Raising Capital Through Equity Offerings: Things to Consider & Ways to Prepare

Presented by Dom San Angelo, M&A & Securities Attorney
dominick.sanangelo@gknet.com | (602) 530-8226
gknet.com/dominick-san-angelo

Presenter Background

Dominick San Angelo
Attorney at Gallagher & Kennedy

- Practice in corporate, mergers and acquisitions, securities, and general business law.
- Represent companies at all stages, from pre-formation concept-stage to large public companies.
- Counsel clients on capital-raising considerations, from “friends and family” round through exits.

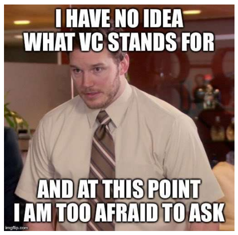
What's in Store for This Presentation?

- High-level overview of capital raising considerations.
- Steps to prepare to raise capital through equity offerings.
- Some warnings, pitfalls, and war stories.
- Hopefully, the right amount of memes.

What's in Store for This Presentation?

First Things First

- Why are you raising capital?
  - What are your business goals?
  - How will increased capital help you achieve those goals?
  - Do you have a concrete plan for how you will use the funds?
- Is equity financing the right choice *right now*?



7

Capital Sources: Four Types

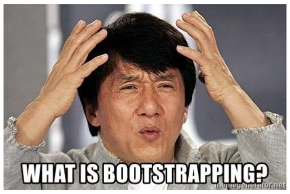
1. Capital from Within
   - Funding the business from personal funds of the principals:
     - Pro: no dilution (more on that later)
     - Pro: no loss of control (more on that later)
     - Pro: no payback schedule necessarily (contrast with debt)
     - Pro: if from employees, may give them “skin in the game”
     - Con: more limited amount of capital (unless you’re Elon Musk)
     - Con: less diversification from a personal finance perspective (even if you’re Elon Musk)
     - Con: current investors may be tapped out

8

Capital Sources: Four Types

9

Capital Sources: Four Types



G|K 10

Capital Sources: Four Types

2. Capital from Within
   - Boot-strapping (reinvesting cash flow):
     - Pro: no dilution or loss of control
     - Pro: managed growth, builds confidence in viability
     - Con: only works if you have sufficient cash flow
     - Con: slower, harder to scale

G|K 11

Capital Sources: Four Types

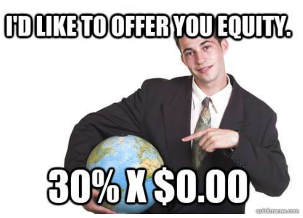
3. Debt Raise
   - Borrow capital from lender(s)
     - Pro: no dilution
     - Pro: no loss of voting control (but may have negative covenants)
     - Pro: higher potential returns if business plan works
     - Con: funds must be repaid with interest
     - Con: priority of capital returns goes to creditors first
     - Con: may make raising further capital harder (debt or equity)

G|K 12

Capital Sources: Four Types

GK 13

Capital Sources: Four Types



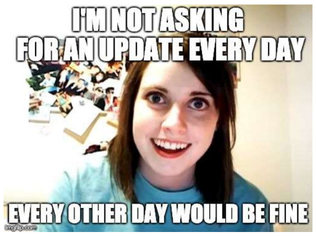
GK 14

Capital Sources: Four Types

4. Equity*
   - Raise outside capital
     - Pro: no defined payback period (usually)
     - Pro: pari passu with other owners (usually)
     - Pro: potential strategic value from involving other investors
     - Con: dilution of relative voting and economic position of existing owners
     - Con: investors might want certain rights (repayment, priority, preferred return, board seats, etc.)
     - Con: investors might be needy or complain
   - *Alternatively, you could franchise, but that is a topic for another day

GK 15

Capital Sources: Four Types



IF Equity is the Choice

- Where are you in the life-cycle of your business?
  - Startup? Early Stage? Established but Growing? Mature?
    - Options and "right choice" may be impacted by company stage.
  - Who are you talking to?
    - Friends and family
    - Angel investors
    - Venture capital
    - Private equity, family offices, larger companies, etc.
  - Do you have advisors in place?
    - Accounting, tax, banking, and legal.

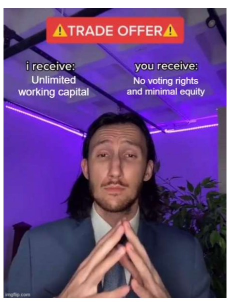
IF Equity is the Choice (continued)

IF Equity is the Choice (continued)

- Do you know what you want?
  - How much capital? Will you need to raise more soon?
  - What form?
    - Convertible notes
    - Equity
    - Options/Warrants/Derivatives
- What is your company worth (pre- and post-money)
- What are you wiling to give up?
  - How much dilution—for now?
  - How much decision-making authority?

19

IF Equity is the Choice (continued)



20

IF Equity is the Choice (continued)

- Are you ready for your guests to arrive?

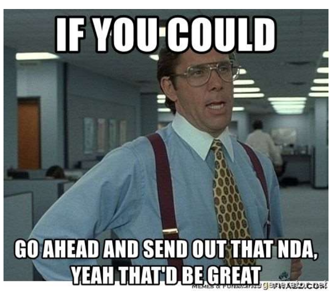
21

IF Equity is the Choice (continued)

- Savvy investors will want to look under the hood
  - Is your legal structure in place?
    - Entity formed.
    - Governance documents.
    - Cap table is clear and cleaned up (no side deals).
    - Material contracts are in writing and in the entity name.
  - Is your business structure in place?
    - Financials are prepared and understandable.
    - Business plan and overview is written and understandable.
    - Value proposition and strategy is clear and attractive.

IF Equity is the Choice (continued)

- Do you have a written NDA/confidentiality agreement?



IF Equity is the Choice (continued)

- Do you have a deck? What about a PPM?

IF Equity is the Choice (continued)

GK 25

IF Equity is the Choice (continued)

- Have you engaged an attorney to ensure compliance with securities laws?
  - Securities laws are confusing, even for some attorneys.
  - Many people have no clue that they may be selling unregistered securities.
  - The "happy investor exemption" should not be relied on.
  - There can be civil and criminal penalties if you don't follow the rules.
  - Many exemptions available but all have requirements.
    - Accredited-investors-only is safest.
    - Less than 100 investors is safest.
    - When in doubt, disclose!

GK 26

IF Equity is the Choice (continued)

GK 27

Key Take-Aways

1. Identify why and for what you need capital.
2. Decide whether outside equity fundraising is right for you.
3. Get your house in order.
   – Clean up corporate documents, cap table, contracts, etc.
   – Figure out what you have and what you need.
4. Assemble a team of professionals.
   – CFO or outside CFO; accountant; tax advisor; banker; lawyer.
5. Go pitch!

G|K 28

G|K
Gallagher&Kennedy

Thank you!

Presented by Dom San Angelo, M&A & Securities Attorney
dominick.sanangelo@gknet.com | (602) 530-8226
gknet.com/dominick-san-angelo