TOBIN SOLITARIO
INVESTMENT BANKING Grp.

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WILL INVESTMENT BANKING RETURN TO ITS ROOTS?

We founded Tobin Solitario because we are devoted to serving our clients. We believe that leading and guiding our clients is an extremely motivating and satisfying trade. We also enjoy the industry of investment banking -- the industry of advising clients about matters, financial and strategic, regarding the creation of capital.

Michael Lewis recently wrote an article in Portfolio Magazine called "The End." The article was in December's issue of the magazine and we highly recommend this reading.

In the article, Mr. Lewis tells us that Wall Street is finally, officially over. Mr. Lewis starts by telling us why he left investment banking in the late 1980's. He thought he got out while the getting was good. And then he waited. He waited two decades for the end of Wall Street. He explains what happened over those two decades and how that course led to the recent so-called demise of Wall Street.

The investment banking industry of the Nineties and the Naughts, yes, may certainly be over. But we at Tobin Solitario believe that this, finally, is the opening for investment banking to return to its original roots of client service and real capital creation.

We started Tobin Solitario eight years ago so that we could do what we love to do – advise our clients in mergers and acquisitions, in financings, in financial and strategic decisions. Here's to a bright future for our clients and for the investment banking industry.

GUEST COLUMNIST: In this issue of our newsletter, we have asked a guest columnist to contribute content. Jeffrey Hart, a shareholder of Robinson, Bradshaw & Hinson, P.A., recently wrote a white paper on important issues to consider when selecting an advisor for a capital raise or for mergers and acquisitions. Here is a recasting of the article that Mr. Hart has made specifically for publication in this newsletter.

SELECTING AN ADVISOR TO RAISE CAPITAL OR FACILITATE AN ACQUISITION?

JEFFREY C. HART
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BEWARE OF BROKER-DEALER ISSUES: Many individuals, consulting firms and small investment banks are unaware that engaging in capital raise and acquisition activities for third parties may require them to register as broker-dealers with the Securities and Exchange Commission (the "SEC"). The failure to register can result in the inability of the advisor to enforce fee obligations, the imposition of government sanctions and fines and a prohibition on future securities and acquisition activities.

Section 15 of the Securities Exchange Act of 1934 (the "Exchange Act") requires a person acting as a "broker" or a "dealer" in securities to register with the SEC. Both brokers and dealers are persons who are "engaged in the business" of buying and selling securities. Brokers arrange securities transactions for others, whereas dealers purchase and sell securities for their own accounts. Persons are "engaged in the business" of buying and selling securities if they demonstrate a "regularity of participation" in such transactions. A person's participation in a single, isolated transaction is insufficient to require registration, but the SEC and the courts interpret the phrase "engaged in the business" broadly.

The courts and the SEC have identified a number of business practices that constitute broker-dealer activity. These so-called "badges" of broker-dealer activity include, but are not limited to: (1) actively soliciting buyers or investors for a business; (2) advising buyers or investors as to the merits of a securities transaction; and (3) actively participating in the negotiation or execution of a securities transaction. If a person engages in any of these activities (e.g., a private placement of securities or a business acquisition structured as a stock sale or merger) and receives transaction-based compensation (e.g., a commission based on the size of the transaction or a success fee), the person likely must register with the SEC as a broker-dealer.

A person may attempt to refer to himself or herself as a "finder" and therefore claim an exemption from the broker-dealer registration requirements, but this term is greatly misused in the private placement and investment banking industry. A finder's activities simply fall outside the scope of the broker-dealer definition, as there is not a recognized "finder" registration exemption. Typically, a finder merely locates a buyer or an investor for a business for a flat or hourly fee. After making an introduction, a finder does not conduct due diligence, perform a valuation, participate in structuring the transaction or in negotiations, provide advice to parties, or otherwise facilitate a closing.

The failure to comply with broker-dealer registration requirements may result in a variety of penalties against the advisor, including injunctive or disciplinary action and criminal prosecution and sanctions. Unlawful non-registration also may give rise to state penalties and private litigation against both the advisor and its client. For example, California recently adopted a law that provides an express right of rescission to investors purchasing through an unlicensed broker-dealer.

The author is a shareholder of Robinson, Bradshaw & Hinson, P.A. a corporate and commercial law firm with over 130 attorneys. The firm has offices in Chapel Hill and Charlotte, North Carolina, and Rock Hill, South Carolina.

A favorite QUOTE:

"We spent 20 minutes or so determining that our presence at the same lunch table was not going to cause the earth to explode. We discovered we had a mutual acquaintance in New Orleans. We agreed that the Wall Street C.E.O. had no real ability to keep track of the frantic innovation occurring inside his firm. ("I didn't understand all the product lines, and they don't either," he said.)"

MICHAEL LEWIS

"The End," *Portfolio*, December 2008
www.portfolio.com

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SERVICES: WHAT WE DO

Shareholder Rights Plans

Tobin Solitario provides merger and acquisition advisory services to our clients. The world of merger and acquisition services is quite extensive and incorporates many kinds of engagements and projects.

Shareholder Rights Plans ("SRPs") have always been a strategy that every public company has had to consider over the past two decades. Since the peak of their popularity during the leveraged buyout wave and the height of corporate raider activity in the late 1980s, SRPs have declined in number.

Until now. More publicly traded companies have implemented SRPs over the past twelve months than in either 2007 or 2006. And the number of SRPs continues to increase.

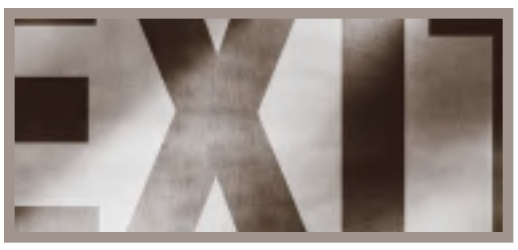
Off course we know why. Most publicly traded companies are now viewed as being undervalued. Boards of Directors believe they have the responsibility to protect shareholders' investments from unwanted takeover attempts at depressed valuations. Hence, the increase in SRPs.

Tobin Solitario works with its publicly traded clients in reviewing the potential extension of an existing SRP or in evaluating the need for the implementation of a new SRP. Tobin Solitario can help your Board of Directors review the company's susceptibility to an unsolicited takeover and can conduct an analysis of the potential impact on shareholder value of an extension or implementation of an SRP.

Tobin Solitario can also help your Board of Directors set the exercise price of the SRP through our sophisticated valuation models and services. We generally employ two broad methods to determine an appropriate exercise price for the client company's SRP.

- The first method examines the exercise prices (expressed as multiples of the companies' stock prices when the plans were adopted) of other plans recently adopted by similar companies.
  - In market conditions like those that we are now experiencing, we augment this analysis to examine multiples of the companies' stock prices at the current time in light of the recent significant market value retrenchment.
- The second method estimates the market value per share of the client company's stock at the expiration of the plan. This method employs different techniques, including the application of observable valuation multiples from similar publicly traded companies to the projected financial results of the client company.

Tobin Solitario can assist your Board of Directors in evaluating the desirability of a Shareholder Rights Plan in light of current economic events and the market environment. Just let us know.



WHAT IS YOUR EXIT STRATEGY?

Tobin Solitario Investment Banking Group recently developed a presentation on Valuations in the SaaS Industry. *Want a copy?* Drop us a line and we will get one to you.

M&A Terminology – A Primer

SHAREHOLDER RIGHTS PLAN:
A Shareholder Rights Plan, or an "SRP" – known in the investment banking vernacular as a "poison pill" – is a plan or policy that is designed to encourage a potential acquirer of a publicly traded company to negotiate with the target company's Board of Directors rather than launch a hostile takeover attempt.

RIGHT:
A "Right" is a non-taxable dividend on the issuer's (target company's) common stock which is triggered when a potential acquirer either acquires more than a set percentage of the issuer's shares or attempts to consummate a merger with or acquisition of substantially all of the issuer's assets.

EXERCISE PRICE:
The price at which each holder of a target company's common stock is able to acquire more shares under an SRP, but with some substantial discounts and relative to the current value of the target company's shares. (Yeah, it gets complicated.) The Exercise Price in an SRP is determined by the company's Board of Directors, typically in consultation with an investment bank, and is intended to reflect the potential value of the Company's stock over the term of the SRP.

Tobin Solitario can help your public company evaluate the need for a Shareholder Rights Plan in this market where your company's market price may be considered substantially undervalued.

WE ARE BLOGGING NOW: Not on Corporate Finance. But we ARE blogging on Kid Finance. Justine Tobin's KidsMoney Weblog is a daily blog with posts to help parents teach their kids about money. JUSTINETOBIN.WORDPRESS.COM.