



Japan-U.S. Entrepreneurial Forum

Economic Revitalization
Through Entrepreneurship

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FORMATION OF VENTURE CAPITAL FUND

- Use of Limited Liability Business Entities
- Management of the Venture Fund
- Private Offering to Qualified Investors
- Investment by Retirement Funds
- Respecting/Avoiding Regulatory Rules

PORTFOLIO COMPANY INVESTMENTS

- Technology Company Investments
- Getting to the Term Sheet
- Due Diligence Investigations
- Series Preferred Stock Investments
- Convertible Subordinate Note Investments
- Warrants and Other Incentives
- Investors' Rights and Protection

INTELLECTUAL PROPERTY CONCERNS

- Effect of Domestic Patent/Trademark Registrations
- Effect of Foreign IP Registrations
- Protecting Trade Secrets/Confidentiality
- Assignment of Developers' Rights
- Derivatives, Upgrades and Modifications
- Effective Transfer of Rights

U.S. FEDERAL SECURITIES LAWS

- All Investments Are Regulated Securities
- Exemptions From Securities Registration
- Regulation D
- Section 4(2)
- Rule 701
- States Also Regulate Securities

FIDUCIARY DUTIES OF INVESTORS

- Fund's Fiduciary Duties
- Directors' Fiduciary Duties
- Avoiding Conflicts of Interest
- Business Judgment Rule
- Effect of Insolvency
- Merging Portfolio Companies

DILUTIVE FINANCINGS

- Bridge Financing and Senior Debt
- Simple Down-Round Financings
- Reset Financings
- “Cram-Downs”, “Washouts”, “Pay-To-Play”, and “Death Spiral”
- Investor/Director Conflicts of Interest
- Waivers and Consents From Existing Investors

CHANGING TRENDS IN VENTURE CAPITAL DEAL TERMS

- Lower Valuations
- Staggered Financings
- Increased Liquidation Preferences
- Participating Preferred Stock
- Full Ratchet vs Weighted-Average Anti-Dilution
- Redemption Rights
- Dividends
- Protective Provisions
- Directors and Management

EXITING THE INVESTMENT

- Initial Public Offering
- Sale of the Company for Stock or Cash
- Merger With Other Portfolio Company
- Redemption and Put Rights
- Liquidation of Company and Preferences
- Replacing Management

INTERNATIONAL INVESTMENTS

- Whether to Invest in Foreign Company or Local Affiliate
- Differences in Applicable Law/Enforceability of Contract Provisions
- Differences in Business Culture
- Differences in Legal Language and Custom
- Currency Conversion Issues
- Limitations on Liquidity of Investment