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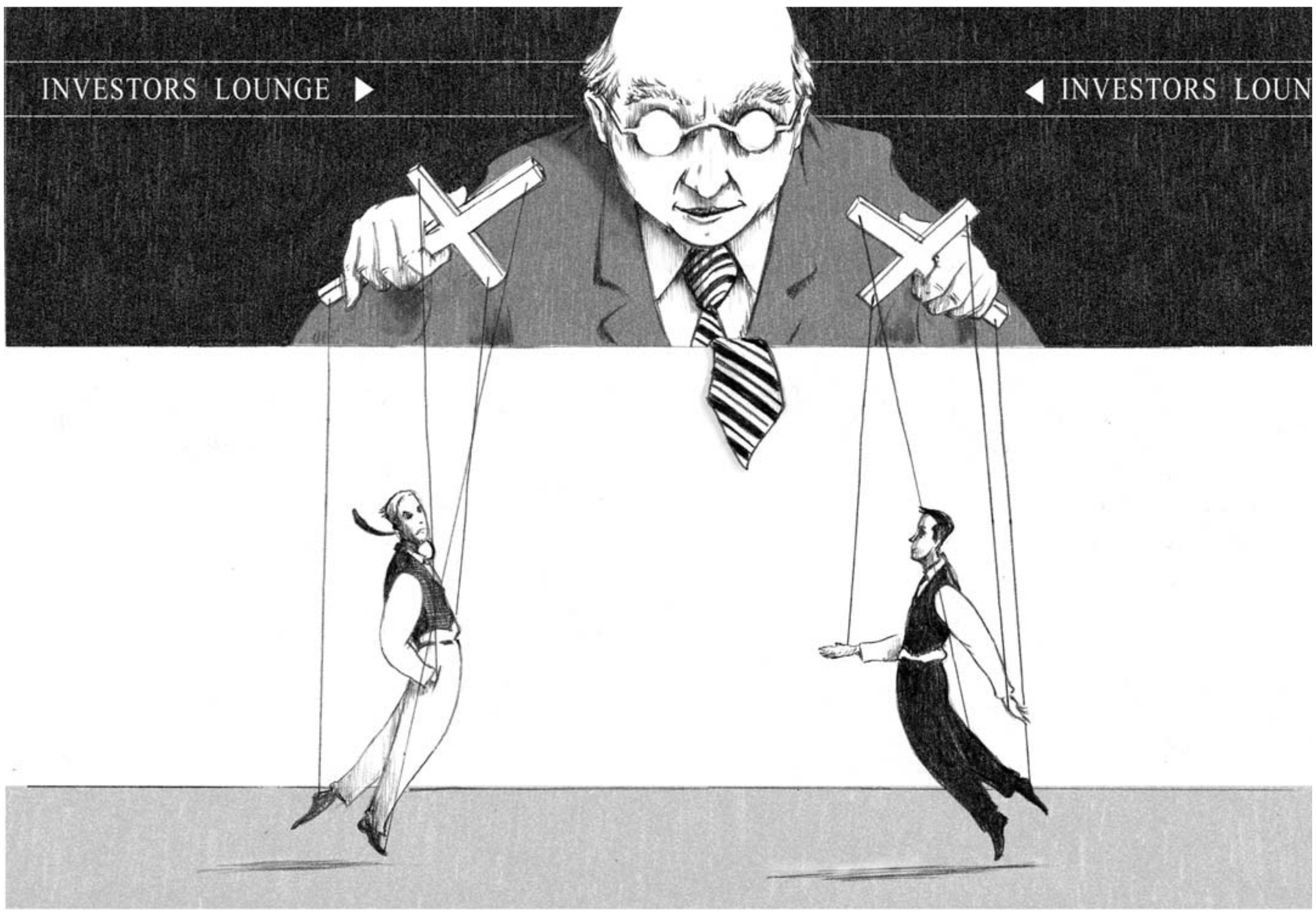
Capital market transactions

Mergers and acquisitions deal with various business aspects. Pivotal are economic rationales, communication aspects as well as the legal framework related to capital market transactions. While dealing with the first two issues some solutions may appear smarter than others, the legal aspects set clear barriers. As an introduction to this newsletter, Philipp Haas, Partner, Niederer Kraft & Frey attorneys-at-law, identifies current trends from his practical experience as an M&A professional.

Illustration: Paolo Friz, Illux



Institutional investors increasingly exert influence on management.

What are the biggest communication challenges from a legal view point?

Philipp Haas: Today, more than ever before, institutional investors are actively involved in corporate governance matters and the corporate decision-making process. The recent removals of Werner Seifert and Rolf Breuer from their functions at Deutsche Börse AG are striking examples of the pressure institutional holders can exercise upon boards of directors. In their efforts to influence companies, larger investors often engage in an informal regular dialogue with the management. This example of active shareholder democracy can collide with another important principle of today's capital markets: the equal treatment in the corporate information process in order to ensure a level playing field among the market participants. Balancing these two can be challenging but is (still) possible with some common sense.

How does one avoid information dissymmetry among various shareholder groups in general and during transactions?

Philipp Haas: Swiss law permits a company to furnish more detailed information to an investor upon request provided the information serves as explanation of already public information or is not share price sensitive or confidential. Clear barriers are the prohibition of insider trading and the tipping of third parties with non-public information on important events (capital increases, etc.) and the ad hoc publicity rules which require a company to inform the market on an equal basis of any non-public price-sensitive facts arisen in its sphere of influence such as acquisitions or the release of annual results. The situation becomes less clear if it is not certain whether some non-public information is share price sensitive or not. On a practical level companies try to avoid this grey zone through a number of measures such as regular public information, the introduction of blackout/no-talk periods prior to important announcements and the possibility for investors to participate in analyst conferences.

Acquisitions and capital market transactions are normally share price sensitive and, therefore, subject to insider trading and ad hoc publicity rules. Prior disclosure to selected shareholders is generally not possible unless the support of the shareholder is a necessary condition for the implementation of the transaction and the shareholder has agreed to confidentiality and trading restrictions. In case of leaks an immediate announcement is required. Standby press releases are, therefore, a necessity. The distinction between market rumours and actual leaks requiring an announcement can be difficult.

Interview: Michael Düringer,
The Investor Relations Firm AG

SYNERGIES – BUZZ PHRASE?

In most cases, the technical incident behind a capital market transaction is a combination or consolidation of business opportunities, market positions, resources or a crossover of such assets that generate synergies.

The communication challenge starts at the latest with the use of the term "synergies". Shareholders as well as other stakeholders want to understand the rationale, and, more importantly, the financial perspectives of the transaction. Otherwise, they will not support the strategic decision.

Fairness towards investors demands a transparent assessment of the stand-alone option versus the combined business. This includes uncovering the opportunities for growth and highlighting the long-term potential of current and future stock valuation.

Philipp Haas emphasises in his entry statement to this newsletter that shareholder democracy is a widely common phenomenon today. More than ever before shareholders ask for participation rights. In his contribution, Patrick Laager formulates a clear and unmistakable expectation to IPO candidates: "Keep to promises!" Mathis Berger provides guidance in his article "Legal minefields". In case no attractive investment opportunities are available, shareholders often expect a capital repayment; Marc Klingelfuss identifies the pros and cons of such a corporate decision.

This newsletter aims to cover some of the main trends and issues of capital market transactions affecting companies and related parties that are actively involved in investor relations and financial communications.

Michael Düringer, Partner
The Investor Relations Firm AG

WANNA BE AN IPO CANDIDATE?

To be a publicly known IPO candidate has its pros and cons. On the plus side is the better position to raise awareness. To be an IPO candidate triggers interest. This makes it easier to do media relations, to get space for articles and profiles, offering the company to educate the financial community about its strategy, activities and key characteristics.

The flipside of the coin is to be seen as a shelf warmer. With IPO windows becoming shorter and less frequent, risk is to be for many years on the IPO lists published by some financial media. It may be better to positively surprise the market with the IPO story after having prepared the ground calmly and without touting the IPO plans to everybody.

See IPO FOCUS on pages 3 and 4

Defence measures against an unfriendly takeover

Takeover battles have various facets. In many cases, they distract from the operational tasks and absorb considerable resources that would better be directed to actual business issues. In order to avoid such a waste of time and resources, defence measures can be developed on the operational level, on the organisational and structural side as well as in communications.

Michael Düringer, Partner,
The Investor Relations Firm AG

M&A transactions represent a thrilling challenge to every company concerned. At the beginning of the debate, the outcome is difficult to foresee. Flexibility is required by the management as well as by all other involved stakeholders. Many open questions arise, a multitude of options unfold. To successfully overcome a takeover debate requires the ability to keep a level head and prepared structures for quick reactions, allowing proactive responses to any possible raid.

Do your homework

There are a few principles regarding strategic issues that a company which could turn into a takeover candidate should pay attention to. For example, it is dangerous to walk around with a lot of cash in the pockets. The decision which has to be taken in such a situation is whether the capital will be given back to shareholders or how to invest it in a profitable manner. Hence, having carefully analysed the market trends and developed – building upon the relevant findings – an effective business strategy, the best defence measure overall is to strive for operational excellence. Doing so, the company automatically starts to generate sales and to increase market share. This again will be the basis for increasing enterprise value, making the company more expensive and thus less attractive for potential buyers. In other words, companies that are successful in running their businesses put themselves at the same time in a strong position. In order to maintain or even to strengthen this position, some communication aspects may contribute: An efficient market intelligence monitoring system provides knowledge on trends as well as on gossip. A corporate actions support programme helps to ensure the effectiveness of the own communication platforms and tools. And, last but not least, a transparent stakeholder relationship management facilitates many business aspects and challenges.

Set up a task force

The first question of interest is: When should a company consider itself a possible takeover target, respectively at which point in time should defence measures be induced? Generally spoken, if a company holds assets that are attractive to any other organisation active in the same or in a related business, special attention should be directed to the topic. Such assets could be high innovation power, hidden gems in the product pipeline or a perfect match for a competitor. Beyond strengths, also certain weaknesses can turn a company into a takeover candidate. For example an unbalanced shareholder structure holds risks, or when a company suffers from slow business and high debts cutting off the ability to invest in new businesses. Given the buyer understands to identify and address these weaknesses, he has the chance to overcome them. Moreover, by harvesting the so-called low-hanging fruits, he will be able to quickly present operational improvements thereby increasing the valuation of the company.

Facing any takeover advance, the most urgent measure is to set up a multi-disciplinary task force. Specialists from different fields, such as compliance management, investment banking and communications, have to be on the committee. The working processes and information flow within the body – especially the decision-making process – requires special training.

Quick decisions are key for success. In order to make them, it is best to have the necessary structures in place before the company starts being exposed to pressure.

Think in options

During the “battle”, there is no time to develop and test any kind of concepts. Things happen fast, it is not possible to know what the next step of the other party will be. Often new players join with a new offer that triggers the process. In such situations, it is likely that prices rise higher than what a bidder is willing to pay. To ensure quick decisions, for example on which party to support, it is helpful to anticipate different possible developments. Thinking in options is therefore a prerequisite in order to be mentally prepared for unforeseen strategic moves.

It is a comfortable initial position, if the management has adequate arguments and formulated key messages at hand for each of these options in order to come up with a proactive response in a timely manner. Another important factor for the success of the own strategy is the access to efficient communication platforms and channels. If the discussion is at the decisive stage, it is too late to think about the innovative dissemination of the own standpoint. Affected companies that have prepared a feasible communication concept in the forefront of a takeover battle endeavour a great advantage.

Rather unusual in normal periods, but very effective in special situations are financial ads. In such ads, companies have the chance to talk directly, i.e. in open and concise words, to their targeted audience and to present their case and relevant positions.

Irrespective of the kind of news the company may have, if communicated in a credible way, the company will manage to win the trust of its shareholders and thereby strengthen its position.

Bridges open the path

Knowing what is discussed around the own organisation is valuable information. The most efficient way to ensure that you stay in the loop is to develop an active relationship management to all relevant opinion leaders. Directly speaking to major investors, financial analysts and journalists, as well as important business partners ensures effective platforms for your own messages and, on top of that, encloses a lot of news.

True communication implicates an information flow from both sides. Therefore, cultivating business contacts is the best early warning system. It provides timely indications on any upcoming advances. It is then the company’s task to not neglect them and deal with them seriously.

DOS AND DON’TS WHEN FACING A TAKEOVER THREAT

Dos	Don’ts
• Build on own strengths	• Do not undermine your leeway with statements regarding your own positions and actions in the future
• Develop relationships to all relevant investors and additional influential stakeholders, such as financial media, analysts and other opinion makers	• Do not talk bad about competitors, leave this job to others
• Analyse carefully the transparency and clarity of your opponent’s argumentation	• Do not hide yourself, address the issues that are raised against you
• Take advantage of any inconsistencies, raise public awareness of such topics	• Avoid to be caught, prepare leak statements for any cases
• Ensure your messages are well understood, support media activities with financial ads	• Never give up, fight for what you believe is right
• Try to build committees supporting your strategy	

DO FINANCIAL ADS SUPPORT YOUR STORY?

More and more companies use corporate advertising in order to effectively communicate with investors. Whilst the IR professionals are typically less involved in the design, they are involved in the messaging and the monitoring of these advertisements.

The purpose behind many campaigns is to communicate a message of trust and dependability to the investment community. In special situations such as M&A transactions, financial ads additionally are a very effective instrument educating the audience. A campaign, presented in selected newspapers and well timed and coordinated with the company’s news flow, enhances the awareness of the own messages. Whilst the ad is formulated straightforward, companies have the opportunity to include their Web address and further links in order to provide background information.

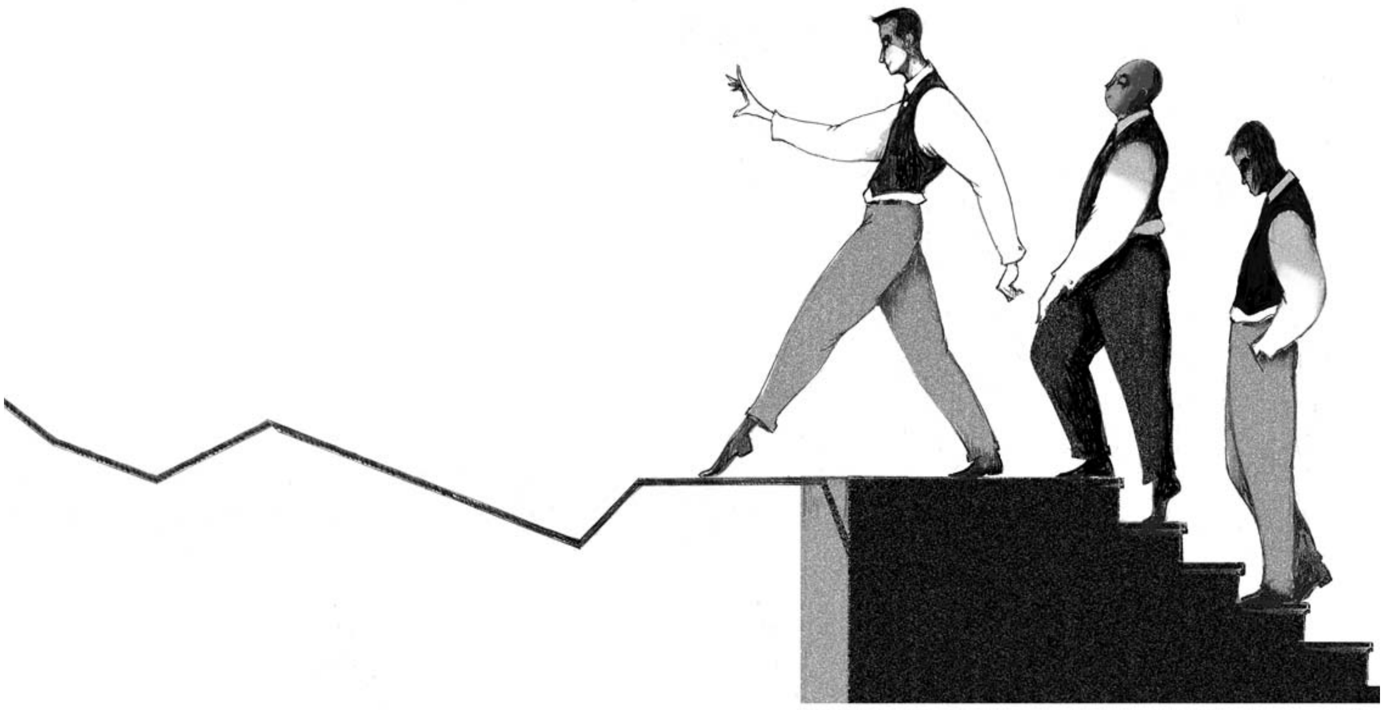
According to the IR Magazine US Research Report 2004, 32 per cent of buy-side portfolio managers, 21 per cent of sell-side analysts and 51 per cent of retail investors interviewed (out of a group of around 4,000) further investigated the investment potential of a company after seeing its corporate ad.

Whether financial ads really increase a company’s visibility is a hot topic. At least the result of the mentioned survey is encouraging. Try it out: Financial ads certainly provide the opportunity to differentiate from others, thereby raising additional awareness.

Make it simple, but effective

At first glance, setting up pre-IPO communications seems to be the same as investor-driven communication for every other company: It's all about rising awareness in the financial community and getting the "story" right for existing and potentially new investors.

Martin Meier-Pfister, Partner, The Investor Relations Firm AG



Going public requires diving into fresh water.

To raise awareness, a pre-IPO company, as a listed company, introduces its top management and other key people to the media. Also, such companies have to set up and handle a number of platforms to communicate with existing investors and the broader financial community, such as one-on-one or group meetings, conference calls, and IR website or a substantially extended annual report.

With "getting the story right", things become more different. Most pre-IPO companies tend to take marketing for communications. Their communication tools are driven to make clients buy products and services. When considering an IPO, companies need to change their mind. When putting the company's strategy on a number of slides, they find it difficult to make things easy – easy to understand for a layperson new to the industry. Things must be said in simple words. Unlike clients, most investors need to be introduced to the company's business specifics.

No overselling, please

And at even closer inspection, pre-IPO communications differ in a number of issues from a "normal" set-up in financial PR. Especially in start-up companies, standards and established procedures can hardly be found. Communications are typically event driven. But successful investor relations are steady and ongoing. Companies must learn to stick to an ongoing programme, and foster relationships even in times when good news is scarce.

Another issue is overselling. Entrepreneurs are successful by having visions and disregarding critical views of their own plans. They are inclined to oversell their story, to speak more about the future than about achievements. Whereas talent to market a story to investors is pivotal, it is also crucial to deliver on promises. A reputation of being a systematic overseller may hamper a company's IPO plans. This is especially true if numbers are involved. Too optimistic revenue or earnings growth rates, communicated to the marketplace some time before going public, may have an unfavourable comeback at the IPO roadshow.

Distinctive pre-IPO shareholder base

A strong influence on communication skills and the company's readiness for being a public company has the shareholder structure before the IPO. Growth companies being controlled mainly by venture capitalists tend to have well-developed reporting tools in place. Its management may have a solid experience in doing IR presentations for potential investors. On the contrary, companies owned by a single person, a family, or institutions being very different from "tough" investors, face a substantial cultural shift when heading into an IPO. They need to get used to public control. This cultural shift is even more pronounced when the Chairman or CEO is a substantial shareholder of the company who has led the organisation with a charismatic style or as a patron. They must get used to the fact that investors want to speak to them on the same level, and not as subordinates. They need to get used to not take nasty questions personal, and answer them in a matter-of-fact way.

Early impact of regulatory framework

I have experienced a few companies investing heavily in developing new or adapt existing communication tools the year before the IPO. Whereas this makes consultants happy, money may not be spent wisely. In the "real" IPO process, two to three months before the listing, the investment case is fine-tuned by the lead banks, lawyers and other consultants. It crystallises in the offering circular and the presentation held for the syndicate bank analysts. All other communication measures for investors must, for legal reasons, not differ from those documents. Nice brochures, printed just a few months before, will remain on the shelves and not be part of the roadshow marketing package. Thus, it is more efficient to focus pre-IPO communications on relation building: strengthen ties to media and the financial community. The new IR website section and other specific IR tools can wait until the IPO is announced officially.

The "Harry Potter concept"

How are you telling your story to your investors? A sober and understandable description of your company's business and strategy is indispensable when talking to investors. However, Harry Potter may give you some insight on how to add some spice to your story.

Jan Gregor, Partner, The Investor Relations Firm AG

Once upon a time … – this is how the stories start that are told to little children. These stories are built with a wealth of colour and imagination. They stage heroes, whom the reader can identify with. The heroes use magic wands, flying brooms and face unheard-of creatures. The stage used is a castle in a hidden place or just wild nature. And, more often than not, these stories end happily.

You may ask yourselves how this relates to the world of stock markets and investors. Investors are a calculating group of people and do not believe in fairy tales, heroes or magic wands. Investors are unexcited chaps, unemotionally analysing numbers and unimpressed by any signs of heroic status. After all, investors are rational agents in an efficient market.

Being part of the story

Honestly true? You have never been carried away by the fantasies of golden futures told by awe-inspiring managers? You have never been impressed through the top guy's self-confidence and the aura surrounding him? And, you certainly never invested in a magic wand or unknown creatures? Well then, you must be the lucky investor, who was never burned with an investment in a tech, telecom or internet company.

You did? Well then, you too believed in the stories of the golden age delivered with the means of new technology and the arrival of the internet or mobile telephony – the magic wands of the nineties. Those young fellows with their brilliant new ideas about how the world would look like in future using their – admittedly unheard-of – products were

Please turn to page 4

IPO candidates watch out! Analysts like being pampered

Making a stockmarket debut is often equated with fame, glory and success. And sometimes even with making a quick fortune. A stock exchange listing is not seldom seen as the culmination of a corporate history. However, the reality is sobering, the IPO process in particular involves great pressure, lots of hard work and a fair amount of responsibility.

Patrick Laager, Equity Analyst, Bank Vontobel

The formation of high expectations in the financial community is especially demanding on a newly listed company. It determines whether or not an IPO candidate can stand out from the mass and investors buy its shares. Diligent preparation ahead of a listing is accordingly all the more important. In doing so, public and investor relations – as well as the banking syndicate which prepares the actual listing – play a crucial role.

No second chance for companies who fail to live up to expectations

In principle, the financial community consists of five groups: investment advisers, institutional and private investors, business journalists as well as financial analysts. I am one of the latter. As a group, analysts are among the first to pass judgment on the success or failure of a floatation. Consequently, meeting analyst expectations is particularly important. But, what is it that equity analysts expect from an IPO candidate? – In brief: that it keep its promises. Companies which break a promise can quickly become unpopular. But beware, firms who promise too little risk falling out of favour with investors.

Scoring points ahead of the IPO

The positioning of a company wishing to be listed on the capital market should be substantiated, the (growth) story must be plausible. An ill-conceived equity story, an unprofessional presentation and, last but not least, a poor communication strategy will put an end to any dreams of a listing even before the IPO. Companies that disappoint the capital market are very rarely given a second chance. Consequently, a floatation – and often the future of the company – will succeed or fail depending on the quality of the preparation. And this starts well before the actual IPO.

Put to the acid test

To get to the point: prelisting activities focus on preparing the key information on the IPO candidate. This primarily involves collecting and structuring accounting data as well as particulars about marketing and production. Major points of interest are growth prospects, a sound financial position and future payout policy. All the figures are closely scrutinised, the balance sheet and income statement put to the acid test. The information provided must be accurate and presented in a transparent manner.

Other details, apart from the conventional set of numbers, are likewise essential. Information on management quality and corporate philosophy, for instance. Targets and objectives have to be set to enable financial analysts, and ultimately the investors, to assess the potential listed company's future performance. The more accurately this preparation is done, the more unlikely a rude awakening will be on the first day of trading.

Trust starts with active communication

Presenting this information to the financial community in a transparent fashion is a crucial part of a company's public relations in the run-up to an IPO. To gain the trust of analysts (and investors), communication must be sought actively: transparent, comprehensive and reliable. Openness must be demonstrated in order to dissipate any doubts. Sensitive issues must also be dealt with. Awkward questions always tend to pop up and should not be ignored. A brusque "no comment" is just not helpful. Watertight answers ought to be offered to investors' and analysts' critical questions. Conveying the equity story requires a major communication campaign, which must be launched well ahead of the IPO. A word of caution, however: top priority must be given to communicating with top management. Financial analysts want to have contact with members of executive management. This is what gives a company, i.e. a share, distinctive features. Maintaining a friendly demeanour helps signal a willingness to communicate. Charisma is cash.

Communication matters well worth taking seriously

The standards placed on the transparency of corporate communications are very high. Announcements must – within the framework of legal requirements – be informative, targeted and timely. The latter is a key factor, especially given the ever shorter reaction times on the financial markets. An IR manager must be available "around the clock". An appropriate communications strategy, however, assumes that a skilled IR manager is hired. More often than not, this position is filled by someone with very little experience with financial markets and unfamiliar with the financial community's demands and expectations. Without knowledge of market sentiment, considerable frictional losses are likely in communicating with the financial market, which ultimately leads to a waste of both company and IR resources.

Once the game has started, keep to the rules

A successful IPO is a key step. Having cleared the IPO hurdle unscathed, continued commitment and quality must be maintained. A good reputation will soon be lost if, for instance, an open communication policy is not diligently pursued. This can be true even if business is booming. Following the IPO, efforts should be concentrated on continuity and IR managers should keep in mind that financial analysts – as is the financial community as a whole – are always hungry for information and consequently like being pampered. Skilled players of the game will look good on the market. This, in turn, has an accordingly positive impact on order books!

Continued from page 3

just too inspiring. You just had to be part of the story!

Why do stories matter?

Surprisingly, some key elements of the "Harry Potter concept" seem to be valid for the financial community too. Even though, reality should never get out of sight. These elements, which in our industry are more commonly known as equity story, might be a necessary prerequisite not only to sell books but also to influence the demand and hence the valuation of a security.

The significance of storytelling lies in the unremovable fact that any investment is always done on the basis of assumptions on the future of the company. This can be illustrated with the most widespread valuation method in the industry, the discounted cash flow model, which explicitly takes future developments into consideration. Whilst explicitly guiding analysts on the expected future results is hardly a feasible solution, the analyst will still need some indications on how the company sees its future and what level of assurance can be given. To this end, the company has to wrap its approach and expectations in words – the equity story – to allow for an assessment of the company's future. It will have to do this on the basis of information needed from the investor's perspective.

Strategy, management and more

Every company has to ask itself one key question: Which elements make us an attractive company to invest in and how will we present this information to the financial community? Even in the most mature industries, companies have different perception of their markets and approach them differently. As a consequence they possess different strengths and weaknesses. And, there are different personalities standing in to guarantee future success.

The first step in this process then has to be the identification of information needed by investors. A number of studies will tell you that there is a clearly defined and limited set of information. Your company's success is defined through the underlying trends of the markets it operates in and the success of the company's products within those markets. Yet, the most important ones are two soft factors. On the one hand, it is the company's strategy that defines the approach to the markets a company wants to serve as well as the products and services to be offered. And on the other hand, it is management and board of directors who will have to pledge that the stated strategy is a successful one and who will have to assure that the strategy is carried out as planned. Hence any equity story will always have to include an understandable explanation of the company's business model, strategy and related milestones that allow for a continuous appraisal of progresses. Furthermore, the document has to deliver sufficient information on why current management and board of directors are capable of accomplishing stated goals. Finally, a discussion of the financials should not be forgotten.

Common elements – different guises

Some ingredients seem to be common to all types of stories. They include personality (the hero: Harry Potter), vision and strategy (the hero's plan: defeat Lord Voldemort) as well as some down-to-earth factors like products (the hero's capital: the magic wand). In the corporate world however, the stories will come in different guises and focus should be laid more on effective achievements than on fantasies. This, of course, does not only apply to hot new companies being listed on the stock exchange. It applies to all companies competing for capital – debt or equity. Just to make sure that the story's end too will proceed as normal – … and they lived happily ever after.

Legal minefields

M&A transactions face many different legal requirements. The summary below focuses on legal questions relating to informational issues and highlights selected key points within an M&A process such as for example confidentiality agreement, letter of intent, due diligence and adhoc publicity.

Dr. Mathis Berger, LL.M., attorney-at-law, Hess Dallafior attorneys-at-law, Zurich

Already when approaching an enterprise in order to discuss a possible transaction, critical information-related problems arise. Only on the basis of a confidentiality agreement, the parties feel confident to disclose information about themselves which is relevant for the transaction. It can be advisable to include an obligation to pay a contract penalty for the violation of the confidentiality agreement in order to signal the importance of secrecy. Confidentiality becomes virulent, if a merger filing has to be filed with the antitrust authorities, as the information to be disclosed contains business secrets of each of the parties involved. Important is also the internal information about an envisaged transaction. At a certain point in time, the employees are entitled to know the reason of the transaction as well as its impact on them.

Letter of intent and memorandum of understanding

With respect to a letter of intent or a memorandum of understanding it has to be stressed, that such agreements do not contain a duty to enter into an agreement, unless explicitly stated otherwise. The most important parts of a letter of intent or a memorandum of understanding are a confidentiality agreement, a timely limited exclusivity obligation and a duty to allow the conduct of a due diligence. During the status of contract negotiations the parties are obliged by law to comply with the principle of good faith. Each party is entitled to expect that the other party acts like a sincere and honest business man, what, under special circumstances, might include the duty to inform the other party about a fact which is not known by such party, but which might influence its decision to enter into the transaction agreement.

Due diligence

The purpose of a due diligence is to collect information regarding the target. The legal due diligence focuses on legal risks which can influence the content of the transaction agreement, especially the representations and warranties, or which constitute a pricing issue. The disclosure may be limited by law, e.g. regarding personal data which is subject to data protection requirements or regarding data subject to banking secrecy. If the target is a listed company, further restrictions apply because of the rules pertaining to insider trading and to the so-called ad hoc publicity requirements.

Insider-trading provision and prohibition of stock price manipulation

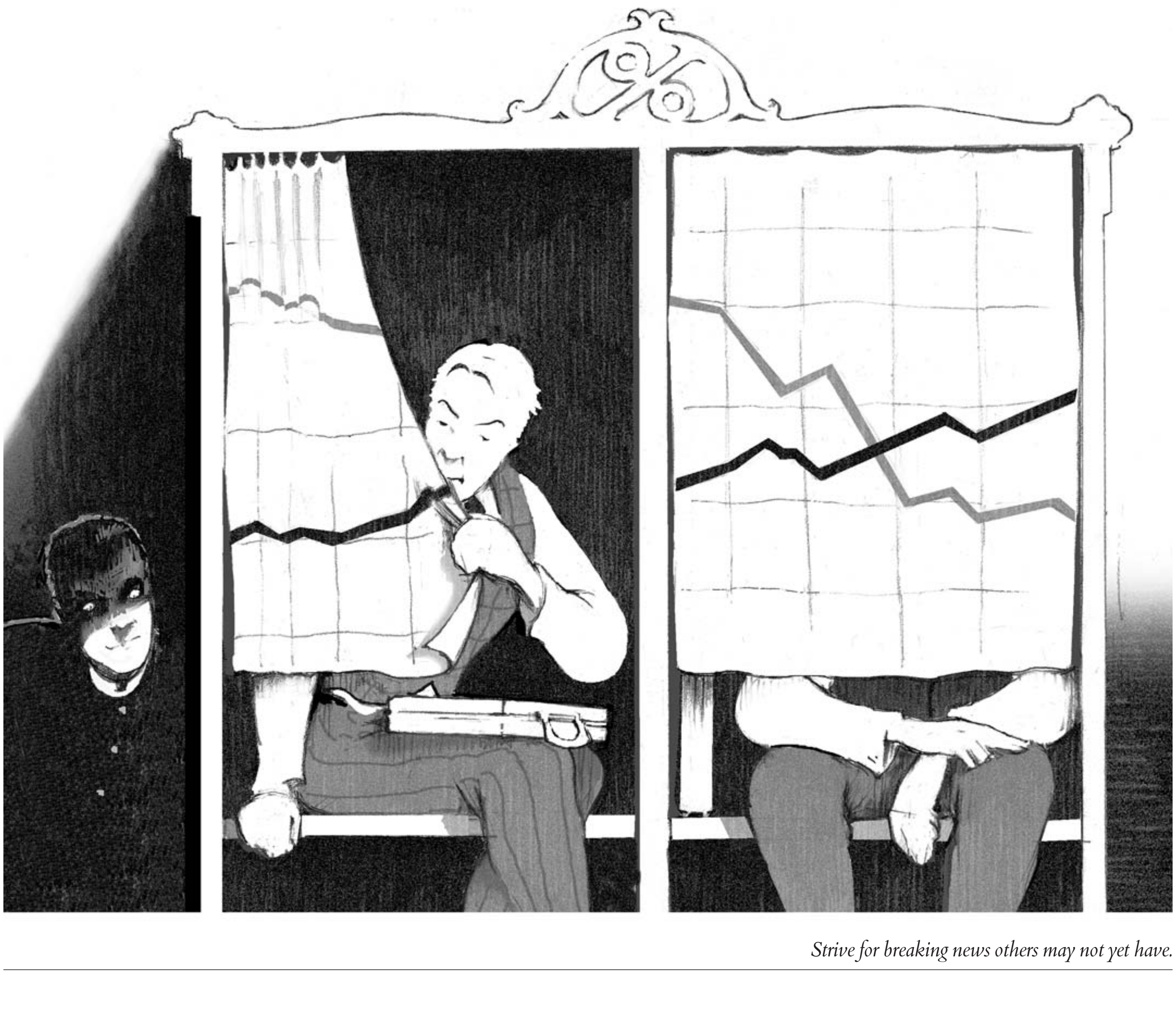
According to the insider-trading provision contained in the Swiss Penal Code it is prohibited for the members of the board of directors, for the members of the management and for the auditors to profit of the knowledge of a confidential fact relating to a publicly listed enterprise which is apt to influence the stock price. Also to act as a tippee or to profit of a fact as a tipper is prohibited. An envisaged transaction involving a publicly listed company qualifies as a fact in the sense of the insider-trading provision. It is, therefore, important to have all persons involved in the transaction sign a declaration that they are aware of the insider-trading provision and that they do not engage in respective activities. Moreover, it is prohibited to manipulate the stock price of securities which are publicly traded in Switzerland in order to make an illegitimate gain. Such a manipulation is illegal, independent of whether it is done by buying or selling securities or by disseminating incorrect information. This provision might become relevant in a takeover fight, if a party tries to artificially enhance a stock price of a company.

Ad hoc publicity and legal structure of an M&A transaction

Publicly listed companies are subject to the so-called ad hoc publicity requirement. The issuer of a listed security is obliged to inform the market about all company-related facts which are of influence on the stock price of such security and which are not yet publicly known. In general, the market has to be informed as soon as the information is known in its substance to the enterprise. A delay of the disclosure is possible, if the critical fact forms part of a plan or decision of the enterprise or if the distribution of the information would be to the detriment of the enterprise. Such a delay requires a strictly confidential treatment of the respective information. In the case of an M&A transaction, the requirements applicable for a delay are, in general, met. However, if the confidentiality scheme leeks, the market has to be informed immediately. A violation of the ad hoc publicity requirements of the Stock Exchange Act might also become relevant according to the rules governing directors' liability.

The most common legal structure for an M&A transaction is the acquisition of all shares of the target. As the shares represent the control over the enterprise, it is essential to carefully draft the representations and warranties addressing the qualities of the enterprise itself, what has to be done on the basis of the results of the due diligence. If the target is listed on a stock exchange, a tender offer in accordance with the provision of the Swiss Stock Exchange Act is necessary. A merger of two companies constitutes a special form of a share deal as the price for the acquired shares is paid in the form of shares of the acquirer and the target becomes a part of the acquirer. A further legal form available is a purchase of assets. In such a case, each asset to be acquired must be specified in the agreement, otherwise the property is not transferred. Moreover, some statutory form requirements might be applicable. In the case where all assets of an enterprise or all assets of a part of an enterprise are acquired, the Swiss Merger Act is applicable which provides for legal effects comparable to a merger. According to the Merger Act, an asset deal is legally binding once it is registered in the commercial register, nevertheless, the seller remains jointly liable with the buyer for a period of three years. The Act provides for a special duty of the directors and the management of the seller to inform the company's shareholders about the sale of assets to a third party.

Finally, the closing of a transaction has to be communicated internally and externally in a structured form. This requires, once more, the confidential treatment of all information as well as a strategy regarding the communication management.



Strive for breaking news others may not yet have.

Will capital repayments remain en vogue?

Since the end of the 1990s billions have been returned as excess capital to shareholders in the Swiss capital markets. In 2004, a new record was set as net returns to shareholders (after deducting intake) reached CHF 23.7 billion.

Marc Klingelfuss, Corporate Finance, Lombard Odier Darier Hentsch & Cie, Zurich

Capital can be returned to shareholders in three ways: in form of a dividend, through a nominal share value reduction and through a share buy-back programme with share capital reduction. Whereas dividends and nominal share value reductions are simple processes, share buy-backs have more complex execution alternatives (public tender offer, second trading line, put options).

Historically, most capital returns take the form of dividend payments, which are made regularly as part of the companies' dividend policies. Over the past few years, the tax efficiency of nominal share value reductions for private investors has supported the growth of this alternative. Yet, as the nominal share values of an increasing number of companies near the legal minimum, nominal share value reductions will become rarer going forward. Both dividend payments and nominal share value reductions result in a direct cash payment to shareholders.

Following the major amendment to Swiss corporation law in 1992, share buy-backs gained legitimacy as an additional flexible instrument in equity capital management. In view of an upcoming revision to the aforementioned legislation, it is under discussion to allow the implementation of an authorised capital reduction – analogous to the creation of authorised capital – or, alternatively, a capital range in relation to existing issued share capital, to further enhance a company's financial flexibility. A share buy-back with a subsequent cancellation of the shares bought back, cet. par. indirectly increases the earnings attributable to existing shareholders. Empirical studies find that the announcement of share buybacks is correlated to a positive impact on the share price on announcement. This positive relationship is reinforced by the Signalling Theory, which asserts that this corporate action is a signal from management that own shares are undervalued in the market.

Capital returns and share price development constitute total performance to shareholders. Capital gains are preferred to cash receipts for tax reasons. Investors want to be adequately compensated for the risks assumed and achieve superior total returns to comparable investments.

Why have capital returns increased strongly over the past few years?

One of the main functions of any company is capital management. Free cash flow can either be retained or returned to stakeholders, which in turn affects the balance sheet structure. An increasing equity ratio – depending on company and sector specifics – can lead to a suboptimal mix of equity and debt and thus to a higher cost of capital. Management is expected to invest the cash in the company or return it to shareholders in absence of investment opportunities which do not exceed the cost of capital hurdle rate. In case of financing of internal or external growth, the benchmark is clear: projects should be undertaken when the return increases the value of the company as a whole.

Herein lies an important explanation for recent corporate trends. The expansionary 1990s, financed mostly through debt, have been followed by a period of consolidation and debt reduction. Profitability has regained the spotlight from growth. Both companies and investors are today more sceptical on changing capital structure to achieve leverage gains.

Prices paid for acquisitions made during boom times were often exaggerated and resulted in subsequent negative value adjustments, which has led to radical operational and capital-restructuring measures. Today external growth is considered more critically – especially where management's track record is unproven or absent. Free cash flow is today applied primarily to reduce debt or returned to shareholders, rather than financing external growth.

In addition, there are also many companies that cannot find profitable acquisition targets despite intensive search efforts. The impact on earnings per share of an acquisition should be superior to the effect on earnings per share of a share buyback programme of equivalent value.

The profit distribution policy of a company and its application are closely observed and have a strong signalling effect in capital markets. Recently, a growth company announced the intention to pay a dividend for the first time. Reactions were mixed. On the one hand the payment was welcomed, given the solid financial structure, while on the other the decision cast doubts on growth prospects. In these circumstances, one can not interpret this as a clear positive or negative signalling effect in the short term.

In conclusion, it is hoped that both retained profits and capital returned to shareholders will find their way to profitable investments which support sustainable growth.

IR FIRM – MANAGING EXPECTATIONS

Financial Public Relations have acquired increasing significance in the past few years with the requirements for companies growing exponentially. An increase in the professionalism and in the internationality is to be noted. Shareholders have gained more influence on companies' management teams. Due to these developments, management teams face greater challenges. Strategy, goals, expectations and financial results must be actively formulated and communicated. IR Firm knows the main players in the financial community – institutional and private investors, financial journalists, financial analysts – and their needs. IR Firm knows which tools are needed to reach these people and the institutions they represent. IR Firm's knowledge is based on ample practical experience: advising listed companies in good and difficult times, capital market transactions such as IPOs, mergers, spin-offs, capital increases or going-private transactions as well as supporting financial institutions in specific communications issues.

The IR Firm advisory team expands this knowledge continually and creates added value for those companies which want to increase their profile in the financial community and to create a dialogue with their targeted audiences. In addition to traditional IR communications measures, IR Firm offers new instruments in the analysis of investors' perceptions and behaviour. The range of activities spans from advising on strategy regarding the conception and realisation of individual measures to regular measurements of results.

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