

FIGURE 2-1 Progression of Funding Sources for a New or Young Business



FIGURE 2-2 Progression of Funding Sources and Characteristics of Funding Decisions

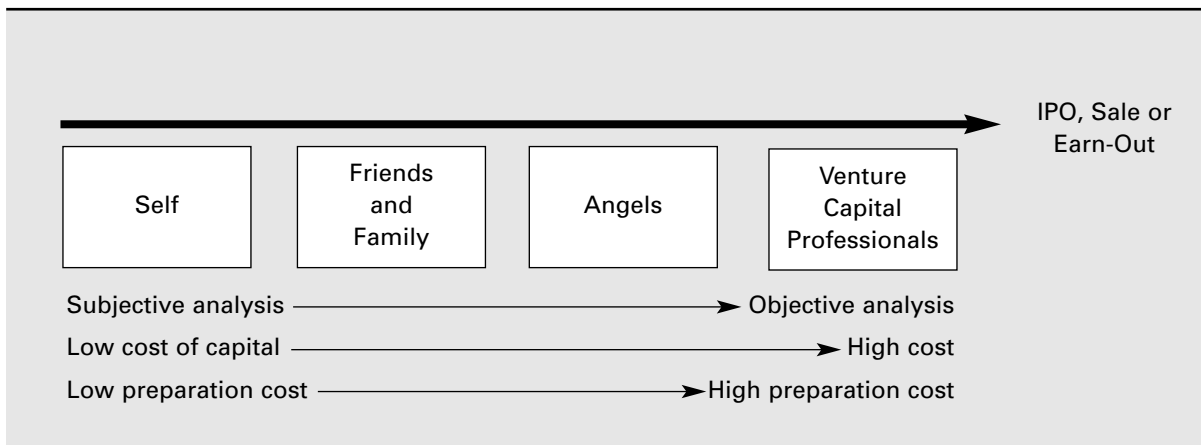


FIGURE 4-1 Friends and Family Network

Name	Affiliation or Activity	Frequency of Contact			
		Weekly	Monthly	3-4 Months	Less Frequent
	Academic				
	Alumni				
	Arts				
	Theater				
	Symphony				
	Other				
	Civic/Community				
	PTA				
	YMCA/JCC				
	Other				
	Ethnic				
	Family				
	Aunts/Uncles				
	Cousins				
	Parents				
	Siblings				
	Neighbors				
	Local Politics				
	Professional Assns.				
	Religious				
	Service Providers				
	Lawyer				
	Doctor				
	Other				
	Retail				
	Car maintenance				
	Dry cleaner				
	Hair				
	Restaurants				
	Social				
	Book club				
	Cooking/Dining				
	Dancing				
	Other				
	Sports/Athletics				
	Golf				
	Gym				
	Racquet sports				
	Running/Walking				
	Swimming				
	Other				
	Work				

FIGURE 7-1 Targeted Search for Angel Investor

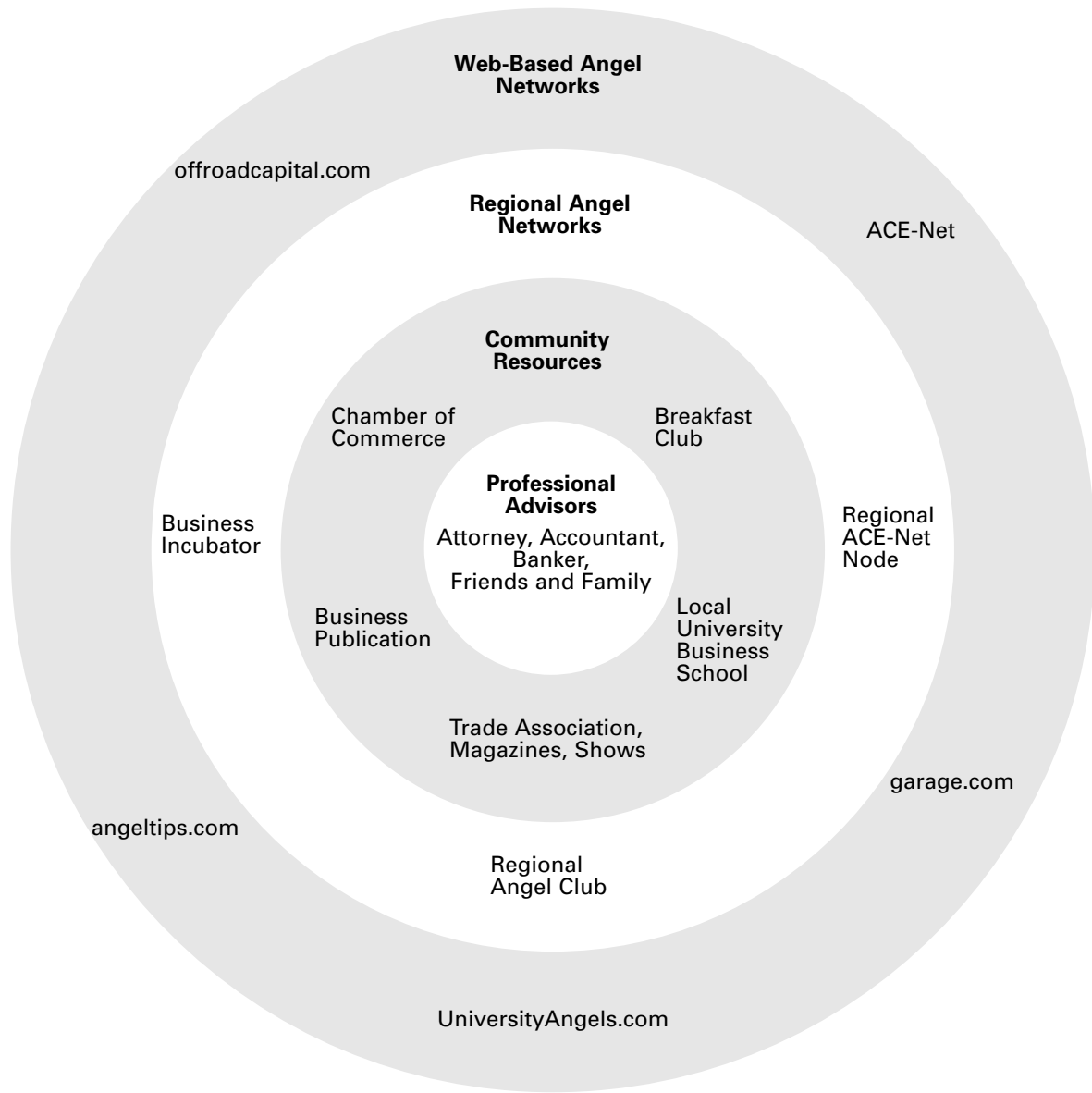


FIGURE 9-1

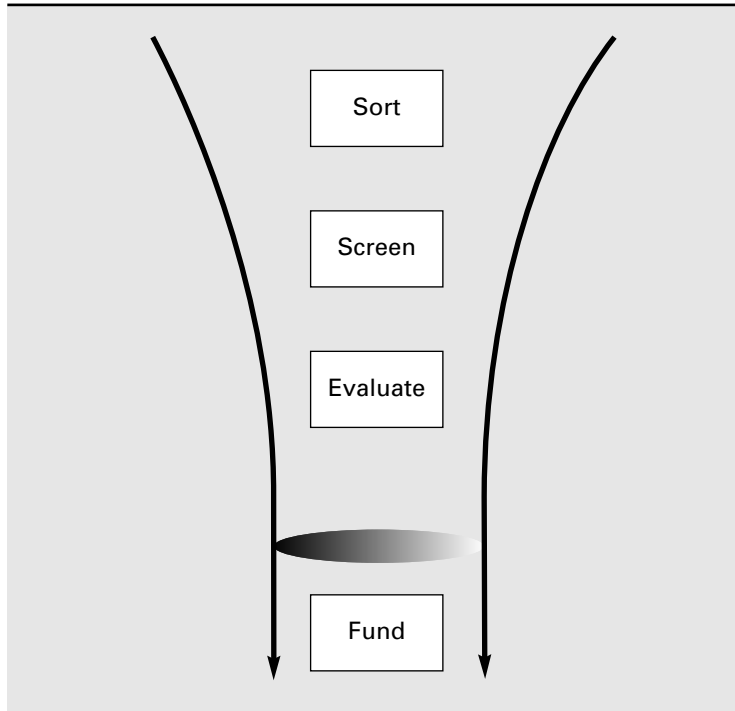


FIGURE 9-2

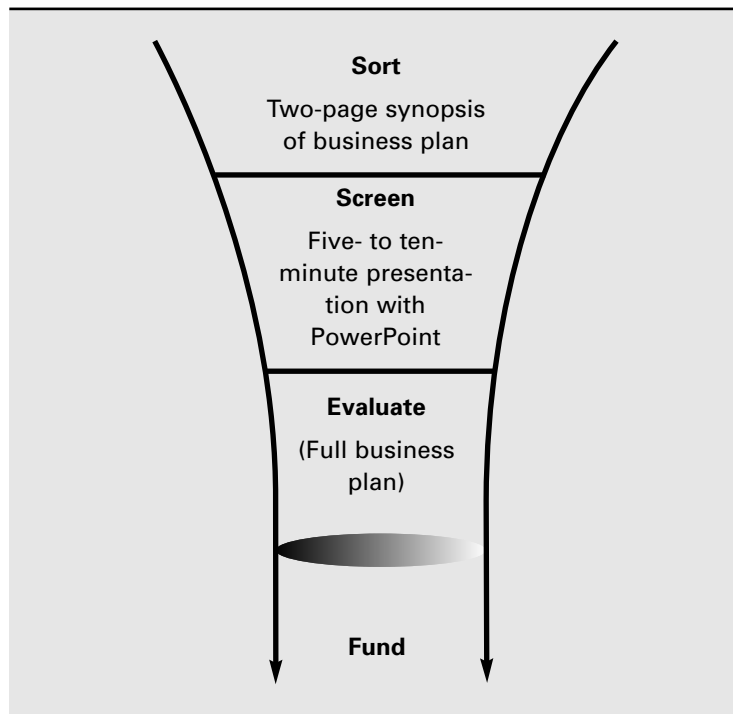


FIGURE 10-1 Targeted Search for Venture Capital Investors

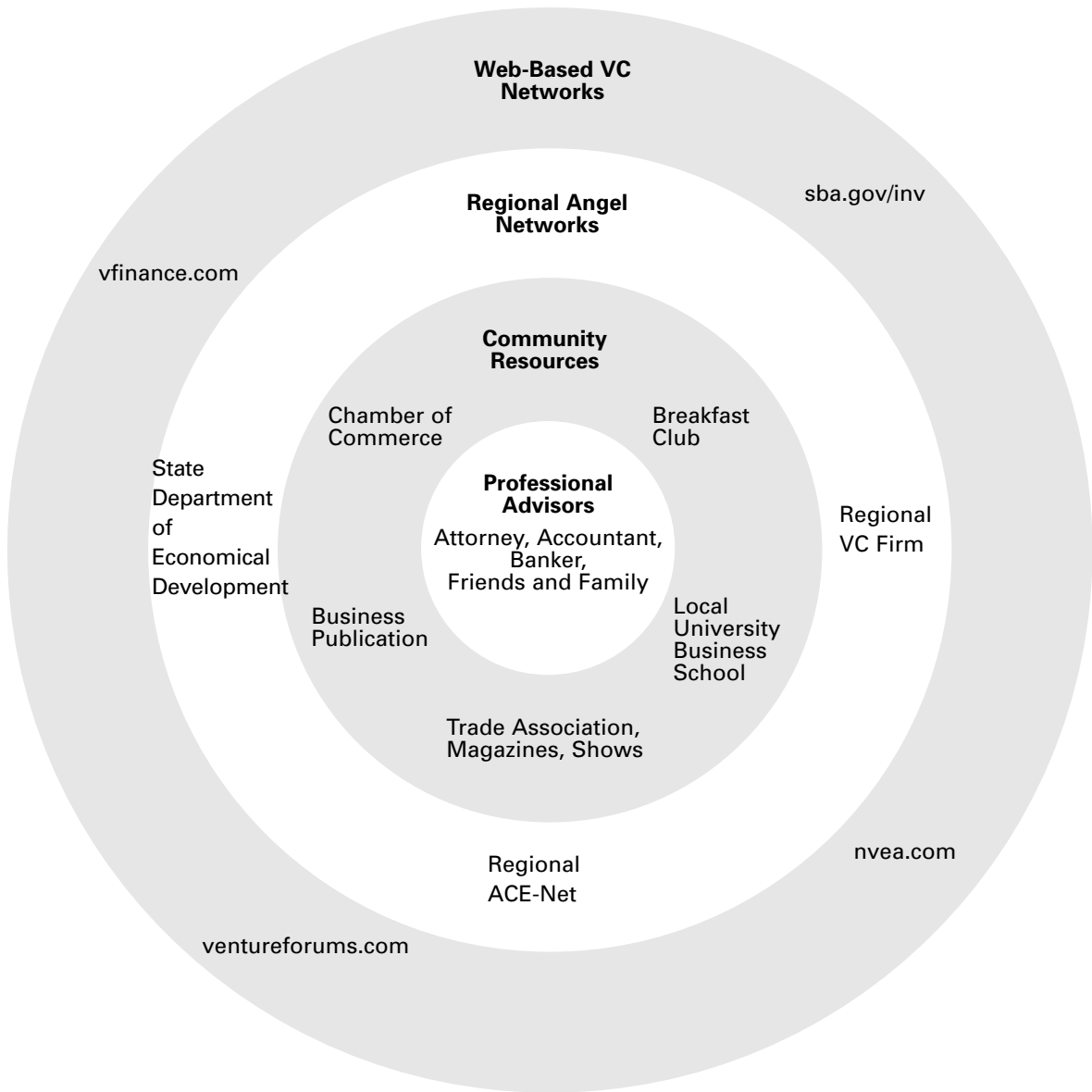


FIGURE 18-1 Key Questions to Ask of Any Potential Strategic Alliance

There are eight key elements to consider in forming a strategic alliance.

1. *Strategic fit.* Does the proposed alliance help both partners to implement their respective strategies?

2. *Advantage and benefit.* What are the benefits each partner will receive from the alliance? Will these benefit increase each partner's strategic advantage within its own competitive universe?

3. *Partner competence.* Does each partner have the competences and capabilities needed to achieve the alliance's objectives?

4. *Resource demands.* Do the parties have the funds, personnel, and other resources the project requires? Are these resources sufficient to carry the project to the end? If either party does not have the resources today, will they be able to get them in a timely basis?

5. *Risks.* What are the risks involved in attempting to achieve the objective? What is the likelihood that any of these risks will occur? What would its impact be?

6. *Corporate dominance.* Will one partner in the alliance try to dominate the other?

7. *Profit and loss impact.* Will focusing on satisfying the commitments to any alliance mean diverting resources from other efforts? This is more often a concern for the small company partner. Small companies looking for resources and a quick route to achieving certain goals may enter into an alliance without thinking through what it will ultimately cost in resources and impact on other projects.

8. *Image.* How would the relationship, if known to the outside world, reflect on the partners? Again, this is of prime concern to the small company partner. Most entrepreneurs expect people to think their company and products must be worthwhile if a large corporation has teamed up with it. Unfortunately, there is some sensitivity, especially in the investment community, about small companies that are tightly interlinked with larger companies in alliances, and such an effort can hinder any future search for capital.

FIGURE 18-2 Partner Negotiating Checklist

Negotiating an agreement with a business partner can be emotional and traumatic for a number of reasons. Here is a list of negotiating points to help smooth the way:

1. Planning and Preparation

- Use people inside your company as well as outside specialists to create a team with the necessary skills.
- Do not change team members midcourse unless absolutely necessary.
- Include marketing, financial, and technical people, as well as an attorney, on the team.
- Know what you want out of the negotiations. Go in with a list of goals and objectives for the relationship.

2. Negotiating Behaviors

- Don't talk too much. Everything you say provides clues to the other party about your motivations.
- Don't fear silence. All negotiations need some "cooling off" time.
- Don't accept a deadline without thinking it through. Don't let artificial deadlines limit negotiating, force a quick deal, or cause a "rush to close."
- Don't negotiate when tired. Get enough rest and start negotiations after noon on Monday and end before noon on Friday.
- Use anger constructively. Getting angry at the right moment is great, as it can force the other party out of complacency. But don't get angry too often; this becomes an emotional button the other party can press to achieve its aims.
- Don't be critical without being reasonable. Constant criticism or ridicule of the other party's position can undermine yours.
- Everybody reads upside down. Don't think the other party's negotiating team isn't full of grade-A upside-down readers. Be careful not to expose documents you don't want them to see. Let them see things you want them to see.

3. Negotiating Tactics

- Forgetting, bypassing, or neglecting your strategy and objectives means you have lost the focus of the negotiation
- Don't give "free" concessions.
- Don't withdraw concessions.
- Calculate how you will respond "spontaneously" to a new term introduced in negotiations.

4. Negotiating "Musts"

- Always calculate the economic value of each term or condition.
- Always get it in writing.

FIGURE 18-3 Checklist of Business Terms and Conditions for Partnering Agreements

The partnering agreement is an important business document and a sensitive legal document. The following checklist will help you work through the process of creating a partnership agreement with another company. All but the final elements should be completed by business executives; the final section is to be performed by legal counsel.

- 1. Statement of Purpose**
(Legal term: "Recitals")
- 2. Roles of the Partners**
- 3. Scope of Work:**
Partners' and participants responsibilities for:
 - development
 - manufacturing
 - testing
 - marketing
 - milestone schedule*Activities*
 - time lines
 - milestone schedule
 - completion and acceptable criteria
- 3. Financial**
Amount(s) paid by whom, to whom, distribution ratios, and purpose:
 - investment and form
 - services
 - advance payments and royalties*Payees—commitment*
 - extent
 - duration
 - consequences of defaults*Proceeds*
 - payments
- royalties
- allocation
- 5. Organization and Structure**
- 6. Rights to Intellectual Property**
 - ownership
 - reversions
 - licensing
 - exclusivity
 - assignment
 - extent of use
 - right of first refusal regarding other developments
 - escrow requirements
- 7. Equity**
 - earning basis and amounts
 - basis for changes—financial and other milestones
 - public stock issues (e.g., price, registration)
 - incentives
 - warrants
- 8. Indemnification**
 - patent infringement
 - allocation
- 9. Confidentiality and disclosure conditions**
- 10. Major exposures and consequences**

FIGURE 18-3 Checklist, continued

- 11. Conflict resolution formula**
- 12. Termination and exit**
 - during development phase
 - during full-scale operation
 - penalties
 - dissolution formula
- 13. Requirements (agreement contingent on completion of)**
 - delivery of "know-how"
 - examination of invention disclosures, papers, and patent disclosures
 - definition of "know-how" (This is sometimes referred to as application technology and intellectual property, refers to all information and anything that represents or describes the invention or innovation.)

Included in know-how, without limitation:

 - all inventions covered by the patent
 - designs
 - drawings
 - photographs
 - instructions
 - prototypes and models
 - technical information
 - specifications for materials and production
 - special tools and equipment
 - data concerning development
 - testing and evaluation of inventions covered by patent
- laboratory records and reports
- Other data that have been developed, acquired, owned, controlled by the developer and are useful in the manufacturing and installation of inventions and/or maintaining and inspecting the same.
- 14. Legal Aspects (performed by legal counsel)**
 - compliance with laws of all jurisdictions
 - legal due diligence
 - contract enforcement
 - equipment patents and trademarks
 - patent infringement
 - contract/agreement drafting and review
 - key personnel agreements
 - tax planning
 - entity structure and plan (if separate entity formed)
 - examination of records:
 - articles of incorporation
 - financial statements
 - by-laws
 - review of existing contracts and lawsuits
 - lien search
 - draft and review opinion of counsel

FIGURE 19-1 Components of a Licensing Agreement

The following 11 sections must be included in any licensing agreement:

1. Definition and description of the intellectual property being licensed.
2. Type of rights granted (exclusive or nonexclusive).
3. Description of the geographic territory in which the licensee is allowed to use or sell the intellectual property.
4. Applications for which the intellectual property may be used.
5. Financial (sometimes referred to as compensation) specifying the applicable payments: fees and/or royalties.
6. Representations and warranties, in which the licensor states things such as that he or she is the owner of the intellectual property and has the right to execute the license.
7. Confidentiality agreement stating that the licensee must not divulge any proprietary information that it obtains while working with the licensor.
8. Proprietary rights, including who maintains the intellectual property rights, etc.
9. Infringement describing what happens if someone copies the product or uses the technology or process without a license.
10. Term or period during which the license is in force.
11. Termination describes what happens at the end of the agreement period, and under what conditions the agreement can be terminated early.

A number of other issues, such as accounting, auditing, and taxation, need to be laid out in the agreement. The best person to write the agreement is an attorney familiar with both intellectual property and licensing arrangements. Not every patent attorney is competent to write a licensing agreement or to pursue an infringement action.

FIGURE 30-1 Initial Capitalization

	Friends/Family	Angel	Venture Capitalist
Amount of financing	✓	✓	✓
Price per share	✓	✓	✓
Type of security	✓	✓	✓
Use of funds		✓	✓

FIGURE 30-2 Capital Structure: Rights

	Friends/Family	Angel	Venture Capitalist
Antidilution		✓	✓
Conversion	✓	✓	✓
Dividends	✓	✓	✓
Future stock purchases		✓	✓
Liquidation preference		✓	✓
Participation protection		✓	✓
Redemption ("put" provision)		✓	✓
Registration rights			
• Demand registration		✓	✓
• "Piggyback" rights		✓	✓
"Tag-along" rights		✓	✓
Unlocking provisions		✓	✓

FIGURE 30-3 Capital Structure: Restrictions

	Friends/Family	Angel	Venture Capitalist
Founder stock restriction		✓	✓
Founder vesting		✓	✓
Right of first refusal		✓	✓

FIGURE 30-4 Management Control

	Friends/Family	Angel	Venture Capitalist
Board of directors		✓	✓
Veto rights		✓	✓

FIGURE 30-5 Information

	Friends/Family	Angel	Venture Capitalist
Disclosure of other stockholder terms	✓	✓	✓
Reporting (information rights)	✓	✓	✓
Representations and warranties	✓	✓	✓

FIGURE 30-6 Legal Issues

	Friends/Family	Angel	Venture Capitalist
Assignment	✓	✓	✓
Confidentiality	✓	✓	✓
Indemnification	✓	✓	✓
Legal fees and expenses		✓	✓
Purchase agreement		✓	✓

ENTREPRENEUR PROFILE

The Entrepreneur Profile has nine questions, each of which demand some level of analysis. The answers you give to these nine questions may differ at each stage at which you are seeking capital. (Feel free to photocopy this page and use it regularly.)

1. Who are you as an entrepreneur?

2. What is the geographic area in which you want to start (operate) your venture?

3. What type of business are you in?

4. What and where is your market?

5. What round of financing are you seeking? (i.e., seed, mezzanine, third-round VC, etc.)

6. How much money do you need in this round of financing?

7. What do you need the money for at this time?

8. How quickly do you need the money?

9. Are you looking to raise capital through debt or equity sale?

LAW FIRM SELECTION CRITERIA AND EVALUATION

Item	Firm 1	Firm 2	Firm 3
Compatibility Integrity Ability to work together			
Competence/Track Record IPOs DPOs PPMs Term sheets			
Commitment Level of contact Resources Interest			
Contacts Angels Venture Capitalists Underwriters			
Costs IPO DPO PPM Term Sheet			

Item	Firm 1	Firm 2	Firm 3
Overall impression of value add			
Other comments (Scale 1 [low] to 10 [high])			