

## U.S. Venture Capital Industry Outlook Optimistic

The chain of events in NYC and DC most certainly impacts the U.S. economy. To seek out the opinions of leaders in the venture capital industry as to their insights for the future of private equity investing, Lisa LaBonte of Pacific Business Forums contacted National Venture Capital Association's President, Mark Heesen, who was scheduled to speak with the NY Venture Group on Sept. 26th, for his comments. In a swift reply Sept. 25th addressing this issue, the NVCA expressed the following:



Mark Heesen

- ◆ The venture capital industry is preparing itself for an extremely difficult economic environment over the next 12-18 months but remains confident that private equity investment will prevail at a time when the United States needs it the most.
- ◆ Imminent concerns center around the economic environment's direct effect on investor confidence. Venture capitalists expect to see a continued slower pace of new investments in the short-term, as investors wait to understand the impact that the attacks and their aftermath will have on the economy. Such a delay threatens to slow innovation and growth.
- ◆ There is also an increased concern around the limited exit options for existing portfolio companies, as the re-opening of the IPO market and resurgence of the acquisitions market may be further pushed out into the future. Under such a scenario, venture capitalists will be faced with the prospect of supporting their portfolio companies longer than planned.
- ◆ On the positive side, an "overhang" of venture capital funds still exists, estimated at approximately \$45 billion at the end of the second quarter of 2001. A large percentage of these funds will likely serve as reserves for existing portfolio companies. For those venture capitalists who are looking to make early stage investments,

the number of promising opportunities has not decreased and, in fact, appears to be at strong levels.

- ◆ Despite the short-term concerns, there is consensus in the industry that venture capital will continue to play a strong and critical role in the nation's economic growth. The nature of venture capital investment is long term and the industry will continue to return to its fundamental roots and move away from the unsustainable investment pace of 2000.

Heesen summed it up eloquently by stating, "The venture capital industry is fundamentally linked to US innovation and growth. Thus, there are elements of our industry that we all should be watching very closely including ongoing investment

levels and 'overhang' on funds raised but not yet invested. We have tremendous flexibility as an industry to move where the opportunities lie, and that flexibility will serve us and our investors well. The venture capital industry is strong at its core and there is confidence that we will continue to support growth and innovation in the US at a time when it is fundamentally critical."

Other views of leading VCs as to business creation, growth and venture investing for the immediate and long term horizons are consistent in their overall tone of optimism.

According to Jim Breyer, Managing Partner, Accel Partners, Palo Alto, CA, "Despite short-term concerns, we remain Continued on Page Five

### Deal Flow

QUARTERLY DEAL FLOW		
Quarter	Number of deals	Amount invested (\$mill.)
Q1 2001	1302	\$17,151.26
Q2 2001	1019	11,164.31
Q3 2001	660	7,030.90
Totals	2321	28,315.57

### DEAL FLOW PAST 60 DAYS

Date	Number of deals	Amount invested (\$mill.)
8/31/01	34	\$348.52
9/07/01	48	\$512.88
9/14/01	NA	NA
9/21/01	45	\$460.65
9/28/01	63	\$768.15
Totals	660	\$7,030.90

### Top IPO Underwriters

Company	Total offering amount (\$mill.)	Number of IPOs
Credit Suisse First Boston	\$13,205.5	15
Morgan Stanley	12,037.1	11
Salomon Smith Barney	9,746.6	8
Goldman, Sachs & Co.	3,870.7	7
Merrill Lynch & Co.	3,605.0	12
UBS Warburg	3,008.3	3
Lehman Brothers Inc.	1,150.5	5
Deutsche Banc Alex. Brown	865.9	4
Banc of America Securities	563.6	3
CIBC World Markets	357.6	2

Source: IPO.com, New York Year to Date to 9/28/01

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# SCENE & HEARD

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## Pacific Business Forums at the Plaza Club



Lt. Governor Mazie Hirono



David Blumberg, Blumberg Capital, C A



Elliot Fishman, Advantage Capital, N Y



Tom Swindell, Edward Longoria, and Bill Meyer



Karl Chang and Beadie Kanahale Dawson



Ray Kamikawa, Master of Ceremonies

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Lisa, your experience and energy will serve as a catalyst in Hawaii. As an ardent supporter of Hawaii's public school system, I commend your company for committing to give back to the community by making donations to our schools"

Lt. Governor Hirono

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Thank you for your tireless efforts on behalf of the Hawaii business community. PBF's speakers are extremely informative and provide a level of expertise that is without question both outstanding and timely. I was also thrilled to discover a valuable resource for one of my projects in the Jap@nInc magazine you provided!"

Jeff Tunick, Managing Partner, Hawaii Opportunities Group

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Congratulations on a terrific event. Not only was I impressed with the speaker and caliber of guests, but of Pacific Business Forums. The color coding name tags is an outstanding idea as was the booklet of published names."

Alan Pollack,  
President, Marketing Strategies

# VENTURE INVESTMENTS

## Top 20 Investments September 24 thru October 5, 2001

Company	From	What they Do	Most recent financing
NuVox Communications	St. Louis, MO	Provides high-speed Internet access, local & Long distance phone services.	\$87.0 mill.
Masergy Communications Inc.	Irving, TX	Provides networking software	"A" Round \$57.4 mill.
Anoto AB	Lund, Sweden	Makes special pens for wireless transmission of handwritten notes.	Second Round \$56.0 mill.
Cereva Networks, Inc.	Marlborough, MA	Makes Internet storage systems for service providers.	Fifth Round \$51.0 mill.
Allegro Networks Inc.	San Jose, CA	Multiple-router systems for telecom carriers.	"B" Round: \$50.0 mil.
Celiant Corp.	Warren, NJ	Develops wireless power amplifiers.	\$50.0 mil.
Ribotargets, Ltd.	Cambridge, England	Researches and develops anti-infection treatments.	Third Round \$47.0 mill.
Tropian Inc.	Cupertino, CA	Develops analog and digital voice wireless devices.	"D" Round: \$45.0 mil.
Corona Networks	Milpitas, CA	Develops network-based Internet protocol service platforms.	Third Round \$40.0 mil.
Sanera Systems Inc.	Sunnyvale, CA	Offers storage networking infrastructure products for enterprises and service providers.	Second Round: \$38.5 mill.
Altus Biologics Inc.	Cambridge, MA	Develops platform technology to enable the rapid commercialization of high-value protein-based products.	First Round: \$35.0 mil.
DWL Inc.	Toronto	Offers enterprise software to insurance and financial firms.	\$31.0 mil.
Convedia Corp.	Vancouver, BC	Provides media servers for IP networks.	\$30.0 mil.
MobileWay Inc.	San Ramon, CA	Provides global data access over wireless networks for businesses and mobile operators.	Second Round: \$27.0 mil.
Panasas Inc.	Fremont, CA	Provides smart and infinitely scalable storage networks.	Second Round: \$25.4 mil.
EasyEverything	London, England	Operates a chain of cybercafes.	\$22.1 mil.
Riptech Inc.	Alexandria, VA	Provides real-time managed security services.	\$21.0 mil.
Convedia Corp.	Vancouver, BC	Provides next-generation media server solutions.	Third Round: \$20.0 mil
Crystallize Inc.	Ann Arbor, MI	Designs software that enables companies to re-organize their business without re-implementing their enterprise applications.	"C" Round \$18.5 mill.
Uniscape Inc.	Sunnyvale, CA	Provides globalization software and services.	"D" Round: \$18.5 mil.

Source: The Daily Deal

## THE NOW ECONOMY

PBF announces its call for submissions for content relating to Hawaii's Now Economy. Send submissions to [llabonte@pacificforums.com](mailto:llabonte@pacificforums.com). You will be notified if your piece is selected for publishing.

# VENTUREVIEW

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Last spring the San Francisco Chronicle contained an article by Carol Emert that I have excerpted as follows:

"Livemind Inc., a San Francisco wireless startup, is facing a mass defection by employees who claim that venture capitalists are making off with an unfair share of the company's equity and leaving them with virtually nothing. ...most of Livemind's staff of 35 to 40 stayed home yesterday, jarred by the firing of (the) CEO...and (the terms of) a related controversial bridge loan proposed by the VC firm.

The primary investor...is demanding a "liquidation preference" of four times its money back for a proposed \$3 million bridge loan, according to sources who have seen (the) term sheet. Liquidation preferences give the holder first dibs on any proceeds from a sale, so (the investor) would reap \$12 million from its \$3 million loan.

"I was given a sizable amount of equity which is now not worth anything," said Iain Scholnick, Livemind's chief technology officer. "Eighty to 90 percent of the staff's not going (to work) and I'm not going in," said Scholnick, who was the No. 2 executive until yesterday."

This is scary stuff! Like the old medical "cure" of bloodletting; for many ailments, the treatment was worse than the disease. But as frightening as this scenario is, there are many lessons we can learn from it.

But first, let's take a look at how we got here. The last half of the '90's was a seller's market in which deals were increasingly overpriced and under-investigated. Investors were impatient, inexperienced and overconfident. Today, with the market

sell-off and the downturn in the economy, we are in a buyer's market. 'Once burned, twice shy' investors are hesitant to make new investments, and many would describe the current state of VCs as wounded, paralyzed, vengeful, nasty, and overreaching.

To make up for prior bad investments and protect themselves from incurring similar losses, many VCs today are seeking protection and retribution in new term sheets with onerous, almost 'angry' clauses. To paraphrase Queen Elizabeth I, 'anger makes men witty, but keeps them poor'. Thus, we have an epidemic of widespread "Down Rounds Syndrome". But before we rush to tighten terms and demand 4x liquidation preferences and full ratchet anti-dilution clauses, let's recall master strategist Augustus Caesar, who said "Hasten slowly". While there are many gravely ill patients, what we really need is preventative medicine.

The vaccine for "Down Rounds Syndrome" comes in many forms, and I think that learning lessons from the past can prevent future outbreaks. There are lessons to be learned by everyone involved in the private equity process, Entrepreneurs, VC's, Angel Investors and Corporate Strategic Investors.

## Entrepreneurs

Entrepreneurs should take away the following lessons from these events:

1. Be Realistic - Realistic projections will allow you to get funded at market clearing price.
2. Be Conservative - Overly aggressive forecasts can come back to haunt you. Higher projections lead to higher valuations, and potentially to down rounds when these overly aggressive forecasts are not met.
3. Be Credible.
4. Be Cost Conscious - Getting to cash flow breakeven is critical, because it will reduce your dependence on VCs and help you avoid being forced to accept unfavorable valuations.

Founders must also remember that in good markets, they will likely end up with 5-15% of the company (pre-IPO), and in down markets this will be only 1-3% after all rounds and dilution. However, what may seem like a small stake can be very valuable, if you do a good job of creating value with your products.

As an example, Blumberg Capital worked closely with the three founders of

Check Point Software from Israel by driving the first 18 months of the US and Japanese business development, marketing and PR efforts. Initially, the founders sold half of the equity for only \$200,000 in seed financing. Nevertheless, the low initial valuation didn't hurt the founders because the company was ultimately very successful. The \$200,000 was ultimately turned into \$10 billion.

## VCs

On the VC side, many of the heavily invested VC funds are in serious triage mode, and the VC industry in general should issue a collective mea culpa. VCs were overpaid, hasty, careless, and lacking in humility. Many deals were over financed, and many VCs pressured entrepreneurs to take more money, scale faster, and spend more. My first VC mentor Fred Adler says, "The size of the start-up company's office is inversely proportional to the future success of the company." In the old days, we learned that bootstrapping is good discipline, and the easy cash of the last few years was too much of a good thing.

VCs should take away the following lessons from these events:

1. Triage/Salvage - VCs must work hand-in-hand with the companies that they funded in order to salvage them. Harsh deal terms and squeezing out employees and founders will not go a long way in returning lost capital (as the epilogue of the Livemind story shows.)
2. Back to classic venture capital formulas - Rigorous valuation models with realistic assumptions need to be employed before investments are made. Throwing cash at the latest trends will not produce positive returns.
3. Caution - Investments need to be researched, including in depth analysis of the management, competitive landscape, and marketing plan. If an investment seems too good to be true, it just might be.
4. Karma - What goes around comes around, so be careful whom you crush. Michael Collins of Testa Hurwitz says he is seeing VC clients tending to band in tighter consortiums with groups they trust, working on multiple shared deals rather than doing deals helter skelter and opportunistically. He counsels clients to seek reasonable balance between stakeholders, optimal discussion, transparency, open information, and processes for dispassionate decision making.



## Angel Investors

While it appeared for a while that Angel Investors could make significant returns by investing very early in new ventures, Angel Investors have also learned some difficult lessons, including:

1. High Risk - Early stage technology investing is a tough business, with low odds of success.
2. Commitment - A serious or full time commitment is required. Careful due diligence and extensive research must be done before an investment is made.
3. Wide Range of Skills Demanded - once an investment is made, early stage companies need more than just cash, they need mentoring, contacts and advice.
4. Diversification - As in all investing, diversification is a critical part of the equation. However, this is typically hard for angels to accomplish, given their limited access to dealflow.
5. Deep Pockets - Early round investments will not pay off if the early money is completely diluted in later down rounds. A lot of money may be required to invest in future rounds if a company is a winner.

Thus, Angels must proceed with caution. This is a risky playing field for experienced investors, and you must know your limits to participate. Ideally you should invest through VC funds to achieve more diversification, and use co-investment rights to leverage skill-set and resources of a professional investment team.

## Corporate Strategic investors

On the corporate side, there was too much of the "tail wagging the dog" whereby corporations tried to invest in start-up firms in the hope they would create more demand for the investor corporation's products. It generally hasn't worked very well because the corporate investors didn't bring the financial/venture expertise nor did the managers have the long-term perspective traditionally required for this asset class investment. I recently heard about one large software company VC fund in Silicon Valley where 27 of 31 investments were either dead or on life support. Again, investing through independent venture capital firms is probably a better route for most corporate investors.

But it is not all bad news. Who would recommend investing in technology VC funds or start-up companies now? Well, as Mark Twain said about Wagner's music, "It's not as bad as it sounds."

The beneficiaries of the current environment are newly formed, early-stage VC funds. As long as these new funds learn their lessons and don't make the same mistakes seen in the recent past, they have certain advantages, such as:

1. No legacy portfolio in need of repair - New funds can focus on making investments, rather than spending time helping past investments stay afloat.

2. Partner Time - Fewer investments and no triage means there is also more time for the Partners to help new portfolio companies.

3. Bargains - The positive side of down rounds is that dramatically lower valuations abound, so current investors can find great deals.

4. Boring Deals - The end of the gold rush means there are less "MBA deals" floating around, with a slick business plan and no innovation or technological base. There are more "boring" deals from Engineers and PhDs, based on technical research. This is just what good VCs like.

5. Early Pick of the Litter - Early-stage VCs can choose the best young companies, and then feed second round deals to larger established VC firms.

Finally, let me add among all the gloom and doom, that entrepreneurs are like artists, they create companies because they have a need to do so, and great entrepreneurs create companies that bring forth products and services of real value tapping into latent demand in fast growing markets. While it seems the worst of the market downturn is not yet over, in the longer term, the best is yet to come. Follow your dreams, and hire a good attorney!

PBF's August speaker, David J. Blumberg, Managing Partner, Blumberg Capital • 580 Howard Street, Suite 401, San Francisco, CA 94109 • All Rights Reserved (c) 2001

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# U.S. Venture Capital

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very optimistic about the longer-term outlook for fueling significant technological innovation. Entrepreneurs who focus on management team depth, fundamental technology, and defensible revenue and profit models will continue to receive strong financial backing from the venture capital community."

Roger Novak, Managing Member, Novak Biddle Venture Partners, McLean, VA offers, "Risk is woven into the fabric of the venture capital industry. On September 11 the world just got riskier and venture capitalists will need to maintain discipline and continue to do what they do best — take calculated risks that help fuel our economic engine."

Pat Hopf, Managing Partner, St. Paul Venture Capital, Eden Prairie, MN, believes "...the United States has long been distinguished by an indomitable spirit of entrepreneurship and a willingness to take risk, and this spirit may be rekindled as part of the healing process. One person with a great idea can make a difference, as this

nation has proved for over 225 years, and the truly great ideas are more likely to rise to the top during periods of crisis."

"Entrepreneurs are a hardy, risk-taking bunch. They are used to overcoming obstacles. Confident, competent entrepreneurs are going to approach venture capitalists with new business models and new technology. Venture capitalists are going to continue to fund the best of these companies", added Craig Jones, President, Ticonderoga Capital, Wellesley, MA.

According to Matthew Doull, Partner, Hollinger Capital, New York, NY, "There is no doubt that the uncertainties we are all facing will dissuade some entrepreneurs from starting companies, but terrorists will never be allowed to extinguish the pilot light of American industry. The venture capital industry has access to more money now than at almost any time in its history, and stands ready to finance the next generation of American business successes."

Tom McConnell, General Partner, New Enterprise Assoc. and NVCA Chairman,

Palo Alto, CA, concludes "The venture capital industry, by definition, is based upon a long-term financial horizon. Although the short-term outlook is challenging, prospects for venture investing in the intermediate and long-term are bright. Many traditional venture capital firms have raised new funds in the last year and are well positioned to fund new companies at a time when valuations are low and talented employees are available for hire. Historically, a number of the greatest companies were created during difficult economic times, and this period offers the same opportunity for investors with courage."

The National Venture Capital Association (NVCA) represents approximately 400 venture capital and private equity firms and aims to foster the understanding of the importance of venture capital to the vitality of the U.S. and global economies. Pacific Business Forums (PBF) delivers access to global thought leaders, and current and best practices across venture capital, law, technology, and new media. PBF's mission is to leverage knowledge assets, facilitate professional relationships and expand networks, and empower cross industry collaboration. [www.pacificforums.com](http://www.pacificforums.com)

# GLOBAL DEALS

## South America

Sadia, a Brazilian food group, has formed a joint venture in the logistics sector with Brazilian wholesale company Martins and Accor, a French food, hotel and tourism group. According to O Globo, the three partners will invest a total of R\$32 million (\$12.03 million) in the new company, which will begin operations in the second quarter of 2002. The joint venture will specialize in the distribution and supply of food products to restaurants, bars, bakeries and snack bars. It is expected to record revenues of R\$35 million (\$13.16 million) in its first year of operation, rising to R\$200 million (\$75.17 million) in the second. The partners expect it to have a customer base of 30,000 by 2008.

In facilitating its pursuit of Spanish-language broadcaster Telemundo Holdings Inc., NBC is betting that U.S. regulators will relax station ownership restrictions so that it can add even more outlets in the nation's largest markets. "There needs to be meaningful regulatory change for a deal with Telemundo to work in NBC's favor," said Bishop Cheen, high-yield analyst with First Union Securities Inc. "The [Bush] administration was leaning toward deregulation prior to Sept. 11. Now, with the weaker economy and an even weaker ad market hitting television especially hard, the administration will be even more sympathetic to less regulation since it will give Bush one less industry to bail out." Sources close to the negotiations said Telemundo could seal a deal with NBC, a unit of General Electric Co., worth \$1.7 billion in cash and stock plus the assumption of \$700 million in debt, for a total value of \$2.4 billion, by the end of the week. Viacom, another strong suitor, is content to let Telemundo go by at that price given its current per share value and the very rich 45 times 2001 Ebitda of \$60 million NBC would be paying. Either way, this person said, Telemundo is likely to be sold. John Malone, whose Liberty Media Corp. owns 40% of Telemundo "is tired of dumping money into it every time it wants to expand," the expert said. However, at face value, Telemundo's strategic fit with Viacom is stronger than with NBC. Stay tuned.

## Europe

Bulgarian tire producer Vidachim's railway station was sold to Belene, Bulgaria-based Micromed for 145,550 levs (\$68,697), according to The Bulgarian News Digest. The sale also included machines, equipment and one engine.

Interactive Services, an Irish firm developing e-learning software for the telecommunications industry, signed a multimillion pound licensing deal and formed a strategic partnership with Lucent. According to Dublin's daily newspaper The Irish Times, the U.S. giant has signed a three-year deal with Interactive Services for its software,

which experts believe is worth \$7 million to \$10 million. The deal will enable Lucent's staff to study a range of interactive training packages provided by the Irish firm.

Anglo-Dutch oil company Royal Dutch/Shell Group boosted its presence in the U.S. gasoline market by buying out Texaco Inc.'s stakes in two gas retailing companies. Shell and Saudi Refining Inc., owned by the Saudi government, agreed to pay \$3.8 billion in cash, debt and pension liabilities for Motiva, which will allow them to sell gasoline under the Texaco brand name at least until 2004. U.S. regulators had demanded Texaco shed its stakes in the two businesses as a condition for approving the company's merger with Chevron Corp. Separately on Tuesday, Chevron and Texaco said their respective shareholders had approved their \$45 billion merger. The deal was expected to close on Oct. 9.

Starbucks Coffee Co. of the US and Karstadt Quelle AG, the German retail group, have established a joint venture and will begin setting up a chain of coffee shops in Germany in the spring of 2002. Die Welt reported the joint venture expects to open 1,500 cafes in the long-term, under the name Starbucks Coffee. Karstadt Quelle has an 82% interest in the venture, and Starbucks the remaining 18%. Between 180 and 200 Starbucks Coffee shops will be opened in Germany over the next five years, with investments of around DM20 million (\$9.4 million) per year.

Siberian Aluminum chief Oleg Deripaska, together with Sibneft chief Roman Abramovich, has extended his industrial empire by taking over top-10 bank Avtobank and leading insurer Ingosstrakh. The St. Petersburg Times reported none of the companies have confirmed the acquisition, but analysts and sources in the industry say it's a done deal, valuing it at \$90 million. Along with Avtobank and Ingosstrakh, SibAl and Sibneft are buying Nosta Metals Plant.

Swedish telecommunications solutions provider LM Ericsson has received a \$70 million global system for mobile communications contract from Malaysian state-owned operator TCSB. According to the Nordic Business Report, Ericsson regards the contract to be of strategic importance as Malaysia is expected to begin awarding third-generation (3G) licenses next year.

## Asia

Telecommunications company Shin Corporation has said it will raise its holdings in television station iTV to 64% from 39% in a deal with Siam Commercial Bank valued at 1.13 billion baht (\$25.26 million). Bangkok Post reported SCB will sell 106.25 million iTV shares to Shin for 10.65 baht (\$0.24) each. After the transaction, the bank will retain a 30% stake in iTV.

Shareholders of Hong Kong Parkview

Group have approved a proposal to sell properties in Hong Kong and Britain to controlling shareholder, the Hwang family, for HK\$833.4 million (\$106.9 million). The asset sale paves the way for the group to concentrate on property development in China.

A joint venture between Dai Nippon Printing Co. and Asahi Glass Co. has started constructing a plant to make backboards for plasma display panels (PDPs). Jiji Press English News Service reported D.A.P. Technology Co., based in Kitakyushu, Fukuoka Prefecture, western Japan, plans to set up the new plant by June 2002 with an annual capacity of 700,000 backboards for 42-inch PDPs. The 5-/50 joint company expects domestic production of PDPs to grow to five million units by fiscal 2005, up from the current estimate of 900,000 units for fiscal 2001. The joint unit will start production in Oct. 2002, expecting sales of ¥15 billion (\$124.52 million) in fiscal 2003.

## Middle East and Africa

Visa International has rolled out its first-in-the-Gulf Visa smart card program combining full issuer and acquirer functionalities, along with National Bank of Abu Dhabi (Nbad) and Card Tech Ltd (CTL). According to Gulf News, by incorporating 'chip' technology into its banking strategy, Nbad is giving its cardholders and retail merchant base the highest level of payment card security available.

Tel Aviv's Top Image Systems has said it has won a project from FEBRABAN, the Confederation of Banks of Brazil. The Jerusalem Post reported the company refused to disclose the deal's value but said it is expected to be several million dollars. As part of the deal, the company's systems will process tens of millions of images containing financial information, extracting and validating the data and delivering the information to FEBRABAN's financial processing application.

Ormat Industries Ltd., an Israeli turbine maker, said it is in talks to purchase six geothermal power plants in Southern California's Imperial Valley to add to its power generating operations in the US. According to The Jerusalem Post, Ormat said it is buying the Ormesa Geothermal power plants, which are owned by several companies, including Constellation Energy Group Inc., for \$41 million. Some of the plants have contracts to supply Southern California Edison through 2018. The Ormesa acquisition would give Ormat an extra \$29 million in annual sales next year. The negotiations come after Ormat bought two power plants in Nevada for \$31 million and acquired sites in Oregon and California to develop future power plants.

by Erica Schlesinger  
of The Daily Deal

**Q**How do I go about targeting VCs for my new venture? What's the best way to send my plan, electronically or in paper format?

**A** Congratulations on your new venture! Before attempting to approach a VC, you need to understand that 'Venture Capital' generally refers to investments of \$1mil plus. Various stages of venture funding are Angel or Seed (usually under \$1mil); Early Stage (often \$1-5 mil); Round or Phase I (often \$5-20mil); 2nd or 3rd Round or Phase (often \$20 mil plus). These ranges are examples - rounds will vary according to deal criteria. Since your financial need is relatively small, you may want to look into SBA backed loans, or seek funding from angels or friends/family. For alternative financing resources go to [www.pacificforums.com/html/eresources.cfm](http://www.pacificforums.com/html/eresources.cfm)

Ben Flammang, Partner, Carnegie Ventures

**Q**I'm starting a business that requires \$100,000. What's the best way to approach a VC?

**A** First, unless you are sending a package pre-announced to a VC, don't expect to have your plan looked at. This may sound harsh, but, consider that VCs get bombarded with plans—depending on the firm, some receive thousands per month! So you're on the right track in wanting to target your best prospects. The A-1 best approach is to do some research on companies in a firm's portfolio, then have someone from one of those companies recommend you. The point is that almost all venture deals are initiated by referrals from people the investors know and whose judgement they respect, not from cold calls or mass mailings or business cards collected at a conference you attended. And, many WILL check with your referral! Since most VCs will not even look at an unsolicited plan, building relationships and a good rapport early on is important. There are many listings of VCs and their funding focus areas, e.g., [www.pwcmoneytree.com](http://www.pwcmoneytree.com)

Burt Alimansky, Managing Director, Alimansky Capital and Chairman, New York Venture Group

To submit a question to be routed to PBF's network of VCs, send to [vambertson@pacificforums.com](mailto:vambertson@pacificforums.com). Due to space constraints, we will select 1-2 questions per month for print.

This is a periodic update of key recent developments in Internet law through September 30, 2001, brought to you by Brown Raysman Millstein Felder & Steiner LLP. For more information on e-commerce legal developments, visit <http://www.brownraysman.com>.

#### Amazon.com Immune From Suit For Third Party Book Reviews

The immunity provisions of Section 230 of the Communications Decency Act (CDA) protect Amazon.com from any claims of defamation, negligent misrepresentation and breach of contract relating to defamatory statements made in book reviews posted by third parties on Amazon.com. *Schneider v. Amazon.com*, No. 46791-3-1 (Wash. Ct. App. Sept. 17, 2001). The court held that Amazon.com is a provider of an "interactive computer service" within the meaning of Section 230(c) of the CDA because it is "providing an information service that necessarily enables access by multiple users to a server." The court rejected the argument that the immunity provisions of the CDA apply only to Internet Service Providers (ISPs), stating that there appeared to be "no difference between web site operators and ISPs in the degree to which immunity will encourage editorial decisions that will reduce the volume of offensive material on the Internet." The opinion is available at <http://www.courts.wa.gov/opinions/opindisp.cfm?docid=467913MAJ>  
**Editor's Note:** This case is significant because it is the first to expressly hold that the CDA's protections apply not only to ISPs, but also to web site publishers.

#### ebay Not Liable For Sale Of Counterfeit Movies Listed On Auction Site

Online auction service Ebay is protected by the Digital Millennium Copyright Act (DMCA) safe harbor from copyright liability arising from the sale of infringing copies of a movie, using materials stored on the eBay web site. *Hendrickson v. Ebay*, No. CV-01-0495 RJK (C.D. Cal. Sept. 4, 2001). The court held that eBay satisfied the first two prongs of the safe harbor provision - lack of actual or constructive knowledge of the infringing activity and lack of control over the infringing activity. The third prong, which requires certain action by eBay upon notice of the activity, was held not to be triggered because of the plaintiff's insufficient notice of the alleged infringement. The opinion is available at <http://news.findlaw.com/cnn/docs/ebay/hendrickson.pdf>

#### In Rem Jurisdiction Provisions of Anticybersquatting Act Withstand Constitutional Challenge

The Anticybersquatting Consumer Protection Act (ACPA), which permits the exercise of in rem jurisdiction over a domain name in the jurisdiction in which the domain name registry is located, satisfies the requirements of due process. *Cable News Network L.P. v. Cnnnews.com*, No. 00-2022-A (E.D. Va. Sept. 18, 2001). The action was brought by Cable News Network to adjudicate the rights to the *cnnnews.com* domain name. The domain name was registered with Network Solutions, Inc. of Herndon, Virginia, by a company located in China. The court held that an in rem action under the ACPA is a "true in rem" action because it adjudicates the rights of all potential rights holders to the disputed property. The court concluded that the due process clause of the U.S. Constitution permits the adjudication of rights in an in rem action even if some of the parties who may have an interest in the property do not have jurisdictional minimum contacts with the forum state.

The opinion is available at <http://pub.bna.com/eclr/002022a.htm>

#### Internet Investment Game Held Subject to Federal Securities Laws

Shares in an online fantasy investment game that permitted its subscribers to trade in the stock of imaginary companies are an "investment contract" subject to the

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regulatory jurisdiction of the Securities Exchange Commission. *Securities and Exchange Commission v. SG LTD*, No. 01-1176 (1st Cir. Sept. 13, 2001). The defendant operated the "StockGeneration" web site, which offered subscribers the opportunity, for a fee, to engage in a "game without any risk" by investing in "virtual companies" listed on a "virtual stock exchange." The Court of Appeals, in reversing the District Court decision below, held that the defendant's characterization of the web site as "a mere game" did not exempt it from the operation of the securities laws.

The opinion is available at

<http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=01-1176.01A>

### Zoning Law Regulating Operation of Adult Entertainment Not Applicable To Internet Dissemination of Live Video

A web site providing live video of adult activities taking place in a residence in Tampa, Florida, does not violate the city's zoning prohibition against the operation of "adult entertainment establishments" in a residential zone. *Voyeur Dorm, L.C. v. City of Tampa*, No. 00-16346 (11th Cir. Sept. 21, 2001). The web site enables subscribers to view the activities of young women in all areas of the residence. The court held that the operation of the service does not fall within the prohibition of the zoning ordinance because the public does not "physically attend" the premises. The court concluded that the "offering" of the entertainment "occurs when the videotaped images are dispersed over the internet and into the public eye for consumption."

The opinion is available at

<http://www.brownraysman.com/InternetLawUpdate/VoyeurDormWTmpa.html>



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