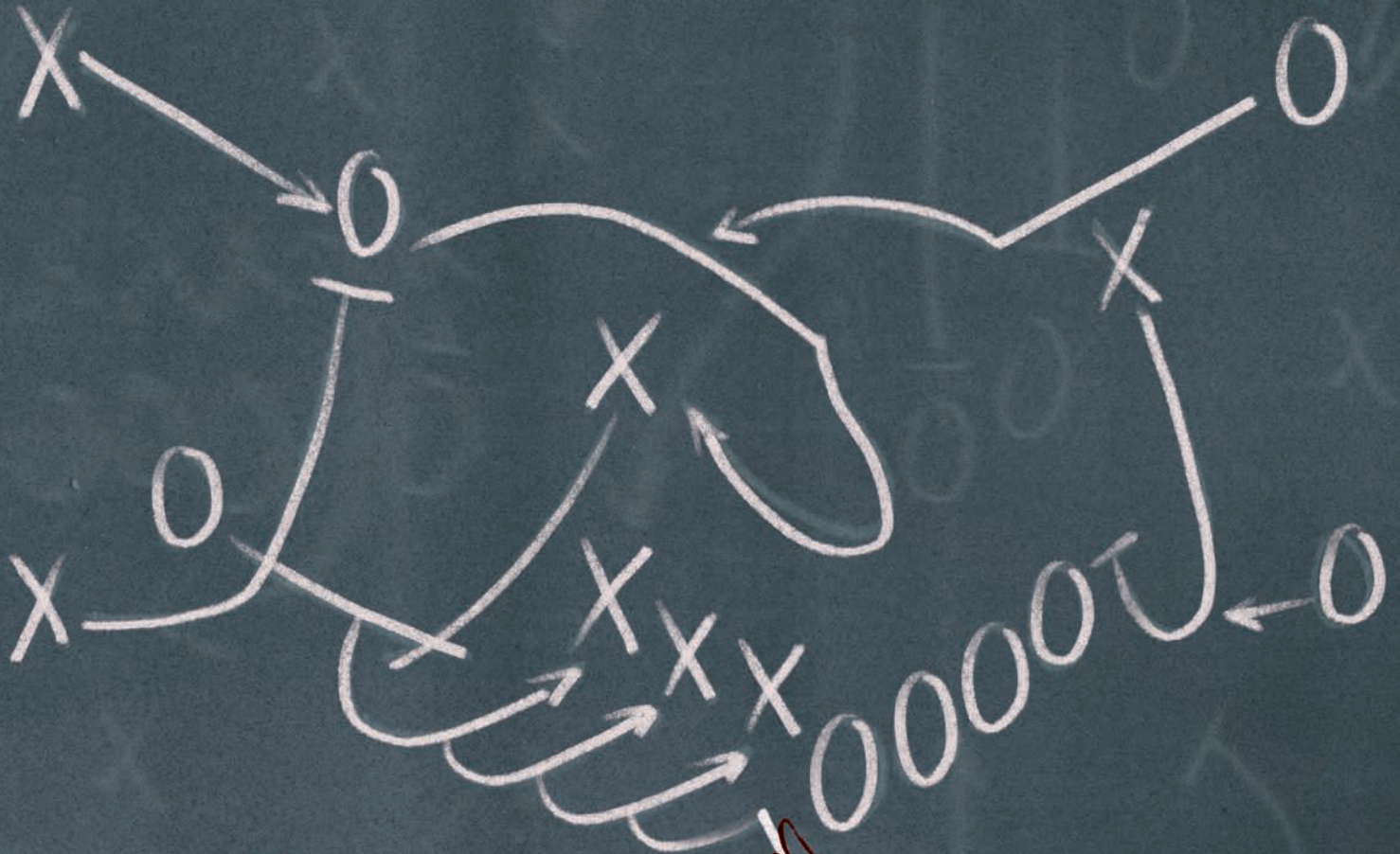


BRUNSWICK REVIEW

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THE Deal ISSUE

LARRY SUMMERS
J.P. MORGAN'S AIYENGAR
JIM CRAMER
MARTY LIPTON
NEAL WOLIN

plus
'DAVID BOWIE IS'

BRUNSWICK

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Good for
shareholders
alone is now too
narrow a test
for any major
transaction

THE BRUNSWICK REVIEW ALWAYS FOCUSES ON A CRITICAL ISSUE FOR our clients, and one where we have deep expertise within the firm. This has never been truer than with the M&A edition. Brunswick built much of its reputation working on the toughest M&A transactions and we have fought to be at the top of league tables all over the world. It was through M&A that we learned about combative campaigns under pressure, rapid response, and a commitment to accuracy and veracity. It was where we got to work with many of the great advisory firms of the world and alongside our clients at some of the most critical times.

The other day, I was given a copy of the *Financial Times* from the 28th February 1987, the day we founded Brunswick. It was full of news on the growth of investment banking, reforms in China, and 11 percent interest rates, but there was also a half-page feature on the increasing recognition of the value of internal communications in takeovers. *Plus ça change ...*

The biggest change in recent times is the recognition of not just internal but also societal and national interests. This is not isolated to deals. Increasingly it is accepted that top executives need a strong social narrative alongside their financial narrative. What is the value of a company to society? CSR alone is not an adequate response and can prove a distraction if it is not properly wired to a company's wider social narrative and accompanied by a strong commitment and ability to listen. Unions, politicians, employees and customers all have a view, and all have a voice that must be heard alongside that of shareholders.

At the same time, we are seeing national interests become a critical part of the conversation around transactions. In many different countries and jurisdictions, both formally and informally, there is much greater political and regulatory debate. The article on CFIUS by Neal Wolin, Brunswick's new CEO and the former chairman of that committee, highlights how technology and the rise of Chinese acquirers are presenting new challenges to regulators, even amid an enduring desire for inbound investment. This is a trend we are seeing not just in the US but in cross-border deals across Europe and the UK. The impact of the changing thinking in China will doubtless become clearer in the year ahead.

In a world where it is no longer enough to be big, one must be enormous, and there are a number of sectors, like media and technology, where scale has become a deal-driving issue. At the same time we are seeing a subtle, but clear, shift from regulation being based around consumer interest to focus more on market or platform dominance. This trend shows no sign of retreating. So, while getting shareholder and media support is as challenging as ever, ensuring regulatory approval in this new environment is significantly different. Good for shareholders alone is now too narrow a test for any major transaction. This shift toward a more holistic stakeholder model is also one of the reasons we believe activism will increasingly be challenged, and I would recommend Marty Lipton's fascinating interview on this topic.

This complex external environment requires a vast set of skills from an advisory firm. Our digital team is extraordinarily creative, our public affairs and regulatory teams are deeply experienced, knowledgeable and integrated, and nearly every major transaction we tackle requires the expertise of our employee engagement and research teams. It may now be stating the obvious, but while the complexity and range of stakeholders and issues continues to grow, the value of good advice is as high as ever. We are experiencing nothing short of what Marty Lipton calls a "paradigm shift." Deal risk has been transformed, and we all have to adapt to the new world. This could be a huge and positive step forward if a broader and deeper understanding of real value creation can support the next generation of M&A.



SIR ALAN PARKER

**CHAIRMAN,
BRUNSWICK GROUP**



24

A NEW NARRATIVE

Chinese companies are set to lead global M&A in 2018, but the reputation of "China Inc." is working against them

6

QUOTES FROM THE ISSUE

"We're going to have a lot of deals in 2018." – Frank Aquila

7

SPOTLIGHT SECTION

Insights from Brunswick colleagues around the world

7 FLIGHTS OF FANCY Everyone has an idea about what Apple should do with its money

8 TILL DEATH DO US PART Mergers don't always end happily

9 THE MYTH OF DEAL FAILURE M&A research is problematic

10 PE'S GAME OF THRONES Private Equity leaders are stepping down – slowly
MiFID II What regulatory changes in the EU mean for businesses

11

GLOBAL CAMPAIGNS

Brunswick Group CEO Neil Wolin and Chair of Global Markets, Susan Gilchrist, on the M&A landscape

INTERVIEW: PETER TAGUE

Citigroup's Co-Head of Global M&A on the trends he's seeing around the world, and what's on his radar

12



12

THE POLITICS OF THE DEAL

Brunswick's Dr Joachim Peter on how businesses can navigate a regulatory nightmare

17

WOLIN ON CFIUS

Neal Wolin chaired CFIUS for five years. He shares an insider's insights on the regulatory body

18

EVERY DEAL'S WILD CARD

Brunswick's Christopher Hannegan says the human element of M&A is all too often overlooked

21



18

BRUNSWICK INSIGHT

Our global survey of the perceptions surrounding M&A. Deals were seen positively; foreign buyers weren't

22



9

- 26** **INTERVIEW: LARRY SUMMERS**
The former US Treasury Secretary talks candidly about the state of the US economy. He's not optimistic
- 30** **INTERVIEW: ANU AIYENGAR**
J.P. Morgan's head of M&A North America is one of the most powerful women on Wall Street
- 34** **ONE SHARE, ONE VOTE**
On boards the world over, Dr Daniel Summerfield votes on behalf of one of the UK's largest pension funds
- 36** **INTERVIEW: MARTY LIPTON**
The legal guru and corporate defender is receiving more calls from European companies
- 40** **WELCOME TO THE JUNGLE**
The CEO of the world's largest animal health company faced tremendous challenges early on
- 43** **INDONESIA'S FINTECH REVOLUTION**
Brunswick talks with Go-Jek CEO Nadiem Makarim
- 45** **AN UNLIKELY CROSS-BORDER**
CEO Stefan Borgas tells how Austria's RHI and Brazil's Magnesita Refratários merged
- 46** **INTERVIEW: JIM CRAMER**
The "Mad Money" host has a message for CEOs: "Come on TV and make your case!"
- 50** **TRUMP VS WORLD**
The US is disrupting the World Trade Organization's global system, argue Brunswick Senior Advisers
- 52** **BUFFETT'S BUY-AND-HOLD**
Warren Buffett's writer and editor of choice reveals why companies happily sell their businesses to him at a discount
- 55** **INTERVIEW: FRANK AQUILA**
Over a 35-year career in American corporate law, he has worked on a huge number of high-profile deals. He talks taxes, Trump and 2018 predictions



30



46



60



80

INTERVIEW: FRANCESCO GIANNI
The leading M&A lawyer tells Brunswick he sees a growing wave of deals in Italy and Europe

57

IRRATIONALITY IN THE ROOM
Human biases influence deals just as much as balance sheets

59

SOCIAL MEDIA'S DEAL
A digital strategy for M&A is a requirement today, not simply an optional feature

60

BUYER BEWARE
Hidden cybersecurity threats can deal a serious blow to any merger

64

AN "AUDACIOUS" ACQUISITION
Omantel's CEO Talal Al Mamari tells Brunswick about leading the largest deal in Oman's history

66

THE TEXTBOOK ON M&A
Dr Patrick Gaughan's book is still studied, and has even made an appearance on a popular TV show

68

BURROUGH ON BARBARIANS
How a bestseller on the RJR Nabisco takeover changed Wall Street

72

M&A AT THE MOVIES
Dealmakers haven't received the kindest treatment on the big screen

74

Stories on art, business, and politics beyond our main theme

76

"LAST MAN" PERSPECTIVE 76
TEPCO Chairman Takashi Kawamura talks about the Fukushima disaster and a new mindset for Japanese businesses

"DAVID BOWIE IS" 80
An exhibit showcasing David Bowie's legacy is traveling through cities the late artist called home

SAVING KANSAS CITY 85
Former mayor Carol Marinovich on how she revitalized a struggling city

CRITICAL MOMENT 86
The Armistice that ended World War I also helped lay the foundations for World War II

WIDE ANGLE

QUOTES

“During the Obama Administration, we (CFIUS) spent a lot of time working hard to get to yes on these deals. In the current CFIUS, my impression is that there has been perhaps a bit less energy directed toward that getting-to-yes effort”

NEAL WOLIN
Brunswick Group CEO
pg. 18

“I kind of feel like we’re living on borrowed time”

LARRY SUMMERS
Former
US Treasury Secretary
pg. 26

“Cross-border (M&A) has actually gone up. And that trend could continue, because we are at a unique moment in time when pretty much every part of the world is growing”

ANU AIYENGAR
J.P. Morgan
pg. 30

“When you don’t want to put the CEO on TV, I immediately start wondering, OK, well, what’s wrong here? Is there something that they’re hiding?”

JIM CRAMER
Host of CNBC’s “Smart Money”
pg. 46

“The single most significant development has been that some of the major activists have essentially shifted so they no longer promote financial engineering or short-term changes”

MARTY LIPTON
Legendary corporate defender
pg. 36

“The notion of M&A being a permanent part of a company’s corporate tool kit is now firmly embedded in business culture on a global basis”

PETER TAGUE
Citigroup
pg. 12

JUAN RAMÓN ALAIX
Zoetis CEO
pg. 40

“Bill Ackman called me and said, ‘I want to tell you that I bought a little more than 8 percent of your company, and it will be in the news tomorrow’”

“We had fewer deals in 2017 than we should have had because a lot of companies were waiting to see what was going to happen with healthcare reform, and also tax reform. But we’ll make up for it in 2018. We’re going to have a lot of deals in 2018”

FRANK AQUILA
World-leading M&A lawyer
pg. 55



View from the Valley:
**Flights of fancy,
dead weight**

by Eric Savitz

FOR YEARS NOW, THE MEDIA and their friends in the pundit class have had a field day telling the world's biggest tech companies how to spend their billions of dollars in stashed cash. It's an irresistible parlor game. Apple, Google, Facebook, Microsoft and Oracle together have more than \$600 billion in cash and investments. It drives some people half-crazy that Apple in particular has enough cash to acquire almost any company this side of Berkshire Hathaway, but historically has made very few large acquisitions. Some of the others in that group are a little more acquisitive, but nonetheless continue to sit on mountains of long green.

One complicating factor has been that most of that cash sits offshore for tax reasons. But with recent changes in US tax law, conditions for cash repatriation have improved – and that could trigger a more active M&A market in tech. What is surely going to follow is widespread speculation by investment bankers, M&A reporters and equity investors about who is going to buy whom. And here's the thing: they will generally all get it horribly wrong.

Try this. Type "Apple should buy" into Google search. Here's a sampler of the results:

- "Could Apple Buy Disney?"
Forbes, December 16
- "Why Apple Should Buy Netflix,"
Bloomberg, November 7
- "Why Apple Should Buy Sony,"
Monday Note, October 1
- "Apple Should Buy GoPro,"
Motley Fool, September 26
- "Apple Should Buy IBM,"
Forrester Blog, June 29
- "Apple Should Buy Athenahealth,"
CNBC, June 15
- "Why Apple Should Buy
Sirius and Pandora," Barron's,
December 14, 2016

- “Why Apple Should Buy McLaren,” Gizmodo, September 21, 2016
- “Apple Should Buy Tesla – And Make Elon Musk CEO,” Marketwatch, May 7, 2016

This behavior runs deep. A few historical gems:

- “Should Apple Buy Dell?” Forbes, February 11, 2013
- “Why Apple Will Buy BlackBerry,” SeekingAlpha, October 13, 2013
- “Could Apple Buy Intel?” The Guardian, April 29, 2013
- “Why Apple Should Buy Nokia,” Forbes, October 6, 2012
- “Why Apple Should Buy Yahoo,” Forbes, February 22, 2012
- “Four Reasons Why Apple Should Buy HP,” IT Pro Portal, August 22, 2011

Of course, *none of those happened.*

YOU CAN PLAY THIS GAME WITH the other cash hoarders:

- Google should buy, apparently, Dropbox, Twitter, Groupon, HTC, Nintendo, The New York Times and Amazon. (That last one was from 2011; it’s now silly on the face.) One story suggested Google ought to buy the entire music recording industry.
- Microsoft, according to the historic headlines, should buy HP’s PC business, Red Hat, Citrix, Salesforce, Slack, DocuSign, AMD, Netflix and, here’s a nice one, Ford.
- Facebook’s shopping list, apparently, should include Twitter, Vimeo, Slack, Groupon, eBay, Pinterest and Hulu.

No one really knows what Apple or the others are going to buy, if anything. But nature abhors a vacuum; so do reporters, and speculative M&A stories always generate readership.

There is no question that Apple and some of their tech kin have way, *way* more cash than they need to run their business. But while imagining all the possibilities, I would keep in mind this headline from Gizmodo in May:

- “Apple Doesn’t Need To Buy Anything.”

Eric Savitz is a Brunswick Partner based in San Francisco.



MERGER *mystery*

Excitement for a union is no predictor of what comes next, says Rob Webb

WHEN COUPLES MARRY, THEIR union is often perceived, at the altar, as a coming together of equals – a partnership which will endure to the benefit of both. The reality, as many married folk will attest, can be very different a few years down the line, with one partner soon to be in the ascendant, and the other sent out to work.

So it is with mergers and acquisitions: true examples of blissful union are rare; the rougher variety are much more common. The “cost synergies” envisaged by the consultants cannot be released as hoped; the “revenue synergies” either do not materialize, or competition authorities seek to make sure that real choice in a marketplace is

not restricted, so that withdrawal of competing products, or the raising of profits created by any withdrawal of supply, are either strangled at birth, as a term of the deal, or prove impossible to achieve in practice. Sometimes the most difficult decisions are left until last: for instance, which Chairman or CEO will stand aside. No one dares raise the matter too early, in case the deal falters on other grounds and they both survive. But when all the other details are agreed, it is too late. Most top brass are trained to recoil when they hear the tumbrils.

Much of this M&A activity is stimulated by advisers, cold calling, “Have I got a deal for you?” “Widget & Co have been asking if we could introduce them to you.” “Did you know that X Co are up for sale? Just a word to the wise”... Advisers,

who may have been acting for nothing, or for peanuts, for years, normally get paid out when a deal occurs (before it actually delivers value), and so are naturally keen to see them happen from time to time. They are not then on earn-outs; they collect on the signing. Management are left to execute.

These siren voices can lure the hapless CEO, entrenched in the mud of his or her own business, with no clear plan ahead, on to the rocks, even if the shareholders have lashed them to the mast with share options and generous long-term incentive plans to prevent them from listening. They may get a bonus too, and lots of options when the deal is inked.

No one knows at the start if a “merger” will work, any more than they do with a marriage. There are plenty of celebrations on Day One, but the wakes come later, when reality dawns; the benefits have not accrued, the costs are still there, the culture wars are in full flow between acquirer and acquired, and the investors are asking why they have had no extra returns, and also why they find themselves in a conglomerate, rather than a business with a single issue focus. The sirens have meanwhile long gone off to sing to other corporate mariners.

When British Airways moved into the then-new Terminal 5 in 2008, Lord Marshall, former BA CEO, was asked what he thought the main benefit would be. He replied that he thought it would help the merger of BEA and BOAC. This happened in the ’70s, but it left two companies wearing a single uniform, each harboring deep suspicions of the other. Lord Marshall was, as ever, correct.

“M&A” is an essential force in capitalism for progress and for “creative destruction.” The purpose of this note is to observe that it can also give rise to false optimism and wanton, rather than creative, destruction.

Look before you leap. Or, if you are the CEO, think about it.

Rob Webb QC is a Brunswick Senior Adviser based in London.

The MYTH of deal failure

Simon Mackenzie Smith, chairman of UK and Ireland Corporate Investment Banking, talks with Brunswick's Simon Sporborg and Rosheeka Field

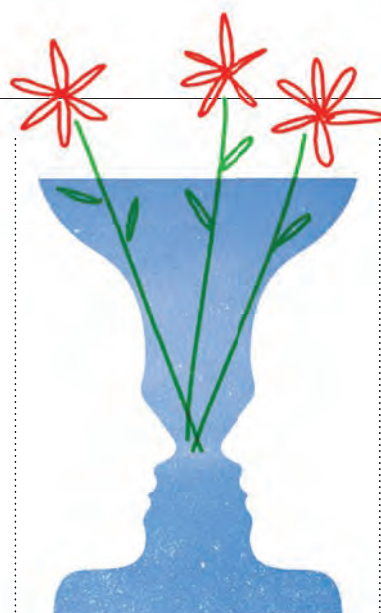
AS CHAIRMAN OF UK AND Ireland Corporate and Investment Banking at Bank of America Merrill Lynch, Simon Mackenzie Smith is well aware of research suggesting that a high percentage of deals destroy value for acquiring companies.

Yet Mackenzie Smith believes that deals remain a smart way for companies either to boost their share of existing markets or diversify into new ones. As a banker who has advised on and financed deals dating back three decades, he has seen firsthand the benefits that can accrue. His own

experience has convinced him that success often takes time, and must be measured over the full lifecycle of a deal – right through to and beyond integration of the target company, a process that can take from 18 months to three years.

That underscores a limitation of research on deals. Invariably, it is short-term, because the long-term effect is muddled by a range of factors potentially including other deals, economic swings and management turmoil. Unlike medical trials, which control for so-called confounding factors, acquisition research often fails to account for other, often-unforeseen influences. “Life often turns out differently,” says Mackenzie Smith.

Concern about showing short-term success can be counterproductive, Mackenzie Smith argues. Often, the premium paid for an acquisition can look value-destructive for the acquirer and great for



target shareholders, at least in the short term. And to counter that perception, acquirers can make the mistake of engaging in unsustainable cost-cutting or ineffective integration – moves that can thwart the long-term benefits of a deal.

Mackenzie Smith also notes that research into the success of M&A lumps all mergers

and acquisitions together. The purchase of a mid-sized competitor in an existing market is altogether different from a hostile takeover that crosses multiple borders and diversifies the acquirer into new territories.

Mackenzie Smith says that boards and advisors are well aware of the uncertainties surrounding deals, and in many cases have raised the bar for deal metrics. Whereas it once was sufficient for a company to deliver earnings per share improvement to justify a deal's success, this is no longer enough – particularly in today's low-interest environment, says Mackenzie Smith. He says boards and advisers increasingly demand clear strategic rationale, seek relatively quick financial returns or new expertise (especially technological expertise), and focus on cost-cutting, managed integration and retention of key personnel.

Perhaps that helps explain recent research from the City, University of London's Cass Business School M&A Research Centre, along with Willis Towers Watson. This research indicates that the short-term success rate of M&A deals for acquiring companies may be improving. Data going back to 2008 show that for deals over \$100 million, acquiring companies outperformed the market by 3.5 percentage points during the quarter a deal was completed. Looking only at the last three years that improvement over the market increases to 4.8 percentage points.

Concludes Mackenzie Smith: “In my experience, those companies that tended to make the best successes of acquisitions were those that looked to re-energize the acquired business rather than simply consolidate it, and where a large acquisition or merger is used to reshape the business model of the acquirer.”

Simon Sporborg is Brunswick's UK Managing Partner. Rosheeka Field is a Director. Both are based in Brunswick's London office.

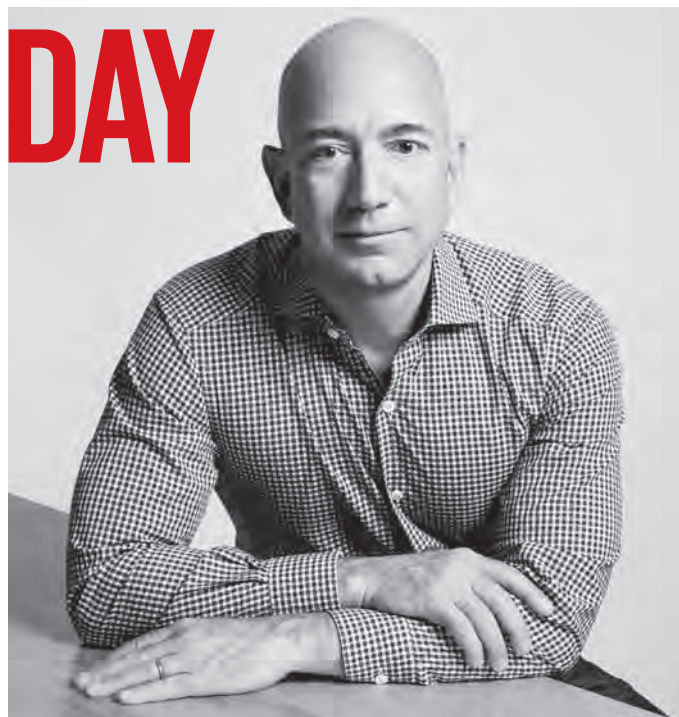
Not a bad DAY

WHEN THE MARKETS CLOSED IN the US on October 26th, 2017, Jeff Bezos's net worth was \$82.8 billion. A day later, on the back of Amazon's strong earnings results, it was \$93.1 billion, making him the richest person in the world.

Over a span of 24 HOURS, Jeff Bezos's net worth had increased by

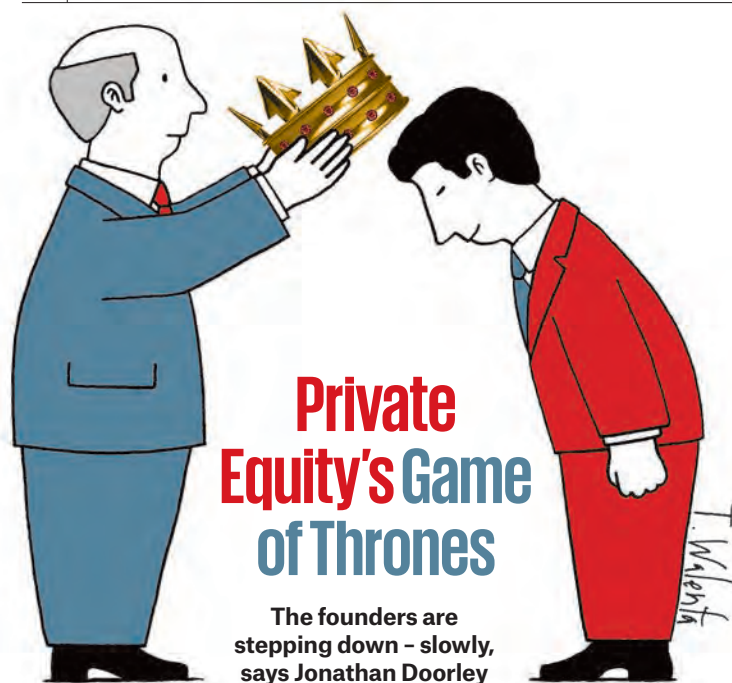
10.3

BILLION. To put that in perspective, that's roughly:
\$429 million per hour
\$7.1 million per minute
\$119,212 per second



Bezos earned more in a day than he previously had in a decade. Following Amazon's IPO in 1998, Bezos had a listed net worth of \$1.6 billion. In 2007, he was at \$4.4 billion, an increase of \$2.8

billion – a big jump, but roughly equal to only seven hours of October 27. And the good times keep rolling. Immediately after Black Friday, Bezos's net worth topped \$100 billion.



Private Equity's Game of Thrones

The founders are stepping down – slowly, says Jonathan Doorley

PRIVATE EQUITY EXECUTIVES have long invested in businesses in need of capital and expertise as they transition from founder-led organizations to more sustainable institutions. Now those buyout barons – most of whom founded their firms decades ago and are in their 70s or 80s – are taking a hard look at their own benches to identify and appoint successors to lead their firms into the future.

Blackstone, Carlyle, KKR and Apollo – the four largest publicly traded global alternative investment firms – have all announced formal succession plans since July 2017. Private

equity firms have always tended to move in a pack, but the clustering of succession announcements highlights how critical this issue has become for both limited partners and public shareholders.

The firms have all appointed presidents or co-presidents in their 40s or 50s to oversee day-to-day management, with the aim of preserving culture while positioning the firm for the decades to come.

However, they also all said their founders would continue to be actively engaged and were not yet retiring, despite the transfer of more prestigious titles to a

new generation. The founders appear willing to loosen the reins, but not to let go entirely.

Blackstone, the industry's behemoth with \$430 billion in assets under management, was the last one to announce. In mid-February 2018, it named 48-year-old Jonathan Gray as President and Chief Operating Officer – though the second line in the company's press release made clear that Gray was still reporting to Stephen Schwarzman, Blackstone's Co-Founder, Chairman, and CEO.

Founders across all industries eventually grapple with how to build an enduring institution and preserve legacy. In private equity, the stakes are particularly high: the fiercely competitive

industry is full of larger-than-life founders and controls more than a trillion dollars of assets. Meanwhile, a new generation of leadership is anxious to make their own mark.

With all the unknowns in this process, the only certainty is that preparation will pay off. Those firms that engage in a thoughtful transition process, well communicated to both the investment community and employees at the appropriate time, will be the ones best positioned to separate themselves from the pack once and for all.

Jonathan Doorley is a Brunswick Partner based in New York who specializes in financial situations.



What MiFID did

Global markets brace for EU financial regulatory changes

THE EUROPEAN UNION'S revised Markets in Financial Instruments Directive, or MiFID II, came into effect at the beginning of 2018, an update of the existing framework for regulating investment services companies. While predictions of its effects ranged from the merely dire to the apocalyptic, early signs indicate far less dramatic consequences.

Still, the changes are significant. MiFID II requires fund managers to pay banks and brokers directly for analyst research, instead of receiving research for free with the cost reflected in trading fees. This could cause a drop in good quality research from sell-side firms, particularly for small- and mid-cap stocks. Such changes

raise other questions; for instance, if fewer analysts cover a stock, how will the market reach a consensus?

Though it targets the EU, markets from the US to Asia are bracing for aftershocks. Trading, transaction reporting and client services to IT and HR systems could all be affected. The aim is to provide better value to investors, but an unintended effect could see liquidity in certain stocks reduced, creating more volatility.

Companies will need to articulate any investment case more clearly, and utilize digital media in a way that ensures they punch through the wall of noise to reach their audiences.

Amelia Pan is a Partner in Brunswick's London office.



"David was our CEO before the merger. This is our new CEO, DavidBob."



NEAL WOLIN, GROUP CHIEF EXECUTIVE OFFICER SUSAN GILCHRIST, CHAIR, GLOBAL CLIENTS

FOR THE DEALS EDITION OF THE *BRUNSWICK REVIEW*, WE interviewed chief executives, bankers, lawyers, public officials and financial journalists and found that a consensus emerged: doing deals is harder than it used to be, especially across borders. It's harder because target assets often include technology that might raise national security concerns. It's harder because asset prices have risen steadily, elevating premium expectations. It's harder because shareholders are no longer the only constituency that needs convincing. It is harder because social-media platforms have given a voice to the masses. It is harder because workers around the world increasingly want something more than a paycheck: they want to know that their employer is seeking to improve society. It's harder because these concerns haven't escaped the attention of politicians.

Yet our research also unearthed a second consensus: M&A is more crucial than ever. Growth remains the primary motivation, for acquirers and the acquired. Today, the pressure for growth is unprecedented because of activists whose focus is hardly limited to fast-paced industries. Consumer-products

companies long viewed as steady if stodgy are suddenly facing demands to show growth or break up. Another driving force is the recognition that technology is not an industry. It is a huge component of growth in all industries, and the fastest way to capture its advantages often is through acquisition. Finally, as was ever the case for humankind, untapped geographical markets beckon, and the least-difficult path to global expansion typically is paved with acquisitions.

How to achieve what's difficult in the pursuit of what's vital is the theme of this *Brunswick Review*. The insight we offer comes from M&A bankers from Citigroup and J.P. Morgan, from lawyers including Marty Lipton and Frank Aquila, from the experiences of executives like Warren Buffett, and from financial journalists including CNBC's Jim Cramer. They argue that acquisitions require more diligence than ever, along with a narrative that must be communicated to a variety of audiences in a targeted, sensitive and comprehensive way.

These extra hurdles may reduce the risk of unpleasant surprises once a deal closes and the truly hard work begins. Research shows that the long-term success of a merger depends on consistent and continual post-merger communication with investors, the public and employees from both companies until, in every important way, the two are one.

PETER TAGUE, WHO'S BEEN WORKING ON DEALS FOR

more than three decades, is especially focused on the geopolitics of cross-border deals these days. "It matters in M&A in a way that it hasn't historically," he says. • Tague was named Co-Head of Citigroup's Global Mergers & Acquisitions group in 2012 and, since then, Citi has advised on more than 1,100 deals with a combined value in excess of \$2.7 trillion, according to data from Acuris (formerly Mergermarket) and Thomson Reuters. • In late 2017, when megadeals such as Broadcom-Qualcomm, Disney-21st Century Fox, and

GLOBAL CITI-SCAPES

CVS-Aetna Health were closing out another strong year for M&A, Brunswick met Tague in Citi's office in west Manhattan. The room boasted a clear view of the glimmering Hudson. Off in the distance, small but unmistakable, stood the Statue of Liberty. We spoke about the global M&A landscape, though our conversation often returned to geopolitics. • "Today, it's increasingly common for us to have at least one government entity with a seat at the table; and, often, more than one playing an integral role in a transaction," says Tague. "But, as someone who worked on the Dubai Ports World transaction in 2006, it's clear this sense of nationalism and protectionism in a deal context isn't entirely new, either." • Tague is a voracious reader, with

PETER TAGUE, head of one of the largest M&A advisory groups on Wall Street, shares his global outlook with Brunswick's **EDWARD STEPHENS**



the voluminous knowledge you expect from a leader of one of Wall Street's largest cross-border advisory businesses. His daily online intake includes *The Wall Street Journal* and Stratfor, a geopolitical news platform, and has recently expanded: "I'm spending a lot more time reading blogs and newsletters around the hedge fund activist activity," he says. Still, he manages to sneak in non-M&A themed material as well. When we spoke, he had just finished Yuval Noah Harari's acclaimed non-fiction work, *Sapiens: A Brief History of Humankind*.

But he stresses that the strength of his team at Citi means he doesn't need to know all the answers himself. "I'm very fortunate that I have 25 Managing Directors sitting next to my office and when I ask any one of them a specific question,"

Tague says, "they'll probably be smarter and better-read and more thoughtful about it than I was."

Though we spoke at length about the myriad challenges facing dealmakers today, Tague remains fundamentally optimistic about the future of M&A. Yes, there are new obstacles to be overcome today, but he says that every era has had its own set of challenges.

"What our industry has demonstrated time and time again," he says, "is that, wherever the lines get drawn, however the rules get written, we will work within the constraints that we're given, and we will provide creative, value-adding solutions within those constraints."

What advice do you lead with when talking to boards and CEOs?

If boards stay focused on strategy and their shareholders, they're going to end up in the right spot. You won't necessarily always get a deal done, but you'll end up in the right spot. So we always start with a defensible strategic rationale for the transaction itself. If the deal can't pass muster on its own merit, then let's all set down our pencils and get on with something else. If that strategic merit is based on dominating a particular sector, well, we can put the brakes on because every nation has some version of antitrust regulations.

But the subtler issues of national security or currency controls, the nuanced questions of market definition around antitrust – those take real work to understand. It probably doesn't take me very long to identify a North Korean buyer of US nuclear power assets as being a non-starter. But there are a host of transactions that I see every day that are far more debatable and far less black and white than that.

How often do these debates result in deals not going forward?

It happened this morning, actually. I have a foreign client looking at an asset in the US. I shared that there are challenges around that asset's ownership that make getting a deal done less likely. And the asset quality itself would require an enormous investment to bring it to the same standard as my client's existing operations. So, I basically said, "I'm in the deal-doing business. If you tell me that you really want to give this a go, we'll think hard about it. But my advice to you is: let's look for the next opportunity." And they agreed.

There are very few right and wrong answers to the questions we get asked. We occasionally get asked a simple question like, "How did you calculate the weighted-average cost of capital in this discounted cash flow?" That's pretty rare. Not a lot of boards are really spending their time asking that question. Nor should they be. More often, we get complicated questions with no right or wrong answer, where it's a question of judgment. And 30 years of experience gives me the basis for some level of judgment. But it also has taught me that I'm as fallible as the next guy.

2017 was a strong year for M&A. How much of that was driven by cross-border transactions?

It was a strong year, both in terms of volume and number of transactions. But cross-border deals are down. If we stripped out Broadcom, which had a massively distorting effect by the sheer size of it – and there are some complexities depending on how you define Broadcom's domicile – then in terms of volume, cross-border activity was down in every single market other than transatlantic.

One of the biggest reasons is that cross-border activity tends to revolve around larger transactions that bump up against regulatory issues that in-market, domestic deals sometimes don't. And those issues can run the gamut

"If boards stay focused on strategy and their shareholders, you're going to end up in the right spot. You won't necessarily get a deal done, but you'll end up in the right spot"

**"The notion of M&A
being a permanent part
of a company's
corporate tool kit is now
firmly embedded
almost on a global
basis"**

from antitrust to national security concerns to questions of taxation or employment. It can get complicated pretty quickly. Investment Canada, for instance, considers different things than CFIUS [the Committee on Foreign Investment in the United States] does.

The challenges involved in cross-border deal-making have always been present, to some extent, but it's certainly been building.

Are there landmark transactions that have contributed to this tide of opposition?

There are certain, narrow regulations that you might associate with a reaction to a transaction. But in most cases, there were probably a number of transactions that accumulated into a reaction.

For example, increasingly stringent controls have been put on Chinese companies doing outbound M&A by the countries where the target companies reside. That could be CFIUS in the US, but it could just as easily be the UK or Germany. But there are also restrictions on capital flows out of China that have been put on Chinese acquirers by SAFE, the Chinese regulatory body.

There probably were some specific Chinese outbound transactions that triggered a reaction. A few companies got a bit ahead of themselves on deals that would have made less strategic sense, and were more about getting deals done than getting smart deals done.

What are the other cross-border deal issues you're seeing today?

They broadly fall into three buckets. One, money, which boils down to investment, taxes and employment. Two, national security, which is obvious enough. And three, antitrust.

There's also a fourth bucket, about proper operatorship. This applies when you have an industry-centric regulator – in energy or nuclear power, for instance. Those regulators are still concerned with national interests, just pursued around a particular industry. But that fourth bucket tends to be more fragmented. The first

three are written at a national level and tend to apply at a national level. Additionally, we're much more conscious than we used to be about how the political messaging on very large transactions is going to read. And that doesn't matter what market we're in. In an environment where the internet has given everybody a megaphone, I think it has become much harder to ignore the local politics of any particular transaction.

Do you have a sense of how CFIUS is going to look under the Trump administration?

There is obviously regulation in place today affecting a large number of transactions – there's a record backlog of deals pending CFIUS approval. The volume of transactions being referred to CFIUS is also at an all-time high. How CFIUS approvals have changed or will change under the current administration is still unclear.

There are two quite similar versions of new CFIUS regulation that have been put forward in Congress at this point. It is not clear what the timing is or what ultimately those bills will look like. But it has become more difficult to get transactions done in the US for certain foreign buyers, and it will likely become still more so.

But I'm still optimistic: it's unusual to find something that is just, on its face, impossible to see work. Those transactions tend to never get to CFIUS because they're so obvious.

What are the most common frustrations for your clients facing CFIUS review?

One is its relative opacity. When it comes to issues of national security, however, as a US citizen, I'm happy for that opacity. That goes to the heart of the issue, which is national security.

All of us, as citizens, are concerned about defending our own country – that's not true for just the US. And I don't think, as an M&A banker, that it's my job to start instructing countries on where the bounds of their national security interests lie. However, it is my job to try on behalf of my clients to make sure that we are coloring within the lines, and that we are maximizing their interest within the scope of what is legal and permissible.

Are you seeing a CFIUS-style approach become more popular across Europe?

Absolutely. Many Western European countries have moved from a historic scrutiny of cross-

border transactions related more to investment and antitrust, to concerns more in the national security arena. At a populist level, the trends across the continent are toward more of a nationalist agenda. But we're seeing some encouraging signs. The Siemens-Alstom rail transaction announced recently was a cross-border deal that was clearly supported by the French and German governments and has an enormous amount of industrial merit to it.

When we start seeing European governments being more proactive about making their industrial base more sound, with good-quality strategic deal-making regardless of location, and having the governments themselves help those companies through the process, that's massively encouraging. I hope we see more of it.

Globally, a similar narrative seems to emerge: deals are facing unprecedented scrutiny. Are you optimistic about meeting these challenges?

There's no question. I am bullish in a fundamental way about M&A because the market continues

to value growth and our clients are increasingly sophisticated. The notion of M&A being a permanent part of a company's corporate tool kit is now firmly embedded in business culture on a global basis.

There are some markets, one could argue, which are still relatively nascent, but for the most part, M&A is seen as an important tool for value creation.

It's not the answer to everything. But it is something that every prudent board and management team is thinking about all the time, not as a once-every-10-years event, but as a matter of course.

Yes, there are more challenges today – but there were more challenges five years ago than there were five years before that, and corporate transaction activity has overcome those issues.

I have a great deal of optimism that that will continue to be true: the landscape will become more difficult, and we'll rise to the occasion.

EDWARD STEPHENS is Deputy Editor of the *Brunswick Review*, and is based in New York.

PETER TAGUE

Named Co-Head of Global M&A Business at Citigroup in 2012, Peter Tague serves as Managing Director of Citigroup Global Markets Limited (formerly, Schroder Salomon Smith Barney). He has been with Citigroup since 1994.



"Furthermore, both parties agree that all deal communications will take place within the so-called 'confidentiality bubble.'"

ILLUSTRATION: KAAMRAN HAFEEZ

Through the LOOKING GLASS

Politics is the one path that can lead a company most reliably through a regulatory nightmare, says Brunswick's **DR JOACHIM PETER**

THE GLOBAL ECONOMY OFFERS A WORLD OF opportunities for growth. However, time and again, businesses face obstacles that they cannot surmount by technical, legal or financial means. Typically, these come down to challenges of public policy – a set of rules, conventions and idioms unique to each country. Summed up in one word, regulation, these challenges can hang over business deals like the Sword of Damocles. Behind those challenges are policymakers – politicians sensitive to a whole host of concerns far beyond the deal itself.

A case in point: Midea, a Chinese electrical appliance maker, raised the German government's hackles with plans to buy a stake in the German robot maker Kuka a few months ago. Minister of Foreign Affairs Sigmar Gabriel launched an inquiry to determine if this deal would endanger the nation's "public order or security," throwing the acquisition into serious jeopardy.

With Brunswick's help, a dialogue was opened with policymakers that provided some touchy moments but eventually led to a green light. Today, the Chinese firm holds around 95 percent of Kuka's shares. Midea and Kuka have since been striving to drive the company's growth. "We want to become No. 1 in the Chinese robotics market," said Kuka CEO Till Reuter a few months ago.

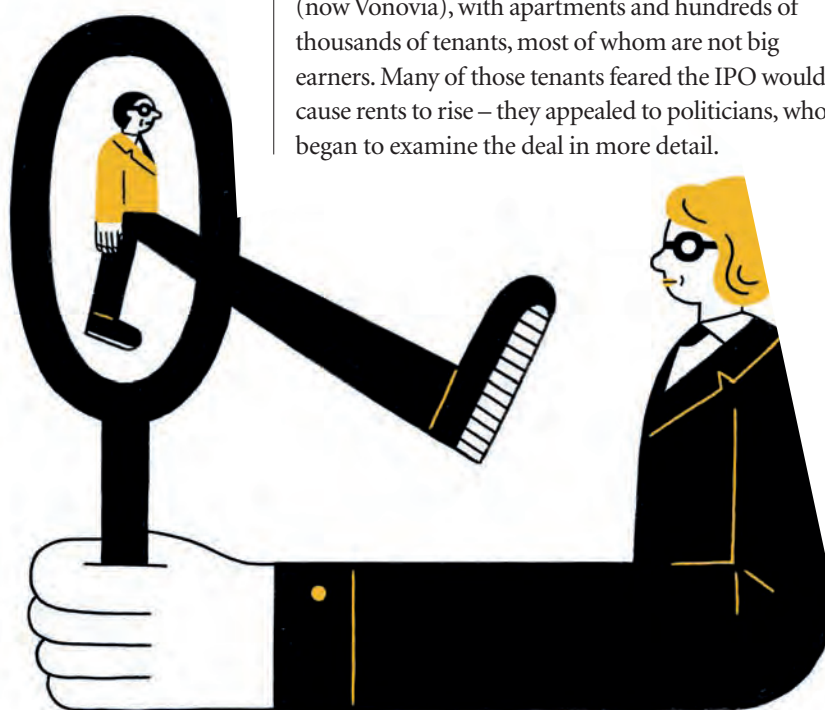
Recently, a CEO admitted to me, "I don't know anything about politics! You're going to have to explain this to me." That's hardly uncommon. But companies that ignore the political element do so at their own peril. Beyond the threat of one regulation, businesses become vulnerable when politicians who write those regulations and approvals feel pressure.

Business leaders do have the advantage of being able to react quickly, a privilege that public policymakers do not have. Discussions with politicians are a protracted process, subject to many variables. Each proposal is preceded by talks and more talks with stakeholders. This is how public policy is shaped in a democracy. The balance of power

and public sentiment can tip decisions one way or another – often with a drama out of proportion with the actual evidence. We may lament such imperfection, but live with it we must.

The most prudent thing business leaders can do is to apprise policymakers early of a potential deal, especially if it carries social implications, such as employment, environment, transportation, infrastructure and consumer protection.

One such case was the 2013 IPO of the largest German housing company Deutsche Annington (now Vonovia), with apartments and hundreds of thousands of tenants, most of whom are not big earners. Many of those tenants feared the IPO would cause rents to rise – they appealed to politicians, who began to examine the deal in more detail.



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Situations like this pose daunting communication challenges for companies. Even mild tremors in the corporate world can give policymakers, who rely on the votes of tenants and workers, the jitters. It's the company's job to put these fears to rest.

And the sooner, the better. The political apparatus has to be given time to consider its position and find a way to communicate it. Comparatively few parliamentarians in the German Bundestag have a background in business or economics. Yet its members must make decisions that can affect the entire economy – often putting taxpayers' money at stake. Therefore, it is the responsibility of businesses to give those politicians the information they need to make confident choices.

In an important sense, government and regulatory involvement is a matter of trust between all parties. And trust can only be won in an open dialogue.

DR JOACHIM PETER is a Director in Brunswick's Berlin office, specializing in Public Affairs.

Since 1988, the Committee on Foreign Investment in the United States (CFIUS) has reviewed, for national security purposes, about 2,500 proposed purchases of American assets by foreign parties, granting a green light in the vast majority of cases. Since 1988, US presidents, to whom the committee issues recommendations, have blocked only a handful of deals. But two of those rejections are recent: one by President Obama in December 2016, another by President Trump in October 2017. Does this portend greater difficulty for foreign acquirers? Offering insight is Group Chief Executive Officer of Brunswick, Neal Wolin, a former Deputy US Treasury Secretary who for five years chaired CFIUS.

committee concerned with national security is going to arrive at a slightly different place.

The kinds of assets and companies being purchased have also evolved. Transactions involving dual-use technologies or artificial intelligence or semiconductors or big sets of personal data are more frequent than they were 10 years ago or even five years ago. And those transactions have tended to raise greater national security sensitivity.

If CFIUS determines there is no national security concern, then the transaction can proceed. If, on the other hand, CFIUS decides there are national security concerns, they are obliged under the statute to try to mitigate those concerns, which is to say to work to address them. Sometimes that will take the

WOLIN

Group Chief Executive Officer of Brunswick, **NEAL WOLIN**, chaired CFIUS for five years. He shares his views on the regulatory process today

HOW CFIUS HANDLES A PARTICULAR TRANSACTION depends on the facts and circumstances of the deal. Increasingly there are transactions before CFIUS that originate in countries that have a tendency to pose more national security complexity than the set of countries whose companies have historically populated the committee's docket. Previously, there were many transactions from the UK, from Canada and from other NATO allies. And increasingly there are now transactions that originate from other countries that have more complicated national security relationships with the US.

CFIUS publishes an annual report, of which there is a classified and an unclassified version. If you look at the last five or six public reports, they give summary statistics about the origin of the acquirers in these transactions that come before CFIUS. As recently as 2009, there were four deals – out of a total of 65 – where the acquirer was Chinese. By 2015, 29 of 74 deals on the CFIUS docket involved Chinese acquirers. If once you had transactions coming mostly from the UK, Canada and France, and now you have a larger number coming from China, it is not surprising that a

ON CFIUS

form of leaving certain assets out of the deal. Other times, there will be changes to post-transaction governance, or a set of protections concerning who has access to what information or what intellectual property or which data. There can be a substantial middle space between deals that have no national security issue at all and those that seem so incontrovertibly problematic that the government says, “We don’t ever imagine getting to yes.”

Under the statutory provisions that govern CFIUS, the only person who can actually block or undo a deal is the US President. What ends up happening with some frequency is that when CFIUS views itself as having a national security problem that cannot be mitigated, it will communicate to the parties that it will recommend to the President that he block the



transaction. Most parties in that circumstance will pull their deal from CFIUS and not proceed with the transaction because they prefer to avoid the President publicly blocking the transaction with an explanation as to why he has concluded that there are unmitigable national security issues. There are some deals that get “blocked” this way on a *de facto* basis without actually going to the President.

If the parties pull out of their deal, the government will not make that public, so it becomes public only if one of the parties decide to disclose what has happened. There are a fair number of deals that do not go forward under the circumstances I have described, but only some portion of those will become publicly known.

Under President Trump, I do not think there has been a 90-degree or 180-degree turn in the way the current CFIUS views transactions. I think there has been further development of the idea that transactions that originate in certain geographies or that involve certain kinds of technology will be scrutinized very carefully. Those perspectives began during the Obama Administration. For example, the Obama Commerce Department put out a report in

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2016 saying the US government was quite concerned about the extent to which the Chinese government was focused on closing the gap relative to the US in their basic set of capabilities around semiconductors, essentially saying the US ought to be more protective of its technology and manufacturing advantage in semiconductors, which can be relevant to national security. This line of thinking has to some extent further intensified, in terms of the range of sensitive technologies and capabilities that give the US pause. But it is not a sea change. It is more of a movement further down that path.

During the Obama Administration, we spent a lot of time working hard to get to yes on these deals. The statute and implementing regulations are constructed in a way that CFIUS is meant to try to get to yes. If there is a national security issue, the committee is to try to mitigate that issue and get to a place where the deal can be approved with modifications. The basic policy judgment of the Obama Administration, and of many administrations before it, was favorably disposed to inward foreign investment because it is good for the US economy. Democratic and Republican

NEAL WOLIN

Neal Wolin is Group Chief Executive Officer of Brunswick Group. He was most recently Deputy US Treasury Secretary, under Secretaries Tim Geithner and Jack Lew, and chaired CFIUS for five years. He is based in Washington, DC.

administrations have long supported foreign capital contributing to the creation of US jobs.

In the current CFIUS, my impression is there has been perhaps a bit less energy directed toward that getting-to-yes effort. This is reflective of an ambivalence among some in the Trump Administration about whether inward investment from places like China is a good thing or a bad thing. On the one hand, you hear some in the Trump Administration talk about bringing in foreign investors that will create US jobs. But others in the Administration are allergic to the idea of Chinese companies buying assets in the US that will give them access to sensitive US technology or that will allow them to compete more successfully with US companies. My sense is these perspectives are in tension and result in not quite as much effort being applied by CFIUS into this “getting to yes” dynamic.

President Trump and Treasury Secretary Steven Mnuchin and Commerce Secretary Wilbur Ross have said things publicly that could be fairly understood as a reaffirmation of support of inward foreign investment. But they have also expressed support for legislation now pending in Congress

that would expand CFIUS’s jurisdiction, and tighten up the standards by which it makes its judgments.

Another question that has been asked is whether CFIUS limits itself to national security issues. How susceptible is it to political pressure? The influence of Congress? The influence of trade groups or competitors or other kinds of judgments that might be seen as something other than a straight-up, merits-based judgment about the national security interests of the US?

Although the people who populate CFIUS are human beings who read the newspapers and are exposed to public discussion and public debate, the process is remarkably well-insulated from politics. CFIUS will not disclose – not to the public or even to Congress – that a transaction is pending before it. Sometimes deal parties will have put in their securities disclosure or in a public press release that they are seeking CFIUS approval, but CFIUS will not confirm or deny or comment on the question of whether a transaction is in fact pending before it. This confidentiality helps protect business-sensitive information, but it also helps insulate CFIUS from political pressure as it considers the national security implications of transactions.

EUROPEAN COMPETITION COMMISSION: DO'S & DON'TS

EUROPE HAS BEEN DEVELOPING its competition (antitrust) policy since the 1950s. The European Commission is the institution responsible for investigating and deciding cases, subject to judicial oversight by the European Court of Justice. The European Union’s merger regulation is only a quarter of a century old.

But in that time it has gained a reputation as a complex but efficiently run set of rules, administered in coordination with the competition authorities of the member states of the European Union. Globally, competition agencies often look to Brussels for a lead in international M&A cases.

So it would be useful to understand the structures and a few do’s and don’ts for dealing with the European Commission. The political leader is the Competition Commissioner, currently Margrethe Vestager,



former Danish Minister of Economic Affairs and the Interior. The department is known as DG Comp (short for Directorate General for Competition).

In all cases, companies involved in or seeking to challenge a merger will need specialist advice on law, economics and

communications. Tell the truth and be prepared to provide compelling evidence.

DO demonstrate advantages for customers and final consumers; explain the expected positive impact on price, quality, innovation and employment; stress the competitive and expanding nature of the market; and present consistent legal, economic and communications cases across all jurisdictions.

DON'T forget that the EU is concerned to create or, where it exists, maintain a seamless single market across all its members. So don't present national or regional markets within the EU as separate without very good arguments and evidence.

Wherever possible, refer to previously decided cases and **DON'T** present your case as requiring or representing a new policy departure.

However strong the pressure or temptation, **DON'T** claim that some other public policy goal you think you meet is more important than competition.

DON'T underestimate or antagonize the Commissioner or DG Comp.

DON'T indulge in personal arguments; you are addressing political leaders, highly trained lawyers and economists.

DON'T rely on political connections or personal relations to influence or accelerate the regulatory process.

DON'T use the media to make your case, but **DO** respond to their questions with a coherent narrative about your business and its prospects.

Sir Jonathan Faull is chair of Brunswick's European Public Affairs team, and is based in Brussels. He was a senior member of the European Commission.

The **WILD CARD** in every deal

While all else may be thoroughly calculated, the human element is often overlooked, says Brunswick's **CHRISTOPHER HANNEGAN**

IN THE TYPICAL MERGER, BANKERS AND ADVISERS are first on the scene, putting together financing, filings and announcements. The deal goes public, spurring scrutiny by regulators, shareholders and other stakeholders. The deal closes. Bankers and advisers collect fees and move on, leaving two workforces to figure out how to act as one.

Mergers frequently fail to deliver promised value because executives rebel or defect, or corporate cultures clash, leaving employees confused and at odds with each other. Those troubles can affect customer service, alienating the stakeholders most needed to ensure success. This is all well known, yet companies and their advisers still fail to focus on the critical human element.

Internal relationships demand nuanced and sustained consideration, not a single action or survey, but a frame of mind embedded in deal planning from the outset.

FIVE KEYS TO GETTING STARTED

► **Understand the cultures.** How do the two proposed merger partners communicate, make decisions, reward success, punish failure, hire, promote, grow and lead? An early understanding of these critical cultural attributes will pay off in the long term, and it needs to start at the top.

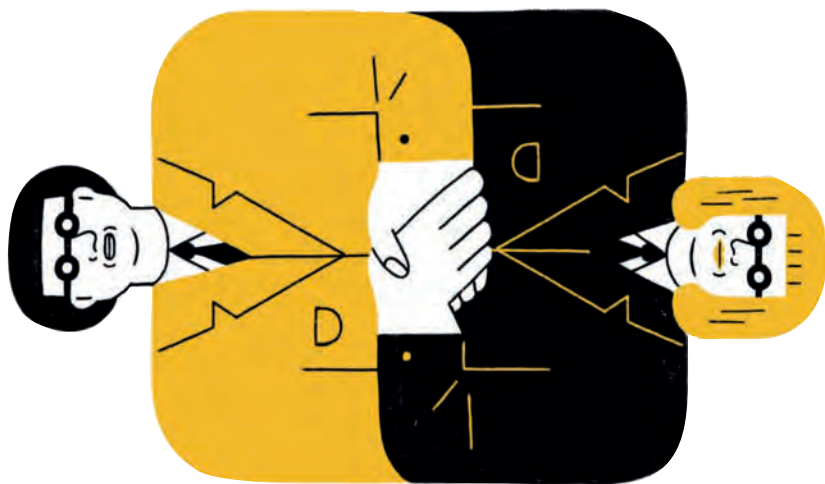
When a global healthcare company recently planned to acquire another global company, it started with a third-party audit of both cultures to determine points of difference and similarity. Its head of HR then educated leaders on the cultures and had explicit conversations about how to get off on the right foot when they first reached out to their counterparts.

► **Focus engagement on a critical few.** Not all employees matter equally in merger-related communications strategies. While you want to ensure that all employees understand why the merger is happening, what it means to them and when things might be changing, you may want to shine special attention on customer-facing

employees in call centers, customer care or retail outlets, and employees subject to the most severe impacts as integration gets under way.

► **Be explicit.** This is no time to mince words. Be direct. Don't sugarcoat difficult messages. Especially in today's environment where the divide between internal and external communications has all but vanished, employees will find out bad news one way or another. Better to deliver it yourself.

Answer questions about what will happen to the merged company's strategy, vision, values and cultural norms. Employees of the acquiring company will often assume – sometimes incorrectly – that their jobs will remain the same.



► **Don't wait until you have all the answers.**

Bring both workforces along in the integration journey by openly sharing when key decisions need to be made, what's being considered and when more can be communicated. Some of the most effective communications about past integrations have included discussion of options considered before the final one was chosen. Employees will appreciate being included in the thought process and reassured that multiple scenarios are being considered.

► **Set metrics and stick to them.** Create a benchmark of important key performance indicators. You don't need to measure everything, but do look at metrics related to voluntary staff turnover, customer satisfaction statistics, employee referrals and overall indicators of employee engagement.

Put this scorecard in place for both companies and then determine the best ways to measure against your benchmark on a rolling basis. This will give you real-time insight into the human element of the transaction and allow you to adjust accordingly as the integration process plays out.

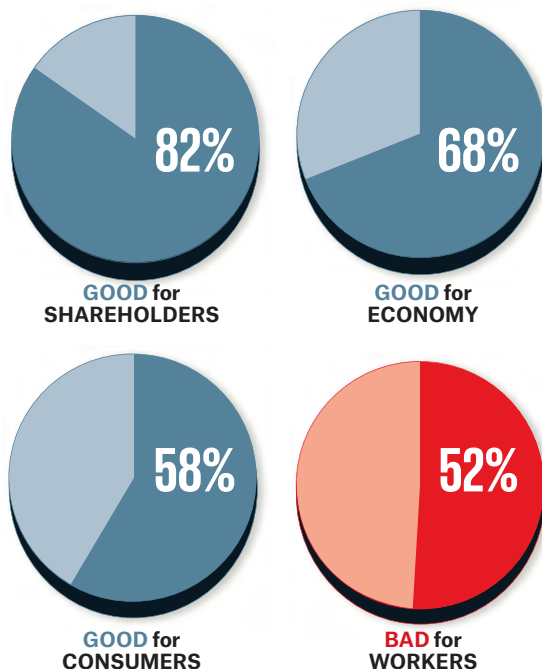
CHRISTOPHER HANNEGAN

is a Partner based in Brunswick's Chicago office and leads the firm's Global Employee Engagement practice.

WE THE PEOPLE

IMPACT OF DEALS GLOBALLY

Averaged across all regions, responses reveal a positive view of deals for everyone except workers.



The views of workers and consumers are critical to any successful deal. Brunswick's MARLEEN GEERLOF and Brunswick Insight's KAYLAN NORMANDEAU examine our survey results

EXECUTIVES, BANKERS, LAWYERS AND regulators set the terms that define deals. But ultimately, success may depend on the support of voices often missing in that conversation: consumers and workers.

Brunswick interviewed a total of 2,550 adults in the US, the UK, France, Germany and China to find out their concerns about the risks and rewards of M&A. Results vary by country and are sometimes contradictory – yet overall they reveal surprising consistencies that any corporate leader planning a deal would be wise to take into consideration.

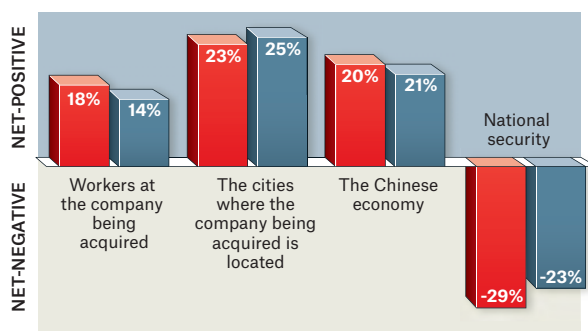
IN MOST MARKETS, A MAJORITY APPROVE OF M&A generally. On average, two-thirds in each market think the government “should allow mergers between large corporations.” In the US, this represents a substantial shift from 20 years ago when a Gallup poll found only 40 percent in favor of deals. The one exception was Germany, where half of respondents felt government should do more to oppose mergers.

Despite being seen as an important driver of the economy, M&A is still viewed as bad for workers. Those who have experienced a merger or acquisition

CROSS-BORDER ACQUISITIONS, OPPOSITE OPINIONS

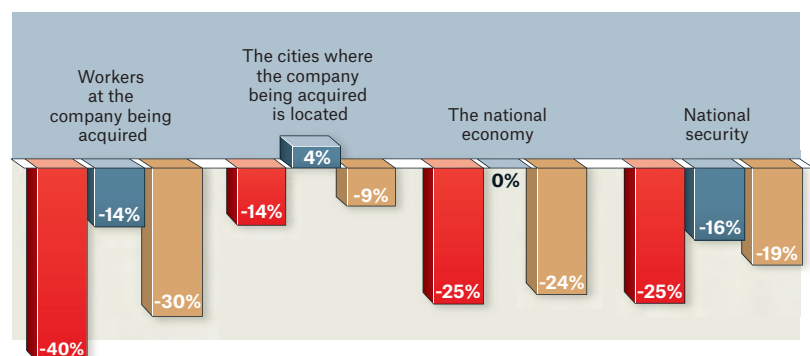
CHINESE ATTITUDES OF A WESTERN ACQUISITION

■ American acquisition of a Chinese company
■ European acquisition of a Chinese company



WESTERN ATTITUDES OF A CHINESE ACQUISITION

■ Chinese acquisition of a German/French company
■ Chinese acquisition of a UK company
■ Chinese acquisition of a US company



are more likely than those who haven't to perceive deals as good for workers (54 versus 41 percent).

THE WARM GLOW AROUND M&A DISAPPEARS WHEN a foreign buyer enters the picture. US and European consumers turn chilly, particularly where Chinese and Middle Eastern acquirers are concerned. Those in Britain are more sanguine: they view an acquisition by a Chinese company as a risk to workers and national security, but are more neutral about the impact on the economy.

In contrast, Chinese consumers see all M&A activity as good for their country – involving both domestic and foreign companies. Even though acquisitions by foreigners are seen as a risk to national security, American or European acquisitions are still viewed as beneficial to workers, the affected cities and the national economy.

Respondents in most regions, especially Europe, say government oversight should be much stricter, but, seemingly at odds with that finding, they don't trust the government. They believe government leaders are too focused on the interests of their own political parties and not enough on protecting employees, customers, local economies, national security and the environment.

Consumers are prepared to act on their beliefs. Globally, 43 percent have boycotted a product, or taken some other action in the past five years to support or oppose a deal. Such grassroots activity can have a direct business impact for the merged company, making consideration of society's views critically important in the planning stages.

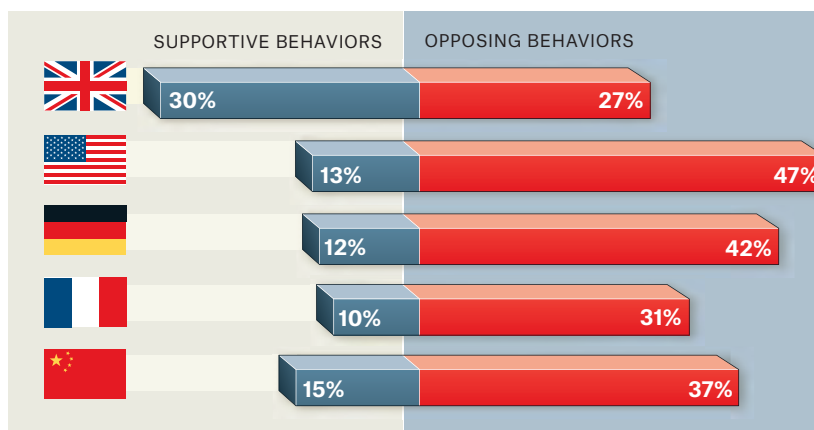
OF THOSE
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OF 48 PERCENT

MARLEEN GEERLOF is a Director in Brunswick's New York office.

KAYLAN NORMANDEAU is an Associate with Brunswick Insight, the firm's public opinion research function.

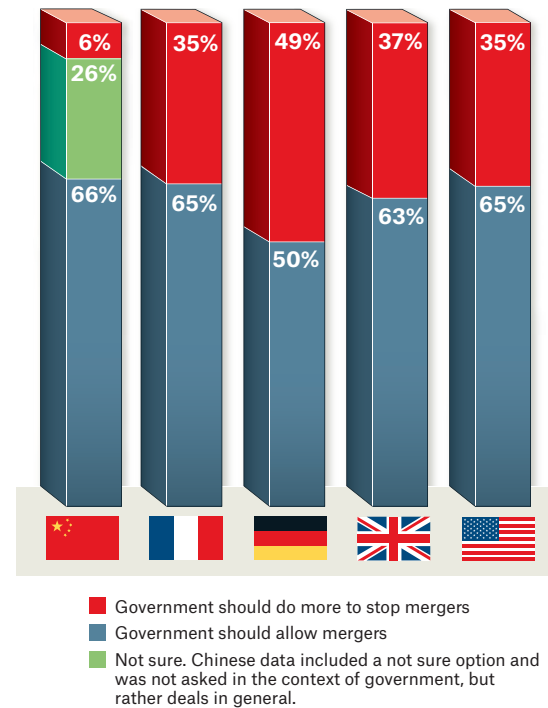
USING THEIR VOICES

Globally, almost a third of respondents indicated that they had taken some action in the past five years to support or oppose a deal.



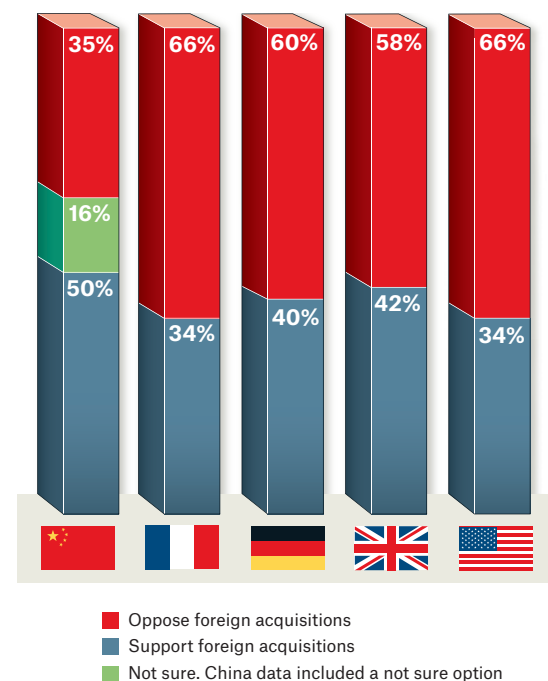
"YES" TO DEALS

Society is open to deals in general, with perceived benefits outweighing costs.



"NO" TO FOREIGNERS

Sentiment sours for cross-border deals, with more opposing a foreign acquisition than supporting it.



A RECENT BRUNSWICK SURVEY OF SENIOR M&A advisers, along with our “Perspectives” research among the general public – 43,000 people in 26 markets – paints a bleak picture for Chinese corporates. An overwhelming majority of the M&A advisers polled believe reputation has a significant impact on deal costs, both for an acquiring company as well as a target. This impact is particularly acutely felt by Chinese companies seeking to make acquisitions. Their reputation is seen as having a significant negative impact on their ability to get regulatory approval, shareholder approval and their ability to successfully merge after a deal has closed.

As Chinese companies step forward to play a bigger role on the world stage, how can they build the understanding and trust required to make them welcome acquirers overseas – and, in the process, lower their costs of doing business?

CROSS-BORDER LEADER While many commentators in the past two years, especially those in the West, have been hailing the “death of globalization,” you would not know it by looking at recent trends and future projections in cross-border M&A. Recent Brunswick Insight research among M&A advisers, most of whom are senior lawyers and bankers across North America, Europe and Asia, shows high optimism that 2018 will surpass the solid volumes seen in 2017.

Central to this growth story is China. With rhetoric from the US administration focused around a theme of “America First” and nationalist movements in Europe threatening to gain serious traction in key elections, 2017 was the year that China stepped forward as the new champion of globalization. Speaking at Davos, it was Xi Jinping urging the world’s leaders to remain “committed to developing global free trade and investment” and to “say no to protectionism.”

There are clearly gaps between rhetoric and real action on both sides of the world. However, recent moves by the Chinese administration to open its economy and liberalize new sectors of the economy to inbound investment, as well as its Belt and Road initiative and continued support for specific types of outbound investments, reinforce the country’s positioning as a new leader for globalization.

This shift was recognized by a full third of advisers worldwide in our research, who see China’s Belt and Road policy as a leading factor driving global cross-border M&A, ranking ahead of shareholder activism (27 percent) and US tax

policy changes (24 percent). Most advisers still expect China and US outbound M&A to lead the way in 2018.

THE ROLE OF REPUTATION There remains, however, a high degree of skepticism and concern internationally about China’s changing role in the world.

Perceptions of China Inc. are consistently lower than those of companies from other countries – and often by a significant margin. US and European citizens have a net negative view of Chinese companies. In many countries, this is compounded by opposition generally to foreign acquisition: in the US, Germany, Japan, Australia

Financial value is at risk as Chinese companies, in the lead for global M&A, struggle with the reputation of “**CHINA INC.**” say Brunswick’s **TIM PAYNE** and **DAVID ASHTON**

REPUTATION on the WORLD STAGE

and France, a majority of the general public are both opposed to foreign acquisitions and have a negative overall view of Chinese companies. The risk of public backlash against Chinese investment in these countries is high.

Public sentiment and reputation challenges have a meaningful impact on success of Chinese businesses trying to complete a deal, as well as deal costs. China has a long experience of difficult dealings with the Committee on Foreign Investment in the US (CFIUS), and it is facing similar challenges elsewhere. Recent investments in the German technology sector have stoked concerns among the German public – almost certainly a driving force for Germany’s decision to develop its own CFIUS-type body. Several other countries are following suit.

Among the global advisers canvassed in our recent survey, an overwhelming majority (87 percent) feel that negative aspects of China Inc.’s reputation undermine the ability of Chinese companies to get regulatory approval on overseas acquisitions. But the impact is felt to stretch beyond just the decision of the regulator: 77 percent feel the reputation of Chinese companies impacts negatively on their ability to get shareholder approval, while two-thirds



(66 percent) believe post-merger integration is made more difficult because of perceptions about Chinese companies.

BUILDING TRUST The implications for Chinese businesses are considerable. The reputation of the country and its companies – its “soft power” deficit – is currently a drag on its considerable global ambitions. Shifting perceptions is a long-term game and companies, Chinese or otherwise, can’t afford to wait until they are about to engage in M&A to build a positive image and profile. Nor can they expect to be able to gloss over concerns around how they are governed and operate.

In the long term, Chinese companies that seek to position themselves as global leaders in key focus areas like sustainability, business in society and corporate governance will be better placed to fulfill their international ambitions and enjoy lower deal costs. Even those that have not invested over the long term in establishing a good reputation can increase their chances of success in M&A by engaging with investors, regulators and other stakeholders in a clear, open and transparent way.

Looking ahead, there is hope. Chinese companies are showing the rest of the world the way forward when it comes to online retail, digital payments and

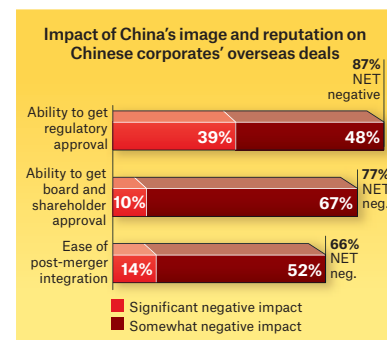
fintech. Chinese innovation in these areas is shifting old stereotypes of China from being a follower to a leader. Just as China’s administration has leaned-in on key global debates around the environment and globalization, so too its companies can seize the opportunity to lead in the areas defining the corporate agenda in the future.

TIM PAYNE is a Senior Partner and the Head of Brunswick’s Asia offices. **DAVID ASHTON** is a Director and leads Brunswick Insight in Asia, the firm’s research department. Both are based in Hong Kong.

TWO CHINA TRENDS



Brunswick Insight’s survey of leading M&A advisers found that China and the US topped the list for regions with the most expected outbound deal activity for 2018. China’s Belt and Road policy was seen as an important driver.



At the same time, Chinese corporations are faced with a reputation problem that makes any deal harder – and more expensive. An overwhelming majority of advisers polled believe reputation has an impact on deal costs.

NEAL WOLIN: Larry Summers needs no introduction. So I'll be brief. In chronological order, Larry has, among the many things he's done, been the Chief Economist of the World Bank. In the Clinton presidency, he was the Secretary of the Treasury. He was the President of Harvard. Came back to public service in the Obama Administration. Was the head of the National Economic Council at the White House in the midst of the financial crisis. He is now the Charles Eliot Professor at Harvard. And he is, it's fair to say, a leading public intellectual on a ridiculously wide range of topics concerning economic policy, and public policy more generally. So thank you, Larry, for being here.

LARRY SUMMERS: I had the very good fortune when I was the Secretary of the Treasury to have Neal as my general counsel. In that capacity, Neal was crucial in the negotiation of a very complex standstill on \$100 billion-plus of Korean debt. When for a brief moment it appeared that there would be some overall agreement between the government and the gun manufacturers, Neal was its architect. And Neal also had the unfortunate responsibility of having to enforce the Treasury's ethics codes.

I well remember when I arrived at a United Airlines counter as the Secretary of the Treasury, with my secret service detail. And United Airlines reacted to my presence by offering an upgrade.

My chief of staff called Neal to inquire whether I could accept the upgrade, and Neal inquired whether there were any spaces available in coach. Unfortunately, there were spaces available in coach. So Neal opined that I was not permitted to accept the upgrade. I did not take it well. (Laughter)

NEAL WOLIN: Obviously, that's not a way to endear yourself to a Treasury Secretary. (Laughter) I want to start with what seems like the topic of the moment, which is tax reform, and its potential growth effects. Earlier in the week, 137 economists wrote an open letter saying there would be all kinds of growth effects. What is your judgment about the chance either in the short term or the long term that tax reform would actually lead to incremental economic growth?

LARRY SUMMERS: You can't rule out the possibility that the tax cut will lead to a substantial acceleration in growth. But it's not anybody's sensible best guess. If you read that letter you just referenced, you'll see that the conservative

On November 30, Maria Figueroa Küpçü, a Brunswick Partner who is New York Office Head, hosted a gathering of business leaders in the firm's Midtown board room. These leaders came to hear former US Deputy Treasury Secretary Neal Wolin, now Group Chief Executive Officer of Brunswick, interview his former boss, Larry Summers

LARRY

SUMMERS

economists who wrote it quoted three studies. And the quotations are just badly wrong from two of them. And when I say badly wrong, I mean that if a Harvard student did what they did – citing only the high end of growth estimates in the sources being quoted – I would call it dishonest.

NEAL WOLIN: You've been a strong proponent of this idea of secular stagnation. We've got inflation



PHOTOGRAPH: ANDREW HARRER/BLOOMBERG

that seems to be anchored substantially below 2 percent. What do you make of it? And what set of things that are politically achievable are likely to bring us out of this dynamic?

LARRY SUMMERS: It's a bit of a mystery. You would have thought that when the unemployment rate was this low and there were this many people saying they had vacancies to fill, that there'd be

more wage pressure. And if you had told me every other variable and you'd ask me to guess the inflation rate, I would've guessed higher than what's played out. My guess is that people are more fundamentally scared by the combination of the recent recession experience, the possibility of their job being outsourced to India and the possibility a robot will start to do their job, that you just have very quiescent labor and with very quiescent labor

"There's a question whether the economy is more brittle than many people imagine"

“And if in order to grow at a reasonable rate, you need to have stock prices go up to 20 percent a year – well, hello, that’s not going to keep happening for five or 10 more years”

you don’t get wage pressure. And without wage pressure, you don’t get inflation.

That said, what we all just need to get used to is that for the last 40 years, even 60 years, the labor force has grown reasonably fast. It’s grown reasonably fast because we’ve had significant immigration. Because people used to average having three kids. And because more and more women were entering the labor force. The adult labor force was growing at one and a half percent a year. Going forward, the adult labor force is not going to grow. If the economy works as well as it used to, it is going to grow substantially slower than it used to. And that’s just life. It’s OK. It’s sort of more like GDP per person that we care about, than it is the total quantity of GDP. In that sense, slower growth is baked in demographically.

On top of that, there’s much less call for physical investment than there used to be, because people shop electronically rather than go to malls, because a law firm that used to need 1,400 square feet of space per lawyer now needs 700 square feet because it stores things in the cloud. Because of whatever it is that’s causing our leading tech companies like Google and Apple to be rolling in cash – without full uses for cash.

All those things combined with rising saving, because people are living longer, because more capital’s coming from abroad, because more of the income’s going to rich people, all that means, you got a lot of savings. You don’t have much investment. That means low interest rates. That means high asset prices, because the savings flow into the existing assets. That means limited demand pressure. Which means a tendency to sluggish growth. And it means a tendency to low inflation.

And it raises the question whether when you have good growth under these circumstances, is it financially sustainable?

In the 2000s, we had the mother of all housing bubbles. We had a vast erosion of credit standards. And it’s not like the economy was on fire. The economy was kind of OK. The sense of rapid growth over the last couple of years, is that some new strong sustainable foundation? Or is that something that goes with stock prices going up 20 percent a year? And if in order to grow at a reasonable rate, you need to have stock prices go up to 20 percent a year – well, hello, that’s not going to keep happening for five or 10 more years.

There’s a question whether the economy is more brittle than many people imagine. We have a playbook for fighting recessions in the United

States. That playbook is the Fed cuts rates by 500 basis points, by 5 percentage points. Given where rates are now and given where people think they’re going, it’s going to be a very long time before there’s anything like 5 percentage points of room to cut rates in the event of a recession.

I kind of feel like we’re living on borrowed time. But if it turns out that inflation drifts up to 2 percent, things stay moderate, debts don’t accumulate, the markets are kind of broadly stable, not rallying and growth stays great for another decade, then I’ll have been wrong. And I don’t preclude that possibility at all.

NEAL WOLIN: What policy would help push things in that direction?

LARRY SUMMERS: I look around and I see that the average American pays the equivalent of a 60 or 70 cents-a-gallon gasoline tax, in extra automobile repairs, because we don’t do a good job of maintaining our roads. The Democrats say a bunch of it is an unwillingness to allocate money. And they are right. The Republicans say that the regulations are so crazy that it takes years to build a simple bridge. And they’re right, too. I mean, people estimate that the Second Avenue subway cost five times as much to build per mile as the subway in Paris. You know, the French, they have unions, they have all the stuff we don’t like. And they did it for one-fifth of the cost per mile as what we did.

NEAL WOLIN: To widen the aperture, what do you think of the path the US is taking in its engagement with the world, especially in the economic sphere?

LARRY SUMMERS: You have to come to a judgment. Do you think the 70-some years since World War II have basically been good years for the US or do you think they’ve been bad years? It seems to me it’s pretty obvious that they’ve been good years. There hasn’t been another war. Americans really live vastly differently than they used to. And they’ve been fantastic years for humanity as a whole. And that’s had a lot to do with a relatively open international system in which there was big growth in trade, big growth in the flow of capital, big growth in the flow of ideas.

I think it’s pretty obvious that it was the right strategy. And while I have, in past years, bitterly decried the policies of the presidents I didn’t serve, I think if you take the large view, what I just described has been something that’s been



US Deputy Treasury Secretary Neal Wolin, far left, stands with Secretary Tim Geithner and First Lady Michelle Obama in 2010. She was speaking to Treasury employees in Washington, DC.

PHOTOGRAPH: WENN LTD / ALAMY STOCK PHOTO

supported in a broad bipartisan way since World War II. And that is under challenge.

Gary Cohen and H.R. McMaster, who would be viewed as the establishment edge of the Trump administration, took to *The Wall Street Journal* some months ago to proclaim that there's no such thing as an international community. There's only the constant struggle between nations. That seems to me to be a very dangerous idea. And ultimately that hurts American business when it tries to do things abroad. It leads other nations to retrench and focus on their own advantage rather than cooperation. It causes us to be excluded.

NEAL WOLIN: Do you buy the argument that international economic complexity plays into the PRC's hands? Is this all just good news if you're the People's Republic?

LARRY SUMMERS: This system of basically open global markets, opportunities to export, foreign investment, ability to send hundreds of thousands of people to US universities to learn how to do artificial intelligence and go home and start companies doing artificial intelligence, this liberal system has really been pretty good for China. So if that system collapses, I'm not sure it's going to be quite that terrific for them.

NEAL WOLIN: What politically viable options are there for us, as a country, to try to make important headway on the persistent problem of inequality?

LARRY SUMMERS: My suspicion is that this trend toward increasing inequality may not – of its own volition – change. This is why we need more progressive taxation, not less. This is why we need to be doing more about the geographic element, both putting more capital and more things that are new into the decaying parts of our country, and at the same time, making it easier for people to move into more productive hubs and hot spots in our economy.

We are surely making a big mistake as a country by spending much less on the education of the 70 percent of our population that is not going to graduate from college than most other countries do. There is a lot that one can do that is enormously productive and enormously satisfying without a college degree. Germany in particular does a great job in respect to this problem. But we don't do it.

People take it as a given that technology helps the skilled. But you know, technology will replace Wall Street traders long before it replaces gardeners.

NEAL WOLIN is Group Chief Executive Officer of Brunswick, based in Washington, DC. He was Deputy US Treasury Secretary under Secretaries Tim Geithner and Jack Lew. Additional reporting by **LIZ DAHAN**, a Director in New York.

FROM AN EARLY AGE, ANU AIYENGAR vowed to work hard toward the pursuit of a fulfilling career. In her native land, India, that usually meant medicine or engineering. But out of Smith College, where she obtained a degree in Economics, she took a different path, joining J.P. Morgan in 1999 as an Associate in Mergers & Acquisitions. Today, she is Head of M&A North America.

Did 2017 meet your M&A expectations?

After the US election in 2016, the market was exuberant with expectation that there would be meaningful regulatory reform. Our team tracks how many times the S&P 500 hit an all-time high, and the last time I checked it was something like 57 times in the first 11 months of 2017.

We had a Republican House, Republican Senate, Republican government, and a combination of very robust equity markets and low interest rates. All of that should have resulted in more M&A than you probably saw in 2017.

But having said that, I don't really agree with some of the headlines which say M&A has been really down. Because if you look at the number of deals over \$250 million in size, it's been sort of flat. It's really the mega-deals or the over-\$10 billion deals that have been down. And even then it's not massively down. Volume is down 6 percent off a pretty high year the previous year.

DEAL DOYENNE of Wall Street

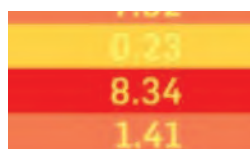
What is your outlook for 2018?

I think the big themes we saw in 2017 will continue in 2018. The elements of favorable equity markets, low volatility, and low interest rates should continue this year. If we are cooking up a recipe, three more ingredients would be tax reform, more clarity on the regulatory approval process and better timing.

The time that it takes to get a deal approved is increasing. In 2016, there was about \$800 billion of withdrawn deals. In 2017 the amount was smaller but still large. And the ability to predict whether a particular deal will go through or not is less certain because it's unclear who all the players are and what the regulatory approval process would be like.

ANU AIYENGAR heads J.P. Morgan's M&A business in North America. She speaks with Brunswick's **KATHERINE KIM** about the global deal landscape





"I think the big themes we saw in 2017 will continue in 2018. The elements of favorable equity markets, low volatility, and low interest rates should continue"

And so those are two things you need because companies don't want to announce a deal and just be left out there. They want to know, if we announce a deal, will it close and how long is it going to take? Because if you announce a deal and then have to withdraw it, that's not pleasant, there's a franchise damage to companies.

If you look at it from a seller's perspective, you're watching your stock price go up, up, up, up, up, to a price you haven't really seen before and maybe not even dreamt about. And you look at that and say, "So what should we do? Should we sit there and wait and say, 'OK, maybe it'll go more up more'? Or can I deliver a certain value to the shareholders through a deal, or create a merger which is value creative?" Overall, I would say that potential sellers are not proactively saying, "Let me go run a sell-side process." However, they are being responsive to informal outreach and inbound expressions of interest.

What is your outlook for cross-border deals?

Again, there are a lot of headlines about how cross-border deal volume has come down. But 2017 is actually higher than 2015; 2016 was higher still, really driven by China. And China had come down in 2017 as they were going through their governmental process. Outside of that, cross-border has actually gone up. And that trend could continue, because we are at a unique moment in time when pretty much every part of the world is growing. It's not spectacular growth. But every region of the world is growing. And so in that environment—where you have an investor that is seeking growth, and all the regions in the world are growing—there is a desire to find growth in nontraditional places.

We're very bullish on cross-border and we think we are very well positioned to benefit from that, because we have both long-standing local relationships around the world and the heft to do cross-border deals which are harder and more complex to get done.

How much potential is there for tax reform to spur deals?

If my tax rate falls to 20 percent, my value will be a lot higher. That could be a factor in deciding whether I will do M&A. Why sell at this price? Or has the market already factored tax reform in the stock? The expectation of tax reform is part of the reason you've seen the equity markets rise. Now, having absolute confirmation that it's happening

is better than expected to happen, you would think. But markets don't always work that way. Sometimes they trade better on expectation rather than on reality.

Boeing recently did a large share repurchase and its stock went up. Do you think other companies will be giving more cash to shareholders and will that take away from the M&A market?

Most of them are doing it from found cash. It's not—"Let me not do M&A and do this instead." I think there were times, not the current times, when people may have thought about it that way. But the investor today wants growth. And the buyback strategy doesn't spur growth.

Do you see tax inversions coming back under the Trump Administration?

No. If you have tax reform, and American businesses are allowed to be globally competitive, then what would be the need to pursue an inversion transaction?

Do clamors for protectionism in the West concern you?

To the contrary, in Europe, I think there's a real desire to develop pan-European leaders. That actually promotes a lot of Europe-to-Europe deals, and we've seen an increase in European targeted volume in M&A in 2017. In 2017, you saw deals happen across the borders of Spain, Italy, France, Germany. There is a sense in Europe that, if we don't do more pan-European deals, we'll get left behind. Some people say that Brexit has brought the EU closer together. When somebody decides to walk away from something, maybe the people who want to be in it appreciate the value of it more.

Are deals getting done any differently today than in the past?

More of the deals are happening in a highly negotiated way, with a buyer approaching a seller and saying, "I've thought about this. Does it make sense to put these companies together?" And sellers also seem more comfortable in processes which are less public, more contained, and more deliberate.

The process of getting a deal done has appropriately become very deliberate in terms of analysis, board involvement, evaluation, preparation—and making sure that your investor base understands it and isn't surprised. A board does so much work in evaluating a merger, the challenge is always how to communicate that

thinking to the investor base. And that has become even more important as these deals are becoming pretty complex.

When an offer is spurned, are would-be acquirers any more or less willing today to take their offer directly to shareholders?

I think the willingness to speak directly to the target shareholders is probably higher. And there's often receptivity to that, you know, shareholders saying, "I will take that."

Shareholders today don't want you to say "no" without them knowing about it. There's an evolving awareness of shareholder activism, and it has matured a lot. Shareholder activists are no longer a block, no longer a particular type. It isn't always aggressive. Sometimes it's much more nuanced.

How are high stock prices and cheap debt impacting the private equity market?

The amount of money private equity has to put to work today is multiples of what it has been before. Nearly every fund is raising more than what they did previously. They may say, "I'm going to build a \$5 billion fund," and end up with \$7 billion. So there's a lot of money that the private equity firms have to put to work. At the same time, most private equity firms are doing much more than the narrow tradition of taking a company private or an LBO.

The breadth of funds they have allows them to get very creative. They have infrastructure funds, energy funds, growth-oriented funds, they have value-investing funds. They have long-dated funds which are a lot like pension funds. And those may be situations that have more stable cash flows and maybe less drama and less glamour around them.

How is technology influencing M&A?

Technology used to be covered as a standalone industry sector. But now companies in every industry are seeking out a better way to do their own business using technology. So you can call it convergence, you can call it the technology stripe – companies from all sectors are looking at "technology" deals. Industrial and retail companies are doing technology deals. Some examples are, Walmart buying Jet.com, PetSmart buying Chewy, Samsung buying Harman, and Roper buying Deltek, Target investing in Casper, Fossil doing Misfit, Unilever doing Dollar Shave Club and many more. These are all what you would previously thought of as separate sectors, but they're converging.

Over the last 24 months we have done a lot of cross-sector deals that came out of an initiative that we started about three years ago. For, I'd say the first year or so, we didn't have much to show for it. But in the last two years that has really changed and the above deals are a testament to this and we expect to see a lot more.

Why have family offices become more relevant to the M&A market?

Thanks to 2008 and the banking crisis, you now have a lot of ex-investment bankers and lawyers who work at all these family offices. They're all much more deal savvy, they all want to do deals.

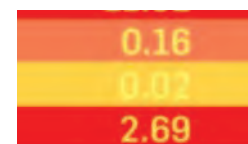
That has brought into the market families that historically may have had the money to do this, but lacked the infrastructure and expertise. Now they all have the ability to do deals. You have large families who are helping other companies do deals. As a buyer, you could have a situation where you could issue stock to the target company, or alternatively issue it to this family who you know is going to be a stable shareholder, and then you could just buy this company for cash. Your dilution is maybe the same. But you are choosing your shareholder in a more thoughtful way.

When it comes to recruiting, is Wall Street still the place to be, or is it difficult to compete for talent with flashy startups?

I don't know about the broader Wall Street perspective, but when we go to campuses we still have standing-room only. What I do think has changed is that young people looking for a job are doing a lot more due diligence. They really want to understand, "What does this company stand for? Who are the people I'm going to be working with? How is this going to add value to me as a person? And how is it that I am going to make an impact on the world in this job?"

I think it's awesome for someone who is coming out as an undergrad to think about all these questions. We do have a larger purpose, a mission, and our CEO addresses it in his communications, and it's part of our culture. It's something these candidates can find online, and I do have 22-year-olds come in here and say, "I want to work for J.P. Morgan because of what you guys do for the community, for the environment, because of what you stand for." It's not, "Oh gosh, I need a job."

KATHERINE KIM is a Director in Brunswick's New York office, specializing in M&A and shareholder activism. She was formerly a Vice President at J.P. Morgan.



"Technology used to be covered as a standalone industry sector. But now companies in every industry are seeking out a better way to do their own business using technology"

ANU AIYENGAR

Anu Aiyengar is Head of M&A North America for J.P. Morgan. She has been with the firm since 1999, and has held multiple leadership roles. Aiyengar began her career as a Manager at American Express.

DR DANIEL SUMMERFIELD ASSESSES HIGH-value investments in some of the world's largest companies for the UK's Universities Superannuation Scheme and advises USS as a major investor to encourage good corporate governance at those companies. In his role as Co-Head of Responsible Investment for USS's Investment Management, he has an unusually detailed perspective on the deal-making landscape and the future of M&A across the transatlantic region. He spoke to Brunswick recently about his outlook and USS's role as an active shareholder.

USS is a steward of pension savings for hundreds of thousands of people in the field of higher education in the UK. As such, it is frequently in the position of encouraging or resisting changes to corporate governance and other aspects of a company's operation, to facilitate the best value and least risk for its portfolio. Recently, the fund has become a force in the fight to preserve open markets against a rising tide of protectionism in Europe and the US.

Summerfield offers France's 2015 Florange Law as an example of how even well-meaning regulation can go wrong. The law is named after the French town where, after a successful hostile takeover, ArcelorMittal tried to close down two blast furnaces, only to be met with government threats to nationalize the plant. Enacted as a reaction to the incident, the law gives companies the ability to fight off hostile bids by granting long-term shareholders additional voting rights. In effect, however, Summerfield says the law does little to stem short-termism while it hinders new long-term investment.

"Sounds good in theory," Summerfield says, "but in practice, it doesn't have the desired effect. We believe in the principle of one share, one vote."

What are the themes that you saw emerging in 2017 that will continue for 2018?

European markets are at a precipice. As a UK pension fund, we're going to have to remain an investor in Europe, irrespective of Brexit. We're based in the UK, but we'll continue to focus on the markets in a very objective way. We've become much more global. That's a reflection of politics and the state of the markets.

We believe in the importance of good stewardship of our assets and we have guiding principles when we invest. Among those are shareholder rights and the equal treatment of

shareholders, both under threat on both sides of the Atlantic. What we are looking for comes down to two things: first, transparency – what's being done with the capital we're putting into companies or entities. Secondly, we look for appropriate shareholder protections for the capital we are putting at risk. If we have those two, that gives us a reduced investment risk and provides a lower cost of capital to issuers – a win-win situation.

Now we are seeing increased protectionism within certain markets – governments and regulators are more inclined to intervene. France's support for Alstom is an example. Back in 2016,

ONE SHARE, ONE VOTE

the French government spent about €500 million (\$612 million) on high-speed trains that the country arguably didn't actually need. Those trains were built to run at 320 kms an hour but are running on existing regional tracks, where the maximum speed is maybe 200 kms an hour, at best. That was six months ahead of the elections, after Alstom said jobs were at risk because of a lack of orders.

There's always been an element of state intervention, obviously. We accept that. But it's been growing recently. The Netherlands, in particular, has made various attempts to try to prevent hostile takeovers and shareholder activism. The government, in place since October 26, is looking at various proposals that we would view quite negatively. This type of intervention just wasn't there before.

We look very carefully at the standards and protections afforded to us as shareholders before we invest in a company in a particular market. We would be concerned if the state intervened to the extent that open markets and the free flow of capital, which we view as absolutely essential, are impacted.

DR DANIEL SUMMERFIELD exercises the influence of one of the UK's largest pension funds on the global corporate stage. He talks to Brunswick's **NICK COSGROVE** about standards, open markets and shareholder protections



There is a risk this could take root in the UK as well. The National Security and Infrastructure Investment Review contains options for short-term and long-term reform. The secretary of state would be able to make a special national security intervention in an acquisition of significant influence by any foreign investor. They are looking at sectors such as civil, nuclear, defense, energy, telecoms and transport.

So you can see where this is potentially going, and the risks that could arise if they expand it too far. Unless we're very specific in the UK, we're sending out a signal that the state could intervene, which would create more uncertainty.

In addition, there is a potential risk that, to attract new listings to markets in a post-Brexit world, we begin to dilute the high standards associated with a premium listing. That would be a step backward.

Short term, there is an economic benefit to allow more companies to IPO within the UK. Medium to long term, there is a risk of lower standards and less protection for shareholders and ultimately, higher cost of capital for companies.

DANIEL SUMMERFIELD

Dr Daniel Summerfield is Co-Head of the Responsible Investment Team of the Universities Superannuation Scheme (USS), one of the UK's largest pension funds. Previously, he was the corporate governance executive at the Institute of Directors. He was also project director of the Independent Director initiative, a joint venture between the IoD and Ernst & Young.

Has US-style shareholder activism in Europe made things easier or harder for you?

I don't think it's had much of an impact. But it's an interesting development, isn't it? Shareholder activists, who were largely focused on the American market, are now coming over to Europe, where in the past they concentrated on their home market.

Sometimes they're aligned with our views and sometimes they're not. Not all activists are the same. Sometimes they are in it for short-term gains and at other times, for medium- to long-term gains. We're more aligned with those looking at the long-term strategy of a company and doing it in a constructive and confidential way.

Will such activism grow in 2018?

I think so. There is a role that activists can play in terms of unlocking some of this value. They see Europe as a potential new area of growth.

What other themes are you looking at with regard to M&A for the coming year?

Cybersecurity is a key risk and an ever-increasing one for companies. This needs to be on the board's agenda. When a company is considering an acquisition, it will want to make sure in advance that the target company has all the requisite IT infrastructure in place.

Environmental standards is another area to consider. We're led to believe that one of the reasons Nippon Paint walked away from Axalta was because some environmental standards were deemed not to be in line with Nippon's expectations. [Nippon Paint ended its bid for Axalta Coating Systems after the US company, backed by its biggest shareholder, Warren Buffett's firm Berkshire Hathaway, rejected Nippon's \$9.1 billion offer.] Environmental, social, governance – these are the new areas to consider in M&A, not just financials.

Culture and human capital also need to be part of that equation. There hasn't been much regard given to the cultural alignment of acquirer and acquisition. And that comes with a human capital dimension.

Good companies and good acquirers in the past have taken these issues into account. But it's not on the radar for many others. Are they on the radar of the investment banks that act as intermediaries? I'm not convinced.

NICK COSGROVE, a former BBC business presenter, is a Partner in Brunswick's London office. He specializes in M&A, financial, media and crisis communications.



Europe Courts



PHOTOGRAPH: STEVEN LAXTON

Brunswick's
KEVIN HELLIKER
speaks with
MARTY LIPTON,
a legend in
corporate
battles against
activists, about
the latest trends
in that war

FOR HALF A CENTURY MARTY LIPTON HAS been the defender of choice for companies under attack by an activist investor. That has been his specialty since he graduated from the New York University School of Law in 1955. The inventor of the “poison pill” strategy for thwarting hostile takeovers, he published a landmark article in 1979 on the responsibility of board members to stakeholders other than shareholders. A 1992 article he co-authored, “A modest proposal for improved corporate governance,” became the template for basic corporate governance principles that were adopted in the 1990s.

Far from slowing down at 86, he has become an important adviser to lawyers and board members in Europe, where activism recently has taken root. From the Midtown New York offices of the law firm he founded in 1965, Wachtell, Lipton, Rosen & Katz, Lipton reiterated his long-standing arguments against activism, while noting that the battle has taken some recent turns. What follows are the thoughts he expressed in that interview along with select excerpts from previous conversations with Brunswick.

Have activists become an ordinary and less acrimonious part of the corporate landscape?

Yes and no. Certainly the acrimony has increased with activists like Paul Singer and Bill Ackman, and the number of activists has increased. Most institutional investors are not terribly affected by acrimony. But some of the activists feel that acrimony is essential to achieve their efforts. It's hard to generalize. There are 15 or so major activists and another 100 or so more. They have different targets and different strategies. Some activists who had a very aggressive strategy have changed and are much more cooperative. I think probably the single most significant development has been that some of the major activists have essentially shifted so they no longer promote

MARTY LIPTON

“Unless a company is quite comfortable that it could win, it’s usually a mistake to go into a proxy fight”

financial engineering or short-term changes. Some are basically looking to invest to help a company change its strategy. Sometimes to improve it. And they’ve had quite a bit of success doing it. It’s sort of like an old-fashioned merchant bank having a significant investment in a company and trying to help it on a long-term basis. I call them pro-bono management consultants.

Are boards open to that or resisting it?

The P&G board resisted it with Triam last year. But some boards have encouraged it or at least accepted it.

I’m guessing your advice would depend on the case?

Depends on the case. Unless a company is quite comfortable that it could win, it’s usually a mistake to go into a proxy fight. Even if it’s won, a close vote sets up a situation where any downturn, any problem, could result in a change of leadership. It’s not helpful to management to have a proxy fight that comes out, even if you win it, you know, 52-48, something like that. That just shows that 48 percent of the shareholders are not satisfied with the way the company is being managed.

Unless a company is comfortable that it’s going to win a proxy fight by a large margin, it should not undertake one. It’s better to settle the matter and put one or two new directors on the board.

In other cases where the activist is promoting something that’s untenable, or something the company feels runs contrary to the best interests of shareholders, then the company is basically forced to defend a proxy fight and should do so, but always keeping in mind that a close win is the equivalent of a loss.

The most important thing is that the company has a very good IR effort and a real understanding of what its principal shareholders are thinking. What is their evaluation of the company? What is their opinion of management? On the basis of that information, the company can make the right decision as to whether to settle or to fight.

Are you more often recommending that boards negotiate with activists?

Not really. About the same. I have one message: activism is a disaster for the economy. And unless that gets played back, we are condemning ourselves to low growth – or no growth.

Is demand for your and your firm’s counsel as strong as ever?

I’d say it’s as high as it’s ever been, maybe even a little higher.

As activism spreads across Europe, is your counsel in demand there?

Europe hadn’t experienced activism, and now there’s a sharp increase in it not just in Europe but around the world. Publicly traded stocks on stock exchanges everywhere are subject to activism. I would say the trajectory for activism outside the United States is at a higher rate than the growth of activism in the US.

While we don’t operate in other countries, we’ve had a significant number of situations where companies outside the US have come to us for help in dealing with an activist situation in their country.

Do you advise by phone or travel to the scene of the battle?

Oh, we travel. An activist battle is basically fought on the home country’s turf. You might give some advice long distance, but you basically have to be on the ground when you’re in the midst of an activist fight. In dealing with an activist situation, there are a lot of people that need to be involved and it’s always best to meet in person. It doesn’t mean you stay there for a month or two. It’s back and forth.

Does a strong market provide some coverage to companies that might otherwise become activist targets?

Yes. If the price of a stock has gone up, it improves the total shareholder return. One of the key metrics that activists use is comparison of the target’s TSR to the peer group TSR. And to the extent that the target’s TSR is lower than the peer group, it’s an argument that activists like to use.

Some proponents of long-term investing, for instance McKinsey’s Dominic Barton, have suggested that short-termism may play a role in rising populism. What do you think?

I view activism as being a major factor in inequality. And inequality always breeds populism. There are a number of economic studies that show that. There are organizations like the Coalition for Inclusive Capitalism that are trying to moderate short-termism and activism in order to make the economy more inclusive.

Going back to 1970, when Milton Friedman published an article in *The New York Times* basically saying that the sole social purpose of a corporation should be maximizing value for the shareholders – usually virtually those words – there’s been academic support for short-termism and activism.

There are those who have accepted that and basically believe that shareholders should have absolute control over the corporation and that management should operate solely to maximize the return to shareholders.

I think it’s axiomatic that if that thinking dominates an economy, the average worker is going to get less and the shareholders are going to get more. And sooner or later, you have created a degree of inequality – and really, despair – that’s going to spur a sharp populous turn.

That’s been true throughout history. Step back to Roman times. If there’s an elite that begins to take an outsized share of the economy, it causes disruption and ultimately some kind of revolution. It can be a revolution that moves toward a more socialistic approach, or it can be a sharp turn to a totalitarian approach. But one way or another, the few who control the source of income in an economy, whether it be land in feudal times or business corporations in modern times, you’re going to get a reaction unless there’s a fair mediation of the proceeds of economic activity.

A series of economic studies, two of which have come from Europe, showed that activism – short-termism, shareholder-centric governance – is responsible for a very material drag on GDP growth in the US, UK, Netherlands, France and Germany. If companies don’t invest, you’re not going to get an increase in productivity, you’re not going to create employment – you’re not adding to the economy. It doesn’t take statistics to show that. It’s plain, ordinary common sense. And people are beginning to have common sense.

That’s why I feel so strongly that activism is not beneficial to an economy and it should not be encouraged. Now, there are always companies that are not well-managed, pursuing a bad strategy. Those companies need to be turned around, but it is not necessary to have activists do it. The institutional investors should undertake to engage with those companies and convince them to turn around. If you promote activism, what you’re doing is sending a message to every company that

it should start thinking the way of the activist or otherwise it’s going to be attacked, which means in a sense that you kill long-term strategies.

So what can be done?

We need to rethink corporate governance. The board of directors should determine the strategy of the company. We’ve taken that away and put the power into the hands of shareholders. The best way of dealing with that is for institutional investors to stop outsourcing the monitoring of their investments, and instead take it in-house.

What really annoys me, what I get really angry about, is that the public and union pension funds don’t try to do something about this. Activism is the cause of these great layoffs. It is bad for working people, it’s bad for shareholders and it’s bad for the economy.

How should boards deal with the potential for activism?

What activists are trying to do is drive a wedge between the board and management. Boards need to be prepared to back the management. Boards need to be on top of shareholder relations, to be ready to meet with institutional investors. Then they will get the support of institutions to win proxy fights.

That means, with regard to the potential for activism, the single most important thing for a CEO is to maintain a relationship with the board of directors so the board doesn’t feel pressured to seek a solution that’s not in the best interests of the long-term shareholder.

How optimistic are you for future generations?

Well, at the moment one cannot be very optimistic because the world is somewhat chaotic, both from an economic standpoint and a political standpoint. And the failure of investment, both in business corporations and by government, has basically penalized future generations.

If you don’t invest in infrastructure – and by infrastructure I mean not only bridges and roads but also soft infrastructure like education, employee training, healthcare and housing – if you don’t invest in that, you’re basically penalizing future generations. We’ve now had more than 16 years of robbing from future generations.

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KEVIN HELLIKER, a Pulitzer Prize-winning journalist, is Editor-in-Chief of the *Brunswick Review*.

“The single most significant development is that some major activists no longer promote financial engineering or short-term changes”

MARTY LIPTON

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A founder in 1965 of Wachtell, Lipton, Rosen & Katz, Marty Lipton is a dean of mergers and acquisition law, his practice focused in particular on corporate defense. He invented the so-called poison-pill defense.

FEW CEOS EXPERIENCE THE PRESSURE OF spinning off a business and taking it public. Rarer still is the chief executive who has successfully handled one of the world's most aggressive activist investors. Juan Ramón Alaix has done both – all within his first five years as CEO of Zoetis (zo-EH-tis), the world's largest animal health company. Today, Zoetis operates across 100 countries and has a market cap of more than \$35 billion. It boasts more than 300 product lines, ranging from vaccines to medicated feed additives, and generates nearly \$5 billion in annual revenue.

Alaix became CEO in 2012, after Pfizer CEO Ian Read announced the pharmaceutical giant would seek strategic options for its animal health division, a process that ultimately led Pfizer to spin the division off as its own business: Zoetis. In 2013, Zoetis had one of the year's largest initial public offerings, surpassing both Twitter's and Hilton's IPOs.

The IPO put Zoetis, essentially overnight, on the radar of hundreds of analysts and investors – many of whom knew little about the multibillion dollar business, and the nuances of the animal health industry. One of those interested investors would turn out to be the vocal activist Bill Ackman.

From Zoetis' headquarters in Parsippany, New Jersey, Alaix told Brunswick how intense training and clear communication were crucial in the build-up to Zoetis' public offering. And for the first time, Alaix shared the story of what happened after he received a call from Ackman, and why the company believed open discourse, not a public battle, was the right option.

Did you think you were ready to become CEO?

You only have the experience to be a CEO when you've already been a CEO. Of course, if companies only hired CEOs to be CEOs, you'd

Brunswick's
RAUL DAMAS
speaks with
Zoetis CEO
**JUAN RAMÓN
ALAIX** about
leading an
animal health
company to a
\$2.2 billion IPO
and facing down
an aggressive
activist

WELCOME to the JUNGLE

quickly run out of talent. I'd been running Pfizer's animal health business successfully for more than six years, and reported to Ian [Read, CEO of Pfizer] for years, so it was an educated bet.

How did you prepare for it?

I was fortunate to have access to a number of current and former CEOs who'd taken a company public. This group included leaders who had failed, and they provided some of the most valuable advice. I was also fortunate to participate in the board recruitment process, meeting and



ILLUSTRATION: NIGEL BUCHANAN

interviewing potential board members. This was a rare opportunity, which helped ease my transition into the role of CEO.

And even before the spinoff, we started acting like a company within a company. We identified who would be running the company, my leadership team. We also had to identify the new structures we needed to build as a standalone company. We did all of this while communicating with our newly formed internal board, just like any company.

You became the face of this new company. How did you feel about that part of the job?

I had to adjust the way I discussed the elements of our business. I was now communicating with individuals who were very familiar with Pfizer, the larger company of which we'd been a part, and the human pharmaceuticals business, but they were less knowledgeable about our animal health business. I needed to take a step back and ensure they understood the fundamental elements of Zoetis' business.

"BILL ACKMAN CALLED ME AND SAID, 'I WANT TO TELL YOU THAT I BOUGHT A LITTLE MORE THAN 8 PERCENT OF YOUR COMPANY, AND IT WILL BE IN THE NEWS TOMORROW'"

What audiences are we talking about?

Media? Investors?

It's both. In many cases, you assume that the people in front of you have similar knowledge about your business – like internal audiences do – but that's a mistake. And this took me time to learn.

We were talking to investors who didn't appreciate the advantages of animal health, such as our shorter innovation cycle and the lack of third-party payers. These are key differences.

Did this new approach to communications cause some human health-focused analysts to give animal health a second look?

Absolutely. Because we took a step back and did a better job explaining our fundamentals, many Pfizer shareholders saw for the first time the opportunities our business presented.

We've discussed the differences between animal and human health, but what are the similarities that you wanted investors to know?

In digital health, precision medicine and analytics, the animal health ecosystem is seeing incredible innovation, just as in human health. But unlike in human health, you're not dealing as much with governments, insurers and other intermediaries. We're able to work directly with the clinics – veterinarians, our customers – to develop the diagnostics that improve their outcomes. The same goes for livestock, where farms have an enormous amount of data, and we're helping them integrate it with health information to boost productivity.

So, we come back to communication.

Yes. One of the lessons we learned at the beginning is that you cannot be "cheap" in communicating externally. You always need to spend time with investors, but this is especially true after a spinoff, because the reasons for them to continue investing in your business may have changed.

What other communications tactics were important?

Repetition is key. Investors hear from lots of different people. They see lots of presentations. I needed to ensure that they heard what we were saying, even if I felt like a broken record by the third time ... and the fourth time. Also, personal delivery: I needed to make sure I showed the same level of engagement, enthusiasm and understanding of the audience in the first meeting of the day or the last.

"I NEEDED TO ENSURE THAT THEY HEARD WHAT WE WERE SAYING, EVEN IF I FELT LIKE A BROKEN RECORD BY THE THIRD TIME ... AND THE FOURTH TIME"

JUAN RAMÓN ALAIX

That brings us to Bill Ackman. He was one of those investors who watched you take the company public, and afterwards, wanted you to do more.

Bill Ackman called me and said, "I want to tell you that I bought a little more than 8 percent of your company, and it will be in the news tomorrow." I told him that since we would be holding an investor meeting the following week, I hoped he'd attend and learn more about our company. And that began a series of discussions.

How did those go?

They went well. We met with Pershing Square [the hedge fund led by Bill Ackman] to discuss their investment thesis and their areas of focus. And, through these conversations, they expressed interest in a board seat. I discussed this request with our board, which ultimately agreed to incorporate two new directors: one from Pershing Square and one independent director.

And where do things stand today?

After about 18 months, Pershing Square saw good progress with its investment and decided to sell its stake in Zoetis, and resign their board seat.

You employed a dialogue-based approach, different than the public fights we often see in activist challenges. Why?

When you are approached by an activist, you always have options. The board and I agreed that, given the distraction and cost to our business of a public fight, it was not the right choice for Zoetis at the time.

In addition to the board seats, what other changes did you make?

We implemented what we called an operational efficiency initiative, which was the next phase of evolving our business following the spinoff. We wanted to make sure that we would continue growing faster than the market, as we did in Zoetis' first two years as a standalone company. That required us to be much more efficient, by eliminating complexity in our company.

Did you develop this business plan at Pershing Square's urging?

No. It was already under way, because we understood it was something we needed to do following the spinoff of our business. We did inform them of it, of course. We also presented the

completed plan to our board, including the two new directors. The board approved it unanimously.

You took some major actions, including reducing your workforce by 20 percent. Was everything on the table?

No. One of Pershing Square's theses was there were opportunities to reduce R&D efforts. This may have been based on their understanding of human health, where that could make sense. Once they saw our return on R&D investment, our productivity, they understood the need to continue it.

Culture seems to be a challenge every CEO wrestles with. Have you?

From the beginning, we involved 2,000 colleagues to help us translate our core values into simple, practical language that would resonate with them.

Take "Run It Like You Own It," which is one of our core beliefs. Coming from a larger organization, where it was harder to move the needle on the overall business, we realized we now had the opportunity to explain to colleagues that this was truly their business. What would have been insignificant changes at Pfizer had real, lasting impact on our business.

While you're much smaller than Pfizer, Zoetis is still a large, global corporation. How do you retain the agility that helped drive the decision to spin off?

It requires challenging our organization – every day – to find simpler ways to operate. There can be no compromise when it comes to safety and risk, but what are we doing just because we've always done it? What can we do differently, more simply? These are the questions we need to answer, and the answers need to come from the bottom up, because it's the employees dealing with these processes who know their true value. And, if we decide we need to maintain a certain level of complexity internally, I ask that we not translate it to our customers.

It's a never-ending process, because any organization tends to build complexity over time. A key lesson from the spinoff, and the hard work we did to meet our targets after the spinoff, is that it forced us to become the unified company we are proud to be today.

RAUL DAMAS is a Partner based in Brunswick's New York office. He specializes in public affairs, crisis management, and reputation issues, with a focus on the healthcare industry.

JUAN RAMÓN ALAIX

Juan Ramón Alaix is CEO of Zoetis as well as a member of the company's board of directors. He has spent more than two decades in the pharma industry. Prior to Zoetis, Alaix served as President of Pfizer Animal Health. He is a native of Spain.

GO-JEK WAS FOUNDED IN 2010 AS A telephone booking service for a small fleet of motorcycle taxis called “ojeks.” Designed to formalize the informal ojek industry, the company quickly evolved into a ride-hailing, food-ordering, package-delivering, massage-booking – you name it – service that has expanded rapidly across Indonesia.

Indonesia’s 260 million people make it the world’s fourth most-populous country. Go-Jek brought a new stream of income to hundreds of thousands of them – there are 900,000 registered Go-Jek drivers – lifting many out of poverty. The company’s technology has also increased access to customers for 125,000 businesses through a range of other services including Go-Food, a food delivery service and Go-Pay, a digital wallet that now processes over 100 million transactions every month.

Since launching its app in 2015, Go-Jek has raised hundreds of millions of dollars from investors, including Google, KKR and Warburg Pincus, and is eying an IPO at some point in the future. Private equity firms are attracted by the growth potential of Southeast Asia overall, and Indonesia in particular.



Indonesia's TECH REVOLUTION

Internet penetration rates are comparatively low but developing quickly. As the middle classes grow, the potential for strong returns grows too.

Go-Jek’s 33-year-old founder and CEO, Nadiem Makarim, is a Harvard Business School graduate, former McKinsey consultant and native of Indonesia. He and his management team now aim to further bolster the company’s presence in the burgeoning fintech space and to play an even bigger role in increasing financial inclusion in a country where 64 percent of the population currently lacks access to the formal banking sector.

To that end, Go-Jek recently acquired three of the largest and most influential fintech companies in the country: Kartuku, the country’s leading offline payments processor, which serves nearly all of the

Go-Jek CEO
**NADIEM
MAKARIM**
talks with
Brunswick’s
DARRAGH OOI
about the ride-
hailing service’s
ambitions and
acquisitions

country’s 100 top retailers; Midtrans, the leading online payment company, which works with over 3,000 online merchants; and Mapan, a leading local community group-based saving and lending network that will provide the company with greater access to the unbanked population.

We met with Makarim to talk about his acquisition strategy, and Go-Jek’s commitment to increasing investor value while it improves quality of life across Indonesia.

Why do you think Go-Jek has been so successful?

Our growth came about initially because of how visible we were – we had branded motorcycles running around town so a lot of people very quickly found out who we were.

As awareness grew, a huge number of people recognized that the company could provide them with a livelihood. People had been using ojek in Jakarta for years, but it wasn't until Go-Jek that the market really took off. Roughly speaking, our presence cut the price for the consumer down to one third, while at the same time doubling driver incomes. The reason we were able to do that was because we increased the overall market size by four to five times.

This brings me to another reason for our growth – we don't focus on stealing market share from existing businesses; instead we have searched for ways to create new online markets where there weren't markets before.

And now you're accelerating your presence in payments. Why are you making these acquisitions instead of expanding organically?

Go-Jek is a technology company and technology is not built by machines, it is built by humans. Specifically, it's built by teams. Our acquisition strategy is exclusively about bringing on the best teams in their respective disciplines. In this case, the acquisitions really represent the best teams in Indonesia's fintech space.

How do you think the acquisitions will help you realize your vision for Go-Jek in the future?

Kartuku, as the leading offline payment network, will take our payment wallet from online and only existing within our app, to the offline world in a spectacular way. Midtrans will do the same in the online and e-commerce segment. And Mapan will expand our reach more deeply into the rural and unbanked areas of Indonesia. All three will work together as a very powerful payment ecosystem that will enable us to tackle the three most important segments for payments – online, offline and the unbanked.

What effect do you expect these acquisitions to have on your internal culture? How will you assimilate them into the Group?

We wouldn't have acquired these companies if we didn't believe that their cultures would complement that of Go-Jek. We want to maintain the culture and identities in each of the companies because that's what got them to their respective number one positions in the first place. We are asking ourselves how we can learn from each of these companies and as a result elevate the overall Go-Jek Group culture.

Are there any specific elements within the acquired businesses that you think will help Go-Jek improve?

Absolutely. For example, Mapan's culture is all about understanding social and community dynamics among the poorer parts of society and knowing how particular products might help them and their families. Their social mission is so deeply ingrained in their culture that we feel it will enhance Go-Jek's strategy as a technology company with social enterprise at its core. They will also help us with how we interact with our driver community.

Kartuku and Midtrans are very focused on B2B and merchants, whereas our DNA is focused more on the consumer. Increasing this merchant mindset will add great value to how we serve merchants' needs and maintain their loyalty.

Go-Jek is a socially focused business. How much do you think this drive to improve society matters to your investors?

It is extremely critical. Ninety percent of our employees are Millennials, and Millennials care so much about social purpose in addition to profit. Investors in turn recognize that the biggest competitive advantage you can have as a company is having and retaining the best people, because the best team always wins.

You've said that in order to win in Southeast Asia, you have to win in Indonesia. How much of a role does national pride play in your strategy?

Go-Jek is a national champion because we have out-competed some of the biggest tech companies in the world. We're a true testament to how local insight and local connection can add great value and competitive advantage. We want to prove that Indonesia can create world-class products and can compete with the best.

Finally, what do you think the future holds for M&A in Southeast Asia?

I think we'll see more and more locally founded coalitions being built. Working together will help local businesses gain scale and show larger foreign entrants to the market that we can compete and be successful. They will have to partner with us or invest in us – they won't be able to operate as successfully here without us.

DARRAGH OOI is a Director in Brunswick's Singapore office, specializing in sustainability, corporate reputation and crisis.



NADIEM MAKARIM

A graduate of Harvard Business School, Nadiem Makarim worked for McKinsey before founding Go-Jek in 2010, where he is currently CEO. Originating as a ride-hailing call center, Go-Jek now offers a platform for a wide range of services.



CEO **STEFAN BORGAS** tells Brunswick's **RONALD SCHRANZ** and **ALEXANDER KLEEDORFER** how he persuaded RHI Magnesita's skeptics

This **CROSS-BORDER** can take the heat

THE 2017 MERGER OF AUSTRIA'S RHI AND Brazil's Magnesita Refratários created the global leader in heat-resistant materials with 14,000 employees, a volume of 2.9 million tons a year and annual revenue of €2.5 billion (\$2.8 billion). At the head of the combined RHI Magnesita is Stefan Borgas, former CEO of Israel Chemicals and Lonza Group. He talks to Brunswick about the challenges, past and future, around the merger.

What were the key ideas behind the RHI and Magnesita combination?

The refractory industry has been stagnating for years. Growth can mainly be achieved through M&A and consolidation. Looking for an appropriate partner, Magnesita was the best candidate due to their geographic setup and product portfolios. Together Magnesita, with its focus on the Americas, and RHI, a European company with activities in North America and Asia, cover most parts of the world.

STEFAN BORGAS

Stefan Borgas became CEO of RHI Magnesita in 2016 after having led Israel Chemicals Ltd and Lonza Group. He earned an MBA from University of St. Gallen. His other interests include running, golfing, skiing and playing the cello.

RONALD SCHRANZ is a Partner and Head of Brunswick's Vienna office. **ALEXANDER KLEEDORFER** is an Associate in Vienna.

Was the merger, which was under way already, a motivation for you to take the job?

I like situations where you really must be vigilant and where your decisions matter and have a huge impact. So yes, the merger context was relevant to my decision to accept the offer.

What are the challenges you face now?

We are forging a new culture, based on performance, collaboration and an open-minded attitude. For us, this is not a poster on the wall. For example, we implemented an open office concept for the whole executive management team and introduced English as the corporate language.

How did you convince the shareholders? There obviously was some skepticism and activism?

We had to deal with skepticism mainly from private shareholders based in Austria. We saw some activism from local individuals and had to repeatedly explain to them the why and the how. For institutional investors, we did roadshows, conference calls and met them in person. We received overwhelming support from them, as size does matter as a competitive advantage in our business. The positive share price development since the deal announcement tells a story in itself.

What did you do to get regulators and antitrust authorities to approve the deal?

We engaged with law firms that specialized in cross-border transactions to go through the process as quickly as possible. Even so, it was a time-consuming and costly procedure with a massive amount of detailed data work and it tied up a lot of internal capacities.

What are the benefits of changing the listing from Vienna to London?

Even with Brexit on the horizon, it's still true that the industry analysts and investors in London know our business and know the industrial sector. As a result, our trading liquidity increased quickly. That opens us to more potential investors than before.

Is it difficult to manage the diverse cultures?

Diversity is an essential advantage because it brings different approaches. But we share a lot. We are in the same industry, solving the same problems for customers with much of the same base technology.

How will you decide the merger was a success?

It's the employees who form a company, not the figures. Financial performance will also tell a story, but ultimately success will be evident in an engaged and performing staff – and it will be *their* success.

AS AN UNDERGRADUATE AT HARVARD, JIM Cramer became President and Editor-in-Chief of the student newspaper, the *Harvard Crimson*. But out of college, after taking a series of jobs as a reporter, the future millionaire investor, entrepreneur and TV star was confronted with a problem common to the trade: not enough money. At one point, while working for the Los Angeles *Herald-Examiner*, he was forced to live in his car.

“Oh, I was really poor!” he recalls in a recent conversation with the *Brunswick Review*. “I always wanted to be a writer. But that wasn’t lucrative enough for me to be able to live in New York. So I did the hedge fund thing.”

First though, he went back to Harvard to study law. During that period, he made significant and profitable investments for Martin Peretz, a friend and owner of *The New Republic*. That propelled him into the “hedge fund thing,” first as a stockbroker with Goldman Sachs Private Wealth Management and later with his own firm, Cramer, Berkowitz and Co.

Building on his success, he founded pioneering online-only outlet TheStreet in 1996, the first business reporting website. A major player in the late ’90s, TheStreet has struggled with profitability and has undergone a series of restructurings since the dot-com bubble burst in 2001. Yet it remains a milestone in the evolution of journalism and Cramer continues to be an important contributor.

“I founded TheStreet because I felt like the world was changing and we were going to find ourselves outmoded by the internet,” he says. “So I saw that coming, which was good. But did I really capitalize off of it? Well – we’re still trying. We’re going to get it right!”

Cramer also became a frequent commentator on CNBC and his own show, “Mad Money,” has

aired continuously since 2005. Its characteristic mix of thoughtful interviews and 100-mile-an-hour analyses of stocks in the news – with plenty of graphics and sound effects – has earned it an enduring niche in American culture.

At both TheStreet and CNBC, where he is now co-anchor of the daily “Squawk on the Street,” Cramer’s goal is to educate people about investing, the workings of the market and the companies behind the stocks. As a hedge fund manager and journalist, he has had deep exposure to the top minds in business and how they interact with media and investors.

Cramer retired from his hedge fund business in 2001 to focus on journalism and his charitable fund Action Alerts Plus. We spoke to him about his career, about M&A deals, and his views on the role of media in business. Too often, he says, companies are reluctant to explain themselves, to state the facts and let the public decide. He has a message for CEOs: “Come on TV and make your case!”

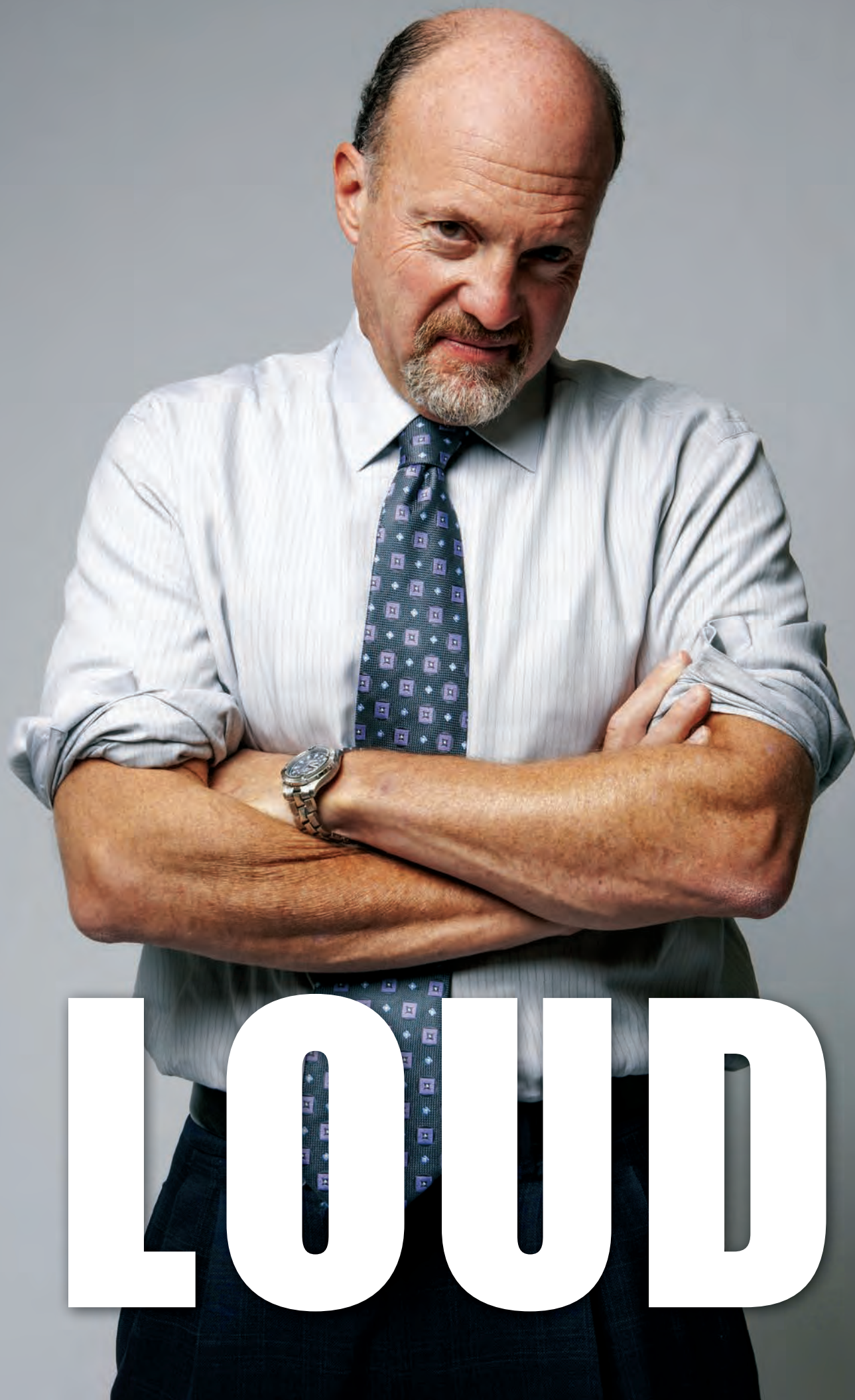
What do you think the media gets right or wrong in its reporting on deals and M&A?

It’s a remarkable beat because there are some people who can do it really well and a lot of people who just don’t have it right. And when you don’t have it right, you can really cause a lot of damage to the stock market. You can write that someone’s about to make a takeover bid – but what if it’s not true? And boom! A lot of people pile into a story and the story’s dead wrong.

I work a lot with David Faber [of CNBC], and David is the best M&A reporter in the country. It takes a tremendous amount of responsibility to be an M&A reporter and a tremendous skill set. You have to be skeptical. You have to recognize that there are a lot of people who want you to write a story that is not real. David knows all those things

Journalist, TV star and former hedge fund manager **JIM CRAMER** tells Brunswick’s **CARLTON WILKINSON** his view of the role media plays in business deals

SAY IT OUT



LOUD

**"IN THE MEDIA,
WE WANT TO DO
OUR BEST,
AND THE MORE
INFORMATION
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BETTER WE WILL
BE. THE LESS
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THE MORE
DIFFICULT THE
STORY IS"**

JIM CRAMER

are happening. But most people who cover M&A do not know.

Does the rise of social media make that harder?

Social media is unedited. Not enough editors and everybody journaling – that's nothing but trouble. There are a lot of people who need a stock to go higher and they can exploit social media to try to do that.

That's the biggest problem I have right now with M&A. Someone can put up something on social media and then another person may feel compelled to write a story for a news outlet because the social media dimension moved the stock. Then that story gets promoted. And so it becomes a vicious cycle.

From the earliest days at TheStreet and in your books, you've said you want to level the playing field for the small investor – to give them the same information hedge fund managers might have. Is that still an important goal in media?

I want people to invest as prudently as possible. The small investor these days tends to do ETFs [exchange-traded funds that track baskets of stocks in specific sectors or markets]. I'm not saying the small investor is disappearing. There are a lot of things they can do – there's more homework available online than ever before. But most investors have decided that they can't do it and that they should just be in index funds. And I'm totally, totally fine with that. That is absolutely fine.

I approach it like a doctor: first, do no harm. Almost all professionals say, "Listen, you can't pick stocks. You can't do it as well as a pro." What I say is, get a mixture. You can have index funds and then you can have some mad money to pick stocks.

How important is the entertainment factor in getting your message across?

I've never tried to hide the fact that it's a very dry topic. My professors that were really great were the ones that were animated and used a lot of different methods to get people interested, to try to make the material come alive so that they stay involved.

I've always said that the only way to do that is to add some pizzazz to it. Now, pizzazz is not something a lot of gray beards are going to appreciate. But I don't care. I'm at a point where I'm just trying to do my absolute best to try to get people educated. I don't want to lose them. I don't want them to say, "Look, this is really boring." So I try to make it interesting, while I tell the truth and do my best.

You took some heat in 2009 on the "Daily Show with Jon Stewart." He accused you of doing the opposite of looking out for the little guy. What did you do to move past that disappointment?

You've just got to put your pants on in the morning, put your shirt on, go right back to work. Sometimes you just get had. It was a long time ago now. Do I think about it? Yeah, when someone mentions it I'll think about. People who don't know what I do for a living remember that I was on that show – it was really good ratings for him. But, you know, did I think I was unfairly pilloried? Absolutely.

But he has to do his job, and that's what he perceives is his job. That was a disappointment for me. But you just have to move forward. Some people would have folded and just said, "I've had enough," but I like what I do and I believe in myself.

You must have met hundreds of CEOs now. What was your most memorable CEO interview?

Jim McNerney at Boeing was one [in 2013]. I asked him whether he was ever worried about the Dreamliner not working and he just said, "No!" I pressed him on it and he said, "I'm not. It's Boeing."

I just absolutely loved the fact that he had total conviction in his company and the product. I wish there were other people who were as unequivocal about their companies. It was just so much fun.

Was there any particular CEO interview that you did that really surprised you?

Yes! There was. Greg Hayes, the United Technology CEO, came on CNBC [in 2016] when Honeywell made its hostile bid. And he said, "Ain't gonna happen." I was struck by that. People in that situation usually couch or equivocate – they're afraid. It was unbelievably good that he said, point blank, "Ain't gonna happen." It's one of my favorite interviews ever.

Is there anything the best CEOs do that less successful business people don't?

The best CEOs have a clear vision, but allow for others' opinions. They take advice and they listen and they're not bullheaded.

That's why I think that a strong board is so important. The weakest boards produce some very, very difficult situations. The great example is GE. GE's board was very weak. They did not raise questions about what [former CEO] Jeff Immelt was doing. And because of that, he made a series of mistakes. They were honest mistakes. But the board should've been much more questioning.

The members kind of just said, “I’m fine with everything.” And that’s unacceptable.

What could companies do to help themselves as far as the media is concerned?

Give me all the information possible and really try to help me form my own view with the facts. That’s what Brunswick does and I favor that. Let me have access to the CEOs – because when you don’t give me access or you don’t want to put the CEO on TV, I immediately start wondering, OK, well, what’s wrong here? Why are they not coming on TV? Is there something that they’re hiding?

TV is a great opportunity to tell the truth. The best way to disseminate news is to be on TV because you control what you say. And I’m always just amazed that some executives don’t get that. When I see a CEO who says, “I don’t want to do TV,” I am immediately suspicious. The person’s either lacking confidence about his view or doesn’t want something known. That means you have to dig deep and find out what the hell’s wrong.

I’ll give you an example: DuPont. [Former CEO] Ellen Kullman did not want to come on my show [in 2015] to talk about what was going on. [Kullman retired from DuPont in October 2015 after a bruising public fight over board seats with activist investor Nelson Peltz and his firm, Trian Fund Management]. I can’t make the case first. She’s gotta make the case for her. And she didn’t want to. That’s a very ill-advised strategy, to not have the CEO make the case for the decisions that were made. And yet I see that happening all the time and it just shocks me.

That’s one of the things I really liked about CEO David Taylor and Procter & Gamble. I personally agreed with Peltz [who revealed a \$3.5 billion stake in the company in 2017 and nominated himself for a board seat]. But Taylor came on my show and told us why Procter didn’t need him. It was a truly impressive performance, and it made me think, maybe there is another side here.

In the media, we want to do our best, and the more information we have, the better we will be. The less information, the more difficult the story is.

What do you read to get up to speed first thing in the morning?

TheStreet does some good stuff at night, so I look at our coverage out of London. After that I go to *The Wall Street Journal*, the *New York Times*, *USA Today*, *Financial Times* – and I watch CNBC. I like to take my cue from – I love this – the Wilfred Frost and

Jim Cramer appears on “Meet the Press” in Washington, DC in 2009 with former US Federal Reserve Chairman Alan Greenspan.



Sara Eisen show [“Worldwide Exchange”], which I work out to in the morning. And I check Twitter.

So I gather that just continues through the day?

Yes. There’s no real downtime. Because I’ve got two shows. It’s a very stressful day, but, again, I love what I do and I try to do my best and try to stay on top of things. But there are so many things I have to stay on top of.

What’s the latest book you’ve read?

I’m reading two. *High Noon*, which is a really good book about the blacklist and the making of the movie, “High Noon.” Very well written. It’s about the way the blacklist really ruined people’s lives. The movie provides the vehicle that they use to talk about the blacklist.

And then the other book is *Bloodlands* by Tim Snyder, a professor at Yale. That’s about the area between Hitler and Stalin in World War II. A fantastic book, very, very smart, well-researched. I try to read two books at once because I live in Summit, New Jersey and I live in Brooklyn, and so I’m reading *Bloodlands* in Brooklyn and *High Noon* in Summit.

Has your interview style changed since you started your show?

I’m less interested now in the quarter and earnings per share and more in telling the story so that people can then do the work. And I find that I like the storytelling much more. Sometimes, obviously, the quarter is the subject. But I love helping people tell the story to understand a company so that they might be interested in understanding the stock. That’s just my favorite.

JIM CRAMER

Founder of market news website TheStreet and its Chief Markets Columnist, Jim Cramer is also co-anchor of CNBC’s “Squawk on the Street” and host of the network’s “Mad Money.” He is also manager of the charitable fund Action Alerts Plus and the author of six books, including *Real Money*, *Confessions of a Street Addict*, and *Get Rich Carefully*.

CARLTON WILKINSON is Managing Editor of the *Brunswick Review*, in New York and former Deputy Managing Editor of TheStreet.

A YEAR INTO PRESIDENT DONALD TRUMP'S term, many observers are concluding that the administration's "bite" against the multilateral, rules-based trading system will not be as bad as its "bark." As evidence, they note that it is not withdrawing from the North Atlantic Free Trade Agreement (NAFTA), but pursuing a renegotiation of it and the Korea-US bilateral free trade agreement (KORUS). Only very recently have a few import restrictions on solar panels or washing machines been announced. But it would be a mistake to think that US foreign trade policy does not pose substantial risks to supply chains.

The administration has repeatedly claimed that the World Trade Organization, established in 1994 to negotiate trading rules and resolve trade disputes and now including 164 countries, is a "disaster." As evidence of persistent discrimination against the US, the President claims that it loses all its cases at the WTO and has fewer judges than other countries.

The facts tell a different story. The US has been a complainant at the WTO more often than any other country and has prevailed in 91 percent of those adjudicated cases. During President Barack Obama's Administration, the US was largely undefeated, including in 16 cases against China. The US also has more cases brought against it than any other member and loses most (89 percent) of those that end in adjudication. That is roughly in line with the win-lose rates of other countries.

It is also untrue that the rules for appointing panels of judges discriminate against the US. A large number of disputes are settled before litigation. Unresolved disputes are handled by a three-person panel drawn from a WTO-approved list of qualified individuals. None can be from a country involved in the dispute. Decisions may be appealed to a panel of three members chosen on a rotating basis from seven standing full-time members of the appellate body who serve four-year terms. So far, the US has had one member on that appellate body. True, the US doesn't have majorities on the dispute settlement panels, but neither does any other country.

Over the past months, the Trump administration has been blocking the appointment of appellate body members. There should be seven members, but there were only four as of January. Three more terms expire by the end of 2019. Three members are needed to rule on any individual case. Meanwhile, cases in the backlog are building up and taking longer to resolve. The system is close to collapse; EU Trade Commissioner Cecilia Malmström has stated that the US risks "killing the WTO from the inside."

Although the US is effectively holding the WTO hostage to its demands for reform, it has not articulated what those demands are. US Trade Representative Robert Lighthizer has in the past recommended that US judges should be able to review any findings against the US. More recently, he has praised the system that preceded the WTO, under which members could block panel rulings. By eroding impartiality of the system and inviting other countries to do the same, these fixes would undermine a system that has averted trade wars for more than two decades.

In its National Trade Foreign Policy Agenda released in March, the administration announced that it does not consider WTO rulings binding and would feel free to ignore adverse rulings. It also said it would seek to deal with trade disputes outside the WTO system. Although the US already has some of the world's more far-reaching forms of "trade defense," the administration signaled it would consider imposing restrictions unilaterally by using statutes rarely used in the past.

One of these would enable the President to limit imports of specific items because of national security considerations. Originally conceived to apply during a time of war, this administration is prepared to define "national security" far more broadly.

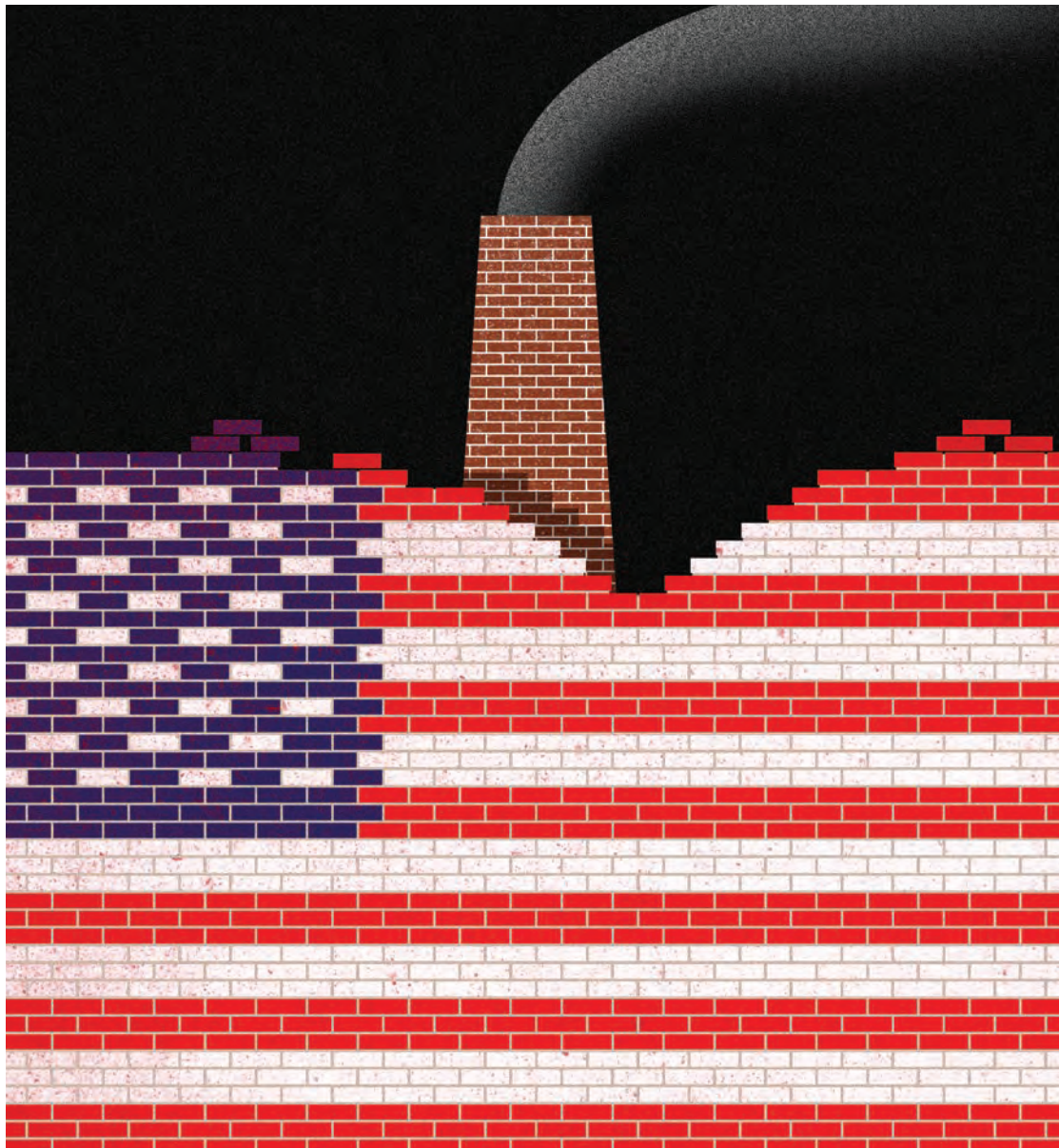
Among such unilateral actions currently on hold are tariffs on aluminum and steel. On the sidelines of the December WTO meeting in Buenos Aires,

The US is disrupting the World Trade Organization's global system that has prevented trade wars for two decades, say Brunswick's **ANTHONY GARDNER** and **PASCAL LAMY**. And it could get worse

TRUMP VS

the EU, Japan and the US announced an alliance to tackle "severe excess capacity" in steel and the role (specifically in China) of illegal subsidies, state financing and state-owned enterprises. The EU and Japan are hoping that the US can be induced to cooperate, rather than act unilaterally, to fix abuses in the world trading system.

But it would be unwise to assume that the US won't take unilateral action to protect its steel, aluminum or other sectors it may consider strategic. Even though such measures could trigger retaliatory gestures by foreign countries, and erode the competitiveness of the US by increasing input costs and consumer prices, the President may consider them worth implementing as an appeal to his electoral base.



The US was essentially undefeated during President Barack Obama's term in cases it litigated at the WTO; these included

16
CASES against China

WORLD

According to press reports, he repeatedly rejected Chinese proposals to cut steel overcapacity, despite a positive recommendation from several top advisers.

Unilateral measures to withdraw from plurilateral pacts have already proven counterproductive. The US decision to withdraw from the Trans-Pacific Partnership prompted the remaining 11 members to proceed with a slightly revised agreement covering nearly 500 million people and 13 percent of global economic output. The move also accelerated the finalization of the EU-Japan free trade agreement. It is spurring EU negotiations with Australia and New Zealand, and it has revived the prospect for a deal with the Mercosur trading bloc in Latin America.

As a result, US exporters will be comparatively disadvantaged when they sell into these markets; the EU and others will export their own industrial and regulatory standards, including in key areas such as the digital economy, and the US will have forfeited the opportunity to write or at least co-write the rules of global trade. A withdrawal from NAFTA or KORUS, while more disruptive from a systemic point of view, would have similar effect.

The rules-based international trade system has proved its worth for decades. But it is fragile and there can be no guarantee that it can withstand sustained assault. If the US moves ahead with its plans to work against or outside the WTO, we would move into a new era of economic disorder worldwide. Unless other WTO members can find a way to work together without the US, protectionism would come back, with a risk of every country taking the law into its own hands. The result would be global trade frictions, potentially even a trade war, that would disrupt international business and growth. Multinational businesses need to plan for that eventuality.

ANTHONY GARDNER and **PASCAL LAMY** are Senior Advisers at Brunswick Geopolitical. They are former US Ambassador to the European Union and former head of the World Trade Organization, respectively.

MY BROTHER PAUL LOVES WORKING AT Nebraska Furniture Mart, a furniture store started in 1937 by a Belarus immigrant named Rose Blumkin. What my brother finds appealing is that even though the founder is deceased, and even though NFM has expanded beyond Omaha to Iowa, Kansas and Texas, and even though it ranks as the nation's largest home-furnishings store, it very much remains a family-run business. On any number of occasions in the Kansas City store where my brother works, he has shaken hands with Ron Blumkin, a grandson of the founder who serves as chairman of NFM.

"It's a family business," says my brother.

When I ask whether he's aware that Warren Buffett's Berkshire Hathaway owns NFM, he laughs. "That might be an urban myth," he says.

After starting out as an investment vehicle that took large positions in undervalued stocks, Buffett's Berkshire Hathaway evolved into a prodigious acquirer of a peculiar sort. Questions fundamental to most acquirers – such as how to merge two corporate cultures? – don't apply to Berkshire, because a strong culture is crucial to Buffett's interest in a company. To other acquirers, mediocre management may be a mark of opportunity. For Buffett it is a deal breaker.

These peculiarities make Berkshire the acquirer of choice for companies that want everything – the proceeds of a sale and benefits of a deep-pocketed parent – without losing their independence. Outside of Buffett himself, no one knows more about Berkshire's acquisition strategy than Lawrence Cunningham, a George Washington University Professor of Law who is Buffett's favored chronicler. Besides serving as editor of *The Essays of Warren Buffett* – a perennial bestseller – Cunningham in 2014 wrote *Berkshire Beyond Buffett*, a treatise on why the company will prosper once its chief executive, now 87 years old, is gone.

Cunningham's argument is simple. Berkshire will remain vibrant without Buffett because each of its 300-some individual units or subsidiaries is well managed. If it weren't, Buffett wouldn't have bought it in the first place.

When you write about Berkshire, you talk about direct and indirect subsidiaries. How many are there in total?

About 60 direct subsidiaries, and at the next level there are probably 240 companies. So around 300 in all. It depends on how you – how Warren – counts it. Scott Fetzer is a direct subsidiary, for

instance, but in his annual report Warren will list out 12 of their divisions for some reason. (Laughs) I think he does that because Scott Fetzer was one of his early acquisitions, and he pays a lot of attention to those individual subsidiaries.

Is there a standard way that one of these acquisitions comes about? Is it Warren Buffett approaching a company or vice versa?

It's almost always the company or an agent approaching Warren. He's managed to create a network and a reputation that generates lots of

BUFFETT'S Promise of Permanence

overtures from the other side. And he can be very selective. In my book, I list at least 14 where the seller family wrote or called him directly. And he'll answer the phone. He'll open your mail and respond.

There's another cluster where some intermediary who knew the selling family and who knew Warren made an introduction. And there's a third category where friends or relatives made the introduction.

There's another category that I call stranger. Someone just sends him a fax. Or in the case of FlightSafety International, a Berkshire shareholder who was also a shareholder of FlightSafety wrote a letter to Warren's outside attorney. And his lawyer passed it along. For the most part, he just sits back and waits for the phone to ring.

Is there an example of Berkshire making the overture?

Warren actually initiated the Scott Fetzer deal. Someone was making a hostile bid, and Warren read about it in *The Wall Street Journal*, and he called the CEO and said, "If you want a friendly acquisition, give me a call."

If I'm the subject of a hostile takeover, why would a call from Warren Buffett appeal to me?

A manager facing a hostile takeover knows that the bidder has reasons to terminate management, throw out the board, install new people, take the whole company in a new direction. Warren's the

Warren Buffett's writer and editor of choice, **LAWRENCE CUNNINGHAM**, tells Brunswick's **KEVIN HELLIKER** how the legendary investor has acquired hundreds of subsidiaries – and never sells them

exact opposite. The manager will stay in place, have autonomy, independence, very little oversight. And so if you love your business, you want to run it even if someone else owns it, he's the perfect buyer.

Hasn't he bought some companies out of bankruptcy? Wouldn't a company's need for bankruptcy protection raise questions about management?

Those cases are very much the exception. Warren isn't hunting regularly in the bankruptcy courts for opportunities. In the case of Fruit of the Loom, management got caught flat-footed by some shipping challenges and cheaper labor costs overseas, and just needed more time than was available. Once the price got low enough, Warren saw there was brand strength and customer loyalty.

What percentage of these acquisitions would you estimate are family-owned businesses?

Before 20 years ago, it was the majority. It's now a minority. And that's partly to do with size and scale.

**"THEY ACCEPTED
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AND THEY LEFT
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THE TABLE"**

Before 1997 or thereabouts, Berkshire's acquisitions tended to be in the \$100 million range. They didn't often get above \$1 billion. You had many more medium- to small-sized companies in that sweet spot. And they tended to be family-owned and operated. They're the perfect kind of seller; the owners typically have some interest in preserving a legacy, maintaining a family name and continuity among generations of managers. They welcomed that commitment to autonomy. Berkshire's other commitment is to permanence. Berkshire hasn't sold an acquired subsidiary in 40 years.

That's amazing.

It is. Warren came to realize that a lot of sellers will accept a commitment of permanence in exchange for some economic consideration. As he has developed a reputation for permanent ownership, sellers have shown a willingness to charge less. I give a couple of examples in *Berkshire Beyond Buffett*. The Child family who owned RC Willey, a home furnishings company, were at the third-generation stage, and it was time for a change. But they were very interested in both autonomy and continuity for the nephews coming up and permanence for that family name. And they went on to the market and solicited and obtained bids, one of which was from Goldman Sachs for \$200 million and one was from Berkshire for \$175 million. Both were all cash. And Bill Child told me he sat around, met with the family and they talked it over and they accepted Berkshire's bid. And they accepted Berkshire's bid because of that promise of permanence and autonomy. And left \$25 million on the table.

Their vindication is that, nearly 23 years later, the Childs still run that company. They don't have to do a lot of reporting and they have virtually no oversight from Warren. They've had interactions with Warren over questions like, "Should we expand into this state or buy property here?" And they've had a great relationship over it. It has grown, it has expanded, and the family still runs it.

Is that promise of permanence delivered over a handshake or actually written into the deal?

It's over a handshake. It's never written into the deal. It is an interesting thing, that it's not written anywhere. As a corporate lawyer, I would never advise writing that into a deal. But he's got a long record of keeping his word, and he has made the promise on video, when Berkshire bought Benjamin Moore Paints. Benjamin Moore has a localized distribution system of independent dealers to sell



ILLUSTRATION: THOMAS FUCHS

their paint. And the distributors were very nervous about Berkshire's acquisition. He made a video that was distributed to all of them, giving that assurance that we buy for keeps and we're not going to sell you, we're not going to change that business model. And so, even though it's not legally binding, it's so ingrained in the culture – and he's just truthful.

And anybody who has doubt can call other sellers, other people who have sold to him.

Are management changes ever needed?

The Pampered Chef went through a difficult patch. That's a company that sells kitchen utensils, typically through Tupperware-type parties at homes, among friends. And it was a great business model in the '90s. But it faced serious problems as its demographics shifted to online shopping, and Millennials are just a different social milieu where that sort of home party isn't as popular. So they faced a very serious challenge, but Warren stuck with it. The founder, Doris Christopher, wanted to step down. She wanted to do other things, she was in her late 60s, and so she did, and they hired somebody else. And the headwinds were still strong. And Warren thought Doris really has the genes for this and the chemistry and the history. So he called her back from retirement. And she tried to reestablish the conviction among the sales force that they could do this and how to adapt to the online world. And she got it back on track. And then she still wanted to retire. (Laugh)

And so he did manage to persuade an executive in Omaha, Tracy Britt Cool, a young whippersnapper from Harvard Business School, to take charge of the Pampered Chef. And as I understand it she's got it right now. It was partly about distribution strategy, partly product mix. Making those parties appealing again. The key is, he held onto it.

Would he ever sell a subsidiary?

He does have two rules that he's stated for 40 years that, if triggered, he'll sell. One is because he is a fiduciary. Berkshire's got to look out for shareholder interests. It can't just be a welfare center for corporate orphans. First, the permanence commitment is binding so long as the business has sufficient cash flows. It can't just hemorrhage cash. A business can't be in a coma or dead. It can be struggling, but it's got to at least have that cash flow. Second, it's got to have labor peace. That's not a big problem with most companies. It's come up a couple of times. NetJets – the fractionally owned aircraft business – employs very expensive, highly

skilled pilots. And they exerted real pressure against management. Management though was pushing back. They had a real gap. Pilots protested at the annual meetings, took out ads in *The Wall Street Journal* and were a very strong and loud voice. They built a lot of pressure around NetJets and it even reached, I think, to Warren. But they ultimately managed to calm it down, get an accommodation. Watching that, I thought, this is going to be one of those exceptions. If this labor unrest persists, this will be grounds for selling. But it never even got close to that.

Is the promise of permanence a reason to believe in Berkshire beyond Buffett?

Yup. That's my argument in the book. Everyone who has studied it recognizes that that permanence commitment is an important source of value at Berkshire over time. My research supported the conclusion that this commitment to permanence will be sustained. And mainly that's because it has been injected into the culture, into the corporate DNA. It's molecular, it's fundamental. Everyone gets it. Certainly, the entire board of directors – who will be responsible for picking the next CEO – fully, completely, comprehensively embrace that principle.

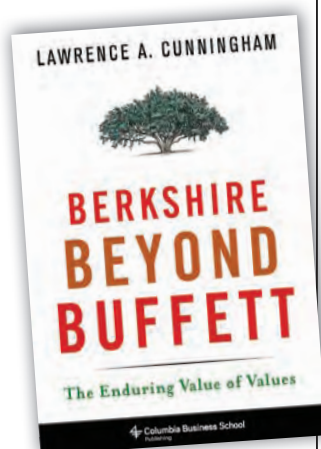
Likewise, within the executive ranks, the managers of most of these companies receive that commitment or have made it in turn to subsidiaries they acquire. And so none of them will have any propensity to break that commitment.

And the third group are the shareholders, who obviously elect the board of directors. These are very unusual shareholders in corporate America. They've got a much longer-term outlook than average. Their holding periods are longer. Share turnover is lower. They're not so fixated on quarterly or even annual results. They're looking really at five, 10, 15 years. There are very few index investors in Berkshire.

Do you think Berkshire could ever become the target of an activist?

Could a Nelson Peltz or a Carl Icahn or a Bill Ackman take a shot at Berkshire? I don't think so. Nothing is impregnable. It's not impossible. But the culture around the board, the managers and the existing shareholders, is so strongly committed and aligned with this idea of permanence that it just seems unlikely. And the businesses themselves all tend to be in the top of their respective industries.

KEVIN HELLIKER, a Pulitzer Prize-winning journalist, is Editor-in-Chief of the *Brunswick Review*.



LAWRENCE A. CUNNINGHAM

Lawrence A. Cunningham has authored or edited dozens of books, most of them focused of corporate governance and investing. He is the Henry St. George Tucker III Research Professor of Law at George Washington University.



Legal Rebel

OVER HIS THIRTY-FIVE-YEAR CAREER, Frank Aquila has been called a lot of names. “Dealmaker of the Year,” by American Lawyer; “Global M&A lawyer of the year” by the Global M&A Network; a three-time “MVP” according to the online publication Law360; “M&A lawyer extraordinaire” on CNBC’s Fast Money; and even “legal rebel” by The American Bar Association, for being “one of the profession’s 50 leading innovators.”

Aquila, who’s been with the law firm Sullivan & Cromwell since 1983, has packed a career’s worth of high-profile deals into the last decade alone. He worked on the 2015 Kraft-Heinz merger, which formed one of the world’s largest food and beverage companies, and on the 2011 United Rentals-RSC acquisition, which created the world’s largest equipment-rental company. In 2008, Aquila represented InBev in its purchase of Anheuser-Busch for \$52 billion, one of the largest all-cash acquisitions in history, and eight years later, represented AB InBev

FRANK AQUILA, one of the world’s leading M&A lawyers, talks taxes, Trump, and 2018 predictions with Brunswick’s **BEATRIZ GARCIA**

in its \$100 billion mega-merger with SABMiller. Brunswick spoke with Aquila, a lifelong New Yorker, in Manhattan. The conversation drifted from predictions on dealmaking to reflections on how it has evolved and changed. “M&A has really become institutionalized, just a part of how companies manage their capital structure. In the same way that companies have to decide, ‘Am I going to buy back stock?’ ‘Am I going to issue equity, or debt?’, companies also realize that they have to decide, ‘Am I going to make acquisitions?’” says Aquila. “In the ’80s M&A was more of a swashbuckling, Saturday-night-special, all-hands-on-deck style of dealmaking. But it’s changed, and that’s a good thing.”

What surprised you in 2017?

All the biggest surprises for me really were in the US. In particular, how slow the US regulatory process was. And that may be because it’s taken a long time for appointments to be made. And it was surprising because one of the things that Donald Trump ran on was cutting regulatory red tape. While Trump cut regulation, in many cases he has been slow to appoint political appointees who can execute on that.

There were also very few all-share deals in 2017. That was in large part because US companies had plenty of cash and they also had access to cash – not just at low rates but also on very good terms. So very few all-share deals were done. We may well see that continue. The GOP tax bill could free up to \$3 trillion of offshore cash, so US companies will be even more cash-rich – and even if interest rates go up a bit, rates will still be at historically low levels and terms should continue to be very favorable.

You mentioned the tax plan. Can you talk more about how you see it affecting M&A?

Just because it goes into effect on January 1, it doesn’t mean that we are going to suddenly see all these deals announced in the first quarter of ’18. Companies are going to have to figure out what it means. But if I’m acquiring a non-US company, or if I’m merging with another company in the US, the effects under the new tax code are going to be dramatically different when you crunch the numbers that boards consider – over three-, five-, seven-year periods – when approving deals.

But to be clear, it’s not just that this tax plan is positive for M&A. *Any* tax plan would have been net positive for M&A because the drive to consolidate is there. Boards and leaders just needed to know what the tax effect was going to be so they could figure out what the exact value would be of a transaction.

**"ONE OF THE
KEY MESSAGES
I HAVE FOR
BOARDS IS:
FORGET ABOUT
ACTIVISM,
THINK ABOUT
CREATING VALUE"**

The most important thing about the tax plan is it removed uncertainty, because uncertainty kills deals.

What's your read of this administration's effect on dealmaking so far?

The first year of the Trump administration had a negative effect on deal-making, but not for the reasons you may think. We had fewer deals in 2017 than we would have had, and should have had because a lot of companies were waiting to see what was going to happen with healthcare reform, just given how important healthcare is to the economy. And companies were also waiting for tax reform because you really can't do a big acquisition, whether it's domestic or cross-border, without some assumption around taxes. But we'll make up for it in 2018. We're going to have a lot of deals in 2018.

That's your prediction?

Yes. We'll see significantly more transactions from a number perspective and a dollar perspective in 2018. The most important leading indicator for M&A as a whole is business confidence. It's also very rare that we have simultaneous economic growth in Europe, in China, in Japan, in North America. So when you have that sort of synchronized global economic growth, you know that there have to be high volumes of M&A just because M&A has always been associated with that level of economic growth.

Are the boards you're talking to worried about economic nationalism and populism?

Boards certainly ask about that, in the US especially. What they're concerned about in particular is antitrust enforcement. US antitrust enforcement under Reagan was very permissive. Under Clinton and Obama, it was more restricted, but it was all within the confines of historic US antitrust principles. The concern that boards have at the moment is that the Trump administration is looking at antitrust approvals as a means to effectuate their populist agenda. To some extent we have already seen some cases of the courts not permitting the administration from straying far from the lines, so it likely won't have a long-term effect. But at the moment, there is some concern.

Have these profoundly changed the way you communicate around deals?

I'm obviously aging myself, but I remember the days when you were doing a deal and you would have somebody go up to Chicopee, Massachusetts, which was where *The Wall Street Journal* was printed. And

another person go over here [in Manhattan], by *The New York Times*. We knew when the papers came off the presses, so we would immediately get copies of the papers. That was often the way you would find out if the other side had launched its tender offer for your client, or if there was a story about your client. Then, you knew that you had until 3:00 p.m. the next day to respond.

Today, M&A is like a political campaign during a major election, with the 24-hour news cycle. You need to be able to respond very, very quickly. Before you could be reactive because you knew you had a certain amount of time. But now, you need to be preparing in advance. What are the issues? What are the concerns that people are going to raise?

There weren't any leaks in the days of Chicopee?

Oh, there were plenty of leaks. But you just didn't know about it until the papers came off the presses. And sometimes you knew because you were getting a call from some reporter asking questions, and you'd be suspicious about why they were asking you particular questions.

Another change, I imagine, has been the role of women in M&A.

When I first started doing M&A, there were extremely few women. So it's changed quite a bit. You're seeing more women M&A bankers and lawyers today.

There certainly is not parity by any means, but there are more women than ever before and that's obviously a good thing. At Sullivan & Cromwell, we have five female M&A Partners, and our retired Partner and Of Counsel Janet Geldzahler was really one of the first female M&A Partners in the country.

You've been involved in a number of activist battles. How has activism changed M&A?

Activism has changed corporate America in many ways. Clearly activism leads to more M&A. But what it really does is it leads boards and managements to become increasingly focused on shareholder value. M&A is one of the tools that boards and management teams use to create shareholder value.

One of the key messages I have for boards is: forget about activism, think about creating value. To understand the rise of activism you only need to consider corporate America generally. In the 1950s, 5 percent of US equities were owned by institutional investors, while 95 percent of equities were owned by individuals. Today, it's the exact opposite.

Individuals only own 5 percent of US equities, and 95 percent are owned by institutional shareholders – though the reality is individuals actually own 100 percent, they just own them indirectly, whether it's through a 401(k), a pension plan or a mutual fund.

If boards should forget about activists, who shouldn't they forget about?

What I tell boards is that they should regularly engage with their institutional shareholders. Go out, talk to them. Most CEOs and CFOs and IR heads will tell you, "Well, I do go out, and I do talk to my institutional shareholders on a regular basis." But they're talking to the investment managers – the people who make the investment decisions.

Today, board and management also need to talk to the people who vote the shares. In most institutions, there is a separation between the investment decisions and the corporate governance

decisions. The people who vote the shares have an ethical screen between them and the investment managers. So the investment managers may love you, but the corporate governance folks, they vote the shares based upon certain principles. You need to talk to them and explain why you're doing certain things and why you're not doing other things.

How much of a difference does it make?

What I find is that companies that have that dialogue, first and foremost they have fewer incidences of activism. And when they do have activism, they have high credibility with their institutional shareholder base. They usually are very successful.

BEATRIZ GARCIA is a Director in Brunswick's New York office. She specializes in global media relations, reputation and brand management, with a focus on financial services.

FRANK AQUILA

Widely acknowledged as a legal pioneer in M&A and corporate governance, Frank Aquila has been with the law firm Sullivan & Cromwell since 1983. He is a member of the Firm's Management Committee and was formerly the co-managing partner of the firm's General Practice Group. He received his J.D. from Brooklyn Law School, and his Bachelor's Degree from Columbia University.



M&A Renaissance

A 16TH CENTURY PALACE IN ROME, A SITE that has historically hosted several illustrious Cardinals of the Roman Catholic Church, serves as the offices of law firm Gianni, Origoni, Grippo, Cappelli & Partners. The rarified atmosphere befits the 30-year-old firm's reputation as a world-respected counselor for international companies doing business in Italy. Brunswick spoke to Francesco Gianni, a founding partner and one of the top European lawyers in M&A and structured finance, about his view on Italy's place in the current international business

Top M&A lawyer **FRANCESCO GIANNI** sees a growing wave of deals in Italy and Europe. He talks to Brunswick's **ALESSANDRO IOZZIA** and **LIDIA FORNASIERO**

landscape, the growing roles of technology and activism, and the enduring attraction of quality and experience in business services. Advising multinationals such as ArcelorMittal, Atlantia, Hitachi and ProMach in multibillion cross-border deals, Gianni has a privileged viewpoint over the dramatically changing M&A market in Europe.

What does the Italian and European M&A market look like over the next two years?

The economy is in a growing phase – not at the same pace all over the world but there is certainly



**"WE'RE NOT A
JUKEBOX:
YOU POP IN THE
COIN, IT PLAYS
THE TUNE"**

FRANCESCO GIANNI

One of the founding partners of Gianni, Origoni, Grippo, Cappelli & Partners, Francesco Gianni is the head of the firm's Corporate M&A department and a practicing lawyer licensed in Rome and New York. A graduate of the University of Rome, he obtained an LL.M from the University of London, King's College in 1976 and an LL.M from the University of Michigan Law School in 1977. Early in his career, he worked in the US for top law firms.

a recovery. Northern Europe is performing very well and in Germany we still see strong M&A activity with a robust economy. Central Europe is enduring some political tensions, yet I've recently been in Poland and Lithuania and entrepreneurs are very positive.

In Italy, traditional foreign investors, from US, Europe and Japan, are coming back. We also see strong interest from the developing countries, and from China. It's a sound market and it is made even healthier by two key elements: one is the active return of private equity and the other is Italian companies starting to expand internationally.

Is Italy a particularly ripe target for the wave of activist-inspired litigation on the M&A scene?

I don't think the kind of activism that leads to litigation is finding much room in Italy. There are very few truly public companies without a controlling shareholder, compared to France and Germany. Challenges such as Elliott Advisors' and Amber's campaign against Hitachi regarding its ownership of [railway signaling business] Ansaldo STS are very rare.

On the other hand, hedge funds in general are becoming more active in their participation in shareholders' meetings. Our system is more conservative, but we need to confront this trend. In many cases, the funds' objective is to improve a company's governance with more qualified, independent board members, or to increase the value of their investment through management change. Those are more common than cases involving litigation.

What are the types of questions you're asked the most?

International investors are most often concerned with the consistency and the stability of Italy's legal system. Investors feel our regulatory system is too easily subject to change. And they are concerned by the length of judicial proceedings, which exceeds the standards international investors are used to.

Look at what is going on with the ILVA steel plant: the Apulia Region and the Municipality of Taranto are filing an appeal against the environmental plan. We represent ArcelorMittal; they are going to invest as much as 4 billion euro. However, if the environmental plan is modified, the investment profile will change as well. So, their question is: do we invest now or wait for the judgment? It will take at least two years, what do

we do with ILVA's 14,000 workers in the meantime? This is a serious issue.

How much more difficult was it to do deals before the iPhone and the internet?

When I started – back in the Middle Ages – we typed on paper, used carbon copies and mailed the documents. We used to post mail from the Vatican, as they were using the Swiss Post, thus punctuality was assured.

Today, we can be everywhere in real time. That adds complications however, as clients also expect our response in real time. That's not possible. We're not a jukebox: you pop in the coin, it plays the tune. For our clients' sake, we need the time to ponder our responses.

How will artificial intelligence affect M&A?

We have set up a team dealing with AI and recently hosted a workshop here in Rome. It's a complete revolution that will change our way of doing business. At first, we will use AI predominantly in due diligence. Instead of 50 people to examine 4,500 documents, the machine will read them overnight. I may want to know if there is a clause of change of control: the machine will pull out 50 documents containing that clause. But not all the change of control clauses are written in the same way, so I still need to read all 50 documents selected by the machine. AI helps me, but I still need human intervention. Eventually, it will reach a level of sophistication that gives us more accurate responses.

What was the most inconvenient call you ever received about a deal?

The most peculiar call came on my 25th wedding anniversary. I had planned a weekend in Porto Cervo, Sardinia and waited two years before I got the confirmation of the room. We fly there and we're in a car on the way to the hotel when my phone rings: it's a very prominent investment banker. "Where are you? I need to speak to you. It's confidential." It was the acquisition of a major listed company. I spent the whole weekend writing the purchase agreement. We spent the following seven years working for that company, yet I would rather have received that phone call the next Monday.

ALESSANDRO IOZZIA is a Partner and Head of Brunswick's Milan office.

LIDIA FORNASIERO is a Director with the firm, also based in Milan.

Are takeover battles waged **RATIONALLY**?

The field of behavioral economics finds evidence to the contrary says Brunswick's **STUART HUDSON**

NOBEL PRIZE WINNER DANIEL KAHNEMAN HAS long argued that people make poor financial decisions. They rely on “heuristics,” making most decisions using mental shortcuts or rules of thumb that often turn out to be wrong. They are “loss averse,” putting a higher price tag on a thing they already hold, versus a thing they do not. And they are susceptible to “framing,” being influenced by the way an idea is presented.

Sophisticated investors are not immune from this behavior. Harvard's Andrei Shleifer talks of “systematic” deviations from rationality. Repeated studies have found a short-term momentum effect in stock prices, suggesting a psychological feedback mechanism influencing investment decisions.

And it isn't just investors. Georgetown's Donald C. Langevoort has found that CEOs in takeover situations – particularly acquirers – are more likely to display overconfident and risk-taking behavior. And corporate board members and their advisers can be affected too. When they are surrounded by a deal team consisting largely of senior males who feel experienced in their field, watch out. Competitive behavior can then create a desire to win at almost any cost – including to shareholders. And the desire for cohesion can suppress dissenting opinions.

All of this suggests that future takeover battles may be won by those who effectively incorporate the insights of behavioral economics and psychology.

Here are **THREE LESSONS** to start with.

FIRST, don't just recite numbers; tell a story that builds trust. It is crucial to develop a narrative that explains that you “get” your shareholders. Show how your track record demonstrates that shareholders can trust you, and clarify how and why your team is best suited to manage the embattled company.

That means telling the story of your management team's journey, the progress you have made and the opportunity that a takeover could jeopardize.

The bidder must counter that narrative with a story of their own, one that undermines the credibility of the target's track record and that explains why they deserve the confidence of shareholders.

SECOND, when rebutting claims from the other side, don't just rely on facts. People are susceptible to confirmation bias, only accepting evidence that fits their existing views, so telling them they are wrong and arguing the facts might only make things worse. There can even be a backfire effect, in which correcting people actually increases their misperceptions. The science behind vaccines, after all, is solid. Yet a classic Harvard study showed how attempts to debunk myths about vaccines failed to convince dubious parents.

Instead, before trying to convince skeptics of an

alternative narrative to the one they believe, first look for a way to reassure them and build some common ground.

THIRD, recognise that you and your team are likely susceptible to your own biases and to groupthink.

When you express a point of view on an important question, ask yourself “What would cause me to change my mind?” In *Superforecasting*, Philip Tetlock and Dan Gardner suggest that in any decision-making process you should list all the signs and factors that would cause you to come

to a different answer. If you have identified these factors at the start, you may be more open-minded when your colleagues or advisers suggest that the time has come to change course.

In the months and years ahead, it is likely that the study of behavioral economics and finance will yield more insights for those working in M&A. If you are going to win a business-critical takeover battle, you cannot afford to be left behind.

STUART HUDSON is a Partner specializing in M&A and regulatory strategy. Formerly, he served as Special Adviser to the UK Prime Minister.



COMPETITIVE BEHAVIOR CAN THEN CREATE A DESIRE TO WIN AT ALMOST ANY COST – INCLUDING TO SHAREHOLDERS

Here's the Deal with SOCIAL MEDIA

WHILE NOT EXACTLY COOKIE-CUTTER, there used to be a fairly standard protocol when announcing a big merger or acquisition. Hand an exclusive to a journalist and, in return, you'd know when the news would break and you'd have some say in the initial coverage. Largely because of social media, that approach – to put it generously – is far from ironclad, or sufficient.

Today, more than one in four deals are first reported on Twitter, while absolutely every deal faces challenges that are magnified, and often created, by social media: leaked information, non-stop commentary, rumors that spread with viral ease, soundbites shared without context.

It's difficult for some to shake the dated notion that social media is essentially a place for teens and Millennials to post their selfies and share their cat videos. That may have been true five years ago, but today search engines and social channels are just as important as traditional outlets for M&A.

Not only do these channels present an opportunity when used correctly, they create huge risks when they're ignored. If a billion-dollar deal goes sideways because investors get spooked by what's on social media – an entirely preventable situation – the break-up fee alone can be significant, not to mention the reputational hit.

Teens and Millennials are definitely active on social media – but so are business executives, politicians, and investors. Almost 200 CEOs joined Facebook as a business leadership platform in 2016. A Brunswick survey of global buy/sell-side investors found that 90 percent of respondents

AIG's **JIM WELLS** and Brunswick's **MIKE KREMPASKY** argue that a digital strategy for M&A is no longer simply nice to have, but rather an essential requirement



said they actively use social media to investigate investment decisions. One in three Bloomberg Terminal users access social media through their machines.

While a lot of the conversation surrounding M&A today focuses on how much the landscape has changed – and without question, a great deal has – it's important to recognize what remains the same: what stakeholders think of a deal can affect whether the transaction is approved or rejected,

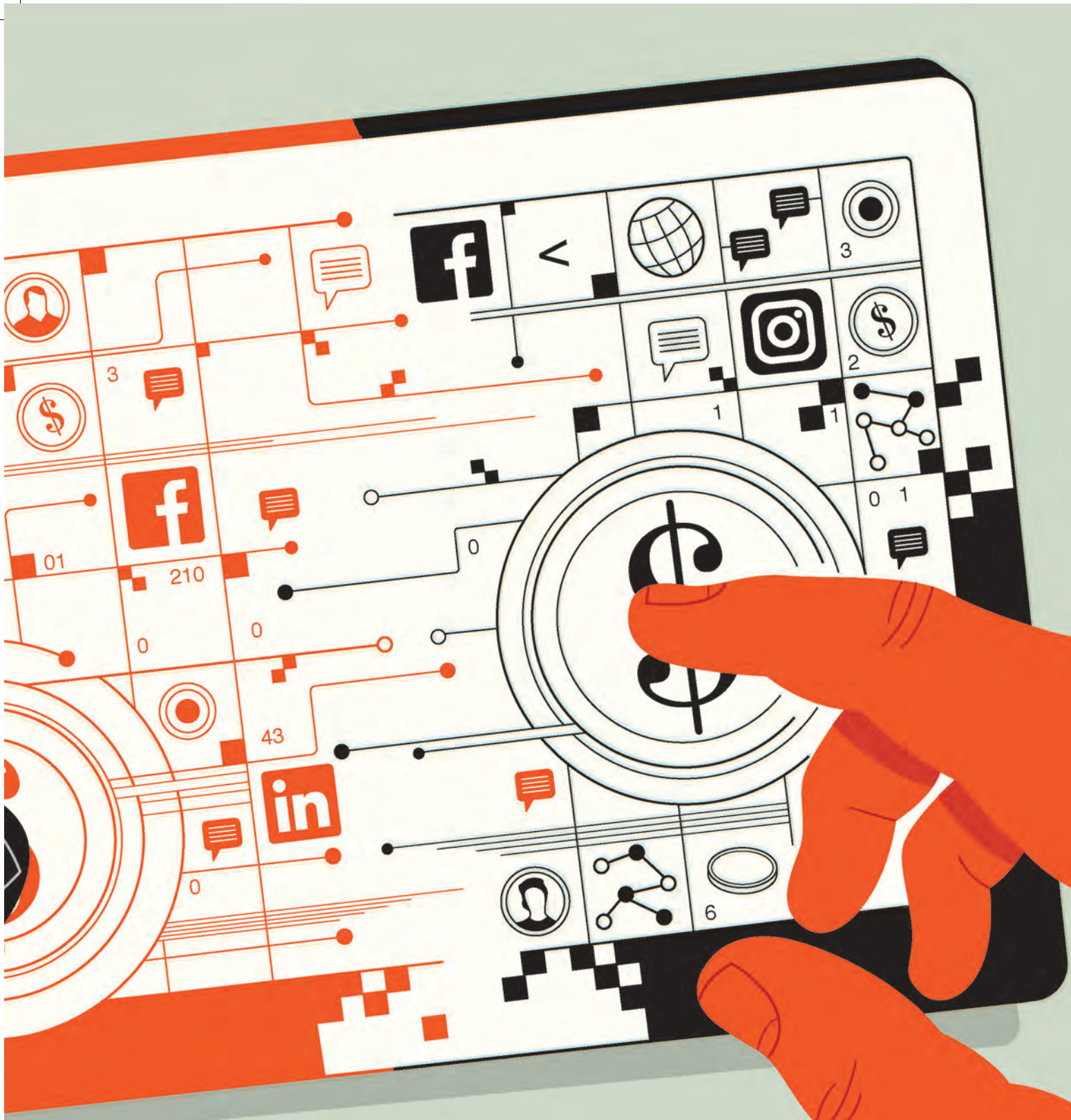


ILLUSTRATION: HARRY CAMPBELL

and influence whether it lives up to its proponents' promises or down to its critics' expectations. Today, there's simply no more cost-effective, efficient way to connect with all of these stakeholders – from investors to regulators, customers to employees – than through search engines and social channels.

One obvious reason search engines and social media are so important is their outsized reach. Business news on Facebook reaches five times more people than the top 10 financial outlets

combined, including Bloomberg, CNN Money, *The Wall Street Journal*, *FT*, and Yahoo! Finance.

For those new to digital media, these numbers might remind some of the pitch that billboard salespeople used to make, counting every driver (and some passengers!) on the highway as a potential customer. But the billboard metaphor falters in a few important ways. In fact, a growing percentage of these online audiences are actively using digital channels to search and find news

**One in three
Bloomberg
Terminal users
access
social media
through their
machines**

"This trust exists even when our friends don't share the news with us – simply seeing content alongside a newsfeed full of people and companies we've chosen to follow, the argument goes, primes us to view the content as trustworthy"

about businesses, organizations, and politicians. In other words, rather than just happening to drive by these heavily trafficked billboards, a growing number of people are heading out looking for them.

PEW's most recent survey found that two-thirds of US adults get their news from social media. The Reuters Institute's 2017 "Digital News Report" surveyed 36 markets across five continents and found that nearly half of respondents used Facebook for news. Increasingly, these digital platforms are even where people first encounter traditional media: Facebook is the No. 1 referral site to the *FT*. Google "directs 10 billion clicks a month" to publishers and traditional media outlets, according to *The Economist*.

Crucially, not only are people looking for news on social media, they're also viewing that news as credible. A recent report by Echelon Insights and Hart Research found that adults under the age

of 49 trusted news shared by their friends more than news shared from outside outlets. Some have argued that this trust exists even when our friends don't share the news with us – simply seeing content alongside a newsfeed full of people and companies we've chosen to follow, the argument goes, primes us to view the content as trustworthy.

Unlike their print predecessors, big-name digital platforms not only boast massive audiences, they also allow you to target these audiences with surgical precision. Companies can segment the different groups they're trying to reach – by job title, by geography, by online search history, among a host of other criteria – and then reach each group with a tailored message. Even more, companies can compare exactly how many people saw the content versus how many clicked on it; they can analyze how long people spent with the material and track whether they shared it – along with a dashboard of other data points. That's a bit of an upgrade from

DIGITAL DEFENSE AGAINST ACTIVISTS

AS DIFFICULT AS THIS MAY BE,

imagine that an activist investor is clamoring for change at your company. And now imagine knowing weeks before the decisive vote what shareholders thought of the proposed changes and how likely they were to support them.

How much would you pay for that information? How would that influence your approach leading up to the vote, and determine what you'd be willing to negotiate?

It sounds far-fetched, but a targeted social media campaign can help businesses glean precisely that kind of insight.

Through a digital campaign, a company can reach a meaningful sample size of its institutional and retail investors. Then, the business can analyze investors' reactions to its messages on key issues, getting a sense of shareholder sentiment weeks before a vote – sentiment that can even be measured by the seemingly light-hearted emojis investors use.

No, really. Emojis. Not just smiles or "likes," but angry faces, hands clapping, or head scratching



question marks. Believe it or not, this data is not only reliable but allows for much more sophisticated analysis of an audience's response – an audience that includes professional investors. A recent survey by Brunswick Insight found that 90 percent of buy/sell-side investors used social media to investigate investments.

Businesses can use these digital tools to ward off activist challenges in advance, and be better informed about how key proxy votes are likely to go. A digital campaign against activists often calls for a coordinated approach across multiple platforms.

LinkedIn might be best for reaching institutional shareholders. Placing ads on Google search can direct investors to a proxy microsite and answer questions your shareholders are asking. Targeted ads on Facebook can get your message into the newsfeeds of retail shareholders and employees. Display ads can appear alongside top-tier news coverage.

There are legal concerns when opening this new front in the battle against activists. Safeguards need to be in place so companies don't provide material information to shareholders. Businesses that are transparent about what type of information they plan to disclose, and publicize what they plan to do so, should be in the clear.

Having a social media strategy doesn't guarantee victory in an activist fight – but that's because these battles aren't won on any media, social or otherwise. Digital channels simply offer companies a way to tell their side of the story with a precision and reach that wasn't possible before.

SOCIAL MEDIA as a NEWS SOURCE

printing a full-page ad and hoping readers don't skip over it.

Social media's effectiveness won't come as a shock to many Chief Communications Officers. They don't need to be convinced of the need for a social media strategy, they want guidance on how to make it sophisticated and cutting edge. Here's how they can.

First, there is no one-size-fits-all solution. Every deal has a different set of stakeholders, and every market has a different level of social media penetration. No single platform will reach everyone you want, and it's unlikely a single message will resonate with all stakeholders. Typically, you need a coordinated approach across multiple networks in multiple markets – and obviously, you need compelling content to share.

One of the most effective digital approaches for M&A is a highly targeted paid campaign, where companies select the stakeholders they want to reach, create the content they want them to see, and pay so their content shows up in newsfeeds or search results. This is great for delivering messages at critical points in the deal process, and is available on all major social networks.

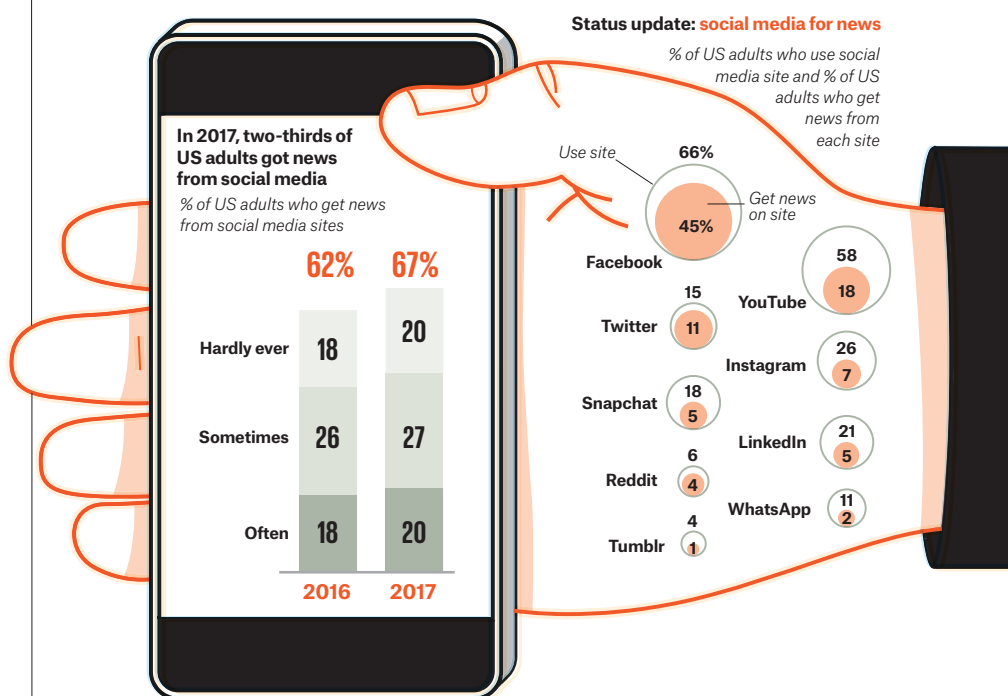
These campaigns work because the platforms have tied their business model so closely to the success of their advertisers. When it comes to reach, targeting, and optimizing your messages, all of the algorithms, databases, and feeds are at your service.

The cost of these efforts will vary according to the level of interest in your transaction – you'll only pay when your audience sees or engages with your content. But your total investment will always be a rounding error compared to the value of your deal or the resources you're willing to invest to get to closing.

An ideal platform for targeted paid campaigns is Google. The site remains a first stop for inquisitive investors and reaches people actively raising their hand for your information – 70 percent of buy/sell-side investors use Google to research deals and 48 percent make decisions based on what these results show, according to Brunswick Insight.

For example, if you searched "Alaska Airlines and Virgin America" when the deal closed in December 2016, the top result was a paid ad. That ad took you to a deal site, which explained the benefits of the transaction. In other words, the first thing consumers or investors interested in the company's future saw on Google drove them to the acquirer's story.

With the world's largest and richest professional network, LinkedIn can provide a powerful solution



Source: Pew Research Center

for deal communications. Add the reach of Facebook and the immediate media impact of Twitter and you've got an extraordinary recipe for success.

When Reckitt Benckiser bought baby formula manufacturer Mead Johnson in February 2017, RB CEO Rakesh Kapoor took to LinkedIn to make the business case for the deal directly to investors and employees of both companies around the world. As the news broke, Kapoor was able to reach those employees directly in a professional context and make sure they had the most important information immediately.

The company then repackaged information from the deal sites and used paid targeting on Facebook and Twitter to reach media, customers and other stakeholders in every significant geography relevant to the transaction. The comments and responses were overwhelmingly positive, suggesting key stakeholders were receptive to the messages.

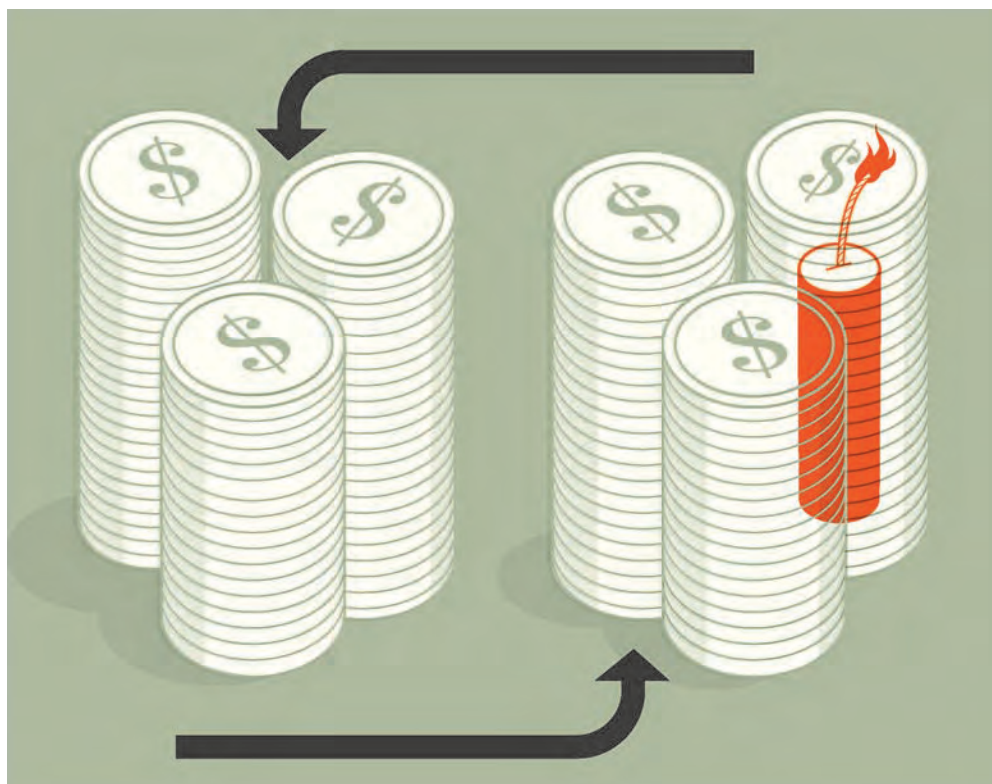
This, at their core, is what digital platforms do better than any other communications tool today: remove the distance and filters that often stand between companies and their stakeholders, and allow businesses to tell their own stories in their own words.

JIM WELLS is Global Head of Digital and Social Media at AIG, and a former Brunswick Director.

MIKE KREMPASKY, a Partner, leads Brunswick's digital specialty. He is based in Washington, DC.

90
PERCENT
of global buy/
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investors use
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to investigate
investment
decisions

Source: Brunswick Insight



FOR SALE: One Trojan Horse

JUST MONTHS AFTER IT CLOSED A DEAL last summer to acquire payment processor TIO Networks, PayPal had to suspend operations at the processor when it uncovered a breach of its systems that exposed the data of as many as 1.6 million customers. A year earlier, the theft of data for 3 billion Yahoo! accounts cost the Verizon-Yahoo! deal \$350 million.

M&A deals expose companies to significantly heightened cyber risk, as the target company's technology infrastructure is an important part of the package. If that infrastructure is infiltrated, or the intellectual property has been stolen, the acquirer takes over those problems.

"We're just starting to see cyber impact deal valuations, and that trend will accelerate," said Jacob Olcott, Vice President of business development at

Hidden cybersecurity threats can deal a serious blow to any merger plans, say Brunswick's **SIOBHAN GORMAN** and **ANDREW GERNT**

BitSight Technologies, which rates companies' cybersecurity. "Acquirers don't want to be caught unaware."

Both Verizon and PayPal were caught flat-footed, and forced to acknowledge publicly that they didn't know they'd bought – or were about to buy – damaged goods. The first *New York Times* article in September 2016 on the Yahoo! breach called into question Verizon's cyber due diligence and questioned how the revelation would affect the value of the deal. A Verizon spokesman was quoted as saying that Verizon had learned of the breach just two days prior and had "limited information and understanding of the impact."

PayPal faced similar harsh scrutiny on the wisdom of its decision to buy TIO Networks. PayPal didn't create the mess, but headlines made it clear who

owned it: "PayPal subsidiary ...," "PayPal-owned company ...," "PayPal's TIO Networks" A taunting *USA Today* headline went further: "PayPal shelled out \$238 million for company that may have had 1.6 million customers breached."

Such risks are a global threat. Shortly after Australian mobile phone provider Telstra completed its acquisition of network and data provider Pacnet in 2015, it learned that Pacnet had discovered a breach while negotiating the deal and didn't disclose it.

Uber, too, faced an investor-related challenge after its apparent effort to cover up a high-profile cyber breach that compromised the data of 57 million rider and driver accounts. The rideshare company's valuation declined sharply after the breach. SoftBank initiated its effort in November to buy a significant stake in Uber at a valuation of \$48 billion, 31 percent below the \$70 billion valuation from its previous funding round, *The New York Times* reported.

Increasingly, corporate bidders are weighing cyber risk in their valuations of prospective targets. A 2016 New York Stock Exchange and Veracode survey found 22 percent of company directors say that they would not acquire a company that had a high-profile data breach. Further, half of all respondents in a 2016 Brunswick Insight survey said they would trim their valuation in situations where

Increasingly, corporate bidders are weighing cyber risk in their valuations of prospective targets

SIOBHAN GORMAN, a Director, advises on public affairs and crisis, with a focus on cybersecurity and privacy.

ANDREW GERNT is an Account Director. Both are based in Brunswick's Washington, DC office.

the target company had been breached – whether the breach was discovered before, during or after the merger. As a result, more companies are relying on technical due diligence, reputational preparedness and tailored insurance services to protect their reputations and bottom line.

The best way to mitigate cyber risk in an M&A transaction is to reduce the potential for surprise by uncovering and addressing cyber issues before they're uncovered for you – and ensuring a quick and capable response. Tailored cyber insurance can help manage the financial risk by guarding against a steep drop in valuation.

To safeguard both companies' reputations, contingency plans should be developed to guide their public responses in the event that a breach is uncovered. After the deal closes, the combined company should assemble a response playbook in the event of different types of cyber incidents. Such a playbook has the added benefit of helping the newly combined leadership team identify and work through strategies, roles and responsibilities.

A cyber education campaign for employees is also critical and can serve to establish a common goal for

the combined corporate culture. By some estimates, more than 90 percent of cyberattacks begin with a malicious "phishing" email sent to employees that carries invasive email attachments or links laced with attack software.

In addition to other sensitive data, hackers often seek non-public M&A information that they can use for a quick profit on the market. In 2014, cybersecurity firm FireEye found hackers targeted more than 100 companies, investment advisers and law firms to uncover anything related to deals. In 2016, the State of New York arrested three hackers who obtained sensitive, non-public information on at least 13 pending deals and used that information to conduct insider trading.

For companies that engage in M&A, the greatest benefit of investing in a strong cybersecurity governance program is that it allows you to move deals forward with greater confidence.

It will also yield benefits down the line – Brunswick Insight's survey found half of the investor respondents would increase their valuation of companies that work to mitigate cyber risk during a deal.



"We are gathered here today to join this man and this woman in an effort to lower costs and increase efficiency."

OMANTEL'S "Audacious" Acquisition

IN 1864, A LARGE ROCK ON THE NORTHERN EDGE of Oman became one of the most critical points in the British Empire. A repeater station was built on it to boost signals through undersea cables linking Britain to its Eastern colonies, allowing colonial administrators and traders to send 200 messages a day by Morse code.

The spot is now known as Telegraph Island. In the digital age, sub-sea cables are more vital than ever, enabling Oman to capitalize on its unique geographical location between Asia, Europe and Africa.

The country's heritage as a crossroads for trade, people and communication is not lost on the CEO of Omantel, who has projected his company onto the international stage with what he calls an "audacious" transaction – the biggest M&A deal in Oman's history.

Omantel's recent acquisition of a controlling stake in Kuwaiti telecoms firm Zain has boosted the company's interests from one market of 4.5 million people to 10 markets, with a combined population of 175 million. The tie-up will also enable Omantel to leverage on its connectivity to 13 major submarine cable systems, through five separate landing stations in Oman.

"Oman has been a regional hub for trade and cultural exchange for decades," Talal Al Mamari says. "As Omanis, we have a good understanding for others and an acceptance of different cultures – this is reflected in the way we do business. In this case, we were looking for a significant acquisition, a marriage if you like, and we needed the right partner."

In 2015, Al Mamari, a graduate of Duquesne University, Pittsburgh, set out his vision for Omantel's future; humbly called "Omantel 3.0." The plan? To make Omantel a "leading digital service provider" – a business that could help drive Oman's economic transformation agenda, which aims to reduce dependency on dwindling oil resources by boosting sectors such as petrochemicals, logistics, technology and tourism. A mountainous and desert nation with a gorgeous coastline, Oman has a stable government and an increasingly balanced economy.

CEO TALAL AL MAMARI tells Brunswick's **WILL ANDERSON** how his company is expanding into a regional communication hub



With limited growth opportunities as a single market telco, Al Mamari began poring over a long list of prospective partners with CFO Martial Caratti, who drew on his earlier experience with the Orange/France Telecom merger. Ultimately, Al Mamari hoped to grow the company culturally and intellectually, as well as physically.

"We needed a truly complementary business to form an alliance – a forward-looking mobile telco that was already providing an integrated service, one that wasn't in our market and would benefit from our sub-sea cable infrastructure," Al Mamari said. "The list was full of potential partnerships but Zain Group – Kuwait's leading mobile operator and the most digitally advanced service provider in the region – stood out as the right strategic fit."

An alliance with Zain would propel Omantel into fast-growth markets such as Saudi Arabia, Iraq, Sudan, Morocco, Lebanon and Jordan. Al Mamari had high respect for Zain's well-established brand and its management team, for the work they had done in modernizing their networks and providing a lucrative portfolio of services that monetize data.

"We started a long period of research to really get to know the business and to understand their



intentions,” Al Mamari said. “We needed to find a way in and saw an opportunity in Zain’s treasury shares, which we knew might be for sale back to the open market. Early conversations with Zain were really excellent and it was clear they wanted a strategic partner with energy, expertise and capital. The chemistry was right, so we went for it.”

The treasury shares represented a holding of just under 10 percent. After more discussions and a two-stage deal lasting six months, Omantel purchased a total of 22 percent in Zain Group, becoming its second-largest shareholder. The final stage of the transaction saw the appointment of five board members to Zain Group, giving Omantel majority control.

“We knew this was going to be an audacious transaction not least because of the auction process mandated by the Boursa Kuwait.” For sales of more than 5 percent of stock, a listed company in Kuwait must conduct a public auction – an extra step that could have derailed the proposal.

“This means, we had to announce our intentions, and then sit patiently for 10 days to see if we had won – it was excruciating at times as we were not allowed to talk about the deal in any way!”

While Oman is a growing center of international commerce, popular images often focus on its picturesque coastline and romantic history. Above, a dhow, a traditional wooden boat, is shown floating in the waters off of Telegraph Island in Oman. Located in the Strait of Hormuz, between the Arabian Gulf and the Gulf of Oman, Telegraph Island was a key communications link for the British Empire.

TELEGRAPH ISLAND

For a handful of British soldiers in the mid-1800s, there was no station in the world worse than “around the bend,” a phrase that referred to Telegraph Island off the north coast of Oman. From 1864 to 1869, Jazirat al Maqlab, or Telegraph Island, was the site of a crucial communication link between India and Britain. Previous attempts by the Red

Sea and India Telegraph Company to connect India to London over land had failed, so a submarine cable route in the Arabian Gulf was chosen.

For five years after the telegraphy was decommissioned, British soldiers continued to man the isolated outpost. The size of a football field, unbearably hot and barren, the island reportedly drove sane men mad.

Al Mamari confesses to a few sleepless nights.

“As with any major transaction there are ‘points for negotiation,’ but in this case, the quality of both management teams really shone through. Yes, there was a moment when I thought the whole thing could have collapsed but when Bader Al Karafi, the Zain Group CEO, and I got together, we were able to remind everyone of the main objective.”

Al Mamari sees these strategic peaks as key moments along the storyline of the deal. While there are professional mechanisms and processes – “the science,” as Al Mamari calls it – there is also “the art” of a deal, the activity that requires attention to the human aspects.

“When you have 60 or so superb and experienced professionals working toward a common goal in a highly stressful environment, there are times when people can get too detailed and lost in process minutiae,” he said. “They forget what it’s all about.”

For Al Mamari, the importance of this deal was never lost.

“We’ve heard many discussions over the years around diversifying Omani business, but many plans were not realized for whatever reason,” he said. “Omanis are naturally down to earth people, accepted and welcomed wherever we go. We understand different perspectives and value other cultures, and in particular what they can bring for the benefit of our own nation. It is these characteristics that have made this a good deal, bringing renewed hope and confidence to Oman.”

WILL ANDERSON is a Partner and the Head of Brunswick’s Abu Dhabi office. He specializes in technology, cyber, telecoms and banking.

IN HARDBACK, THE SEVENTH EDITION OF *MERGERS, ACQUISITIONS and Corporate Restructurings* is as intimidating as you'd expect from a nearly 700-page finance textbook. One review calls it "the bible for M&A." The book's been on the curriculum at Dartmouth College and The University of Pennsylvania's Wharton School. It's one of the thickest tomes on the shelves in Brunswick's New York office, weighing in at just under three pounds.

I spoke with Dr Patrick Gaughan (pronounced GAW-gen), the book's author, as the latest edition was set to be released in late 2017. He wrote the first edition while teaching graduate courses at Fairleigh Dickinson University in New Jersey, amid the M&A and hostile takeover boom of the 1980s. "There was no textbook on M&A, believe it or not. Professors just lectured from their handwritten notes and wrote on the board – you have to remember, innovation back in those days was having overhead slides."

The book took "about a year or two" to write, the material coming largely from Gaughan's lecture notes. It went on to win Book of the Year in accounting from the Association of American Publishers.

Over three decades, Gaughan incorporated the latest studies and data into each subsequent revision. The latest edition includes, for example, recent studies that suggest PE funds do in fact outperform the S&P 500, contrary to what earlier research had suggested. Other data bolsters conventional wisdom – the stock price of a target

He **WROTE** the **TEXTBOOK** on **M&A**

company tends to go up after a deal is announced, while the acquirer often suffers in the short term, paying a premium the market struggles to justify (the average premium today, according to Gaughan, tends to be 30 to 40 percent above market value).

These updates and revisions are not light undertakings, given the sheer volume of research to sift through. "M&A is the most researched of all areas of finance, including securities and investments," says Gaughan. "I guess a lot of people in the world of finance find M&A interesting." I ask if at social events he attends, there are any stories he tells about M&A to try and make the topic interesting for people outside the world of finance. Gaughan laughs. "In my experience, most people at dinner parties don't want to talk about M&A, especially with an academic."

He doesn't give himself enough credit. Not much later, he's telling me about the remarkable back-and-forth takeover battle in the 1980s between US companies Bendix and Martin Marietta, where Marietta used what is wonderfully known as the Pac-Man defense – "so-named after the popular video game in which characters try to eat each other before they are eaten themselves," as Gaughan explains in his book (see Page 71 for more on the Bendix v. Martin Marietta battle).

Gaughan, who holds a PhD in economics, still lectures, teaching at the University of International Business and Economics in Beijing. The economic and financial consulting firm he leads, Economatrix Research Associates, works with a number of Fortune 500 companies.

Academic and author
**DR PATRICK
GAUGHAN** speaks
with Brunswick's
EDWARD STEPHENS



ILLUSTRATION: LINCOLN AGNEW

DR PATRICK GAUGHAN

A professor of economics and finance at the University of International Business and Economics in Beijing, Dr Patrick Gaughan has written or edited 10 books, including *Mergers, Acquisitions, and Corporate Restructurings*. Gaughan is also president of Economatrix Research Associates, a consulting firm that works with Fortune 500 firms. He holds a PhD in economics.

EDWARD STEPHENS

is Deputy Editor of the *Brunswick Review* and based in New York.

And he still writes as well. Gaughan has edited or written 10 books, including *Mergers: What Can Go Wrong and How to Prevent It*, and *Maximizing Value through Mergers and Acquisitions*. He tells me he's currently halfway through book No. 11. "It's going to be on military history, the Pacific theater in World War II," he says in an answer I in no way saw coming. Sensing a question in my silence, he says, "It's a hobby and passion of mine."

For how much he has written on deals, Gaughan admits that people can be surprised to learn he's "a bit of a critic of M&A." Not because he believes deals are inherently flawed, but rather that the people leading them seem to repeat the same, largely avoidable mistakes.

"There's a body of very, very pragmatic empirical research in this field of M&A. And I think it's a fair statement that a lot of people doing deals have virtually no awareness of it. Yet, the research literature really reflects the historical experience of so many other companies and their CEOs, the deals that they did, and what worked, and what didn't.

"But not only do some people not know the history of M&A," Gaughan says, "others don't *want* to know it. Because if they're proposing a deal that wouldn't be consistent with the research literature, they don't want to hear that. They just want to do that deal."

Gaughan contrasts this with medicine, where fluency in research literature is seemingly a prerequisite for practitioners.

A place to begin instilling this knowledge, Gaughan believes, is the boardroom. "If you're going to serve on the board, particularly for companies that do a lot of deals, you should have to attend seminars led by people familiar with the research literature. That way directors can bring a perspective on each deal. What does the research

say? What works, and what doesn't work? When things don't work, what are causes of it? And how can it be fixed?"

Those who studied the research literature would see that many of history's best deals, according to Gaughan, have been between businesses that are intimately familiar with one another, citing Pfizer's 2000 acquisition of Warner-Lambert and the 1999 merger of Exxon and Mobil. "Deals in your own industry, businesses that you know well, have a much higher probability of being successful than diversifying deals, where you acquire businesses totally different than your own. The track record of diversifying deals is really poor." The market prices that in, Gaughan says, with companies trading at a diversification discount (also called the conglomerate discount). Say, for instance, a business has 10 separate divisions, and each division is valued at \$1 billion. A diversification discount would be if the market valued the combined business at less than \$10 billion – and this discount can be as high as 15 percent, according to Gaughan.

I ask Gaughan about the patterns that emerge from the worst deals. He cites two. First, bad deals often had "empire building" CEOs driving them, and second, the companies' corporate governance structures failed to rein these CEOs in.

As their name suggests, "empire builders" tended to pursue deals for flawed reasons, like enhancing their personal reputation or meeting lucrative performance targets. And they could push bad deals through, according to Gaughan, because they weren't held in check by their boards. What went wrong? Some boards had independent directors who "weren't necessarily all that independent." Others had directors sitting on three or four boards simultaneously, too busy and distracted to do the job for which they were hired. The good news,

WAVES

Modern M&A began at the turn of the 20th century, with titans like Carnegie, Morgan, and Rockefeller consolidating and expanding their empires. Dealmaking has since gone through a series of "waves," often mirroring the ebbs and flows of global capital markets.

1st: 1897–1904

The inaugural wave of modern M&A created large monopolies in oil, mining, railroad, and steel in the US. It also saw the first billion-dollar mega-deal when J.P. Morgan's US Steel purchased Carnegie Steel. The resulting steel giant merged with almost 800 separate firms, and at its peak, accounted for as much as 75 percent of the US's steel-making capacity. Strong antitrust legislation followed in the US.

2nd: 1916–1929

An economic boom continued for almost a decade after the end of World War I, one that saw another wave of consolidation. Instead of merging for monopolies, companies merged to form oligopolies. A number of iconic US companies were formed during this second wave: General Motors, IBM, and John Deere. The second wave came to an abrupt halt with the stock market crash of 1929 and the Great Depression that followed.

3rd: 1965–1969

This brief wave saw US companies embrace the idea of conglomeration. This was the era that gave birth to IT&T, which acquired more than 300 companies during the 1960s; LTV, which went bankrupt in 2000, and Teledyne, the US industrial conglomerate. Research suggests that 6,000 mergers happened during these four years, and more than 25,000 companies disappeared as a result.

Gaughan says, is that we're seeing companies make "meaningful progress" in strengthening their governance structures and improving their practices – "though not always voluntarily," he adds.

The rebuttals directed toward academics in most fields can certainly be directed toward Gaughan. It's murky territory figuring out exactly what past deals can tell us about the promise of future ones, given how drastically businesses and the climates in which they operate have changed. Lessons often only crystallize with hindsight. Crucial factors can also get lost in large, quantitative studies. How to account for the deals that floundered because of factors beyond a CEO or board's control?

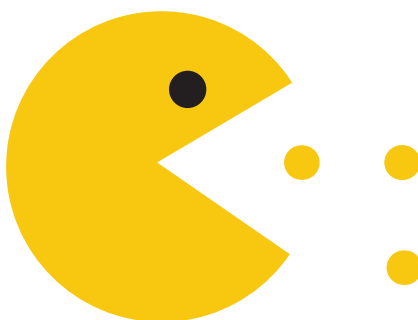
Throughout, Dr Gaughan tacitly acknowledges these limitations by using phrases like "tends to happen" or "almost always." Among research's most valuable use, he suggests, is looking at dealmaking conventional wisdom and seeing if the numbers actually back it up. The research doesn't have to make the decision, but it should inform it.

Perhaps the harshest reception to *Mergers, Acquisitions, and Corporate Restructurings* came from – and I'm being serious – "Gossip Girl," a TV show that describes its plot as "revolving around the fictional lives of upper-class adolescents living in Manhattan." It ran from 2007 to 2012 and was wildly popular among teenagers.

"Someone sent me the episode, and in it, one girl is talking to another girl," Gaughan says, betraying himself as less than a devoted "Gossip Girl" viewer. "And she's saying how much she likes this guy she's going out with. But this guy, he's kind of a nerd. And she picks up my book and it's sort of like, 'Who would sit and read *Mergers and Acquisitions* on a Friday evening?'"

This, I tell Dr. Gaughan, is the M&A story he should use at his next dinner party.

THE PAC-MAN DEFENSE



IN THE POPULAR VIDEO GAME

from the 1980s, a player uses a joystick to move Mr (or, in later versions, Ms) Pac-Man, gobbling up points and trying to eat colorful ghosts drifting around the screen – while also avoiding being eaten by the ghosts themselves.

As the game was becoming popular, US companies started mimicking Pac-Man's eat-or-be-eaten game play in their increasingly extreme attempts to ward off hostile takeovers.

In *Mergers, Acquisitions, and Corporate Restructurings*, Dr Patrick Gaughan defines the Pac-Man defense as: "When the target makes an offer to buy the raider in response to the raider's bid for the target. Because of its extreme nature, this defense is considered a 'doomsday machine.'"

In other words, employing the defense means you buy the company that's trying to buy you.

The tactic first appeared in 1982. Bendix, a manufacturing and engineering company based in Michigan, offered \$1.5 billion for 45 percent of Martin Marietta,

an aerospace company it already owned 5 percent of. Martin Marietta rejected the bid, then made a counteroffer to buy slightly more than 50 percent of Bendix's stock. Bendix rejected that.

Both companies escalated the fight, which is where it became complicated. At some point, Bendix purchased 70 percent of Martin Marietta's shares, but Martin Marietta's management used the lapse between Bendix purchasing the shares and actually owning them to try and launch their own hostile takeover.

Two other companies joined the fight – Marietta enlisted the help of Connecticut-based United Technologies to make a separate bid for Bendix; Bendix called on Allied Corporation to be a white knight, and buy it instead of Bendix or United Technologies.

State laws, corporate charter rules, and multi-tiered offers all came into play. Courts were involved. Joseph H. Young, a Federal District Judge, said after reviewing the companies' ruthless back-and-forth, "I suspect Shakespeare had something like this case in mind when he said, 'a pox on both your houses.'"

From start to finish, the battle lasted less than a month. Marietta's defense was technically successful – Bendix didn't buy them. But their independence carried a steep price tag, as the company had quadrupled its debt to finance all of its share purchases and initiatives.

4th: 1981–1989

The legendary era of corporate raiders and poison pills, hostile takeovers and leveraged buyouts, the fourth M&A wave saw takeover strategies become much more contentious and sophisticated. M&A activity also spread to Europe, and cross-border mergers became more common across the continent.

5th: 1993–2000

The first truly international merger wave, Germany, the UK, France, Canada and Japan all saw sharp increases in the total dollar value of M&A. The largest deal of this wave – and arguably still the largest merger in history – saw UK-based Vodafone purchase Germany-based Mannesmann in 1999 for \$180 billion. Runner up: Pfizer bought fellow pharma business Warner-Lambert for \$90 billion.

6th: 2003–2008

Dealmaking picked up after markets had recovered from the dotcom bubble. Activists were at the helm, playing an important role in the M&A resurgence. The peak of the sixth wave was 2007, a year that saw an estimated \$3.6 trillion in global M&A activity, according to Acuris. The wave crashed with the subprime mortgage crisis in the US and the ensuing financial crisis.

7th: 2011–today

Recovering equity markets coupled with increased private equity activity helped spark a return of M&A in 2011. In 2013, M&A activity increased in every quarter. In 2015, Acuris estimated global M&A activity to be \$4.28 trillion – surpassing the previous record year of 2007. The wave continues today, with both 2016 and 2017 surpassing \$3 trillion in total M&A value worldwide.

BURROUGH on “BARBARIANS”

Author **BRYAN BURROUGH** discusses how his and John Helyar’s masterpiece on the RJR Nabisco takeover changed the way deals are done

AT THE BARNES & NOBLE BOOKSTORE ON New York’s Fifth Avenue, thousands of titles cram the shelves of business books, suggesting that it won’t be easy to find a 28-year-old tome about an ’80s-era takeover. Does Barnes & Noble even carry *Barbarians at the Gate* any longer?

The title clearly rings a bell with the young man at the service counter. “That one’s easy,” he says. Without checking his computer for its whereabouts, he walks away from the business-books section toward the front door, where the latest bestsellers are displayed. There, atop a table labeled Popular Paperbacks, sits a tall stack of *Barbarians at the Gate*, a book that first hit the bestseller list in 1990.

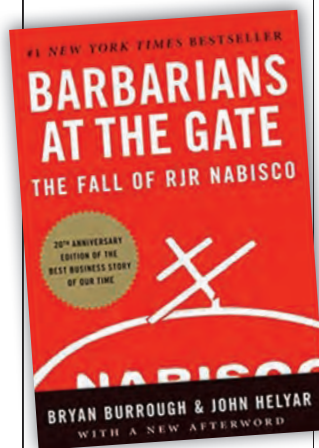
“The life of that book is a strange thing,” its lead author, Bryan Burrough, says in an interview.

Most business bestsellers offer advice on how to succeed. There’s Steven R. Covey’s *The 7 Habits of Highly Effective People* and Jim Collins’s *Good to Great*. Another popular genre is the journalistic chronicle of corporate collapse or market crash, including books about the fall of Enron and Andrew Ross Sorkin’s account of the rescue of the financial system in 2008, *Too Big to Fail*.

By contrast, *Barbarians* is an M&A story, and it proves that that topic can serve up large portions of drama, suspense and humor, and at the same time win critical acclaim and commercial success.

In broad strokes: An offer is made for RJR Nabisco, prompting a larger offer from a second party, which incites a bidding war that culminates in a near doubling in value of RJR Nabisco shares. The purchase is consummated without anybody dying, getting indicted or being accused of legal wrongdoing – the usual elements of a potboiler.

During the two-month-long bidding war, the battle for RJR Nabisco received substantial newspaper coverage, including stories that Burrough and his co-author John Helyar wrote



**‘BARBARIANS’
CONVINCED
DEALMAKERS
THAT THEY
NEEDED TO
TEMPER THINGS,
OR AT LEAST
DO A BETTER
JOB AT PUBLIC
RELATIONS**

for *The Wall Street Journal*. When the two of them began pitching a book on the RJR Nabisco saga, “every publisher wanted to know what the book would say that we hadn’t already said in our *Journal* stories,” says Burrough.

Only one publisher, Harper Collins, offered the two a contract, for \$150,000. Minus their agent’s cut and distributed in installments split between the authors, that amount was just enough to allow Burrough and Helyar to take some time off from *The Wall Street Journal*.

Burrough, 27 at the time, had been covering Wall Street for only four months, “and I only wrote for the *Wall Street Journal* because it was the best job I got offered out of college, not because I had any interest in business. My interest was much more in true crime.”

Neither Burrough nor Helyar had ever written a book. “We started working on it on January 2nd and we turned it in over Labor Day. For those months, it was a seven-day-a-week, 16-hour-days thing. My wife and I lived in a tiny apartment in Brooklyn and we didn’t have AC and it was so hot that I remember doing the writing in a bathing suit,” says Burrough. A constant source of anxiety: “We had competition from a woman from *Newsweek* and I was scared to death that she would get her book out first and that it would be better. I remember being intimidated because she was older than me.”

Eight months after signing the contract, Burrough and Helyar submitted their manuscript. “We had no expectation of commercial success,” recalls Burrough “We were just looking forward to returning to our day jobs.”

Published in late 1989, the book climbed onto *The New York Times* bestseller list and stayed there 40 weeks. An HBO film version won Emmy and Golden Globe awards for best television movie. The book became a business-school staple. Its popularity spread overseas. “Almost half our royalties these days come from China,” says Burrough.

To this day, *Barbarians* invariably lands on lists of great business books. “I’m not the only person who thinks that *Barbarians at the Gate* is the best business book ever,” wrote MarketWatch columnist Jon Friedman in 2008.

A primary model for *Barbarians* wasn’t a business book but rather Truman Capote’s so-called non-fiction novel, *In Cold Blood*, a 1965 masterpiece that stirred in Burrough a desire to become a non-fiction narrative writer. In portraying in novelistic fashion the 1959 murder of the Clutter family and the capture and execution of their killers, Capote

elevated a routine crime case into a masterpiece that spawned countless films, subsidiary books and investigative stories.

In similar fashion, Burrough and Helyar brought readers into the boardroom where F. Ross Johnson, CEO of RJR Nabisco, proposed taking the company private in a \$75-a-share leveraged buyout, a proposal Johnson said was spurred by a lackluster stock price despite healthy earnings. Although concerned that the proposal might put the company in play, the board agreed and the offer went out, quickly triggering a competing offer from the leveraged buyout firm Kohlberg Kravis Roberts.

Over the ensuing days, as countless others on Wall Street entered the fray, driven in large part by the promise of tens of millions in transaction fees, the price rose far beyond any ceiling analysts would have placed on the value of RJR Nabisco. Ultimately, KKR won, at a price of \$109 a share, or \$25 billion. It was the largest merger in history, a record that would stand for nearly a decade.

In between those events there transpired dozens of meetings in offices across Wall Street, and *Barbarians* recreated virtually all of them, each chapter of the book concluding with the fate of the company in suspense. What enabled Burrough and Helyar to gain that level of detail was the extraordinary cooperation of all the major characters involved. They spent more than 20 hours interviewing just the principals of KKR.

Their biggest challenge was Johnson, initially a holdout, perhaps because he lost the bidding war and along with it his job as RJR Nabisco CEO (although his severance totaled more than \$50 million). Johnson's cooperation was key because he was such an outsized character. He had a history of joining companies as second in command and persuading boards to oust the CEO and give him that job. He also made such extensive use of corporate jets that he once chartered a flight especially for his dog, Helyar and Burrough reported.

Once they persuaded Johnson to talk, he sat down with them for 36 hours, and despite his portrayal in the book as conniving and greedy he never regretted his participation. In an "Afterward" that Helyar and Burrough wrote in 2008, for the 20th anniversary of the deal, Johnson, who died in 2016, raved that the book had made him a celebrity, and that it "had an impact on millions of readers, in terms of their knowledge of business. That book's in every goddamn library in the world. They teach it at the business schools."

THE 25 BILLION DEAL WAS THE LARGEST IN HISTORY, A RECORD THAT STOOD FOR ALMOST A DECADE

BRYAN BURROUGH

Since *Barbarians at the Gate*, Burrough has published five other non-fiction books, including the bestsellers *Public Enemies*, about the birth of the Federal Bureau of Investigation, and *The Big Rich*, about the origins of the Texas oil industry. He lives in Austin, Texas.

Publication of the book came at the end of a decade of Wall Street flamboyance, personified by Michael Douglas's Gordon Gekko character in Oliver Stone's 1987 film, "Wall Street." That moment in time, combined with the unprecedented size of the RJR Nabisco deal, helped Burrough and Helyar persuade their sources to cooperate.

"Everyone in that story felt as if they'd been through a moment in history, and they wanted to talk about it. Most of the main characters in that story I had a weekly interview with for at least an hour for eight months," says Burrough, adding that his and Helyar's association with *The Wall Street Journal* also helped. "Those people weren't sitting down with us because we were just charming and talented young journalists. That was all because our business cards said *The Wall Street Journal*."

The subtitle of the book, *The Fall of RJR Nabisco*, turned out to be more prescient than the authors could have known. A reference to the company's loss of independence, it turned out to be prophetic. Overloaded with debt from the LBO, RJR Nabisco couldn't afford to update aging factories or hold its own against Philip Morris in a cigarette price war. Its products lost market share.

Then the years-long anti-smoking movement culminated in Congressional action against the cigarette industry. "The fact that it became such a business failure made us look smart, smarter than we actually were," says Burrough.

Eventually, RJR Nabisco got broken up and sold off, and in part because of bad publicity wrought by *Barbarians*, leveraged buyouts got rebranded as private equity.

"John and I weren't populists or progressives, and I never really bought into the idea that Wall Street is greedy. The executive's job, by law, is to make as much money for shareholders as he can. The fees that the bankers got – that's their job, to get the biggest fees they can. John and I just set out to tell the story accurately, and it did spark an outcry. There were lots of angry articles. And 'Barbarians' did contribute to a mindset in what we now call the private equity world that we've got to temper things a bit, or at least do a better job with public relations," Burrough says.

"Today, I think Silicon Valley has largely supplanted Wall Street as a focus of public interest and fascination, and some outrage. When you hear about billionaires these days, it's Mark Zuckerberg and Bill Gates, not the private equity guys."

KEVIN HELLIKER, a Pulitzer Prize-winning journalist, is Editor-in-Chief of the *Brunswick Review*.



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M&A AT THE

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PHOTOGRAPHS: PHOTO 12 / ALAMY; MOVIESTORE COLLECTION LTD / ALAMY STOCK PHOTO



Danny DeVito (left), Humphrey Bogart (above, far left), and Michael Douglas (right), all played less-than-lovable dealmakers on the big screen. DeVito was "Larry the Liquidator," Douglas the money-blinded Gordon Gekko, while Bogart played Linus Larrabee, a businessman worried that love might ruin a lucrative deal.



THE NARRATIVE HAS BEEN AS CONSISTENT AS IT HAS HARSH. DEALS ON THE BIG SCREEN COME AT A HUMAN COST – LOVE, MORALS, JOBS

Christian Bale (opposite, top), as Patrick Bateman in "American Psycho," the story of a murderous M&A banker. In the 1988 film "Working Girl," Sigourney Weaver (opposite, left,) plays a dealmaker who steals her secretary's idea. Tess, the secretary, is played by Melanie Griffith. The two have one of the film's iconic exchanges: "Tess, this is business. Let's just bury the hatchet, OK?" "You know where you can bury your hatchet?"

SO CIOPATHS BEREFT OF MORALS, HEDONISTS blinded by greed, even serial killers armed with chainsaws – these are just a few of the less-than-flattering ways dealmakers have been portrayed on-screen. Dealmakers play a leading role far less often than other financial professionals – like rogue traders or immoral brokers – but in almost every instance they've been painted with a similarly scathing brush.

In the 1954 classic "Sabrina," a lucrative merger hinges on an engagement between the children of two wealthy families. The choice facing Humphrey Bogart's character is love or money – the heartless nature of the deal won't allow both.

Richard Gere plays a fabulously wealthy corporate raider in "Pretty Woman" whose relationship with a prostitute, played by Julia Roberts, helps him discover a moral compass. By the end of the film, Gere's character wants to save companies rather than tear them apart – a move that infuriates his unrepentant business partners.

In "Other People's Money," Danny DeVito's deal-making character is affectionately known as "Larry the Liquidator." In "American Psycho," Christian Bale's character is an investment banker specializing in M&A – and also a deranged serial killer. The slick-haired, cigar-puffing corporate raider Gordon Gekko, played by Michael Douglas, tells us in "Wall Street" that, "Greed, for lack of a better word, is good."

Other films that have unpleasant dealmakers include "Working Girl," "It's a Wonderful Life," and "The Family Man."

The portrayal persists on TV. In a Sopranos episode titled "Mergers and Acquisitions," infidelity, intimidation, and a violently broken arm move the plot along.

The narrative has been as consistent as it has harsh. Deals on the big screen come at a human cost: love, morals, or jobs. The men who make them – and they are almost always men – don't balk at the steep price tag. When they do, their professional lives and relationships take a hit.

It may be tempting to write off these story lines and characters as fantastical. But these caricatures can have real-life inspirations. Oliver Stone, who co-wrote "Wall Street," said Gekko was an amalgamation of real-life corporate raiders.

Others might say the corporate-raider narrative is dated. But today, it remains difficult – laughable even – to imagine a film featuring a dealmaker who saves an orphanage, or a mega-deal that rescues a small town. When leaders and businesses highlight the social value of their deal, many in the audience are understandably skeptical.

Dealmakers have been cast as the villains for decades. It will take bold and sustained engagement, backed by meaningful action, to change the narrative.

Turn on the POWER

IN 1999, TAKASHI KAWAMURA, THEN A VICE president of global conglomerate Hitachi, was one of 500 passengers aboard a plane that was hijacked – and saved with the help of an off-duty pilot. The experience gave Kawamura evidence that critical decisions can rest with anyone in an organization, a way of thinking about employee engagement that he calls the “Last Man.” As he tells Brunswick in the interview below, “There are more chances to nurture these decision makers, these ‘Last Men,’ than you would think.”

Kawamura later became President and Chairman of Hitachi, where he helped the business reinvent itself in the face of rapidly changing technology and shrinking domestic demand. In 2017, he accepted a new position as the Chairman of Tokyo Electric Power Company, or TEPCO. The large regional utility in Japan is emerging from an existential crisis of its own: TEPCO operates the Fukushima Daiichi nuclear plant that suffered a meltdown after a tsunami in 2011. Shares of the company plummeted as much as 90 percent amid a flood of domestic and international compensation claims and calls for the country to close its nuclear facilities. The scale of the disaster was enormous and the cleanup continues today.

In our interview, Kawamura is positive about the future of nuclear energy but acknowledges the work the company still needs to do to help rebuild the lives of the people in the area around the reactor, and to allay the fears around nuclear power in general and TEPCO’s stewardship in particular. “It will take a sustained effort over a long time to restore the firm’s reputation,” he concedes.

Meanwhile, TEPCO continues to provide reliable energy and to grow in a dramatically changing energy environment. Kawamura sees the energy sector in Japan at a crossroads, where it must refocus its efforts toward innovation and globalization if it is to continue to grow. To further the pace of economic growth set in 2017, Kawamura feels the country’s most established businesses need to take a hard look at themselves.

Why is the “Last Man” view important now?

Outside Japan, people think deeply about self-determination, the need to form their own values.

TEPCO Chairman **TAKASHI KAWAMURA** talks to Brunswick’s **DAISUKE TSUCHIYA** about the future after the Fukushima Daiichi nuclear plant incident, and how a “Last Man” perspective can supercharge Japan’s workforce



There is a chronic shortage of that in Japan. People here view their role within an organization as listening to and obeying the people the organization labels as leaders.

Until the mid-1980s that wasn’t a problem; Japan was in resurgence, and population growth meant abundant demand. Now, however, unless Japanese people modify their decision-making process, I doubt that Japan will resolve its current deadlock. Even the leaders of small teams must begin to take final responsibility as the Last Man, considering and articulating the direction that their part of the company should take.

Japan faces some unprecedented challenges, such as an aging population. We need to get ahead



on those issues. Japanese people have relatively little training in leading. Employees need to be encouraged to consider how they can affect the company's overall direction. There are more chances to nurture these decision makers, these "Last Men," than one might think, if we look for them.

My biggest lesson came while I was at Hitachi, and I found myself on a hijacked flight in Japan. An off-duty pilot who happened to be on board forced his way into the cockpit along with two others, took control from the hijacker and managed to save the aircraft. He had to break the airline's rules to do it, but he saved the lives of more than 500 people.

That showed me, in a very dramatic way, that these "Last Men" existed in the world – that people

can make these kinds of critical decisions. When I became President of Hitachi, I thought that I needed to try to be that Last Man, the final decision maker, and to have such leaders in each internal group.

In 2009, when you became Hitachi's President, what was your top priority?

The main thing was speed. The decision-making process had been extremely time-consuming. If a second Lehman shock were to occur, or if the Greek crisis caused some European banks to collapse, Hitachi would go down as well. Even one US bank failure had a major impact on orders. Hitachi has a huge number of employees and alumni, as well as shareholders, so we had to consider

TEPCO workers in 2014 are shown preparing to lay the foundation for a tank to hold contaminated water at the damaged Fukushima nuclear power facility.

“Outside Japan, people think deeply about self-determination, the need to form their own values. There is a chronic shortage of that in Japan”



TAKASHI KAWAMURA

A former President and Chairman of multi-national electronics company Hitachi, Takashi Kawamura was named Chairman of the Board of Tokyo Electric Power Company Holdings, or TEPCO, in 2017. He began his career with Hitachi as an electrical engineer in 1962.

not just stock price, but pensions and so forth; if the company failed it would have been disastrous.

We needed to make decisions quickly. We determined what we needed to do within three months. We had to close, downsize or expand divisions. We had to ask employees, some even in the prime of their careers, to retrain, transfer to different workplaces, or in some cases leave Hitachi. It was a tremendous upheaval. We had to do things that were painful. And we had to move quickly. We had no choice.

Why did you accept the position as Chairman of TEPCO, another company in a difficult situation?

Energy is the country's foundation. Japan and South Korea are the only countries in the world that supply just 4 percent of their own energy. Stable, cheap energy is critical for all industries and the livelihood of all citizens. I intend to contribute whatever I can to making sure we achieve that.

TEPCO will collapse if it is mismanaged, and we cannot let that happen. To address the issues arising from Fukushima, all our employees need to regard energy as truly fundamental. We need greater earnings to fund a range of long-term initiatives.

However, TEPCO has a responsibility to society – from charging cellphones to operating traffic lights. Japan's tiny, distant islands may not be great customers in profit terms, but it is part of our job to supply them. It's not easy to be profitable while continuing to act in the public interest. Also, the sheer number of stakeholders in a utility prevents immediate decisions regarding management reforms or the improvement of profitability.

We're also faced with full industry deregulation. We have to generate earnings while remaining properly focused on safety, amid the change from an advantageous regional monopoly structure to a far more competitive environment. A monopoly meant no customer desertions. Competition under full deregulation is extremely tough.

What qualities are appropriate for a corporate leader today?

Our current TEPCO President offers a great example. Leaders at power companies tend to make straight-laced, overly conservative decisions when approaching new developments. Our current President is able to make very proactive decisions.

Particularly when trying to change a company internally, communication is important. In the past many leaders were charismatic – people who waved the flag and encouraged others to follow them.

Now, I think communicators are the better choice, reflecting a far greater diversity of employee, stockholder or other stakeholder perspectives.

Companies need to be able to communicate on the topics of innovation and globalization. There is a surprising amount of innovation in the energy sector. Companies will emerge that use computers to handle excess power generated by electric vehicles, for instance. This shift is also being seen in the US and Europe.

Another way the sector is changing is that demand in Japan has gradually fallen versus a gradual expansion in overseas markets. Our new joint venture with Chubu Electric Power, called JERA, has a mainly overseas focus. JERA has also acquired a US thermal power generation company. Thermal power and our fuel business are at the forefront of our globalization efforts.

Does this emphasis on globalization have an impact on the company's culture?

At my previous firm, I learned a great deal from our shareholders and employees overseas. When I became CEO, I brought back to Japan a lot of people from our overseas subsidiaries and they helped us reform areas of the business that had become too complacent. The same is true at TEPCO: people with overseas experience return to Japan with a different approach to their work.

In Japan, many people act as if they have lifetime employment. Outside Japan, no one thinks they will spend their whole life at a single company. They view everything in terms of self-development, and if they are not learning anything they go elsewhere; this is how they develop the skills that ultimately make them international leaders in their particular field. I think the same thing will eventually happen in Japan. As people live longer, they will work longer and they will see the need to change companies and to re-educate themselves.

Japan languishes in this transitional phase and is falling further behind the world. In the West, excessive finance capitalism has led to the problem of a small handful of people earning tremendous amounts. This extreme inequality is a bad thing, but Japan's excessive focus on equality is also not very helpful. We need to reward work appropriately for both quality and productivity.

Do Japan's companies have strengths that could serve as models for their counterparts overseas?

Oh yes, certainly. The Japanese have very strong self-discipline, for instance and, compared to other

industrial nations, our levels of corruption are quite low. Efficiency is very high. When Hitachi supplied a railway system to the UK, we were able to deliver several months ahead of schedule – several months' extra profits for the railway firm. No other country in the world could achieve that, only Japan.

Someone in Abu Dhabi commented to me about how different the Japanese are. Even at building sites, they sweep the last work area, use their buckets to clean their mops before they stow them away – only then do they leave. That may seem overdone by standards of other countries, but it is one of Japan's selling points.

Another of Japan's hallmarks is the country's overall long, healthy lifespan. A long-lived population is a sign that the country is generally being run correctly. The Japanese government's attempt to lengthen healthy lifespans is a good thing, and companies must find ways to contribute to it via innovation. We have had our household customers install smart meters, so one could envisage a business where we use changes in electricity usage patterns to detect that something untoward has happened to an elderly person, for example.

What needs to be done now in addressing the problems related to the Fukushima disaster?

It will take a sustained effort over a long time to restore the firm's reputation. There are around 60,000 people who were evacuated from the area, including some who do not intend to return. We are therefore continuing to support with the recovery. Produce from Fukushima Prefecture and the Tohoku region is not treated equally either within Japan or worldwide, partly due to rumors and misinformation. Flounder caught in Fukushima is very good quality, and Tokyo sushi restaurants have been buying it, but only at deeply discounted prices. We are working to redress the impact of these misperceptions in the marketplace.

Obviously, we also need to work on improving the overall safety of nuclear energy. Smaller-sized reactors, currently under development, lined up in inside large pools should help. Placing the reactors inside pools will enable us to flood them in the event of a problem. We are also considering a self-regulating type of nuclear plant that has completely independent emergency systems, including its use of batteries.

We need a greater public debate about nuclear power in Japan. We think it would be better to continue using it, with a shift to self-regulating

reactors, to meet the goal of an 80 percent cut in global CO² levels by 2050. That won't be achievable only with solar power. It will only just be possible with a combination of solar, wind, hydro, geothermal, bio and nuclear power.

It's a question of gaining the public's trust.

Yes. The UK decided to generate nuclear power. In Japan, the accident at the Fukushima Daiichi plant created tremendous difficulties. It is our responsibility to address the various issues and to convince the public that despite this we still need nuclear power. But it will be difficult.



Blossoming trees hint at a new beginning for Fukushima and TEPCO in this 2017 photo.

How do you view a company's role in society?

Companies are the bedrock of society. Generating proper earnings is their primary task. That is what drove Japan's postwar recovery. They should also pay proper salaries to their employees, pay dividends to their shareholders, pay interest to financial institutions, and pay taxes to the government. Their greatest role is in distributing the added value they create to society, thereby creating a sustained beneficial impact on society. Loss-making firms that only manage to pay their employees' salaries are not enough. It is the job of companies to pay society's salary.

DAISUKE TSUCHIYA is a Partner in Brunswick's London office. A former Japanese diplomat, he specializes in Japanese business and multinationals active in Japan. Additional reporting by **SARAH SKLAR**, an Executive in London.

“DAVID BOWIE IS,” THE HIT EXHIBITION about the artist, has followed the man’s trajectory: London, Berlin, New York. For the last 20 years of his life, his home was Manhattan, where he was the family man, heading out in disguise to galleries and gigs, getting a light from sidewalk smokers who carelessly offered a Zippo or a match before missing a beat to wonder about that guy’s unmatched, lupine eyes, that sing-song south London baritone. But then it was too late; the night-time ninja was gone, slipped around the corner. And then? And then, sadly, it would always be too late. Reports of Bowie spottings in New York were common; encountering him yourself was a once in a lifetime affair. Many people said it was like meeting a character from a movie in real life. This exhibition, coming to

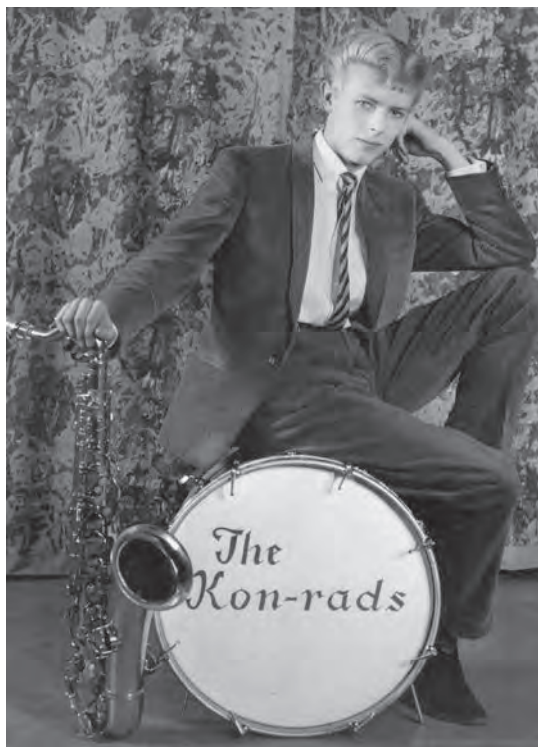
david bowie

db

An exhibit showcasing
David Bowie's legacy
is coming to Brooklyn,
in cooperation with
Brunswick Arts.
ROB BOUND, Culture
Editor at Monocle,
offers an inside view

is





THE EXHIBIT brings together a variety of photos and fashions from the artist's career.

For the 1973 "Aladdin Sane" tour, he appeared in a striped bodysuit designed by Kansai Yamamoto, shown on the previous page.

Left, a young Bowie poses for a 1963 publicity photo for his band, the Kon-rads.

Right, a 1978 self-portrait based on the photo from his "Heroes" album cover.



the Brooklyn Museum for its final encore after playing to adoring crowds in London and Berlin, translates some of that myth, some of that *aura*, and yet also shines a spotlight on his process and preoccupations. It is a testament to the strength of the work of the man himself and the skill of the curators who have put this world tour of an exhibition together.

While the core of the show stays the same, each of the exhibition's international iterations have seen new work unveiled – or rather, old work presented afresh – and the Brooklyn Museum leg of the Bowie journey has some tantalizing secrets up its sleeve. Visitors can marvel again at the well-known stuff such as Bowie's early '70s Ziggy Stardust creation and DA Pennebaker's untouchably strange and intimate footage of that final Ziggy concert at the Hammersmith Odeon. But they can also ogle the drawings and concepts for Bowie's final album, "Blackstar," and specific American and New York material that has not turned up or been displayed before. Anne Pasternak, director of the Brooklyn Museum, is jubilant at being custodian of the show's victory lap.

"When Bowie gave his blessing for the exhibition to the Victoria & Albert Museum back in 2013, he was very clear in his desire to have the final venue be here in New York," she says. "He designated about 40 objects to be added to the exhibition for New York. And here we are!"



Above, designed by Freddie Burretti, this quilted two-piece suit was made in 1972 for the "Ziggy Stardust" tour.

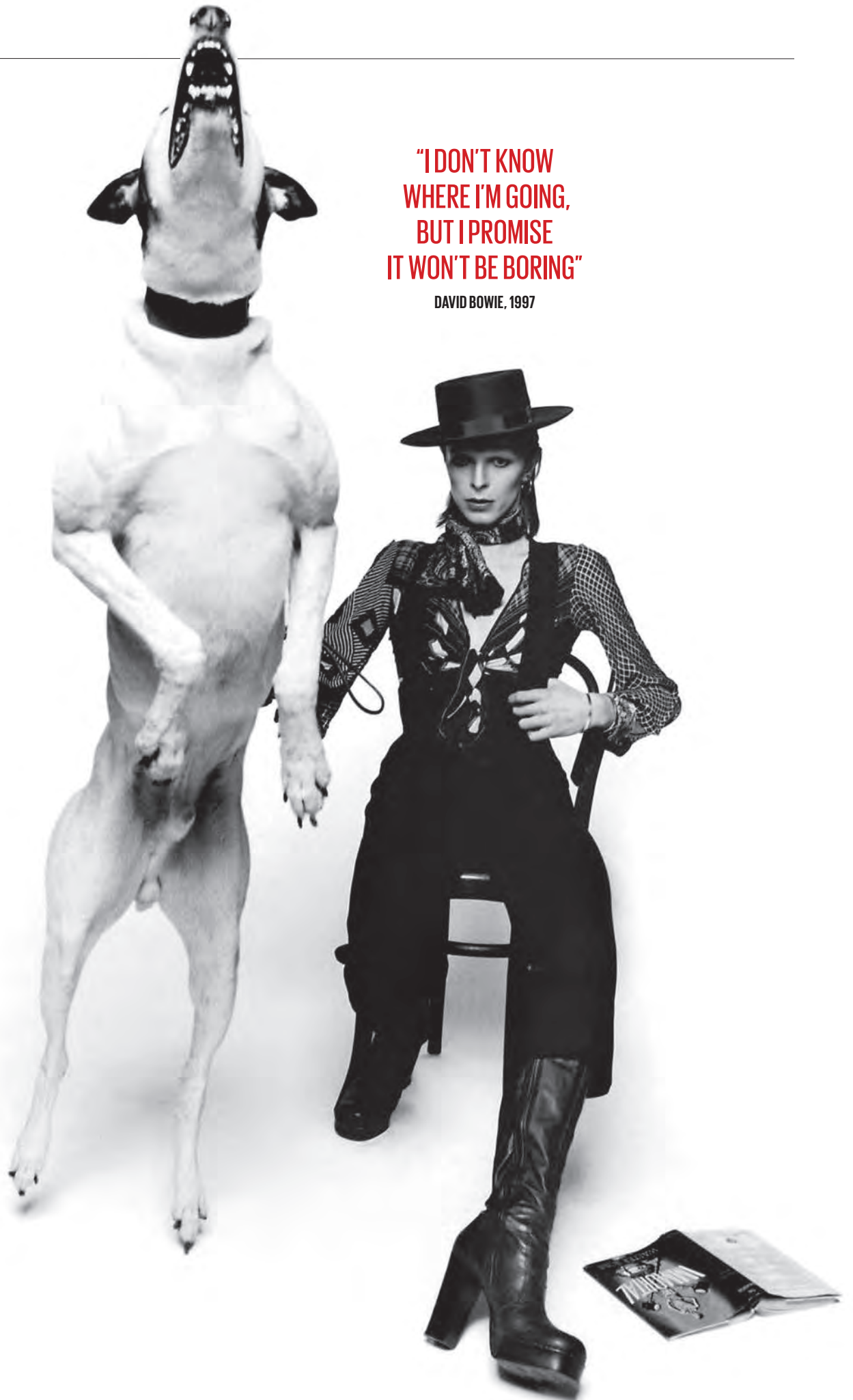
Now, please don't shoot the messenger of the obvious, but music is fairly central to this whole enterprise and the highly regarded German headphone specialist Sennheiser has again engineered the audio reproduction that sings through the show. In addition, a new sponsor for the exhibit in its Brooklyn Museum incarnation is Spotify. The streaming service has its eyes firmly on the future and has come on board to do much more than simply write a check.

"While Spotify is making a significant contribution to help us meet costs, they are also leveraging their significant marketing knowledge and data on David Bowie listeners to maximize awareness of the show," says Pasternak. "In this sense they are also a collaborator. Being able to play both roles makes them a perfect partner."

While investment banks and consultancy firms often lend their wedge to the shows, their guest lists to the opening nights, and can bask in the reflected glow of cultural exchange, Spotify offers additional expertise in the statistical and practical aspects of streaming the past, present and future of music. Even for old pros like the Brooklyn Museum, the involvement of Spotify feels optimistic and fresh. Museum visitors can augment their experience of the show by streaming any song or album by Bowie via Spotify before they even think of heading home – a near-perfect example of what businesses term *convergence*. When it comes to adding value to an

**"I DON'T KNOW
WHERE I'M GOING,
BUT I PROMISE
IT WON'T BE BORING"**

DAVID BOWIE, 1997



With a friend, the artist puts on a Spanish flair and some trend-setting platform boots to promote the 1974 album "Diamond Dogs."

offering, acting as a partner rather than a sponsor, it's a very decent hand of cards to hold.

"In the past, museums would advertise on public radio stations and hope for an audience overlap," says Pasternak. But the insight Spotify provides allows for far more precision. "Here, we are easily able to see what other artists Bowie listeners follow and target their fans too."

This strategy seems to have also energized the Brooklyn Museum's dreams for the future. "I'm eager to see how we can work with Spotify going forward on the marketing of other types of exhibitions, like our upcoming 'Soul of a Nation' show. The possibilities are exciting," says Pasternak.

For sure, they are – it's not often that the notion of "accessibility" is so deeply entwined with the exhibit itself, and leaps out as something genuinely inclusive and inspiring.

If you visited the Victoria & Albert Museum's "David Bowie is" in London in 2013 or have followed the exhibit around the world, the final hit of the tour at the Brooklyn Museum will be essential viewing.

The London show focused on the general sweep of Bowie's career while dipping its toes into some of the white-hot lava of his creative flow. The Berlin leg showed his catharsis in trying to live drug-free in a physically and politically divided city. Brooklyn will reveal a late-period New York bloom in Bowie and something altogether unfamiliar to those that loved the alien: the legend in the everyday; a happy David Bowie in his *de facto* hometown.

Best of all? Perhaps still the title itself – for many, Bowie is an eternal present.

DAVID BOWIE, 1947-2016

An artist known for reinvention, Bowie started his career as a dancer and folk singer/songwriter in the mid-'60s. After a handful of minor hits, he became a phenomenon with glam-rock alter-ego, Ziggy Stardust. A succession of decade-defining styles followed, keeping him at the vanguard of music and fashion. Hits like "Changes," "Young Americans," "Fame" and "Let's Dance" offer windows into a much larger body of work that included acting roles – such as Broadway's "Elephant Man" and Hollywood's "The Hunger" – and 25 studio albums of songs. The last, "Blackstar," was released just two days before his death from cancer.

BRUNSWICK ARTS is an international consultancy, led by Managing Partner **BEN RAWLINGSON-PLANT** in New York, that promotes and manages the reputations and interests of arts, cultural and charitable organizations around the world. In recent work, it introduced Spotify to the Brooklyn Museum and helped launch the Louvre Abu Dhabi.

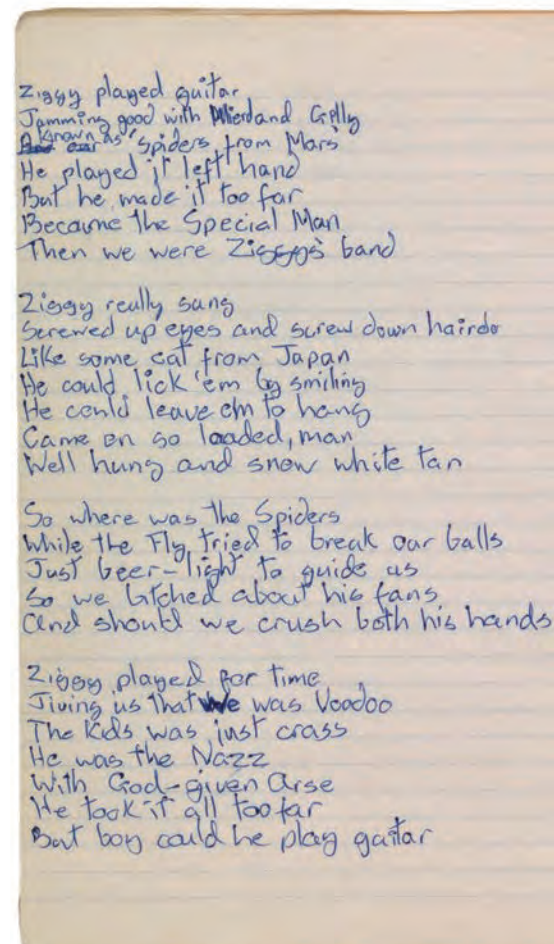


Bowie's left eye was injured in a fistfight in 1962, leaving the pupil permanently dilated and more prone to "red eye" from the camera flash. This photo is from the shoot for the cover of the 1973 album "Aladdin Sane."



Above, an asymmetric knitted bodysuit, designed by Kansai Yamamoto in 1973 for the "Aladdin Sane" tour.

Right, the handwritten lyrics for the 1972 song, "Ziggy Stardust."



How a school teacher SAVED KANSAS CITY

WHEN CAROL MARINOVICH BECAME mayor of Kansas City, Kansas, it was a ghetto with little going for it except a name easily mistaken for Kansas City, Missouri (KCMO), a larger, more-sophisticated, wealthier city across the river.

Then Marinovich orchestrated a miracle of almost unprecedented proportions in modern American politics. Long the armpit of greater Kansas City, KCK evolved into a development magnet drawing sports complexes, office buildings, retail centers and hotels from around the country. Recently, Citibank, a major funder of Marinovich's efforts, launched a national advertising campaign around her. "People couldn't wait to get out of Kansas City, Ks. – not anymore," Marinovich says in a Citi ad on *W* Magazine's back cover.

The Marinovich story could be used to show the potential power of ordinary citizens; she was a schoolteacher for a quarter century before entering local politics. Or it could be used to show the difference a woman can make in a traditionally male environment. Marinovich was the first woman elected to the KCK City Council.

But in a recent interview in a fancy coffee shop on a once-dead block of KCK, Marinovich said the most inspiring and relevant aspect of the story is the larger cast of characters who played significant roles. Humility is what you'd expect of the retired mayor, a college professor now who notes that she gave all proceeds from the Citi ad to charity.

Yet actually she has a point. Has America – or the world – ever been hungrier for a demonstration of what rival political parties can achieve when they work together? A lifelong Democrat, Marinovich recalls that the so-called Democratic Machine in KCK largely opposed her strategy for revitalizing the city. "All the crucial help came from moderate Republicans," she says.

When Marinovich became KCK mayor in 1995, financial problems plagued not only the city but also the larger jurisdiction where it sat, Wyandotte County. Marinovich's idea – to merge the city and county governments, eliminating duplicated services – required more than voter approval.

Former mayor
**CAROL
MARINOVICH**
tells Brunswick's
KEVIN HELLIKER
about her
campaign to
revitalize a
forgotten city



It required the blessing of the state legislature before it could even land on a ballot. In the state legislature in Topeka, the fiercest opposition to the proposal came from Marinovich's fellow Wyandotte County Democrats. Only with the help of Republican Governor Bill Graves and the Republican President of the State Senate, Richard L. Bond, did Marinovich win approval to ask Wyandotte County voters to approve a unification of the city and county governments. In a blue-collar community where political leadership always had been male, Marinovich and her campaign persuaded a large majority of voters to approve consolidation.

Once the city and county governments merged, her next step involved marketing a city known mainly for crime, smokestacks and a declining population. While greater Kansas City had grown dramatically to the east, north and south, to the west

there was the ghetto known as KCK – and then prairie.

In fact, the prairie was relatively close to downtown KCMO. What if Marinovich marketed that prairie as close to the heart of KCMO – but with a green buffer between it and inner-city KCK? The tax and job benefits could be used to rejuvenate its inner city. Because this plan would rely on offering tax incentives to developers, it also required state approval. Once again, Marinovich relied mostly on moderate Republicans in the Kansas Legislature.

Today, Wyandotte County remains staunchly Democratic. Of the 105

counties in Kansas, only Wyandotte and one other voted for Hillary Clinton in the 2016 election. But today, virtually every Democrat in KCK/ Wyandotte County takes pride in a revitalization that would never have happened if not for Marinovich and a large band of Republicans. "Wouldn't it be nice if things worked that way in Washington?" Marinovich asks.

KEVIN HELLIKER, a Pulitzer Prize-winning journalist, is Editor-in-Chief of the *Brunswick Review*.

Critical moment

CAPTURED ON FILM BY A SLY RAILROAD worker, this image marks the end of World War I. The signing of the Armistice in a dining car in a forest near Paris planted seeds of both peace and war.

The Allies won by technical knockout. Swaggering but dangerously wounded, Germany had been abandoned by its allies, including Austria, which had helped instigate the conflict. German Secretary of State Matthias Erzberger, a peace advocate, proposed an armistice. France's Marshal Ferdinand Foch led the Allied delegation. At the first meeting of the two sides on November 8, Erzberger asked that fighting cease at once. Foch refused, suspecting Germany merely wanted time to regroup. He gave them 72 hours to unconditionally accept the Allies' demands.

Three days later, at 5:10 a.m., they signed. Fighting officially stopped at the 11th hour of the

A MOMENT OF PEACE Marshal Ferdinand Foch, seated, is seen through the rail car window as he signs the Armistice ending World War I. November 11, or Armistice Day, is still observed in many countries. After World War II, the US renamed it Veterans Day to honor soldiers of both wars in a single national holiday.



11th day of the 11th month of 1918. Thousands more lives were lost in the final days and hours. The last was Henry Gunther, an American killed in France at 10:59 a.m., November 11. The date remains a national observance in many countries.

Many still blame the harsh and humiliating demands of the victors for a new wave of German nationalism that rose immediately, culminating in World War II not even 21 years later. But scholars today say part of the problem was a simple failure of communication. No one convinced the Germans that they had, indeed, lost.

"The Armistice of November 1918 was in fact a surrender, but the Allies, without thinking, retained the German term implying only a ceasefire," writes Sally Marks, Professor Emerita at the US's Rhode Island College. "That was the first Allied mistake."

The war's horrific battles hadn't reached inside Germany and its people had been fed overly positive reports. As late as the Treaty of Versailles signing in 1919, they believed Germany to be an equal party in a truce. Reparations and an economic blockade imposed by the Treaty drowned

all hope of peaceful recovery. As one German scholar notes, they saw a "sudden shift from the expectation of certain victory to crushing defeat."

Shock bred denial. A conspiracy theory, "Dolchstoß" ("stab-in-the-back"), swept the nation, fanned by its leaders. Germany, they felt, had been betrayed by Jews, communists, pacifists and others. Erzberger himself was assassinated.

The Allies made other mistakes: no enforcement plan for the Treaty was ever developed, for instance. But the lack of direct involvement with the German people allowed the fatal delusion of Dolchstoß to flourish.

Adolf Hitler sent a clearer message. In June 1940, he signed an armistice with a defeated France – in the same railway car.

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