

# Michigan Business & Entrepreneurial Law Review

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## Front Matter

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MICHIGAN JOURNAL *of*  
PRIVATE EQUITY &  
VENTURE CAPITAL LAW

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VOL. 1 No. 1

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*Articles*

Jing Li

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THE USE OF OFFSHORE FINANCING STRUCTURES AND  
CORPORATE RELOCATIONS

Kenneth MATHIEU &

Vincent P. (Trace) SCHMELTZ III

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*Essays*

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THE MEANING OF THE MARKET MYTH

Susan MOSHER

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*University of Michigan Law School  
Ann Arbor, Michigan*

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#### WEBSITE

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# MICHIGAN JOURNAL *of* PRIVATE EQUITY & VENTURE CAPITAL LAW

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**Volume 1 • 2011-2012**

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The *Michigan Journal of Private Equity & Venture Capital Law* Volume 01 Editorial Board is very grateful for the generosity, kindness and support that we have received during the past two years of planning, brainstorming and implementing the inaugural volume.

Having said that, the Editorial Board would first and foremost like to thank Dean Evan Caminker for allowing us to have this amazing opportunity; Maureen Bishop for her enthusiasm, guidance and insight; Barbara Garavaglia for graciously sharing the resources at the library, but, more importantly, her tacit knowledge with regards to the publication process; Kimberly Ellsworth-Flores and the entire Publication Center; the University of Michigan Law School library staff; Lara Furar, Maher Salah and the Office of Development and Alumni Relations; our publishing company, Joe Christensen, Inc.; our marketing company, William S. Hein & Co., Inc.; and LexisNexis and Westlaw.

This *Journal* would also not exist without the insight, feedback and encouragement that the University of Michigan Law School faculty and staff have provided to us during these pivotal times. We would especially like to acknowledge and thank Adam C. Pritchard, the Frances and George Skestos Professor of Law at the University of Michigan Law School, for providing us with invaluable early guidance on how to successfully launch this venture. We would also like to thank Robert Hirshon, Frank G. Millard Professor from Practice and Special Counsel on Development in the Legal Profession at the University of Michigan Law School, for initially connecting us with the American Bar Association, and the law school's faculty for providing guidance to countless members of this *Journal* over the course of the past two years.

Finally, the Stephen M. Ross School of Business has provided the *Journal* with countless hours of insight and many opportunities to connect with private equity and venture capital practitioners. We would like to thank David J. Brophy for allowing us to participate in the Michigan Private Equity Conference. We would also like to thank the faculty and staff at the Ross School of Business who have provided us with feedback and insight into this business field.



The Editorial Board is extremely fortunate and proud to have had the opportunity to work alongside the American Bar Association's Section of Private Equity and Venture Capital Law.

Indeed, we would like to acknowledge and personally thank Mark Danzi, who is a shareholder at Hill Ward Henderson and Chairman of the *Journal's* Advisory Board. This *Journal* is unique both in scope and structure because our articles are selected for publication by a group of renowned practitioners who serve in an advisory capacity. Mr. Danzi leads this Board, and his knowledge, perspective and enthusiasm have allowed this *Journal* to develop and succeed. We are eternally grateful for his support and guidance.

Our articles are sent to an Advisory Board member for feedback on a rotational basis; therefore, every member plays a pivotal role in the creation of each volume. We would like to acknowledge each member of the Advisory Board, including: Stephen C. Bigler of Richards, Layton, and Finger, P.A.; Herbert P. Fockler of Wilson Sonsini Goodrich & Rosati; Samantha Horn of Stikeman Elliott LLP; Robert D. Kraus of Village Ventures; Paul "Chip" Lion of Morrison & Foerster LLP; Vicki Martin-Odette of Haynes & Boone LLP; David Parsigian of Honigman Miller Schwartz & Cohn LLP; Adam C. Pritchard of the University of Michigan Law School; and John K. Hughes of Sidley Austin LLP. This Board has chosen our timely and innovative scholarly pieces, and we are grateful for their time, expertise and generosity.

We are also grateful for the support that law firms have shown this *Journal*, and we would like to acknowledge and thank Honigman Miller Schwartz & Cohn LLP and Paul Hastings LLP. Without their generosity, this *Journal* would not exist. Both firms have allowed the members of this *Journal* to gain a unique insight into the private equity and venture capital legal professions, and have allowed us to share this knowledge with the University of Michigan Law School community at-large. We look forward to working closely with Honigman and Paul Hastings in the years to come.



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# FOREWORD

*By Jason Mendelson\**

My career reflects the diversity in the private equity and venture capital industry. I am a venture capitalist with a focus in the tech space, a general counsel, a professor, and have served as lawyer at a large law firm, and as a software engineer. As one of the first full-time, in-house general counsels at a venture capital firm, I was on the forefront of thought leadership and co-chaired the National Venture Capital Association's General Counsel group and am an active participant on the NVCA's Chief Financial Officer group. I worked on the NVCA model document task force, which created the industry's first set of standardized venture capital financing documents, greatly aiding in the efficiency of completing these types of deals.

But as I reflect on how I got to where I am today, I realize there is a strong need to better teach the current crop of lawyers how to be as diverse in their careers, and a need to better critically examine the issues our industry faces, but still with a focus on what practitioners want to read. This leads me to visit my alma mater every couple of years.

As a graduate of the University of Michigan Law School, I head back to Ann Arbor, Michigan to spend a few days reconnecting with my alma mater and to check out the startup ecosystem. My visit usually includes meeting with entrepreneurs, spending time with the different organizations that support entrepreneurs and guest lecturing.

I've always thought that Ann Arbor has all of the raw materials to become a hot bed for startup activity – the University of Michigan is a great anchor tenant university, there are excellent students, professors and researchers, and it's a place where people want to live. Based on my last trip, Ann Arbor is getting its act together and the launch of *The Michigan Journal of Private Equity & Venture Capital Law* is a tremendous step in the right direction.

The Editorial Board and rest of the staff at the *Journal* embody the entrepreneurial changes in Ann Arbor. They are taking a bold approach amongst law school journals, focusing their model toward the practitioners in the industry, solidifying an advisory board relationship with the Private

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\* Jason Mendelson is the co-founder and Managing Director of Foundry Group, a Boulder based venture capital firm that invests in early-stage information technology companies, and a Managing Director and General Counsel at Mobius Venture Capital. Jason also is an adjunct professor at the University of Colorado Law School, founder of the Boulder Open Coffee Club, co-author of the AskTheVC blog, and a member of board of the National Venture Capital Association. Before he was a venture capitalist, he was a lawyer at Cooley LLP. Before he was a lawyer, he was a software engineer at Accenture. Jason holds a Bachelor's of Arts in Economics and a Juris Doctor from the University of Michigan.



Equity & Venture Capital Committee of the American Bar Association, and soliciting content from practitioners as well as academics.

This is in line with the entrepreneurial nature of the broader Ann Arbor community, and coupled with the advent of grass roots organizations like Tech Arb (the student accelerator) and Tech Brewery (a community of technologists, entrepreneurs, and startups), the exponentially higher number of younger folks involved in company creation than just a short time ago, and a real sense of excitement, accomplishment and hope, places the *Journal* in an incredibly unique position to capitalize and productively reflect on our industry.

Furthermore, thanks to a \$5 million gift from Sam Zell to the Law School, it is now home to Zell Entrepreneurship And Law Center, where students will provide free legal advice to the startups in the community, and the Zell Lurie Institute at the Ross School of Business serves as a practical educator and potential financing source for future business leaders.

The content of the *Journal* will reflect the multi-disciplinary nature of our industry. From technology, to healthcare, to international competitive landscapes, to regulatory reforms and other legal topics – nothing is off limits. Instead of the common misperception that our industry is a narrow one, the *Journal* will explore the various topics that affect our daily lives as practitioners.

Despite constant debate about the current state of the law school and legal economies, the culture at the University of Michigan and publications like this *Journal* embody the change necessary to stay relevant. The *Michigan Journal of Private Equity & Venture Capital Law* enables the staff to more deeply develop the thoughtful conversations in our industry, engage practitioners across the industry, and fill a void where no other law journal is currently primarily operating.

*Jason Mendelson*

Co-Founder & Managing Director, Foundry Group  
Managing Director & General Counsel, Mobius Venture Capital  
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