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The Journal

Keeping Your Business Healthy During an Economic Downturn

By Stan Mork, Maureen Driscoll,
Paul Siebrasse, Mike Nafziger and Karin Taylor
RSM McGladrey

In a recent article in Fortune magazine, Ram Charan, author of several popular management books, emphasized the importance of not behaving like an ostrich (and sticking your head in the sand) during an economic downturn: "Being on the downside of the business cycle is not much fun. That said, a slump can also be an opportunity if you use the sense of urgency to improve strategy, management and discipline. In that sense, happy and unhappy times are alike: The companies that take charge and out-compete will win."

We agree with Mr. Charan – instead of focusing on how your company can merely weather the economic downturn, you should be strategizing about how you can use it as an opportunity to improve your competitive position.

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Donald Jacobs Honored for his Lifetime Achievements

Throughout history, Chicago has produced some of the world's most influential and accomplished business leaders. ACG Chicago honors such individuals with the Lifetime Achievement Award. In January, the chapter will continue this tradition by presenting the Award to Donald P. Jacobs, Dean Emeritus of the Kellogg School of

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Donald Jacobs, Kellogg School of Management

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Jim McNair, Corinthian Capital

President's Column

Clearly, this recession is louder and deeper than the recent ones in our lifetime. Large companies are filing for bankruptcy. Friends are getting laid off. Foreclosures are reaching historic highs. It must be time to throw in the towel. Right?

Not Really. We should be working and thinking harder than ever. As some doors shut, others will open. It is our job to find these new entrances.

This is the time for good deals to happen and for fortunes to be made. Many companies are looking to shore up their balance sheets. Others will be trying to eliminate risks and keep their legacies alive. Still others will be extremely vulnerable to the changing markets and need support for significant shifts.

Our private equity survey before the October 2008 Midwest ACG Capital Connection showed 92% of our exhibitors expected to execute as many or more deals in 2009. The recent Chicago results for the 2008 ACG/Thomson Reuters Dealmakers Survey reasonably support these findings. Despite the economic changes since October 2008, 59% now say that M&A activity will be the same or better and 48% describe the markets as fair to good. Some people are finding opportunities.

Realism still prevails. There are new economic and financial expectations, but we are still thinking about how to build and grow. Reach out to the ACG networks to find the best sources, best leaders, and most knowledgeable members. It is a great time to roll up our sleeves.

Jim McNair

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Sector Focus: Energy, Health Care and Technology

By Harris Smith
Managing Partner, Private Equity and Strategic Relationships
Grant Thornton LLP

The Grant Thornton/ACG/Nasdaq white paper, Top Trends in Middle-Market Private Equity, noted, "It's no secret that noncyclical sectors are the best ones to invest in right now." The white paper identified three sectors, energy, health care and technology, as among the most promising for dealmaking in the first half of 2008. In the midst of a financial crisis that is impacting dealmaking across industries, across the investment spectrum, and across the globe, we take a fresh look at these sectors to identify how they are faring, and where new opportunities might be found in today's unsteady markets.

Energy

As reported in the white paper, the U.S. Energy Department projects energy consumption in the United States to rise 31 percent by 2030. And private equity firms have taken advantage of growth opportunities in the sector. According to Thomson Reuters, energy was ranked second in dollar value for worldwide M&A for the first nine months of 2008, with $411.3 billion in deals. The U.S. figure was $104.8 billion.

Respondents to the May 2008 ACG/Thomson Reuters Dealmakers survey expected energy to be the most active sector for M&A in 2008. That sentiment has changed somewhat, with the November survey indicating dealmakers are a little less bullish on the sector. That said, survey takers rank energy third for expected M&A activity in the coming six months, and second for the most organic growth expected during that time.

While many sectors within energy saw activity in the first half of 2008, alternative energy was perhaps the most active, thanks to high commodity prices, and regulatory requirements that didn't exist a number of years ago. State-by-state renewable portfolio standard requirements in the electricity space, ethanol blending targets in the biofuel space, and technologies that were completely nascent or didn't exist 10 years ago, have been approaching commercialization.

Recently, investment in renewable energies has slowed, in response to the credit crisis and more recently, the collapse of oil and gas prices. According to New Energy Finance, a provider of information and research to investors in renewable energy, low-carbon technology and the carbon markets, venture capital and private equity investing in the sector fell from $5.8 billion in the second quarter, to $4.4 billion in the third quarter, a decline of 24%. That said, alternative energy still attracted significant cash in the last quarter, and there is a great deal of private equity money in the pipeline.

Many see long-term opportunities given pledges in the U.S. and Europe to reduce dependence on foreign oil, and to lower greenhouse gas emissions. The financial bailout package recently passed by Congress extended federal tax credits for wind energy by one year, geothermal by two years and solar energy by eight years.

"Energy-based tax incentives can often make a proposed transaction more compelling, as a target business that throws off energy tax credits to its investors can effectively provide an immediate or short-term return on the investment," said Paul Beecy, Tax Partner & Transaction Advisory Tax Services Practice Leader, Grant Thornton.

The tight credit markets could fuel further consolidation and provide additional dealmaking opportunities for private equity firms. With the public markets closed for the time-being, and bank funding all but shut off, large state-owned utilities, or private equity firms with large reserves or access to credit, could acquire renewable energy firms looking for much-needed cash.

Health Care

Health care M&A is certainly not ailing. With the oldest of the 78 million baby boomers nearing retirement, the need for health care products and services continues to grow by the day. As noted in the white paper, the industry was an especially popular destination for buyout firms in the first half of the year. That trend has continued.

"This is one of the most robust years in recent memory in terms of size and number of deals, with pharma, biotech and medical devices leading the space," said Jeff Benton, Partner, Corporate Advisory and Restructuring Group, Grant Thornton. "People are always going to need health care and services, and private equity is in a great position to take advantage of the growing demand."

According to Thomson Reuters, the sector was ranked second in dollar value for mergers and acquisitions in the U.S. for the first nine months of 2008, with $147.9 billion in deals. This figure represents a 3.9 percent year-over-year increase, and health care was one of the few sectors to experience growth compared to 2007. Worldwide, health care M&A through the third quarter was valued at $185.4 billion.

Regarding fundraising, while the number of new funds targeted for health care investments is down considerably this year compared to 2007, the dollar value is up. For the first nine months of 2008, new health care funds totaled $18.9 billion vs. $16.3 billion for all of 2007, according to Thomson Reuters.

"A lot of firms are interested in investing in the health care industry. It has historically been considered recession-proof," commented Jonathan Goldstein, Managing Director, TA Associates. "And unlike many industries where you can have a short product lifecycle, health care companies tend to have a longer life span. The pace of change is not excessively rapid."

Medicare and Medicaid reimbursement rates also remain a significant source of concern for private equity firms investing in health care. A change in rates will adjust any company's earnings, in most cases not for the better. Congress is likely to make adjustments to the federal health care entitlement programs in

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Winning… Even When the Game Keeps Changing!

By William Durkin
Vice President, Business Development
The Synergy Companies, Inc.

Many business owners go into survival mode during economic slowdowns. Their instincts tell them to play defensive, protect market share and top-line revenues. They automatically cut expenses and lower their prices. These cost-cutting measures are designed to protect the bottom line. The "defensive" philosophy is reinforced daily by the endless stream of recycled bad news in newspapers, magazines and on the internet. And if you are too busy to read, just turn on the radio or television and you are quickly provided with a steady stream of sensationally sad stories regarding the impact of the financial crisis.

Recently I got in a crowded elevator and noticed everyone staring at the LCD monitor in the corner. Before the doors closed, we were all informed that "It's official!" The National Bureau of Economic Research had declared that the U.S. economy is in a recession. The gloom and doom news kept coming with information about more layoffs and a suggestion that the nation's retailers will continue to face struggles. When we hit our first stop on the 10th floor, the doors opened and a middle-aged man, mesmerized by the facts he was reading, just barely got off before the doors started to close. As he was leaving, he uttered one word to the strangers he left behind… SCARY!

Now we all know the media has a vested interest in keeping our attention; and for the majority of people, bad news sells. The question is… are you buying it? I hope you are not.

Our future depends on the minority. Today we need more bold business leaders who realize there are tremendous opportunities to be had during tough times. What good does it do to debate when the recession actually started or when it will end? Is the economy bad right now? Yes, and the truth is some organizations are not going to make it. It's also true that most will survive and many companies will prosper. Our economic crisis is a "dangerous opportunity" for companies that are willing to make changes to the way they conduct business.

History tells us some organizations and people will profit in any given economic condition. There are champions in every industry that see the bleak economy as an opportunity to focus their efforts and investments on what really matters… achieving a worthy cause by building mutually beneficial relationships with employees, customers and suppliers. When the economic situation turns around, winning teams are always stronger and in a much better position to provide innovative products and services to their niche markets.

Let's stop worrying about how long it will take for the economy to recover. According to the experts we are into our 11th post war recession and we all know at some point it will end. What happens on Wall Street is much less important than what happens on your street. This is the time to review your business plan for 2009 and take the positive actions necessary to help your team win.

If you are looking for ideas on how your company can improve next year, I have a suggestion for you. Study organizations that have demonstrated sustained success during good times and bad and adapt what you learn to your business.

For the past two years, one of our clients, Winning Workplaces and The Wall Street Journal have collaborated to identify and honor exceptional organizations. In 2008, 780 organizations across the country were nominated. Through a rigorous judging process, 15 of the best were selected.

The winners distinguish themselves in many ways:

- They are healthy and steadily growing their revenues, often outperforming their industries.
- They have identified niches where they add unmatched value.
- They are highly innovative and guided by strong missions and values.
- They are well-managed firms with stellar reputations in their industries.
- A key driver behind their success is their highly engaged and committed workforces.
- They work hard to intentionally select, prepare and retain their top talent and have built the kind of dynamic work cultures that bring out the best in everyone.

Mary Clark, Executive Director of Winning Workplaces says, "Extensive research shows that organizations that are good workplaces, those that effectively engage employees in the issues that affect their jobs, achieve better results along every dimension: business growth, quality of products and services, productivity and, ultimately, profitability." She adds, "The 2008 Top Small Workplaces demonstrate this well. They have grown revenues 23 percent annually for the last two years. They are innovative, often recreating themselves and defining or redefining their industries. Further, they have been in business an average of 42 years, reflecting that many are not young, high-growth companies. Their sustainability alone is an argument for looking at how they operate, especially as we face tough economic times."

The Winning Workplaces organization has identified a number of themes common to the companies that rose to the top. These themes reflect why they are great workplaces, and explain how they have tapped a defining competitive element: their employees.

Here are what the winners had in common:

1. **These companies take a long view of their business.** These firms have a long-time horizon and are committed to building enduring, sustainable businesses. They have grown consistently over a period of time, remain profitable and have loyal customers.

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About The Synergy Companies, Inc.

Since 1989 ***Synergy*** *has been improving the profitability of their small to mid-size clients by providing outsourced Human Resource services typically available only in large organizations. These efforts-focusing on both financial improvements and loss prevention-are provided by their staff of highly experienced HR professionals at a small fraction of the investment that would be necessary to gain this expertise on one's own. Their typical growth oriented clients place a high value on their employees, and they recognize that small HR improvements can dramatically increase profits, as easily as HR mistakes can devastate the bottom line.*

Synergy has offices in Illinois, Indiana and Wisconsin.

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But, how can you gain ground when money is tight? Outsourcing, co-sourcing or staff augmentation of key projects can help to position your company competitively while making efficient use of capital. These project-based approaches offer nimble, scalable and technical resources that can help you achieve short-term goals and lay the groundwork for continued growth during strong or weak economic times. In general, you may find variable, project-based expenses are easier to manage than fixed costs. By making strategic investments in outside resources, you can still accomplish key business goals.

This white paper will discuss four crucial areas of focus for your company that are easily supplemented with outside technical resources, including strategy, sales and marketing, people and operations. When you target these key segments of your business, you'll help to improve your efficiencies, your bottom line and your competitive position in the marketplace.

Strategy

Strategic organizations see an economic downturn as an opportunity to strengthen their position in the marketplace and gain a competitive advantage. It's important that you lead the way – instead of just surviving.

The opportunities that are available to your organization during an economic downturn are different than those during a boom period, but they exist. Updating your strategic plan to account for market changes can position your company proactively rather than reactively. Strategic planning focuses your organization on the issues that are most important, helps management and employees think critically and strategically (not just day-to-day), and generates consensus, commitment and teamwork by involving key management and staff. The benefit is the alignment that occurs between the direction of the company and the day-to-day efforts of managers and employees.

In the 2007 RSM McGladrey Manufacturing and Wholesale Distribution Survey, more than 940 industry executives provided compelling insights into what they are thinking about and doing – or in some instances, not doing – to advance their companies.

Among the key findings in the area of strategy – more than 50% of responding companies cited the need to reinvent their corporate growth strategy. In addition, the survey found that mergers and acquisitions continue to be a leading strategy for corporate growth – highlighting the need for planning relative to post-acquisition integration. With price multiples going down, this may be an opportune time to consider acquiring attractive competitors at a relatively lower price. Through an effective merger or acquisition, your company can take an offensive position and gain market share.

An example of the benefits of strategic planning can be found at GE Johnson Construction Company, one of the largest builders in the Western region of the United States. The company was transitioning from a family held to a closely held business, the market was becoming more competitive, and the company was turning more complex.

New questions faced GE Johnson's management, including: How much growth can we support? How do we engage non-family members? Where should we focus our operations? RSM McGladrey committed to a long-term relationship with this client to ensure the strategic plan was fully integrated throughout the company and its staff with projects that included strategic situation assessment, market analysis and research, strategic planning retreats, organizational structure changes, and monthly meetings. As a result, the company has seen record growth in revenues, project margins and pre-tax operating profit — even in a challenging economic environment — with the creation of clear market focus and action plans for sustained growth.

Sales and marketing

To thrive during an economic slowdown, make faster decisions, and prepare for the inevitable economic rebound, companies need to look at their sales and marketing initiatives. Through this focus, companies can gain momentum over their competitors.

Sales and marketing efforts should center on protecting your core asset – your best customers. By analyzing your customers and pricing, you can implement action plans that deepen key relationships – resulting in more profits for your company. This may be the perfect time to implement a voice of the customer initiative, which involves visiting with your key clients to get their perspective on how well you are serving their needs. In tough economic times, you want to "bullet-proof" your customers to protect your business from competitors who are looking for ways to infiltrate your customer base.

Long-range marketing plans are necessary to help your organization achieve its goals and objectives, as well as establish a realistic set of action steps to achieve them. Some of the areas for concentration are market analysis, market evaluation, market segmentation, product/service portfolio planning and marketing communication planning.

Detailed marketing strategies provide you with a compass for managing change, achieving profitability and future growth, and establishing a unique position in the marketplace. Through adding Customer Relationship Management (CRM) software and collecting and reporting key financial metrics, you can more effectively market, sell to and service your best customers. You can also gain a deeper understanding of your pipeline, develop niche marketing techniques and better manage your inventory. Do you have effective sales processes? The right CRM and business intelligence software solutions for your company can ensure your sales team is focused on the right business opportunities.

From a compensation perspective, this is an important time to review sales compensation plans to assure they align with and support business strategy and appropriately reward sales staff for results.

People

A recent Towers Perrin survey – 2008 Business and Workforce Challenges – shows that while most U.S. companies are concerned about the economy (90%), few plan to undertake a large-scale reduction in their workforce (11%). "The results of this survey show a nuanced shift in fundamental organizational

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[This is the full text of the article which appeared in print edition of the December 2008 Journal.]

About RSM McGladrey

***RSM McGladrey** is a leading professional services firm providing accounting, tax and business consulting. RSM McGladrey has an alternative practice structure with McGladrey & Pullen LLP, a partner-owned CPA firm that provides audit and attest services. Though separate and independent legal entities, they work jointly to serve clients' business needs, and together rank as the fifth largest U.S. provider of accounting, tax and business consulting services (source: Accounting Today), with 8,000 professionals in 100 offices. RSM McGladrey and McGladrey & Pullen are member firms of RSM International, an affiliation of independent accounting and consulting firms.*

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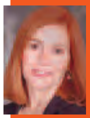

Karin Taylor,
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thinking since the last economic down cycle," said Max Caldwell, managing principal at Towers Perrin. "Companies seem to understand that, while they may realize short-term gains from across-the-board cuts, these benefits often come with long-term consequences that may take years to recover from, in terms of lost talent, reduced morale and employee engagement."

High-functioning organizations recognize that maximizing employee productivity is key to sustaining success, and performance management is a critical component in communicating performance expectations.

Do employees in your organization understand their accountabilities and how they are rewarded? Is there alignment between company initiatives and employees' efforts? Should variable pay (bonus or incentive) programs be considered as a way to control fixed costs and drive key initiatives? If you already have a bonus incentive plan in place, is it achieving desired objectives or results? Are you rewarding results that are distinct from base pay expectations thereby avoiding the potential for "double dipping"? These are just a few of the questions organizations should ask themselves in an adverse business environment. When employees and organizational goals are aligned, your company can realize both revenue improvements and cost savings.

As an example of a successful performance management system, Central Minnesota Federal Credit Union wanted to connect employee performance results to its reward system. RSM McGladrey consultants worked with a crossfunctional team of employees to develop a new system that supported the organization's culture and business strategies. Credit Union managers and employees were trained on the new system, giving them the information and skills needed to actively participate in the process. The resulting performance management system aligns employee efforts with business strategies, generating employee engagement and performance that supports business objectives for growth.

While employee retention is always a focus area for most organizations, it is critical during an economic downturn. Other organizations will take advantage of this time to recruit your best employees. Making sure your compensation and benefits programs are competitive to retain employees, as well as rewarding your top performers is the best defense against an employee exodus. In addition, now is the time to focus on developing your current employees. As the Baby Boomers move towards retirement, companies cannot afford to be without the next generation of leaders.

For a relatively small investment in training and development, you can better position your company for the future. In the event you are adding or replacing staff, it's important that you hire the right people for the right roles. Each turnover event costs an organization one to two times an employee's salary in both direct and indirect expenses. This impact can be even more costly during an economic downturn. Through an assessment of a candidate's skills and competencies, you can ensure a strong fit for both your organization and the new employee, and position the new hire for success.

Operations

Feel like your business is running well, but something tells you it could run better? Perhaps some cost cutting has occurred, but you're on the lookout for other solutions to improve your bottom line. Now is a good time to examine functional areas of operations and scrutinize how well your processes are working.

Through an integrated approach, you can look at success factors that lie outside your organization. By benchmarking operational efficiencies against your peers, you can learn about best practices that can improve your company's Keeping your business healthy during an economic downturn bottom line. Benchmarking also provides assurances that your company's operational structure is as efficient as possible, as well as identifying areas that are not.

In addition, with the right technology tools, your company can reduce time spent on back office processes and possibly reduce staff because of these efficiencies. Staff can spend less time entering information into multiple systems, looking up information and managing projects, and instead, focus their energies on serving your customers. In addition, by demonstrating your dedication to business improvements, you can show your customers that your company is efficient (in essence, passing those cost savings onto them) and solidify vendor relationships. In a recent RSM McGladrey information technology engagement, Trudeau Distributing, a fast-growing midsized specialty food manufacturer and distributor that serves corporate and independent grocers, wanted internal systems that could provide improved efficiencies and better accounting for its business.

RSM McGladrey implemented SAP Business One as the ERP/accounting system for Trudeau, as well as Accellos Warehouse Management System. This solution integrated with the laptop computers of Trudeau's salespeople so they could take remote orders. Immediate results that Trudeau experienced after the solution implementation include the elimination of re-entry of sales orders, invoices and POs; improved accuracy of inventory in the warehouse; and better information for management to make purchasing and strategic decisions. These automation improvements have helped lower costs while increasing operational performance, providing a competitive advantage during challenging economic conditions.

Another operational area to explore is capital restructuring – such as realigning capital, refinancing debt and obtaining new financing. The appropriate capital structure will position your company's operations to be strategically suited for growth during a downturn and upturn.

Finally, your company cannot move forward if critical areas of your operations are at risk. Improving your internal controls can provide a much-needed safety net against deficiencies and other threats to your business goals. Some focus areas for internal control investigation may include:

- Internal audit: CEOs, CFOs, audit committees and other stakeholders are concerned about many significant challenges in today's business environment, including financial, operational and compliance-related business processes. If your business doesn't have sufficient internal audit capabilities, then you may be exposing yourself and your organization to great risk.

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- Fraud mitigation: Ensure that your internal controls are strong enough to identify both customer and internal fraud. By being proactive, you can save your company money and time.
- Sarbanes-Oxley compliance: If your company is publicly traded, you need to consider your Sarbanes-Oxley compliance programs. Prior to recent SEC guidance, management based their Sarbanes-Oxley compliance program on Auditing Standard No. 2, a standard that was written for external auditors. As a result, compliance programs were rigid, costly and did not take advantage of the knowledge management had of its own controls.

Today, management has a unique opportunity to use this new guidance to avoid many of the common pitfalls associated with SOX compliance programs. The guidance provides flexibility and empowerment to management for evaluating its internal control over financial reporting. Management can work from its own set of principles and knowledge to establish a program that streamlines compliance efforts. As a result, process owners take ownership, risk awareness increases, mechanical efforts that don't add value are avoided — all are outcomes that take you beyond mere compliance and steer you down the path of effective risk management.

Now that you know how to take advantage of these opportunities during an economic downturn and take your company to the next level, what are you waiting for? If you don't believe you have the time or resources consider obtaining short-term outsourcing or consulting help to keep these key initiatives moving. Opportunities abound in economic downturns and upturns – getting the right people with the right expertise involved with your organization can help you seize the day!

Board Duties in Distressed Companies

By Joseph K. Hasson
Partner
Ungaretti & Harris

Given the current economic climate, this is a good time to review how the duties of officers and directors change when a company is undergoing financial distress and becomes insolvent and what directors can do to protect themselves from personal liability.

Corporate Governance Generally

The board of the directors and the officers of a solvent corporation owe a fiduciary duty exclusively to the corporation and its shareholders. These duties require the board and its officers to abide by the duties of loyalty, care and good faith. Briefly, the duty of loyalty is a duty to avoid conflicts of interest, including the avoidance of conduct that is in the director's interests or the interests of a third party. The duty of good faith requires directors and officers to act in a manner that they honestly believe is in the best interests of the corporation and its shareholders at the time. The duty of care requires officers and directors to execute their duties with the care that a prudent person would exercise under the circumstances. When a board makes a decision, there is a presumption that the directors acted upon an informed basis, in good faith and in the honest belief that the action is in the best interest of the corporation. This standard is commonly known as the "business judgment rule" which protects officers and directors from personal liability even if a decision later proves to have been a mistake.

When a corporation becomes insolvent, the board can no longer solely take into account the interests of its shareholders. Board members of insolvent companies must consider the interests of its creditors, as well as any other parties that have an interest in the corporate enterprise. This is often viewed as a shift of focus from the shareholders to the creditors; however, it is more appropriately viewed as an expansion of the board's fiduciary duties, since the board must now consider all of the interests in the corporate enterprise. As soon as the corporation becomes insolvent, the main focus of the directors should be to maximize the value of the corporation for all constituencies instead of paying particular attention to the interests of any single constituency. Even though the board must now consider more than solely the interests of shareholders of the corporation, the duties of loyalty, care and good faith continue.

When is a Corporation "Insolvent"?

The "moment of insolvency" is the first clear point when the board of directors must affirmatively take into account more than just the shareholders' interests. There are two generally accepted definitions of insolvency. One test is the balance sheet test, under which a corporation is insolvent if its debts exceed the reasonable market value of assets held. Under the balance sheet test, the term "debts" includes contingent, disputed and other obligations that may not be

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About Ungaretti & Harris

Ungaretti & Harris LLP *was founded in 1974 and has grown to more than 100 attorneys who practice in three basic areas. These groups are business (M&A for private equity funds and privately-held and public companies, corporate finance, corporate governance, real estate, financial services, tax and benefits), litigation (commercial litigation, labor, insolvency and anti-trust) and healthcare/regulatory. U&H has offices in Chicago and Springfield, Illinois, Grand Rapids, Michigan and in Washington, D.C.*

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reflected on a balance sheet. A second is the cash flow test (also known as the "equitable insolvency" test) where the corporation is not able to pay its debts as they become due.

Actual "insolvency" can be difficult to identify. This confusion led to the development of a doctrine of law which referred to the time period before a company was clearly insolvent as the "zone of insolvency." For the last twenty years, courts have been unwilling to clearly define the zone of insolvency. Some courts have defined it as a corporation with unreasonably small capital, while other courts have held that a corporation is in the "zone of insolvency" when, even though the company is currently solvent, the directors have reason to believe at a particular point in the future the company will become insolvent.

Fortunately, Delaware courts recently provided much needed clarity by holding that creditors of a Delaware corporation that is in the "zone of insolvency" have no right to assert direct claims for breach of fiduciary duty by members of the board of directors. Creditors can still bring derivative claims on behalf of the corporation, but only when the corporation is insolvent. In a derivative action, any recovery belongs to all of the constituencies, not a particular group of creditors. In other words, the "zone of insolvency" is no longer an area of concern for boards of Delaware companies, and a board need not focus on interests of its creditors unless and until the company actually becomes insolvent.

How Directors Can Protect Themselves

When a corporation becomes insolvent, the actions of the board will be heavily scrutinized by several divergent constituencies, including shareholders, creditors, employees and community interests. In order to satisfy their fiduciary duties, directors should:

- Take the time to understand the financial issues facing the company and carefully assess all reasonably available options, including sale of all or part of the company, discontinuation of marginal product lines, workforce reductions, etc...

- Meet more frequently than in the past. Problems can go from bad to worse quickly, so the board needs to be prepared to act and to be knowledgeable in real time. A board should also consider hiring specialized experts to provide advice on valuation, debt restructuring and other strategic options available to the company.

- Engage in extensive deliberations. Any decisions should only be made after extensive deliberation; however, a board does not need to debate for hours on end. Nor does it mean that the board must hire six experts when one or two will suffice.

- Create additional checks and balances among the board members. The board may consider creating new committees to deal with critical issues. For instance, a board may consider creating a restructuring committee to present strategic options for the full board to consider.

- Assess all compensation arrangements of board members and officers. All compensation paid to board members and officers will be under greater scrutiny. Recently, seven top executives and board members at Goldman Sachs requested that they do not receive a bonus after the stock of the company had decreased in value by more than 69% earlier this year. While this action may not have been taken in direct response to the fulfillment of their fiduciary duties, these board members clearly understand the importance of public perceptions.

Conclusion

As long as a company is solvent, the board should maximize the enterprise value for the benefit of its shareholders. If the company becomes insolvent, the directors still have the same goal: to maximize the value of the business enterprise; however, at that point, the board must also take into account the interests of additional constituencies, including its creditors, and the board should carefully scrutinize its decision-making process to ensure that all interested constituencies, including its creditors, are accounted for.

 (CONTINUED FROM PAGE 7)

2. **It's not just about profits…these firms intend to change society.** Leaders of these firms share a strong sense of mission, are driven by clear values and view their roles as responsible stewards serving multiple stakeholders: their employees, customers and the larger community.
3. **Open communication helps weather the good times and the bad.** If mission and values drive these organizations, a commitment to honest and transparent communication assures that they operate effectively, grow wisely and respond quickly to changes. These organizations actively invite and expect employees to participate in decisions that affect their work lives. Nearly all share financial information with employees and train them to understand what the numbers mean.
4. **Teamwork – it's how the work gets done.** These organizations believe that a high level of teamwork leads to greater inspiration, high levels of innovation, camaraderie and unmatched productivity.
5. **Employee development assures quality execution.** These firms hire for "attitude" and "fit," then train for skills. They understand that learning organizations are more adaptable, and they invest accordingly. Further, because of their long view and commitment to sustaining a strong culture, they grow their leaders from within whenever possible.
6. **Workspace matters.** These firms have learned that to sustain a vibrant, team-based learning culture, their work environment should encourage collaboration and communication. They believe that open spaces, team-based desk arrangements and flexible work settings contribute to productivity, as well as employee morale.
7. **Employees share in the risks and rewards.** Philosophically, these firms believe that trust, commitment and self-worth are built when everyone that helped to create the business success gets to share in the benefits of that success. All of the Top Small Workplaces offer some kind of performance-based incentives, often a combination of stock options, profit sharing, sales commissions and bonuses.
8. **A focus on well-being, prevention and health builds endurance.** These organizations actively nurture a culture of good mental and physical health by offering above-industry-average medical benefits, wellness programs that promote prevention, health and flexible work options to help employees balance work and life demands.
9. **Committed, able employees enable these firms to compete on quality and service, less on price.** These firms are growing and profitable because they have clearly defined market niches, and they provide extraordinary quality and value to their customers. Their customer-centered focus differentiates their businesses, and it is directly tied to their highly engaged, committed workforces.

What are you going to do differently next year? What adjustments are you going to make to the way you serve your best clients? What should your company start doing or stop doing when it comes to winning new business? What would you have to do to win the Top Workplace Award next year? (For more information on the application process go to www.winningworkplaces.org)

You can win in 2009, but you can't do it with last year's game plan or by waiting for the government to intervene. Winning when the game keeps changing requires a well thought out strategy and engaged employees with a sense of urgency for creating a better world for this and future generations. Hopefully I'll be reading about your success story next year in the Wall Street Journal.

Corporate Network Teaches "Billion Dollar Lessons"

Today's business headlines prompt us to ask, "How could this have been avoided?" ACG's Corporate Network provided answers at the Corporate Network Author Series event November 7th in Oak Brook.

Leading Business author Chunka Mui presented highlights from his book, "Billion Dollar Lessons: What You Can Learn From the Most Inexcusable Business Failures of the Last 25 Years." The book highlights seven common failure patterns among 750 corporate collapses, including:

- Overestimating synergy
- Inadequate financial analysis
- Making acquisitions into something they are not
- Staying the course even if it is misguided
- Misjudging whether or not a market is adjacent
- Improperly implementing technology
- Consolidating when it does not make sense to do so

Look for the next Corporate Network Author Series February 6th at The Lodge in Oak Brook. Watch the ACG Chicago web page for more information as soon as it is available.

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Another Sold-Out Midwest Alternative Energy Venture Forum

Attendees at another sold-out Midwest Alternative Energy Venture Forum enjoyed 20 panelists presenting in-depth thought leadership into the next economic foundation. These panels were complemented by 13 innovative leaders presenting investment plans to build the companies that will take advantage of the emerging energy trends.

This conference was a collaborative effort between ACG Chicago and the Polsky Center for Entrepreneurship, the University of Chicago Booth School of Business (the name change was announced the day of our conference), Argonne Laboratories, the Illinois Department of Commerce and Economic Opportunity (DCEO), and many others. ACG Chicago members chaired three of the panels. Jim Greenberger, Partner at ReedSmith chaired the Clean Coal Panel. Shez Bandukwala, Partner at ThinkPanmure chaired the Solar Energy Technology Panel, and Craig Miller, CEO of ACG Chicago, chaired the Advanced Biofuels Panel. Bill Haas of Sage Environmental chaired the Wind Energy Supply Chain Panel.

These intense explorations of specific niches were augmented by industry overviews and observations of Michael Polsky, President & CEO of Invenergy, Jack Lavin, Director of DCEO, Ira Ehrenpreis, General Partner of Technology Partners, and Sadhu Johnston, Chief Environmental Officer for the City of Chicago. Ehrenpreis detailed the strategies of Technology Partners, their approach to this current market and what they expect to invest in over the next few years.

The presenting companies included:

- 10x Technology – develops & manufactures micro- and nano-structured polymer substrates
- AlGalCo – a new technology to create hydrogen gas from an Aluminum product
- All Cell Technologies – customized thermal management for lithium-ion batteries
- EcoThermics Corporation – pioneering heat pump technology (CEO Rocke pictured at right)
- Eden Park Illumination – commercializing LED lighting systems
- iLight Technologies – innovative LED lighting for custom applications
- In-Pipe Technology – advanced water treatment facilities
- LifeCrete Eco-Masonry – eco-friendly (hemp bases) foundation blocks for building

EcoThermics CEO Merle G. Rocke

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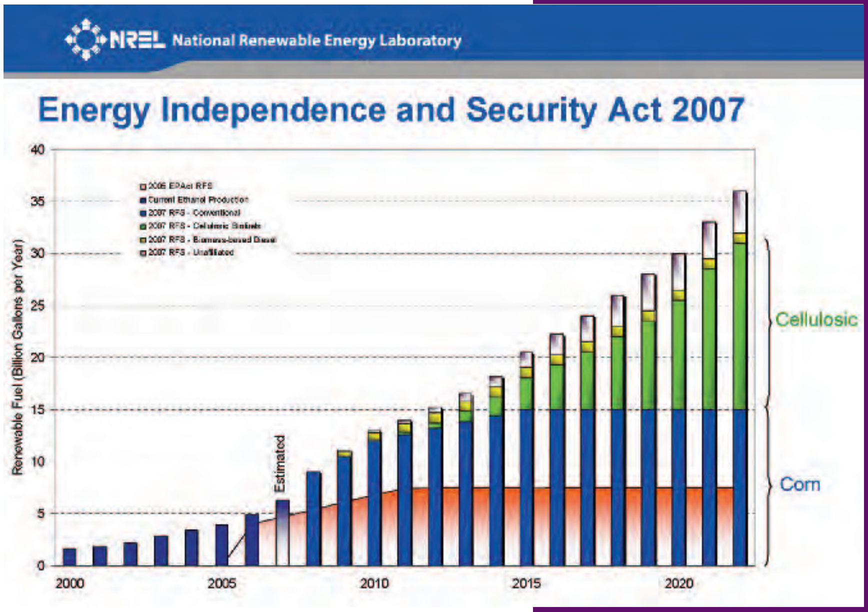
- NanoCarbons – vastly advanced ultra capacitor
- ShadePlex – solar development company with cells integrated into outdoor furniture
- SmartSpark – micro-inverter called Solar Bridge used in conjunction with each panel
- SoCore Energy – building and installing solar systems on large commercial buildings
- Turbulent Energy – technology to substantially improve fuel economy and lower greenhouse gas emissions

Clearly the MAEVF was a great opportunity to better understand the emerging market niches, and to invest in the next wave of innovation in Chicago. If you missed this one, watch for future energy conferences over the next few months.

Advanced Biofuels Panel Explores Energy's Future

The Advanced Biofuels Panel chaired by ACG Chicago CEO Craig Miller condensed into one hour an industry overview that could fill a week of intense discussion about the future fuel supply of America for combustion engines. Joining the panel were: Wes Bolson, CMO and VP of Coskata; Daniel Oh, COO of Renewable Energy Group; and, Bennett West, Principal of Deloitte.



This chart from the National Renewable Energy Laboratory (NREC) shows the dramatic growth required in this industry.

In an overview of the industry, Miller pointed out that the ethanol industry has been around and growing for decades. Starting with the Clean Air Act in the late 1980's, accelerated by the MTBE restrictions in the 1990's and most recently by the Renewable Fuel Standards (RFS), ethanol has grown to almost 7 billion gallons per year. This current production is primarily corn-based ethanol production yet substantial research is yielding more energy efficient production of this method and great advances in cellulosic ethanol and biofuels that will drive production to the next required RFS level of production.

There are a wide variety of new fuel technologies in development and more than one will be commercially developed to fill the needs of America and the world even as we strive to include hybrid battery technology in the mix of energy efficient transportation (ACG Chicago presented an intensive dive into advanced battery technology for hybrid transportation at our June 2008 Summit – see our website for more information about the presenters and program). The chart on page 18 provides a quick overview of the estimated current state of these developments and their time to market. This select panel dove into the specifics of a couple of advanced biofuel producers, Coskata and Renewable Energy Group.

(continued on page 20)

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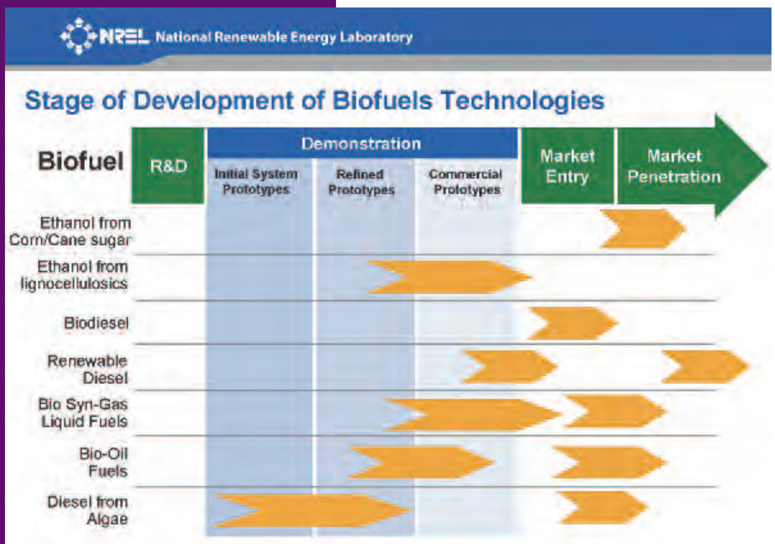
Advanced Biofuels (continued from page 19)

Coskata generates ethanol from a wide variety of input material including biomass, municipal solid waste and other carbon-based material. Using proprietary microorganisms and patented bioreactor designs, they are developing technologies and processes that will produce ethanol for under US$1.00 per gallon.



Wes Boylen provided an in-depth overview of the hybrid processing used in the Coskata technology and investment opportunities. He equated the 16 billion gallon mandate with various other industries to demonstrate the potential growth opportunities in the U.S. markets. The general sales at $2.50 per gallon will equal a $40 billion industry equal to the global pesticide industry. The capital investment required is estimated at $64 billion. That is equivalent to 10 large world-class oil refineries, and the feedstock required to produce this is valued at $8 billion or the size of the Brazilian sugar industry.

This economic incentive and their IP portfolio of patents, trade secrets and know-how for the development and commercialization of syngas-to-ethanol process technology has encouraged the capital markets and drawn leading investors including GM, Khosla Ventures, Coghill Capital, GreatPoint Ventures, and Advanced Technology Ventures.

Further application of their processes was evident as Coskata recently announced they are exploring a sugar waste cellulosic ethanol plant with U.S. Sugar. This mid-November announcement (after the MAEVF) projects a plant that will result in a giant 100 million gallon-per-year factory near Clewiston, Florida. By keeping the plant close to the fields, Coskata will be able to keep its own costs for transporting in the plant detritus — leaves, plant tops and crushed-up stems called bagasse — quite low, and hopefully split the resulting riches with U.S. Sugar.

Renewable Energy Group is one of the largest firms in today's evolving and expanding biodiesel industry. Daniel Oh offered a detailed review of REG's construction, production, management and marketing expertise, which allows them to understand and design for cutting-edge performance at every stage of production. He reviewed a broad spectrum of issues around biodiesel plant construction; process engineering, permitting and registration, safety management, and site preparation. They focus on 30 to 60 million gallons per year commercial-scale, multiple feedstock biodiesel facilities and not only construct the facilities but help manage day-to-day operations.

REG is also the leading marketer of biodiesel in America and Oh outlined the benefits of biodiesel blending and the opportunities. On the more advanced biofuel front, REG has been involved in algae oil-to-biodiesel commercialization for more than two years. This next wave technology explores a massive number of algae types for the most productive use in ethanol and recently REG announced that it has implemented a technology to refine the oil from a variety of algae strains and produce algae biodiesel.

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These technology issues are not the only hurdles to overcome as the world deals with the economic turmoil and the natural aversion to change. Three primary issues are often mentioned by critics: the recently falling price of oil and whether it is economical to develop these technologies; the effect on the food industry and claims that ethanol has driven the price of food up 75%+ for developing and third world countries; and overcoming those issues, an archaic infrastructure system.

The current economic turmoil has driven oil prices well below their 10-year trend line. Coupled with an even moderated growth in Asia plus the medium term projected flattening of oil supplies, there can be a reasonable expectation that oil prices will eventually rise to at least the trend line. If the "peak oil" theory of extreme long term decline in supply of oil is correct, then we can expect prices to return to and exceed the spring 2008 prices of over $140 per barrel. Either way, the new technologies described by Bolysen and Oh are designed to be mass-produced at a price to compete near today's fossil fuel prices.

The food argument that biofuels are taking food from the starving masses and driving costs to astronomical levels has gained some emotional footing but was recently rebuked in a United Nations study that noted biofuels at most could be allocated about a 15% rise in the cost of food. Supply, weather, government subsidies, and the economy have much greater effects on the cost and supply of foods.

Bennett West addressed the third issue of infrastructure and specifically distribution. Current production is nearing satisfaction of the E10 requirements for the fuel supply. Reaching this "blend wall" will require E15 or E20 (moving from 10% to 15-20% ethanol in gasoline) which the EPA is currently studying. They released an interim study just a couple weeks prior to the forum with positive results and optimism for future adoption of a higher blend allowance. More studies to confirm the initial results and explore outstanding concerns are underway. Of course E85 (85% ethanol) would more fully open the supply opportunities and Bennett spoke to this issue when discussing the sparse distribution of consumer access to E85 pumps at this point. Unfortunately there was not enough time to more fully discuss the additional value propositions of widely distributed production that a firm like Coskata might provide using municipal waste and waste food product versus larger scale production that is consolidated at a central point. As with the various types of energy we expect to use over the coming decades, it may be that both options are included in the ultimate answer.

There is still skepticism that there is a viable industry in biofuels from more traditional investors. For further encouragement, the Obama campaign should provide some insight as the future will be driven by the Obama administration. Obama declarations during the campaign included raising the biofuel targets to 60 million gallons by 2030, support of flex fuel retrofits of existing cars and all cars to be flex fuel in ten years, targeting 1.5 million plug-in hybrids with a minimum of 150 mpg by 2015, and creating 5 million new green jobs by investing over $150 billion over 10 years in this area. Clearly there is opportunity for the investors who understand the markets and believe in the future of American energy independence. From production to pumps, green tech means jobs, economic development and corporate growth.

China's Outbound Direct Investment

By Anita Y. Tang, Partner
Royal Roots Global Inc.

In 1999, China initiated the "Go Out" policy encouraging its domestic enterprises to invest and do business abroad. Immediately Haier, the world's 4th largest white goods manufacturer, formed Haier America and built a 4.8 million sq. ft. production plant in South Carolina. In 2002, it acquired a landmark building in Manhattan and made it Haier America's headquarters.

Also in 1999, BYD Company, one of the world's largest rechargeable battery manufacturers, established its U.S. branch in Illinois. Other Chinese companies of various industries and sizes established offices and manufacturing facilities in the U.S. Currently, there are over 1,000 Chinese companies with formal government approval that have invested in the United States. In addition to such formal approval, there are large numbers of private enterprises that have either invested in the U.S. or have different types of cooperation with American firms.

Investment from China's Sovereign Wealth Funds

China's three sovereign wealth funds draw a great deal of attention from all over the world. Besides the China-Africa Development Fund, which is continent specific, the other two funds can invest in different parts of the world. The National Social Security Fund (NSSF) invests in overseas equity markets with designated foreign currencies. The United States-based Northern Trust Corporation was selected to provide global custody, investment mandate compliance monitoring and performance measurement services to NSSF. The third fund – China Investment Corporation (CIC) – started with US$200 billion in 2007 and is projected to grow to US$625 billion by 2010.

Governments of the developed countries are wary about China's sovereign wealth funds, even as individual entities are eager for their investment. For example, CIC has already invested US$5 billion in Morgan Stanley, US$3 billion in Blackstone, and most recently purchased US$100 million worth of Visa stock. Gao Xiqing, CIC's president, indicated that the Fund will invest in foreign companies but will not go on their boards. In addition, it is currently limiting its U.S. investment to the U.S. financial sector only. Further, NSSF has announced its plan to outsource a number of mandates to external third-party managers, and CIC is looking to transfer the management responsibilities of its assets to capable asset-management houses.

Other China Outbound Direct Investment

While NSSF and CIC are following a more hands-off approach in their investments, there are other Chinese investments abroad that feature a more hands-on approach. Lenovo, the Chinese manufacturer of ThinkPads, purchased the brand from IBM in 2005. Part of this US$1.75 billion deal is to have IBM help in the marketing and support of these products during the multi-year transition. China's Wanxiang Group founded Wanxiang America in Illinois in 1994 with a green-field operation to manufacture auto parts and it eventually grew to 25 manufacturing facilities in North America, mostly through M&A activities. Wanxiang America has also made investments in other areas, such as natural resources, real estate and hi-tech. Taishan Fiberglass Inc., one of the world's 10 largest fiberglass manufacturers, entered the North America market in 2003 through a joint venture, with its JV partner contributing its well-established sales channel. These and other Chinese companies in the U.S. provided some useful experience for China's ODI.

Historically, more Chinese investments have gone to the two coasts, but recently attention has also been given to the Midwest region. This year China's Investment Promotion Agency of the Ministry of Commerce (CIPA) made multiple visits to the U.S. Midwest. It signed memoranda of understanding with states including Illinois and Missouri to promote economic ties, understanding and long-term economic and trade development. In our meetings with the business and government representative delegations led by CIPA deputy directors general Zhang Yingxin and Yu Hua this May, the Chinese delegates displayed a keen interest in learning about the U.S. market and business opportunities here.

Work with China as an Equal Partner

As for investing in the U.S., most Chinese companies take late Chairman Deng Xiaoping's approach – carefully feel your way across the river. A big Chinese state-owned company, for example, acquired a couple of million-dollar entities to learn more about the market in the U.S. before mandating its billion-dollar acquisition. There is no doubt that the Chinese are interested in U.S. real estate. Yet if the sellers believe that this is going to be a repeat of the Japanese buying spree in the U.S. a quarter of a century ago, they will be disappointed because the Chinese have learned well the lessons of the Japanese mixed results.

Many Chinese companies go global because of brutal domestic competition. China does not plan to invest in the U.S. and go away – it views this market with great growth potential and it wants to see its investments grow. The U.S. is attractive to China because of its big market, its talents, its management skills, its technology, and its well-defined rule of law. However, the differences in American and Chinese culture, management style and business approach complicate the working relationship, which demands great efforts from both sides to make things work and succeed.

One success story is close to home – Gerber Plumbing Fixtures of Illinois, a 76 year-old, third-generation family-owned business. It has thrived after a financial injection from a Chinese company in 2003. Chairperson of the Board Ila Lewis credited the company's continued success in working with its Chinese partner to a great working relationship that is based on trust and mutual respect.

Future success stories will be written by those enterprises which make dealing with Chinese ODI an element of their business strategy and develop tactical approaches which can generate mutually beneficial outcomes.

Essential Network Update

The Essential Network continues its development. Now in beta testing, this suite of Web 2.0 tools will allow ACG Chicago members to stay up to date on current local news and people while connecting to the global network of ACG Expertise.

A key component of the Essential Network will be your profile. Beyond your basic membership information currently in our database, you will have broad capabilities to post white papers, graphics and blogs on which you can share your expertise and accomplishments.

This information as well as the CapitalLink^{SM} database and all other posted material will be accessible though intelligent search tools. If you haven't written a new article, updated that old one, or compiled some thoughts to journal in your personal blog, you can prepare these in the next couple of months. The ACG Essential Network is scheduled to launch in February.

ACG Chicago Recognizes Chicago Mercantile Exchange for Outstanding Corporate Growth

For the last few decades, ACG Chicago has bestowed the prestigious Corporate Growth Award on the large corporation in our region that has shown significant strength, growth and leadership. This award has been limited to firms with more than $500 million in annual revenue. The ACG Global organization has discontinued the national corporate growth award program due to the large variety of markets served by our various chapters. The diverse and substantial Chicago market makes it clear that ACG Chicago will continue this tradition and honor those building our corporate community.

The Chicago Mercantile Exchange (CME) has earned the 2008 ACG Chicago Outstanding Corporate Growth Award as a result of its continued success. The CME has been instrumental in maintaining Chicago as a world-class financial center. The CME merged with the CBOT in the summer of 2007 and more recently with NYMEX to create a company with pro forma 2007 annual revenue of $2.7 Billion and average trading volume of approximately 14.2 million contracts per day in the first two quarters of 2008. This makes it the largest and most diverse derivatives exchange in the world.

The awards committee reviews numerous candidates and performance metrics to identify the most appropriate honoree each year. The CME joins the ranks of previous award winners McDonald's, R.R Donnelly, Fortune Brands, and CDW. The 2008 award will be presented to Craig Donahue, CEO of CME during a luncheon at the Standard Club on February 12. Donahue will share the CME growth story in addition to accepting the award.

Murray Lessinger, Awards Committee Co-Chair and Managing Partner of White Oak Group noted, "CME continues to grow in new and innovative ways. We are pleased to honor this vital Chicago institution for its outstanding foresight and skillful execution."

Join us to hear how the CME has led the world in futures and where we're going. Visit www.ACGChicago.com to register.

Lifetime Award Honors Donald Jacobs (continued from page 1)

Management and the innovator who changed the structure of MBA programs around the world.

As Dean, Jacobs recognized the impact of globalization and positioned Kellogg to capitalize on the trend by creating alliances with universities across the globe. He also recruited the highest quality faculty. Through these efforts, the school earned its first #1 ranking from the Wall Street Journal in 1985, and has continued to receive similar rankings and accolades ever since.

Jacobs has been a member of the Kellogg School faculty since 1957 and currently teaches corporate governance and issues of risk in business at the master's level at the Kellogg School. His many outstanding accomplishments and leadership positions include:

- Dean of the Kellogg School from 1975 until 2001
- Director of the School's Banking Research Center from 1960 to 1975
- Chairman of the Department of Finance from 1969 to 1975
- Named Gaylord Freeman Professor of Banking in 1979
- Author of *Financial Institutions*
- Editor of *Regulating Business: The Search for an Optimum*
- Published in many scholarly journals
- Numerous honorary degrees and international accolades
- Chairman of the board of AMTRAK from 1975 to 1979
- Chairman of the Advisory Committee of the Oversight Board of the Resolution Trust Corporation for the third region
- Senior Economist for the Banking and Currency Committee of the U.S. House of Representatives from 1963 to 1964
- Co-Staff Director of the Presidential Commission on Financial Structure and Regulation (The Hunt Commission) from 1970 to 1971
- Received his BA in 1949 in Economics from Roosevelt University
- Received his MA in Economics from Columbia University in 1951
- Received his PhD. in Economics from Columbia University in 1956

"Don Jacobs changed the world of business education and is universally acknowledged as one of the premier financial thought leaders," said Karin O'Connor, President of Perimeter Advisors and Awards Committee Member. "We are thrilled to present this award to such an outstanding individual."

Join Us to Honor Dean Jacobs

January 22, 2009 - 6:00 P.M.
The Fairmont Chicago

Registration for the Lifetime Award Dinner is now available on the ACG web page at: **www.ACGChicago.com.**

ACG Chicago Members and spouses can register for $125.
A late registration fee of $20 will be assessed after January 9.

Morningstar Accepts Emerging Growth Award

Many companies are still achieving impressive growth in the current economy. ACG Chicago honored one such company, Morningstar, Inc. with the Emerging Growth Award. CFO Scott Cooley accepted the award and shared the story of Morningstar's growth from a single entrepreneur startup to almost one-half-billion dollars in revenue.

Cooley outlined the company's vision for continued growth through four critical goals: focusing on three specific platforms for individuals, advisors and institutions; becoming a global leader in fund of funds; expanding their range of services; and expanding internationally.

Dan Howell, ACG Awards Committee Chair and Senior Managing Director of Private Equity Investments at Mesirow Financial, noted that Morningstar's growth has been ongoing for many years. "Morningstar has achieved a ten-year compounded growth rate of 27.3% and a five-year compounded growth rate of 31.8%. Many businesses can learn from their example."

You can too as the presentation materials and downloadable audio recording are available under the "Library" tab found at www.ACGChicago.com.

Scott Cooley, CFO of Morningstar accepts the Emerging Growth Award from Dan Howell, Awards Committee Chair (right) and Craig Miller, CEO of ACG Chicago (left).

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2009 ACG Chicago Calendar

January 22
Lifetime Achievement Award Dinner
Honoring Donald P. Jacobs
The Fairmont Chicago

February 6
Corporate Network Author Series
The Lodge, Oak Brook

February 12
Corporate Growth Award
Presented to:
Chicago Mercantile Exchange
The Standard Club

March 6
M&A/Private Equity Breakfast
Annual Market Trends
The Standard Club

March 19
International Growth Luncheon
The Standard Club

April 3
Venture Network Luncheon
The Standard Club

April 21
Corporate Network Luncheon
The Standard Club

May 1
Corporate Network Author Series
The Lodge, Oak Brook

May 19
M&A/Private Equity Luncheon
The Standard Club

June 9
Annual Golf Outing
Harborside International

June 23
International Conference
Location TBD

July 10
Corporate Network Author Series
The Lodge, Oak Brook

July 23
ACG/MBBI/TMA Boat Cruise
Lake Michigan

September 15
M&A/Private Equity Luncheon
The Standard Club

September 24
Corporate Network Summit
Location TBD

October 2
International Growth Breakfast
The Standard Club

October 20
2009 Midwest ACG Capital Connection
McCormick Place, West Building,
Skyline Ballroom

November
Third Annual Midwest
Alternative Energy Venture Forum
University of Chicago Gleacher Center

November 6
Corporate Network Author Series
The Lodge, Oak Brook

November 17
Emerging Growth Award
The Standard Club

December 4
TMA/ACG Holiday Social

December 8
M&A/Private Equity Luncheon
The Standard Club

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Save the Date:
March 6, 2009

Market Trends Breakfast

The Standard Club

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2009, with leaders on Capitol Hill stating that strengthening Medicare and Medicaid will be a top priority. And President-elect Obama has stated he would seek to expand the current entitlement system.

Technology

Earlier this year, technology M&A looked particularly promising. As noted in the white paper, "Many tech investors believe they are going to see another vintage year, reminiscent of 2000 and 2001, when tech buyouts, on a dollar volume, accounted for 14 and 21 percent of all transactions, respectively, according to Thomson Reuters." In the first quarter of 2008, the $19.7 billion in closed tech deals accounted for 31 percent of all buyout transaction deal volume involving U.S. sponsors.

The first nine months of 2008 saw significant activity in the sector, with technology ranked first in number of M&A deals in the U.S., and second globally, according to Thomson Reuters. (The sector trailed energy and health care in dollar value of deals -- $75.5 billion in the U.S. and $133.7 billion globally.)

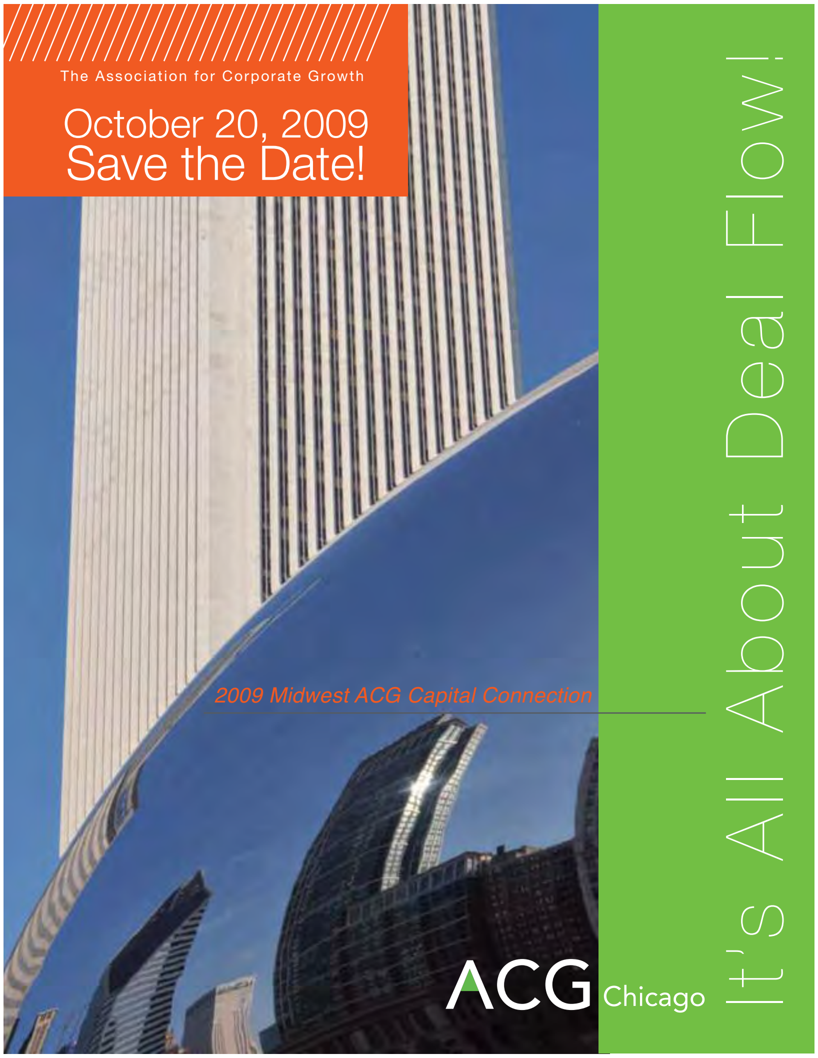
Most recently however, the worldwide financial crisis has begun to takes its toll. "Things have changed significantly, especially in the last couple of months," said Marc Chiang, Director, Transaction Advisory Services, Grant Thornton. "Technology is getting hit hard by the financial meltdown, and many private equity firms are having difficulty closing deals."

There are bright spots within tech, of course. Among these is Software as a Service (SaaS). Some believe the current environment benefits this tech subsector, given the relatively low adoption costs of a SaaS platform.

"The thing about tech is that you always have to be thinking about the future, the next thing," noted Chris Nicholson, a partner at Vector Capital, in the white paper. "Even a boring tech company needs to be looking ahead. And just like in the early 2000s, now is a good time to be working on the next thing so companies are ready when the market comes back. Now is the time to buy: Valuations are low; you can make changes and be ready with a sales effort when things pick up."

The second factor that makes tech strong is that competition for deals has eased, due in part to the departure of generalist firms that have been scared off by the lack of credit. However, for firms that play in the tech space, the lack of leverage is common; market conditions aren't so far off from what they were prior to the past few years. In general, these companies use less leverage than your normal buyout.

Also helping the tech buyout scene: Corporate orphans are easier to buy these days because companies are looking to shed noncore assets. Though prices have fallen nearly as low as they did in the aftermath of the 2001 tech wreck, now is still a good time to pick up assets. Furthermore, the industry has matured, making it easier for private equity firms to understand the business propositions. Additionally, because of their maturity, these firms now have an operating history, making them easier to understand and more attractive to private equity investors than ever before.


The Association for Corporate Growth
October 20, 2009
Save the Date!
2009 Midwest ACG Capital Connection
It's All About Deal Flow!
ACG Chicago


"IT IS NOT THE GOING OUT OF PORT, BUT THE COMING IN,
THAT DETERMINES THE SUCCESS OF A VOYAGE."
Henry Ward Beecher, theologian and speaker
WHAT IS YOUR COMPANY'S
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40 Celebrating years Of Corporate Growth Leadership

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