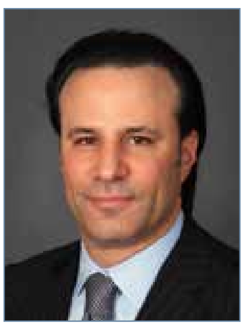
# Investor Meetings: When Board Deference Can Be Fatal

By Adam J. Epstein



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Risk is relative. To the uninitiated, launching at warp speed off a 90-meter ski jump is the epitome of recklessness, while for an experienced Olympian it might be dramatically safer than the drive to the ski jumping facility. Similarly, and convention notwithstanding, a corporate action that might not require any board oversight at one company could very well require extensive review at another.

Small-cap directors need to be proactively involved in myriad issues that would never receive any attention from large-cap directors because potentially business-ending risks are everywhere in most small-cap companies. A good example of that unique need for greater board involvement is investor meetings in advance of a financing.

Because of their balance-sheet strength, large-cap companies often have the ability to opportunistically control the timing of financings, are well known to the investor community, have very actively traded stocks, and are extensively covered by equity research analysts. In addition, their management teams are typically seasoned public company veterans. Therefore, financings—and more specifically, preparations for investor meetings—are predominantly, if not exclusively, management's province.

On the other hand, for many small-cap companies, financings may be time-sensitive matters of life and death, companies are not widely known, and stocks often aren't actively traded or covered extensively by research analysts (if at all). Management teams are often quite new to public company stewardship, corporate finance, and the capital markets. Consequently, it's incumbent upon many small-cap boards to stay apprised of all the elements of a financing from start to finish.

Investor meetings are a considerably more integral part of financings for small-cap companies than they are for larger companies, because in situations in which companies are nascent and riskier, investors are betting as much or more on management than anything else. Moreover, because small-cap companies typically aren't well known, investor meetings are often introductions of both company and management to investors. And since management experience in the small-cap ecosystem can be highly variable, the results of investor meetings can be binary in the absence of board supervision.

### Board Determinations

Given the heightened role that investor meetings play in the successful outcome of many small-cap financings, boards need to consider making some preliminary determinations about how involved they will be in monitoring management's preparation for investor meetings.

An obvious place the board can look to gain some clarity about the relative need for its involvement is the manner in which prior financings were handled (if it's the same management team). That is, if the management team has been successful in a number of previous financings and has demonstrated the ability to present the company to investors with aplomb, then the board might feel that only minimal input is required.

If the management team doesn't have a financing track record, or if they have minimal public company financing experience, or if they have undertaken needlessly dilutive financings, then the board might make the determination that it needs to be more involved, rather than less.

### A Boardroom Checklist

When the board of a small-cap company determines that it needs to be more involved in overseeing management's preparations to meet with investors in advance of a financing, there are a number of issues deserving of attention.

1. **Mock presentation.** Though it happens rarely, one of the best tools in a board's supervisory arse-

nal is to sit through a dry run of the presentation management intends to deliver to investors. In doing so, the board should keep things simple: Is the presentation succinct, engaging, and accurate? Will investors be able to easily understand what the company does, why it's a compelling time to invest, and what the company is going to do with the new capital? Ask any small-cap institutional investor, and they will confirm how often companies fail to clearly communicate the same (especially true of technology and life science companies, due to their technical natures).

2. Banker input. It's a good idea for the board to review the prospective investor presentation with management before any banker input is provided because it's easier thereafter to appreciate and evaluate the suggested changes. Sometimes the input from bankers will be limited to style and formatting, but often bankers will recommend changing the overall tone, nomenclature, business description, financial data, and so on. Officers, directors, and counsel should carefully discuss any suggested changes.

3. Investor selection. While investment banks are paid to, among other things, arrange meetings with investors likely to have an interest in the company, small-cap companies are often too deferential in this regard. More specifically, directors should make sure that management is receiving clear communication from the bankers about the financing strategy and how each prospective investor meeting fits within that strategy. Bankers should be able to succinctly set forth: (a) what types of companies the investors typically invest in; (b) the amount they typically invest; (c) whether the investors have investments in peer companies; and (d) other material anecdotal information about the investors' historic likes and dislikes. Just because investors are good clients of a particular investment bank doesn't mean they are right for your company.

4. CEO comportment. There is discernibly more focus in the small-cap realm on the CEO than there is perhaps in larger company settings, because nascent companies by nature are more dependent on the vision, will, and execution of the CEO. Therefore, boards should consider spending time with less experienced CEOs, and explain the importance of maintaining a balanced, steady demeanor at investor meetings, the tone of the meetings notwithstanding. Less experienced management teams often take rigorous investor questioning personally and too easily lose their cool. Alternatively, collegial investor meetings occasionally bait the less experienced officer into speaking off message.

5. PowerPoint. There are a considerable number of institutional investors who loathe sitting through computerized investor presentations. Directors should strongly encourage management to practice making company presentations without an electronic device.

6. "I don't know." Even experienced officers can benefit from a friendly reminder that these three words are often demonstrably better than the alternative when meeting with investors. Institutional investors don't expect management teams to know everything about the company or the industry. Less experienced CEOs should be reminded of this by the board. Management teams often underestimate how good institutional investors are at listening and taking notes. Consequently, speculative, imprecise, or rambling answers not only routinely fail to impress, but they also might well be turned against the company for the investors' benefit.

7. Regulation FD. A close corollary to speaking too much is saying the wrong thing. While Reg FD is now well engrained in corporate discourse in public companies of all sizes, there are still two situations in the small-cap ecosystem where FD is often skirted: with less experienced management teams, and with experienced management teams of companies that are in dire situations. There are two things that small-cap directors can do to help ensure that Reg FD is obeyed in the investor meeting context. First, they can, together with counsel, remind management prior to the beginning of investor meetings to make sure that the spirit and letter of FD are upheld. Second, they can underscore a point that's easily lost in the investor meeting context: that the vast majority of institutional investors are far from appreciative of disclosures made in contravention of FD.

8. Banker comportment. Directors should encourage management to be vigilant about the conduct of the company's bankers for a simple reason: the bankers are the company's representatives at investor meetings. When investment bankers aren't prepared, appropriately dressed, or spend the entire meeting texting or e-mailing, it reflects poorly on companies. Too many small-cap companies are permissive of the same, and the board needs to remind management that substandard investor meetings ultimately harm shareholders.

## Vigilance Required

The overwhelming majority of public companies is small, and for many of them, financing represents an austere enterprise risk. This risk may be heightened further by, among other things, the fact that many small-cap CEOs and CFOs lack appreciable public company experience (otherwise successful careers notwithstanding). If small-cap companies want to routinely undertake smarter, less dilutive financings, then more board oversight is often required throughout the financing process. Unfortunately, too much board deference in these pivotal situations can prove fatal.