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CLIMATE CHANGE AND SUSTAINABLE BUSINESS SOLUTIONS UPDATE

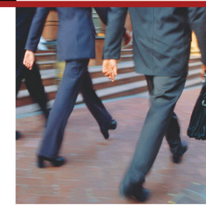
Venture Capital Investment in Clean Technology Grows Despite Decline in Overall Activity

Investment in the U.S. clean tech sector has continued to demonstrate significant growth, notwithstanding the fact that overall venture capital investment has shown recent signs of slowing and remained essentially flat from 2007 to 2008. Venture capital investment in the U.S. clean tech sector increased to $1 billion for the third quarter of 2008, up 14 percent from the $887 million invested in the second quarter of 2008, according to the MoneyTree™ Report recently released by PricewaterhouseCoopers (PwC) and the National Venture Capital Association (NVCA) based on data from Thomson Financial.[1] In comparison, venture capital investment across all sectors was $7.1 billion for the third quarter of 2008, down 7 percent from the $7.7 billion invested in the second quarter of 2008, and was flat compared to the $7.1 billion invested in the third quarter of 2007. The report defines the clean tech sector as comprising the following industries: alternative energy, pollution and recycling, power supplies and conservation.

For the first nine months of 2008, venture capital investment in the U.S. clean tech sector was $2.76 billion, representing an 80 percent increase over the approximately $1.54 billion invested during the same period in 2007. In contrast, venture capital investment activity across all sectors increased only 4.2 percent for the same period, up to $22.3 billion for the first nine months of 2008 from $21.4 billion for the same period in 2007. Indicative of the venture capital industry's growing emphasis on clean tech, total investment in the clean tech sector as a percentage of investment across all sectors was 12.4 percent for the first nine months of 2008, up from 7.2 percent for the same period in 2007.

As these figures clearly indicate, venture capital financing in the clean tech sector shows continuing growth, both in terms of actual dollars invested and as a percentage of overall investment activity. Although the foregoing figures do not reflect the impact in the fourth quarter of 2008 of the global financial crisis and falling energy prices, the clean tech sector is expected to continue to be an area of focus for venture capital firms' investments and to represent an increasing percentage of overall venture capital investment activity. These investment opportunities, particularly in a recessionary economy where investment dollars may become scarce, highlight the need for both investors and clean tech companies to pay careful attention to how investments are structured and the associated risks. Factors to consider include:

- Agreement on the business plan;
- Management rights for the company, including day-to-day operations, the composition of the board and major business decisions;
- Alignment of short- and long-term operational and financial goals;
- Development and ownership of intellectual property rights, including patents, copyrights, trademarks, trade secret information and know-how, particularly if third-party consultants are hired or intellectual property is co-developed;



- Evaluating the strength of intellectual property rights vis-à-vis other competitive technology or market alternatives;
- Evaluating intellectual property infringement risks;
- Evaluating the company's ability to enforce its intellectual property rights against potential infringers and to defend its rights against potential claimants;
- Evaluating the strength (or weakness) of the market opportunity and the time period necessary to get the clean technology to market;
- Evaluating competition, other market alternatives and barriers to entry (or lack thereof) for new participants;
- Whether additional capital contributions will be made by the investor, and if so, clear contractual provisions and/or benchmarks for determining when additional capital will be provided;
- The amount of equity (if any) to be reserved for employee options or other employee equity incentive arrangements;
- Control over distribution and liquidation determinations;
- The handling of deadlocks between the investors and the company founders; and
- Exit strategies and options for both investors and company founders.

Although it is difficult to predict with any certainty the effect that the global economic crisis will have on the venture capital industry, it is encouraging to see that investment activity in the clean tech sector is a growing area of focus for venture capital investors. Thus, even if overall venture investment activity slows, as is likely, the clean tech sector appears well positioned to receive an increasing allocation of dollars being invested.

For More Information

If you would like more information, please contact David Rines, a partner in the **Corporate Transactions & Securities** and **Climate Change and Sustainable Business Solutions** groups, at 513.352.6742 or **David.Rines@ThompsonHine.com**, or contact your primary Thompson Hine lawyer. For a list of Thompson Hine lawyers, please go to **www.ThompsonHine.com/practices**.

[1] All investment amounts are from quarterly PwC/NVCA MoneyTree Reports. Investment amounts may differ from amounts reported in previous PwC/NVCA MoneyTree Reports due to changes in Thomson Reuters' clean technology company criteria.