

# QuickLaunch University Webinar Series

## The New Bull Market?

### Private Secondary Shares

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# Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- WebEx customer support: +1 888 447 1119, press 2

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# Speakers



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## Secondary Transactions Macro-Environment

- Secondary Market Growth
  - Time to Liquidity (Unicorns and other epic animals)
  - Slow-down in IPOs (regulatory fervor)
  - M&A not only exit opportunity
  - Talent Retention
- Platform and Processes
  - Established Players
  - Established Processes
  - Appetite in Market is Large

# WH 2017 Trends – Nasdaq Private Market

Private liquidity sent mainstream as an accepted alternative

VC-fueled secondary “megadeals”

Geographic shift in adoptions from West to East Coast

2016		2017
\$1.1B	TOTAL PROGRAM VOLUME	\$3.2B
32	TOTAL PROGRAMS	51
13	TENDER OFFERS/THIRD PARTY	23
19	BUYBACKS	28
\$10.9M	DEAL SIZE	\$20.0M
	TOP 5 INDUSTRIES	

Company Programs – by the Numbers

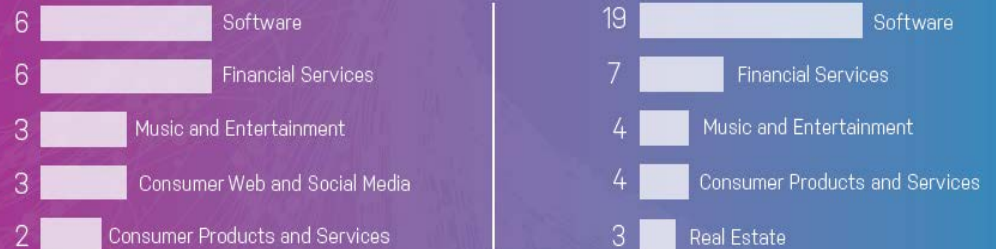
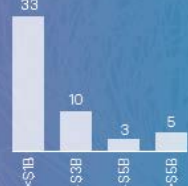
Transactions by Total Volume



Transactions by Eligible Shareholders



Transactions by Valuation





# Who Is Dancing at This Party?

## Sellers

- Founders and Early Employees
- Investors who need liquidity
- Company in connection with new capital raises and contemporaneous redemptions

## Buyers

- Current investors
- VCs and Special Opportunity Funds
- Specialized Secondary Investors
- Mutual, Interval and Crossover Funds
- Company in connection with new capital raises and contemporaneous redemptions





## WHO CAN PARTICIPATE? HOW PROGRAMS ARE STRUCTURED.

Nasdaq Private Market's technology allows for companies to customize unique transactions to fit their needs.



90%

of companies  
allowed employees to sell

53%

of companies  
allowed founders to sell

41%

of companies  
allowed investors to sell





# Why Come to This Party?

## Companies

- Control exit scenarios (M&A or going public)
- Consolidate cap table
- Provide liquidity
- Keep pay below or at market

## Employees/Optionees

- Keep employees engaged and happy
- Show value creation
- Talent pool attraction and retention
- Keeping up with the Jones's (public company RSUs)
- Boost total compensation







## WHERE IS SECONDARY CAPITAL COMING FROM?

### IN 2017, VENTURE CAPITAL BUYERS PUT THEIR DRY POWDER TO WORK.

Nasdaq Private Market has deep working relationships with a wide-variety of buyers and supports top-tier companies in locating the right investors.





# How to Dance at This Party?

## Company Tender Offers

- Valuation considerations (IRC Section 409A and fair market value)
- Pricing Issues (Preferred Price vs. discounted price)

## Third-Party Tender Offers

- Valuation considerations (IRC Section 409A and fair market value)
- Company inclusion

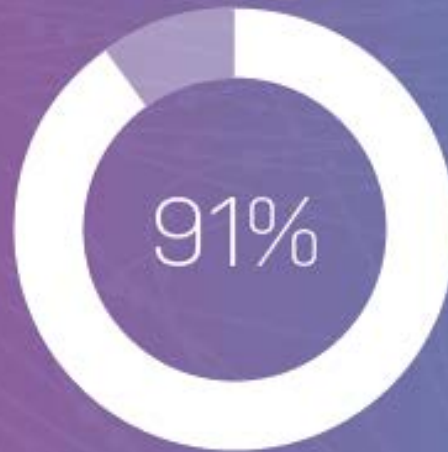




## MATCHING BUY-SIDE AND SELL-SIDE DEMAND

Analyzing the offering size and the actual amount transacted shows that Third-Party offers had a higher alignment between buy-side and sell-side demand than Company Buybacks.

### THIRD PARTY TENDER OFFERS (2017)



91% of the total dollar value offered during all Third Party Tender Offers in 2017 was accepted by sellers

### COMPANY BUYBACKS (2017)



66% of the total dollar value offered during all Company Buyback transactions in 2017 was accepted by sellers



## What Else Is Important Here?

- Timing, timing, timing (409A valuation)
- How large should a tender offer be to interesting to buyers?
- How much information can we give/get (these are private companies)
- Beware of confidentiality in Third-Party Tender offers
- Seller will most likely have to pay taxes on gain
- Impact on Small Business Stock Gain Exclusion (IRC Section 1202 QSBS Treatment)
- Transfer restrictions (Right of First Refusal for Company or Investors)





## What is a Tender Offer?

- Offer to buy
- 10(b)5 liability
- 20 business day rule
- Exceptions
- Settlement





## What Kinds of Rules Do We Have Around the Offering?

- Who is allowed to sell?
- Parameters around selling (record date, caps)
- Allocations if interest too high or low
- Timing and Pricing





## One-Offs vs Tender Offers

- One-Offs often used for founders
- Tender Offers more formal and broader reach
- Disclosures and documentation
- Company involvement
- Payment and Settlement



## Summary of Issues Around Secondaries

- Identifying Need
- Devising a Plan
- Working on Implementation
- Communication and Execution
- Setting expectations





# CASE STUDY & DISCUSSION



## Case Study: Boston-based cybersecurity company

- \$600M valuation in a \$150M Series D round led by Softbank in mid-2017
- Three founders looking to take \$20M liquidity (roughly 20% of their common stock holdings)
- Company's Board is supportive of liquidity for three founders
  - Will provide information to potential investors they pre-approve
  - Management will meet with investors who show interest
  - Major investors state they will not exercise ROFR rights, although won't put it in writing
- Founders expectations are 15% discount to prior preferred valuation
- Founders sign Agreement with NPM for a 2% success-based fee
- NPM sends investment opportunity summary and link to data room to ~25 buyers
- ~5 buyers moved forward to perform diligence on NPM platform
- A [Buyer] agreed to meet Founders pricing expectations and terms & contracts finalized





# Questions

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- Draws on expertise of WilmerHale's extensive team of lawyers practicing in areas critical to emerging companies in various stages of growth
- Features a growing library of video insights from lawyers, investors and other experts
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