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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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exiting will end, because the multiple is high. The rule generally is that, since the leverage is about five-and-a-half times to six,<sup>45</sup> you have to find the difference by some other financing. Currently, \$250 million deals are going for a domestic buyout purchase price multiple of 7.5, so the leverage is somewhat smaller.<sup>46</sup>

Entrepreneurs today can raise financing in many places. This is a seller's market. So, if you have a great company, you are golden. We have not seen this trend in a long time. There are liquidity opportunities out there. The problem sometimes is that can be extreme in either direction, so we have got to sit and hope this economy continues and that credit problems will be resolved.

### CANADIAN SPEAKER

*David Woolford\**

MR. WOOLFORD: Good afternoon, ladies and gentlemen. I listened with interest as my friend Mr. Morton told the story about the lawyer and the farmer. I do a lot public speaking, and I normally try to dispel the widely held notion of the countless number of lawyer jokes that people always bring up. It is not true. There are only two. The rest are all true stories.

I have the benefit of not only being a lawyer but also being an investor, and I would like to approach my remarks today from that perspective. I will

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a firm has been overhauled, it's common for the investors to either sell the company to a corporate buyer or take it public.").

<sup>44</sup> See generally Ford Completes Sale of The Hertz Corporation to Private Equity Group, PRNewswire, <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/12-21-2005/0004237949&EDATE=> (last visited on Oct. 21, 2007) (stating that Ford completed a sale of Hertz to a private equity group).

<sup>45</sup> See generally Mitchell Presser, *Private Equity & Leveraged Buyouts*, 25th Annual Institute on Federal Securities (Feb. 7-9, 2007) 12-13, [www.westlegalworks.com/presentations/fedsec/presserprivate.pps](http://www.westlegalworks.com/presentations/fedsec/presserprivate.pps) (showing average debt multiples and equity contributions spanning from 1996 to 2006).

<sup>46</sup> See generally *id.* at 13 (showing that up to \$250 million-dollar deals in 2006 had 7.6 domestic buy out purchase price multiple).

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also try to bring an inspirational perspective like Mal Mixon, and then delve into and build upon, the profound remarks of Mr. Cohen.

If I can see a show of hands, who knows whom Zack Johnson is? Zack Johnson is one of the little guys. He is an entrepreneur, and he just beat Tiger Woods to win the Master's. The majority of the pro-golfers that go on the pro-tour toil in relative obscurity. They are in a constant fight in trying to secure sponsorship financing. These relatively obscure pro-golfers do not have the name recognition of Phil, Tiger, and Arnie such that everybody is jumping at the chance to be associated with it. This is true about all entrepreneurs. They do not have the money or the profile of the Intels, Ciscos, RIMs, Googles and the You Tubes of the world. These well known companies have investment bankers, merchant bankers, and traditional bankers jumping at the chance to do financing for them.

These unknown entrepreneurs have an insatiable need for capital in order to grow their businesses, in order to demonstrate traction, to gain market acceptance, to gain market approval, to penetrate the market, generate customer orders and customer sales. They have needs for continuous improvement in R & D, to continue to out perform and outpace the competition. This insatiable need can be a real chicken and egg dilemma, because they do not have the necessary organizational money, and the financiers will not finance them until they become a success. In other words, they will not finance these unknown entrepreneurs, until they actually have orders in hand, or actually have demonstrated that somebody wants to buy their product and buy it in sufficient quantities, so that the yields and returns are impressive and attractive. So, there is a fear among these entrepreneurs that they will lose everything. The constant fears are the inability to make payroll, sending the work force home, having to make payroll deductions, having to pay rent, the remittances, the statutory remittances for taxes and workers' compensation and other levies and assessments that have to be remitted to the local government. What can these entrepreneurs do? They will have to go to the landlord again with hat in hand and see what they can work out. Will the landlord take shares of the company? Another problem is not being able to meet the supplier's terms on a regular basis. So it is a real constant dilemma. It is a real constant struggle for entrepreneurs in order to be able to attract that capital.

Zack Johnson has a green jacket and he is a Master's champion. He can write his own ticket for the next ten or fifteen years, and that is what entrepreneurs in the tech and other emerging industry areas are striving towards: getting their company names known. Entrepreneurs want their companies known so that they can go out and attract sufficient capital on a regular basis to grow so that they can become the next RIM or You Tube.

I want to discuss the different types of financing, many of which are similar to the ones in the United States, but that represent opportunities at the

49th parallel for both domestic companies, U.S. companies, and other companies abroad. A couple of speakers have already touched on angel investors, so I will not go into more detail. I will note, however, that in Canada, the primary source of funding for companies that are looking for their initial seed rounds in the million-dollar range, are angels.<sup>47</sup> There are very few venture capital firms in Canada that have seed or commercialization funds.<sup>48</sup> There are a few. But when you get into the real criteria, many of them have criteria that make it not pre-revenue. It is not really startups they are interested in. The criteria constitute a risk profile allocation or assessment, and when you actually get into it, although they may publish criteria that suggests they will invest in that space, the number of opportunities or the number of instances where they actually do is a lot less than what one would initially believe.

There is also private equity venture capital, which, like in the United States, is really just a subset of private equity that focuses on a higher risk profile.<sup>49</sup> Again, there are a lot of venture capitalists. I think a comment was made earlier about the labor sponsor investment funds, and I have many of those clients and have done many deals where they have invested in clients of mine. They have represented a good source of funding for Canadian businesses over the years, but this is changing, and you are starting to see more private VC funds arise.<sup>50</sup> So, there is a proliferation of more VC funds into Canada to fill the gap.

I am glad Morton touched on the SPAC program. I am not that familiar with the SPAC program, but I will have a deal in that area soon. I have also been extensively involved in a program similar to SPAC that our venture established a few years ago called the Capital Pool Company program (“CPC”).<sup>51</sup>

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<sup>47</sup> See Expert Panel on Commercialization, Government of Canada (2006), <http://strategis.ic.gc.ca/epic/site/epc-gdc.nsf/en/tq00023e.html> (explaining that “much of the investment for early-stage firms is informal (personal savings, friends, family members and angel investors)” in Canada).

<sup>48</sup> See generally *id.* (“[The a]verage venture capital investment in a U.S. company is nearly four times that invested in a Canadian company.”).

<sup>49</sup> See generally Fraser Forum: Venture Capital: High-risk, High-return Financing, The Fraser Institute, [http://oldfraser.lexi.net/publications/forum/2000/07/section\\_04.html](http://oldfraser.lexi.net/publications/forum/2000/07/section_04.html) (explaining that venture capital is high risk, but also has high return financing).

<sup>50</sup> See generally About Garage Canada, Garage Technology Ventures Canada (2006), <http://www.garagecanada.com/about> (“One of Canada’s newest private, institutionally-backed, early-stage venture capital funds, whose close ties with Silicon Valley and other emerging global clusters provides a unique strategic perspective on business cycles, market trends, and technology that we bring to our portfolio companies.”).

<sup>51</sup> See generally Capital Pool Company Program, TSX Venture Exchange, <http://www.tsx.com/en/pdf/CPCBrochure.pdf> (last visited Oct. 16, 2007) (“The CPC program introduces investors with financial market experience to entrepreneurs whose growth and

In a CPC program, you establish a blind pool, set up a public company with a good board of directors and strong management team with a pool of capital,<sup>52</sup> and then go out and find a meritorious target company, and then you essentially do a reverse takeover and take it public on the venture exchange.<sup>53</sup> A case study is a solar tech company that we are bringing public here in Canada, which I will talk about in a minute.

Similar to in the United States, there are different types of debt financing alternatives available to entrepreneurs. Traditional debt, or bank debt, is very limited in terms of its access to most entrepreneurial companies because these companies typically do not have assets to put up as collateral.<sup>54</sup> Companies that are fortunate enough to get a credit line, it is probably in the quarter million-dollar range at the maximum, which really is quite limiting and puts further constraints on these companies and their ability to grow dramatically like the founders and entrepreneurs want to see it. There are also some venture debt players.<sup>55</sup> A client of ours, an innovation fund, has done quite well, but when you look at the profile of the businesses they invest in, the businesses are the traditional, rust bucket, bricks and mortar types. Our clients are not really investing in entrepreneurs, because these traditional businesses have a lower risk profile, and they have guaranteed returns, or as much guaranteed returns as they can.

Trade financing is available in some instances, but again, it requires the entrepreneur to have a stream of revenue.<sup>56</sup> For the companies that are ramping up in order to gain orders, gain customer acceptance, and gain demonstrable traction in the marketplace, this form of financing is typically limited.

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development-stage companies require capital and public company management expertise.”).

<sup>52</sup> See generally *id.* (“Unlike a traditional IPO, the CPC program enables seasoned directors and officers to form a “Capital Pool Company” with no assets other than cash and no commercial operations, list it on TSX Venture, and raise a pool of capital.”).

<sup>53</sup> See generally *id.* (“The CPC then uses these funds to seek out an investment opportunity in a growing business. Once the CPC has completed its ‘qualifying transaction’ and acquired an operating company which meets Exchange listing requirements, its shares continue trading as a regular listing on the Exchange.”).

<sup>54</sup> See generally Expert Panel on Commercialization, *supra* note 47 (“[M]uch of the investment for early-stage firms is informal (personal savings, friends, family members and angel investors)”).

<sup>55</sup> See generally EDC’s Invests CAD 10 Million in Venture Debt Fund to Benefit SME Exporters, Export Development Canada, (2006), [http://www.edc.ca/english/docs/news/2006/mediaroom\\_11687.htm](http://www.edc.ca/english/docs/news/2006/mediaroom_11687.htm) (describing a 10 million dollar investment “in the WF Fund III Limited Partnership, [which is] a \$125 million [venture debt] fund targeting companies in sectors with high export and growth potential.”).

<sup>56</sup> See generally Who We Are, NORTHSTAR Trade Finance, <http://www.northstar.ca/whoWeAre.php> (last visited Oct. 16, 2007) (describing a public-private partnership, “offering [trade] financing to credit worthy buyers of eligible Canadian goods and services.”).

From an equity investment point of view, I want to discuss the key integral aspects that prospective financiers – prospective investors – look for. One aspect, especially from an angel perspective, is the initial valuation of the company. As I tell most of my clients, the price has to feel good. It has to be a price that is compelling enough to cause a particular investor to write a check. If the investor is going to take a pass, it is likely not because they do not necessarily like the opportunity, like the space, or like the quality of the talent and the technology, but because over time they do not feel that they can garner returns that are sufficient enough either for their own personal investment habit or for, in the case of funds, the stakeholders who are expecting a certain rate of return.

Another aspect to look at is what other investors have taken a pass on. And there is a reason they have. Bay Street is not the size of Wall Street. It is still a fairly small community, and a lot of the groups like to co-invest. They like to syndicate their investments. They like to do that because, one, they like to share the risk allocation, and, two, they like to share and trade the benefits of the due diligence responsibilities, given the relevant strengths of each organization. If another investor has had an opportunity to invest and has passed, there is something typically wrong with the investment. There is some hair on the deal. As I say, it may be too highly priced, or maybe the management team does not have the credibility that the investment populous believes is necessary to drive that particular business, or their technology may not be attractive enough. It may also be a small-medium sized business, that is not going to garner sufficient returns to attract the excitement of people with money, both in the private equity and public markets. We have seen that with You Tube, and some of the companies that Nortel and Cisco have bought, that these companies have home run potentials in terms of multiples. Well, these are getting multiples of 10, 30, 50, a hundred times; it is tremendous.

There is proliferation in the Valley. The old Internet and web 2.0 funders, including the Sun Microsystems founders, are all into huge clean tech funds with money flowing into the solar technology and wind technology.<sup>57</sup> Money is flowing into environmental issues and biodiesel. A lot of the alternative fuel and alternative energy sectors are attracting considerable interest and, as we heard some comments earlier about, responsibilities. There are many

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<sup>57</sup> See generally ERIC MARTINOT, RENEWABLES, GLOBAL STATUS REPORT (2005), available at <http://www.worldwatch.org/brain/media/pdf/pubs/ren21/ren21-2.pdf> (“About \$30 billion was invested in renewable energy worldwide in 2004.... The fastest growing energy technology in the world is grid-connected solar photovoltaic (PV), which grew in existing capacity by 60 percent per year from 2000–2004, to cover more than 400,000 rooftops in Japan, Germany, and the United States. Second is wind power capacity, which grew by 28 percent per year, led by Germany, with almost 17 GW installed as of 2004.”).

corporations that are striving, especially in the more traditional businesses, to modify their businesses in a way to demonstrate that they are doing things to help the environment. Certainly, in the emerging, and in the entrepreneurial area, there are some tremendous opportunities both for the entrepreneurs and for the financiers in making investments in these environmental areas.

At this point, I would like to turn to a case study of one company that I have been involved in and of which I am the chairman. Virox is a company I established with a friend of mine who was a senior executive at Bausch & Lomb. Together, we raised a million dollars in love money, or family angel financing, as I heard somebody refer to it earlier.

You cannot pickup the paper, or listen to the news these days, without hearing about another threat of the pandemics. For instance, the bird flu or the avian flu – there is always news about another outbreak in the Middle East or another outbreak in Britain. Virox has an accelerated hydrogen peroxide program.<sup>58</sup> It is the technology of choice on most cruise ships worldwide, to fight the Norwalk virus, which many or all of you have heard about.<sup>59</sup> Think back two years ago with the SARs epidemic in Ontario. The accelerated hydrogen peroxide technology was exclusively recommended by the Ontario Government,<sup>60</sup> which is unheard of. Governments never, certainly not in our country, recommend a particular product. Usually, there will be a suite of products or family of products that is recommended. But because Virox is unique and has the only accelerated hydrogen peroxide technology out there, the Government of Ontario put in a million dollar order to outfit every worker on their ambulances and in their hospitals and daycare facilities when the SARS outbreak was at its zenith.<sup>61</sup> In the fall of 2006,

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<sup>58</sup> See Virox Technologies Inc., <http://www.virox.com/> (last visited Oct. 16, 2007) (“Virox Technologies Inc. has pioneered the broader acceptance of Hydrogen Peroxide based products with a patented technology known as Accelerated Hydrogen Peroxide (AHP). AHP is a synergistic blend of commonly used, safe ingredients that when combined with low levels of hydrogen peroxide produce exceptional potency as a germicide and performance as a cleaner.”).

<sup>59</sup> See generally Susan Candiotti, *Sailing the Sickening Seas*, CNN.COM, Dec. 2, 2002, <http://archives.cnn.com/2002/TRAVEL/12/02/sick.ships.wrap/> (“The Norwalk virus is one of the most common causes of gastrointestinal illness and tends to strike people in confined spaces.... Outbreaks occur regularly on land and cruise ship outbreaks occur several times a year...”).

<sup>60</sup> See Memorandum from Malcolm Bates, Director, Emergency Health Services Branch to Municipal EMS Directors and Managers (March 27, 2003) available at [http://www.virox.com/pdf/MinistryofHealthSARS\\_Vers1\\_1.pdf](http://www.virox.com/pdf/MinistryofHealthSARS_Vers1_1.pdf) (“Following the transport of a patient with suspected SARS, EMAs and Paramedics must decontaminate the vehicle, stretcher and any equipment used during the call. It is recommended that Virox-5TM, an accelerated hydrogen peroxide base formulation, be used as the disinfectant of choice for this purpose.”).

<sup>61</sup> See generally Kate MacNamara, *Germicide Maker: Virox, Winning in the Battle Against SARS*, NAT’L POST, Apr. 7, 2003, available at [http://www.virox.com/outbreaks/04\\_07\\_03.asp](http://www.virox.com/outbreaks/04_07_03.asp)

Virox won the prestigious Canadian-American Business Achievement Award in partnership with their largest trading partner and strategic investors, JohnsonDiversey, Inc., out of Wisconsin.<sup>62</sup>

You may be more familiar with their retail sister company, S.E. Johnson. S.E. Johnson has a host of retail products, and they have been a team strategic partner and investor of Virox since 2001.<sup>63</sup> I do not have a Robert Frost poem like Mal Mixon had, but I want to make my last point with a statement from the President and CEO of Virox, which is, “For entrepreneurs, stay the course. Don’t get off focus.” Entrepreneurs try to be too many things to too many people. Know your core competencies. Virox’s core competency is something I have already described and it is a pretty compelling mission statement. Infection control is at the heart of everybody these days and Virox could have done many other things. However, this is what Virox chose to do, and it has been a huge success.

There have been some worldwide partnerships that Virox has developed. As I mentioned Steris is in the high level – the endoscopes and the emergency cardiac wards of many hospitals.

Virox early on was the first foreign operation that received EPA approval for an Anthrax technology during the bioterrorism postal system problems.<sup>64</sup> It was a spray that was developed to be used throughout the U. S. Postal system to help deal with the pandemic.<sup>65</sup>

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(“[W]ith the outbreak of severe acute respiratory syndrome, or SARS, reaching crisis levels in Toronto, the firm’s disinfecting wipes are fast becoming a must-have commodity. Orders at the Mississauga, Ont.-based firm have more than doubled over the past couple of weeks as a result of the deadly new strain of pneumonia.”).

<sup>62</sup> See *Canada-US Partnership a “Clean” Sweep for 2006 Business Achievement Award*, CANADIAN NEWSWIRE, Oct. 23, 2006, <http://www.newswire.ca/en/releases/archive/October2006/23/c3426.html> (“The Canadian American Business Council... has selected Virox Technologies Inc., of Oakville, Ont., and JohnsonDiversey Inc., of Sturtevant, Wisconsin to be awarded the prestigious Business Achievement Award for their collaboration in developing and distributing, a safe and environmentally friendly hydrogen peroxide-based disinfectant.”).

<sup>63</sup> See Press Release, Virox, Johnson Wax Professional Becomes Global Leader in Accelerated Hydrogen Peroxide Technology (June 13, 2001), [http://www.virox.com/news/06\\_13\\_01.asp](http://www.virox.com/news/06_13_01.asp) (“Johnson Wax Professional has acquired the exclusive rights in the I & I market to the Accelerated Hydrogen Peroxide (AHP) technology. Additionally, it intends to purchase a minority stake in the Canadian company that invented it, Virox Technologies Inc., developing a relationship that will eventually bring the use of AHP across the globe.”).

<sup>64</sup> See Memorandum from Marianne Lamont Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response to Stephen L. Johnson, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances (Jun. 25, 2002), *available at* <http://www.virox.com/pdf/JohnsonWaxCrisisExemption.pdf> (authorizing exemption and describing conditions).

<sup>65</sup> See *generally id.* (describing use of the spray by the United States Postal Service).

Time is kind of tight, so I will quickly run through my remaining slides, but I thought this slide would be of particular relevance and of interest to the entrepreneurs in the crowd. This slide sets out a chronology of how Virox has grown in terms of funding.<sup>66</sup> As I mentioned, in July of 1998, we put together a million-dollar seed round.<sup>67</sup> We had to bulk up that seed, with a rights offering a year later. We secured some bank financing, but again, it was more in the quarter million range. So it was not that significant to grow the company. One of the elements that was very significant was that we entered into these various partnership arrangements, including R & D contracts, and it was integral for the large partners, whether it was the Pharmas or the JohnsonDiverseys or the other partners. These large partners had to fund the research, the tailoring of our crown jewels into applications that were going to fit into their particular industry and into their distribution and food chain. We also did a funding round in D.C. in May 1999, which amounted to \$2.5 million.<sup>68</sup> We also entered into the big alliance with JohnsonDiversey in 2000.<sup>69</sup> Then Virox turned the corner, and started generating pretax flow, started to significantly enhance the bottom line so much so that in the last couple of years, we bought out all the seed investors and our venture capitalists, which is a unique story. You do not hear about many tech companies that can do that. This year Virox is trending towards close to \$17 - \$18 million on the top line, and \$6 or \$7 million on the bottom line. The margins are significant because 90 percent of the product is water. And the arrangement with Steris has not been completed yet. They are in the middle of the throws of their FDA submissions.

The EPA registrations have started to come through with JohnsonDiversey. Most of these figures in Canada and Europe and the Far East do not even include the biggest market in the world. To give you a quick idea of how the valuations have shot up, if there were a 2007 bar graph, the

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<sup>66</sup> See David Woolford, "Private Financing of Entrepreneurships: The Ongoing Challenges" – Comparative Legal Aspects of Entrepreneurship in Canada and the United States, [http://cusli.org/conferences/annual/presentations/4WOOLFORD\\_PrivateFinancingbyEntrepreneurships\\_Apr1207.PPT](http://cusli.org/conferences/annual/presentations/4WOOLFORD_PrivateFinancingbyEntrepreneurships_Apr1207.PPT) (last visited Nov. 7, 2007); see also Morton A. Cohen, Private Financing of Entrepreneurships: Sources of Private Financing, [http://cusli.org/conferences/annual/presentations/4\\_COHEN\\_Private\\_Financing\\_of\\_Entrepreneurships.ppt](http://cusli.org/conferences/annual/presentations/4_COHEN_Private_Financing_of_Entrepreneurships.ppt) (last visited Nov. 7, 2007).

<sup>67</sup> See generally MacNamara, *supra* note 61 ("In 1998 [Mr. Pilon] was a vice-president for eye care giant Bausch & Lomb Canada. Long a 'thwarted entrepreneur,' a lawyer contact put him in touch with local chemist, Michael Rochon. Mr. Rochon had a formula for accelerating the germ killing action of hydrogen peroxide but no business plan. Mr. Pilon conceived a plan, and bought Mr. Rochon's firm, M&R Chemical. On the strength of Mr. Rochon's formula, Mr. Pilon cobbled together \$3-million in seed money.").

<sup>68</sup> See generally *id.* (describing total seed money obtained).

<sup>69</sup> See *id.* ("JohnsonDiversity [sic] even took a 10% equity stake in the company.").

bar would be much higher than the value of the seed shareholders and venture capitalists a couple years ago.

I will quickly touch on equity investments. The main agreements are subscription agreements. We set out the deal terms, the representations and warranties – which should be a full spectrum of the due diligence – and we set out the various remedies. We heard speakers talk earlier about limitations and baskets, and those are the things you want to make sure you have an experienced lawyer to talk to about. In a shareholder agreement, it is important to put in things to deal with preemptive rights, anti-dilution or full ratchets, and drag-along, tag-along, piggyback, board provisions.

This is the essence of what I do and the essence of the legal practice surrounding equity investments in private companies. It is important, as an entrepreneur, to make sure that you have experienced counsel, not just a lawyer who is very good in what he or she does, but one that knows the industry, because there are a lot of unique elements to venture capital investing and entrepreneurships. So, if the lawyer does not play, day in and day out, in the industry, then the lawyer will not be able to properly counsel the client.

There are pros and cons in going public. Virox is a keen example where we set up and operate like a public company already – compensation committees, governance committees, audit committees, and regular reporting to stakeholders and to banks. We have a data room that impresses investment bankers and other prospective partners.

I mentioned the CPC program. I will quickly touch on it. We just announced a press release last week. We are bringing the first non-North American, non-resource issuer to go public on the Toronto Stock Venture Exchange.<sup>70</sup> It is a German solar tech company.<sup>71</sup> Germany is universally regarded as the world leader along with Japan.<sup>72</sup> I've visited several times now. Almost every second home, barn, and commercial facility has solar panels. It is a green environment. This is a testament to the quality of the

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<sup>70</sup> See generally MarketWire News Releases, *Eminence Capital I Inc. Announces Executed Letter Agreement*, HOUS. CHRON., Apr. 5, 2007, <http://markets.chron.com/chron?GUID=1662999&Page=MediaViewer&Ticker=ECI> (describing plans to list a German solar power company on the Toronto Stock Venture Exchange).

<sup>71</sup> See generally *id.* (describing plans to list a German solar power company on the Toronto Stock Venture Exchange).

<sup>72</sup> See generally Robert Collier, *Germany Shines a Beam on the Future of Energy*, SAN FRANCISCO CHRON., Dec. 20, 2004, <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2004/12/20/MNGRAAEL4B1.DTL> (describing Germany as “the No. 1 world producer of wind energy, with more than 16,000 windmills generating 39 percent of the world total, and it is fast closing in on Japan for the lead in solar power.”).

program – here is a world leading company that is a real success in its own backyard coming to North America to establish operations here.

We see daily in the papers about wanting to establish solar parts. The LPA and government have brought in new incentive programs to help us establish solar technology.<sup>73</sup> It bodes well and provides for some opportunities cross-border between Canada-U.S. We are bringing this world-class technology from another jurisdiction, into North America, while at the same time going public and having access to the public markets here.

#### DISCUSSION FOLLOWING THE REMARKS OF MORTON A. COHEN AND DAVID WOOLFORD

MR. ROBINSON: Well, Henry and everybody else will be pleased to know that we have 22 and-a-half minutes left for questions, which is terrific. I would just like to say one thing before we do questions.

MR. WOOLFORD: Let me just ask one thing about SPACs. I recall, and maybe it was more than five, ten years ago, there was a similar type of program in the U.S., which initially garnered a lot of interest, but then I think it garnered some bad press as well. Either they were not making a lot of investments or the investments they were making were less than sterile quality and caused a lot of dissatisfaction, or caused the program to run into a lot of lack of interest because of that.

MR. COHEN: I will go back to my initial statement – that investment bankers in this country are extremely creative. They have come up with a different structure, which precludes these blank check companies from just making any old acquisition. The way this thing works is that the money is raised on certain conditions. One of those conditions is that 85 percent of the funds go into escrow, at which point you have 18 months to make an acquisition, supposedly within the domain of your prospectus. If 80 percent of the shareholders vote against this, they cannot approve the acquisition. If somebody wants to get their money out after the 18 months, they can get their money out of that program, minus the 15 percent that the investment bankers get.

So the structure is different, and it is supposed to be more protective. There are also warranties that go into these deals, and interestingly enough, the warranties are at the issue price and sometimes less than the issue price. It is not all worked out.

MR. ROBINSON: Dr. Barber had the first question, I believe.

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<sup>73</sup> See generally Government Incentives, The Canadian Solar Industries Association, <http://www.cansia.ca/government.asp> (last visited Oct. 16, 2007) (describing Canadian Federal, Provincial and Municipal incentives for the installation of solar technology).