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**Private Financing of Entrepreneurships: Sources of Private Financing; Guarantees (Required Personal or Otherwise); When to Go Public (Pros and Cons); Rights of Financing Parties; Defaults; Capital Formation for Entrepreneurial Ventures; Tax Considerations**

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PRIVATE FINANCING OF ENTREPRENEURSHIPS: SOURCES  
OF PRIVATE FINANCING; GUARANTEES (REQUIRED  
PERSONAL OR OTHERWISE); WHEN TO GO PUBLIC (PROS  
AND CONS); RIGHTS OF FINANCING PARTIES; DEFAULTS;  
CAPITAL FORMATION FOR ENTREPRENEURIAL VENTURES;  
TAX CONSIDERATIONS

*Session Chair – Michael Robinson*  
*Canadian Speaker – David Woolford*  
*United States Speaker – Morton A. Cohen*

INTRODUCTION

*Michael Robinson*

MR. ROBINSON: I am Michael Robinson. I am pleased to preside here, which means I do not have to do any hard work. I asked to do this because I represent the last of entrepreneurial financing lawyers.

When I started practicing in 1966, I did two things: Non-recourse project financing, mostly for mines, which was inventive in Canada, and IPOs, for what was then an unusual thing, for the service industry such as radio broadcasting and insurance brokerages that had no bricks and mortars. In other words, they were businesses that did not make “things.”

Now, our two speakers today represent the present and the future of entrepreneurial business financing, and I will briefly introduce them. Mr. Cohen is going first.

Morton A. Cohen is a closet Canadian born in Montreal, but not as Canadians are said to be, particularly shy. His bio of many achievements in Canada and U.S. in finance is almost a page and-a-half, but I am going to distill it for you. He owns Clarion Capital, which is a small business investment company, which does private placements in public companies. He founded Clarion Capital Corporation, which runs several domestic and offshore hedge funds, achieving a 15 percent overall return since its inception in 1994. That’s not quite up to Warren Buffet’s return rate I don’t think, but if you go to the last paragraph of his bio in which he details his healthcare and life sciences investment activities over the last eight years, and you will see that he achieved an internal rate of return of over 200

percent. Now, Warren Buffet has never done that and rarely has any investor that I know of. His background is a B.A. in Economics from Concordia University in Montreal, an M.B.A. in Finance from Wharton, and he is a certified financial analyst.

I hope Mr. Cohen will tell us something about how the local medical research establishment in Cleveland, which is so well known and primarily led by The Cleveland Clinic, contributes to his entrepreneurial activities in this field.

Mr. David Woolford is a closet Yank. He was born in the U.S. and ended up in Canada. He is a partner at Cassels, Brock & Blackwell LLP, a major Toronto firm and one of the sponsors of this organization, the Canada-U.S. Law Institute. He specializes in business law, corporate finance, e-business, privacy law, and securities law, and especially the development and financing of high tech companies, including many startups in Canada and abroad.

Indeed, David just returned from closing a deal in Germany between a Canadian technology company and a major German partner. He has published extensively on the subject of emerging developments in technology law. He is also an angel investor and a member of the Toronto Angel Group. So he puts his dollars where his legal advice is obviously, and he knows the entrepreneurial game from the inside out as well as just the legal aspect thereof. He is also Chairman and a director of Virox Technologies Inc., and holds various other private directorships and advisory board positions.

So without further ado, Morton, would you care to begin?

#### UNITED STATES SPEAKER

*Morton A. Cohen\**

MR. COHEN: Good afternoon. I really cannot thank you enough for the opportunity to follow Mal Mixon. It is like following Warren Buffet. Let me just say it is just nice to be here.

I walked in here, and the first couple of words I heard were "disputes," and at lunch I heard "conflicts," and that reminded me of an old story about a lawyer who goes hunting in rural Tennessee. The lawyer is duck hunting, and sure enough he shoots a duck, and the duck falls in the farmer's field. The lawyer goes up over the fence to get the duck.

The farmer appears, and gets off his tractor and says, "this duck belongs to me; it is on my land." The lawyer is absolutely indignant and he says, "I am going to sue you. I am a very famous lawyer, and I will sue you and take everything you have." The farmer looks at him, says, "You know, we have a