

## 2009 Venture Financing in Review— A Challenging Year Ends with Reasons for Optimism\*

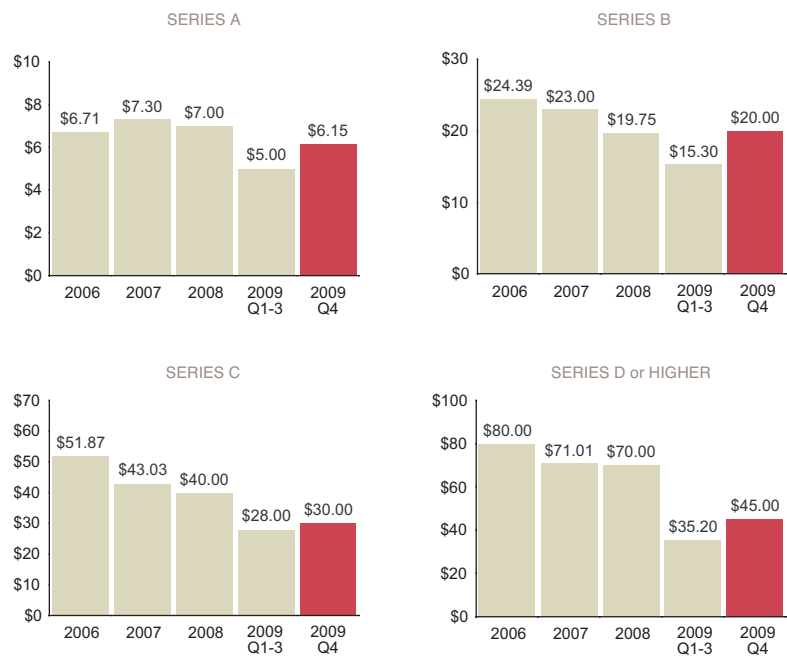
Unlike 2008, which ended with a painful final quarter after a reasonably solid initial three quarters, 2009 ended with a strong fourth quarter after a difficult start and slow incremental progress during the year. As 2009 came to a close, there were definite signs of improvement in the final quarter. Both the number of deals and the aggregate dollars raised increased from the prior quarter, which in turn had increased over the prior two quarters. Also worth noting was the direction of median pre-money valuations. We saw steady increases in median pre-money valuations for all series during the fourth quarter, as compared to the average over the prior three quarters. Up rounds continued to increase over earlier quarters, as flat and down rounds decreased, although a majority of deals continued to be either down or flat rounds.

During the fourth quarter, basic deal terms continued to show signs of slow improvement. 58% of the deals during the fourth quarter included fully participating preferred, which is down slightly as compared to the first three quarters of the year. Additionally, fewer later round deals had multiple liquidation preferences than during prior quarters. Also continuing this trend, 13% of deals during the fourth quarter included pay to play provisions, which was a decrease from the prior three quarters.

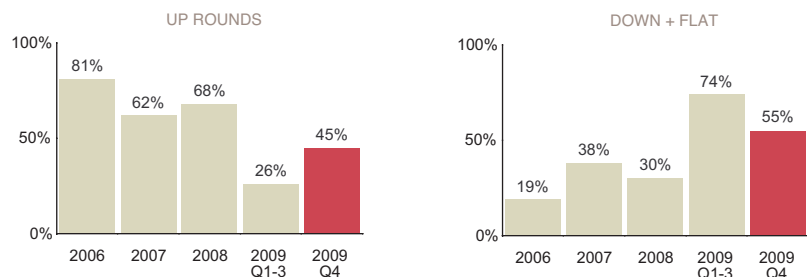
\* Analysis based upon 376 completed deals totaling approximately \$3.82 billion in 2009, 328 completed deals totaling approximately \$4.26 billion in 2008, 343 completed deals totaling approximately \$4.52 billion in 2007, 351 completed deals totaling approximately \$5.01 billion in 2006. The 2009 data consists of 278 completed deals totaling approximately \$2.72 billion in the first three quarters of 2009, and 98 completed deals totaling approximately \$1.10 billion in the fourth quarter of 2009.

### TRENDS IN FINANCIAL TERMS

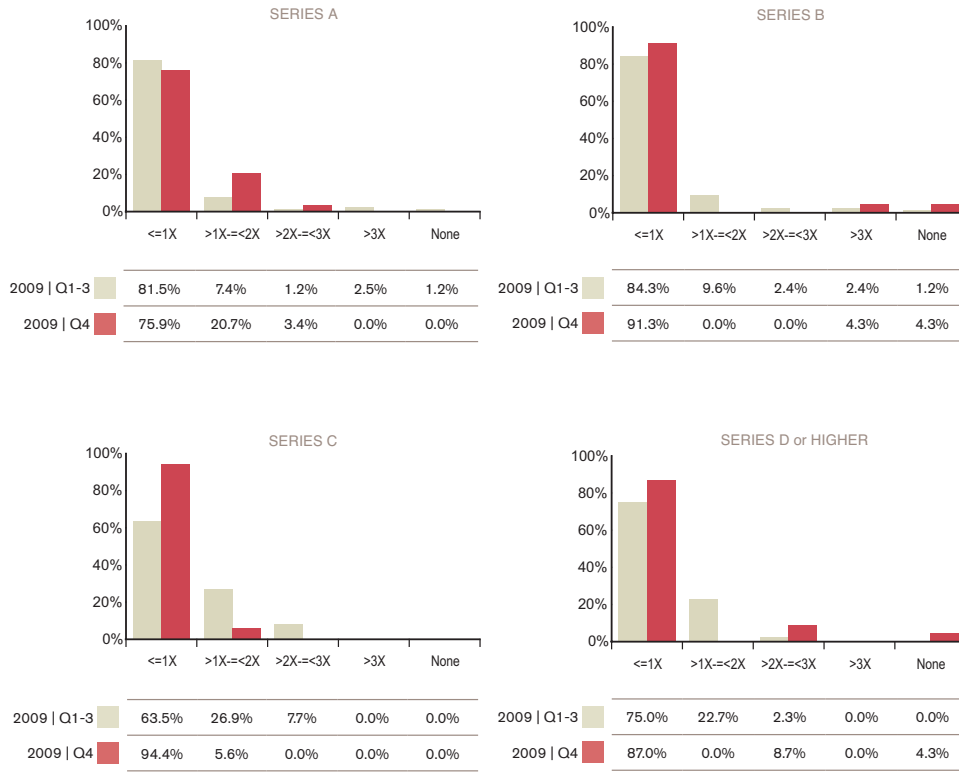
**MEDIAN PRE-MONEY VALUATION (millions \$)—By Series.** Series A, B, and D+ rounds saw significant improvement in median pre-money valuations during the fourth quarter as compared to the prior three quarters. Though valuations remain below their historical levels, the overall trending for Q4'09 looks promising.



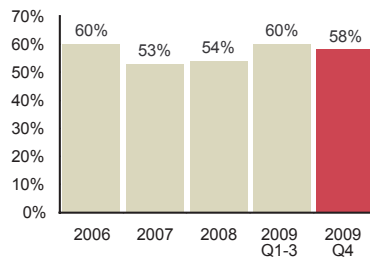
**PERCENTAGE OF UP, DOWN, AND FLAT ROUNDS.** We continued to see an increasing percentage of up rounds. While below recent historical levels, there was significant improvement during the fourth quarter over the earlier quarters of 2009. Clearly, this is an encouraging sign as we move into the new year.



**LIQUIDATION PREFERENCE—By Series.** Though historical data points to most transactions retaining a 1x liquidation preference, the economic environment in 2009 has had a definite impact on these terms. We continue to see a sizeable number of deals with greater than 1x preferences, although fewer later round deals included this during the fourth quarter, as compared to the prior three quarters of 2009.

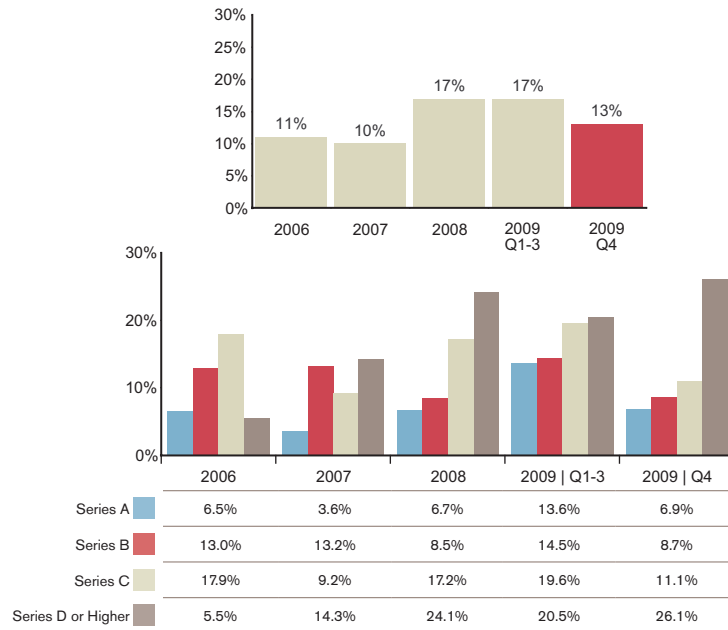


**PERCENTAGE OF DEALS WITH FULLY PARTICIPATING PREFERRED—By Year.** The percentage of deals with fully participating preferred dropped in the fourth quarter. Note that current levels still exceed those of 2008 and 2007.

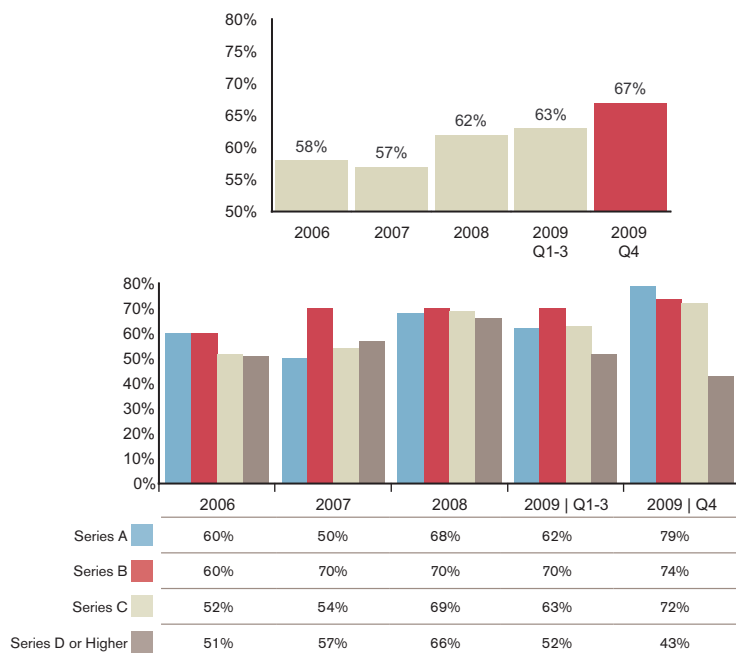


TRENDS IN NON-FINANCIAL TERMS

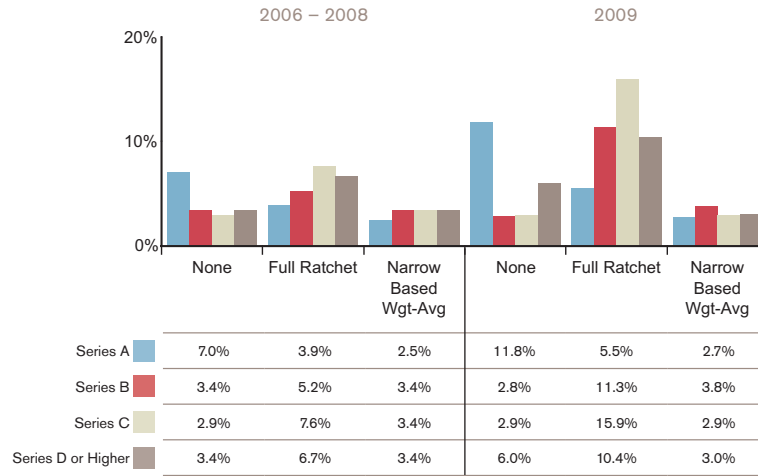
**PERCENTAGE OF DEALS WITH PAY-TO-PLAY.** The number of deals with pay to play provisions declined during the fourth quarter, as compared to 2008 and the first three quarters of 2009.



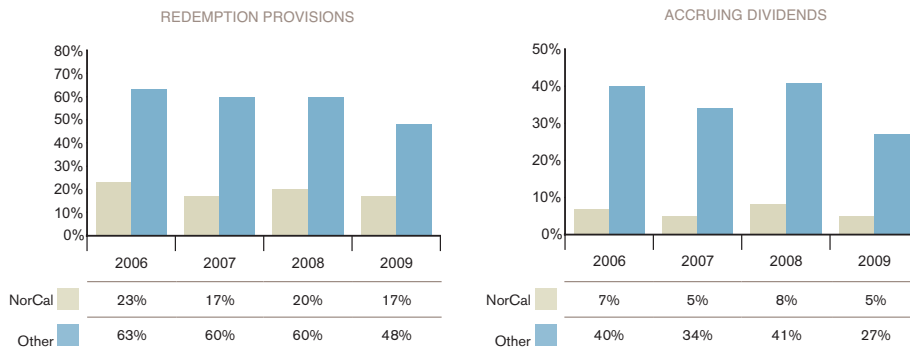
**PERCENTAGE OF DEALS WITH DRAG-ALONG.** The data points to a continued increase in the use of drag-along provisions during the fourth quarter. This was particularly noticeable in Series A, B and C deals in Q4'09. Series D+ deals were the only round to see a Q4 decline in the use of these provisions.



**ANTI-DILUTION PROTECTION—By Series.** 2009 saw a dramatic increase in full ratchet protection, specifically in the later rounds of funding. Note that the charts below exclude broad based weighted average anti-dilution protection, which continues to be used in the vast majority of financings.

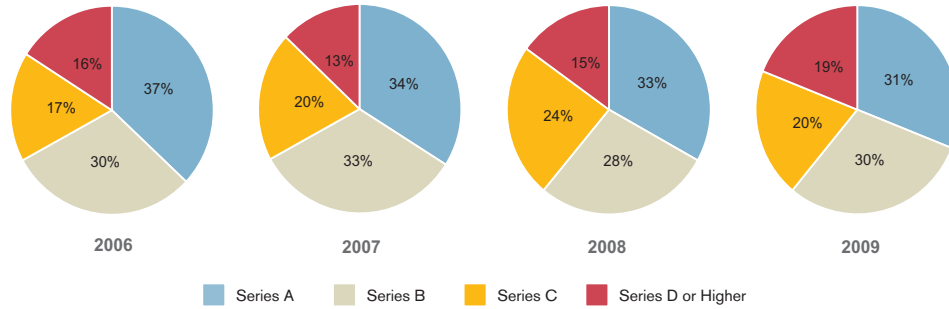


**REDEMPTION PROVISION AND DIVIDEND PROVISION UTILIZATION—By Region.** With the benefit of a larger data set offered by using annual data, we reviewed regional differences in terms. The most significant and consistent differences were the use of redemption and accruing dividend provisions. In the two following tables, we see that Northern California-based companies tend to receive the more favorable terms, including substantially less use of both redemption and accruing dividend provisions.

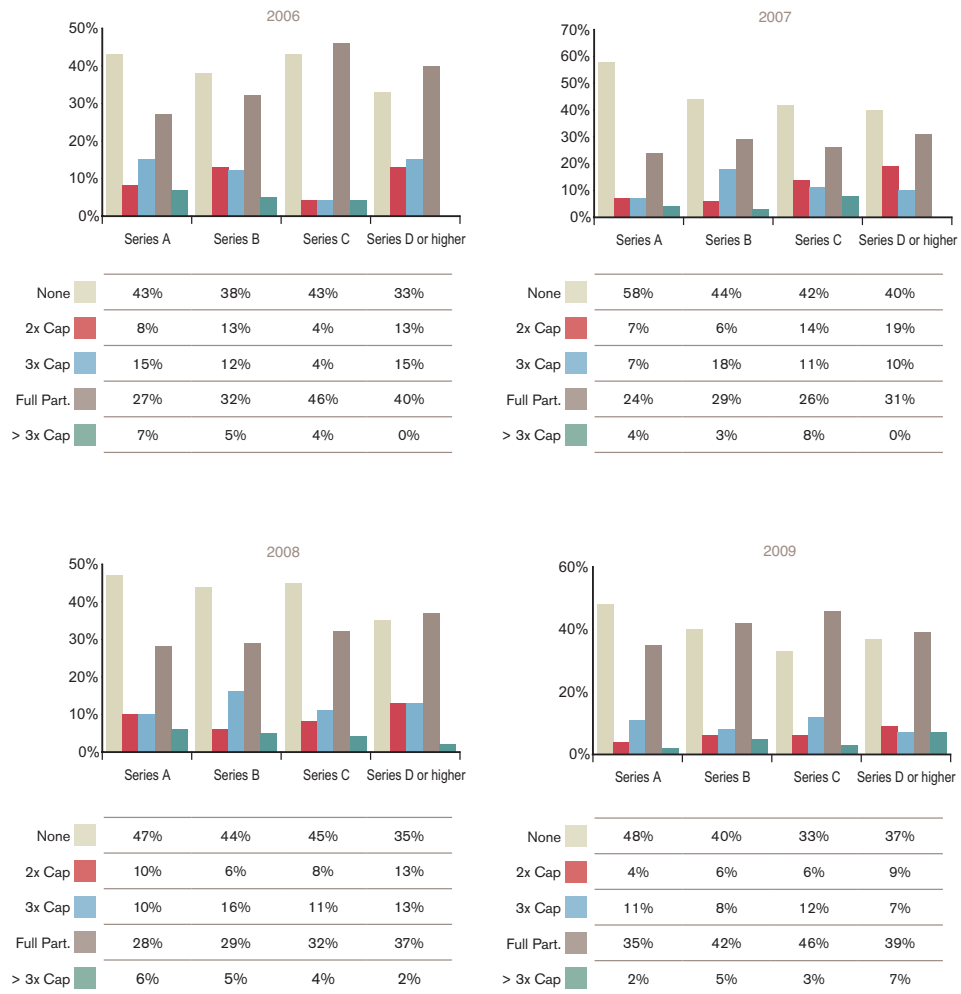


ANNEX

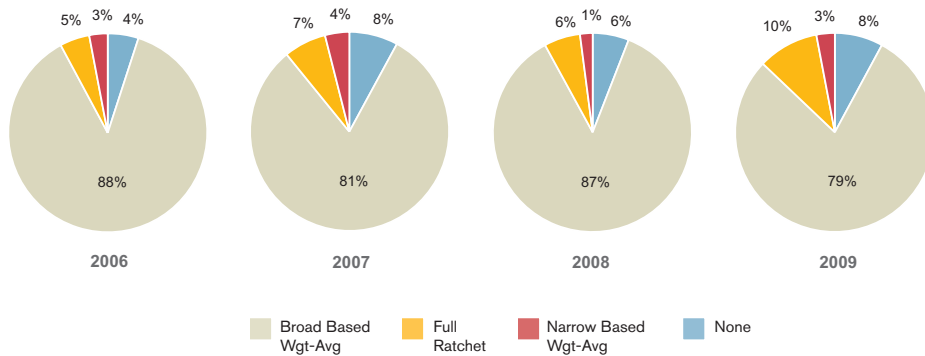
**DEAL BREAKDOWN—By Series.**



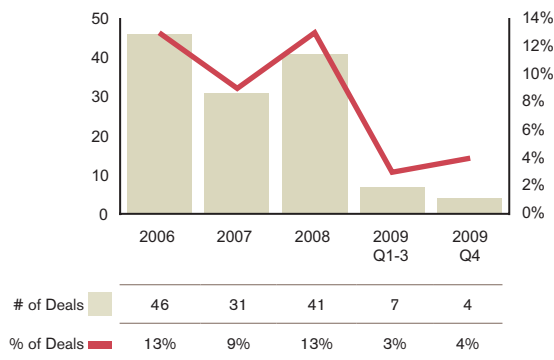
**LIQUIDATION PREFERENCE: PARTICIPATION FEATURES—By Series.**



**ANTI-DILUTION PROTECTION—By Deal.**



**PRE-MONEY VALUATIONS OF MORE THAN \$100 MILLION—By Deal.**



**ABOUT COOLEY** Cooley Godward Kronish's 650 attorneys have an entrepreneurial spirit and deep, substantive experience, and are committed to solving clients' most challenging legal matters. From small companies with big ideas to international enterprises with diverse legal needs, Cooley has the breadth of legal resources to enable companies of all sizes to seize opportunities in today's global marketplace. The Firm represents clients across a broad array of dynamic industry sectors, including technology, life sciences, financial services, retail and energy.

**ABOUT THIS REPORT** This quarterly report provides data reflecting Cooley Godward Kronish's experience in venture capital financing terms and trends. Information is taken from transactions in which Cooley Godward Kronish served as counsel to either the issuing company or investors. For more information regarding this report, please contact the Cooley attorneys listed below.

- |                         |                          |              |                      |                     |              |
|-------------------------|--------------------------|--------------|----------------------|---------------------|--------------|
| PALO ALTO, CA .....     | Jim Fulton.....          | 650/843-5103 | BROOMFIELD, CO ..... | Brent Fassett ..... | 720/566-4025 |
| NEW YORK, NY .....      | Babak (Bo) Yaghmaie..... | 212/479-6556 | WASHINGTON, DC ..... | Ryan Naftulin.....  | 202/842-7822 |
| SAN DIEGO, CA .....     | Patrick Loofbourrow..... | 858/550-6089 | BOSTON, MA .....     | Lester Fagen.....   | 617/937-2311 |
| SAN FRANCISCO, CA ..... | Craig Jacoby .....       | 415/693-2147 | SEATTLE, WA .....    | Gordon Empey.....   | 206/452-8752 |
| RESTON, VA .....        | Mark Spoto .....         | 703/456-8029 |                      |                     |              |

www.cooley.com

This Venture Financing Report is not intended to provide specific legal advice or to establish an attorney-client relationship. ©2010 Cooley Godward Kronish LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, CA, 94306. 650/843-5000. Permission is granted to make and redistribute, without change, copies of this entire document provided that such copies are complete and unaltered and identify Cooley Godward Kronish LLP as the author. All other rights reserved..