For Whom The PIPEs Chime: You May Be Very Surprised

A few million dollars in early/seed-stage venture capital may be a lot easier to obtain than you think, but you have to know how to do it.

Ever wonder where those billions in hedge fund dollars everyone's talking about are really going? You might be surprised to learn that it's not all ending up in risk arbitrage, directional trading, and other exotic investment strategies conjured up by the wizards of Wall Street, and that a lot of it is actually finding it's way into early/seed-stage venture capital investments. You might be even more surprised to learn that getting a few million dollars of it for your own company may be very possible. Just ask John D. Stanton, a former CPA turned private investor that has managed to complete financings exceeding $10MM in the aggregate for three of his portfolio companies over the past year, all of which are in the development-stage and only one of which had previously generated any meaningful revenues. Most of this money came from hedge funds.

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And Mr. Stanton's good fortune is not unique. Increasingly over the past several years, there has been a very significant development in the financing of early/seed-stage technology and other companies, and one which is drawing increasing interest from many private companies in need of such financing. Whereas traditionally the only sources of financing for these types of companies – other than friends, family and so-called "angels" – were the elitist venture capital firms, there are now *many* hundreds of small and large hedge funds that are actively seeking out and financing these types of companies through what are known as PIPE transactions.

While originally a financing option almost exclusively utilized by biotech, telecom, and oil, gas, and mineral exploration/mining companies because of the heavy reliance in these industries on very substantial capital investment requirements, PIPE money is now flowing in fast and furious not only to companies in these cash-guzzling industries, but also to operating companies in all of the various technology sectors as well as many other more traditional, non-tech sectors. Since January 1st of this year, in fact, and not including transactions of less than $1MM, approximately $1.9 billion has been invested into 207 PIPE transactions for non-biotech/pharma and non-oil, gas, and mineral exploration companies with less than $1MM in annual revenues, and $925 million during the same period for 122 of the same type companies with between $1MM and $5MM in annual revenues. What's more is that this money is available to these companies in greater amounts and much faster than it would be through traditional venture capitalists or organized angel networks. It also generally comes following much less in the way of due diligence than is usually the case with other early/seed-stage investors, and, in most cases, without any associated board seats or other control-related requirements. Better still is the fact that management need not have already founded a company that sold for hundreds of millions of dollars, graduated from the Harvard Business School, been an academic scholar in the Electrical Engineering and Computer Sciences Department at Berkeley, or have a close relative that's a partner at Goldman Sachs in order to have a good chance of getting some of this money; in some cases, in fact, management need not even be seasoned.

Sounds great, right? Well ... there *is* one small catch. The company has to be public. The term "PIPE," in fact, is an acronym for 'private investment in *public* equity.'

Oh, well, you're no doubt thinking … that's a very different story. And indeed it is. For most development-stage private companies, the idea of being public means first having to "go public," a highly coveted event hoped for in the future but unlikely to occur anytime soon. And, practically speaking, any financing alternative which requires that a company first be public would likely be viewed by management of any private company as akin to them having to be much more profitable in order to be eligible for a bank loan; the qualifying hurdle itself would be just as much of a challenge – if not a *greater* one – as their primary objective. However remote the odds, institutional venture capital, in fact, might be seen by these individuals as a more likely source of whatever funds they need.

What's very interesting, though, is that this isn't really true; not even *close*, in fact. While, to be sure, a PIPE isn't an option for a neighborhood flower shop, a printing house, or a local home builder, for virtually any development-stage company in an exciting, fast-

growing sector, or with a business that is otherwise scalable, there's a whole lot of money out there that's readily available. While ascertaining what that figure is exactly is basically impossible because these funds are all private, it is clear from the level of actual investment activity that it's in the billions. And although the VC industry certainly has billions of its own to invest, the reality is that the overwhelming percentage of VC funds are not being applied to $1-5MM slugs into Series A or common stock rounds of early-stage companies; most of them are being applied to $10-30MM slugs into Series C or D rounds of later-stage growth companies.

"Well … yeah, OK, but … *public*?" Yes, *public*, but not everything is always what it seems. When most people think of public companies, they think of bulls and bears and large, multinational corporations with household names like Boeing, General Electric, Proctor & Gamble, PepsiCo, Microsoft, Motorola, or Citigroup. They think of the Dow Jones Industrials, the New York Stock Exchange (NYSE), NASDAQ, or the American Stock Exchange (Amex). But this is only the proverbial tip of the iceberg. What most people aren't aware of is that there is a vast subterranean universe of over 10,000 very small public companies out there in an oft misunderstood arena known as the OTC (an acronym for "Over-The-Counter").

The OTC is a market for securities of companies that are somewhere between getting some traction on their way to the big time (*i.e.* the NASDAQ, Amex or NYSE), on the one hand, and lost and forgotten, on the other. While the NASDAQ is technically part of the OTC market, it's not what most market-savvy types understand to be the OTC. To them, the OTC means the market comprising the OTC Bulletin Board (or "OTCBB" as it is more commonly referred to), an electronic quotation system owned and operated by NASDAQ which quotes securities of some 3,300 nanocap and other microcap public companies, on the one hand, and the Pink Sheets, a privately-owned electronic quotation system which quotes securities of over 7,000 similarly small public companies, on the other. To a lesser extent, the OTC also encompasses certain other non-U.S. markets as well, including the Toronto Stock Exchange (TSX) Venture Exchange and the London Stock Exchange Alternative Investment Market (AIM). While the overwhelming majority of the issues quoted in the OTC are technically "penny stocks," a term commonly associated with fraudulent schemes, dubious promoters, and, in any case, very risky business, the fact of the matter is that most penny stock issuers are perfectly legitimate, albeit small, companies. Moreover, while it is very possible for OTC companies to eventually graduate to NASDAQ or one of the national exchanges, and many do, the vast majority of these companies while at the OTC level are "public" only in the most literal sense that their stock is publicly-traded; in terms of their size, scale, structure, public float, trading volume, and corporate and financial sophistication, they are scarcely different than most small private companies.

Although, to be sure, there are many PIPEs being done by companies on the Pink Sheets, most of the nanocap venture capital type PIPEs activity these days involving technology and other operating companies is focused on OTCBB companies. This is true for essentially two reasons. First, there tends to be somewhat better liquidity in OTCBB securities than those in the Pink Sheets as a result of generally higher average trading volumes of the securities quoted, which means that investors have a better chance of being able to more readily sell their large positions as and when they want. Second, in order to be eligible for quotation on the OTCBB, companies must have their financial statements audited periodically and be "fully-reporting" under the federal securities laws, which means that they must file with the U.S. Securities and Exchange Commission (SEC) annual 10-K reports, quarterly 10-Q reports, 8-K reports for certain events, as well, in most cases, as proxy statements for shareholder votes. This is in marked contrast to the Pink Sheets, for which no such requirement, or any similar requirement, currently exists. While there are some companies on the Pink Sheets that are required to be fully-reporting because they have either previously filed a registration statement with the SEC or have 500 or more shareholders and total assets of $10 million or more, their obligations to be fully-reporting in this regard arise under the federal securities laws, not under any requirement imposed by the Pink Sheets. And although more than a few companies quoted on the Pink Sheets that are not SEC-registered, fully-reporting companies are nonetheless consistently making publicly available the same type of information as they would if they were, they are doing so strictly voluntarily and are under no legal obligation (except maybe contractually with their investors) to continue to do so. From an investor's perspective, OTCBB investments are preferable, therefore, because there is considerable comfort to be found in knowing that current information is required under the law to be made

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continuously available about a company and that much of it has been passed upon by a reputable auditor.

So how is all of this relevant to owners of a private company? The answer is that *many* private companies that would otherwise never even *consider* going public in the traditional sense are doing so these days *solely for the purpose* of being able to tap the PIPE market – approximately 53 since the beginning of this year alone. And, although it's by no means a cinch, becoming a publicly-traded company that's eligible for a PIPE financing isn't nearly as difficult as most would expect. There are essentially two different ways to do it, neither of which involve what most people think of as a traditional IPO. Of great interest to most that might consider this route, moreover, is the fact that, depending on how the deal is structured and who the service providers are that are involved, it is often possible to greatly minimize the required cash outlays associated with the process prior to closing on the PIPE and receiving the proceeds with which to finance it.

"... the capital markets are virtually closed to small private companies these days, while they are rife with opportunity for companies that are of the same size but public."

The first way to become public without doing an IPO, and the simplest, is to voluntarily register with the SEC. The registration process can be one which registers either (i) a sale of securities as part of a primary offering by the company as well as a class of the company's securities for purposes of enabling a secondary market in those securities (which is precisely what occurs in a traditional IPO, though on a much grander scale, and involving a team of investment bankers / underwriters), or (ii) a class of the company's securities solely for purposes of enabling the secondary market. In both cases, the extent of the information required to be included is pretty much the same; it is also quite extensive, including audited financial statements. As part of this process, it is also necessary to recruit at least one market maker for the company's stock and prepare and submit certain documentation in order to obtain a stock symbol for the company and get the stock quoted on either the OTCBB or the Pink Sheets. Depending on such factors as whether such audited financial statements are already available, the size of the company, and the size of the law and auditing firms engaged, becoming public through this method is likely to cost a company somewhere in the range of $35,000 to $200,000. In any case, it generally takes four to six months to complete the process.

The other way to become public is by doing what has come to be known as a "reverse merger." This is a transaction whereby a private operating company is (usually indirectly) merged into a public shell company (*i.e.* a company with no or nominal operations or assets, but with quoted securities and some public float), thereby causing the formerly private operating company, through a bit of legal alchemy, to itself become public. While considerably more complex than SEC registration because of their transactional nature, reverse mergers offer a variety of advantages as a means by which to become public, including an abbreviated time frame (two to four months generally) and, in most cases, having market makers already in place and an existing secondary market post-closing for the company's securities, which isn't always an easy thing to manufacture on demand, and, in some cases, can take years to develop.

While historically the vehicle of choice for unscrupulous penny-stock promoters engaging in "pump-and-dump" schemes, and having suffered a reputational taint as a result for many years, reverse mergers have gained wide-spread recognition and acceptance in recent years as a very legitimate means by which to go public. In a recent (July 15, 2005) and very significant Final Rule Release, in fact, the SEC expressly acknowledged in discussing reverse mergers that it "recognize[s] that companies and their professional advisors often use shell companies for many legitimate corporate structuring purposes." And, as virtually every piece of literature that's been written about reverse mergers over the past decade has pointed out, it was by way of reverse merger that a number of very large, well-recognized names in corporate America have come to exist, including Occidental Petroleum, Turner Broadcasting, and Acclaim Entertainment.

While reverse mergers offer certain advantages over straight-forward SEC registration, there is no question that the costs associated with reverse mergers are higher. This is largely attributable to the direct cost of the public shell company itself which must be purchased and which, depending on a variety of factors, including whether it's a Pink Sheet shell or an OTCBB shell, can cost anywhere from approximately $100,000, on the low end, to upwards of $800,000. Depending on the same factors identified in relation to SEC registration, becoming public through reverse merger is likely to cost a total of approximately $200,000 to $900,000.

NGM-Tec, Inc., a development-stage voice biometrics company based in New Hope, Pennsylvania with only nominal revenues to date, is currently in the process of

reverse merging into a Pink Sheet shell company in order to become public. Jeffrey D. Randol, NGM-Tec's Chief Executive Officer, commented that "the capital markets are virtually closed to small private companies these days, while they are rife with opportunity for companies that are of the same size but public. The decision to become public was *not* a hard one for us." NGM-Tec hopes to complete a PIPE of at least $2.5 million by the end of this year.

For any company that makes a determination to become public one way or the other in order to pursue a PIPE financing, it would be well-advised to make sure that it arrives dressed for the dance. Depending on the company, this can require any one or more of an array of potential corporate structural changes and related actions, often including such things, for example, as making sure that the company is authorized to issue what is commonly known as "blank-check" preferred stock, possible reincorporation in Delaware (typically from one of the so-called "penny stock states" including Nevada, Utah, Idaho, or Colorado), certain capitalization restructuring in order to increase the number of shareholders and shares in the public float, getting a stock symbol, and getting quoted. These types of considerations are best explored in consultation with qualified securities counsel.

So what is a PIPE exactly and how does it work? In its most basic form, a PIPE is really very simple. It's any private placement (*i.e.* unregistered sale) of securities in a public company that involves a commitment on the part of the company to immediately register the resale of the shares (or the shares into which they are convertible if convertible securities are involved) after the closing. The array of structural variations that PIPEs take on, however, is quite broad and sophisticated. While many PIPEs at the OTC level merely involve the issuance of common stock, many others involve convertible preferred stock or convertible debt with either a fixed conversion price, a reset price, or a variable price [see inset: PIPEs: The Deal-Speak].

More elaborate still are so-called "private equity lines." Although not technically in the same immediate family (because their resale is actually registered with the SEC *before* they are sold to the investors), private equity lines are more than a distant cousin to PIPEs, and always included as a practical matter in any discussion of the various types of PIPE structures. Under these financing arrangements, companies are able to draw down funds on an as-needed basis, subject to certain limitations. As their name implies, they work something like commercial credit lines, with the key distinction being that draw-downs under a private

PIPEs: The Deal-Speak

As with most areas of corporate finance, the business of PIPEs is marked by its own lexicon. The following are a select few of the most basic terms that you should know if you're thinking of doing a PIPE:

* ***Restricted Securities***: Securities the resale of which has not been registered, and which may or may not be eligible for resale under Securities Act Rule 144. Generally, securities issued in PIPE transactions are restricted securities.

* ***Registration Rights***: Rights granted to investors to compel the issuer of restricted securities they hold to register the resale of such securities.

* ***Convertible Security***: Any security, typically a preferred stock, note or debenture, which the holder may convert into an equity security of the same issuer, typically common stock, during a specified term based on a certain conversion price, which may be either fixed, subject to reset, or variable.

* ***Structured PIPE***: A PIPE involving some type of security other straight common stock.

* ***Discount / Premium***: The difference between the open market trading price of a given security and the effective price paid by a PIPE investor for restricted shares of the same security expressed as a percentage of the former.

* ***Warrant Coverage***: The extent of common stock purchase warrants included in a PIPE transactions expressed as a percentage of the overall stock being issued in the transaction.

* ***Fixed Price***: A purchase/conversion price that is fixed (subject to certain standard adjustments) either at or prior to closing, or on a specified date following the closing.

* ***Reset Price***: A purchase/conversion price that is originally fixed (subject to certain standard adjustments) either at or prior to closing, or on a specified date following the closing, but which is subject to adjustment (upward or downward) based on various criteria including fundamental performance, the occurrence of a specified event, or the achievement of a certain market trading price threshold for the company's stock within a stated period following the closing.

* ***Variable Price***: A purchase/conversion price that fluctuates in relation the price of the company's stock following the closing (typically with a ceiling).

equity line result in the issuance of equity as opposed to debt.

Whatever the structure, the price paid by investors in a PIPE transaction is generally tied to the trading price of the company's common stock on the open market, typically at either some discount or premium, depending on the type of security involved; common stock is generally sold at a discount and convertible securities are generally sold at a premium. At the OTC nanocap level, discounts are often involved with any type of security and can be quite substantial, depending on the average trading volume of a company's stock, ranging from approximately 10% on the low end to as high as 50% or more for a very thinly-traded stock (which are common at this level). In order to minimize dilution, however, well-advised companies will generally limit the size of initial PIPE transactions to a minimal amount they determine will be needed to achieve certain developmental milestones in the hope that their stock price will increase in the meantime and allow them to do a second (or perhaps third or fourth) follow-on PIPE following achievement of those milestones at a then higher valuation. In any case, and because of the short-term arbitrage opportunity it presents, the discount in a common stock PIPE investment is one of the principal features that make them attractive to the hedge fund community in general, and particularly to the majority in this community which tend to be guided by more of a trading mentality than a long-term investing mentality.

For purposes of illustration, in a plain vanilla development-stage technology common stock PIPE transaction, an OTCBB-listed company with, say, 25 million common shares outstanding and a $.40 trading price per share will sell and issue 6,250,000 common shares at a price of, say, $.32 per share (*i.e.* a 20% discount) for a total purchase price of $2MM. In such a transaction, the investors would receive the 6,250,000 common shares, the company would receive $2MM in fresh working capital, and the existing shareholders of the company would be diluted by 20%.

Most often, and almost invariably for those involving development-stage companies, PIPEs also involve the issuance – at no additional cost to the investor – of one or more warrants to purchase additional common stock for a given period at some stated price. The inclusion of these warrant "kickers" (as they are known) is intended to incentivize investors by "sweetening" the deal somewhat with additional upside, on the one hand, and incentivizing management to get the stock price up in order to compel holders to exercise and bring in more cash for the company, on the other. The number of underlying shares covered by warrants in any given PIPE deal, as well as the corresponding strike price and term, can vary significantly and, in any case, are subject to negotiation. Generally, however, warrant coverage is in the range of 10-50%, warrant terms run 3-5 years, and strike prices are 100-300% higher than the market price of the underlying stock as of closing and/or the effective price of the common stock being acquired in the transaction. Many warrants, moreover, include call provisions pursuant to which the company may compel the investor to either exercise them or have them cancelled if and when the trading price of the stock hits and maintains for a specified period a certain minimum threshold. Whatever the specific terms, the warrant piece in a PIPE transaction has come to be viewed by many of the hedge funds that invest in these transactions as an important component. By selling the common stock position that they originally invest in at a modest profit in the near-term (following conversion if convertible securities are involved), and then holding the warrant(s) on a more speculative basis for the greater upside potential over the longer-term, these investors enjoy the benefit of a true hedging opportunity.

The vast majority of PIPE transactions are highly syndicated, involving anywhere from several to as many as thirty or more different investors at a time, often inclusive of several high net-worth individuals in addition to the hedge funds. There will typically be a lead investor which negotiates the pricing and other terms of the deal, conducts the due diligence review, and whose counsel typically drafts the deal documents (although the company, it should be noted, will always have to pay the associated legal fees). The other investors then come aboard on the basis of the pre-negotiated deal. Note that, because they involve a somewhat delicate legal structure, private equity lines differ significantly from true PIPEs in this regard, never involving any more than a single investor.

Whether a PIPE involves an investment firm acting as a placement agent to syndicate the deal will largely depend on the size of each of the company and the deal involved. To be sure, though, intermediaries of one kind or another are often involved in PIPE transactions, even at the microcap/nanocap levels.

As noted previously, a distinguishing feature of most PIPEs is the commitment on the part of the company to immediately register the resale of the restricted shares issued in the transaction (or the shares into which they are convertible if convertible securities are involved). In those deals which include warrant coverage, the resale of the shares underlying the warrants, and in some cases the resale of the warrants themselves, are registered as well. The fulfillment of this obligation

requires the preparation and filing with the SEC by the company of a registration statement, invariably within a contractually mandated timeframe. While it is pretty standard in these deals for the company to have a relatively short period in which to first file the registration statement (generally 30-60 days following the closing), the deadline for getting the registration statement to be declared effective by the SEC, which means the shares can actually be sold, can vary from approximately 90 to 180 days. Because a company has only limited control over this process (because of the SEC's involvement), these time frames, and the associated penalties which become payable by the company in the event of any delays in meeting them (which can be quite severe), are among the most intensely negotiated points in the context of a PIPE transaction. Interestingly, despite a growing number of PIPE investors with a decidedly longer term VC-type perspective than traditional hedge funds (thereby rendering immediate registration rights logically irrelevant), there is never any corresponding slack on the imposition of these registration rights penalties. The liquidity afforded PIPE investors through virtually immediate registration is a key characteristic in distinguishing this type of investment activity from traditional private equity venture capital, and even those PIPE investors with a relatively long-term view and no present intention of selling their stock place a high degree of importance on this as a Plan B exit strategy.

Are there any downsides to doing a PIPE? Of course there are, some real and some perceived. By far, the most significant direct downside of doing a PIPE is that, because they are most often done at a time when a company's stock price is relatively low, which means the purchase discounts will be relatively high, they result in greater dilution to existing shareholders than any of them would probably like (although, as previously noted, it is possible to minimize this effect through careful planning). What's more, in addition to the downward pressure on a company's stock resulting from *any* equity offering (attributable essentially to shareholder perceptions relating to dilution) and the increase in market overhang from convertibles and/or warrants, a company's stock price is very likely to be on a fairly sustained and significant – sometimes even sharp – decline following effectiveness of the registration statement and during the subsequent period that the PIPE investors are selling off their positions, which can last for a period of up to two years. While certainly undesirable, and frequently cited by PIPE critics as reason enough to avoid them altogether, this is a natural effect of having large blocks of stock being sold into the market, and should be expected. Moreover, it's important to bear in mind when considering these transactions that, whatever the result may be to their stock price, PIPEs allow these small, developing companies to obtain significant amounts of cash at times when it is very often critically required and otherwise unavailable, and any negative effect on their stock price is likely to be only temporary. Strength and vitality, after all, probably shouldn't be the biggest concern to those gasping for air.

For companies that aren't already public, potentially the biggest risk associated with doing a PIPE, however, is indirect, arising out of the company's transition to *becoming* public. This is a very involved issue, and one which raises a number of considerations. Among the most significant of these is the escalating cost associated with merely *being* public, which includes SEC reporting, Sarbanes-Oxley compliance, D&O insurance, and investor relations, among other things. At a minimum, these expenses are likely to run a few hundred thousands dollars per year. And under no circumstances, of course, would a company want to find itself in a position where such costs constitute the margin preventing it from being profitable. Further, the distraction that invariably accompanies the additional and very time-consuming responsibilities on the part of management in maintaining a public company can also become a very real impediment to productivity and is something to seriously consider. Beyond these issues, there are a variety of others associated with becoming a public company as well that private company owners should think carefully about, including those relating to the potential loss of control, disclosure obligations that may provide competitors with otherwise confidential information, increased exposure to liability for officers and directors, restrictions imposed on certain actions of management, limitations on trading by management and major shareholders due to short-swing profit liability rules, and general market pressures to manage for the benefit of short-term stock performance.

And, although it is unquestionably true that a great many companies are becoming public these days one way or another in order to take advantage of the PIPEs market, it should be noted that making a decision to become public in order to do a single round of financing is probably not a very wise idea. Any decision to become public should be motivated by some *combination* of the variety of different advantages actually being public has to offer, which, in addition to a significantly higher valuation and greater access to the capital markets generally, include the following, among others:

* Heightened visibility and image that can potentially provide an advantage over privately-held competitors;

* The ability to make acquisitions using the company's stock as currency, and on the basis of the higher public valuation;

* The ability to attract and retain more qualified executives and other employees because of incentive compensation packages that involve liquid securities; and

* Liquidity for existing shareholders.

Further still on the negative side are those who will tell you that doing a PIPE is anathema … an option of last resort for those for whom the bells toll. These critics cite the sharp and sustained decline in many companies stock price following a PIPE transaction as evidence to support their conclusion that these transactions are merely vehicles for the sophisticated hedge funds that invest in them to steal money from the market by orchestrating and engaging in massive naked (illegal) short-selling campaigns from offshore accounts, thereby sending the stocks of these companies into irreversible nose dives, and, eventually, oblivion. The facts are, however, that, (i) as previously explained, these price declines are the inevitable consequence of the sell-off by investors following a PIPE registration, and (ii) the extent to which naked short-selling actually occurs in this arena, and its effect on stock-pricing, are highly controversial issues and the subjects of intense debate among some of the most highly informed securities market professionals, regulators, and other experts.

The more moderate detractors contend that the predatory and very short-term trading mentality of hedge fund investors that dominate the PIPEs market is the kiss of death for early-stage companies, which need long-term, value-oriented investors in order to thrive and flourish. And while there is no question that there is some truth to this assertion, it is equally true that a great many companies do, in fact, come to thrive and flourish after having completed a PIPE financing. Of relevance here is the fact, noted previously, that there are an increasing number of funds out there these days that are investing in early/seed-stage PIPEs with a decidedly longer-term approach, some of which provide, in addition to their capital, much of the same type of strategic added value that has traditionally been associated with venture capital firms, not hedge funds. It will be interesting to see over the next few years how the beneficiary companies of this developing breed of VC-type PIPE financing end up performing in the 'thrive and flourish' category.

Where's The PIPE Action?

Exclusive of the many PIPEs being done in the biotech/pharma and oil, gas and mineral exploration/mining sectors, the following is a list of where PIPE activity is occurring in 2005:

Tech Products / Services

IT/Systems/Enterprise
Software
Data Storage
Consumer Software
Medical/Dental
Equipment/Devices
IT
Hardware/Semiconductors
Military/Defense
Aerospace/Aviation
Navigation
Automotive
Electronics
Telecom
- Wireless
- Cable/DSL/Broadband
- VoIP (Voice)
- VoIP (Video)
- Prepaid products, etc.
- Diversified

Media/Multimedia
Internet
- Online Business Services
- Online Consumer Services

Energy/Environmental
Security/Biometrics
Lighting
Education/Training
Materials/Plastics
Robotics
Nanotech Diversified
Healthcare
Nutraceuticals
Photography/Video/Audio
Recreational/Leisure
Games/Toys
Financial
Shipping/Transportation/Logistics
Highway & Transportation Safety
Law Enforcement
Agritech
Oil & Gas/Mining
Chemicals
Other Industrial
Multi-Industrial
Other Consumer
Diversified

Non-Tech Services

Construction
Healthcare
Telecom
Media
Enironmental
Financial/Banking/Insurance
Hospitality/Gaming/Food & Beverage
Business/Industrial
Recreational/Travel/Leisure
Shipping/Transportation/Logistics
Other
Diversified

Non-Tech Industrial Products

Chemical
Building Products

Non-Tech Consumer Products

Food & Beverage
Apparel/Designer Lines
Health & Beauty
Education/Training
Recreational/Sporting Goods
Sports/Entertainment
Books/Magazines
Household/Furniture
Diversified
Other

Retail / e-tail

Food & Beverage
Apparel and Accessories
Health & Beauty/Pharmaceutical
Entertainment (Music/Movies/Books)
Recreational/Sporting Goods
Discount

International Trade

Diversified

Finally, one criticism that pretty much everyone would agree on surrounds the use of so-called “death spiral” or “toxic” convertible PIPE structures which, because of a distinguishing floorless reset feature that relates to their conversion price, can not only result in the pre-PIPE shareholders of a company getting diluted down to nothing, it can also powerfully motivate the holders of the death-spiral securities to endlessly short the stock, thereby bringing about that result in fairly short order. Though quite prevalent about five years ago, and entirely worthy of the harsh criticism they have received, they don’t hold any real relevance today because they have all but disappeared entirely from the current PIPEs landscape.

So, then, is it all worth it? Steven Malone, CEO of FindEx.com, Inc. (*OTCBB*: FIND), a leading Bible software publishing company with annual revenues last year of approximately $5.5 million, thinks that it is. Having gone forward with a $1.75 million PIPE transaction for FindEx in mid 2004 despite some trepidation, Malone believes that his company is much better off for having done it. “It gave us the capital we needed to retire all of our debt and invest in new product development and marketing” says Malone. “You can talk all you want about how the PIPE guys take advantage of small companies that are hard up for cash, and how these deals negatively impact a company’s stock price, and it may all even be true in the short-term, but we’re in this for the long haul and that cash made a world of difference in allowing us to continue to pursue our business plan. The way we see it, if we stay focused on building a strong brand and company, the stock price will eventually take care of itself.” “And if for any reason it doesn’t” Malone added, “we’ll buy back all of the shares at the low price and do just fine.”

Now that hardly sounds like the kind of talk you’d expect to hear from one for whom the bells toll, but rather, perhaps, from one … well … for whom the PIPEs chime.

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