

Private Company Financings in 2008—a Tale of Two Years*

Readers of Cooley's Private Company Financing reports are accustomed to our six-quarter study and format. In light of the recent market turmoil, we thought it would be useful to compare 2008 as a whole with prior years. As we reviewed our data, however, 2008 seemed to track recent history more than we anticipated, until we looked at the data in two groups, with the first three quarters of 2008 in one group and the fourth quarter in the other group. Once we filtered the data into these two groups, we quickly identified an unsurprising trend—the first three quarters of 2008 appeared similar to the preceding several years, whereas the fourth quarter of 2008 showed a marked deterioration of certain financial and non-financial terms for startup companies.

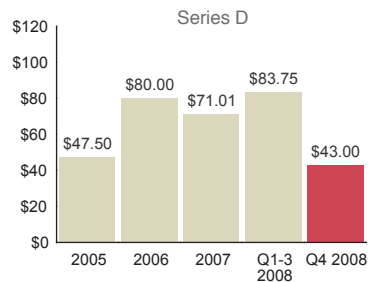
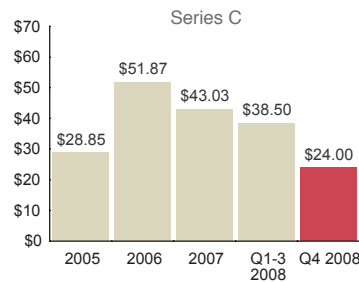
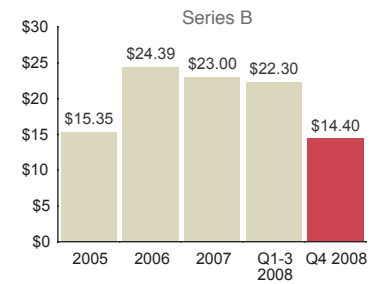
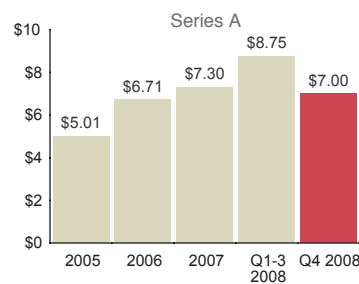
As a result of this recent dramatic change in terms, our report first highlights significant differences in financial and non-financial terms in the fourth quarter versus prior years and quarters, followed by our more typical array of other statistical data, both on a quarterly and annual basis.

Regular readers of these reports will find the data they are accustomed to receiving in the Annex at the end of this report, along with other statistical data collected for the current period.

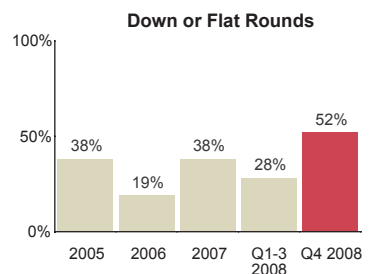
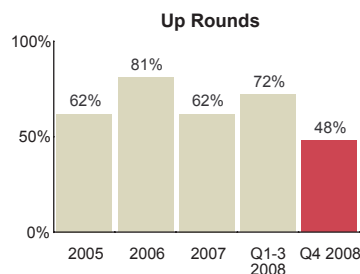
* Analysis based upon 328 completed deals totaling \$4.261 billion in 2008, 343 completed deals totaling \$4.524 billion in 2007, 351 completed deals totaling \$5.007 billion in 2006, and 373 completed deals totaling \$3.880 billion in 2005. The 2008 data consists of 248 completed deals totaling \$3.503 billion in the first three quarters, and 80 completed deals totaling \$0.758 billion in the fourth quarter.

TRENDS IN FINANCIAL TERMS

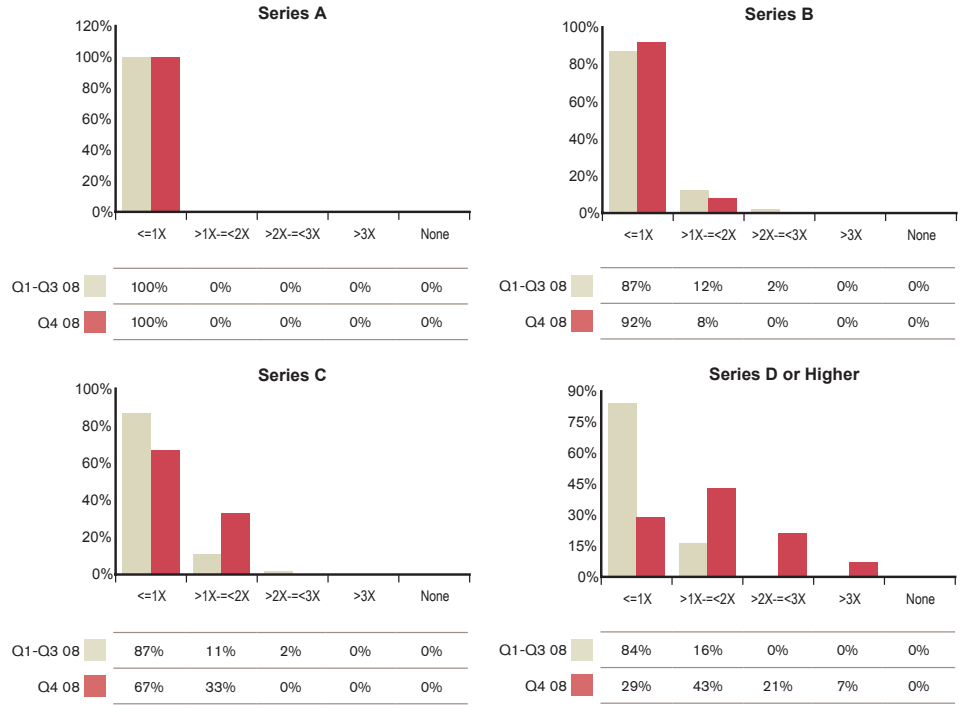
MEDIAN PRE-MONEY VALUATION (millions \$)—By Series. The first three quarters of 2008 showed relative consistency with recent valuation trends, whereas the fourth quarter saw valuations for similar-stage companies drop by 20-50%.



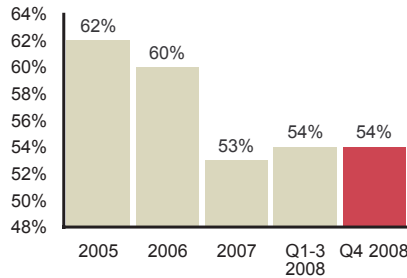
PERCENTAGE OF UP ROUNDS vs. DOWN OR FLAT ROUNDS—By Year. Consistent with general valuation trends, the fourth quarter of 2008 saw a significant drop in the percentage of up rounds, and a commensurately significant increase in the number of flat or down rounds.



LIQUIDATION PREFERENCES—By Series. Historically we see most transactions retaining a 1x liquidation preference, but with the recent downturn, the fourth quarter brought a significant increase in the percentage of deals with greater than 1x liquidation preferences, with the increases centered on later stage transactions.

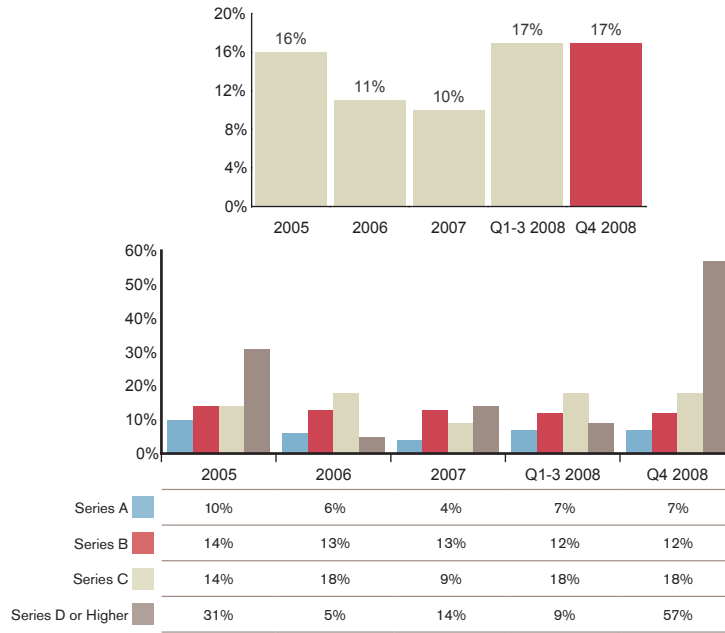


PERCENTAGE OF DEALS WITH FULLY PARTICIPATING PREFERRED—By Year. Interestingly, the data did not show any change in the percentage of transactions with fully participating preferred. It would appear that investors have thus far chosen to manage the tougher economic climate through valuation reductions and greater liquidation preferences instead of increased use of full participation.

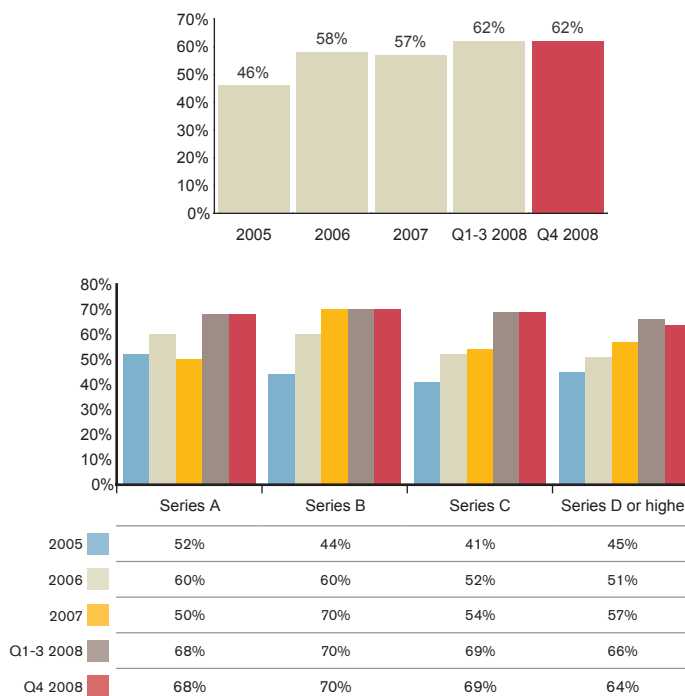


TRENDS IN NON-FINANCIAL TERMS

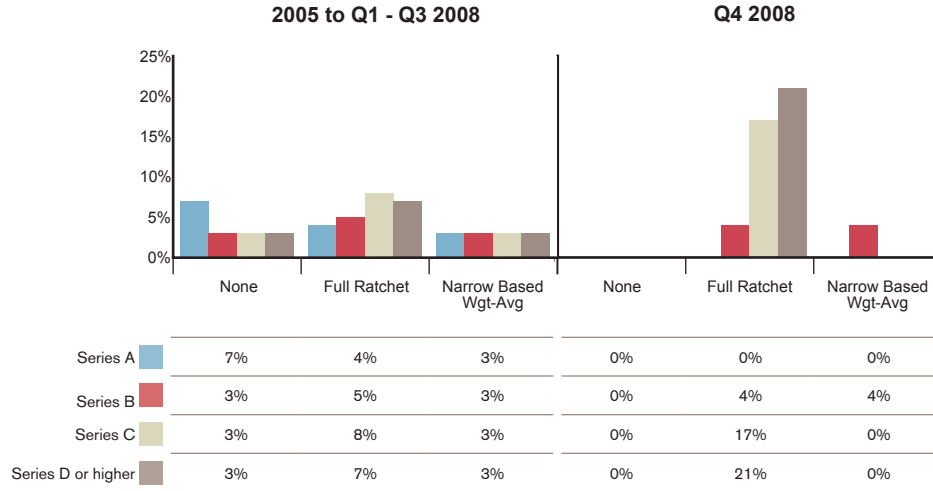
PERCENTAGE OF DEALS WITH PAY TO PLAY—By Year and Series. Our data did not reveal an increase in overall use of pay-to-play provisions. However, when reviewed series-by-series, the data show a marked increase in the use of pay-to-play provisions in later stage transactions. In the fourth quarter, 57% of Series D or later stage transactions included a pay-to-play provision.



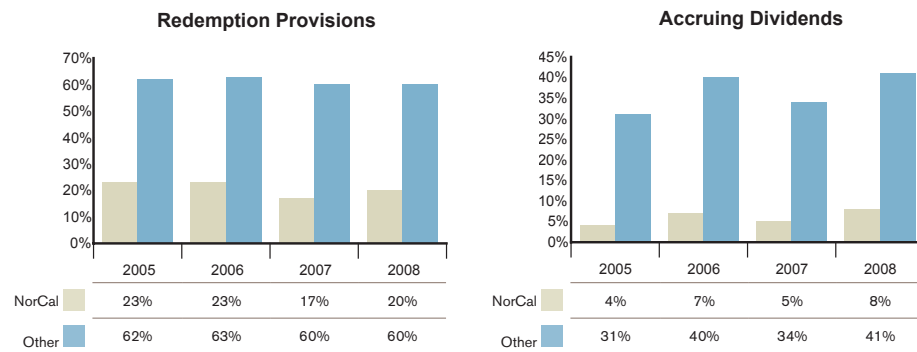
PERCENTAGE OF DEALS WITH DRAG ALONG—By Year and Series. The data do not yet reveal a change in the implementation of drag along provisions. The data show a mild increase in drag along usage from 2007 to 2008, but the fourth quarter of 2008 mirrored the first three quarters at 62%.



ANTIDILUTION PROTECTION—By Series. For our analysis of deals with anti-dilution protection, we focus on the difference between the pre-4Q08 period and the fourth quarter of 2008. As always, the vast majority of transactions continue to retain broad-based weighted average antidilution, but when we removed the broad-based data from the dataset, we revealed a significant increase in the use of full ratchet provisions.

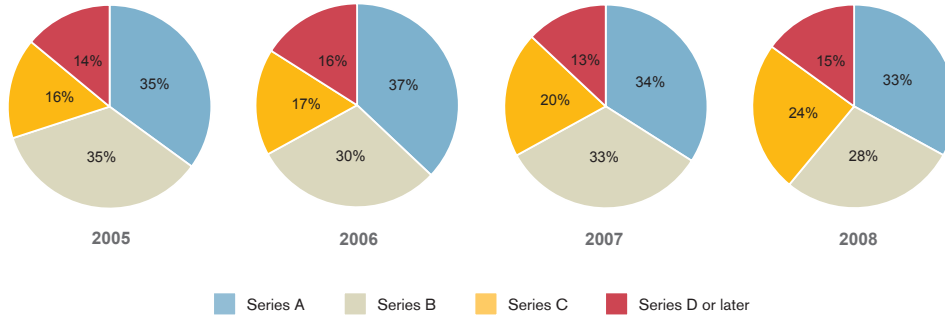


REDEMPTION PROVISION AND DIVIDEND PROVISION UTILIZATION—By Region. With the benefit of a larger data set offered by using annual data, we reviewed regional differences in terms. The most significant and consistent differences were the use of redemption and accruing dividend provisions. In the two following 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.

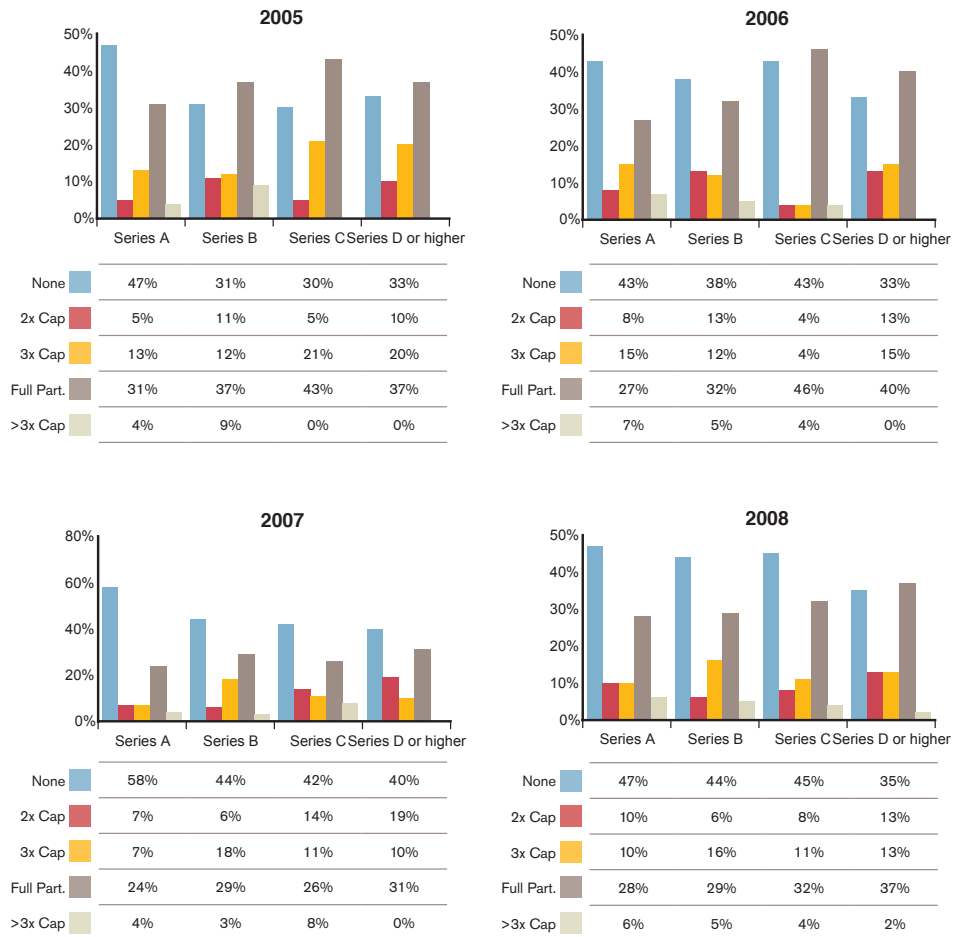


ANNEX

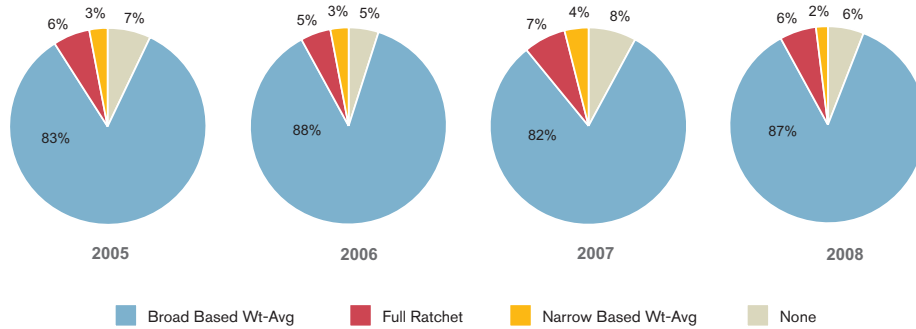
DEAL BREAKDOWN—By Series.



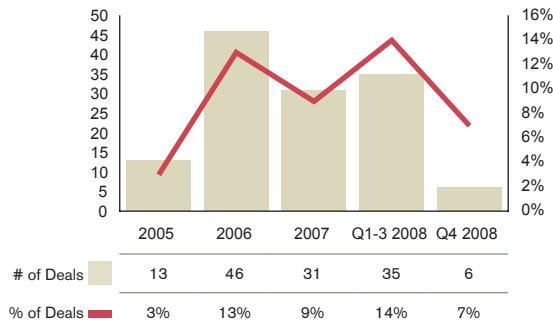
LIQUIDATION PREFERENCE: PARTICIPATION FEATURES—By Series.



ANTI-DILUTION PROTECTION—By Series.



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



ABOUT COOLEY Cooley Godward Kronish's 675 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 from 2005–2008, 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.

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|-------------------------|---------------------|--------------|----------------------|---------------------|--------------|
| PALO ALTO, CA | Jim Fulton | 650/843-5103 | BROOMFIELD, CO | Brent Fassett | 720/566-4025 |
| NEW YORK, NY | Alison Newman | 212/479-6190 | WASHINGTON, DC | Ryan Naftulin | 202/842-7822 |
| SAN DIEGO, CA | Tom Coll | 858/550-6013 | 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 | | | |

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