

TechConnect

Your Law Firm Link to Industry News

MAY 2016

Letter from the Editors

Dear Readers,

There is an ancient Chinese proverb that goes like this: When the wind changes direction, there are those that build walls and there are those that build windmills. In the early part of this year, when the public capital markets swooned, there was much discussion about investors pulling back in the private company market. Further, as we saw some indications of so-called Unicorns becoming "Unicorpses," this chatter increased. But while there appears to be a "reset" on valuations going on in the late stage private company market, there is clearly no shortage of entrepreneurs building new "windmills" and getting these young enterprises funded. Good ideas and good companies are definitely getting funded, and the early stage market remains incredibly robust! Further, companies in the late stage that are true "thoroughbreds" and built to last (unlike ephemeral unicorns) are also receiving the financial support they need to grow. All this bodes well for a solid Q2 and Q3 in the private company markets.

In this issue we feature Gotham Greens, an amazing company growing premium quality lettuces and herbs on large urban rooftops in NYC and Chicago. Environmentally conscious and also fast-growing, Gotham Greens epitomizes the ideal of creating meaningful economic value by doing good!

We also highlight a number of interesting legal proposals that could affect email privacy and angel investing. Additionally, we discuss a new law that will facilitate the resales of securities of private companies and a new tax credit for biotech companies based in NYC.

Finally, we would like to introduce our new Co-Editor, Samuel Asher Efron. Many of you may know Sam from his dedication and hard work on behalf of our clients. Sam is one of our rising young stars and his energy, enthusiasm, and insights will be a welcome addition to *TechConnect*. In addition to being an outstanding lawyer, Sam previously worked at a technology start-up — experience that enables him to bring a unique and well-rounded perspective to our publication.

As always, don't forget to check out our website focused on start-up and emerging companies:
www.mintzedge.com

Happy reading!



A handwritten signature in black ink that reads "Dan".



A handwritten signature in black ink that reads "Sam".

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- ▶ Daniel I. DeWolf
- ▶ Samuel Asher Efron

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Leaders in the News

Mintz Levin to Present on Series A Funding at the Cambridge Innovation Center

The Venture Café Foundation believes that every person with an idea should feel empowered to become a successful entrepreneur, regardless of background, origin, or education. The company is a Massachusetts Not-forProfit Corporation, incorporated as a 501(c)(3) organization whose mission is to connect the innovation community, expand the definition of innovation, and build a more inclusive innovation economy. The Venture Café Foundation enhances and accelerates the innovation process through workspaces, programs, and conversations for individuals and organizations to gather and build relationships.

Through its Bronze Level Sponsorship of Venture Cafe, Mintz Levin will host an interactive seminar focused on Series A Funding at the Cambridge Innovation Center on June 23, 2016.

For companies approaching the end of seed funding, Mintz Levin's Daniel Follansbee and Eric Macaux will explore terms, trends, and traps likely to be encountered in the pursuit of a first preferred stock financing.

- What are the characteristics of a Series A financing and how does it differ from a seed financing?
- What are the current trends in Series A financings?
- What common traps can you avoid in negotiating the financing?

With more than two decades of combined experience counseling entrepreneurs and emerging growth companies in information technology, energy and clean technology, life sciences and medical devices, Daniel and Eric will address these questions and many more. Come with questions!

Be sure to tune in to this session and more exciting events happening in 2016 at the Venture Café Foundation!

Innovator Profile



Gotham Greens

Our client [Gotham Greens](#) is pioneering the urban agriculture field by providing its diverse retail, restaurant, and institutional customers with premium-quality lettuces and herbs grown from rooftop greenhouses in NYC and Chicago. The company's pesticide-free, non-GMO produce is grown using ecologically sustainable methods, meeting the highest standards of food safety. Sent to local stores and grocers, its crops are designed for eating,

not travel. But the real innovation lies in Gotham Greens's 100% clean energy–powered, climate-controlled, urban greenhouses, which produce over 50% more crops than conventional greenhouses while using 25% less energy per pound.

Founded in 2009 in Brooklyn, New York, Gotham Greens now employs over 130 people across four facilities in New York City and Chicago, including the [largest rooftop greenhouse in the world](#). The company operates over 170,000 square feet of urban greenhouses and is exemplifying the “adaptive reuse” of urban space, a trend taking off in cities around the country. Acknowledging the company's innovations and philosophy, *Business Insider* named Gotham Greens one of its [50 Coolest New Businesses in America](#). Mintz Levin has worked with Gotham Greens since its inception and welcomes the opportunity to help the company and its greenhouses achieve new heights — literally — in cities across the nation as it reshapes the urban agriculture industry.



Gotham Greens's Greenpoint, Brooklyn location.

Industry Update

House of Representatives Passes HALOS Act

On April 27, the U.S. House of Representatives [overwhelmingly passed](#) the Helping Angels Lead Our Startups Act (H.R. 4498) or “HALOS Act.” The purpose of the bill is to boost “angel” investments by exempting certain investor events from being considered “general solicitation” under the federal securities laws. Under Rule 506(b) of Regulation D, issuers may not use general solicitation as part of the offering of securities to investors; an expansion of what is considered outside the accepted term “general solicitation” will make it easier for companies to raise money utilizing Rule 506(b).

The HALOS Act directs the SEC to revise Rule 502(c) of Regulation D to exempt certain sales events (“demo days”) hosted by groups such as angel investor groups — as well as groups sponsored by universities, trade associations, and not-for-profits. The bill defines “angel investor groups” as those that (1) are composed of accredited investors interested in investing personal capital in early-stage companies; (2) hold regular meetings and have defined processes and procedures for making investment decisions, either individually or among the membership of the groups as a whole; and (3) are neither associated nor affiliated with brokers, dealers, or investment advisers.

Despite bipartisan support, the bill is not without critics. The Obama administration issued a [statement](#) expressing concerns with the bill while also acknowledging the likely benefits in raising capital more efficiently. The administration stated that it would like to see increased protections for investors as the bill gets refined in Congress. After its passage in the House, the bill now travels to the Senate, where it will be taken up by the Committee on Banking, Housing, and Urban Affairs.

Congress Passes Email Privacy Act

On April 27, the U.S. House of Representatives passed the [Email Privacy Act \(H.R. 699\)](#), with a vote of 419-0. The bill would require government authorities to get a probable cause warrant from a judge before obtaining electronic communications and documents from service providers such as Google and Facebook. The proposed law would update the current law governing the area of personal data protection, the Electronic Communications Privacy Act (ECPA) of 1986, which allows law enforcement officials to search through emails, photos, documents, etc., that are stored in the cloud as long as they are 180 days old. In practice, many tech companies such as Apple and Google already demand a warrant before turning over data — which government officials have agreed to do in most cases. The new law also codifies the expectations laid out in the Sixth Circuit's ruling in *U.S. v. Warshak*, which held that such protections are actually required by the 14th Amendment.

Despite overwhelming support in Congress — including 315 cosponsors in the House — the bill is not without some controversy, and privacy advocates are not fully satisfied with this latest step. An earlier version of the bill required that authorities disclose the existence of a warrant to the person(s) whose files would be searched, but this language was cut from the final bill. Nevertheless, companies have the ability to unilaterally alert users of inquiries by the government, which many email and storage providers, such as Apple and Dropbox, do.

On the other side of Capitol Hill, Senators Richard Burr and Dianne Feinstein are co-authoring a bill whose working title is the "[Compliance with Court Orders Act of 2016](#)." This bill would address the recent controversy involving Apple's unwillingness to assist in hacking its iPhones in criminal investigations, with the aim of punishing tech companies that do not comply with court orders in such situations. The bill is still in the early stages, but it is already stirring up much controversy in the political sphere and technology sector.

In the Spotlight

NYC Extends Tax Credit Available to Biotech Companies

BY [SOHAIL ITANI](#) AND [DANIEL I. DEWOLF](#)

In late 2015, New York City Mayor Bill de Blasio signed into law a three-year extension of NYC's biotechnology tax credit. The credit, which was set to expire on January 1, 2016, is now available through December 31, 2018. Generally, the biotech tax credit allows emerging biotech companies to claim an annual refundable credit of up to \$250,000 for certain costs and expenses. Extension of the credit underscores the city's continued policy of incentivizing the start-up and early-stage growth of biotech companies.

"Biotech is growing faster than ever, and New York is wisely giving this industry additional tools for growth," said New York City Council Member Daniel Garodnick. "This tax credit has proven successful in giving startups a little help as they strive to stay on the cutting edge."

The biotech tax credit may be claimed for a maximum of three consecutive tax years. Any portion of the credit that cannot be applied to the current year's tax liability may be refunded (without interest) or applied as a payment against next year's tax. Therefore, if all of the requirements are met, a biotech company could potentially obtain a cumulative benefit of \$750,000 over a three-year period. Such benefit could prove valuable to emerging biotech companies in terms of additional liquidity in the critical early stages.

For more information on the benefits, requirements, and limitations of this tax credit, [read our full Tech and Tax Alert](#).

Featured Article

The New Section 4(a)(7): More Than a Codification of Section "4(a)(1½)"

BY [SAMUEL ASHER EFFRON](#) AND [CLIFF M. SILVERMAN](#)

On December 4, 2015, the Fixing America's Surface Transportation Act (the "FAST Act") was signed into law by President Obama. Although the FAST Act is primarily a transportation bill, buried in this legislation is a new statutory exemption under Section 4(a)(7) of the Securities Act of 1933 (the "Securities Act") that explicitly permits private resales of restricted securities. This new exemption may increase investor liquidity by facilitating the development of secondary markets in private securities.

Section 5 of the Securities Act requires that sales of securities be registered with the SEC unless an exemption is available. Resale transactions have historically been governed primarily by Section 4(a)(1), also known as the "ordinary trading" exemption, which allows a holder of restricted securities to resell them without registration as long as the holder is not the issuing company, an underwriter, or a dealer. However, resellers run the risk that they might be deemed an underwriter. So, in order to conduct resales without registration, resellers have historically relied primarily on Section "4(a)(1½)," a reseller exemption based on a combination of Sections 4(a)(1) and 4(a)(2) that many resellers have used but which was never codified into law.

The new Section 4(a)(7) exempts certain resales from the registration requirements of Section 5 as long as particular conditions are satisfied. For example, each purchaser of the resold securities must be an accredited investor; the securities may not be offered by means of a general solicitation; the company whose securities are being resold must be engaged in business (i.e., it cannot be a shell company with no specific business plan of its own); and the reseller must provide the purchaser with certain information, such as updated company financials.

Although Section 4(a)(7) is in many ways a codification of Section 4(a)(1½), it differs in certain key respects, such as the disclosure requirements that 4(a)(7) imposes on resellers, which will require significant issuer cooperation. How willing issuers will be to provide the requisite information, which we expect will be dictated at least in part by their potential liability for misstatements made in connection with this process (the scope of which is currently unknown), will have a real impact on the usefulness of 4(a)(7). Furthermore, and most significantly, unlike 4(a)(1½) transactions, in which securities would typically be held for at least six months to ensure that they were not initially purchased with an intent to distribute, 4(a)(7) does not require a holding period, such that purchasers of restricted securities may resell them immediately as long as they have been authorized and outstanding for at least 90 days.

We believe that this exemption will provide holders of restricted securities with improved liquidity and greater predictability, thereby laying the foundation for more robust secondary markets. That said, because the precise implications of 4(a)(7) are unknown, whether or not it really is a game-changer remains to be seen: in order to truly have its intended effect of fostering predictability, 4(a)(7) may require further clarification from courts and the SEC.

Upcoming Events

New York

May 16-22: [Internet Week New York](#)

May 18: [Funding Post's NYC Spring VC & Angel Event](#)

May 18: [Private Equity Americas Forum](#)

May 18-19: [CMX Summit East 2016](#)

May 19: [Big Data Finance 2016](#)

May 20: [Propeller Fest](#)

May 26: [Technomy Conference](#)

June 1-2: [Wall Street Journal Private Equity Analyst Conference](#)

June 7-9: [Cloud Expo New York](#)

June 8-10: [New York Tech Summit](#)
June 8-10: [CB Insights: The Future of FinTech Conference](#)
June 16: [WIRED Business Conference](#)
June 17: [Center for Economic Growth \(CEG\) New York Venture Summit](#)
June 22: [Tex Telecom Exchange](#)
June 22-23: [2016 Conference on Scaling Impact](#)
June 25: [UXCamp NYC](#)
July 14: [VentureCrush - AngelVineVC](#)
July 20-21: [New York Venture Summit](#)

Boston

May 18: [MIT Sloan CIO Symposium](#)
May 18: [New England Venture Capital Association's NEVY Awards](#)
May 20: [Open Data Science Conference](#)
May 23-25: [J.P. Morgan's Technology, Media and Telecom Conference](#)
May 23-25: [ZertoCon](#)
May 24: [Debtwire Investors Summit](#)
June 6-7: [SuperReturn Energy 2016](#)
June 6-9: [SuperReturn U.S. 2016](#)
June 7: [BostonInno's State of Innovation](#)
June 16: [Boston TechJam](#)
June 23: [Mintz Levin's Series A Funding Discussion](#)
August 1-4: [AnDevCon: The Android Developer Conference](#)

San Francisco

May 16-20: [Data by the Bay Conference](#)
May 19: [The Startup Conference 2016](#)
May 21-25: [MuleSoft Connect Conference](#)
May 23-24: [MIT Technology Review's EmTech Digital Conference](#)
May 25-26: [Silicon Valley Open Doors Technology Investment Conference](#)
May 25-26: [Internet of Things Developers Conference](#)
May 26: [Summit Pioneer's 4th Annual Capital Summit](#)
June 1: [San Francisco VC and Angel Conference](#)
June 3: [Nua.IO Drones Data X Conference](#)
June 6-7: [IEEE's Silicon Valley Tech Industry Summit](#)
June 13-14: [Bloomberg Tech Conference](#)
June 15: [VentureCrush San Francisco](#)
June 21: [500's Pre-Money Conference](#)
June 22-23: [Structure Connect 2016](#)
June 27-28: [Stackworld Conference & Expo 2016](#)
June 27-30: [Red Hat Summit](#)
July 8-9: [Propel SF's Conference for Startups & Investors to Secure Funding Partnerships](#)

July 12-13: [Venturebeat's MobileBeat Conference](#)

July 22-24: [Web3D 2016](#)

July 24-28: [Siggraph 2016](#)

August 9-12: [UX Week 2016](#)

San Diego

June 13-17: [San Diego Startup Week](#)

July 15: [NVCA's 4th Annual VC Regatta at San Diego Yacht Club](#)

August 15-18: [Gartner Catalyst Conference](#)

Washington, DC

May 22-25: [TechConnect World Innovation Conference & Expo](#)

May 23-25: [Angel Capital Association's National SBIR/STTR Conference](#)

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