



## Kevin K. Rooney

Partner

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### PRACTICE AREAS

- Corporate

### INDUSTRIES

- Digital Business
- Emerging Growth/Venture Capital
- Life Sciences
- Private Equity

### OVERVIEW

Mr. Rooney is a partner in the Corporate practice group in the firm's Palo Alto and San Francisco offices and serves as the chair of the firm's Emerging Growth/Venture Capital and Technology M&A practices.

#### Areas of Practice

Mr. Rooney has represented many leading Silicon Valley and Bay Area public and private companies. In addition, he has represented a number of Canadian technology and growth companies in U.S. transactions and securities offerings. His practice focuses on a wide variety of corporate, securities and related matters, in particular, mergers and acquisitions and public and private financing transactions.

Mr. Rooney previously practiced at Hayden Bergman Rooney, a Professional Corporation in San Francisco, as a name partner. In addition, he was an attorney with Wilson Sonsini Goodrich & Rosati, Professional Corporation, in Palo Alto and Davies Ward Phillips & Vineberg LLP in Toronto.

Mr. Rooney is an Adjunct Professor at USF School of Law teaching Corporate Transactions, a new course offering that he designed, and a Lecturer at U.C. Berkeley HAAS School of Business (MBA) co-teaching Business Law. In addition, he has been a guest participant at classes at Stanford Graduate School of Business. Kevin is an Advisory Board Member (Ontario) to the TSX Venture Exchange. Kevin is a charter member of the C100 (Canadians in Silicon Valley).

### EDUCATION

- LL.B., Dalhousie Law School
- Hons. Co-op B.A.Sc., University of Waterloo (Mechanical Engineering)

### ADMISSIONS

- California
- Ontario

## EXPERIENCE

### Lead counsel in the following representative transactions:

#### *Mergers & Acquisitions*

- Globalive Communications Corp. in its \$70 million cash tender offer for all of the outstanding shares of Yak Communications Inc. (NASDAQ: YAKC) concurrent secured debt financing and subsequent going private transaction.
- Nightingale Informatix Corporation (TSX: NGH.V) in its \$13 million cash merger acquisition of VantageMed Corporation (OTC Bulletin Board: VMDC.OB) and concurrent secondary offering in the U.S. by private placement.
- SiRF Technology Holdings Inc. (NASDAQ: SIRF) in its \$136 million stock merger acquisition by CSR plc (LSE: CSR) (transaction components).
- ObjectiveMarketer, Inc. in its acquisition by Emailvision S.A. (amount undisclosed).
- Foreign public company in its abandoned merger acquisition of a laser semiconductor company.
- Solar Semiconductor Inc. in its \$375 million failed stock acquisition by Trans-India Acquisition Corporation (AMEX: TIL).
- Hoya Corporation (TSE First Section) in its acquisition of intellectual property and certain other assets from the former Xponent Photonics, Inc. (amount undisclosed).
- Nightingale Informatix Corporation (TSXV: NGH) in its \$12.3 million sale of a U.S. division to Netsmart Technologies Inc.
- Digital Music Group, Inc. (NASDAQ: DMGI) in its up to \$7 million cash and stock merger acquisition of Digital Rights Agency, LLC.
- Berkeley Capital Corp. I (TSXV: BCP.P) in its "qualifying transaction" with iLOOKABOUT Holdings Inc. by way of amalgamation.
- Berkeley Capital Corp. II (TSXV: BIZ.P) in its "qualifying transaction" with Med BioGene Inc. (TSXV: MBI) by way of private placement investment.
- Advantage Performance Group and Real Learning Group in their up to \$25 million cash and stock acquisition by BTS Group Inc. (Sweden: BTS).
- Actuate Corporation (NASDAQ: ACTU) in its up to \$30 million cash acquisition of performancesoft inc.
- Fortinet, Inc. in its acquisition of intellectual property and certain other assets from IPLocks, Inc. (amount undisclosed).
- Fortinet, Inc. in its acquisition of intellectual property and certain other assets from Woven Systems, Inc. (amount undisclosed).
- Calypso Technologies, Inc. in its acquisition of all of the assets of Codefarm Limited (amount undisclosed).
- Calypso Technologies, Inc. in its acquisition of all of the assets of Green River Computing Sevices Inc. (amount undisclosed).
- Globalive Wireless Communications Corp. in its successful bid for licenses in Industry Canada's AWS spectrum auction backed by Orascom Telecom in a transaction valued at over \$600 million.
- Globalive Wireless Communications Corp. in its various restructurings following regulatory review.
- Globalive Communications Corp. in various acquisitions and dispositions of private companies and assets in Canada and the United States.

- Solar Depot, Inc. in its cash acquisition (amount undisclosed) by ITOCHU International, Inc. (together with ITOCHU Corporation, TSE: First Section).
- VividLogic, Inc. in its up to \$30 million cash acquisition by SeaChange International, Inc. (NASDAQ: SEAC).

#### *Corporate Finance*

- Med BioGene Inc. (TSXV: MBI) in its attempted U.S. initial public offering of approximately \$30 million of common shares on NASDAQ.
- Trans-India Acquisition Corporation in its initial public offering of 11,500,000 units at \$8.00 per unit, where each unit consists of one share of common stock and one warrant to purchase one share of common stock at \$5.00 per share, on AMEX.
- Digital Music Group, Inc. in its initial public offering of 3,900,000 shares of common stock at \$9.75 per share on NASDAQ.
- Berkeley Capital Corp. I in its initial public offering of 4,000,000 common shares as a capital pool company on the TSX Venture Exchange.
- Berkeley Capital Corp. II in its initial public offering of 5,000,000 common shares as a capital pool company on the TSX Venture Exchange.
- Med BioGene Inc. (TSXV: MBI) in its U.S. Regulation D offering of units as part of its Canadian secondary offering.

#### *Venture Capital*

- O2 MedTech, Inc. in its formation, core technology acquisition, Series A and Series B preferred stock financings (amounts undisclosed).
- Tivix, Inc. in its formation and Series A preferred stock financing and debt financing (amounts undisclosed).
- Bandwidth, LLC in its debt financing (amount undisclosed).
- 100E Limited in its formation and Series A preferred stock financing (amount undisclosed).
- Investors in Sensory Networks, Inc.'s \$10 million Series C preferred stock financing.
- CommunityWalk, Inc. in its debt financing (amount undisclosed).
- Orgoo, Inc. in its organization and debt financing (amount undisclosed).
- Transmedia Capital Micro Fund I, L.P. in its organization and fund raising (amount undisclosed).

#### **Counsel in the following representative transactions:**

##### *Mergers & Acquisitions*

- Palm, Inc. (NASDAQ: PALM) in its \$250 million stock acquisition of Handspring, Inc. (NASDAQ: HAND).
- Overture Services, Inc. (NASDAQ: OVER) in its \$1.6 billion stock acquisition by Yahoo!, Inc.
- Rational Software Corporation (NASDAQ: RATL) in its \$2.1 billion cash acquisition by International Business Machines Corporation (NASDAQ: IBM).
- Simplex Solutions, Inc. (NASDAQ: SLPX) in its \$300 million stock acquisition by Cadence Design Systems, Inc. (NASDAQ: CDNS).
- Hewlett-Packard Company (NASDAQ: HPQ) in its \$18.5 billion stock acquisition of Compaq Computer Corp. (NYSE: CPQ).

- Palm, Inc. (NASDAQ: PALM) in its failed \$264 million stock acquisition of Extended Systems, Inc. (NASDAQ: XTND).
- Homestore.com, Inc. (NASDAQ: HOMS) in its \$761 million stock acquisition of Move.com, Inc. (NASDAQ: MOVE).
- Actona Technologies, Inc. in its \$82 million cash acquisition by Cisco Systems, Inc. (NASDAQ: CSCO).
- Hewlett-Packard Company (NASDAQ: HPQ) in its cash acquisition of TruLogica, Inc. (amount undisclosed).
- Sun Microsystems, Inc. (NASDAQ: JAVA) in its cash acquisition of Nauticus Networks, Inc. (amount undisclosed).
- VMware, Inc. in its \$625 million cash acquisition by EMC Corporation (NASDAQ: EMC).
- Crystal Decisions, Inc. in its \$800 million cash and stock acquisition by Business Objects S.A. (NASDAQ: BOBJ).
- Catalytica Energy Systems, Inc. (NASDAQ: CTAL) in its up to \$10 million cash acquisition of SCR-TECH, LLC from German sellers.
- Overture Services, Inc. (NASDAQ: OVER) in its \$140 million cash and stock acquisition of AltaVista, Inc. and subsequent cash asset sale of AltaVista, Inc. enterprise search unit to FAST Search & Transfer (amount undisclosed).
- Overture Services, Inc. (NASDAQ: OVER) in its \$9 million stock acquisition of Keylime Services, Inc.
- eVoice, Inc. in its \$60 million cash acquisition by America Online, Inc. (NASDAQ: AOL\$)
- Simplex Solutions, Inc. in its \$2.5 million intellectual property asset acquisition of the Coyote Systems, Inc. business from Coventor, Inc.
- Simplex Solutions, Inc. in its stock acquisition of Altius Solutions, Inc. (amount undisclosed).
- Teachers' Private Capital, the private equity arm of Ontario Teachers' Pension Plan, in its \$230 million acquisition of portion of the senior debt of CFM Corporation (TSX: CFM) in default followed by its acquisition of CFM by amalgamation and going private transaction.
- Canadian counsel on a number of large U.S. private equity transactions.
- Onex Corporation (TSX: OCX) in its failed public take-over bid for Canada's two national airlines.
- CIT Group, Inc. (NYSE: CIT) in its \$100 million public take-over bid of Newcourt Credit Group Inc. (NYSE,TSE,MSE: NCT).
- Toromont Industries Ltd. (TSX: TIH) in its \$2.3 million acquisition of small regional equipment company.
- U.S. hospitality company in connection with amalgamation following public take-over of Canadian hospitality company.

#### *Corporate Finance*

- TIBCO Software, Inc. (NASDAQ: TIBX) in its registration of 69,000,000 shares of common stock and repurchase of \$115,000,000 of common stock held by Reuters Group PLC.
- Mentor Corporation (NASDAQ: MENT) in its \$150,000,000 offering of convertible subordinated notes.
- Netflix, Inc. in its initial public offering of 6,325,000 shares of common stock on NASDAQ.

- Simplex Solutions, Inc. in its initial public offering of 4,600,000 shares of common stock on NASDAQ.
- Canadian national department store in the restructuring of its \$70 million senior secured credit facility.
- U.S. lender in its \$175 million exit-financing loan pursuant to court approved plan of arrangement to restructure TSE 300 company under insolvency protection.
- Nesbit Burns in connection with two asset securitization transactions: issuance of \$150 million principal amount of variable funding credit card-backed certificates and issuance of series notes by purchasing conduit trust; and amendment to receivables purchase agreement, certificate issuance agreement and series supplement, and sale of lump sale accounts, and issuance of \$200 million principal amount of credit card-backed certificates.
- Mosaic Venture Partners in its formation of a \$110 million investment fund.
- Syndicate of lenders in connection with amendment to \$70 million loan facility to replace letter of credit security with guarantee.

#### *Venture Capital*

- Koila, Inc. in its Series A preferred stock financing and equipment lease financing (amount undisclosed).
- Airgo Networks, Inc. in its Series A, B, C and D preferred stock financings and equipment lease financing (aggregate of \$58 million raised).
- Kontiki, Inc. in its Series A preferred stock financing (\$18 million raised).
- Truth Software, Inc. in its Series A preferred stock financing (amount undisclosed).
- Netflix, Inc. in its convertible subordinated note and warrant financing (amount undisclosed).
- Telecruz Systems, Inc. in its Series E preferred stock financing (amount undisclosed).
- Orlimar Golf Company in its convertible secured notes and warrants financing (amount undisclosed).

#### **HONORS**

- Northern California Super Lawyer, 2011 (Mergers & Acquisitions)

#### **MEMBERSHIPS**

- Association for Corporate Growth (Silicon Valley Chapter)
- C100 Charter Member (Canadians in Silicon Valley)

#### **ARTICLES**

- Poison Pills With A Twist, *The Recorder*, January 10, 2011
- A Guide to Poison Pills, *The Recorder*, December 31, 2010
- The Return of the Poison Pill - Lessons Learned in 2010 from the *Selectica* and *Barnes & Noble* Cases, *Insights*, Volume 24, Number 12, December 2010

#### **Corporate & Securities Law Blog Articles**

- "SPACs 2.0: New SPAC Rules Changes Approved by NASDAQ and NYSE AMEX and New Market Features Make SPACs a More Attractive Investment Vehicle in 2011," March 21, 2011

- "SMRH ALERT: NASDAQ Moves Toward Mandatory Electronic Filing," February 8, 2011

**SPEECHES**

- Panelist, Digital Media Law Forum "M&A for 2011: Meet the Players," Silicon Valley Bank, February 23, 2011
- Panelist, C100 48 Hours Panel Discussion, RocketSpace SOMA, June 2011
- Moderator, SVASE "CXO Leadership Forum: How to become an Acquisition Target!" Palo Alto, July 13, 2011
- Panelist (sole), Communitel, Meet the Expert: "How to prepare for U.S. financing or acquisition," Kitchener, November 8, 2011
- Moderator, SVASE "CXO Leadership Forum: Planning your exit - sell fast, or grow big?" Palo Alto, December 14, 2011
- Guest Lecturer, Stanford University, "Legal Structures - What Kind of Business Entity Should You Form?" Palo Alto, January 30, 2012