Hale and Dorr LLP

October 2002

corporate advisor

Going Private

During the 1990s, many entrepreneurs viewed an initial public offering as an achievable Everest. Over 2,400 U.S. companies conducted IPOs in the period from 1996 through 2000, and going public came to be seen as a validation of the business acumen of a company's entrepreneurial founders and venture capital backers. The collapse of market valuations and the corporate scandals of the last year have dramatically altered the landscape. For many private companies, going public remains a worthy goal. However, companies that are already public may wish to consider whether going private represents the best response to current conditions.

This article explains the costs and benefits of going private. It provides an overview of techniques that can be used to take a company private, and it introduces the principal players in a privatization transaction. Ultimately, whether any particular company should go private will depend on its own circumstances. For some companies, though, the burdens of staying public will tip the balance in favor of going private.

Going Private—What is it? Who does it?

Going private is the process by which a public company—a company with a class of equity securities registered with the Securities and Exchange Commission (SEC)—ceases to be a public company. SEC rules permit a company to de-register its securities and thereby "go private" when it has fewer than 300 stockholders of record. Typically, a company goes private through a merger or tender offer that reduces the number of stockholders to one, an entity formed to effect the going-private transaction.

Large and small companies go private. Firms like KKR have taken private such well-known companies as Duracell, Safeway and Ziff-Davis Publishing. But going private is not the exclusive preserve of large companies and LBO funds. Recent privatizations include a $3.3 million transaction (Peritus Software Services, Inc., a software company based in Westborough, Massachusetts) and a $50 million deal (Deltek Systems, Inc., a Herndon, Virginia–based provider of enterprise software products).

Why Go Private?

Going Public vs. Staying Public

Before explaining why a company might want to go private, it is worth recalling why so many businesses went public in the 1990s and re-examining those reasons in light of current market conditions.

- Going public often permits a company to attract capital more easily than if it remains private. Large, profitable public companies may find it relatively easy to raise additional capital through debt and equity offerings.
- Public companies generally find it easier than private companies to pay for acquisitions with their own stock.
- Going public allows a corporation's founders, who often have a relatively large percentage of their net worth tied up in the company, and the corporation's venture capital backers to convert a portion of their holdings into cash.

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- Officers and employees often cannot convert their stock options into cash until a company is public. Options are critical components of the compensation structures of many new companies. The implicit bargain between entrepreneurs and employees is that employees will work long hours in exchange for relatively modest wages and relatively generous option packages, the value of which can be maximized only if the company goes public or is acquired.
- Public companies have traditionally been viewed as more stable than private companies and more attractive business partners for customers and suppliers.
- Going public can be a powerful validation of the vision of an entrepreneur and the wisdom of the venture capital firms that supported the entrepreneur. The reputational benefits and the prestige associated with being a public company are generally considered substantial.

The considerations that led companies to go public may be less relevant to a decision to stay public.

Some of these factors, while relevant to a decision to *go* public, may be less relevant to a decision to *stay* public. The considerations that led companies to go public have also been affected by the substantial decrease in market valuations—public companies as a whole lost $7.7 trillion in market value between March 2000 and July 2002—and by the response to developments at Enron and other companies. In particular:

- While a public company should still generally be able to access the capital markets more easily than a private company, the advantage is diminished if the company cannot easily tap the capital markets at an acceptable price. In considering the "price" of raising additional equity, boards and management must consider the current market price for their stock and the dilution of existing investors.
- Boards and management of public companies must make similar calculations when considering whether to pay for an acquisition with stock. An acquisition may be unattractive if too many additional shares must be issued at the current market price, even if the acquisition will be accretive to earnings.
- Options will almost certainly continue to be powerful motivators and critical components of compensation packages for public companies and companies that foresee going public. However:
  - As market valuations have declined, the values of many option-packages have evaporated, leaving management with difficult choices, including re-pricing existing options, issuing new options with an exercise price equal to the current (lower) market price or doing nothing (and losing the benefits that options provide).
  - There is growing pressure on public companies to recognize a compensation expense, equal to the fair value of stock options granted to employees, when the options are granted. Senators John McCain and Carl Levin, among others, have introduced legislation that would require this accounting treatment for options. Several companies have voluntarily begun to account for options in this way. On July 31, 2002, the Financial Accounting Standards Board stated that recognizing a compensation expense for the fair value of employee stock options is the "preferable approach" under existing accounting rules. If the "preferable approach" becomes mandatory—whether by congressional fiat or FASB directive—or if investor pressure leads more companies to recognize compensation expense for options voluntarily, the effective cost of option programs to companies could increase.

  The net result of these developments is that options would supply a less compelling rationale for a company to stay public.
- Whether a public company today is more stable than a private company, and whether the prestige associated with being a public company is commensurate with the costs, risks and aggravation associated with remaining public today, will obviously depend on each company's circumstances.

There will continue to be compelling reasons for many companies to go public and to stay public. Indeed, for very large enterprises that require large amounts of capital, staying public is the only feasible choice. For other companies, however, developments of the last year have affected the considerations that propelled the decision to go public.

Enhanced Costs and Risks of Staying Public

The response to the corporate and accounting scandals of the last year has also affected the decision to stay public, by increasing the costs and risks of being a public company. Among the increased costs that public companies, their management and their boards must now bear, and the increased risks they now face, are the following:

- Independent audit costs have increased and are likely to continue to rise. *The Wall Street Journal* reported on August 12, 2002 that independent accounting costs were likely to increase 15% to 25%

this year, with smaller companies incurring increases at the higher end of the range. Among the factors driving this trend are:

– Provisions in the Sarbanes-Oxley Act of 2002 and the SEC's new requirement that public companies describe their "critical accounting policies" are causing companies' independent accountants to devote more time to companies' Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q. (The Form 10-K must include audited financial statements, and a company's independent accountants typically review the Form 10-Q.) These new requirements are also causing public companies' independent accountants to spend more time with companies' audit committees.

– The Sarbanes-Oxley Act also prohibits accounting firms from providing eight specific types of non-audit services to their audit clients, including financial information systems design and implementation services.

– The SEC has mandated more expeditious filing of companies' annual and quarterly reports. By the end of the three-year phase-in period, the filing deadlines for Forms 10-K and 10-Q will have been accelerated to 60 and 35 days, respectively, from 90 and 45 days.

– The demise of Arthur Andersen LLP has removed a significant competitor from the market, while accountants' costs—notably, insurance costs—have increased.

- The Sarbanes-Oxley Act imposes new risks on officers of public companies, including two new personal certification requirements.

– Under Section 906 of the Act, the chief executive officer and chief financial officer of each public company must certify, in each of their reports on Form 10-K and 10-Q, that the information in the report "fairly presents, in all material respects, the financial condition and results of operations of the issuer." An officer who signs this certification, knowing that the report does not meet the requirements recited in the certification, may be fined up to $1 million and imprisoned up to 10 years; "willful" violators may be fined up to $5 million and imprisoned up to 20 years. A conscientious officer might justifiably wonder whether he or she could go to jail because a Form 10-K did not disclose a known fact or trend that was not considered material at the time the Form 10-K was filed but that, with the benefit of hindsight, turned out to be material.

– Section 302 of the Act contains a second and more extensive certification provision. The principal executive officer and principal accounting officer of each public company must certify that (1) the signing officer reviewed the report; (2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements, in light of the circumstances made, not misleading; and (3) based on the officer's knowledge, the financial statements and other financial information in the report fairly present, in all material respects, the financial condition and results of operations of the company as of and for the periods presented in the report. The officers must also certify as to the company's disclosure controls and procedures and internal controls. An officer who makes a knowingly false certification will presumably face criminal liability, but the SEC will also be able to seek civil penalties for false certifications.

– The Act specifically empowers the SEC to prohibit a person who has violated the antifraud provisions of the securities laws from acting as an officer or director of a public company if the person's conduct demonstrates "unfitness to serve" as an officer or director of a public company. In addition, the Act lowers the threshold the SEC must satisfy in order to obtain a court order barring a person from serving as an officer or a director of a public company. Before the Act was passed, a person could be barred only if the person's conduct demonstrated "substantial unfitness to serve;" the Act now permits a court to bar a person from serving as an officer or director of a public company if the person's conduct demonstrates "unfitness to serve.

- Members of audit committees face new burdens. These requirements are contained in the Sarbanes-Oxley Act and corporate governance initiatives by the New York Stock Exchange and Nasdaq.

– Under the Sarbanes-Oxley Act, the audit committee must establish procedures for (1) addressing complaints the company receives about its treatment of accounting matters and (2) the confidential, anonymous submission by employees of concerns about questionable accounting matters. The audit committee must be given the authority and resources to hire independent counsel and other advisors to investigate these complaints and concerns.

– The Act requires the audit committee to be directly responsible for the appointment, compensation and oversight of the company's independent auditors.

The response to the corporate and accounting scandals of the last year has affected the decision to stay public by increasing the costs and risks of being a public company.

Going private permits management to focus on long-term, value-maximizing strategies.

– The Act requires a public company's chief executive officer and chief financial officer to review the company's internal controls with the audit committee. As noted above, the audit committee must also approve in advance the company's procurement of non-audit services from its independent accountants.

– The Act requires audit committees to be comprised solely of independent directors. To be "independent" within the meaning of the Act, a member of the audit committee may not (1) accept any "consulting, advisory, or other compensatory fee" (other than directors' fees) from the company or (2) be an affiliate of the company.

– Nasdaq has proposed to require that the audit committee approve all related-party transactions.

– The New York Stock Exchange has mandated that the chair of the audit committee have accounting or financial management experience. The Sarbanes-Oxley Act directs the SEC to issue rules (1) defining the term "financial expert" and (2) requiring public companies to disclose whether or not (and if not, why not) the audit committee includes at least one "financial expert."

- The costs of regulatory compliance have increased and are likely to continue to increase.

– The SEC has proposed to expand significantly the types of events that would necessitate the filing of a Current Report on Form 8-K. If these rules are adopted as proposed, a public company would be required to file a Form 8-K whenever it signs or amends a material contract, including a letter of intent or other non-binding agreement, and including contracts with management. The company would be required to file the Form 8-K within two business days after signing or amending the contract but could receive a two-day extension by requesting that extension within the initial two-day period.

– The Sarbanes-Oxley Act substantially shortens the period for making filings under Section 16 of the Securities Exchange Act of 1934. (These are the filings required whenever an executive officer is granted or exercises options or buys or sells shares of the company's stock.) Persons obligated to make such filings must now do so within two business days after executing a reportable transaction, and option grants must now be reported within the same two-day period rather than after year-end. By July 31, 2003, these filings will be required to be made electronically, and companies that have a web site will be required to post them on the web site within one business day after they are filed.

– The New York Stock Exchange now requires each listed company (1) to publish copies of its corporate governance guidelines, code of business conduct and ethics, and the charters of its key committees (including at least the audit, compensation and nominating committees) on its web site and (2) to disclose promptly all waivers of the code of business conduct and ethics for directors or executive officers.

- The cost of directors' and officers' (D&O) insurance is likely to increase substantially for public companies. A recent report on D&O coverage by Willis Group Holdings, Ltd. concludes that companies with healthy balance sheets face increases of 25% to 40% in premiums for D&O insurance, while companies with financial troubles are seeing rates increase by as much as 300% to 400%.

Benefits of Going Private

Against these increased costs of staying public, companies may wish to consider the savings from going private, including the elimination of the accounting and legal costs associated with the obligation to file annual, quarterly and current reports with the SEC. Companies may also save something even more valuable than cash: executive time. A private company's senior executives need not spend any time reviewing drafts of the company's SEC filings or talking with public stockholders and analysts.

Going private permits management to operate the company to maximize its overall value, not simply to satisfy the consensus forecast for the next quarter's earnings. For example, a private company may have greater flexibility to focus on research and development and to implement long-term strategies.

A company that is sufficiently attractive to support a going-private transaction may also find it easier to obtain additional capital in connection with the privatization than it could as a public company. An investor that is favorably disposed to a company's business prospects may be willing to provide sufficient capital to enable the business to thrive—but only if the investor would receive all or substantially all of the returns from that business, as it would if it acquired all of the company's public shares.

Realizing Value After a Privatization

There are several ways to realize value after taking a company private. The business could be taken public again or could be acquired. Duracell is one of the betterknown examples of this. In June 1988, KKR paid $1.8 billion in cash for Duracell, including $1.45 billion that KKR had borrowed. In May 1991, KKR took Duracell public in an offering that valued the entire company at $1.5 billion. Five years later, Gillette acquired Duracell for $7.8 billion.

The investor group that takes a company private can also sell the business without first taking it public. Examples abound. In considering this path, prospective privatizers should be aware of legal considerations that might affect the sales process. For example, the purchaser of a private company may require the investor group that owns the company to indemnify the purchaser, for a period of time following the closing of the transaction, for breaches of representations and warranties in the sales agreement. By contrast, it is highly unusual for indemnification obligations to survive the closing of a sale of a public company. Conversely, because the board of directors of a public company has a fiduciary duty to obtain the best deal reasonably available in connection with a change in control of the company, the public company's board may need to preserve a "fiduciary out" so that it can terminate a signed sales agreement—before the transaction has closed—in order to accept a superior offer from a third party. The board of directors of a private company will presumably act at the direction of the investor group that owns 100% of the company's stock and may immediately and irrevocably accept an offer that the investor group supports. Business and financial considerations—including whether the business's value can best be maximized if the company is public or private—can of course override these legal considerations.

Finally, it is also possible to realize value from a private company by increasing its profitability and paying dividends or making other distributions to the members of the investor group. Depending on the composition of the investor group and its future plans for the company, it may be tax-efficient to (1) convert the newly-private corporation into a limited liability company, which can elect to be treated as a partnership for purposes of U.S. federal income taxation, or (2) elect to be treated as an S corporation. Both of these decisions have the effect of subjecting the income of the business to only one level of U.S. federal (and, depending on the jurisdiction, state) income tax. For example, while an "S-election" is in effect, the company is not subject to federal corporate income tax or certain other federal taxes, and the company's income, whether or not distributed, is taxed to the company's stockholders.

Key Participants in a Going-Private Transaction

The two principal players in a privatization are a management team and a financing source. Good management is critical to the success of a newly privatized company. Where a third party is considering a privatization, its appraisal of incumbent management will often be an important part of its due diligence, and private equity funds often will not engage in a transaction unless they have confidence in existing management and management commits to stay with the business. The future of incumbent officers may be less secure where the sponsor of the privatization is a strategic buyer (a "strategic buyer" is frequently a corporation in the same or a complementary business as the company to be privatized) because a strategic buyer is usually familiar with experienced managers who can help run the newly-privatized company. By contrast, in one type of going-private transaction, the management buy-out, a company's incumbent management not only continue as officers, they acquire the public shares and continue as owners of the enterprise.

The second principal player in a going-private transaction is the financing source or sponsor. This role can be filled by an LBO or private equity fund, a strategic investor, an existing stockholder of the company or a combination of the above. This entity typically provides the cash to purchase the public stockholders' shares from its own funds or from funds made available to it, for example, by investors in a private equity fund or debt incurred in connection with the transaction.

Large pools of capital are currently available for going-private transactions. Thomson Financial reported that, at the end of 2001, buyout firms had $120 billion under management. These firms continue to seek new money. KRR's Millennium Fund has mobilized between $5 billion and $5.4 billion, according to Thomson Financial, and in July 2002, The Blackstone Group announced that it had raised $6.45 billion for its latest fund. Institutional investors such as pension plans, university endowments and insurance companies supply the capital for these funds. As the returns from early-stage investments prove elusive, these institutions may devote a larger share of their resources to private equity and buyout funds. Relatively low interest rates may also permit the proponent of a going-private transaction to finance the privatization on attractive terms using commercial bank debt or privately placed debt securities.

The secondary players in the privatization process include the special committee of the company's board of directors and the special committee's legal and

> There are several ways to realize value after taking a company private.

financial advisors. Depending on the structure of the transaction and the identity of the prospective acquiror, it may be necessary for the board of the target company to appoint a special committee comprised of independent directors to negotiate with the acquisition group and recommend to the larger board and the stockholders whether or not to accept the acquisition bid. To assist it in discharging its fiduciary duties and evaluating the terms of the proposed transaction, the special committee typically retains a financial advisor. The financial advisor conducts due diligence on the company proposed to be acquired, values the company and delivers an opinion as to the fairness, from a financial point of view, of the consideration proposed to be paid in the transaction. The special committee should also retain legal counsel to assist it in negotiating with the prospective acquiror and navigating the process.

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Alternative Structures for Going Private

A company can go private in a variety of ways, including through a merger, a tender offer or a reverse stock split.

A common form of merger is the "reverse triangular merger," in which an entity formed by the acquisition group merges with and into the public company, which survives the merger. As a result of the merger, the outstanding shares of the company's stock, other than shares owned by the acquisition group, are converted into the right to receive the merger consideration or the right to assert appraisal rights. The merger consideration is the cash paid to the stockholders. A merger typically leaves the surviving corporation with one stockholder, a subsidiary of the acquiror. Some of the principal steps in a going-private merger are described in more detail below.

In a tender offer, the acquiror purchases the public shares directly from the company's stockholders. As in a merger, the proponent of the transaction approaches the target, which may form a special committee to consider the proposal. The special committee retains legal and financial advisors and negotiates with the prospective acquiror. When the two sides reach agreement, the acquiror sends stockholders a written offering document, the "offer to purchase," which contains disclosure required by SEC rules, and a letter of transmittal, which stockholders may use to tender their shares. The public company issues a press release announcing, among other things, that the special committee recommends that stockholders accept the offer and tender their shares. Tender offers are commonly conditioned on the acquisition group's holding at least 90% of each class of the stock of the corporation following the closing of the offer. Ownership of at least 90% of the company's stock gives the acquisition group the ability to complete a short-form merger, without the need to hold a meeting of stockholders or solicit proxies. In the short-form merger, the shares that were not tendered are typically converted into the right to receive the same consideration that was paid to the tendering stockholders or the right to assert appraisal rights. At the conclusion of the short-form merger, the company typically has one stockholder, a subsidiary of the acquisition group.

The Delaware Chancery Court's decision in the *Siliconix* litigation suggests that it may be possible, in certain circumstances, for a majority stockholder of a company to acquire the minority interest in a tender offer at a price of its own choosing, without negotiating with a special committee and without having to prove the entire fairness of the transaction. To take full advantage of the *Siliconix* structure, the acquiror must be a public company using publicly traded stock as an acquisition currency. For this reason, Siliconix will be of most interest to public companies that wish to privatize their public subsidiaries and of considerably less interest to private equity funds.

A company may also be able to reduce the number of its record stockholders below 300 by conducting a reverse stock split. In such a transaction, each outstanding share is converted into a fraction of a new share, and stockholders receive certificates representing whole shares and cash in lieu of fractional shares. For example, in a 1-for-10,000 reverse stock split, each stockholder who owned less than 10,000 shares would receive cash only, each stockholder who owned 10,000 shares would receive 1 new share, and each stockholder who owned more than 10,000 shares would receive 1 new share for each 10,000 shares owned and cash for the remainder of his shares. This effectively cashes out holders of less than 10,000 shares, with the result that the number of stockholders is reduced, perhaps below the 300-stockholder level. A reverse stock split is generally effected through an amendment to the company's certificate of incorporation. This, in turn, requires the company to prepare and disseminate a proxy statement and conduct a meeting at which stockholders may vote on the proposed amendment.

Process for Going Private via a Merger

The principal steps in a going-private transaction accomplished through a merger are as follows:

- Where the proponent of the privatization is an insider—for example, a management group, a significant stockholder or an entity with a representative on the board—the process typically begins with informal discussions between the proponent of the going-private transaction (or its representatives) and members of the public company's board of directors.

- The formal process begins when the proponent of the transaction makes an offer to the board of directors of the public company. The offer typically specifies a price at which the prospective acquiror would be willing to acquire the company and a preferred structure.
- Where the proponent of the transaction is an affiliate of the company—for example, an existing stockholder, a management group or an entity with a representative on the board—the company should immediately form a special committee composed of directors with no tie to the prospective acquiror. Although not required by law, a properly constituted and properly functioning independent committee can simultaneously (1) benefit the minority stockholders, by establishing an independent committee to negotiate on their behalf with the assistance of independent legal and financial advisors whose fees are borne by the company; (2) benefit the independent directors, by helping to demonstrate that they fulfilled their fiduciary duties and therefore cannot be held personally liable; and (3) benefit the proponents of the transaction, by helping them to sustain the burden of demonstrating the entire fairness of the transaction, as they will need to do if the transaction is challenged by minority stockholders.
- The special committee should promptly retain legal and financial advisors to assist in establishing a value for the company, evaluating the financial terms of the transaction and assisting with the legal aspects of the process. The financial advisor should be prepared to render a fairness opinion. The special committee's legal counsel and financial advisors should not be currently or have been previously retained by or affiliated with the proponent of the transaction.
- The scope of the special committee's activities will be influenced in part by the percentage of the company that the proponent of the transaction already owns. For example, if the prospective acquiror is an unaffiliated third party, the special committee will be obligated to obtain the best deal reasonably available. This may require it to conduct a market check before recommending a merger agreement. By contrast, where a controlling stockholder has sufficient voting power to approve a third party's tender offer and indicates that it will support that transaction and no other, then the special committee may have no role other than recommending to minority stockholders whether to tender into the offer or seek appraisal rights. While the proponent of the transaction and the special committee are negotiating the terms of the merger, the financial advisor conducts the due diligence necessary for it to deliver its fairness opinion.
- The negotiation process culminates in an arrangement that is acceptable to the prospective acquiror and on terms that the financial advisor opines are fair, from a financial point of view, to the stockholders not affiliated with the proponent of the transaction. The special committee recommends that the board approve the transaction, then the board approves the transaction and the company and the prospective acquiror sign the merger agreement.
- The company and the acquiror then prepare the documents that must be sent to stockholders and filed with the SEC. Depending on the circumstances, these may include a proxy statement, a Schedule 13E-3 and a Schedule 13D.
  - Among other things, the proxy statement lays out the background to the transaction, describes the merger agreement and the effects of the merger, explains the reasons for the special committee's recommendation and the financial advisor's opinion, states the vote of stockholders necessary to adopt the merger agreement and summarizes dissenters' appraisal rights. The proxy statement cannot downplay positive information about the company or its prospects, and in appropriate circumstances projections may need to be disclosed. The proxy statement contains a proxy card that stockholders may use to vote for or against the proposed merger.
  - Rule 13e-3 under the Exchange Act regulates certain going-private transactions where the public company or one of its affiliates, such as a controlling stockholder, is the proponent of the transaction. Among other things, Rule 13e-3 requires the filing of a Schedule 13E-3. The Schedule 13E-3 contains much of the information that is required to be set forth in the proxy statement; this information can be incorporated by reference into the Schedule. The Schedule 13E-3 is required to describe the identity and backgrounds of the proponents of the transaction, explain the purpose of the transaction and address the fairness of the transaction.
  - Section 13(d) of the Exchange Act and the rules thereunder require owners of 5% or more of the stock of a public company to disclose, among other things, the purpose of any transaction involving the company's stock and any contracts, arrangements,

A company can go private through a merger, a tender offer or a reverse stock split.

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understandings or relationships with respect to the company's securities. Regulation 13D under the Exchange Act requires the filing of a Schedule 13D, which also contains information that can usually be derived directly from the proxy statement.

The preliminary proxy statement, Schedule 13E-3 and Schedule 13D are typically filed on the same day with the SEC and amended in response to SEC comments.

- While these documents wind their way through the SEC, the parties obtain any consents or approvals necessary for the completion of the proposed merger. Depending on commercial considerations and the size and structure of the transaction, it may be necessary to obtain consents from parties to contracts with the company or approvals from governmental agencies, such as any necessary antitrust clearance.
- When the proxy statement has been cleared by the SEC, it is printed and mailed to stockholders.
- The meeting of stockholders follows. It has become almost customary to condition the merger on the support of a "majority of the minority." Where such a condition exists, the merger agreement will provide that the transaction will not be deemed to have been approved unless a majority of the "independent" stockholders—that is, the stockholders not affiliated with the proponent of the going-private transaction —vote in favor of the adoption of the merger agreement.
- Assuming that the stockholders approve the merger by the requisite vote, articles of merger are filed with the Secretary of State (or other appropriate authority) of the relevant state. The merger is effective upon filing the articles of merger. The acquiring group deposits the merger consideration with the paying agent for the transaction.
- Promptly after the merger, the company's transfer agent sends a letter of transmittal to each of the company's registered stockholders. This letter explains that the stockholder must execute and return the letter of transmittal to receive payment for his or her shares.
- Stockholders return their letters of transmittal. In the letter of transmittal, the stockholder represents that he or she is surrendering the shares, has full authority to surrender the shares without restriction, and that there are no liens on the shares. Upon receipt of the letter of transmittal and any certificates, the paying agent pays cash to the stockholders.

Conclusion

For many smaller public companies today, being public is more of a burden than a blessing. For these companies, the economic conditions that have driven down stock prices should be seen as an opportunity rather than a curse. It has been said that an entrepreneur is someone who, when he or she hits the wall, searches to find a crack in the wall to slip through. Given shareholder fatigue due to the prolonged decline in public equity values, readily available private capital for equity investment in more mature companies and historically low interest rates, returning a company to private status may be the crack in the current economic wall.

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