

April 1, 2011

This Week in Social Media:

We believe Social Media is changing the world to a far larger degree than Wall Street currently appreciates. Furthermore, we believe that for the foreseeable future, the news flow on the sector will be highly positive. To keep investors abreast of the latest developments in the sector, we publish this weekly newsletter on all things Social.

IN THIS ISSUE:

- **THIS WEEK IN FACEBOOK:**
 - Facebook dominates Social Network landscape, over 250mm mobile users
 - Facebook Courting Washington
- **THIS WEEK IN TWITTER:**
 - Jack is Back
 - #Grandson Trending On Twitter
 - The Bronx Zoo Cobra Has its Charlie Sheen Moment
- **THIS WEEK IN OTHER SOCIAL MEDIA NEWS:**
 - Google Releases +1
 - Salesforce Acquires Radian6
- **THIS WEEK IN PRIVATE SHARES:**
 - Guest Post by Mitchell Littman, Esq: General Questions & Considerations

PUBLISHED BY:

Lou Kerner

@loukerner

(212) 668-9874

lou.kerner@wedbush.com

Wedbush Securities • 1000 Wilshire Blvd., Los Angeles, CA 90017 • (213) 688-8000 • Member NYSE/FINRA/SIPC • www.wedbush.com

The information contained herein is intended for accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933 or institutional investors.

Wedbush Securities does and seeks to do business with companies covered in its research reports. Thus, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report. Investors should consider this report as only a single factor in making their investment decision. Please see page 14 of this report for analyst certification and important disclosure information.

General Questions & Considerations of a Secondary Market Transaction

Guest Post by Mitchell C. Littman, Esq.



So, what is a Secondary Market Transaction?

A Secondary Market Transaction is a negotiated private sale of restricted securities of an Issuer whose securities are not publicly traded. Some transactions are effected directly from Seller to Buyer and in some instances one or both parties may be represented by a broker-dealer who may earn a commission on the transaction.

Who are the Issuers?

The Issuers that have attracted the most market attention have been social networking and technology firms that have chosen to remain private but that have (i) used equity and equity-linked reward systems in attracting and incentivizing employees and (ii) received private equity or venture capital investments from some combination of angels and institutional investors.

Who are the Sellers?

The overwhelming majority of Sellers have been founders or early-stage employees that have left the employ of the Issuer, though there has been some selling by early stage investors (primarily angels, rather than VCs who have tended to participate in follow-on rounds). Ex-employees have typically obtained their Shares through the exercise of stock options or by receipt of restricted stock grants.

What securities are they selling?

Most sales are of Common Stock, though there have been some sales of Preferred Stock. Some Issuers have two classes of Common Stock - a class with super-voting rights and a plain vanilla class of Common Stock. In such cases, the vanilla class is invariably the security being sold. All such shares are typically deemed to be 'restricted securities' under applicable Federal and state securities laws.

Additional Hurdles to Effecting a Purchase and Sale: ROFR's and Co-Sale Rights

In addition to the outright prohibition on Transfers, most Restricted Stock Purchase Agreements or Option Exercise Agreements include provisions granting a "Right of First Refusal" (a "ROFR") under which the Issuer (or its designee), within a prescribed period of time after receipt of a Transfer Notice, may elect to purchase the Shares on substantially the same terms as those proposed in the Transfer Notice.

In some instances, particularly where the Shares to be transferred consist of Preferred Stock, other early stage investors in the Issuer may also have ROFR's and/or Co-Sale rights entitling them to also sell Shares along with the Seller.

The exercise of any of these rights by the Issuer or another stockholder effectively derails the purchase by the Buyer.

Virtually all ROFR and Co-Sale provisions provide that, in the event the rights are NOT exercised, the Seller has a fixed number of days in which to complete the Transfer to the Buyer. In the event the transaction is not completed within the allotted time, any subsequent attempt at Transfer must once again pass through the ROFR and/or Co-Sale process.

Effecting the Purchase and Sale: The Stock Transfer Agreement

The core document for effecting the purchase and sale of the Shares is the "Stock Transfer Agreement" (also sometimes called a "Stock Purchase Agreement") (the "STA").

The typical STA contains:

- The principal terms of the sale, i.e., number of Shares to be sold, price and the like
- Representations and warranties of the Seller include Title to Shares; Absence of any lien or encumbrance; Power and authority to sell.
- Representations, warranties and covenants of Buyer include Power and authority; Sale was not effected through any public advertising or general solicitation; Buyer is taking for investment intent; Buyer is sophisticated and has sufficient access to information
- Buyer absolves Seller for any liability due to the fact that Seller may have superior information regarding the Issuer Buyer agrees to be bound by same restrictions as were applicable to the Shares in the hands of the Seller

Closing Mechanics

Assuming the ROFR is not exercised, the parties may proceed to a closing. Generally speaking, the Seller and Buyer execute and deliver the STA to the Issuer for its approval.

Seller delivers Stock Certificates to the Issuer or its Transfer Agent.

(Some Issuers actually require that all Stock Certificates be held in escrow by Issuer's counsel to facilitate transfer in the event of a ROFR exercise. In that case, the other parties will only receive photocopies of the certificates.)

Once approved, a virtual closing is conducted, with the Purchase Price being wired by the Buyer to the Seller and the STA signatures and the opinion of Seller's counsel being released to the parties. Subsequently, the Issuer issues a new Stock Certificate in the name of the Buyer.

About Mitchell C. Littman, Esq.

Mitchell Littman is a founding partner of Littman Krooks LLP and heads the firm's corporate and securities department. His practice includes public and private offerings, broker-dealer and investment banking matters, secondary market transactions, venture and private equity capital investments and mergers and acquisitions