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SPECIAL CONSIDERATIONS IN "PETER PAN" COMPANY M&A

A look at why "Peter Pan" companies are staying private for longer, what companies they are looking to buy should be cognizant of, and the nuances of M&A in this field

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Introduction

- "Peter Pan" Companies – The Who and The Why
- Exit Alternatives for "Peter Pan" Companies
- "Peter Pan" Companies as M&A Targets and Buyers
- "Peter Pan" M&A Deal Points
- "Peter Pan" M&A Legal Practice Points

"Peter Pan" Companies – The Who

- Over the past few years, a growing number of unicorns (companies with a valuation upwards of $1 billion) have postponed or turned away from going public (*e.g.*, Uber and Airbnb).
- According to the *WSJ*, there were 12 unicorn IPOs in 2014, four in 2015 and four in 2016.*
- The number of companies achieving unicorn status in the U.S. has grown from 76 in 2014 to 128 in 2017.**

* Source: *The Wall Street Journal: The Billion Dollar Startup Club*

** Source: *As of Aug. 2017, PitchBook*

"Peter Pan" Companies – The Why

- Why stay private? Because they can…
  - Glut of readily available private capital (*e.g.*, record high levels of "dry powder" – $754 billion globally in 2016)*
  - Rise of alternative sources of capital
  - Low interest rates facilitate borrowing to achieve growth (debt markets for M&A remain strong and accommodative)
  - High cost of IPO (on average fees equal 6% - 7% of gross proceeds)**
  - Regulatory burdens of going or being public
  - Short-term focus of market scrutiny of public companies

* Source: *PitchBook: PE & VC Fundraising 2016 Report*

** Source: *PWC: Roadmap for an IPO 2017 Report*

"Peter Pan" Companies – The Why

Continued

- Or because they have to…
  - Changes in market conditions narrow the IPO route.
  - Potential of having a down-round (company's IPO valuation falls below the company's immediate prior private funding round valuation), makes an IPO less attractive.
  - Growing hostility in the public markets towards dual-class structures.
  - Desire to maintain other governance arrangements that would not be acceptable to public shareholders.

Why "Peter Pan" Companies Need Exit Alternatives

- On-going capital requirements
- Investor liquidity
  - Existing hierarchies of investors based on seniority in liquidation and/or governance rights may adversely impact new capital raising activities.
  - Static investor base can create challenges.
  - VC and PE fund investor have time-based exit needs.
- Employee liquidity
  - Impact on recruitment and retention.

Title search: Special Considerations in Acquiring "Peter Pan" Companies

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