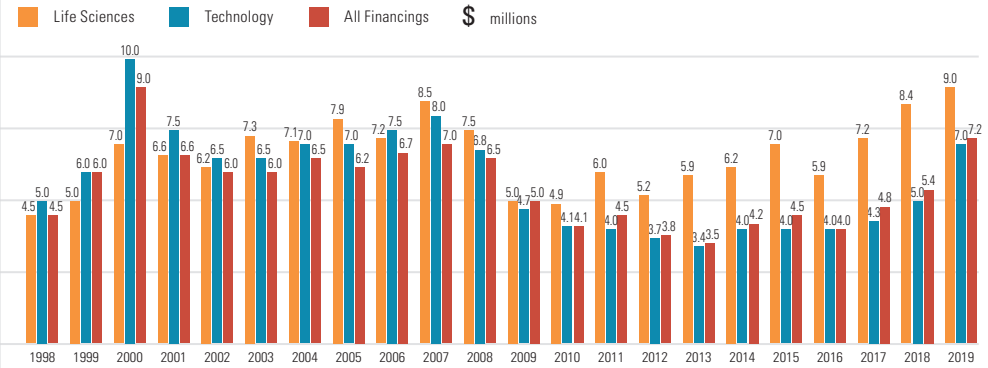
The median pre-money valuation for all venture financings continued its recent rapid rise, more than doubling from $50.0 million in 2017 to $120.0 million in 2018 and then surging to $222.1 million in 2019, primarily due to skyrocketing valuations in later-stage rounds. The median pre-money valuation in the technology sector leapt from $46.3 million in 2017 to $115.2 million in 2018 and then nearly doubled again to $226.7 million in 2019. Among life sciences companies, the median pre-money valuation grew from $31.1 million in 2017 to $86.2 million in 2018 and then to $148.8 million in 2019.

US Venture Capital Financings – 1998 to 2019



Source: Dow Jones VentureSource

Median Size of US Venture Capital Financings – 1998 to 2019



Source: Dow Jones VentureSource

Seed and first-round venture capital financings accounted for 35% of all venture financings in 2019 (up from 34% in 2018) and represented 16% of all venture capital financing proceeds (equal to 2018). Second-round financings represented 15% of all financings in 2019 (up from 14% in 2018) and raised 16% of all proceeds (up from 13% in 2018). Later-stage financings accounted for 28% of all financings in 2019 (up from 27% in 2018) and represented 51% of all proceeds (up from 50% in 2018).

The technology sector produced 33% of the year's transactions in 2019—the sector's highest percentage in over ten years, up from its 32% market share in 2018. The business and financial services sector's market share decreased from 22% in 2018 to 21% in 2019. After remaining steady at 20% in 2017 and 2018, the market share for life sciences companies continued its gradual rise to reach 21% in 2019, a trend that has held since 2014.

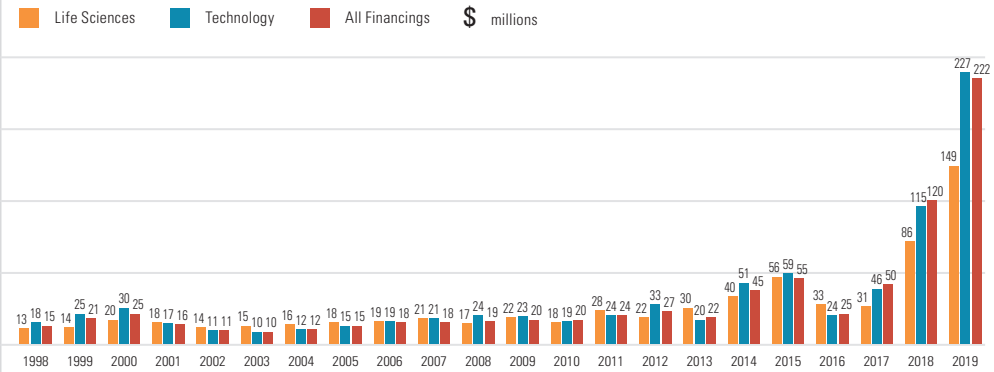
California—which has led the country in financing activity in each year since 1996—produced 41% of all venture financing transactions in 2019 (2,255 financings) and 51% of the year's proceeds ($63.10 billion). New York, home to companies with 755 financings raising $18.75 billion in 2019, finished second in the state rankings, followed by Massachusetts (with 402 financings raising $9.41 billion), Texas (with 236 financings raising $3.56 billion) and Washington (with 197 financings raising $3.29 billion).

LIQUIDITY ACTIVITY

The number of VC-backed US issuer IPOs declined by 4%, from 75 in 2018 to 72 in 2019. Despite this decrease, the 2019 total was still the third-highest annual count since 2000, topped only by 2018's tally and the 102 VC-backed IPOs by US issuers in 2014.

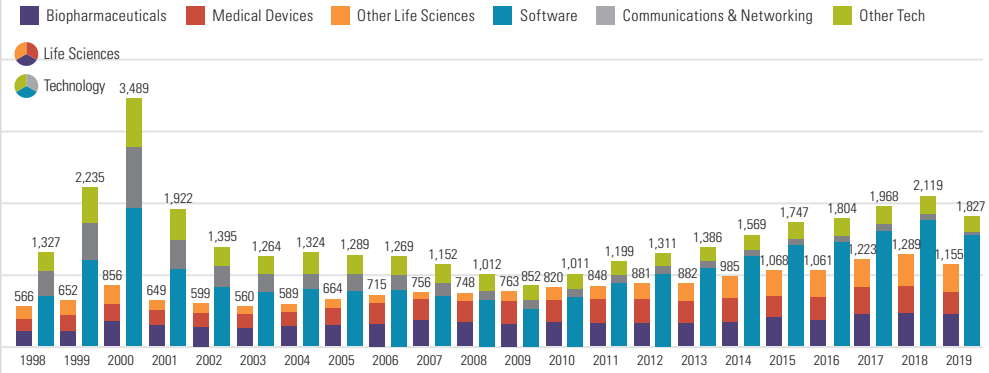
Boosted by five billion-dollar IPOs, gross proceeds from VC-backed US issuer IPOs more than doubled from $10.73 billion in 2018 to $25.04 billion in 2019. The 2019 total surpassed the previous record high of $20.99 billion set in 2012 (of which $16.0 billion was attributable to Facebook's IPO—nearly 15 times the size of that year's next-largest IPO).

Median Pre-Money Valuation in US Venture Capital Financings – 1998 to 2019



Source: Dow Jones VentureSource

US Venture Capital Financings by Industry – 1998 to 2019



Source: Dow Jones VentureSource

The largest IPO of 2019 was the $8.10 billion offering of Uber, followed by the IPOs of Lyft ($2.34 billion), Pinterest ($1.43 billion), SmileDirectClub ($1.35 billion) and Peloton ($1.16 billion).

In 2019, life science companies produced 59% of all VC-backed IPOs, down from 60% in 2018. The VC-backed IPO market share for technology companies increased from 36% in 2018 to 40% in 2019.

The median time from initial funding to IPO increased from 5.4 years in 2018 to 6.3 years in 2019. Among life sciences companies, the median increased from 3.5 years to 4.0 years (still equal to the second-lowest median since 2002), while among technology companies the median declined from 11.6 years to 8.5 years.

The median amount raised prior to an IPO increased by 14%, from $128.8 million in 2018 to $146.3 million in 2019, while the median pre-IPO valuation climbed by 18%, from $385.0 million to $455.8 million. As a result, the ratio of pre-IPO valuation to the median amount raised prior to an IPO increased from 3.0:1 in 2018 to 3.1:1 in 2019—the second-highest level since 2012 (a higher ratio means better returns to pre-IPO investors).

The ratio was between 3.2:1 and 5.8:1 for each year from 2001 to 2012, other than a spike to 7.6:1 in 2009 based on a very small sample size of VC-backed IPOs that year. By contrast, this ratio ranged from 6.5:1 to 10.4:1 between 1996 and 2000, due to very large pre-IPO valuations by younger companies during that period.

The average VC-backed IPO in 2019 gained 33% by year-end, outperforming the Dow and S&P 500 but trailing the Nasdaq's 35% gain for the year. At the end of 2019, 57% of the year's VC-backed IPOs were trading above their offering price, up from the 46% for 2018 but below the 64% seen in both 2016 and 2017.

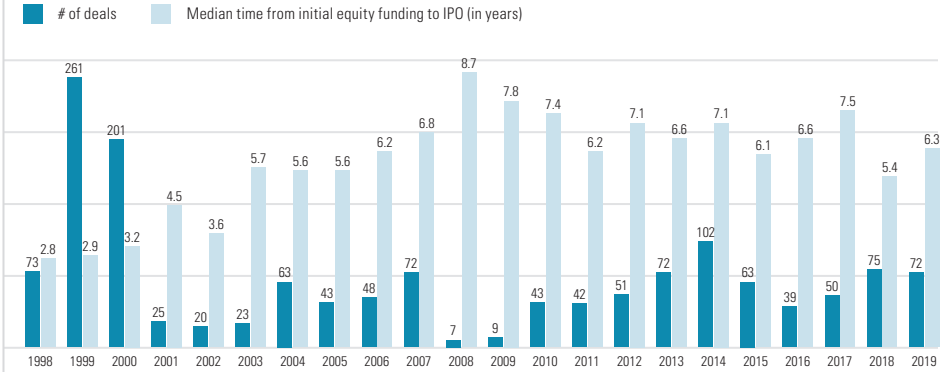
The number of reported acquisitions of VC-backed companies declined by 7%, from 759 in 2018 to 708 in 2019. Total reported proceeds decreased by 5%, from $129.5 billion to $123.4 billion. Once all 2019 acquisitions are accounted for, however, the year's deal and proceeds totals should approach or exceed 2018's tallies.

The median acquisition price increased by 11%, from $108.0 million in 2018 to a new record high of $120.0 million in 2019. The median time from initial funding to acquisition increased from 5.3 years in 2018 to 5.4 years in 2019, the highest annual figure since the 5.5-year median in 2009.

The median amount raised prior to acquisition dipped by 3%, from $15.1 million in 2018 to $14.6 million in 2019. Despite the decline, this was the second-highest annual figure since the $16.3 million median in 2012. The ratio of median acquisition price to median amount raised prior to acquisition increased for the third year in a row, from 7.2:1 in 2018 to 8.2:1 in 2019 (a higher ratio means higher returns to pre-acquisition investors). The 2019 figure was the highest recorded since the ratio of 10.0:1 in 2000, at the apex of the dot-com delirium. The increase in this ratio reflects the combination of higher acquisition prices and lower levels of pre-acquisition investments.

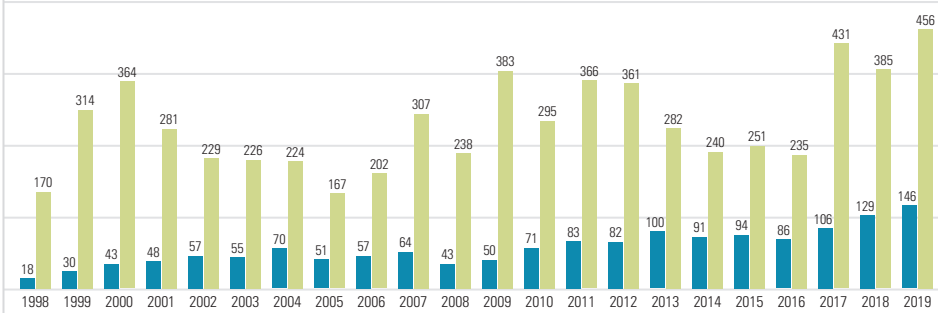
There were 26 VC-backed company acquisitions of at least $500 million in 2019, down from 29 in 2018, but still higher than the 19 in 2017 and the 17 in both 2015 and 2016. The year also saw ten billion-dollar acquisitions, below the 13 in 2018 but above the eight in each year between 2015 and 2017. The largest deal of 2019 was the $10.7 billion acquisition of Bay Dynamics by Broadcom, followed by the $4.0 billion acquisition of Honey Science by PayPal, the $3.4 billion acquisition of Auris Health by Johnson & Johnson and the $2.6 billion acquisition of Looker Data Sciences by Google.

Venture Capital–Backed IPOs and Median Time to IPO – 1998 to 2019



Source: Dow Jones VentureSource and SEC filings
The above chart is based on US IPOs by VC-backed US issuers.

Median Amount Raised Prior to IPO and Median Pre-IPO Valuation – 1998 to 2019



Source: Dow Jones VentureSource

Based on the valuations achieved in company sales and IPOs compared to the financing amounts required to achieve each type of liquidity event, 2019 marked the seventh consecutive year in which returns to venture capital investors were higher in M&A transactions than in IPOs. Liquidity also arrived sooner through M&A transactions than through IPOs, with a median time of 5.4 years from initial funding to acquisition in 2019, compared to a median of 6.3 years from initial funding to IPO. This fact, combined with the tendency of M&A transactions to yield the bulk of the purchase price in cash at closing—whereas IPOs generally involve a post-IPO lockup period of 180 days and market uncertainty on the timing and prices of subsequent stock sales—makes it easy to see why venture capitalists often prefer a company sale to an IPO.

Despite company sales far outpacing IPOs as liquidity events, the ratio of M&A transactions to IPOs for VC-backed companies declined for the third consecutive year. The ratio was 18.0:1 in 2016, 14.6:1 in 2017, 10.1:1 in 2018 and 9.8:1 in 2019—a ratio similar to the 9.4:1 over the four-year period from 2012 to 2015.

OUTLOOK

Results over the coming year will depend on a variety of factors:

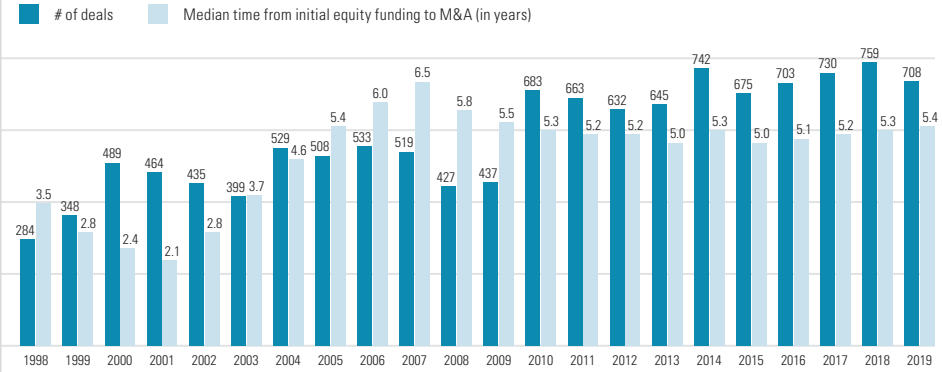
– *Financing Activity*: The impact of the COVID-19 pandemic on the venture capital market is difficult to predict at this stage. While ample funds for investment are available—venture capital fundraising edged up from $56.5 billion in 2018 to $58.7 billion in 2019—financing activity appears likely to slow down over the first half of 2020. A more selective investment environment may help reign in the sharp valuation increases of the past two years. The COVID-19 pandemic may also accelerate the adoption of digital technologies and reshape certain industries far faster than would have been anticipated even six months ago, opening new avenues for emerging companies with promising market solutions and for existing companies that have found market opportunities in the pandemic. Early indications suggest that financing activity declined modestly—more so among seed and early-stage rounds than at later stages—from the fourth quarter of 2019 to the first quarter of 2020, when the effects of the pandemic began to be felt.

– *IPOs*: Although it was intended to encourage emerging growth companies (EGCs) to go public, the JOBS Act—combined with other changes in regulatory requirements and the availability of large amounts of private investment capital—has made it easier for "unicorns" and other EGCs to stay private longer. As a result, many EGCs, particularly in the technology industry, have opted to delay their public debuts, often relying on private "IPO-sized" rounds to meet their financing needs and to scale up for when they eventually go public. While the aftermarket performance of some prominent IPOs by unicorns in 2019 was decidedly mixed, the average VC-backed IPO fared well in the aftermarket. The first quarter of 2020 saw only 11 VC-backed IPOs, down from 16 in the fourth quarter of 2019, but investor needs for cash returns should encourage offering activity when market conditions are more conducive.

– *Acquisitions*: Despite the concern among public companies over the need to maintain adequate cash reserves in the current uncertain business environment, many companies remain flush with cash, and the return to historically low interest rates may encourage strategic acquirers to supplement organic growth with debt-financed acquisitions. After a year in which the median VC-backed company acquisition price reached a record high, the economic disruption caused by the COVID-19 pandemic is likely to restrain valuations and deal activity in the near term, although companies with differentiated market positions and strong growth potential are likely to continue to attract acquisition interest at premium prices. Preliminary data suggest that overall M&A activity slowed from the fourth quarter of 2019 to the first quarter of 2020.

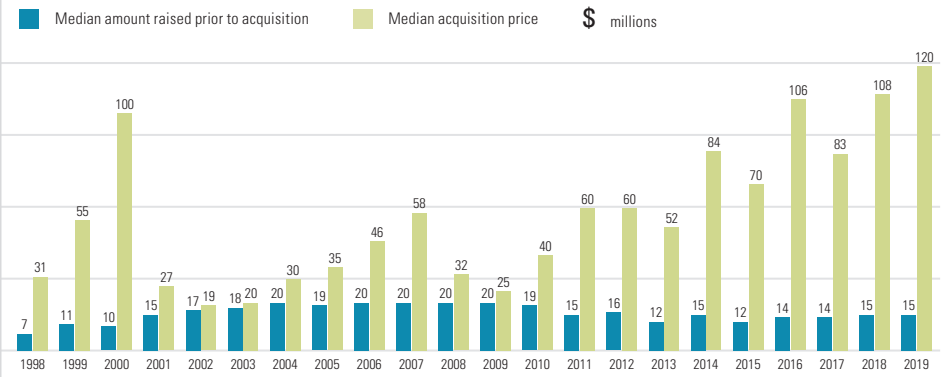
– *Attractive Sectors*: Companies offering products to meet the demands of remote work and the pandemic-induced "stay at home" environment should be attractive financing candidates in the coming year, while those operating in industries hard-hit by the COVID-19 pandemic will likely find financing scarce. In addition, companies with products that leverage blockchain technology, AI, machine learning and voice technology to continue the digital transformation of business processes should continue to attract funding in 2020. Other sectors that should draw investment interest include security, robotics, digital health, consumer e-commerce, fintech and agtech. Life sciences companies with compelling market opportunities—such as those in immuno-oncology and gene therapy—should also continue to appeal to investors. ■

Acquisitions of US Venture-Backed Companies and Median Time to M&A – 1998 to 2019



Source: Dow Jones VentureSource

Median Amount Raised Prior to Acquisition and Median Acquisition Price – 1998 to 2019



Source: Dow Jones VentureSource

CALIFORNIA

California companies reported 2,255 financings in 2019, a decline of 18% from the 2,752 in 2018. Total proceeds were $63.10 billion, down 22% from the $80.44 billion reported in 2018, but 45% higher than the $43.55 billion in 2017.

Despite the overall decline in deal count and volume, the number of very large financings continued to increase in 2019. The number of rounds raising $50 million or more grew by 3%, from 264 in 2018 to 271 in 2019, while the number of rounds of $100 million or more increased by 6%, from 113 to 120.

California was responsible for 41% of all financing transactions in the country in 2019, compared to 42% in 2018, and 55% of all financing rounds raising $50 million or more in 2019, equal to the figure for 2018.

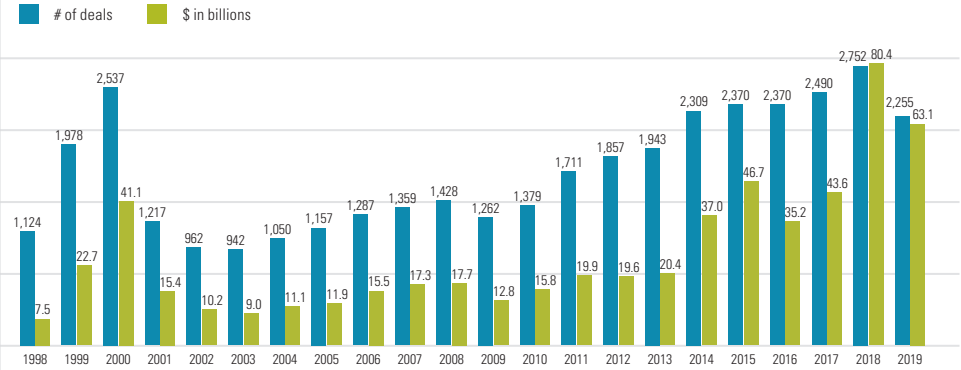
Technology was the largest sector in the state, producing 37% of all California financings in 2019, followed by business and financial services and consumer goods and services (both at 22%), and life sciences (17%).

The number of California VC-backed company IPOs rose by 9%, from 33 in 2018 to 36 in 2019, marking three straight years of growth and accounting for three-quarters of the nation's 20 largest VC-backed IPOs. The state's largest IPOs were by Uber ($8.10 billion), Lyft ($2.34 billion) and Pinterest ($1.43 billion).

The number of reported acquisitions of California VC-backed companies declined by 16%, from 331 in 2018 to 277 in 2019. The state's largest deals were PayPal's $4.0 billion acquisition of Honey Science, Johnson & Johnson's $3.4 billion acquisition of Auris Health and Google's $2.6 billion acquisition of Looker Data Sciences.

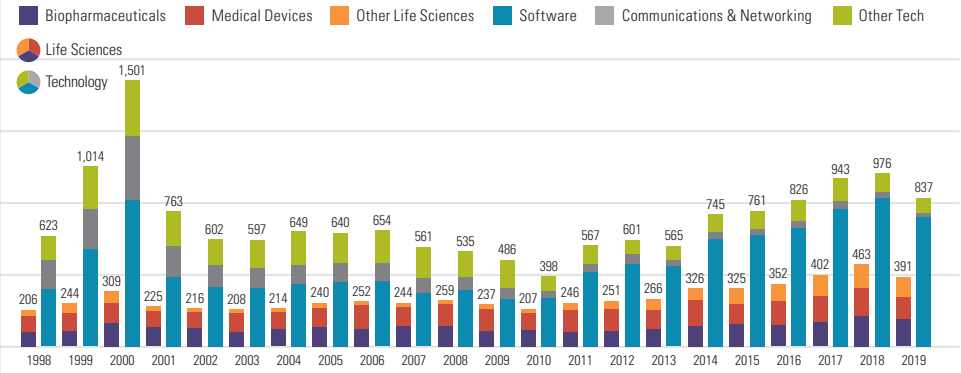
California will undoubtedly maintain its venture capital leadership in the coming year, although its level of financing and liquidity activity will depend on macroeconomic conditions, the willingness of strategic buyers to pay attractive prices, and the state of the IPO market, among other factors.

California Venture Capital Financings – 1998 to 2019



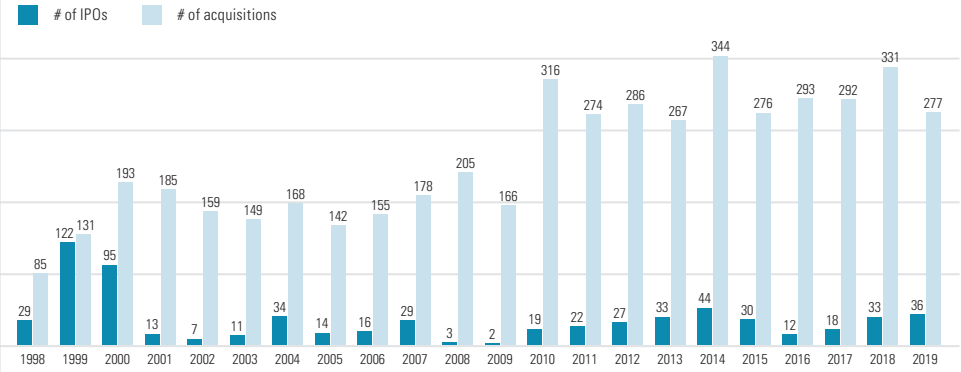
Source: Dow Jones VentureSource

California Venture Capital Financings by Selected Industry – 1998 to 2019



Source: Dow Jones VentureSource

California Venture-Backed IPOs and Acquisitions – 1998 to 2019



Source: Dow Jones VentureSource

MID-ATLANTIC

With 272 rounds, the number of reported 2019 venture capital financings in the mid-Atlantic region of Virginia, Maryland, North Carolina, Delaware and the District of Columbia represented a 20% decline from the 339 financings in 2018.

Total proceeds in the mid-Atlantic region declined by just over one-third, from $5.86 billion in 2018 to $3.81 billion in 2019, as deal sizes in the region contracted.

Virginia led the mid-Atlantic region in deal flow for the seventh time in the last ten years, with 91 financings, while North Carolina led the region in proceeds, with a total of $1.31 billion.

The number of mid-Atlantic rounds raising $50 million or more increased by 25%, from 16 in 2018 to 20 in 2019. The region's largest financings were by Asklepios BioPharmaceutical ($225 million), AvidXchange ($150 million) and CuriosityStream ($140 million).

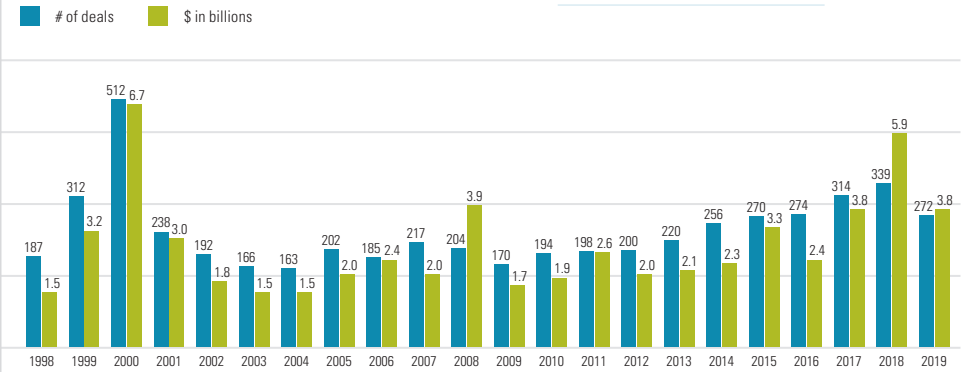
Technology companies accounted for 34% of all mid-Atlantic financings in 2019—extending the sector's longstanding leadership in the region—followed by business and financial services companies and life sciences companies (each with 23%).

The region generated three VC-backed IPOs in 2019, up from two in the prior year. Maryland produced two of the IPOs—Viela Bio ($150 million) and NextCure ($75 million)—with the third coming from North Carolina–based Precision BioSciences ($126 million).

The number of reported acquisitions of mid-Atlantic VC-backed companies declined by 11%, from 47 in 2018 to 42 in 2019, with Virginia generating 14 deals and North Carolina adding 13 deals. The region's largest M&A transactions were the $1.2 billion acquisition of Paragon Bioservices by Catalent and the $510 million acquisition of Lender Performance Group by Q2 Holdings.

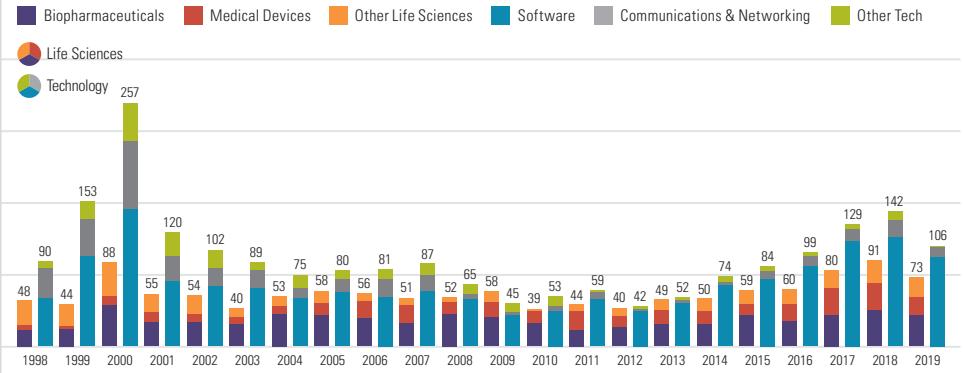
With a strong venture capital ecosystem and attractive financing candidates, the mid-Atlantic region should be poised for growth in financing activity if market conditions are conducive.

Mid-Atlantic Venture Capital Financings – 1998 to 2019



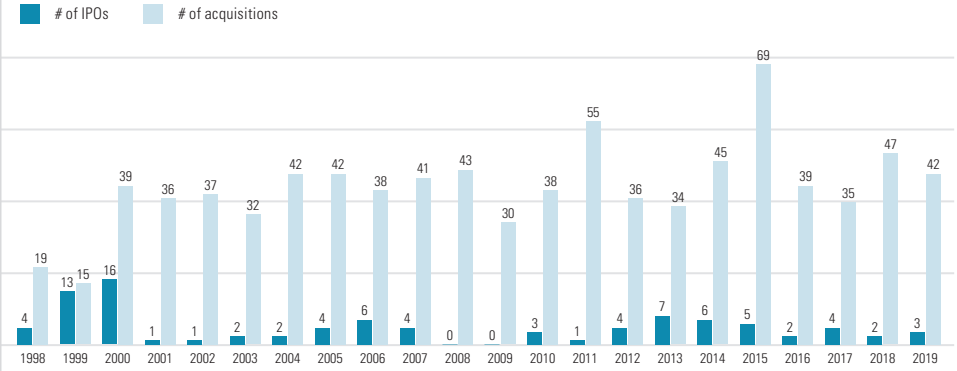
Source: Dow Jones VentureSource

Mid-Atlantic Venture Capital Financings by Selected Industry – 1998 to 2019



Source: Dow Jones VentureSource

Mid-Atlantic Venture-Backed IPOs and Acquisitions – 1998 to 2019



Source: Dow Jones VentureSource

NEW ENGLAND

New England companies reported 490 venture capital financings in 2019, 17% fewer than the 591 financings in 2018. Total proceeds were $10.08 billion, a decline of 24% from the $13.20 billion in the prior year, but still the third-highest annual gross proceeds achieved in the region's history.

Massachusetts, the perennial leader in New England and the nation's third-largest source of VC financings, led the region in 2019 with 402 financings and $9.41 billion in proceeds.

The number of rounds raising $50 million or more decreased by 26%, from 73 in 2018 to 54 in 2019. The largest rounds were raised by Ginkgo Bioworks ($290 million), Toast ($250 million) and DataRobot ($206 million).

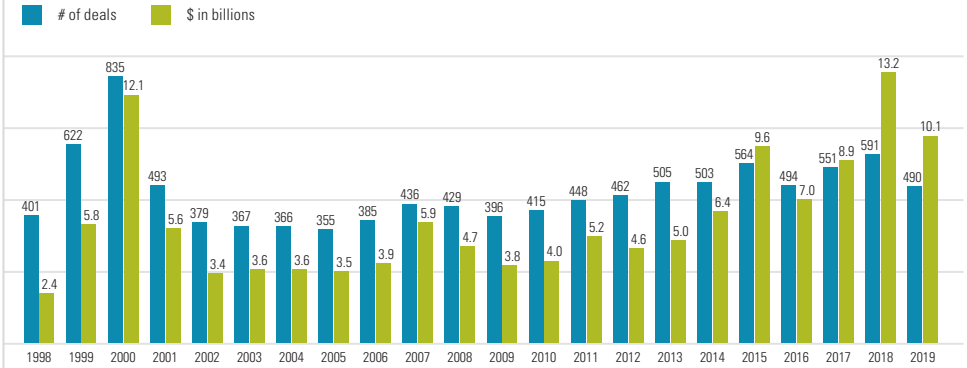
The life sciences sector represented 42% of New England's venture capital financings in 2019, followed by technology (29%) and consumer goods and services (16%).

The number of VC-backed IPOs by New England–based companies declined by one-third, from 21 in 2018 to 14 in 2019—all by life sciences companies. Massachusetts led the region with 12 IPOs, with Connecticut accounting for the remaining two. The region's largest VC-backed IPOs were by SpringWorks Therapeutics ($162 million) and Stoke Therapeutics ($142 million).

The number of reported acquisitions of VC-backed companies in New England increased by 38%, from 55 in 2018 to 76 in 2019, with Massachusetts contributing 63. The region's largest M&A transaction was the $950 million acquisition of Semma Therapeutics by Vertex Pharmaceuticals, followed by the $470 million acquisition of Onshape by PTC.

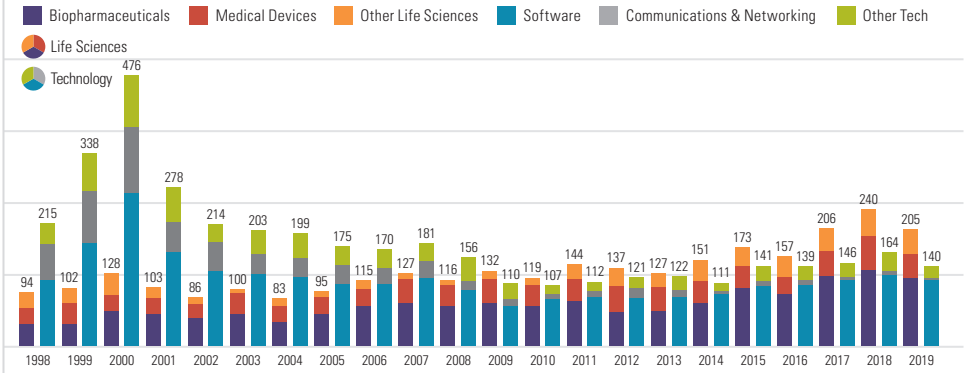
With its concentration of world-renowned universities and research institutions, New England—and Massachusetts in particular—should remain a hub of financing and IPO activity over the coming year, particularly in the life sciences and technology sectors.

New England Venture Capital Financings – 1998 to 2019



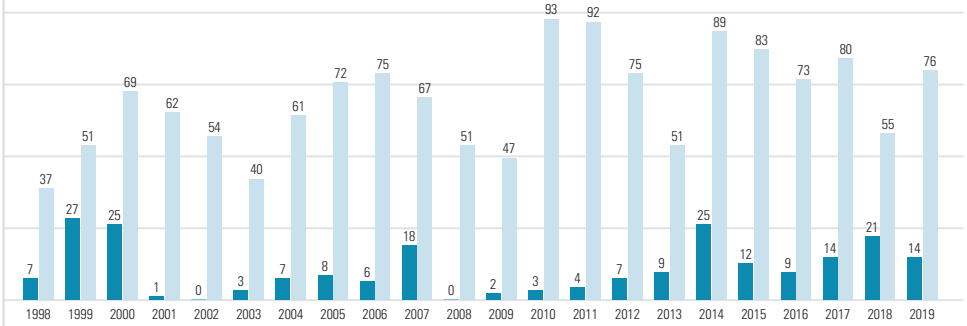
Source: Dow Jones VentureSource

New England Venture Capital Financings by Selected Industry – 1998 to 2019



Source: Dow Jones VentureSource

New England Venture-Backed IPOs and Acquisitions – 1998 to 2019



Source: Dow Jones VentureSource

TRI-STATE

The number of reported venture capital financings in the tri-state region of New York, New Jersey and Pennsylvania declined by 14%, from 1,112 in 2018 to 959 in 2019. Total proceeds increased by 26%, from $17.05 billion to $21.55 billion.

New York, the nation's second-largest source of VC financings, led the tri-state region in 2019 with 755 financings and $18.75 billion in proceeds.

The number of rounds raising $50 million or more increased by 10%, from 69 in 2018 to 76 in 2019, while rounds of $100 million or more increased by 30%, from 23 to 30. The region's largest financings came from GoBrands ($750 million) and UiPath ($568 million).

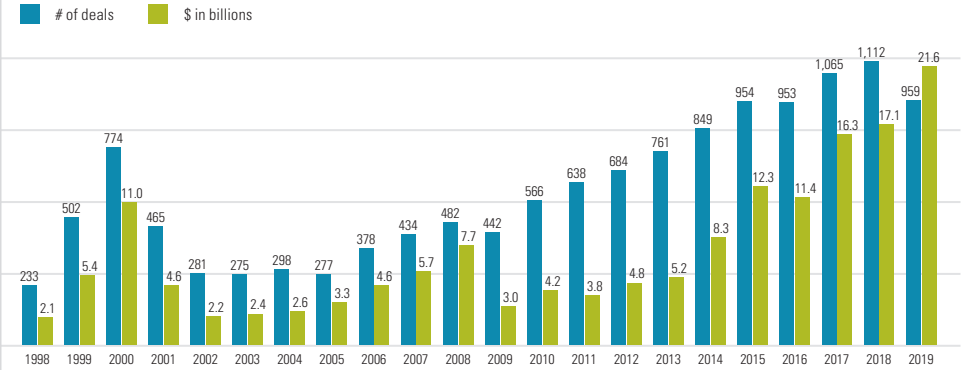
Technology and consumer goods and services companies each accounted for 29% of the tri-state region's VC financings in 2019, followed by business and financial services companies with 27% and life sciences companies with 18%.

There were eleven VC-backed IPOs in the tri-state region in 2019, up from seven in the prior year. New York produced seven of these IPOs, with Pennsylvania contributing three and New Jersey adding one. The four largest venture-backed IPOs in the region came from technology companies, led by Peloton ($1.16 billion) and Datadog ($648 million).

The number of reported acquisitions of VC-backed companies in the tri-state region increased by 15%, from 115 in 2018 to a record-high tally of 132 in 2019. New York generated 99 deals in 2019, followed by Pennsylvania with 23 and New Jersey with ten. The region's largest M&A transactions were Broadcom's $10.7 billion acquisition of Bay Dynamics and Taboola's $850 million acquisition of Outbrain.

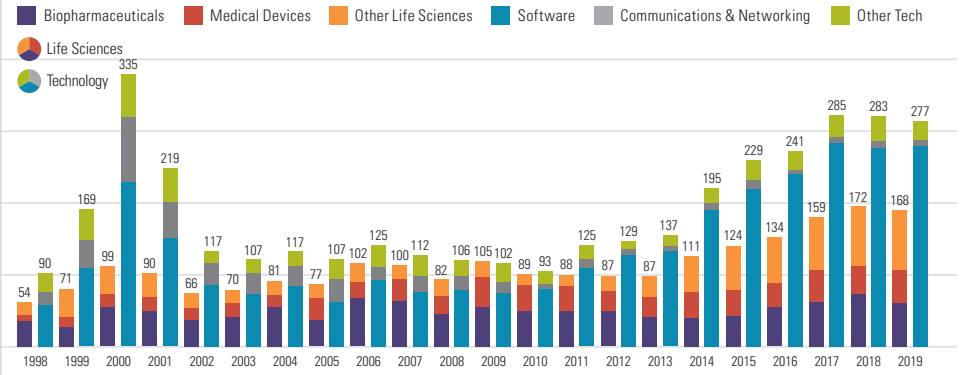
With strength across a broad array of industry sectors, including consumer, technology and life sciences, the tri-state region should continue to produce attractive financing candidates in the coming year, although further growth in liquidity events will depend in part on macroeconomic conditions. ■

Tri-State Venture Capital Financings – 1998 to 2019



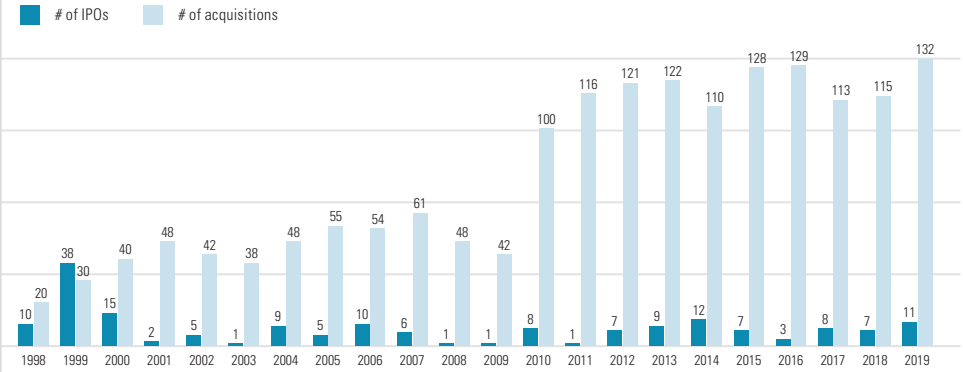
Source: Dow Jones VentureSource

Tri-State Venture Capital Financings by Selected Industry – 1998 to 2019



Source: Dow Jones VentureSource

Tri-State Venture-Backed IPOs and Acquisitions – 1998 to 2019



Source: Dow Jones VentureSource

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generation bio	28 TWENTYEIGHT-SEVEN	STASH	RIGUP	1366 technologies	Eko	affirmed	SOLIDUS LABS CRYPTO-NATIVE COMPLIANCE
$110,000,000	$82,750,000	$112,000,000	$300,000,000	$18,000,000	$20,000,000	$38,000,000	$3,000,000
Third Round	*First Round*	*Late Stage*	*Fourth Round*	*Late Stage*	*Second Round*	*Late Stage*	*Seed Round*
January 2020	March 2019	February 2020	October 2019	December 2019	May 2019	February 2019	February 2019

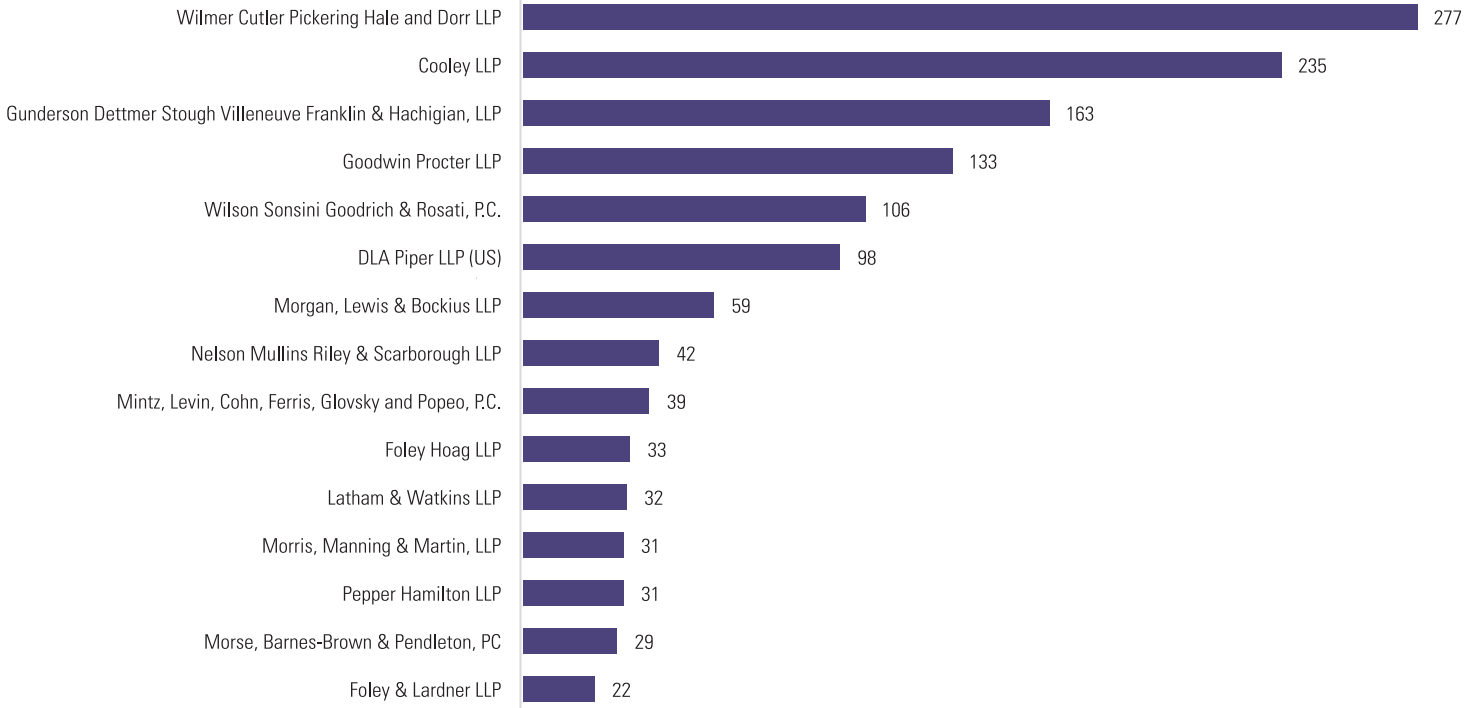
ALTIOSTAR	ribometrix	ACCION SYSTEMS	ZERONORTH	ribon therapeutics	embark	SCHRÖDINGER	jebbit	federated wireless
$82,680,000	$7,800,000	$11,000,000	$10,000,000	$65,000,000	$12,900,000	$110,000,000	$12,000,000	$65,000,000
Strategic Round	*Second Round*	*Second Round*	*Second Round*	*Second Round*	*Second Round*	*Late Stage*	*Second Round*	*Third Round*
April 2019	September 2019	December 2019	March 2020	December 2018	March 2019	May 2019	March 2019	September 2019

mineraltree	PANDION THERAPEUTICS	Capella Space	carisma THERAPEUTICS	Embr Labs	OWL Labs	Fulcrum Therapeutics	GRADIENT
$50,000,000	$80,000,000	$29,400,000	$53,000,000	$6,000,000	$15,000,000	$80,000,000	$6,000,000
Late Stage	*Second Round*	*Second Round*	*First Round*	*Second Round*	*Third Round*	*Second Round*	*First Round*
March 2019	March 2020	November 2019	June 2018	September 2019	March 2019	August 2018	September 2019

Alairion	RunSafe SECURITY	RIGHTHAND ROBOTICS	alyce	BIOCATCH Less Friction · Less Fraud	nference	Werewolf THERAPEUTICS
$12,900,000	$9,800,000	$23,000,000	$11,500,000	$145,000,000	$60,000,000	$56,000,000
Seed Round	*First Round*	*Second Round*	*First Round*	*Late Stage*	*Second Round*	*First Round*
December 2019	November 2019	December 2018	June 2019	March 2020	July 2019	August 2019

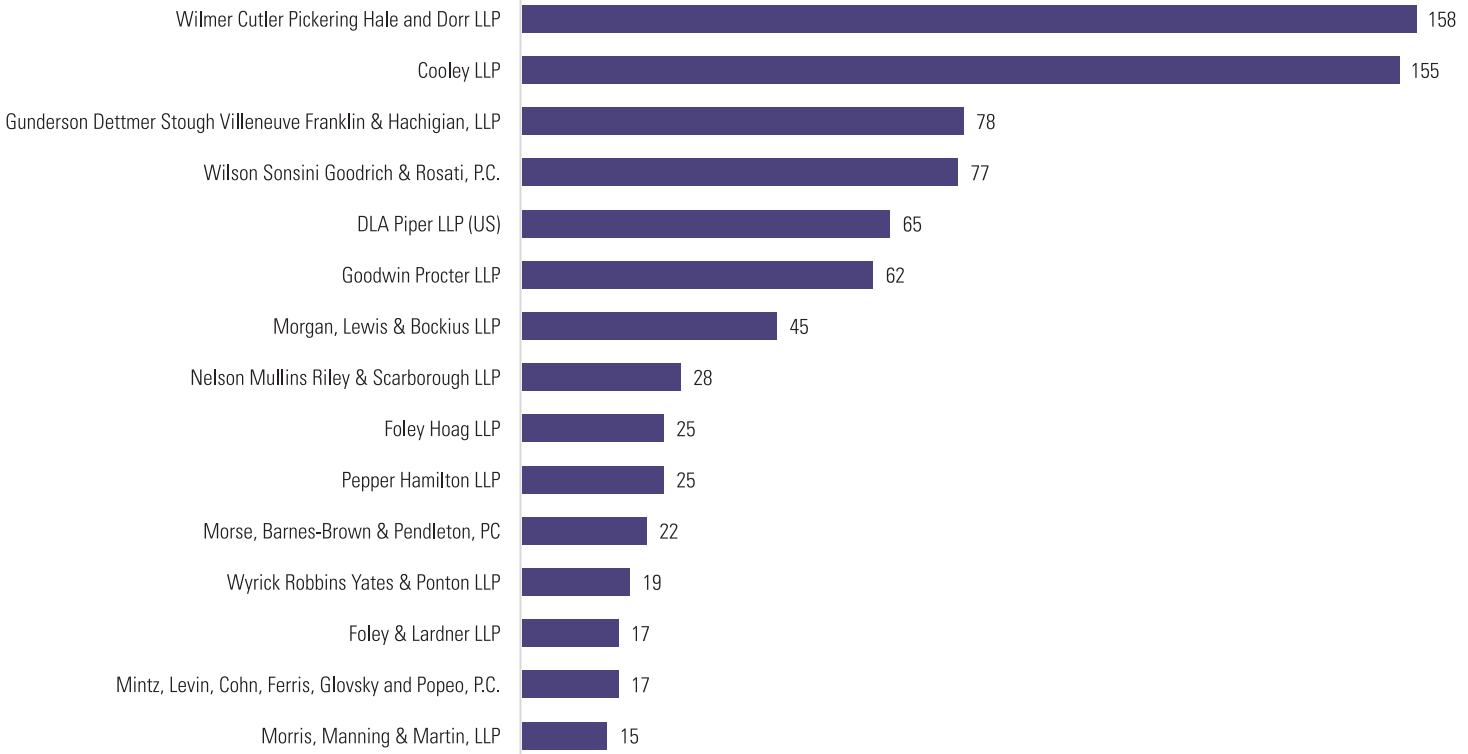
WILMERHALE

Counsel to Eastern US Technology and Life Sciences Companies Receiving VC Financing – 2008 to 2019



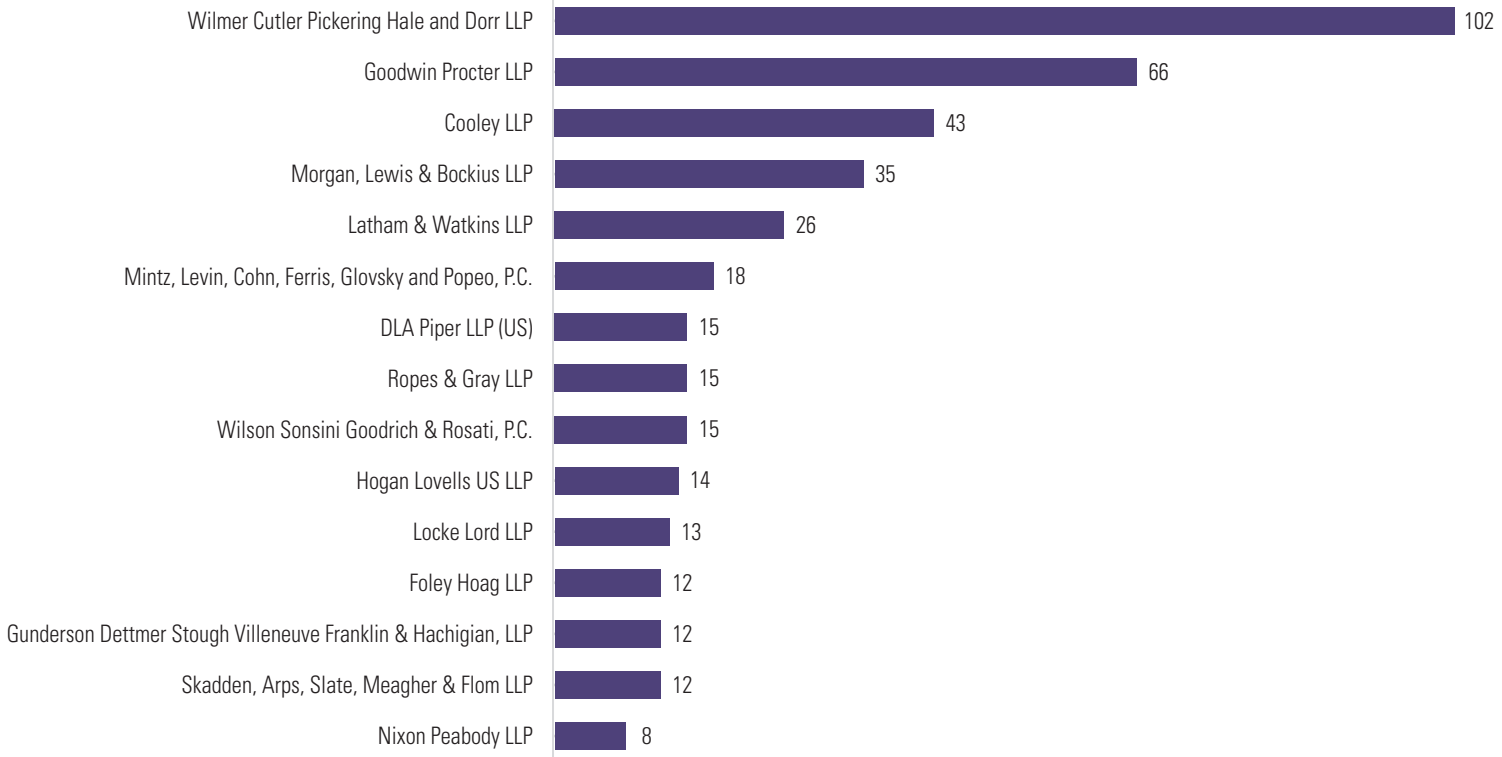
The above chart is based on VC-backed companies located east of the Mississippi River that were private and independent as of the end of 2018.
Source: Dow Jones VentureSource

Counsel to Eastern US VC-Backed Technology and Life Sciences Companies at Year-End 2019



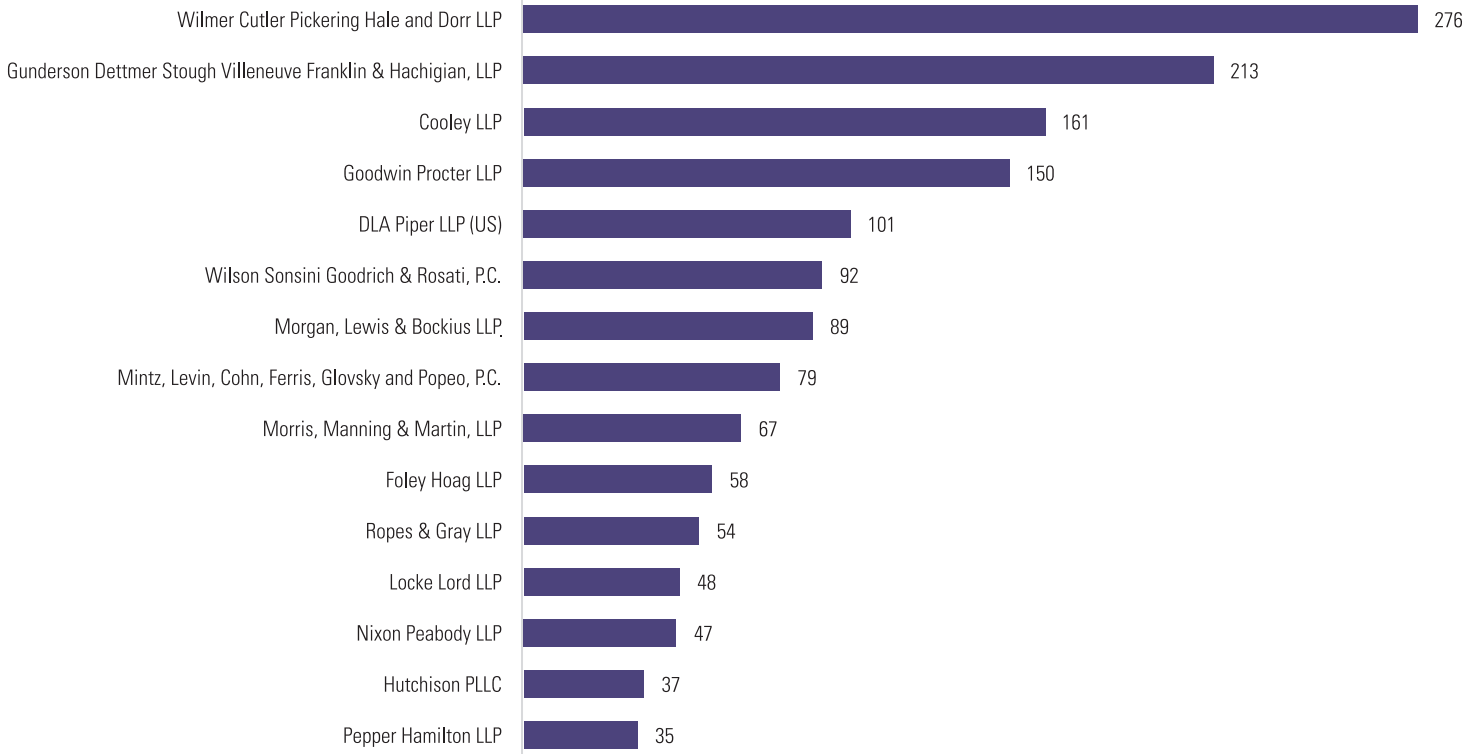
The above chart is based on VC-backed companies located east of the Mississippi River that were private and independent as of the end of 2018.
Source: Dow Jones VentureSource

Company Counsel in Eastern US VC-Backed IPOs – 1996 to 2019



The above chart is based on VC-backed companies located east of the Mississippi River.
Source: Dow Jones VentureSource and SEC filings

Counsel in Sales of Eastern US VC-Backed Companies – 1996 to 2019



The above chart is based on VC-backed companies located east of the Mississippi River.
Source: Dow Jones VentureSource

Secondary Sales of Private Company Stock: Important Tax Considerations

Venture-backed companies are staying private longer than ever. Holders of stock in those companies—particularly founders and early employees, as well as angel investors—often become impatient waiting for liquidity through a company sale or IPO. As a result, resales of outstanding shares of private company stock (referred to as secondary sales) have grown in popularity. Secondary sales are made to current or new investors, often in connection with a company financing, or sometimes made directly to the company (referred to as a company buyback).

While secondary sales can provide stockholders with desired liquidity, companies and stockholders should be mindful of several tax considerations, which are summarized below. Other considerations, such as corporate and securities laws, must also be taken into account in structuring secondary sales.

COMPENSATION INCOME

Typically, when an investor purchases outstanding common stock from employee-stockholders in conjunction with a preferred stock financing, the investor is willing to purchase the common stock for the same price it is paying the company for the preferred stock (or at a discount—perhaps 10–15%—to that price). In some cases, the investor is unwilling to purchase common stock directly from employees but permits the company to use a portion of the financing proceeds to repurchase common stock from employees at the preferred stock price (or at a discount to that price).

If the price paid to an employee for common stock exceeds its fair market value, the premium may be taxed as compensation income rather than capital gain, depending on factors such as who the purchaser is, whether non-employee stockholders participated in the sales, and the purpose of the sales. If the company is the purchaser, the premium generally will be compensation income, subject to income tax reporting and withholding, unless there is a strong business purpose for the purchase unrelated to employee retention and compensation. If an investor (particularly a new investor) is the purchaser, the premium is less likely to be treated as compensation. Another factor weighing in favor of non-compensatory treatment is whether non-employee stockholders participated in the sales on the same terms as employee stockholders, though the strength of this factor will depend on the level of participation.

DIVIDEND TREATMENT

If the company is the purchaser, the purchase price (other than any premium that is treated as compensation income) may be treated as dividend income if the company has "earnings and profits" for tax purposes. A company buyback is generally treated as a dividend rather than a sale of stock to the extent a stockholder's proportionate interest in the company is not substantially reduced as a result of the repurchase. A sale of stock generally results in capital gain equal to the purchase price less the holder's tax basis in the stock. Although dividends generally are taxed at the same rate as long-term capital gain if holding period requirements are satisfied, any amount treated as a dividend would not be reduced by the holder's tax basis in the repurchased stock, and dividend income would not be eligible for the qualified small business stock exclusion discussed below.

IMPACT ON SECTION 409A VALUATION

Most venture-backed companies periodically obtain common stock valuations from an independent third party so that employee option grants are exempt from the deferred compensation rules under Section 409A of the Internal Revenue Code. For an exemption to apply, options must have an exercise price at least equal to the fair market value of the underlying stock on the date of grant. Secondary sales at a premium to the common stock valuation may affect the company's next Section 409A valuation because IRS regulations require the valuation firm to consider such sales in its valuation. Depending on the frequency and other facts of the secondary sales and the methodologies used by the valuation firm, the impact may not be significant (for example, if the sales are determined to be isolated). Prior to participating in a secondary sale, the company should discuss the potential impact of the sale with its valuation firm.

QSBS ELIGIBILITY

A portion of the gain (100% in the case of stock issued after September 27, 2010) from the sale of qualified small business stock (QSBS) held for more than five years is excludible from the holder's income, generally up to a cap equal to the greater of $10,000,000 or ten times the holder's tax basis in the stock. In order to be QSBS, stock must meet various requirements under Section 1202 of the Internal Revenue Code, and stock purchased by an investor in a secondary sale does not qualify as QSBS. For this reason, investors may be unwilling to purchase stock from existing stockholders and may prefer company buybacks out of a portion of the company's financing proceeds. However, company buybacks may prevent stock issued during specified periods before or after the buyback from qualifying as QSBS. Before engaging in a company buyback, the company should confirm that the buyback will not adversely affect the anticipated QSBS treatment for stockholders.

OPTIONS

Employees may need to exercise options to participate in a secondary sale. Conditional option exercises or cashless exercises in conjunction with secondary sales may result in the modification of an incentive stock option (ISO). In general, following modification of an ISO, income and employment tax withholding would apply to the ordinary income resulting from the exercise of the option. Income and employment tax withholding does not generally apply to the exercise of an ISO or disqualifying disposition of stock acquired upon exercise of an ISO. Alternatively, rather than repurchasing shares issued upon employee option exercises, the company could cancel the options in exchange for a cash payment. While income and employment tax withholding would apply to the cash payment, cancellation of the option in exchange for a cash payment would avoid the adverse tax consequences resulting from potential dividend treatment discussed above. ■

Designing a new stock inventive plan involves numerous decisions. Two of the most important address the types of awards and number of shares that will be available under the plan. For a variety of reasons, the typical approach to these and other topics is different for startup companies and IPO companies.

TYPES OF AWARDS

Startup companies usually adopt a stock incentive plan providing for the grant of equity incentives in the form of restricted stock, stock options qualifying as incentive stock options (ISOs) under Section 422 of the Internal Revenue Code, and options not qualifying as ISOs (NSOs). Although stock incentive plans often permit the grant of other types of stock-based awards, private companies tend to stick to restricted stock and stock options because they are familiar to employees and easy to administer.

The primary differences among restricted stock, ISOs and NSOs relate to tax treatment. For employees, as long as the fair market value of the common stock is low, the purchase of restricted stock at fair market value coupled with a Section 83(b) election is generally preferable because no tax is payable until the shares are sold, all appreciation is capital gain and the "alternative minimum tax" does not apply. After the fair market value increases to the point where the purchase of restricted stock represents a significant investment risk, employees may prefer options over shares of restricted stock, and may prefer ISOs over NSOs because the tax on the difference between the fair market value of the stock at the time of option exercise and the exercise price is generally deferred until the employee sells the stock, and the exercise of ISOs does not trigger income tax withholding or additional Social Security taxes. (These advantages may be reduced, however, by application of the alternative minimum tax.)

PLAN SIZE

Startup companies almost universally rely on equity incentives to motivate employees and conserve cash. To provide ample headroom for anticipated company growth, initial plan size often represents a fairly large percentage of total capitalization and plan size is routinely increased as needed, subject to limitations imposed by investors.

TRANSITION TO PUBLIC COMPANY PLAN

As part of its IPO preparations, a company going public will generally adopt a new stock incentive plan. A variety of securities, tax, corporate governance, executive compensation and accounting considerations must be addressed to devise a new plan that meets the company's needs, is suitable for a public company, and satisfies all relevant constituencies.

The terms and administration of IPO company stock incentive plans typically differ from private company plans in several respects:

- *Types of Awards*: Additional types of equity awards, such as stock appreciation rights (SARs), restricted stock units (RSUs), performance awards and tandem awards, are usually allowed.
- *Evergreen Provisions*: "Evergreen" provisions are often included, under which the number of plan shares is subject to an automatic annual increase for a stated number of years (typically ten) equal to a specified percentage of the total number of shares outstanding at the end of the previous fiscal year.
- *Repricing Prohibition*: Both Nasdaq and the NYSE prohibit the repricing of options and SARs without stockholder approval unless the stockholder-approved plan under which the awards are granted explicitly permits repricings without stockholder approval. Most public company stock plans prohibit repricings without stockholder approval because of the intense investor disfavor surrounding repricings.
- *Broker-Assisted Exercises*: In a public company, options are most frequently exercised through a broker facility under which shares subject to the option are sold to cover the exercise price and withholding taxes, rather than through cash payment by the optionholder.
- *Section 16*: Grants to directors and officers are usually structured to qualify for an exemption from the short-swing liability provisions of Section 16 of the Securities Exchange Act of 1934.
- *Outside Director Compensation Limits*: Limits on non-employee director compensation—which frequently apply to both cash and equity awards—have become much more prevalent in light of lawsuits that have challenged excessive director compensation even when the equity grants providing such compensation were made under stockholder-approved plans.

Since is it much simpler for privately held companies to obtain stockholder approval, companies going public typically adopt a new plan prior to the IPO and authorize sufficient shares to delay for several years the need for public stockholder approval of a plan increase. By using an evergreen provision, it is even possible to structure a plan so that public stockholder approval of a plan increase is never required. ■

SELECTED PLAN METRICS

As benchmarks, among all US companies completing IPOs between 2015 and 2019 (2018 and 2019 only, for limits on director compensation):

- The number of shares reserved for issuance under all company stock plans represented a median of 14.9% of the company's fully diluted shares outstanding upon completion of the IPO.
- The number of shares reserved for issuance under the new, post-IPO stock incentive plan represented a median of 7.6% of the company's fully diluted shares outstanding upon completion of the IPO.
- An evergreen provision was present in 64% of all post-IPO stock incentive plans, with a median size of the automatic annual increase equal to 4.0% (typically subject to reduction in the board's discretion).
- Three-fourths of all post-IPO stock incentive plans included limits on non-employee director compensation, with the median annual limit being $750,000, and 51% of such plans provided that the annual limit was higher for the calendar year in which a non-employee director is first appointed or elected to the board.

Privacy Considerations for Startups

Startups in any industry have a lot to think about: funding, staffing, intellectual property, market share and product viability, among other considerations. Another important topic in an increasing range of situations is privacy law.

Privacy law (and its cousin, data security law) now impacts virtually every company in every industry, anywhere in the world, that gathers, collects, uses or analyzes the personal data of employees, customers, consumers or others. As a consequence of the Internet of Things and smart phones, as well as the ability to collect data from almost anything, more and more companies are using and gathering data, and privacy law increasingly will dictate how a company can use this valuable asset. Privacy issues affect a broad range of critical topics for startups, including business partnerships, overall business plan issues, market opportunities and, of course, realistic acquisition opportunities. Startups that fail to think about these issues from the beginning may be missing opportunities and reducing their chances for future success.

A BRIEF HISTORY

Privacy began as a constitutional law topic and did not become a significant issue for American businesses until the mid-1990s. From its tentative and narrow beginnings, privacy law is now an enormous compliance and regulatory issue for nearly all companies across all industries. Privacy is relevant for company data on employees, customers, consumers or anyone else. It is front-page news on a regular basis, leading to highly publicized concerns about artificial intelligence, big data, discrimination and a broad variety of privacy concerns. It is a top-of-mind issue for consumer advocates, regulators and legislators around the country and world.

KEY CONCEPTS

Three related concepts are key in privacy law:

- "Privacy" means the laws, regulations and practices surrounding how personal data is used, gathered, maintained and disclosed.
- "Security" means the laws, regulations and practices surrounding how personal information is protected from unintended and impermissible activity.
- "Cybersecurity" refers to protection of the overall technological infrastructure—with a focus on national security and Internet interconnections—which may or may not involve personal data.

PRIVACY IN THE UNITED STATES

The United States has a large and growing number of privacy laws and regulations at the state and federal levels. To date, these laws have been specific to industry segment (such as health care and banking) or to business practice (such as telemarketing). There is no generally applicable US privacy law at the federal level covering all industries and all data (although that may be changing), but there is increasing complexity within the regulatory environment. The United States is beginning to see state-level laws (such as the California Consumer Privacy Act) that apply across industries. A new set of "specialty" privacy laws dealing with emerging technologies like facial recognition and location data is also becoming more common. In addition, US law requires any company that collects personal information to provide "reasonable and appropriate" security for that information.

OUTSIDE THE UNITED STATES

A growing number of countries have separate privacy and security rules related to data in or originating from those countries. Where these laws exist, the rules usually are tougher than in the United States—meaning that they are more protective of individual privacy. Many of these laws apply to US companies, either because those companies have a presence in these countries or because of the "extra-territorial reach" of these laws (such as the General Data Protection Regulation in Europe).

GOING FORWARD

Privacy law issues affect a broad range of company operations, including core corporate strategy issues. For example, given that current US law is primarily sectoral, determining the exact sectors in which a company operates is crucial. In the healthcare space, if a company's business model is direct to consumer, the company typically has only modest legal obligations. If the company partners with health insurers or hospitals, it is likely subject to the HIPAA privacy and security rules as a service provider to these entities. Where a company operates its business also matters in evaluating whether the company is subject to state-specific laws or laws in other countries. These principles matter for overall compliance, product design, customer and vendor relationships, marketing opportunities and, critically, mergers and acquisition activity, given that acquirers now are drilling down into data assets, data rights and privacy, and security compliance.

The privacy area is evolving rapidly and likely will continue to do so for the foreseeable future. Other states may follow California in passing broad-based privacy laws. The federal government is likely to pass a national privacy law in the next five years. New technologies raise concerns, as does the use of artificial intelligence and algorithms. Startups should plan for these issues from the outset, as it does not take much to consider them, but companies may face real risks and missed opportunities if they don't think about them at all. ■

KEY PRIVACY ISSUES TO CONSIDER

Startups should consider the following questions right from the start:

- Data flows—what data are we generating?
- From where are we obtaining other data? Do we (or our source) have the necessary permissions and rights?
- Are we collecting or using sensitive data, including health, financial, genetic, biometrics, facial recognition or location data?
- Can we "aggregate" data for analytics or product improvement?
- Can we legally or practically de-identify the data?
- What are we doing with our data?
- What rights do we have in the data?
- Are we interested in selling the data?
- What happens to relevant data at the end of a client relationship?
- Who are our customers and partners?

We reviewed all merger transactions between 2012 and 2019 involving venture-backed targets (as reported in either Dow Jones VentureSource or Pitchbook for 2019 or in Dow Jones VentureSource for years prior to 2019) in which the merger documentation was publicly available and the deal value was $25 million or more. Based on this review, we have compiled the following deal data:[1]

Characteristics of Deals Reviewed	2012	2013	2014	2015	2016	2017	2018	2019
Sample Size	26	27	37	27	19	18	37	20
Cash	73%	59%	59%	67%	53%	56%	84%	60%
Stock	8%	11%	6%	4%	0%	0%	3%	0%
Cash and Stock	19%	30%	35%	29%	47%	44%	13%	40%
Deals with Earnout	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
With Earnout	31%	33%	30%	26%	37%	22%	32%	40%
Without Earnout	69%	67%	70%	74%	63%	78%	68%	60%
Deals with Indemnification	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
With Indemnification								
By Target's Shareholders	100%	100%	97%	100%	100%[2]	94%[3]	84%	80%
By Buyer	62%	44%	49%	69%	37%	61%	39%	45%
Survival of Representations and Warranties[4]	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Shortest	10 Mos.	12 Mos.	12 Mos.	12 Mos.	12 Mos.	9 Mos.	12 Mos.	12 Mos.
Longest	24 Mos.	30 Mos.	24 Mos.	24 Mos.	18 Mos.	24 Mos.	24 Mos.	24 Mos.
Most Frequent	18 Mos.	18 Mos.	12 &18 Mos. (tie)	18 Mos.)	18 Mos.	12 Mos.	18 Mos.	18 Mos.
Caps on Indemnification Obligations	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
With Cap	100%	100%	100%	100%	100%	100%	100%	100%
Limited to Escrow	81%	88%	89%	79%	83%	94%[6]	79%	86%
Limited to Purchase Price	0%	0%	0%	0%	0%	0%	0%	0%
Exceptions to Limits[5]	96%	100%	100%	100%	95%	94%	100%	100%
Without Cap	0%	0%	0%	0%	0%	0%	0%	0%
Escrows	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
With Escrow	100%	93%[7]	100%	93%	89%	100%	90%[7]	94%
% of Deal Value								
Lowest[8]	5%	5%	2%	4%	5%	4%	3%	10%
Highest	16%	20%	16%	16%	15%	13%	15%	13%
Most Frequent	10%	10%	10%	10%	10%	5%	10%	12%
Length of Time[9]								
Shortest	10 Mos.	12 Mos.	12 Mos.	12 Mos.	12 Mos.	9 Mos.	12 Mos.	12 Mos.
Longest	48 Mos.	30 Mos.	24 Mos.	36 Mos.	24 Mos.	24 Mos.	36 Mos.	36 Mos.
Most Frequent	12 Mos.	18 Mos.	12 Mos.	12 & 18 Mos. (tie)	18 Mos.	12 & 18 Mos. (tie)	18 Mos.	12 Mos.
Exclusive Remedy	73%	60%	86%	63%	88%	71%	72%	64%
Exceptions to Escrow Limit Where Escrow Was Exclusive Remedy[5]	100%	100%	100%	100%	93%	92%	100%	100%
Baskets for Indemnification	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Deductible[10]	27%	50%	44%	31%	47%	63%	47%	56%
Threshold[10]	65%	42%	56%	61%	53%	37%	53%	44%
MAE Closing Condition	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Condition in Favor of Buyer	95%	100%	97%	100%	100%	94%	100%	100%
Condition in Favor of Target	9%	17%	19%	12%	39%	22%	12%	35%
Exceptions to MAE	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
With Exception[11]	84%[12]	96%[13]	100%	100%	100%	100%	97%[13]	100%

1 For certain transactions, certain deal terms have been redacted from the publicly available documentation and are not reflected in the data compiled below.

2 Includes one transaction where the only representations that survive for purposes of indemnification are certain "fundamental" representations and representations concerning material contracts and intellectual property.

3 Includes one transaction where the only representations that survive for purposes of indemnification are those concerning capitalization, financial statements and undisclosed liabilities, but excludes one transaction where indemnification was provided for breaches of covenants prior to the closing but representations did not survive for purposes of indemnification.

4 Measured for representations and warranties generally; specified representations and warranties may survive longer.

5 Generally, exceptions were for fraud, willful misrepresentation and certain "fundamental" representations commonly including capitalization, authority and validity. In a limited number of transactions, exceptions also included intellectual property representations.

6 Includes two transactions where the limit was below the escrow amount.

7 One transaction not including an escrow at closing did require funding of escrow with proceeds of earnout payments.

8 Excludes transactions which also specifically referred to representation and warranty insurance as recourse for the buyer.

9 Length of time does not include transactions where such time period cannot be ascertained from publicly available documentation.

10 A "hybrid" approach with both a deductible and a threshold was used in another 8% of these transactions in 2012, 8% of these transactions in 2013, and 8% of these transactions in 2015.

11 Generally, exceptions were for general economic and industry conditions.

12 Includes one transaction where the specified exceptions apply for purposes of a standalone "material adverse effect" closing condition and certain representations, but do not apply for purposes of other representations.

13 The only transaction not including such exceptions provided for a closing on the same day the definitive agreement was signed.

Trends in Convertible Note and SAFE Terms

Based on hundreds of convertible note and SAFE (simple agreements for future equity) financing transactions we handled from 2015 to 2019 for companies and investors, we have compiled the following deal data:

Deals with Purchase Agreement		2015	2016	2017	2018	2019
If included, a purchase agreement typically contains representations and warranties from the company (and possibly the founders).	% of deals	74%	67%	57%	40%	63%
Term		**2015**	**2016**	**2017**	**2018**	**2019**
The term of the convertible note before it matures.	Median	18 mos.	18 mos.	18 mos.	12 mos.	17 mos.
	Range	4–60 mos.	2–60 mos.	1–60 mos.	3–24 mos.	12–36 mos.
Interest Rate		**2015**	**2016**	**2017**	**2018**	**2019**
The rate at which interest accrues during the term of the convertible note.	Median	5%	5%	6%	5%	6%
	Range	2%–14%	0.64%–10%	2%–10%	2%–8%	3%–15%
Deals with Security Interest		**2015**	**2016**	**2017**	**2018**	**2019**
Convertible note investors sometimes require the company to provide a security interest in company assets.	% secured	15%	13%	16%	10%	15%
	% unsecured	85%	87%	84%	90%	85%
Deals with Conversion Discount		**2015**	**2016**	**2017**	**2018**	**2019**
Convertible note and SAFE investors often require that conversion in connection with an equity financing be at a discount from the price paid by new investors in the financing. A conversion discount is often coupled with a cap on the valuation at which conversion occurs.	% of deals	89%	72%	72%	77%	70%
	Range of discounts	10%–50%	10%–50%	8%–30%	10%–25%	10%–25%
	% with ≤ 20% discount	74%	69%	98%	91%	95%
	% with > 20% discount	26%	31%	2%	9%	5%
	% with valuation cap	55%	64%	82%	57%	42%
Deals with Conversion upon Maturity		**2015**	**2016**	**2017**	**2018**	**2019**
If a convertible note is not converted or otherwise paid upon maturity, it often converts into shares of the company's common stock or preferred stock. This conversion is most often at the election of the investor but may be mandatory.	% of deals	60%	50%	39%	27%	44%
	% with optional conversion	89%	89%	91%	75%	92%
	% with mandatory conversion	11%	11%	9%	25%	8%
	% that convert into:					
	common stock	32%	41%	42%	38%	33%
	preferred stock	68%	59%	58%	62%	67%
Deals with Conversion upon Company Sale		**2015**	**2016**	**2017**	**2018**	**2019**
If a convertible note or SAFE is outstanding at the time of a sale of the company, it often converts into shares of the company's common stock or preferred stock. This conversion is most often at the election of the investor but may be mandatory.	% of deals	74%	46%	61%	57%	56%
	% with optional conversion	91%	92%	93%	88%	73%
	% with mandatory conversion	9%	8%	7%	12%	27%
	% that convert into:					
	common stock	49%	56%	71%	82%	67%
	preferred stock	51%	44%	29%	18%	33%
Deals with Repayment Premium upon Company Sale		**2015**	**2016**	**2017**	**2018**	**2019**
Investors may require that they receive a multiple of the outstanding investment amount in connection with a sale of the company.	% of deals	53%	57%	59%	57%	37%
	Median premium	2x	2x	2x	2x	2x
	Range of premiums	1.5x–4x	0.5x–3x	1.5x–4.1x	1.2x–2x	1.5x–3x
Deals with Warrant Coverage		**2015**	**2016**	**2017**	**2018**	**2019**
Investors sometimes receive a warrant in addition to their note or SAFE. The amount of company stock covered by the warrant is usually proportional to the investment amount, referred to as the warrant coverage.	% of deals	4%	17%	8%	10%	15%
	Coverage range	Insufficient data	5%–50%	5%–100%	25%–65%	10%–35%
	% that cover common	50%	0%	20%	33%	50%
	% that cover preferred	50%	100%	80%	67%	25%
	% that cover common or preferred (depending on the circumstances)	–	–	0%	0%	25%

Explanatory Note : By their nature, SAFEs do not have maturity dates, interest rates or security interests.

Based on hundreds of venture capital financing transactions we handled from 2014 to 2019 for companies and investors, we have compiled the following deal data:

Deals with Multiple Liquidation Preferences		2014	2014 Range	2015	2015 Range	2016	2016 Range	2017	2017 Range	2018	2018 Range	2019	2019 Range
A "multiple liquidation preference" entitles holders of preferred stock to receive more than 1x their money back before sale or liquidation proceeds are distributed to holders of common stock.	First round	0%	N/A	2%	1.5x (all)	0%	N/A	3%	1.08x–2x	3%	1.5x	2%	1.5x (one deal)
	Post-first round	3%	1.5x (all)	4%	1.5x–2x	4%	1.12x–1.25x	8%	1.32x–3x	3%	1.5x–2.5x	4%	1.5x–2x

Deals with Participating Preferred Stock		2014	2014 Range	2015	2015 Range	2016	2016 Range	2017	2017 Range	2018	2018 Range	2019	2019 Range
"Participating preferred" stock entitles holders to receive a stated liquidation preference plus a pro-rata share (on an as-converted basis) of any remaining proceeds available for distribution to holders of common stock.	First round												
	Total	12%		6%		13%		10%		13%		14%	
	Capped	40%	3x–5x	100%	2x–3x	Insufficient data		14%	2x (one deal)	0%	N/A	38%	1x–3x
	Post–first round												
	Total	19%		19%		28%		16%		31%		11%	
	Capped	45%	2x–5x	50%	2x–5x	34%	2x–5x	56%	2x–2.5x	41%	2x–5x	17%	1.6x–3.5x

Deals with an Accruing Dividend		2014	2015	2016	2017	2018	2019
"Accruing dividends" are generally payable upon liquidation or redemption of the preferred stock, effectively increasing the liquidation preference of the preferred stock.	First round	11%	12%	23%	8%	7%	10%
	Post–first round	22%	25%	30%	26%	24%	15%

Anti-Dilution Provisions		2014	2015	2016	2017	2018	2019
A "full ratchet" anti-dilution formula provides that the conversion price of the preferred stock will be reduced to the price paid in the dilutive issuance, regardless of how many shares are involved in the dilutive issuance. In contrast, a "weighted average" anti-dilution formula takes into account the dilutive impact based upon the number of shares and the price involved in the dilutive issuance and the number of shares outstanding before and after the dilutive issuance.	First round						
	Full ratchet	0%	0%	0%	0%	0%	0%
	Weighted average	100%	100%	100%	100%	100%	100%
	Post–first round						
	Full ratchet	1%	0%	1%	0%	1%	2%
	Weighted average	99%	100%	99%	100%	99%	98%

Deals with Pay-to-Play Provisions		2014	2015	2016	2017	2018	2019
"Pay-to-play" provisions provide an incentive to investors to invest in future down rounds of financing. Investors that do not purchase their full pro-rata share in a future down round lose certain rights (e.g., their anti-dilution rights are taken away or their shares of preferred stock may be converted into common stock).	Total	8%	5%	10%	7%	7%	8%
	% of total that convert into common stock	53%	71%	94%	83%	100%	92%
	% of total that convert into shadow preferred stock	47%	29%	6%	17%	0%	8%

Explanatory Note : "First round" refers to a company's first priced preferred stock financing regardless of round designation.

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Data Sources: WilmerHale compiled all data in this report from Dow Jones VentureSource, except as otherwise indicated. For law firm rankings, IPOs by VC-backed companies and sales of VC-backed companies are included under the current name of each law firm.

Special note on data: Due to delayed reporting of some transactions, the venture capital financing and M&A data discussed in this report is likely to be adjusted over time as additional deals are reported. Based on historical experience, the number of reported venture capital financing and M&A transactions is likely to increase by approximately 5–10% in the first year following the initial release of data and by smaller amounts in succeeding years, and other venture capital financing and M&A data is likely to be adjusted to reflect the inclusion of additional deals.

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