

## Bankruptcy Emergence Communications

### Devising a Strategy

As market conditions have improved over the past 18 months, an increasing number of companies are successfully navigating their way through Chapter 11 and emerging as a restructured company. In 2010, more than 300 companies emerged as reorganized entities, up from 211 companies in 2009 and 151 in 2008.

Certainly, companies entering into a bankruptcy or out-of-court restructuring face complex challenges, with a myriad of communications implications, irrespective of whether reorganization or an ownership change is the ultimate objective. Moreover, for those companies attempting to implement a reorganization, the challenges remain huge – and the communications issues complex – even after emergence from Chapter 11.

During a bankruptcy, of course, each of a company's stakeholders – investors, employees, business partners and, in some cases, even customers – are faced with uncertainty and challenges while the company restructures. Some stakeholders – equity investors, for instance – usually take the biggest hit of all. Not surprisingly, then, upon emergence, these stakeholders often scrutinize each new development to determine whether management and the board have truly embarked on the right path now that the company's balance sheet and corporate strategy are in better order.

In the weeks and months following successful emergence, stakeholders look for greater guidance and reassurance about a company's performance and direction as they will only have a few of the familiar signposts to guide them. Comparative financials are difficult and not necessarily helpful depending on the structure of the new entity, management teams may have changed during the restructuring and the employee base may have been reconstituted. Maintaining the support of all stakeholder groups following emergence can therefore be a tricky and complex task that calls for a specific communications strategy. The following offers several considerations to help guide companies and their advisors in using communications to manage the expectations of debt holders, equity holders, customers, employees and other stakeholders, and to create a "runway" for success post-emergence.

### The Show Me Phase

The overarching communications priority for management and the board during a bankruptcy is for the company to emerge with its reputation intact (and hopefully even enhanced) and its relationships maintained. This can be a formidable challenge as, between filing and emergence, many unexpected issues can arise – business objectives can change or go unmet; market conditions may worsen, and timelines can get extended. To the extent there are bumps along the way, transparency and candor are the best ways to maintain credibility.

The same holds true upon emergence.

Following emergence, a company and its board and management team are essentially in a “show-me” phase. Generally, while actual emergence presents a temporary cause for congratulations, stakeholders will quickly shift their interest to management’s ability to execute going forward. Management should set forth a set of achievable and measurable targets (not necessarily financial) upon which they believe they and the company should be judged in the months and quarters following a restructuring. A management team can only show that it is up to the task afforded by a restructuring once it has established a new track record of success.

A company’s first opportunity to set forth these measurable targets actually occurs long before emergence, that is, within the Plan of Reorganization and disclosure statements that are filed early on in the Chapter 11 process. The Plan of Reorganization, which requires creditor buy-in to get approval, contains elements of the company’s go-forward strategy following bankruptcy. Clearly, a company will want to make sure that whatever is disclosed in the Plan reasonably reflects the structure and strategy of the company once it has emerged, at least as best as a management team can envisage. This way, the story that the company builds post-emergence dovetails in large part with the strategy introduced in the original filing.

### **Take Full Advantage of the Clean Slate Post-Emergence**

Emergence from bankruptcy does more than provide a company with a new lease on life. It also provides the company with a clean slate from which to position itself to stakeholders. Companies should take full advantage of this opportunity to clearly delineate its future from its past. Management should take care to set forth a go-forward strategy and establish the ground rules by which all stakeholders should evaluate success. For example, in most cases, a company will have an entirely new set of financial metrics against which its performance should be evaluated. It also may choose to change the peer set against which it is compared. Emergence provides a good opportunity to do so.

A successful Chapter 11, of course, enables companies to focus on righting their financial structure, jettisoning underperforming parts of the business and improving its overall cost structure. But no company can cut its way to growth. Post-emergence, the company needs to begin to lay the groundwork for where the top-line growth is going to come from and how bottom-line profitability will naturally result. Additionally, a company needs to explain the new capital structure and address why it believes this structure is more manageable than it was before Chapter 11. Of course, the amount of explanation required will vary depending on the structure.

### **Be Prepared for Additional Changes and Developments**

Changes often do not end with emergence from Chapter 11. Many companies re-jigger reporting structures after a bankruptcy because a different structure makes sense for the leaner organization, because of a new strategic focus or because of some natural attrition. Similarly, management may determine that further operational changes are necessary either to meet financial targets or to operate more effectively. Given that some of these developments may not have been expected during the bankruptcy process, companies need to provide stakeholders context for the

changes when they happen and give some indication (when possible) of what this means for the future of the business and whether there are more changes afoot. Without context, these organizational and structural announcements risk being misperceived by stakeholders (e.g., death by a thousand cuts).

Further, a company's strategic plan may not be fully formed and vetted in time for emergence as a new board may want to take the time to evaluate the management team's go-forward strategy, perhaps with the assistance of outside advisors. These processes can complicate management's ability to communicate to investors and other stakeholders with a lot of clarity about what to expect in the weeks following emergence.

### **Addressing Financial Market Audiences**

Post-emergence, a major communications objective is to support the "exit" capital structure while preserving future options. For example, some emerging firms will be purely debt-financed. Others will relist shares immediately. Still others intend to list on an exchange at a later date. Thus, communications must accommodate the current and future plans with respect to debt and equity audiences, even if those may shift over time.

For firms that have immediately re-listed shares, one pressing issue is guidance policy. In terms of guidance, there is no bright line rule to follow. The decision about whether to provide guidance and what kind to provide is entirely unrelated to bankruptcy and emergence from Chapter 11. Rather, it must be evaluated in terms of the particular company, its peer set and whether an outlook (and over what duration) would be particularly helpful to investors and/or analysts in their modeling. For companies that emerge with only publicly traded debt, guidance is less critical as debt holders are typically more interested in whether there is sufficient cash-flow generation to cover its obligations rather than in the company's specific growth prospects.

Companies that emerge from bankruptcy with publicly traded debt or with plans to relist shares on an exchange at some point in the future also need to consider the type of financial disclosure they provide to current and future investors. A company's debt agreements may contain covenants to file quarterly reports and require the disclosure of particular financial metrics. Absent such obligations, a company may want to use emergence as an opportunity to change the reporting metrics it uses – either because the company emerged as a structurally different business for which different metrics are more appropriate or because it wants to position itself differently.

Since debt holders will primarily be interested in the financial metrics, only a CFO actually needs to be on earnings calls. However, companies should consider giving the CEO a role on calls with debt holders as well to provide the broader strategic vision for the company, which will be the foundation for the company's story should it decide to relist on an exchange or seek some other exit strategy.

### **How to Devise the Right Media Strategy**

When it comes to media engagement, one size does not fit all: a number of variables should dictate the media strategy a company pursues post-emergence. These can

include the sector, market context, whether the company is consumer-facing, etc. Retail/consumer companies, for example, often need very strong consumer communications campaigns during and after bankruptcy to retain consumer loyalty.

To the extent that the company has emerged with a new strategic focus, emergence can also provide an opportunity to reposition itself with the media, starting with an attempt to get the “right” journalists to start following developments. Many companies that typically fly under the radar from a media perspective pre-filing can suddenly find themselves getting media attention from hungry bankruptcy reporters who closely monitor filings every day. Emergence can therefore provide an opportunity to strengthen these new media ties as well. In developing the right post-emergence media strategies, a company should consider the following:

Finding the appropriate balance of bankruptcy and sector reporters – sector reporters may be more likely to focus on longer-term strategies, strengths and differentiators but require additional education on the Chapter 11 process

- Consider media briefings in advance of emergence to build relationships with influential reporters
- Be prepared to discuss corporate strategy (post-emergence the company is no longer in a holding pattern)
- Develop a calendar of ongoing opportunities to support the company during its “show-me” phase

## Conclusion

While bankruptcy does herald a new beginning of sorts for those companies using the process to restructure, maintaining the support of all stakeholder groups following emergence can be a tricky and complex task while the management team and board seek to stabilize and grow the business. Companies that have filed for Chapter 11, or are contemplating a filing, therefore need to think seriously about setting the post-bankruptcy narrative well in advance of the actual emergence so that they can be best prepared to meet the many challenges ahead.



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