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TALKINGPOINT: Outlook for the APO market in 2011

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FW moderates a discussion on recent trends and future predictions for the alternative public offerings (APOs) market with Adam S. Gottbetter at Gottbetter & Partners, LLP.

FW: How would you describe APO activity over the last 12 months? Is there a strong appetite for these transactions?

Gottbetter: The total deal value of APOs doubled and the number of deals increased from Q1 2011 versus Q4 2010; however, the total number of deals decreased from Q1 2010 to Q1 2011 by 15 percent, according to DealFlow Media. APO activity has been impacted by the slowdown in Chinese APOs and preference by some investors for registered directs as opposed to the private placement offerings related to APOs.

FW: What benefits can an APO bring to participants?

Gottbetter: APOs provide both much needed capital to private companies as well as liquidity for the shareholders of those companies. Private company shareholders are demanding increased liquidity as evidenced by the tremendous growth of secondary trading platforms for trading stocks of private companies like Second Market. The severe limitation on the availability of IPOs for companies and other liquidity events for private equity will continue to fuel the supply of private companies seeking an APO as an option. Companies like Facebook that have the IPO option can also access the secondary trading platform as shareholders demand liquidity; however, smaller companies do not have that luxury which is why they pursue APOs.

FW: Could you explain the general mechanics and different types of alternative public offerings? How do their structures set them apart from similar transactions?

Gottbetter: Most APOs involve a merger with a publicly traded 'shell' company which typically has limited operations; however, there are a number of key differences with various shell companies. There are shells that have a stock symbol and approved for trading on an over-the-counter market and there are some that don't have a symbol; shells that file reports with the Securities and Exchange Commission and some that don't; and some that have declared themselves as 'shells' and some that are operating companies. These differences are significant and will greatly impact the timing, cost and probability of success of an APO.

FW: What are some of the key procedural requirements involved in executing an APO? What legal considerations need to be addressed throughout the process?

Gottbetter: Procedural requirements include the timing and coordination of the audit of the target company; preparing the offering documents used to market the financing; the merger and related documents prepared by counsel; and obtaining approval from FINRA for the name change and any changes to the public company's authorized capital. These myriad issues need to be coordinated efficiently so that a Super 8-K, which incorporates all of these issues, can be filed and the APO and financing can close.



FW: What advice would you give on managing the risks in APO transactions? How important is the due diligence process and what areas should be targeted for analysis?

Gottbetter: The saying, ‘guns don’t kill people, people kill people’, is very apropos for APOs. It is critical that a company choose advisers, auditors, lawyers, bankers and vendors (e.g., transfer agents) who are both experienced in completing APOs and are reputable. Just as target companies must check references on the professionals they engage, lawyers and bankers must do due diligence on the target company including background checks on key management of the target company and ‘audit’ like checks on customers and revenue sources relating to the target company’s business.

FW: Are you seeing more APOs executed by emerging market companies? If so, what factors are driving this trend?

Gottbetter: The US markets remain the most liquid in the world, and welcome entrepreneurs and companies of all sizes, including those from emerging markets where capital tends to be limited to the largest companies. In addition to China, which has been the source of many deals, companies based in South America are completing APOs in increasing numbers. In addition, US investors are looking for opportunities in attractive sectors regardless of where they might be based.

FW: In your opinion, has there been an increase in regulatory scrutiny of the APO market? If so, what impact could this have on the market?

Gottbetter: There have been a number of positive developments over the past several years as regulators have reluctantly acknowledged APOs. There has been an increase in reporting requirements and the timeliness of those disclosures by companies completing APOs; revisions to rules relating to the resale of restricted stock; review of proposed APOs by FINRA; and increased attention to auditors who review target companies. These changes have helped to raise the bar on the types of companies accessing the APO market and to expose questionable transactions more quickly.

FW: What are your predictions for activity on the APO market through 2011?

Gottbetter: We expect the total number of APOs to increase slightly over 2010 as the demand for companies seeking capital and the APO process outstrips available capital. Although the number of China deals will decrease after years of incredible growth, APOs from other emerging markets will offset that loss. Private equity will have to look at APOs as part of the solution addressing the lack of liquidity for private equity investors. This is driven by an IPO market limited to large companies and secondary trading platforms currently focused on large social media companies. The historical bias by regulators favoring large companies will continue to push small companies to consider APOs which provides the self-determination that entrepreneurs typically crave.

Adam S. Gottbetter is the managing partner of Gottbetter & Partners, LLP, a law firm offering corporate, securities and M&A legal services including supporting the capital needs of public and private companies. Mr Gottbetter specializes in alternative going public structures (APOs) and the GPO in which a company goes public without an underwriter. Since 1993 M. Gottbetter has created a one-stop approach to legal and finance services for public companies. The organization includes Gottbetter Capital Markets, LLC, a broker-dealer licensed with FINRA, which acts as placement agent for raising capital for its clients. He speaks regularly on the issues related to APOs including the upcoming DealFlow Media Reverse Merger Conference in Los Angeles on June 13, 2011. He can be contacted on +1 (866) 586 4098 or by email: ASG@gottbetter.com.