Norton Rose Fulbright for startups

Support for startups and growth ventures
Starting up to scaling globally
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Our program

Norton Rose Fulbright for Startups offers a custom legal service plan directed to accelerating technology companies and startups (the program).

The program is made available to ventures who have been accepted through our admission process.

The program is customized to meet the special needs of technology startups and growth ventures in complex global markets. We have included plans designed not only to cover basic services but also strategic legal support on key topics for high-growth technology businesses such as cross-border investment, mergers & acquisitions, privacy and data security, international intellectual property (IP) strategy, business immigration & international mobility, and structuring collaborations with enterprises to generate traction.

Clients of our program access significant industry expertise and connections to investors and technology receptors by matching the technology and opportunity to the best possible global team.

Our global network supports program clients going to market across different industry sectors including financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

About our firm

Norton Rose Fulbright is a top ranked global law practice, with over 3800 lawyers spread across over 50 cities and 6 continents.

Norton Rose Fulbright’s global footprint, and the importance of our work with technology innovators, gives our team a unique perspective in supporting the growth of tech startups. Norton Rose Fulbright for Startups accelerates growth ventures and delivers strategic, seamless advice wherever their issues arise. Our global coverage and ability to provide strategic and reasonably priced advice in key areas such as corporate/finance, technology commercialization, and international IP is a great fit for startups, especially ones that are active in more than one jurisdiction, or are planning their international expansion.

We are the trusted advisor to startup founders, management, and Boards, providing the best legal advice, delivered with the benefit of sound business judgment.

We have a deep understanding of how technology companies are formed, financed, grown and commercialized (including public exits or mergers). We provide practical recommendations and direction at all business stages, from initial seed funding through to series A and series B financings, public offerings and mergers. We guide startups on business structure and model issues, fundraising strategy and development of proper investor materials.

Norton Rose Fulbright has a track record of attracting pioneers in the technology sector, becoming embedded in their business and technical teams, and making important contributions to the execution of their business plans. We represent tech startups in their infancy, up and comers, high profile industry leading companies, private equity firms, super angel investors, and institutional investors.

Our teams are passionate about working with startups because many of our best clients started with us in their early stages, and startups keep us at the cutting edge of specialized industry knowledge.

Process

Each growth venture client will have a customized plan that generally follows the following stages.

Application. Businesses interested in the program provide information about their technology and go to market strategy. An assessment is made by the program team to determine whether their business is the appropriate fit for Norton Rose Fulbright for Startups. Norton Rose Fulbright’s sought after professionals invest significant time in the program, and so we want to work with the best.

Intake. Once admitted, we identify your champion in the program. The champion will be your relationship lawyer, help manage the work that the firm does for you, and make sure that fees are consistent with the agreed plan. The champion will also work our firm’s connections for your benefit. We propose a champion based on fit between what the company needs and how best we can help you accelerate. One or more preliminary meetings are organized based on your immediate business and legal issues. These meetings are free of charge, and very valuable.
Service Plan. Based on needs and opportunities, our team develops a customized service plan for you, including a set of recommendations and timelines and associated fees / disbursements. The service plan may include specific bundles of services that we recommend for you.

Regular Check-in. Needs change and new opportunities arise. We arrange regular check-ins to keep updated on legal and business strategy. As one of your valued advisors, we urge you to keep us current so we can keep track of changes and new opportunities to help you.

Graduation. Clients continue to benefit from fixed or reduced fees for some time, even once they have significant investment or revenue. Program clients “graduate” when they are ready, and have the resources of our general clientele. Graduates continue to benefit from our general, competitive fee structures, and deep knowledge of their business.

Market need

Growth ventures need legal support to ensure that they create value effectively, comply with regulatory requirements, protect their assets and prevent liabilities. Early stage companies may struggle with traditional fee structures and put themselves at risk by not taking the necessary measures or obtaining the right legal advice. Technology businesses pursue opportunities world-wide in increasingly complex sectors, such as digital health, financial technology, energy, and agriculture. The integration of mobile, big data, cloud, machine-to-machine and other emerging technology can have significant legal implications.

We offer customized plans to meet different client needs, including based on their particular go to market strategies, business model, industry sector, and stage of development. We take clients past company formation, and help them handle the complex issues that can arise quickly (especially during the acceleration phase), where startups have trouble getting the advice that they need quickly at a reasonable price. IP is very important to many accelerating companies, and our firm handles hard core IP, commercial IP, and corporate/transactional work in a seamless way. Our approach adds significant value and avoids problems that are hard and costly to fix. Similarly, startups can benefit from collaborating with larger companies, but struggle navigating the legal risks associated with these opportunities. We have a track record in structuring such relationships strategically for our early stage clients, and helping them manage risk effectively.

Our experience is that accelerating startups require increasingly sophisticated legal advice to succeed, and legal can be a big blind spot. We partner with our program clients to help them become sophisticated consumers of legal services, and work with them to ensure that they are getting the right service, at the right time, for a fair price.

Our approach to fees

We take away the pain from calling the right person, with the right expertise or in the right jurisdiction. Initial advice is not chargeable. We charge for deliverables, once we have sorted out exactly what you need. We emphasize practical solutions rather than legal opinions. You deal with partners or senior associates, who in turn may use more junior staff and clerks, but the work product is actively supervised and approved.

Program clients receive services based on fixed fees, whether as part of a package or a fixed estimate provided in an email, for example. If circumstances change, it is our responsibility to provide an updated fixed estimate and have this approved by you. If this has not been done, we honour the original fixed estimate.

Example legal services are provided in the following pages. Upon request, we can provide sample fees for these legal services. In exceptional cases, where a program client has very high potential and has at that time no budget for legal services, we may waive these fees or consider alternate fee arrangements.

We believe that the support that we provide to growth ventures globally, and across all aspects of law, is unique. We show preference to companies who look to us for all of their legal needs, both for admission, and in the price and payment flexibility that we can provide.

To make the process transparent, we provide a Service Charter to program clients outlining expectations.

We look forward to meeting you and learning about your exciting business and its opportunities and challenges.
Example Service Plans

The service plans that follow provide examples of the services covered.

Company formation

Incorporating and organizing your business at the early stages of its life puts in place essential business structure to grow your company in the future. A company structure will provide your business with the flexibility it will require throughout all the stages of its life – whether it be attracting investors to provide investment capital to grow the business to achieving a clean exit from the business in its final stages.

We can help you to establish a structure tailored to your technology business, to put in place the corporate documents investors and collaborators will expect to see.

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<th>Service</th>
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<tr>
<td>Compare structures</td>
<td>• Identifying and explaining the options for different legal forms.</td>
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<tr>
<td>Incorporation</td>
<td>• Preparing and filing articles of incorporation.</td>
</tr>
<tr>
<td>Shareholders’ agreement</td>
<td>• Drafting a standard shareholders’ agreement.</td>
</tr>
<tr>
<td>Founders agreement</td>
<td>• Drafting a founders agreement where a shareholder agreement is not yet appropriate (e.g. pivots in team and technology).</td>
</tr>
<tr>
<td>Organization</td>
<td>• Drafting by-laws, books and structuring company.</td>
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| Employment or consultant agreement with IP assignment | • Drafting standard employment or consultant/contractor agreement with a transfer of all IP, know-how and confidential information.  
  • Overview of statutory provisions including minimum wage, mandatory leave, family leave and unfair dismissal rights. |
| Non-disclosure agreement                     | • Standard non-disclosure and confidentiality agreement.               |
| Initial tax advice                           | • Initial review of company structure for tax and incentives.          |
| Indemnity agreement                          | • Drafting standard director indemnity.                                |
| Company name                                 | • A company name is the foundation of its branding. The name should not be misleading or confusing with other brands. Rebranding is often expensive and time-consuming.  
  • Initial trade-mark search. 
  • Drafting and filing a trade-mark application in Canada. |
Raising investment

Raising investment capital is often key for a company transitioning to the growth stage. Whether the investment is equity or debt or both, it requires corporate transaction processes to inject the funds into the company. We can guide you through the complexities that often arise out of these processes and assist you with preparing the various legal documents and understanding the key legal concepts to ensure that you achieve the desired commercial outcome.

It is important for a business embarking upon this transitional phase to ensure that the legal documentation is adequate from the outset, as often those documents will provide the terms and framework for any future funding rounds.

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<tr>
<td>Initial review</td>
<td>• Initial review to get team up to speed to support financing.</td>
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<tr>
<td>Term sheets with new investors</td>
<td>• Drafting, negotiating, advising on the terms of any term sheet between the company and new investors.</td>
</tr>
<tr>
<td>Financing agreements</td>
<td>• Preparing and organizing agreements for financing rounds.</td>
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Additional commercial needs

Growth ventures have different commercial legal needs depending on **stage and complexity**.

By using a standard set of terms and conditions to do business with third parties, growth ventures achieve more certainty for conducting business, and protect themselves in the event of a dispute.

Growth ventures will likely explore potential opportunities with third parties for collaboration and commercialization of early-stage technologies.

Clear and concise agreements should be in place to highlight expectations and obligations of each party.

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<th>Service</th>
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<tr>
<td>Subscription agreement</td>
<td>• Drafting a standard subscription agreement.</td>
</tr>
<tr>
<td>Stock option plan</td>
<td>• Drafting a standard stock option plan.</td>
</tr>
<tr>
<td>Teaming agreement</td>
<td>• Drafting teaming, collaboration, joint venture, or partnership agreement.</td>
</tr>
<tr>
<td>Website terms of use</td>
<td>• Drafting website terms and conditions.</td>
</tr>
<tr>
<td>Privacy policy</td>
<td>• Drafting privacy policy and advice in relation to collecting personal data.</td>
</tr>
<tr>
<td></td>
<td>• If the personal data collected through a website is “sensitive” personal data, we will need to tailor the privacy policy.</td>
</tr>
<tr>
<td>Immigration consultation</td>
<td>• Consultation to review immigration issues for international mobility, and bringing in highly skilled professionals to Canada or the United States.</td>
</tr>
<tr>
<td>SaaS subscription agreement</td>
<td>• Reviewing software services and drafting SaaS subscription agreement.</td>
</tr>
<tr>
<td>Memorandum of understanding and term sheet</td>
<td>• Drafting initial terms of agreement.</td>
</tr>
<tr>
<td>Licensing agreements</td>
<td>• Drafting licensing or franchising agreements for assets.</td>
</tr>
<tr>
<td>End user license agreement</td>
<td>• Drafting end user license agreement for products.</td>
</tr>
<tr>
<td>Software developer kit</td>
<td>• Drafting software development kit agreement.</td>
</tr>
<tr>
<td>Reseller agreement</td>
<td>• Drafting reseller agreement.</td>
</tr>
<tr>
<td>Marketing representative agreement</td>
<td>• Drafting marketing representative agreement.</td>
</tr>
<tr>
<td>Sales agency agreement</td>
<td>• Drafting sales agency agreement.</td>
</tr>
<tr>
<td>Supplier terms and conditions</td>
<td>• Providing a supply of goods agreement for: (i) B2B supply of goods; (ii) B2B supply of services; (iii) B2C supply of goods; or (iv) B2C supply of services.</td>
</tr>
<tr>
<td>Real estate agreements</td>
<td>• Example agreements related to lease of office premises, service agreement for serviced facilities, and facilities management agreement.</td>
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Privacy, data security, and compliance

Privacy and data security is an expanding market. Some areas that are expected to explode in 2015 are big data, the internet of things, FinTech (Financial Technology) and e-Health (electronic health).

All persons collecting, using and disclosing personal information in Canada and sending commercial electronic messages (for example, marketing messages) must do so in compliance with applicable laws.

Company activities may be regulated by financial, consumer protection, franchise, privacy, life and health sciences, and medical devices legislation. The most serious consequences of non-compliance with Canadian data legislation are fines, class action law suits and a negative impact on reputation.

Cyber security issues made front page news several times during 2014, and companies storing, using, and disclosing personal information are increasingly expected to implement reasonable administrative, technical and physical safeguards.

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<tr>
<td>Data protection workshop</td>
<td>• Delivering an introduction to data protection workshop to highlight the key requirements of Canadian privacy and data protection law.</td>
</tr>
<tr>
<td>Data protection and compliance audit</td>
<td>• Initial review of collection and usage of data to prepare privacy, data protection and compliance framework.</td>
</tr>
<tr>
<td>Data export agreement</td>
<td>• Drafting one data export agreement for exports of personal data from Canada to a foreign country.</td>
</tr>
<tr>
<td>Data processing agreement</td>
<td>• Drafting data processing agreement for processing of personal data.</td>
</tr>
<tr>
<td></td>
<td>• If the personal data to be processed is “sensitive”, we will need to tailor the agreement.</td>
</tr>
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Protecting innovation

For many technology businesses, IP assets are amongst their most valuable assets. Investors will often question IP ownership when considering investment. If a company does not own its IP assets at the outset, trying to acquire, or even just perfect, ownership of these assets in the future can be a time-consuming and expensive process. The importance of implementing an effective and thorough IP strategy from the outset must not be underestimated.

Automatic unregistered rights – unregistered rights are created and vest automatically. Unless otherwise agreed, rights may vest in the creator rather than the company. This may be particularly important in a non-employee/employer situation with no employment IP assignment clause in place.

First to file – inventions and other IP assets will be evaluated as of the date an application is filed. Opposing a third party’s use of conflicting IP rights is often easier with pre-existing, registered rights.

Protecting IP rights before the company goes to market with a product or service will help maintain an edge over competitors and open the door to new opportunities including licensing and collaboration.

Businesses need to be aware of limitations on their freedom to operate in view of third party IP rights to avoid reputational and financial damage.

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<td>Innovation and IP strategy</td>
<td>• Delivering an IP strategy roundtable.</td>
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<tr>
<td>Provisional patent application and technology review</td>
<td>• Provide and review invention disclosure.</td>
</tr>
<tr>
<td></td>
<td>• Preliminary prior art review.</td>
</tr>
<tr>
<td></td>
<td>• Drafting and filing a U.S. provisional patent application to provide a priority date for regular filings. We recommend filing a detailed comprehensive provisional application. An early priority date is key for “first to file” patent systems.</td>
</tr>
<tr>
<td></td>
<td>• A U.S. provisional patent provides preliminary protection for one year and provides a priority document for subsequent filings made within the year.</td>
</tr>
<tr>
<td>Design application</td>
<td>• Applying to register a Canadian design application with formal figures.</td>
</tr>
<tr>
<td>Searching</td>
<td>• Patentability searching to identify relevant publications to assess scope of patent claims.</td>
</tr>
<tr>
<td></td>
<td>• Freedom to operate search to assess ability to practice core technology.</td>
</tr>
<tr>
<td>Trade-mark licence</td>
<td>• Drafting a standard trade-mark licence agreement.</td>
</tr>
<tr>
<td>Patent license</td>
<td>• Drafting a standard patent licence agreement.</td>
</tr>
<tr>
<td>Collaboration/development agreement</td>
<td>• Drafting a standard collaboration or development agreement including IP ownership and extraction clause.</td>
</tr>
</tbody>
</table>
Credentials

Technology Clients

We’ve worked closely with a number of technology clients to address their legal needs as they pursue their business objectives, including:

- Interaxon Inc., creators of brainwave sensing technologies including MUSE™.
- BlueCat Networks Inc., developers of reliable, scalable and secure IP address managements, DNS, and DHCP solutions that enable the creation of elastic networks.
- Dejero Labs Inc., innovators in the remote acquisition, management and distribution of professional live video over IP networks.
- TELoIP Inc., a company focused on optimizing bandwidth efficiency and network performance.
- Maluuba Inc., creators of an innovative natural language voice assistant platform.
- Nano Magnetics Ltd., creators of Nanoport, a magnetic connector that can hold and align devices to each other while enabling data and power transfer.
- ARB Labs, creators of interactive digital video technology for frameless and holographic display panels.
- Nymi Inc., creators of technology that enables users to seamlessly unlock devices, remember passwords and more, using your heart’s unique signature.
- Atomic Reach, developers of tools that optimize content marketing for maximum impact, engagement, and reach.
- eQOL Inc., a company that provides solutions that empower patients to manage their care outside of the hospital environment.
- Cluep, creators of a mobile ad platform that targets people based on their social media conversations and serves them ads on their mobile device.
- Self Care Catalysts, a patient informatics, intelligence and solutions company.

- Chango Inc., a Toronto-based company focused on mixing information from search queries with behavioral, contextual, and advertiser data to allow brands to better target their ads.
- Askuity, a company that connects retailers and product suppliers with retail intelligence and analytics for improved collaboration, planning and retail execution.
- Flixel Photos Inc., creators of software that enables users to create living photos.
- Aeryon Labs Inc., designers and manufacturers of small unmanned aerial systems and drones.
- Karos Health, developers of Rialto, a platform that empowers healthcare enterprises to implement cross-community access to information that facilitates collaboration between healthcare providers and patients.
- Jibestream Inc., a software development company focused on wayfinding (mapping) software for public spaces to help people navigate venues.
- Juice Mobile, a mobile marketing and technology firm.
- InDanio Bioscience Inc., a drug discovery company dedicated to developing technologies for targeting pharmaceutically-important cellular receptors.
- iHeart Alive, creators of health and wellness tools to enable users to obtain snapshots of their current health.
- Pushlife Inc., developers of a mobile music and entertainment platform (acquired by Google).
- Locationary Inc., creators of a crowdsourced location information platform (acquired by Apple).
- Sysomos, a social media and analytics solutions company (acquired by Marketwire).
- Cognovision Solutions Inc., a provider of real-time audience measurement and retail intelligence solutions (acquired by Intel).
- PostRank, a measurement tool for online publishers to measure the reach and engagement of their content (acquired by Google).
• Granata Decision Systems, developers of software platforms that provide real-time optimization and scenario analysis capabilities for large-scale, data-driven marketing problems and organizational decision-making (acquired by Google).

• Bump Technologies Inc., developers of BumpTop, a desktop environment app that simulates the physical properties of a real-world desk (acquired by Google).

Corporate / Commercial, IP and Privacy

We have also acted for clients in a wide variety of industries as they navigate corporate / commercial, IP and privacy related issues:

Corporate / Commercial

• Advised Semtech Corporation, a California-based semiconductor supplier, in its $500 million acquisition of all of the outstanding shares of Canadian chip maker Gennum Corporation through a plan of arrangement.

• Counsel to OMERS, a Canadian pension fund, in a unique joint venture with Dutch pension fund, ABP, to establish an investment program to deploy €200 million in Canada and the Netherlands over the first five years to invest in knowledge economy start-ups with innovative ideas and technologies.

• Counsel to Revol Technologies Inc., a Montreal based start-up that is working on creating custom-fit earphones, in connection with its initial seed round capital raise by way of a private placement offering to a group of private investors.

• Counsel to a private bitcoin start-up on securities regulatory matters.

• Counsel to Atrium Innovations Inc., a leading developer and marketer of science-based products for the health and nutrition industries, in the sale of its Active Ingredients and Specialty Chemicals division to AXA Private Equity for US$166.4 million.

• Counsel to Sirius XM Radio Inc., a satellite radio provider, in the acquisition by XM Canada of Sirius Canada Inc.

• Counsel to ITF Technologies Inc. and its private equity investors led by Teachers and the Société Générale de Financement in connection with the liquidation of its assets and monetization of its $125 million of tax losses.

• Counsel to Bell Canada on the sale of its information technology services business to Groupe CGI Inc. and on its acquisition of a participation in Groupe CGI Inc.

• Counsel to MultiCorpora R&D Inc., a leader in translation technology solutions, in its sale to R.R. Donnelley & Sons Company.

• Advised Cirque du Soleil in its $100 million, ten year IT services global outsourcing agreement.

IP

• Represent a global Canadian bank in respect of the protection and commercialization of their high-profile electronic trading technology product improving execution quality by implementing smart routing to minimize the effects of high-frequency trading.

• Represent a global gaming company in regards to their IP strategy and development of patents.

• Represent a UK based e-commerce company in developing their global IP strategy, patent portfolio and commercial IP agreements for monetization of their technology and IP.

• Represented large international pharmaceutical companies in patent prosecution and related strategic advice and opinion work across a variety of technology sectors.

• Representing a substantial number of Canada’s technology transfer / commercialization organizations, innovation accelerators and research institutions. We help obtain and protect IP rights for companies and academics involved with developing leading edge technologies, such as computer network solutions, energy storage technology, organic light emitting diodes (OLEDs), power electronics, biosensors and photonics. We have longstanding and close relationships with MaRS Discovery District, MaRS Innovation, Communitech, the University of Toronto, the University of Waterloo, York University, Ryerson University, among other institutions.

• Represented Nortel Networks Limited as IP counsel in the strategic assessment, valuation and, ultimately, sale of Nortel’s patent assets for a record-breaking US$4.5 billion. We also represented Nortel in the IP aspects of its many divestments, providing licensing and corporate advice.
Starting up to scaling globally

- Acted for many of Canada’s largest public and private corporations in a proposed intervention in the Amazon.com case, widely regarded as the leading case on the patentability of business methods in Canada.

- Acted for Bell Helicopter Textron Canada Limited, a leading manufacturer of civil and military helicopters, in a patent infringement and invalidity trial against Eurocopter in respect of the landing gear on its flagship 429 helicopter. The Federal Court held that Bell Helicopter’s certified landing gear did not infringe Eurocopter’s patent.

- Patenting of various clean technologies, including water purification, carbon sequestration, biofuels, solar, nuclear, wind, geothermal, syngas and coal gasification.

- Retained by an Alberta-based private equity firm for IP due diligence and IP transactional advice for acquisitions of oil & gas technologies.

- Represented a telecommunications company, as defendant, in a patent infringement action against 19 patents related to digital subscriber line (DSL) technology.

Privacy

- Drafted and reviewed privacy policies (including policies covering websites, mobile apps and general operations) for over 13 technology, cloud based, and consumer product companies operating in Canada.

- Advised two pro sport leagues on validity of various marketing initiatives under the Canadian Anti-Spam Legislation.

- Advised a major Canadian bank on issues relating to a proposed migration of customer personal information to cloud provider for data analytics and other uses. We advised on whether consent was required, whether notice need be given of the fact that data would be stored in the United States due to Patriot Act concerns and whether actual notice that data will be stored in the cloud is required under Canadian legislation as well as on security issues.

- Advised a world leading technology-based analytics, technology and services corporation on numerous privacy issues including how data can be collected in certain provinces without consent provided that proper deidentification techniques are used or privacy commissioner approval obtained and privacy analytics applied to estimate probabilities of reidentification. We obtained passage of a special bill amending the privacy legislation in Quebec to permit continued activity in this domain.

Initial Public Offerings

We are also regularly engaged to advise on initial public offerings for our scaling clients:

- Represented National Bank of Canada in connection with Lumenpulse Inc.’s initial public offering of common shares. Lumenpulse is an innovator and manufacturer of high performance, sustainable architectural LED lighting solutions.

- Counsel to Baylin Technologies Inc. in its TSX initial public offering. Baylin Technologies is a global provider of innovative wireless component technology, dealing mainly with internal and external antennas for a variety of devices for equipment manufacturers in the mobile, broadband and wireless infrastructure sectors.

- Advised Mecachrome International Inc. in connection with its $205 million initial public offering, secondary offering and concurrent private placements. Mecachrome is a leader in the design, engineering, manufacturing and assembling of complex precision-engineered components for aircraft and automotive applications, including aerostructural and aircraft engine components, high-end automobile engine components and motor racing engines, defense and energy sectors.

- Acted for Guest Tek Interactive Entertainment Ltd. in connection with its $44 million initial public offering and secondary offering. Guest Tek is a global provider of integrated broadband and interactive solutions for the hospitality industry.

- Acted for 180 Connect Inc., a provider of technical support services to the direct broadcast satellite and cable industries, in connection with its US$45 million initial public offering and secondary offering.
• Acted for the underwriters in connection with Mediagrif Interactive Technologies Inc.’s initial public offering. Mediagrif is a provider of e-commerce solutions.

• Acted for the underwriters in connection with the initial public offering of electronics manufacturer C-Mac Industries Inc.

• Acted for the underwriters in connection with Cossette Inc.’s initial public offering. Cossette is a marketing communications company.

• Acted for the underwriters in connection with the $55 million initial public offering of Adaltis Inc., a developer and manufacturer of in-vitro diagnostic systems.
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