

MORRISON
FOERSTER

CORPORATE VENTURE CAPITAL

INNOVATION THROUGH INVESTMENT

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Firm Overview



US News & World Report's Best Law Firms ranks us fifth out of more than 12,000 firms, based on number of first-tier national rankings.



We are recognized as one of America's Best Corporate Law Firms in 2018 by *Corporate Board Member* and FTI Consulting.



Named to BTI's Client Service 30 list, the top 30 firms in the Client Service A-Team



Recommended as a top Corporate/M&A firm by leading directories, including *Chambers USA*, *Chambers Global*, *IFLR1000*, & *Legal 500*.

Substantive Excellence, Global Reach, and Exceptional Client Service

- **Global Reach:** Morrison & Foerster is a leading global law firm with more than **1,000 lawyers** across **17 offices** in key financial and technology centers in the U.S., Asia, and Europe.
- **Recognized Leader:** Our achievements have not gone unnoticed. We have been included in the *American Lawyer's* prestigious A-List for 13 consecutive years and to BTI's Client Service 30 list. We have also been named one of the "Law Firms of the Year" for four of the last five years by *U.S. News – Best Lawyers*.
- **Breadth of Substantive Expertise:** We offer the full range of legal practices for modern global businesses. Our corporate and litigation teams work closely with our lawyers in areas such as tax, intellectual property and other specialty practices.

Defined by Our Unique Culture

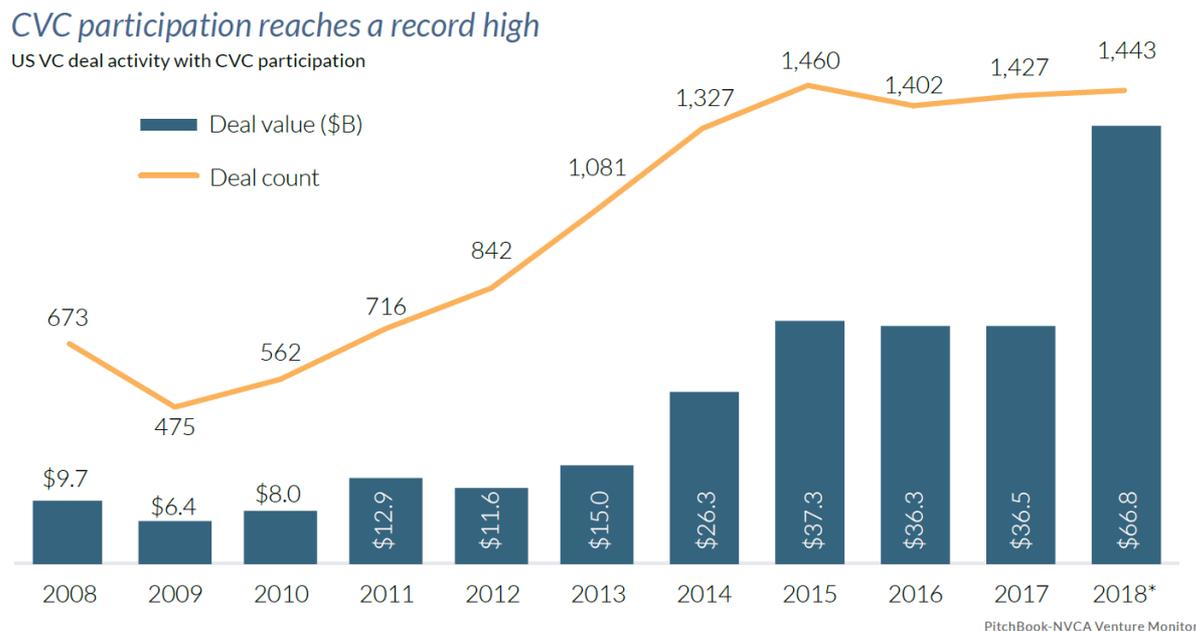
- **Collaboration:** Our culture of collaboration sets us apart from other firms. We recognize and reward teamwork and believe that our emphasis on collaboration translates into greater efficiency and winning results – leading to increased value for our clients.

Firm Overview – Representative Clients

 <p>\$9.6 Billion</p> <p>Multiple Investments in Xiaoju Kuaizhi (Didi) Counsel to SoftBank</p>	<p>UBER</p> <p>\$7.7 Billion</p> <p>Investment in Uber Counsel to SoftBank</p>	<p>wework</p> <p>\$6 Billion</p> <p>Investment in WeWork Counsel to SoftBank</p>	 <p>\$1.25 Billion</p> <p>Venture Investment Counsel to SoftBank</p>	 <p>\$1 Billion</p> <p>Series F Financing Counsel to SoftBank</p>	<p>cloudera</p> <p>\$900 Million</p> <p>Strategic Investment Counsel to Intel Capital</p>
 <p>\$865 Million</p> <p>Series D Financing Counsel to SoftBank</p>	<p>verily</p> <p>\$800 Million</p> <p>Investment in Verily Life Sciences Counsel to Temasek Holdings</p>	 <p>\$535 Million</p> <p>Series D Financing Counsel to SoftBank</p>	<p>Dada-JD Daojia</p> <p>\$320 Million</p> <p>Series F Financing Counsel to Walmart</p>	 <p>\$300 Million</p> <p>Series D Financing Counsel to SoftBank</p>	 <p>\$250 Million</p> <p>Series F Financing Counsel to SoftBank</p>
<p>500.com</p> <p>\$124 Million</p> <p>Investment in 500.com Counsel to Tsinghua Unigroup</p>	<p>Rappi</p> <p>\$105 Million</p> <p>Series B Financing Counsel to Delivery Hero</p>	<p>group nine media</p> <p>\$100 Million</p> <p>Minority Investment in Group Nine Media Counsel to Axel Springer</p>	 <p>\$60 Million</p> <p>Series C-1 Financing Counsel to Capital One Growth Ventures</p>	 <p>\$31.7 Million</p> <p>Investment in ChinaVision Media Group Limited Counsel to Tencent Holdings</p>	 <p>\$26 Million</p> <p>Series D Financing Counsel to Mitsui & Co., Global Investments</p>

Overview – Investment Activity

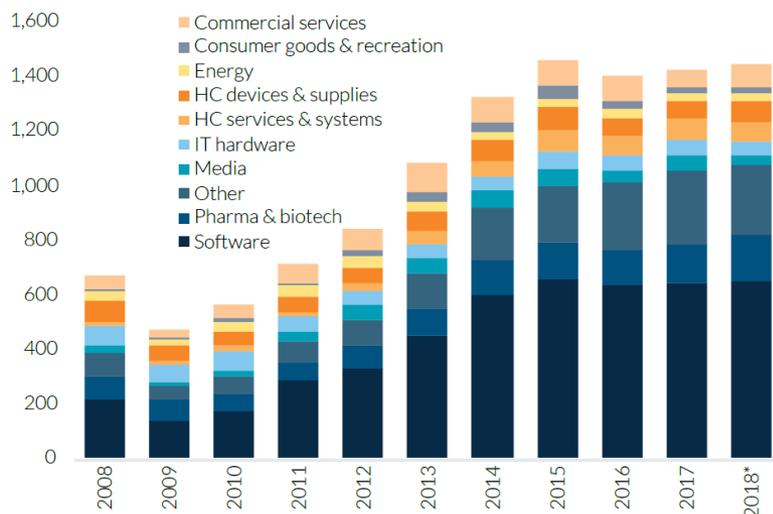
- CVC deal and dollar activity reached records highs in 2018
 - \$67B invested across over 1,433 deals (Pitchbook)
 - 83% increase in capital invested (Pitchbook)
 - Participation in 16-23% of all VC-backed deals in 2018 (Pitchbook, CBI)



Overview – Investment Profile

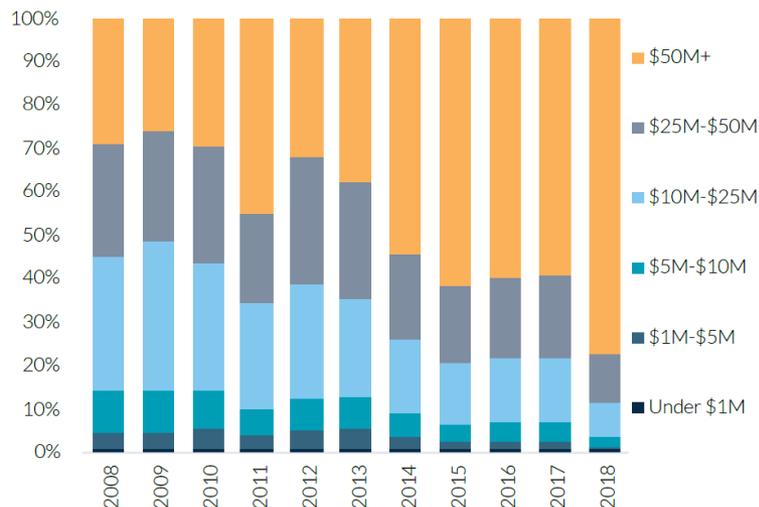
- Expansion in the companies and industries involved and targeted
- Higher average round size than financial investors
- Moving earlier in lifecycle, including seed stage
- Increasingly diverse geographic focus

US VC deals (#) with CVC participation by sector



PitchBook-NVCA Venture Monitor

US VC deals (\$) with CVC participation by size



PitchBook-NVCA Venture Monitor

Overview – Structure and Purpose

- Purpose
 - Financial vs. strategic
 - R&D pipeline
 - Information
 - Ecosystem
 - Acquisition and commercial targets
- Structure
 - Independent entity vs. balance sheet
 - Committed capital vs. annual budget
 - Financial compensation of professionals
- Deal considerations
 - Deal objectives
 - Deal terms
 - Scope and nature of diligence
 - Participation in subsequent rounds

Overview – Company Considerations

- Potential advantages versus financial investor
 - Industry and technological validation
 - Strategic guidance
 - Access to commercial opportunities
 - Focus on long-term product development
 - Evergreen balance sheet
 - Less valuation sensitive
 - Potential acquiror
- Potential disadvantages versus financial investor
 - Differing long term strategic objectives
 - Reduced exit opportunities
 - Challenges if commercial relationship sours
 - Confidentiality and conflict issues
 - Subject to shifts in corporate priorities and funding
 - Long response times

Process and Structure – Process

- Screening of potential candidates
- Initial contact and management presentation
- Preliminary business and technical due diligence
- Negotiation of term sheet
- In-depth legal due diligence
- Confirmatory business and technical due diligence
- Negotiation of definitive agreements
- Signing and closing

Process and Structure – Structure

- Target capital structure
 - Common stock for founders, employees and consultants
 - Preferred stock for investors (including CVCs)
- Types of investment structures
 - Convertible note
 - Preferred stock
- Key rights of preferred stock
 - Liquidation preference and participation rights
 - Conversion rights, obligations and adjustments
 - Voting rights (Board composition, protective provisions, drag-along)
 - Dividend preference
 - Redemption rights
 - Additional contractual rights (information, Board observer, registration, pre-emptive, ROFR and co-sale, special strategic rights)

Key Terms – Financing Specific

- Type of security (e.g. Series A Preferred Stock)
- Pre-money valuation and price per share
- Investment amount / Syndicate
- Tranches / Milestones
- Subsequent closings (dollar and time limits)
- Target closing date(s)
- Pre-closing and post-closing capitalization, including an increase to the equity incentive plan reserve (“option pool refresh”)
- Use of proceeds
- Representations and warranties
- Others (closing conditions, fees and expenses, founder vesting)

Key Terms – Liquidation Preference

- Liquidation preference
- Liquidation multiple
- Liquidation waterfall
 - Senior preference
 - “Pari passu” preference
 - Junior preference
 - Participating stockholders (common, participating preferred)
- “Participating preferred”
 - Fully participating
 - Capped participating
 - Non-participating

Key Terms – Conversion Rights

- Optional conversion
- Automatic conversion
- Deemed conversion
- Effects of conversion
- Conversion rate
- Price-based antidilution rights
 - Broad-based weighted average
 - Narrow-based weighted average
 - Full ratchet

Key Terms – Voting Rights

- General voting structure
 - Preferred votes with common on an as-converted basis
 - Preferred (and/or individual series) also has separate vote on specified matters
- Protective provisions (by series or by class)
- Board composition
- “Drag Along” provisions

Key Terms – Add. Rights and Obligations

- Dividend Preference
- Redemption Rights
- Information and inspection rights
- Board observer rights
- Right of first refusal rights
- Co-sale rights (“tag along”)
- Registration rights
- Pre-emptive rights
- Pay-to-plays
- Ongoing covenants

Key Terms – Special CVC Rights

- Acquisition rights
 - Option to buy
 - Right of first refusal (ROFR)
 - Right of first offer or negotiation (ROFO or ROFN)
 - Notice right
- Competitor restrictions
 - Veto right on sale
 - Veto right on investment
 - “Most Favored Nation”
- Enhanced information rights
- Enhanced preemptive rights
- Confidentiality provisions
- Concurrent commercial agreements
- Considerations regarding Board and observer seats

Key Terms – Board Seat v. Observer

- Purpose of CVC director/observer
- Distinction between “director” and “observer”
 - Voting rights
 - Fiduciary duties
 - Information rights
- Common issues
 - Understanding role
 - Conflicts of interest
 - Continuity
 - Requisite experience

Transaction Documents

- Primary financing documents
 - Preferred Stock Purchase Agreement
 - Certificate of Incorporation
 - Investors' Rights Agreement
 - Right of First Refusal and Co-Sale Agreement
 - Voting Agreement
- Ancillary financing documents
 - Side Letter Agreement (e.g. acquisition rights, information rights, restrictions regarding competitors)
 - Schedule of Exceptions
 - Management Rights Letter
 - Corporate consents
 - Other closing deliverables
- Commercial agreements

Key Takeaways

- CVC is playing an increasing role in the venture landscape
- CVC investors invest for both strategic and financial reasons
- CVC investments allow companies to:
 - Expand R&D pipeline
 - Remain current on industry trends and technological developments
 - Foster ecosystem
 - Gain early access to potential acquisition candidates and strategic partners
- CVC transactions have standard and specific considerations
- Potential CVC investors should carefully consider their:
 - Objectives
 - Internal structure
 - Compensation practices
 - Desired deal terms

Jim Krenn



Partner, San Diego

- Over a decade of corporate experience
- Recognized as “Best of the Bar” by the San Diego Business Journal in 2015.

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Jim Krenn has extensive experience representing public and private companies and investors in significant business transactions from formation through liquidity. His practice focuses on mergers and acquisitions, venture capital financings, and emerging company counseling.

Mr. Krenn advises clients on private and public acquisitions on both the buy-side and sell-side across numerous transaction structures, including equity purchases, asset purchases, mergers, acquisitions, and divestitures of divisions and subsidiaries, cross-border transactions, and auctions. He has represented buyers and sellers in acquisitions and divestitures ranging from \$1 million to over \$1 billion.

Mr. Krenn counsels emerging and established life science and technology companies in equity financings and general corporate matters, and angel, corporate, and venture capital investors in investments in such companies. Mr. Krenn has represented clients in over \$2 billion in equity and debt financings ranging from seed rounds to \$100 million plus later stage rounds.

In addition, Mr. Krenn represents public companies in public offerings, other capital markets transactions, and SEC reporting and compliance matters, and advises boards of directors on corporate governance issues.

Mr. Krenn was recognized as “Best of the Bar” by the San Diego Business Journal in 2015. Mr. Krenn received his J.D., cum laude, from Harvard Law School. Mr. Krenn received his B.B.A., summa cum laude, in finance from the University of Notre Dame, where he was a recipient of the Hamilton Finance Award and the Eugene D. Fanning Award for exceptional achievement in business communication.

Jim Krenn

Representative venture financing transactions include:

- **ACEA Biosciences**, a developer of cell analysis instrumentation technologies, in its \$30 million Series E Preferred Stock financing.
- **Adicet Bio**, a biopharmaceutical company focused on the development of next-generation cell immunotherapies, in its Series A financing of up to \$51 million.
- **Astute Medical**, a medical diagnostic company focusing on high-risk medical conditions and diseases, in over \$200 million of equity and debt financings.
- **Boston Consulting Digital Ventures** as an investor in multiple potential equity financings.
- **California Cryobank**, a private equity-backed leader in reproductive tissue donor services and stem cell banking, in multiple equity and debt financings.
- **Forward Ventures** as an investor in multiple equity financings, convertible debt financings, and M&A transactions, including transactions involving HemaQuest Pharmaceuticals, LigoCyte Pharmaceuticals, Ambit Biosciences, and Syndax Pharmaceuticals.
- **Greenoaks Capital Partners and its affiliates** as investors in equity financings, debt financings, and secondary transactions, including Coupang and several other prominent e-commerce companies.
- **GroupSolver**, a developer of artificial intelligence based market research tools, in multiple equity and debt financings.
- **Oak Investment Partners** as an investor in multiple equity financings, including MobiTV and Brit Media.
- **Petuum**, an artificial intelligence and machine learning software infrastructure provider, in its \$93 million Series B financing.
- **Rakuten Medical**, a biotechnology company developing a new class of precision targeted oncologic drugs, in over \$370 million of equity financings.
- **Solarflare Communications**, a provider of application-intelligent networking I/O software and hardware platforms, in over \$200 million of equity and debt financings.
- **VoloAgri**, an agriculture technology company focused on seed genetics, in over \$150 million of equity financings.
- **Western Digital Capital** as an investor in multiple equity financings, including investments in Hightail and Upthere.

Jim Krenn

Representative merger and acquisition transactions include:

- **ACEA Biosciences**, a medical instruments company, in its sale to Agilent Technologies (NYSE: A) for \$250 million.
- **Adicet Bio**, a biopharmaceutical company focused on the development of next-generation cell immunotherapies, in its cross-border acquisition of Applied Immune Technologies for an undisclosed sum.
- **Alaska Energy & Resources Company**, the parent company of a regulated electric utility in Alaska, in its \$170 million sale to Avista (NYSE: AVA).
- **Astute Medical**, a medical diagnostic company focusing on high-risk medical conditions and diseases, in its \$90 million sale to bioMérieux (EPA: BIM).
- **B. Riley Financial (NASDAQ: RILY)**, a diversified financial services company, in the merger of Great American Group and B. Riley & Co. and concurrent \$53 million private placement.
- **Biotix**, a private equity-backed developer and manufacturer of laboratory consumables and liquid handling solutions, in its sale to Mettler-Toledo (NYSE: MTD) for an undisclosed sum.
- **California Cryobank**, a private equity-backed leader in reproductive tissue donor services and stem cell banking, in multiple acquisitions.
- **Clean Energy Fuels (NASDAQ: CLNE)**, a provider of natural gas as an alternative fuel for vehicle fleets, in its sale for up to \$180 million of components of its renewable natural gas business to BP (NYSE: BP).
- **Cogent (NASDAQ: COGT)**, a biometric identification solutions provider, in its \$943 million sale to 3M (NYSE: MMM).
- **Deere & Company (NYSE: DE)**, in its announced acquisition of the precision planning unit of Monsanto (NYSE: MON) for an undisclosed sum.
- **Mentor (NYSE: MNT)**, a leading supplier of medical products for the global aesthetic market, in its \$1.12 billion sale to Johnson & Johnson (NYSE: JNJ).
- **Mitchell International**, a developer of smart technology solutions that simplify and accelerate claims handling, repair processes, and pharmacy transactions, in its acquisition of Cogent Works for an undisclosed sum.
- **Wavestream**, a provider of high power solid state amplifiers, in its \$137 million sale to Spacenet, a subsidiary of Gilat Satellite Networks (NASDAQ: GILT).

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