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The Uber Board Deliberates: Is Good Governance Worth the Firing of an Entrepreneurial Founder?

BY BRUCE KOGUT*

Introduction

Uber Technologies, the privately held ride-sharing service and logistics platform, suffered a series of PR crises during 2017 that culminated in the resignation of Travis Kalanick, cofounder and longtime CEO. Kalanick was an acclaimed entrepreneur, building Uber from its local San Francisco roots to a worldwide enterprise in eight years, but he was also a habitual rule-breaker.[1] In an effort to put the recent past behind the company, the directors of Uber scheduled a board meeting for October 3, 2017, to vote on critical proposals from new CEO Dara Khosrowshahi that were focused essentially on one question: How should Uber be governed now that Kalanick had stepped down as CEO?

Under Kalanick, Uber had grown to an estimated $69 billion in value by 2017, though plagued by scandal. The firm was accused of price gouging, false advertising, illegal operations, IP theft, sexual harassment cover-ups, and more.[2] As Uber's legal and PR turmoil increased, Kalanick was forced to resign as CEO, while retaining his directorship position on the nine-member board. His June 2017 resignation was hoped to calm the uproar, but it instead increased investor uncertainty. Some of the firm's venture capital shareholders (VCs) marked down their Uber holdings by 15% (Vanguard, Principal Financial), while others raised the valuation by 10% (BlackRock).[3]

To restore Uber's reputation and stabilize investor confidence, the board in August 2017 unanimously elected Dara Khosrowshahi as Uber's next CEO. Khosrowshahi had been CEO

Author affiliation
Sanford C. Bernstein & Co. Professor of Leadership and Ethics at Columbia Business School.

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of travel firm Expedia and had years of experience running a global company in a complex, ever-shifting marketplace. He was well-regarded by colleagues, employees, and investors alike. In his first weeks at Uber, Khosrowshahi showed steady leadership, won over regulators, and began to turn around Uber's soured culture, and an e-mail he soon sent to employees was called "proof positive that he's the right man for the job."[4] At the October 3 board meeting, Khosrowshahi planned to bolster Uber's prospects further by finalizing a $10 billion investment deal with Japanese firm SoftBank, setting a schedule for the long-awaited IPO, strengthening governance rules, and restructuring the firm's misalignment between voting shares and equity allocation.

A sudden turn of events put this plan into question. On September 29, Kalanick exercised the special voting rights that he retained as founder to abruptly fill two empty seats, appointing Ursula Burns and John Thain. These former S&P 500 CEOs would be at the board meeting one week later to presumably buttress Kalanick's authority and undercut Khosrowshahi's proposals. Although the company's governance policies remained on the agenda, the outcome was unclear. Some directors saw Kalanick's involvement as still integral to Uber's success, while others saw him as a risky liability whose influence had to be neutralized.[5] With billions in value at stake, the outcome of the pending meeting was critical to the company's path going forward.

Launch

Entrepreneur Garrett Camp is credited with devising Uber's business model. He had founded StumbleUpon, a web content discovery engine, and sold it to eBay in 2007 for $75 million.[6] His idea for Uber crystallized in 2008, after several bad experiences with San Francisco taxis.[7] He and his friend Travis Kalanick dreamed of hailing a car with the touch of a button and enjoying a classy ride.[8] Tinkering with the idea, Camp and his colleagues Oscar Salazar and Conrad Whelan developed "UberCab" in 2009, an app that called nearby idle limousines (black cars) to provide rides. Kalanick became the start-up's "mega adviser" to raise funds and expand the new venture.[9]

Kalanick was a serial entrepreneur and digital innovator. His first business, a peer-to-peer search engine called Scour, went bankrupt, but he sold his second company, the networking-software firm Red Swoosh, to Akamai for $23 million in 2007.[10] He was known in Silicon Valley as a win-at-all-costs businessman. Highly successful investor Mark Cuban gave his early stamp in calling Kalanick "a true entrepreneur."[11] Equally common, however, was the view that Kalanick was hard to work with. An entrepreneur who has worked with him said, "Travis is ego personified." An acquaintance of Kalanick's said, "Sometimes a**holes create great businesses."[12]

He and Camp changed the brand name to Uber after receiving a cease-and-desist letter from the local taxi commission.[13] The new brand was preferred by Camp, who "wanted it to be one word and a description of excellence.… It means greatness," his then-girlfriend said.[14] For

Kalanick, Uber meant more than a car service: "Uber is ultimately a cross between lifestyle and logistics."[15]

In 2010, Ryan Graves was hired as Uber's first full-time employee, becoming its third shareholder.[16] He held various titles during his first year, including chief operating officer and CEO, and became senior vice president of global operations at the end of 2010, when Kalanick joined Uber full-time as CEO. When the Uber app launched in San Francisco in early 2011, it "was a sensation, at least among the target demographic of Bay Area techies."[17] Uber grew geographically at warp speed, from one city to over 700 locations and from a handful of employees to 12,000 by mid-2017.

How Uber Works

A platform business with a revenue model similar to eBay, Etsy, and Airbnb, Uber created proprietary algorithms that matched riders and drivers within a geographic locale. Once rider and driver were matched, Uber's software supplied secure payments, optimal GPS navigation, a mutual rating system, and customer service backup to optimize the ride-sharing experience. Uber made money by taking a percentage of the fare and charging for added services. On the customer side, riders downloaded Uber's app for free and registered with a credit card. To summon a ride, they opened the app and entered a destination, reviewed a map of Uber cars nearby as well as their estimated arrival time, car size, and fare (typically lower than traditional car service providers), and then selected the car they wanted.

Uber's original San Francisco-only service offered rides in black cars operated by professional drivers recruited by the lure of earning extra income outside their existing jobs. In July 2012, Uber expanded the pool of drivers exponentially by launching UberX, inviting anyone with an SUV or sedan to drive for UberX. The black car service was rebranded UberBLACK. UberX riders were charged 35% less for the new ride-share's less elegant service.[18]

On UberX's driver side of the platform, anyone over 21 with a four-door vehicle could apply online, fill out forms, and hear back within a week.[19] The company required UberX drivers to have a good driving record, in-state driver's license, Social Security number, and clean background check. Vehicles had to pass the firm's inspection test.[20] Once approved, a driver downloaded the app and hit GO to start receiving ride requests. Drivers earned the fare minus an Uber service fee, "typically in the 20 to 30 percent range," with moneys automatically deposited into their account. [21] Drivers were paid as independent contractors and had to pay for gas, car repairs, and taxes.[22] However, Uber supplied car insurance for the hours that a vehicle was in use for UberX trips.[23]

UberX was a quick success. Riders found the app's interface to be seamlessly convenient.[24] Customers said Uber saved them time, money, stress, and was more reliable than taxis.[25] Thousands of drivers signed up, citing the top benefit in working for Uber as flexibility, since "drivers can work whenever they want."[26] Driving for Uber was predominantly part-time work. A study found 81% of Uber drivers had a permanent job. Nineteen percent were students, retired, or stay-at-home parents.[27] A 2017 study found 80% of drivers drove less than 35 hours a week, with 50% driving only one to 14 hours a week.[28]

Expansion at a Fever Pitch

Kalanick saw ride-sharing as a winner-take-all industry, requiring fast, heavy investment if Uber was to dominate the marketplace, capture share first, and build brand recognition. This necessitated a tremendous amount of capital and extremely rapid expansion. To build Uber's platform quickly, former Uber general manager Matt Kochman said, "Their strategy has been 'try and stop us, and if you try and stop us, then we'll cross that bridge when we come to it.'"[29] Kalanick and Graves hired employees at a blistering pace, and by the end of 2011 Uber had launched in Chicago, New York, Seattle, Boston, Houston, and Washington, D.C. By 2012, the firm operated in 60 cities, albeit frequently entering a market by ignoring local taxi regulations and shrugging off the fury of legacy taxi firms.[30]

The key to Uber domination of a new market was to recruit drivers fast, first, and in such quantities that the company could promise only a five-minute wait for riders.[31] Driver recruitment was a constant challenge. Uber poured money into signing bonuses, guaranteed hourly rates, and promotions. By the end of 2015, Uber had 460,000 active drivers, but take-home pay varied widely across markets.[32] A National Bureau of Economic Research study found Uber drivers' hourly earnings-after-expenses were $13.17 in Denver, $10.75 in Houston, and $8.77 in Detroit.[33]

Driver retention was a challenge: 30% of drivers who downloaded the app left each quarter, with only 4% of drivers staying one year.[34] Payments to drivers were also Uber's largest cost, seen by many as the firm's foremost barrier to profitability. That said, the primary reason cited by drivers for leaving Uber was low pay.[35]

Global Ride-Share Market and Competition

As Kalanick expanded Uber overseas, his strategy was "identify a new market and barge right in."[36] In practice, this succeeded at first. By May 2017, Uber was in over 450 cities in 76 countries (see Exhibit 1 for a map of global cities where Uber operated). The app served 65 million customers and 2 million drivers on 15 million daily rides worldwide.[37] (See Exhibit 2 for Uber's growth in booking revenue.) By 2017, Uber's international competitors were also flourishing, including Ola in India,[38] Grab in Southeast Asia, and MyTaxi and Taxify in Europe, while US ride-hailing firms Lyft, Juno, Via, Chariot, and SideCar were gaining ground.[39] Goldman Sachs calculated ride-sharing market revenue would reach $285 billion worldwide by 2030.[40]

By mid-2018, the market still had tremendous upside potential—between 24 and 43 percent% of Americans with cellphones used a ride-hailing app.[41] Early in the industry's evolution, many analysts felt that ride-sharing was likely a winner-take-all market, but as the market evolved, they shifted to predictions of a winner-take-most market, with the customers who were comfortable using multiple platforms doing so. Ride-service companies did not face high capital barriers to enter. They had "contract labor with no inherent loyalty or specialized skills … [and created] free apps that can be downloaded in seconds." Customers had several ride-hailing apps on their phones, which they could check for the cheapest and quickest arrival.[42] And drivers could switch their allegiances rapidly. In 2015, two-thirds of drivers worked for both Lyft and Uber.[43] As an economist noted, "there is room for other players even if Uber is dominant."[44]

Uber's prime competitor, Lyft, started in California in 2012. Lyft offered riders virtually the same service as Uber but provided a better deal for drivers, with a tipping feature that Uber later copied. In dense urban areas, most US drivers signed up with both companies. Lyft expanded slowly, focusing on the United States, and only went international in 2017. Uber's market share in the United States fell from 80% to 74% in Q1 2017, due to increased competition and also to its bad publicity.[45] (See Exhibit 3 for Uber versus Lyft trends.)

A Very Private Firm

Uber's rapid expansion required enormous amounts of capital, even though it did not own the vehicles or hire drivers as employees. Kalanick turned to investors frequently to replenish the firm's capital reserves. As a privately held firm, Uber was mostly free from US Securities and Exchange Commission oversight and was exempt from reporting requirements and the internal accounting controls required under the Sarbanes-Oxley Act of 2002. Nevertheless, the rules regarding VCs, money-laundering, and know-your-customer did apply. But in practice Kalanick was able to seek out almost any financial partner to fund Uber's expansion. As he put deals together, Kalanick made sure that voting power was firmly consolidated in the hands of the cofounders. Board seats and voting shares were only to be awarded to a very few special top investors. Also, since it was a private firm, there was no requirement for independent board directors.

As in most start-ups, as new employees came on board, Uber gave out shares, but it put strict restrictions around stock compensation and voting rights. Early employees received stock options, which allowed them to buy shares at a low price, yet "unlike other technology companies Uber gives employees only 30 days to buy those shares if they leave."[46] If workers did not buy the shares within that period, they forfeited the stock back to the company. Some Uber employees said they were unable to come up with enough money to pay for their stock and the related taxes, which "left them little choice but to stay at the company and wait for a public offering of stock."[47]

Despite the disregard of the practice held by many of the most important governance and proxy services, such as Institutional Shareholder Services (ISS), Uber issued dual-class shares: Class B common stock and "preferred" shares. Class B shares benefited from supermajority (10-to-one) voting power. The preferred shares had supermajority for early investors, including the venture capital firm Benchmark. In recent years, the dual share approach had become more prevalent, with the support of investors including Andreessen Horowitz. Marc Andreesen wrote: "We are hugely in favor of the founder who intends to be CEO. Not all founders can become great CEOs, but most of the great companies in our industry were run by a founder for a long period of time, often decades, and we believe that pattern will continue."[48] Owners of dual-class shares often sell shares at major liquidity events, such as mergers or IPOs; usually Class B shares convert to ordinary shares when sold.[49] Prior to an IPO, activists may seek to purchase restricted shares from employees as well. Uber's leaders openly discussed the potential loss of control, claiming, "we have very strict transfer restrictions in place and pursue necessary means to ensure they are respected." As one Uber spokesperson described the situation, "the only way to invest in Uber is through Uber."[50]

From his first moment as CEO, Kalanick aggressively pursued investors to fund Uber's rapid growth. His task became easier in 2012, when government regulations enabled companies to stay private longer.[51] The JOBS (Jumpstart Our Business Startups) Act allowed private companies with $10 million or more in assets to have up to 2,000 shareholders without the need to comply with SEC public-company reporting rules. The previous limit had been 500. This was fine with Kalanick, who wanted to keep Uber private as long as possible, saying, "in years and decades past, you'd go public for that last slug of capital to get to market.… The dynamics have changed. There's a lot of money in the private markets. So that [need] … is no longer there."[52]

In terms of boardroom power, Uber's company charter designated 11 board directors, but only seven or eight of those positions were typically filled. The total number of directors seated on Uber's board varied over time. Three seats were permanently occupied by Kalanick, Camp, and Graves. Kalanick was also empowered to appoint two more. As investment rounds took place, more board seats were filled by key VCs, e.g., representatives of Benchmark and TPG Capital. From time to time, Kalanick invited an independent director or two to join the board, e.g., Google's David Drummond, Obama adviser David Plouffe, media mogul Arianna Huffington.

Investors and Voting Rights

Uber followed the standard financing path of a successful start-up, from seed capital through a series of venture capital financing rounds. Initially, Garrett Camp used $250,000[53] of his own funds for Uber's seed round of financing. (See Exhibit 4 for a list of the most important Uber investors and moneys from 2010 to 2017.) When Kalanick went looking for angel investors in 2010, he persuaded First Round Capital, Founder Collective, and Lowercase Capital to put up $1.25 million. Rob Hayes, a partner at First Round, was the first outsider to join Uber's board.[54]

Eventually, he left when he was "excommunicated from Kalanick's inner circle" for questioning the CEO.[55]Later in 2010, Uber needed more cash. Benchmark Capital became one of Uber's major investors through participating in several of the company's financing rounds including its Series A in September 2010, B in February 2011, and C in December 2011. For its investment, it got "13% of Uber's stock, including approximately 20% of Uber's voting power" (in a formula based on holding 36% of the preferred-shares voting power and 0.5% of Uber's Class B common stock), and one board seat.[56] Benchmark partner Bill Gurley became the next external Uber director.[57]

Series B investors were given voting power, but only board advisory positions. In this round, Benchmark, Menlo Ventures, First Round Capital, Lowercase Capital, and Fidelity Investments gained more than a quarter of Uber's stock, but "the type of shares they own gives them 40 percent of the voting power"[58] In 2011, Uber's pre-money valuation jumped to $300 million, and Silicon Valley began to take note of the firm's soaring value.[59]

Series C investments came from Benchmark and two new VCs who gained board seats: Google Ventures added David Drummond, and TPG Capital added David Bonderman to the board. Uber said Series C moneys would "be used to expand into new markets, begin marketing efforts, and fight off protectionist, anti-competitive efforts."[60]

The Series C round also raised Uber's estimated valuation to $3.5 billion, and the firm joined Silicon Valley's famed "unicorn club," private companies worth over $1 billion.[61] At the time, tech "unicorns" were competing for funds in a nearly zero-interest-rate marketplace. As one expert explained, "with so much available cash, private companies have been in no hurry to seek the glare of public markets …"[62] This situation gave power to start-ups, as they bargained for contingent funding and board control.

Kalanick's investment rounds also served another purpose: "Uber's money-grab is seemingly part of an unspoken strategy to mark its territory. Every time Uber raises another $1 billion, venture capital investors and others may find it less attractive to back one of Uber's many rivals,"[63] e.g., Didi Chuxing, Lyft, Gett, and Halo. (See Exhibit 5 for the relationships among Uber investors.)

Each investing round publicly revealed the skyrocketing value of the first by the new price paid by the newest investors. Uber's Series D results set the firm's valuation at $17 billion, and "the potential had VCs' mouths watering."[64] Investors like BlackRock and Menlo Ventures had to report on the estimated worth of their Uber stock every six months, and values only went up. By 2017, the company was valued at $69 billion. By some Wall Street estimations, Uber's IPO could eventually be worth $120 billion.[65] (See Exhibit 6 for Uber's cumulative funding and valuation.)

Tensions Begin to Grow

At a 2015 conference, board director Bill Gurley declared that "the worst advice Silicon Valley ever received was to stay private longer," an indication of his interest in seeing Uber go public. However, later the same day Kalanick said an Uber IPO was far away. "We're maturing as a company…. It's a little early. Give us a few years." He continued on to say that the timing isn't right[66] Kalanick believed that going public would put Uber under more scrutiny, citing Facebook's IPO as a burden on Mark Zuckerberg.[67] In a later interview, he explained further, "we have an obligation to ultimately find liquidity for the investors.… Our employees work hard and ultimately that stock that everybody worked for should go to them…. [but] if you can keep your employees from refreshing every 10 minutes to see what the stock price is, your company is going to be more geared towards the future and move faster."[68]

By 2016, Kalanick had to find more investors to get Uber an infusion of cash. After negotiating with Saudi Arabia's Public Investment Fund (PIF), he raised $3.5 billion and the fund's general manager, Yasir Al-Rumayyan, was given a seat on the board. The deal did not cash out any of Uber's existing investors. It made Uber into Silicon Valley's most valuable private business on paper, with a valuation of $62.5 billion.[69] Kalanick had raised over $11 billion from investors since Uber's inception.[70]

There were also notable changes in the board and its governance rules in 2016. For years, Kalanick had kept vacant seats on the board as a means of checking outsiders' power and maintaining his control. A colleague noted, "if the outside directors ever challenged him, he could quickly stack the board with allies."[71] The official number of board seats had held steady for years, but in June 2016, as part of the Saudi PIF deal, Kalanick "was given the sole right to choose who sat in the three" open seats.[72] This unexpected revision to Uber's governance rules raised concerns among the firm's existing investors, particularly with Benchmark's Bill Gurley.

That year, Arianna Huffington joined the board as an independent director. Huffington was the well-known founder of the Huffington Post media empire, which she sold to AOL for over $300 million. When she joined Uber's board, she said she was there to support Kalanick: "I have been inspired by the big, bold bets he is constantly placing, by his gift for innovating his way out of challenges and by his ability to execute at the most detailed level…. I'm so excited…to help take Uber to the next level."[73] She also said adding more women to Uber's ranks was a priority. In 2017, she recruited Wan Ling Martello of Nestlé as a director, as well as helping to hire Harvard's Frances Frei to head up Uber strategy and Apple's Bozoma Saint John to join as chief brand officer.[74]

Uber in 2017: Crises Accumulate

In April 2017, Uber provided Bloomberg with an inside look at its financials. The company reported gross bookings in 2016 of $20 billion, with net revenue of $6.5 billion and adjusted net losses of $2.8 billion, excluding the China business sold in 2015. "We're fortunate to have a healthy and growing business," Kalanick stated. But the ride-sharing giant was burning capital at a rate of $1 billion a quarter.[75] (See Exhibit 7 for quarterly financial results.)

As losses mounted, Kalanick was busy testing and launching new services built on what he now called Uber's "instant gratification" platform.[76] These offerings included UberEATS (food delivery), Uber for Business (corporate transportation management), UberAUTO (auto-rickshaw rides in India and Pakistan), UberBOAT (ferry service in Croatia), UberMOTO (motorcycle rides in India, Indonesia, Pakistan, and the Dominican Republic), and freight logistics.[77]

Scandals and Lawsuits

By 2017, troublesome issues had significantly affected the business, undermining the myth of Uber's inevitable IPO and long-term success.[78] Uber and Kalanick became embroiled in multiple scandals that started accumulating, taking management's attention and time away from actually running the business:

- <u>Waymo[i] lawsuit</u>—When Uber purchased Anthony Levandowski's firm Otto, it thought it had bought his intellectual property too.[79] Otto had originated as a Google venture that spun off as its own company in 2016. Soon after the Uber purchase was announced, Google claimed theft of patents. It filed a lawsuit in 2016, and David Drummond stepped down from Uber's board.[80] Google lawyers sought to depose Kalanick, Gurley, Bonderman, and Huffington, accusing them of being aware of the theft.[81] In May, Uber went to court, some said, "fighting for its very existence."[82]
- <u>Civil and criminal investigations</u>—In 2016, Kalanick fought "more than 70 federal lawsuits in courts across the country," including criminal cases involving Uber drivers and civil suits about deceptive practices.[83] Among the most notorious was the US Justice Department's inquiry into "Greyball" software, a fake app Uber used to thwart regulators in cities where Uber was operating without permission.[84] The FBI started an investigation into Uber's "Hell" program, software used to monitor and potentially influence Lyft drivers with faked accounts created to impede competition.[85] Uber was also charged with violation of the Foreign Corrupt Practices Act for engaging in bribery in five Asian nations.[86] The board of directors was preoccupied, and in some cases personally implicated, in these scandals. For example, "Greyball" had been approved by Ryan Graves.[87]
- <u>Fighting with Apple and the FTC</u>—The Uber app was created so that the firm could track riders even if they later deleted Uber, a feature known as "God

[i] Waymo is the self-driving car unit of Google's parent company, Alphabet.

view." This stealth practice was in violation of iTunes Store rules, and in early 2017 Apple discovered the deception. Kalanick was confronted by Apple CEO Tim Cook, who threatened to pull the Uber app out of the iTunes online store. Kalanick backed down, and Uber eliminated the feature.[88] In April, the Federal Trade Commission began its own investigation.[89]

- Data breach—In June 2017, Uber admitted to failing to disclose a 2014 data breach in which 20 million of their user accounts were compromised. Just as the company settled with the FTC for failing to notify customers, Uber was hacked again. This time, data on 57 million drivers and customers was compromised.[90] Several state attorneys general filed lawsuits charging Uber with corporate misconduct. The board launched its own investigation into its security division in June.[91]

Not surprisingly, consumer distrust of Uber was on the rise. It further grew when Uber was accused of price gouging during the taxi strike in protest of President Trump's Muslim bans, leading to a new "#deleteUber" movement. Within weeks of the hashtag's creation, 200,000 riders deleted Uber's app from their phones.[92] Such negative PR started to have an impact: In January 2017, downloads for Lyft surpassed Uber for the first time ever.[93]

Chaotic Corporate Culture

Uber corporate culture issues came to light in former employee Susan Fowler's February 2017 blog post, entitled "Reflecting on one very, very strange year at Uber," which vividly described a year of sexual harassment and discrimination. The company was portrayed as a workplace rife with sexism, with executives focused on protecting high performers more than enforcing safe-workplace and anti-discrimination laws. The day after the post went viral, Kalanick announced that Arianna Huffington would lead an investigation. Other stories soon emerged, revealing a litany of immoral behavior and shady practices.[94] Huffington said Uber was protecting "brilliant jerks"[95] and called for an external firm to conduct a more thorough investigation.

The law firm of Covington & Burling was hired. Eric Holder, a partner at the firm who had been US attorney general during the Obama era, led the inquiry. Hundreds of employees were interviewed during the spring. Over 200 reported experiencing sexism, harassment, and discrimination, and on June 6 the company fired 20 employees. Covington & Burling's final report to the board recommended major governance changes that board members needed to enact if they were to transform Uber's culture and improve accountability starting at the top, including:

- Restructure the board and add more oversight with new independent directors
- Develop clear guidance to prevent harassment, with a zero-tolerance policy for substantiated complaints

- Hire a chief operating officer
- Review Kalanick's performance and reallocate his CEO responsibilities[96]

A Tumultuous Transition

While in the midst of these controversies, Uber was operating without a president, CFO, COO, or general counsel.[97] Kalanick was also reeling from a personal tragedy. On May 26, 2017, his mother had been killed in a boating accident and his father was gravely injured, still in critical condition. Daily responsibilities for managing Uber were being handled by the board and the 14 people who reported to Kalanick. Two weeks later, the board convened a daylong meeting to discuss Kalanick temporarily stepping away from the company.[98] After being confronted by the board, Kalanick agreed to take a leave of absence, telling employees that he was stepping away temporarily, "to reflect, to work on myself, and to focus on building out a world-class leadership team."[99] Huffington reported that the leave of absence was wholly Kalanick's decision.[100]

Also at this meeting, the board "unanimously voted to adopt all" of the Covington report's recommendations.[101] But the next day, Bonderman illustrated how hard making those changes might be. At an all-employee meeting on the report, Huffington was discussing the benefits of adding more women to the board when Bonderman interrupted to say, "actually, what it shows is that it's much more likely to be more talking."[102] At the time, Huffington dismissed his quip, saying, "Oh, come on, David," but attendees were aghast. After the meeting, "employees angry at Mr. Bonderman's remarks sent numerous emails to their managers and to Liane Hornsey, Uber's head of human resources."[103] An audiotape of the meeting was leaked.[104] That day, Bonderman resigned his seat. David Trujillo joined to represent TPG Capital.[105]

Board pressure for change continued to mount. One week later, on June 20, a group that held 40% of Uber's voting stock, led by Benchmark's Gurley, wrote to Kalanick. The letter was delivered to him in person by two Benchmark partners. The letter demanded Kalanick's resignation and improved oversight of the board "by filling two of three empty board seats with 'truly independent directors.'" Additional demands addressed Uber's leadership structure with a requirement that Kalanick support a board-led search committee for a new chief executive, and the immediate hiring of an experienced chief financial officer.[106] After hours of debate with Benchmark, and a long phone consultation with Huffington, Kalanick agreed to step down.[107] In his farewell message to staff, Kalanick said his departure was for the good of the firm, and he would work with the board-led search committee to find a new CEO.[108]

The next week, Gurley resigned from the board, and Benchmark's rep became Matt Cohler—one of the partners who delivered the letter to Kalanick.[109] Analysts noted that "it's not unusual for activist investors at publicly traded companies to resign their board seat following whatever campaign they were carrying out…. But with Uber being a private company, and thus subject to different rules, Benchmark will retain the seat."[110]

On August 10, when the CEO search was well underway, Benchmark surprised everyone by suing Kalanick for gross mismanagement. Kalanick had failed to sign some of the papers associated with his resignation, specifically the ones giving up board seat control.[111] The lawsuit stated, "Kalanick withheld important, relevant information about the company's scandals before the board voted to allow him to control three seats" in 2016,[112] and "Kalanick's overarching objective is to pack Uber's Board with loyal allies in an effort to insulate his prior conduct from scrutiny and clear the path for his eventual return as CEO—all to the detriment of Uber's stockholders, employees, driver-partners, and customers."[113] Uber's board learned about the lawsuit as did staff—in the press.

The lawsuit filings shed light on Uber's dual-class share structure. Kalanick owned 10% of the company's stock and 35% of Class B common shares, holdings that gave him 16% of Uber's total voting power. Benchmark had 13% of stock, 0.5% of Class B common shares, and 20% of Uber's voting power.[114] Kalanick, though, had a solid alliance with Camp and Graves. When Camp's 6% of stock and Graves 6% of stock were added to Kalanick's, the CEO controlled a total 22% of company stock. Benchmark would have to build more alliances if it was to outweigh Kalanick's accumulated power.

In addition, financial filings revealed how early investors would be treated in the event of a public offering. Preferred stock held by Seed, Series A, and Series B investors would convert to Class B common stock, with 10 votes per share. But preferred stock held by Series C investors would convert to the Class A one-share-one-vote kind.[115] Yet when dividends started to flow, Series C investors were guaranteed an 8% dividend payout, while Series A investors would get 6.3%. The structure ensured Kalanick kept a strong hold on Uber, regardless of whether he was CEO, but also compensated ordinary shareholders.

Kalanick did have supporters who fought back on his behalf. Within a week of the legal filing, an e-mail petition signed by key shareholders from Sherpa Capital, Yucaipa, and Maverick Technologies asked Benchmark to desist and sell its Uber shares instead. They said Benchmark's lawsuit "impeded the critical search for a new, world-class Chief Executive Officer."[116] They were ignored by Benchmark. The board continued its CEO search even as Benchmark's case worked its way through court and private arbitration.

A New Leader

There was widespread speculation about who might be Uber's next leader.[117] By the end of August, three finalists remained: Meg Whitman, former CEO of Hewlett-Packard and eBay; Jeffery Immelt, former CEO of General Electric; and Dara Khosrowshahi, CEO of Expedia. Benchmark questioned Immelt's tenure at GE and worried that he would serve "only as a surrogate for Mr. Kalanick."[118] Whitman had been coaxed into considering the position by

Graves, who counted her as a mentor.[119] Camp knew her from eBay, when she bought his firm StumbleUpon.[120] But Whitman wanted Benchmark and Kalanick to settle their lawsuit before she'd take the job. This met with resistance, as did her goal of limiting Kalanick's involvement, and she dropped out.

According to numerous insiders, Kalanick was still an issue. After returning from a break, the ex-CEO "continued to try to involve himself in daily operating decisions, so much so that top execs have been mulling how to get help from the board to rein him in…. Kalanick has told numerous people…that he was 'Steve Jobs-ing it,' an apparent reference to the purge and later return of the legendary Apple founder at the company."[121] But in reality, "without the support of board members Ryan Graves and Garrett Camp, Kalanick has none of the kind of leverage" required for that to happen.[122]

On August 29, the board unanimously elected Khosrowshahi to be Uber's next CEO.

Khosrowshahi had been CEO at online travel firm Expedia for 12 years. He was known for strong leadership skills and a calm, professional behavior in handling stressful situations, such as "leading Expedia through … several blockbuster acquisitions, periods of uncertainty during the Great Recession, and rapid growth."[123] At Expedia, he achieved record levels of diversity: Half his staff was female; average pay was equal between men and women employees.[124] He said he was interested in becoming Uber's next CEO because the firm was "reinventing the transportation industry and is one of the most powerful brands in the world."[125]

A New Investor

One of his first jobs at Uber was bringing in more investment capital. Investments up to 2017 had consistently improved the multiple of valuation to investment. (See Exhibit 7.) Earlier in 2017, Uber needed another infusion of funds to continue its massive marketing spend. During the summer, Japanese conglomerate SoftBank had exhibited interest. Analysts surmised that "SoftBank's interest in Uber indicates it may be hedging its bets amid intense competition in the ride-hailing industry," since SoftBank also had investment stakes in Ola and Didi.[126] By September, news sources said the firm's interest in Uber could be "between $5 billion and $7 billion, or possibly more, and it would involve share purchases from existing investors and employees as well as a direct investment in the company."[127] Behind the scenes, some said that Benchmark was attempting to sell a portion of its stake to SoftBank, at a discount relative to Uber's last valuation of $68 billion.[128] Others reported that SoftBank wanted a direct stake reportedly as high as 22%.[129] Negotiations had started prior to Khosrowshahi's arrival but continued afterward.

As Khosrowshahi pursued the SoftBank deal, he found out the agreement depended on getting multiple Uber early investors to cash out their holdings. This would be difficult, since several early investors said they would not sell their shares unless Uber's governance changed and super-voting shares were eliminated, while others threatened a class-action lawsuit if there was an end to their super-voting rights.[130] The new CEO needed to get board support to change Uber's share structure for the SoftBank deal to go through.

To sort out these issues, he would take the restructuring proposal to the board in a special October 3 meeting.

The Board Decides

On September 29, Kalanick suddenly appointed two new board directors: Ursula Burns and John Thain. Kalanick's actions confirmed his interest in maintaining control over Uber despite his departure as CEO. Khosrowshahi responded swiftly, e-mailing employees about "some disappointing news…. Travis appointed two new members to Uber's Board without discussing it with me or the Board…. Anyone would tell you that this is highly unusual. The appointments…came as a complete surprise to Uber and its Board. That is precisely why we are working to put in place world-class governance to ensure that we are building a company every employee and shareholder can be proud of."[131]

Khosrowshahi commented that his challenge was to try "to win support from [Uber's] fractious and deeply dysfunctional board" and "de-nuke" its governance structure,[132] where "de-nuking" meant that no one player was in a position to destabilize Uber.[133] The embattled company had accumulated almost $5 billion in losses in its eight years of operation and needed a big cash infusion to fight off competitors, expand, and carry it to an IPO.[134] As of Q3 2017, Uber was burning through more than $1 billion every quarter.[135] (See Exhibit 8 for financial revenue and losses per quarter.) The SoftBank deal was contingent on governance changes, including a larger board and equalizing voting power by eliminating the dual-class share structure.

As Khosrowshahi prepared for the meeting, he considered several governance recommendations for Uber's board, including:

1. How should Uber pick board members? E.g., Khosrowshahi would nominate future directors to be approved by a majority of the board and majority of shareholders.
2. Should voting rights be equal—all shares converting to one-vote-per-share status?
3. How should new investors be treated? Would SoftBank's right to purchase stock from existing shareholders and get two board seats destabilize the fragile board dynamics?[136]
4. What safeguards are needed for choosing future CEOs? [137]

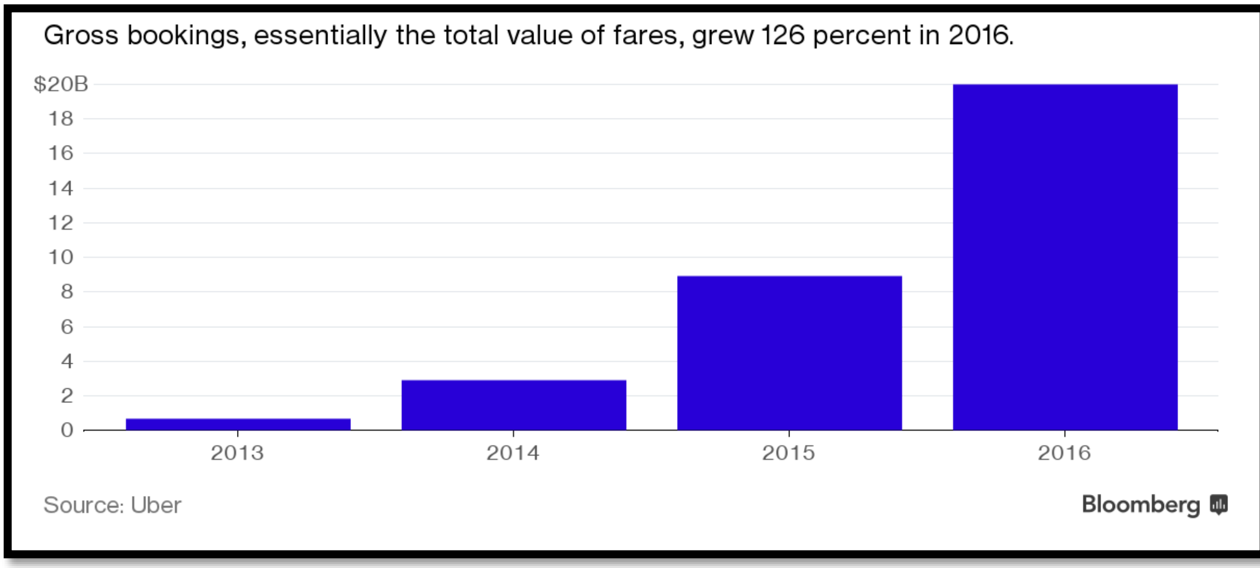
As one tech analyst summarized: "we all want peace in the kingdom…. The overall goal is obvious: To clear the way for a big, new $10 billion stock deal by SoftBank and, eventually, a smooth public offering for Uber next year that will top its current $70 billion valuation."[138]

EXHIBITS

Exhibit 1: Map of Cities with Uber Service as of 2017

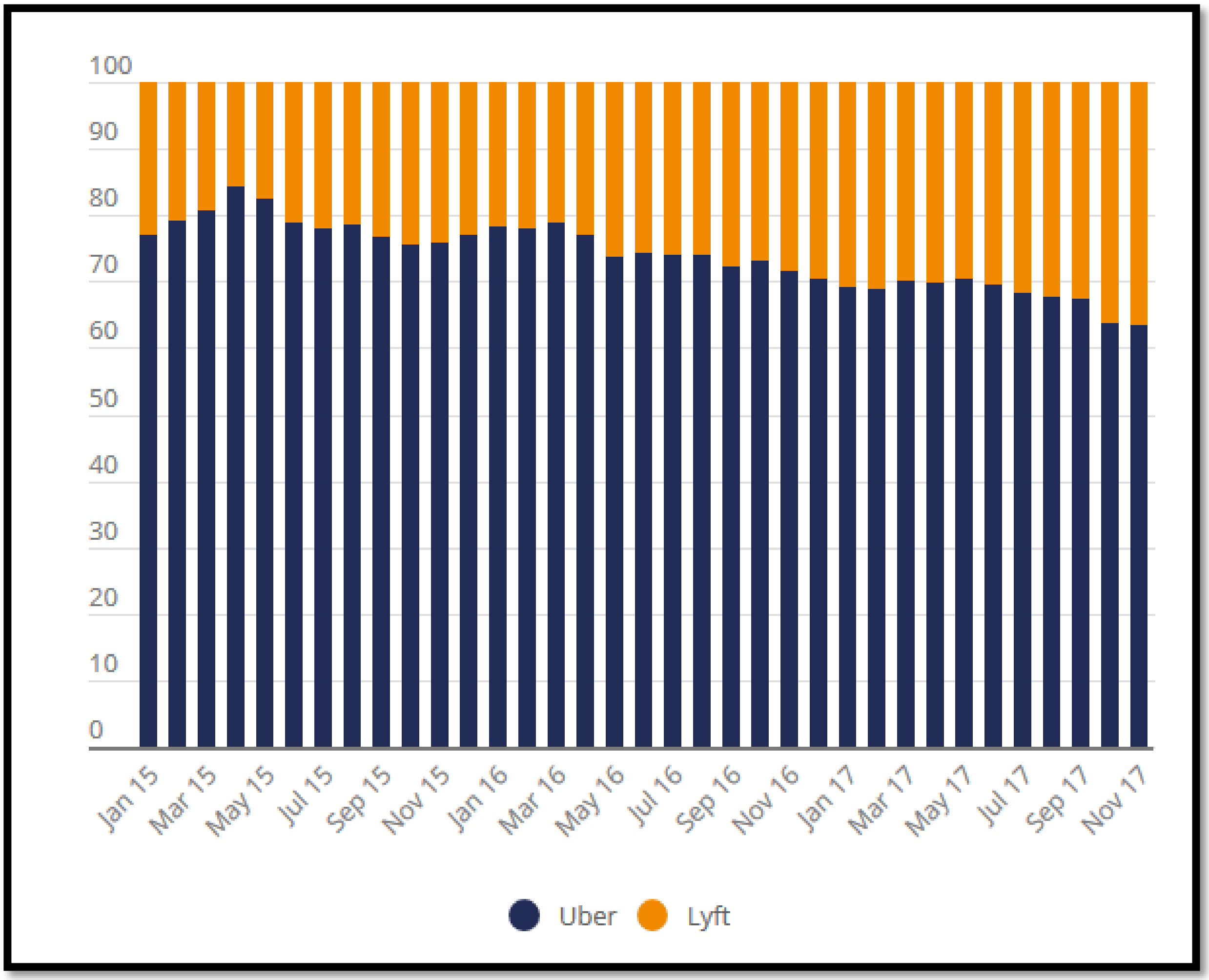
Source: Sky News (September 23, 2017), https://news.sky.com/story/10-uber-interesting-facts-from-brilliant-jerks-to-forced-selfies-11047453

Exhibit 2: Uber Annual Growth in Gross Bookings 2013-2016



Source: https://www.bloomberg.com/news/articles/2017-04-14/embattled-uber-reports-strong-sales-growth-as-losses-continue

Exhibit 3: Uber vs. Lyft—Daily US Usage of Ride-Sharing Apps (Android App Data from January 15 to November 17, 2017)



Source: Daniel Sevitt, "Getting a Lift with Lyft—the #2 Ride-Hailing App," SimilarWeb (December 6, 2017), https://www.similarweb.com/blog/lift-with-lyft-app

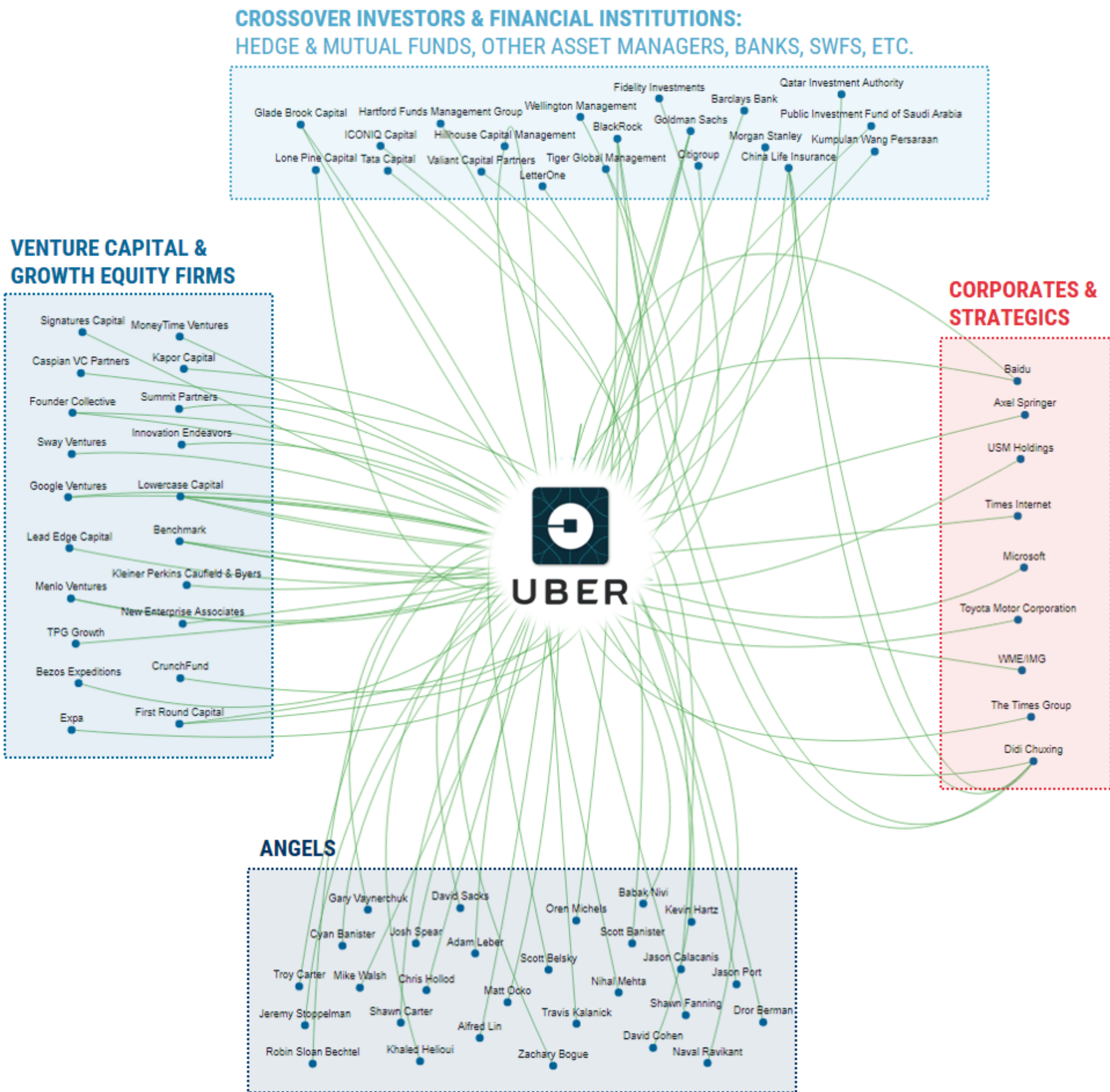
Exhibit 4: Largest Uber Investors: 2010 to July 2017

Round	Date	Amount Raised	Cumulative Amount Raised	Post-money Valuation	Investors
Seed	Sep-10	$1,700,000.00	$1,700,000.00	$5,400,000.00	First Round, Garrett Camp, Founder Collective, Lowercase Capital
Series A	Feb-11	$11,000,000.00	$12,700,000.00	$60,000,000.00	Benchmark, First Round, Founder Collective, Lowercase Capital
Series B	Dec-11	$37,250,000.00	$49,950,000.00	$346,500,000.00	Benchmark, Bezos Expeditions, CrunchFund, Goldman Sachs Group, Lowercase Capital, Menlo Ventures
Series C	Aug-13	$361,170,000.00	$411,120,000.00	$3,700,000,000.00	Benchmark, GV, TPG Growth Buyer Funds, Google Ventures
Series D	Jun-14	$1,188,240,000.00	$1,599,360,000.00	$18,200,000,000.00	Blackrock, Fidelity Investments, GV, Kleiner Perkins, Menlo Ventures, Summit Partners, Wellington Management Company
Merger/ Acquisition	Sep-19	$125,000,000.00	$1,724,360,000.00		Salesforce
Debt	Jan-15	$1,690,510,000.00	$3,414,870,000.00		Goldman Sachs, Vulcan Capital
Series E	Feb-15	$2,800,000,000.00	$6,214,870,000.00	$41,200,000,000.00	Baidu, China Life Insurance, Fidelity, Kleiner Perkins, Lone Pine Capital
Series F	May-15	$1,000,000,000.00	$7,214,870,000.00	$51,000,000,000.00	408 Ventures, AppWorks Ventures, Bennett Coleman and Co. Ltd., MSA, Microsoft, Microsoft Corporation-Strategic Investments

Round	Date	Amount Raised	Cumulative Amount Raised	Post-money Valuation	Investors
Private Placement	Jul-15	$1,000,000,000.00	$8,214,870,000.00		Target
Private Equity	Aug-15	$100,000,000.00	$8,314,870,000.00		Tata Capital
Private Equity	Feb-16	$200,000,000.00	$14,614,870,000.00		LetterOne
Series G	Jul-16	$6,100,000,000.00	$14,414,870,000.00	$69,000,000,000.00	Fort Ross Ventures, Saudi Arabia's Public Investment Fund

Source: Case writer analysis

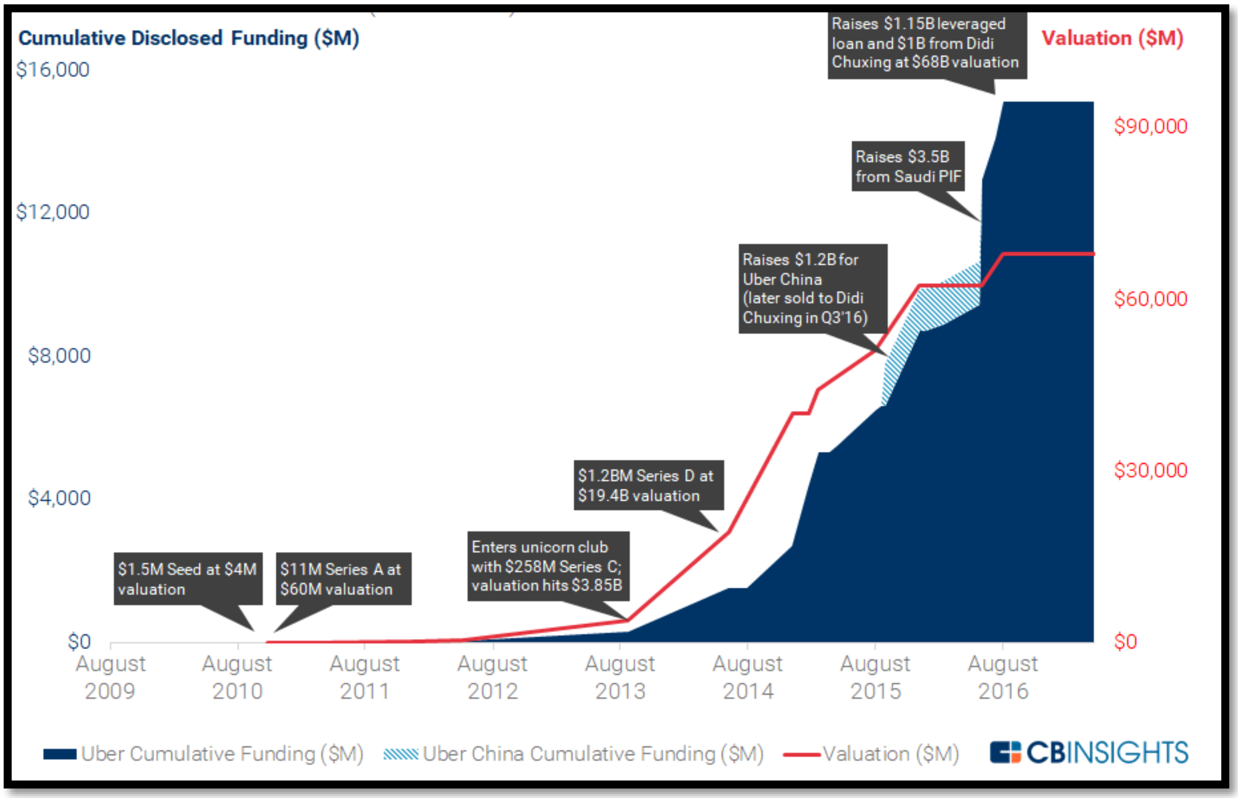
Exhibit 5: Uber Investors and Relationships



Source: Uber investors by type, through August 2017, CBInsights, https://www.cbinsights.com/research/report/uber-strategy-teardown-expert-research

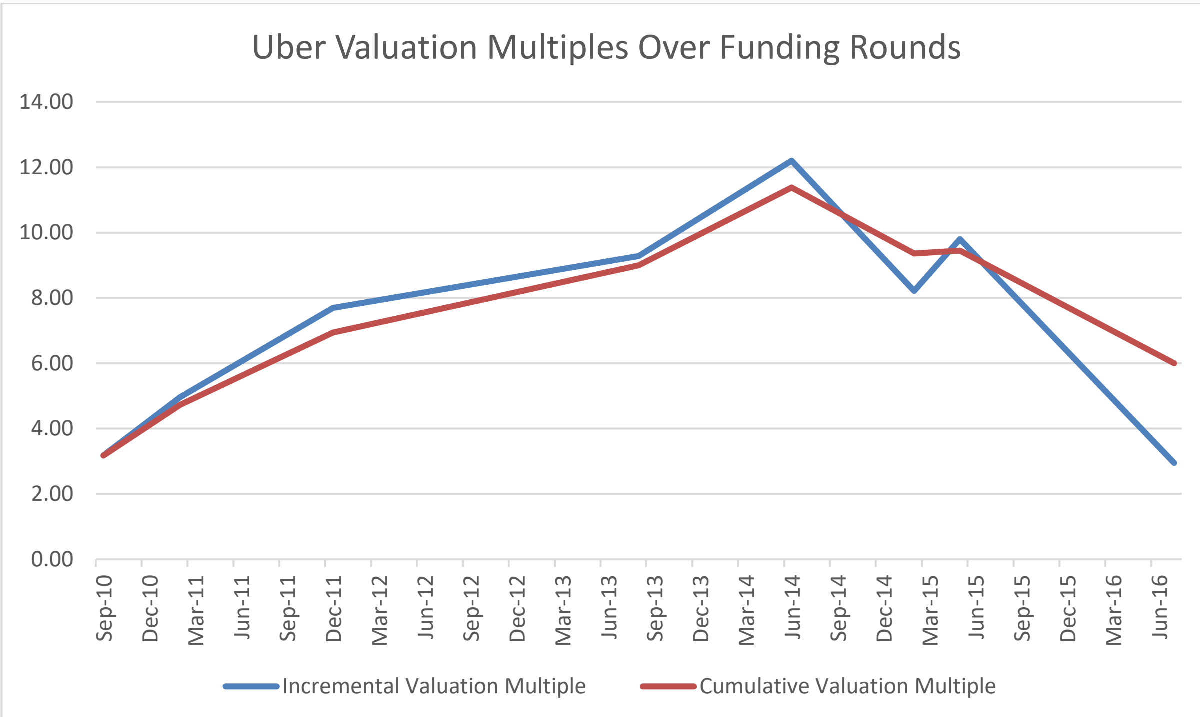
BY BRUCE KOGUT*

Exhibit 6: Uber cumulative funding and valuation history (2009 – Q3 2017 as of August 29, 2017)



Source: Uber investors by type, through August 2017, CBInsights, https://www.cbinsights.com/research/report/uber-strategy-teardown-expert-research

Exhibit 7: Relation of Multiples of Valuation to New Investment, 2010–2017

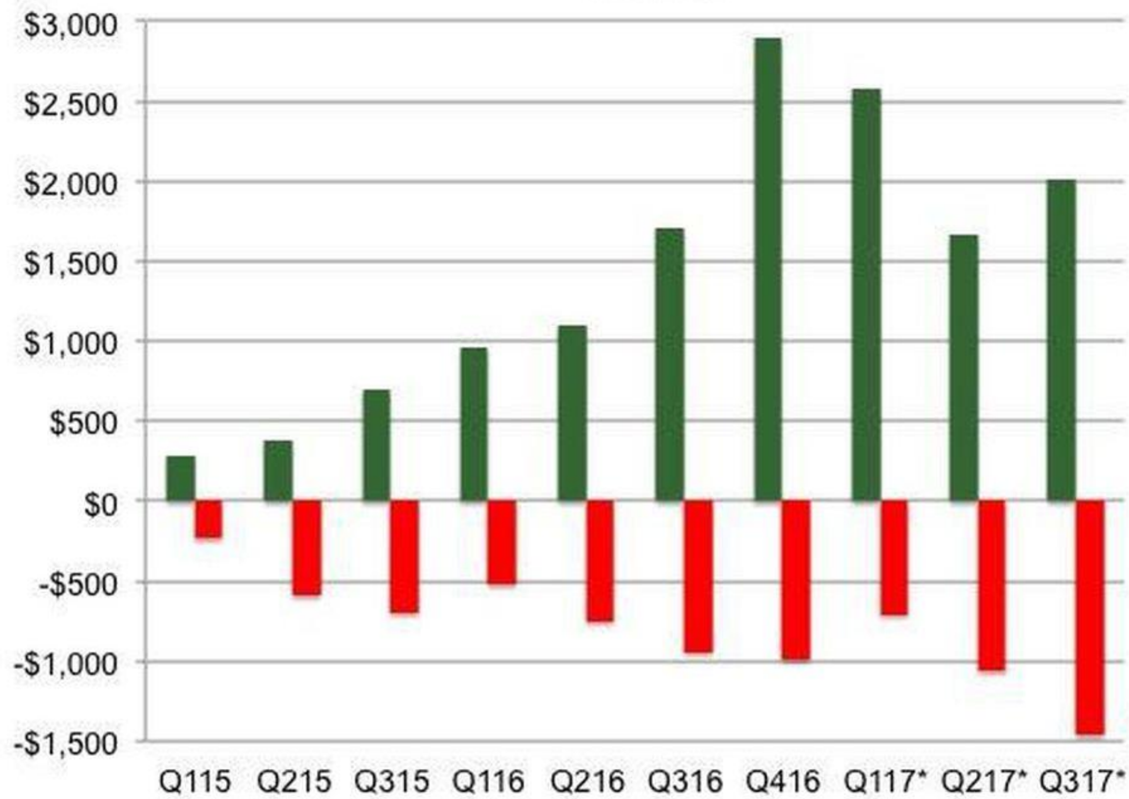


Source: Calibrated from data from Craft.co

Incremental Valuation Multiple: (Change in post-investment valuation)/(Size of funding round)

Cumulative Valuation Multiple: (Post-investment valuation)/(Cumulative funding to date)

Exhibit 8: Uber Net Revenue and Profits/Losses by Financial Quarter (in millions)



**Uber changed its revenue recognition in 2017 to only record net revenues on uberPOOL rides. In prior years, Uber counted total uberPOOL revenue as net revenue. Gaps in data reflect quarters where Uber did not release financial information. Unfortunately, Uber has not been consistent in public disclosures, sharing GAAP financials in some quarters and EBITDAR reporting in others*

Source: Press reports on Uber financials

Source: https://www.forbes.com/sites/lensherman/2017/12/14/why-cant-uber-make-money/#5cc8c4ea10ec

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