

BioInsights

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ALTERNATIVES TO VENTURE CAPITAL FINANCING

Published periodically by Wiggin & Dana, a 150 attorney law firm with offices in Hartford, New Haven and Stamford, Connecticut and Philadelphia, Pennsylvania (USA). Wiggin & Dana's Biotechnology and Life Sciences expertise includes M&A, licensing and other transactions, public and private financing and intellectual property assistance.

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Recently, venture capital firms have become more careful with investments, frequently choosing to focus on their existing portfolio companies. As a result, cash constrained biotech companies with no public market must consider alternative forms of fundraising such as government funding, equipment financings, licensing opportunities and other strategic alliances with corporate partners.

Government Funding and Public Sector Support

Federal and state governments offer grant, loan and technical assistance programs designed to promote the life sciences industries.

Federal Funding. The U.S. government's *Small Business Innovation Research (SBIR)* and *Small Business Technology Transfer (STTR)* programs are funding programs designed to increase the role of small businesses in meeting the research and development needs of the federal government while stimulating technological innovation. Many federal agencies participate in the SBIR and STTR programs, including the NIH.

To be eligible for grants under either program, businesses are required to meet certain criteria including number of employees, for-profit status and U.S. ownership. The SBIR and STTR programs differ in two major ways: first, under the SBIR program, the principal investigator listed on the SBIR application must be employed by the small business at the time of the grant and for the duration of the project, under the STTR program, there is no such employment requirement. Second, the STTR program requires the small business to be engaged in a collaborative relationship with a non-profit research institution located in the U.S. At least 40% of the STTR research project must be conducted by the small business and at least 30% must be conducted by the research institution.

Similar initiatives designed to promote biotechnology exist in many European countries. For instance, the Finnish biotech community receives public funding through certain national technology programs, including the *Finnish*

National Fund for Research and Development (Sitra) and *The National Technology Agency (Tekes)*, which operates under the government's Ministry of Trade and Industry and channels a substantial portion of its annual budget into life sciences research. Similarly, the *Biotechnology and Biological Sciences Research Council (BBSRC)*, the U.K.'s leading funding agency for academic research in bioscience, which receives the majority of its funds from the government's Office of Science and Technology, provides over £200 million each year to scientists at U.K. research institutions. The BBSRC also works to promote the transfer of technology from academia into industry and assists in the development of entrepreneurial skills via business plan competitions and training seminars.

In contrast, the Swedish biotech industry has been fueled to a large extent through novel cooperative initiatives between academia and the biotech and pharmaceutical industry, rather than direct state funding. Karolinska Institutet, one of Sweden's most prominent universities, has actively participated in this initiative by forming several entities focused on commercializing academic innovations through the creation of biotech companies or out-licensing opportunities.

State Funding. Many U.S. states offer financial assistance and other support to their respective biotech communities. For example, Connecticut offers a range of initiatives designed to encourage, strengthen and support the life sciences in Connecticut, many of which are administered by the State's newly created *Office of BioScience*. These initiatives include:

- *The Research and Development Tax Credit Exchange Program*, which allows companies to "exchange" the R&D tax credits they are unable to use (due to lack of income) for a payment from the state equal to 65% of the credit, and

- *The BioScience Machinery and Equipment (M&E) Fund*, a new \$1 million source of capital expected to increase to \$3.5 million in the next two years. In an effort to incentivize lenders to provide loans to local biotech companies to finance machinery and equipment, the M&E Fund provides Connecticut banks with a 30% loan guarantee.

Connecticut Innovations. Connecticut biotech companies may also obtain necessary capital as well as strategic guidance from Connecticut Innovations (CI). Today CI is a leading investor in technology companies with several funds dedicated to the State's biotech community, including:

- *The Connecticut BioSeed Fund*, a \$5 million fund that provides initial investments of up to \$500,000.

- *The BioScience Facilities Fund*, a \$60 million fund dedicated to the construction of laboratory space and has financed more than 225,000 square feet of laboratory space within the State of Connecticut.

- *The Eli Whitney Fund*, which provides investments ranging from \$500,000 to \$2 million to businesses in sectors that present the greatest potential for economic growth, such as bioscience.

- *Next Generation Ventures LLC (NextGen)*, a joint venture between The Phoenix Companies and CI offering seed-stage venture capital and management support to high-tech companies in Connecticut.

Similar initiatives and programs exist in other states with biotech clusters. For instance, California passed laws enabling cutting edge stem cell research, and dedicates considerable state-controlled money to investment in biotech startups through local venture capital funds; and North Carolina created the North Carolina Biotechnology Center, a state-funded entity that offers services ranging from funding of research in North Carolina universities to assisting young biotech companies with financing, business advice and networking opportunities.

Equipment Financings

Leasing is an increasingly common method for biotech companies to finance equipment purchases. Typically, the leasing company purchases the equipment and leases it to the company for a monthly fee. Unlike an equipment loan, a leasing arrangement is off balance sheet so that the company's debt load is not increased.

Licensing Strategies

Outlicensing of Non-Core Technologies. A biotech company may generate revenues by outlicensing its non-core technology, or granting one or more licenses to core technologies outside its principal fields of use. Revenues derived from outlicensing may include up-front or access fees, royalties or milestone payments. This is a particularly

attractive alternative for companies that lack the funds, expertise, capacity or capability to develop or exploit such non-core technology or alternative fields of use on their own.

Strategic Alliances: Joint Development of Core Technologies.

Strategic alliances with pharmaceutical and other biotech companies provide access to necessary resources to discover, develop, manufacture and commercialize products, including capital, key personnel, manufacturing capabilities, distribution channels and a sales force. In addition, a strategic alliance with the right corporate partner may validate a biotech company's technology and business plan, facilitating future fundraising. In the long term, both the corporate partner and the biotech company benefit as they share the risks and costs of operations. In addition to upfront or access payments, milestone payments and royalties, strategic corporate partners may provide research funding, loans and equity investments.

Mergers & Acquisitions

A recent increase in acquisition activity in the biotech sector has been motivated, in part, by the cash reserves of the targeted company. For example, the \$770 million merger between NPS Pharmaceuticals and Enzon Pharmaceuticals was viewed as a strategic move by NPS to acquire Enzon's cash. Dendreon Corporation's merger with Corvas International will create a company with \$110 million in cash reserves, and cash is playing a significant role in the proposed acquisition of Oxford Glycosciences by Cambridge Antibody Technology, Celltech or another potential suitor.

Conclusion

A biotech company may obtain financing from private investors, government funds, commercial loans, or through licensing transactions and corporate alliances. While all of these forms of financing are beneficial during difficult economic times, there is a caveat - each of these alternatives require the company to form a partnership with either the government, an investor or a corporate partner, and without proper due diligence and careful negotiation of such partnership, an inexperienced company may inadvertently miss opportunities or relinquish future rights to valuable technology in pursuit of immediate funds. All biotech companies exploring these alternative forms of financing should obtain sound advice from an attorney, accountant and financial advisor before entering into a definitive agreement.

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News

W&D in the News

In March 2003, Wiggin & Dana was selected as one of nine "highly recommended firms" by *Global Counsel 3000* for Corporate Partnering Transactions in the Life Sciences. Biotechnology and Life Sciences Practice Group Chair, Jim Farrington, achieved a "highly recommended" ranking and was specifically recognized for his extensive U.S. and European experience encompassing joint ventures, licensing and finance issues. *Global Counsel 3000* focuses on leading law firms and lawyers worldwide in various life sciences legal disciplines.

W&D represented the following Clients in the News:

Alexion (CT) in its execution of a large scale product supply agreement with Lonza Biologics for the long term commercial manufacture of its C5 complement inhibitor antibody, eculizumab

BiolInvent International AB (SE) in BiolInvent's acquisition of rights to develop antibody-based drugs against HIV from Thyron LLC (NJ)

Biovitrum AB (SE) in its \$150 million collaboration with GlaxoSmithKline (UK) to develop and commercialize a drug for the treatment of obesity and other medical disorders

Cellular Genomics (CT) in recent collaborations with Serono SA (CH) and Schering AG (DE) that apply Cellular Genomics' chemical genetics technologies to its partners' kinase discovery programs

Cellular Genomics (CT) and **Rib-X Pharmaceuticals (CT)** in connection with facilities funding from Connecticut Innovations

Iconic Therapeutics (GA), a company focused on the development of novel immune conjugate protein structures, in connection with its first round of venture capital financing with Diem Bioventures

Medivir AB (SE) in recent collaborations with Paradigm Therapeutics Ltd (UK) to identify novel protease drug targets and discover protease inhibitor drugs and with F.Hoffman La-Roche Ltd. (CH) to outlicense a novel HIV/AIDS treatment for up-front and milestone payments totaling up to \$42 million

Protometrix (CT) in the sale of preferred stock to, and a tenant improvement loan from, Connecticut Innovations

Taro Pharmaceuticals (NY) in Taro's recent license and optional purchase of four branded dermatological and pediatric product lines from Medicis Pharmaceutical (AZ) and Taro's acquisition of Thames Pharmacal Company (NY)