

- What is an “exit”?
  - Consideration to investors or company
  - Investor access to liquidity
  
- Why?
  - Need for capital
  - Liquidity
  - Business Plan
  - Need for broader scope, management, administrative and support services
  - Employee incentives
  - Consolidation/platform
  
- When:
  - Original expectations
  - Market dynamics/valuation levels
  - Entity cash level/burn rate
  - Availability of growth capital
  - Business/financial prospects
  - Legal rights of investors
  - Liquidity needs of key investors/portfolio concept
  - Opportunism

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- What are alternatives?
  - Sale to public markets (IPO)
  - Sale to strategic acquiror
  - Sale by one VC group to another
  - Liquidation
  - Hibernation
  - Continue business “as is”
  - Modify business plan
  - Other possibilities
  
- What are process dynamics?
  - Reconciliation of expectations/realistic valuation
  - Consensus
  - Contractual rights/state law/fiduciary duties
  - Management status/goals
  - Timing/pace
  - Term sheets/LOI
  - Distressed situations
  
- How to prepare for exit?
  - “Cleanup”
  - Capitalization/options
  - Intellectual property rights & ownership
  - Litigation/disputes

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- Current Markets
  - Little access to public markets: NVCA – 12 IPO's in 2009, 6 IPO's in 2008, down from 86 in 2007, slowest consecutive years since 1974-1975
  - So far in 2010, 14 IPO's total (venture and non-venture backed), with 37 venture backed companies are in the IPO pipeline (per Renaissance Capital)
  - NVCA study shows 263 venture-backed acquisitions in 2009, 68 in Q4 '09 (down from 348 M&A deals in 2008)
  - NVCA study shows \$142.9 million average M&A deal size in 2009 (up from \$114.9 million in 2008)
  - Longer term shift in ratio of M&A to IPO (Wilmer Hale)
    - 1996-2000 1.7:1
    - 2001-2007 9.2:1
    - 2008 approx. 45:1
    - 2009 approx. 41:1
  - IPO prospects older, bigger, profitable
    - 1999 Age: 4 years, \$18 million revenue, 26% profitable
    - 2007 Age: 7 years, \$87 million revenue, 62% profitable
    - 2008 Age: 8.7 years, \$113.5 million revenue, 71% profitable
    - 2009 Age: 7.9 years, \$225 million revenue, 81% profitable
  - M&A Returns: For disclosed deals in Q3 and Q4 2009, 9/57 deals were 10-baggers, 18/57 were between 4-10 times total investment and 19/57 had negative returns

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- Preparing for an IPO
  - Capitalization cleanup
  - Debt covenants
  - Sarbanes-Oxley compliance
  - Public company infrastructure
    - Board composition
    - Board committees
    - Charters, bylaws, policies, etc.
  - Preferred Stock conversion thresholds
  - Secondary shares vs. Primary shares
  - Registration rights
    - Notice periods and other mechanics
    - Piggyback provisions
  - Confidential treatment requests
  - Post-IPO takeover protections
  - Post-IPO benefit/stock plans and exec employment arrangements
- Quiet period rules

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- Sale of control
  - Notice periods
  - Rights of first refusal and offer
  - Drags/tags/cosale
  - Preferred stock contractual rights/priorities
  - Allocation of proceeds
  - Class votes
  - Indemnification/escrow
  - Duty of loyalty issues/Trados decision
- Sale to public company for equity
  - Reg D
  - Rule 145
  - California 3(a)(10)
- SPACs (?) and other alternatives

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- Earnouts
  - Scope
  - Legal Issues
  - Interaction with employee incentives
  - Disputes

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