OPPORTUNITIES & CHALLENGES IN CHINA–U.S. BUSINESS & INVESTMENT

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Wednesday, December 7, 2011
Shanghai

China and the United States are leading partners in business and investment, and future opportunities for Chinese companies to raise capital remain favorable. These distinguished speakers will begin by discussing opportunities for dealmaking, investment, and stock exchange listing. They will then review current challenges facing Chinese companies, including regulatory issues that have a significant effect on the success of deals, and protecting against risk to personal and corporate assets. Boards and general counsel play an important role in obtaining the confidence of American investors and the U.S. government through effective governance and oversight of compliance.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors.

DISTINGUISHED SPEAKERS

Nelson Griggs	President of Asia Pacific, NASDAQ OMX
Jenny Zhang	Chief Financial Officer, China Lodging Group
Shuang Zhao	Partner — Hong Kong office Shearman & Sterling
Jasper Xu	Partner, Risk and Controls Solutions, PwC China
William Boeck	Senior Vice President, Insurance & Claims Counsel, Lockton Companies
Jack Friedman (Moderator)	Chairman, Directors Roundtable

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our Website, directorsroundtable.com.)

TRANSCRIPT

JACK FRIEDMAN: Welcome everyone. My name is Jack Friedman. I'm Chairman of the Directors Roundtable, which does programming for Boards of Directors and their advisors

on a worldwide basis. We have organized 750 programs in the last 21 years including programs in China.

My first trip here, when I was a student, was in 1969. Every time I come to China I look at these amazing buildings. There are more and more modern buildings that are put up, so visitors get a feeling of the tremendous growth and dynamic achievements of China.

This particular topic is very important, not only for China and the U.S., but also for countries all over the world. Globally, it's not only important for companies to manage their business transactions such as sales, contracts, and so on, but also very important to make sure that governance problems don't arise and that you're supervising the company properly. There's always a combination of good transactions and of good governance, internal compliance, legal practices, and insurance practices.

We did a large program with several hundred people in Los Angeles on China-U.S. business. There were many people from all over the world there, and also many Chinese business leaders who live in the United States. One thing that I learned at the program, is that if you have two or three hundred Chinese in America at an event, they love to speak together! They walk into a room, see a friend, and start talking. It can be difficult to get two or three hundred of them to sit down for the program. I've always been impressed with how sociable the Chinese are.

Without further ado, I'd like to introduce our panelists.

Bill Boeck is with the Lockton Companies, which is a world leading insurance brokerage firm. Jenny Zhang is the CFO of China Lodging Group and went to Harvard Business School in the class of 2003. Then we have Nelson Griggs, who is the Head of Asia Pacific for NASDAQ OMX, a very important world stock exchange. Shuang Zhao is a partner in the Hong Kong

office of Shearman & Sterling, which also is a leading global law firm. Jasper Xu is a partner at PwC China's Risk and Control Solutions. He is one of those people who keep you out of trouble, so you should listen to his advice and you'll be in a good position.

We will start with Ms. Zhao and Nelson. What is the general environment now and in the next year or two for dealmaking between China and the United States?

SHUANG ZHAO: Hi, everybody. I will introduce myself and my firm briefly and give you a flavor as to the current market situation.

I'm a Capital Market Partner based in Hong Kong. Over the past ten years, I have spent much of my time doing IPOs, helping Chinese companies get listed in the U.S., and also doing secondary offers. But over the last year, we also find that the mixed work we're doing in China has changed somewhat. For example, we are involved in the going private transactions of over a dozen companies. These companies were listed in the U.S., either through backdoor listing or through regular listing, and now with such a low valuation are attractive targets for going private. Two of the companies we worked on are based in Shanghai; one is Chemspec, and the other is Shanda Interactive. Those are publicly-announced transactions.

We have also been representing 20 or so China-based companies, their directors or officers in class action law suits, NASDAQ or New York Stock delisting process, or SEC investigations. People have probably noticed some negative publicity against Chinese companies. I think this year alone, there were 41 China-based companies which have been sued in the U.S.

A lot of the Chinese companies we are working on are great companies that would like to raise money in the U.S. In July, two companies we worked on made public filings, but because

of the volatility of the market, the transactions didn't go through, and then in November, there were some other public filings.

We will continue to see market volatilities, because of investors' fresh memory of losing money, and I am not optimistic in the short-term, that is, in the next three to six months for capital markets activities. But when I talk to companies, I realize that many, many companies are still interested in raising money in the U.S. over the long run and are actually learning from the experience of other companies. They realize the importance of good corporate governance and pay greater attention to general corporate governance issues such as related party transactions, and this in the long run will benefit Chinese companies and will enhance the image of Chinese companies in the U.S. market.

JACK FRIEDMAN: You were talking about companies going public. I assume that the number of deals of all sorts — financing, joint ventures, mergers and acquisitions, special contract deals, and Chinese exports to the United States are in the hundreds of billions. So the actual overall economic relationship is at a colossal global level. Americans are happy to work in different areas with China and think that Chinese companies are excellent partners for various things. I assume there's not just one area that might be slow?

SHUANG ZHAO: Yes. I think that's exactly right. Also, some investors I talked to say that if you look at the Chinese companies' growth rate, it's still a very impressive growth rate. So over the long run, we are pretty optimistic about the market.

JACK FRIEDMAN: Nelson, why don't you speak about your perspective on the business relationships right now?

NELSON GRIGGS: Thanks very much. My name is Nelson Griggs. I've known NASDAQ for the past twelve years. I spent eight years with Fidelity Investments prior to that.

Half my time was in Menlo Park, California, and about half was in New York, and moved out to Hong Kong and China about a year ago. I feel like I joined NASDAQ right at the top of the tech bubble, as well as from the negative indicator here.

If we look at the situation in China today, for a little perspective, we have 155 Chinese companies on NASDAQ. That number doubled in the last three years. So there was a tremendous rush of interest in Chinese companies going to the U.S., and there was a tremendous amount of increase, from the U.S. investor standpoint, coming to the U.S.

Over the last ten years, you had companies from China looking at listing in the U.S. There was a very solid base of U.S. investors, early investors, who recognized the themes and participated in stocks from China, and then over the last few years, you had a whole round of new investors come in to the equities listed from China in the U.S.

So, the environment that we are in right now, on a global basis, has many macro issues that are driving the market. Over the last twenty years in the equity markets, we've rarely ever seen these three or four hundred movement points in the Dow on a daily basis, just off headline news out of Europe. It seems to have subsided a little bit, but we don't think that's going away any time soon.

So you have this great macro overhang over the markets, and then on China, a specific case, we're really looking at a situation where it's "shoot first and ask questions later." Trading happens very quickly today. The average portfolio manager in the U.S. — 80% of the U.S. funds are below their benchmarks right now, so they're very cautious. When you do see some negative headlines, whether they're on a macro basis or on a China-specific company, as we saw over the last few weeks as news has come up, their first reaction is to sell, digest the news, and then consider if they want to reevaluate their positions.

So it's been a very frustrating year for the companies which are currently listed in the U.S. There's been some frustration for the companies who would like to go and list in the U.S. All of that is just a combination of many different events on a global macro level, and then on a China-specific level. As we talk more on the panel, we'll certainly address those, and I'm looking forward to hearing Jenny's comments on what a company is facing today.

Long-term, we're very, very optimistic. It is, as I mentioned, frustrating, but what we are going through now is probably a good process. We look at, historically, when there is a shakeout of various markets we don't know how long it takes to get to the other side. But things end up being better positioned, companies, exchanges and, partners learn about how we can produce a better product for investors.

JACK FRIEDMAN: What types of investors in the United States do the investing in Chinese companies? Are there large institutions?

NELSON GRIGGS: All of them!

JACK FRIEDMAN: You mean money managers and private equity hedge funds?

NELSON GRIGGS: There's certainly a core group. There are twenty major investors, and then maybe we can get Jenny's perspective on that.

JENNY ZHANG: We have seen a variety of investors in the U.S. market that are investing in U.S. stocks, that includes many big funds, like Fidelity, Schroders, this type of fund. There are also dedicated Asia-focus or China-focus funds, like emerging market funds with the Ashmore Group. The third group would be people, like a smaller or medium-sized hedge fund, who feel they may have a focus in China or in Asia or in consumption stock.

In the general market situation today the mood is quite low. Let me just cite a number so you can get a sense of how the investors feel today. My company, China Lodging, also known

as HanTing Hotels, was listed in March last year. So in the past two years, many Chinese companies went public, and a month ago, my banker told me that we are one of the five companies listed in the past two years whose stock is still trading above the IPO price. I don't know if the other five are still there, okay?

So imagine, and let's leave our seat as the company for a moment and try to sit in the seat of investors. That means most of the people who hold or bought the Chinese companies lost money. If they are long only fund, they lost money in the past two years. Some of them lost a big chunk of that. Many companies' stock price fell from 100 at the beginning of the year, to now somewhere around 20 to 30 on average.

So that's the magnitude of shock to the investors who invested in this sector. It's no surprise that many investors today very cautious about Chinese companies.

There are a few reasons for that. One is a lot of the government investigations surfaced this year, especially the big scandal associated with Longtop. I think that was very shocking news to the market. Then there are, of course, a lot of law suits around the Chinese companies.

So there is a trust and credibility issue surrounding the Chinese stocks.

Secondly, the global economy is not really being helpful this year. China and different sectors are probably experiencing different things. We, in the consumption sector, actually are still doing quite well, but there is still a general concern about where the Chinese economy is heading. Is it going to be a hard landing?

Those factors have hurt the Chinese stocks' performance in the market.

But if you put this currency to Asia aside and look forward for another three to five years, if you are working for start-up companies or pre-IPO companies, you will probably see tremendous opportunity for growth. Even for us, we still see tremendous opportunity for growth.

So I believe the problem with trustworthiness is gradually being eliminated as more companies show their performance and their corporate governance improves. The companies' performance will also provide longer-term support to the stock price. So I agree with the two who spoke earlier that the long-term prospects are still quite bright.

JACK FRIEDMAN: This morning, there was a show on CNBC, the leading American financial network. They had a report quoting the Asian Development Bank about the outlook for Asia and then they had a section on China. In Europe and the United States, if the economies would grow by 2 or 2.5% in a solid way, people would be grateful. It would be like "Thank God we're not zero" or "minus."

But the reports estimated that Asia was steadily getting slower. Overall, Asia looked like it was going to have a problem because it was slowing down to 7.5%. China has an incredible future and the investors want to be part of that future.

There are always times when people are getting used to new ideas. I, myself, was involved, in the 1970's, doing studies in Arab investment after the oil embargo. There was a big increase in oil prices and some Americans got hysterical thinking that Arab money was going to buy up America. Then in the '80's, it was a new idea that Japan was so successful. Some Japanese investors bought a golf course, Rockefeller Center, and some other famous property. Suddenly Americans were worried about Japan.

The same thing goes for China right now. Americans are digesting the idea that China is active everywhere in the world now, and it's growing. Some of their thinking should not be taken too seriously. Our Congressmen will say things about China because it's a new idea.

I want to ask the following question. Even though the current market is slow, could you tell us more about aspects in the process of going public and what services NASDAQ OMX

provides? What steps does a corporation take in order to prepare itself including not waiting until the last minute to have a new board of directors? What does it have to do the year ahead of going public?

NELSON GRIGGS: Yes, I can comment. It might be great to bring in the PwC speaker here, and Shearman, as well, because we tend to be a little later in the process to some degree.

But what we are spending more time on is the preparation for after-market. So, getting companies conditioned to what it will be like to be a public company, the various services that they will need, the expertise from an industrial relations standpoint. I joined NASDAQ twelve years ago. When I joined the Investor Relations function in the U.S., it wasn't nearly as mature as it is today. So most U.S. companies, when they reach $500 million, maybe a billion dollars in market cap, they typically have more of a team of industrial relations professionals, many times at the vice president level. NASDAQ is a public company. Our industrial relations professional is a senior vice president. He sits in many board meetings and is part of the strategic thinking of NASDAQ, and I can point to a thousand other companies like us.

What we'll see develop is the communication and the trust factor. Jenny hit on this, that the trust factor with investors is such a critical component. Every portfolio manager has a stack on their desk of potential investments, and they can all look at the numbers; they can all read the quarterly filings; but they also need to get into the heart of the company, the trust factor. Having those open lines of communications with the CFO, Investor Relations, access to senior management is very, very important. When I first got to China, a lot of the feeling from the pre-IPO companies was the IPO is such a big, important day — and it is, it's tremendous, it's very exciting, it's an amazing milestone — but just after the listing effort you have a lot of new customers! They're all shareholders. It takes time, and it takes effort.

So we're trying to do — I did just hire eight new people in Hong Kong to deal with investor relations background. We offer support tools, building investor relations web sites. So with our 3,500 global listings, if we can bring more best practice ideas to China, I really think you'll see that — we'll talk more about governance and preparing for internal controls, because that's obviously incredibly critical, as well — but just that after-market preparations from investor relations, that's a role that we're really passionate about, that we like to work on.

We bring out organizations from the U.S. working with our listed companies here, to try to generate more ideas around that. From our perspective, that's a role we're trying to play. Of course, when it comes down to the best practice ideas about how to structure a company from a governance standpoint, I have a team in Washington, D.C. There's a group of twenty that focuses on pre-qualifying companies after listings, the best practices, and they're always available to be a consultant company, as well.

JACK FRIEDMAN: Jasper, can you tell us about the issues that you work on when companies are thinking of becoming more global in their visibility?

JASPER XU: Jack, that's a good question. We've been helping a number of Chinese companies, especially those entrepreneurial types of enterprises, to prepare or get ready to list overseas. Traditionally, we used to see companies focusing on many numbers of disclosures, how to get the financial statements ready or translated into English so that people in the U.S. can understand them.

But you see, from those high-profile cases, as someone mentioned earlier, those internal controls systems, and more importantly, people behind those disclosures in the financial statement process, are quite critical because you see many of the companies or the candidates are seeking listing on NASDAQ. I would say that a sizable portion of them are used to control by

just one person, the entrepreneur. So even after they get listed, there's a tendency, for the owner to still perceive the company as his own company rather than as a publicly-listed company.

So instead of making fundamental changes to the governance and the systems of internal controls, quite often we see people are just hiring some good consultants to polish their numbers, etc. This is not changing the fundamental root causes which lie behind all those high-profile cases.

So from my perspective, there are two factors that I would consider critical when people are getting ready for an IPO. The first is getting a qualified CFO in place. People like Jenny are very hot property in the marketplace. More important is how the company will integrate people like Jenny into the company. Where is the operation of the company? All those prospectus' show people with good C.V.s, from high-profile colleges with extensive industry experience. Unless the company can really integrate the CFO into its operations it is not going to work at all. We see a number of examples of people working at home, or somewhere outside of China, but they are acting as a CFO of their company! Is it going to work? I don't know.

You see, they have to get right into the daily operations of the company so that they know and witness all the key decisions coming from an operational perspective.

I can give you a real life case from my personal experience, where there was a high-profile CFO who was hired into a company, and the company was still run by the pioneer and the seeds group, which is closely associated with the owner. So the owner goes out to do business as usual and verbally agrees to many transactions. A lot of transactions, or money movements can occur over lunch with business associates. The money can be authorized by the owner, and it gets routed to someone else's company, without the CFO becoming aware. It can happen quite often in some companies.

So when the CFO gets back to the office and looks at those transactions, certainly there are a lot of implications. From a reporting perspective, it's getting quite complex, whether you consider this transaction as a loan to your associate's company, or an investment, or an intercompany transaction — what is it? Is it a related party? There are a lot of complex legal and accounting implications behind such transactions.

But business goes on as usual and the owner moves the money anyway. Where are the internal controls behind such transactions? Business people have to be careful and consider any situations which may exist behind all these numbers. This is quite critical.

Also, you have got to look into how a company controls its daily processes, because China is getting bigger and bigger. It's like Jack mentioned, they are running at a very different scale from ten years ago. Ten years ago, when we did the auditing, you had to get into a lot of manual processes; you saw a lot of people working to get all the vouchers ready, get all the Excel spreadsheets aggregated to prepare the financial statements, and these things were all massive events. You walk into different environments. The education sector is probably one of the popular sectors in the States. You walk into those schools, they're all getting cash collected from students at different branches. Those branches are all over the place in China. So how are you going to control all those small dollar amounts involving such a massive volume of transactions? You have to have a string system in place to support internal controls within the company's corporate governance structures.

Those are the things we have been working on quite actively, and people in the internal controls systems of companies should at least pay some attention to them in the pre-IPO phases.

JACK FRIEDMAN: The Directors Roundtable has had many seminars regarding Boards of Directors, internal auditors, the whole compliance system, and how a Board knows

what's going on below them. There's the issue, all over the world, of how, at all levels, do you work together?

Jenny, could you discuss some of the typical things you do in a day in the role of a CFO. As a CFO you're getting this huge amount of data; you're going to the meetings; and you work with computer people. Also, from the standpoint of a Chinese company as it moves from a private to a public market, what is important from the CFO's point of view? Of course, you work more with investors once you go public.

JENNY ZHANG: To respond to your question, as well as Jasper's comment, I think there is a misconception about what a Chinese CFO is supposed to do.

Actually, it's a little weird in China, that a U.S. listed company treats a CFO, in many cases, not really as a CFO but more like an I.R. person. I think that's a big problem! That's part of the cause of a lot of the scandals that we are seeing today in the market. The CFO is not really fulfilling his or her duties in a manager, a keeper of good control, where the business is heading, as well as their daily transactions.

When you look at the different CFOs, what they are doing, all investors, especially new investors, start to ask me some very strange questions. The first time I got it, I was shocked. The first question that the guy asked me was, "Where do you live?" I'm like, "In Shanghai, of course!" My company's in Shanghai, right? He told me later why he asked that. He said for a lot of the CFOs he has met the business is somewhere in China, but the CFO is living in the States or living in Hong Kong. That's probably not a good sign to the investors when they start a conversation with a company's CFO.

Secondly, the tenure the CFO has served the company also speaks to that trust issue. In my own case, I started with HanTing in 2007, and the company went public in 2010. So a longer

involvement with the company also enables the CFO to understand the business inside out, and be able to present to the investors with confidence and adequate knowledge.

Thirdly, it's important for all business people, no matter if it's the board member, the CEO or the CFO, to remember that good compliance is good business, actually. The bigger the company gets, the bigger the issue could become if the people at the top are not able to get adequate information or are not exercising adequate control of what's going on in their business.

The problem, as Jack just described is that the board, CEO, or CFO doesn't know what's going on. To resolve that, you actually need a systematic process instilled in your company. I believe people like Jasper are actually offering a lot of companies help in that regard, but in essence, a CFO would need to have an adequate control process, budgeting process, review process, to ensure the business is running in the direction the board and the senior management want it to be, and if there is any deviation from the path, there is an immediate feedback loop that will bring it to the attention of the senior management.

The CFO would need to play a very important role to establish that information cycle.

JACK FRIEDMAN: One of the big subjects in an American business school is how you go from entrepreneurial leadership to an established corporation. You hire someone to be the CEO or the CFO because of their professional skills, but they're not part of the founding family. It's a universal issue; it's not just an issue for China. It's the traditional thing that the founder used to say, "We're going to do it this way," and everybody says, "Yes," as opposed to, "We have to have a board meeting." One of our speakers in Beijing was in the boardroom when there was a meeting, and the top person said for five minutes, "We're going to buy some plant, and it's a great deal." Then, "Let's vote." An independent director said, "This is an important issue; could you tell us some more." The top person said, "I told you it was good!" The

Directors said, "Well, you only gave us five minutes; would you give us something more to read and let's talk." The founder, at that moment, found out the difference between being the total boss and part of a team at the top level. In any case, this is a general problem.

NELSON GRIGGS: I'll just, to emphasize Jenny's point, when I first got out to China last January, the IPO market was going to be incredibly attractive for the second quarter and the third quarter, and I remember meeting with a chairman of a pre-IPO company who said "We're going to be hopefully filing publicly in two months," and I said, "Great, I'd like to meet with the CFO," and he said, "Well, we haven't hired that person yet."

That attitude, I've noticed, has changed a bit over the last six or seven months because when companies do go on the road, they are getting some very critical feedback of the CFO, of their background, of how long they've been with the company. So we will see that change. I cover all of the Pacific and I was in India last week, meeting with about ten potentially pre-IPO companies. I don't want to put India in the "doing everything right" category, because they have a lot of challenges there. But nine out of ten companies I met with were probably two years away from going public, and I met with all CFOs and CEOs.

So if you look at it, and if you go to a U.S. pre-IPO company, the CEO is going to be in place. They also start thinking much earlier about their boards.

A lot of our constituents over the years push for what's called a phase-in of the committees. We didn't have to have the committees in position before we went public, but as a best practice, the more you have your board formulated and committees formulated, having a CFO that's been with the company a few years at least before you go public, as Jenny was, it just sends, without a doubt, the right message.

Investors go through phases when certain things are more important. If we were in a raging bull market and all the economic signals were pointing in the right direction, and there wasn't a European overhang, a lot of these issues would not be as important to investors; today they're important. That's going to last for a period of time here.

So, again, looking at it from a best practices perspective, they're showing what you can do, and what investors are going to want you to do. The more time that's spent in those areas before you go public and even after you go public is critical.

JACK FRIEDMAN: I want to ask Bill a question.

The people who are concerned about governance outside a company are not just the investors. It can be the government; it can be all kinds of people. Companies want to have their directors' insurance or corporate protection insurance. Basically, they want to know how safe the company is going to be before they insure, because they don't want to have a lot of lawsuits unnecessarily. When companies are looking for insurance coverage, what do the insurance companies care about or ask about?

WILLIAM BOECK: I'd be happy to talk about that. To put it in a nutshell, insurance underwriters are interested in the same things that investors are interested in. Insurance underwriters are underwriting the company's risk and are going to be interested in the same internal controls, the same corporate governance, the same financial metrics that investors are concerned about. Again, they're looking for a company that is healthy, that has good prospects for growth, and that is unlikely to see an investor claim, which is the primary concern of directors' and officers' liability underwriters. If they see that a company is well run, well governed, and acting according to best practices, then they will feel more comfortable underwriting the risk, and will do so on favorable terms.

One of the problems that we're seeing with respect to Chinese companies right now is a crisis of confidence with respect to underwriters. There are a number of insurance companies that formerly were interested in and did write Chinese companies. They have now either pulled out or are offering terms for D&O renewals that some could accurately characterize as punitive. It's pure reaction to what they don't know. There's a crisis of confidence. They simply don't know whether companies are well run. They're making assumptions unfairly, but nevertheless, it is a reality. They are making assumptions that companies are not well run or may not be well run, and are therefore charging accordingly for insurance premiums.

JACK FRIEDMAN: By the way, I also would like to mention that it's not only Chinese companies that may have stock market problems in terms of the market going up and down. Even a company like Bank of America had their market value go down 60% earlier this year, so great world corporations are going up and down. There is huge competition for credibility because people are scared that if you invest in a company, even like a B of A, you can't be sure. So there are a lot of choices people have, as Nelson commented on, and one of the things that gives people confidence is the idea that you care very much about best practices and internal governance, and not just, "Well, we're going to have big sales next year."

JENNY ZHANG: I'd like to comment on something from the directors' and CFO's perspective. I think a lot of people in audits, CFOs and independent directors of companies, most of these people have professional backgrounds, your reputation is the most important asset you have. I think in the good old days, I've seen a lot of people basically would love to get on the Board of as many companies as possible. It's a good, prestigious factor, and you also get properly compensated. But that does have risks associated with it, and as I mentioned earlier, there were so many Chinese companies that got civil actions in the U.S., that being a Director of

a company, or a CFO of a company, there is associated a huge liability. A company gets a lawsuit and these people will be named as defendants in the lawsuits. So I would advise people, before you join a company, you do a proper due diligence of the company. You need to talk to the founder, make sure you have the chemistry with the founder, you are able to trust the person. If you are hired as a CFO, you need to understand whether he is treating you as a real CFO. He has opened his books, he has opened his internal, his bank accounts, and all the functions that a CFO should do. Or he is just using you as a "mouthpiece," and an I.R. person who speaks English, and in the background he has a real financial controller or somebody who actually knows everything. Because you have to sign the registration statement, you have to sign the annual report, and you have the personal liability in it.

The other thing is about being an independent director. You also should do more due diligence, especially if you're in an audit committee. Most of the independent directors have quarterly meetings with the company. These meetings tend to be brief, and the material that management provided to you is not necessarily as detailed as it should be, for example, in the context of acquisition or there were things you would ask whether this acquisition was from a related party or is the price fair, etc.

So you should talk to the company's CEO, the founder, to make sure that you are comfortable with the company.

The third thing I would like to point out is — I'm sure many of you have done that — it is good practice to have an indemnification agreement signed when you join a company, and also I know that independent directors usually would insist that a publicly listed company have D&O insurance coverage. So in the event of litigation, it's very stressful for the individuals to be sued in the U.S. I've also seen a person in the process of helping his own company go public in the

U.S., but because of this litigation with another company, he was not able to hold a position for the company he's working on.

So by and large, communicating with the founder is a two-way street. You should use your professional skills and help them be educated, that it is really, in the long-run, in the best interests of the company to be more transparent, to be more open to internal professional parties and external professional parties.

JACK FRIEDMAN: There are a number of other important issues including how an individual senior executive or a director can protect himself when there's a problem. They didn't cause the problem, but they're in a company that has a problem.

For now, what I'd like to do is give the audience a chance to ask a question. If you have wisdom or experience to share, or commentary, that's welcome, too.

[QUESTION FROM AUDIENCE]: When is the best time to join a company?

JENNY ZHANG: I think I can share some of my personal experience. When I joined the company, the company was still very small. We had fifty hotels at the time. Today, we have more than six hundred. So I actually started with the company when the business was still a really small size. I'm not sure if everyone else would join at such an early stage, but beyond the time that I have spent with the company there, I think there are a few things a newly joined CFO should look for, even before you're joining.

One is, of course, why the founder or the CEO is inviting you to join. What's his motivation? What's his objective? What is his vision for the business? That will largely decide what kind of role you are going to play in the team.

Secondly, there is always a chemistry that will be there. But the fundamental is still, do you have the same objective as the founder? That alignment is critical.

Thirdly, in the few years that I have been with the company we have totally restructured their finance team. We used to have a decentralized finance management structure. We had a couple of financial people in each hotel, which is not very cost-efficient, and the work quality is not consistent at all. So what we have done is centralized the finance function. We have a cash pooling system, so all the cash is managed centrally, and a centralized accounting system. Of course, you will need an ERP (Enterprise Resource Planning) system to support that.

Then we also have a few in the finance team to take care of their local tax relationships, as well as the monitoring of their daily operations to make sure they're in good compliance.

So we actually have done all of that, and we now use probably one-third, or even less than that, of the people to do the job, compared to the previous amount per hotel. Productivity basically tripled. We also achieved a much higher quality in terms of consistency. So if you are managing a network of a similar type that could be a proven kind of a solution to this type of business.

Fourth, if you are managing a fairly big finance function, like what we do because we are in a lodging-hotel type of operation, you need more than yourself to exert the control over the business. So I have a few very good people helping me. My accounting hat and finance hat, as well as the internal compliance hat, all came from a well-trained background — people who used to work for PwC, E&Y. So those professionally trained people are also important in setting up the all over finance management system, as well as to establish credibility within the team that the finance people can not only talk the finance, but also talk business, and they really become a strong business partner when you are working with your counterparts within the company.

That kind of credibility is essential for the CFO to have credibility within the top management team.

So those are the few things that we found that work well for us.

[QUESTION FROM AUDIENCE]: What measures should a company that is either pre-IPO or already public take to differentiate themselves from those bad companies? Is there anything that they should do proactively or actively to show that they're better than others?

JACK FRIEDMAN: That's an important question of differentiating yourself from people who may be mediocre or have problems in contrast to your being very good at something. How do you communicate?

JENNY ZHANG: I think transparency actually keeps a good communication line open with your investors; it's very important. A lot of the China-based public companies, in the past operated as a one-man company, so they tend to do everything in secrecy. As you know, most of the companies are foreign private issue. There's not a lot of stuff you must disclose on a day-to-day basis, because the stuff you really must disclose every year, is the 20-F. Then even for 6-K filings there is no specific set of rules of what must be disclosed. You don't really have to disclose your quarterly financial if you don't want to, but people do it because it's market practice. It's basically your judgment as to what the directors and officers think is important from your investors' perspective.

So that gives you a lot of flexibility. I think some companies take that kind of flexibility as a way of only disclosing the absolute minimum, and that actually is not helpful in the kind of volatility in this kind of market. So transparency is very important. After you have a problem, some companies are very quick to counter-attack, very quick to deny. At that time, you need to sit down and really take a deep breath, to think about it, whether you will have sufficient time to responsibly respond to these allegations. Suing the short seller is very counter-productive, in my view, and we would advise a company not to do that. Sometimes you deny it too quickly and

later on, you find you dug yourself a hole that you cannot really climb out of. That would be counter-productive, as well. So in short, after you have a problem, you're being attacked, how to play your cards really depends on how many cards you have, and not everybody at a company knows information on a symmetry basis. The founder, himself, tends to have the most information. So if you are the CFO or a Director, you need to understand. At least try to understand what you know before you decide to act in a certain way.

NELSON GRIGGS: I'll make a comment or two about the pre-IPO process. It's been mentioned a few times that establishing that trust with investors is very, very critical. After all, there is reading financial data, and if you look at why a company's asked to do a road show vs. a video conference or just send numbers, it's because the investors want to meet the people they're going to be investing in, look across the table and see the passion of the CEO and of the CFO. There's nothing stopping a company that's a year and a half away or so on going on investor meetings through your banks ahead of time. Obviously, as you get closer to your IPO, there are going to be quiet periods and things of that nature, but establishing that trust ahead of time and getting them to know the company in advance of your IPO, although there are a whole pool of investors that invest in Chinese equities, for your IPO, the power is really going to be in a handful, ten, twenty of the largest, and establishing contact with them in advance, whether it's a year or a year and a half, getting to know your story, is not a bad idea. Because then the road show is an extension of that relationship. That's one point that I'd make.

Then no one wants to think that they're ever going to get hit by a short sale or have an issue. But certainly, understanding internally what you would do if that happens, having the "play book" of what we would do, a crisis communication plan, however that may affect your company, is important. Today the short sellers can be fairly relentless, so certainly every

company having an understanding of what they would do if that press release hits, you want to be prepared.

JENNY ZHANG: Let me just add a little bit more to how to be more transparent with your investors, which is critical. There are a few things that are very important. One is a look at your public disclosure. The minimum is not necessarily the best. Often, helping your investors to best understand your business is probably the best strategy. So you provide adequate information, make sure they understand your business models thoroughly. They understand the ups and downs you may have, and consider them as regular instead of some abnormal activity. A lot of businesses like us have seasonalities. So you need to thoroughly explain this to investors, through your 6-K, your company presentation, or your road show. Make sure adequate understanding of the business is there with your investors.

Often disclosure, like cash flow statements, which are not a standard prerequisite, but if you can add that, it's helpful. A thorough discussion about the operating cash flow, as well as your capital spending is important for the investors to get a flavor of where the company is heading. So that's one thing.

The other thing we find it helpful is to bring not only the CFO, but the other senior people to meet the investors once in a while. It's tremendously helpful. One, people understand, there is some guy there who is really making a call. Either it's the CEO or the chairman. For the investor to really see that person and be able to talk to them directly gives them a sense of who is running the show and what type of person that is. Can they trust him or not?

So that communication, you probably don't need to do it a lot, but once a year to your key investors is probably useful.

There is another side benefit of that, is to bring your key people in check. Help *them* understand what the investors are thinking. That often also makes the CFO job easier, because they hear what the investors are asking directly, first-hand.

So those are a few things to just share with the audience.

NELSON GRIGGS: I'm going to make one quick comment, because I think those are two excellent points. We've started a semiannual perception study of investors in the U.S. in Chinese equities, and it just came back, and two of the top issues were if you can give access to people below the CEO and CFO to talk to various division heads, whether it's once a year or what have you, that is critical and a big, big trend in the U.S. Then number two is when you have time with the investors, again, they understand the numbers, they've already read your numbers, but the more you can talk about — you have to always keep in mind that although they may have people on the ground, the U.S. folks are 8,000 miles away. They're not using these products. Their kids are using Xanga. Their wife is using Groupon, but if you look at it, they would like to know more about the competitive landscape, things like seasonality, etc., understand the businesses more. So when you are in front of the investors, use that time very effectively.

NASDAQ, for its purposes in our quarterly call, we point the investors to our release, then talk about the business. Because again, we don't spend a lot of time — that hour, hour and a half, we don't spend that time talking about a lot of our numbers; it's about the direction of the business.

So I think the overwhelming feedback was more access to different folks in the organization, and the ability to learn more about the business strategy.

JACK FRIEDMAN: It's somewhat ironic for an American to talk about the importance of the personal contact between the company and the investor. I understand that Chinese culture has such high respect for doing business with people where there's a personal relationship. So sometimes I feel that the Americans can learn from the Chinese.

I would like to turn now to a question for Bill Boeck. People don't necessarily understand the difference between getting insurance for a company versus for the individual director, senior officer, who might not have done anything wrong at all, but is named in a lawsuit. Plaintiffs list every top person who is associated with the company and put it in the document. The Directors don't want to spend all their own money protecting themselves.

WILLIAM BOECK: That is a critical question. There are really three things that directors and officers can do. One was spoken about earlier, and is probably the most important, and that is to manage companies well. A well-managed company reduces its overall risk of claims by regulators and civil plaintiffs. But as we all know, even well-run companies can find themselves sued by their investors, by their shareholders, and can be involved in legal actions by regulators and the law enforcement entities around the U.S. I limit my comments primarily to the U.S., but to the extent that there are investors and regulators worldwide, their actions need to be taken into account, as well.

So, what can an individual do to protect himself or herself? Really there are two things, in addition to running the company well. The first was alluded to earlier. Individuals should strongly consider asking companies to enter into indemnification agreements. Under U.S. law, and it's governed by the laws of the various states where companies are incorporated, there are statutory obligations to indemnify directors and officers against loss. Those obligations are

limited to various degrees, depending on the states, and require board action to implement. A board must vote to indemnify, in most cases.

Individuals are better protected by having contractual agreements with their companies to provide for indemnification rights, so that the need for board intervention is limited, and most importantly, there is no opportunity for the company to change the scope of indemnity it chooses to provide the individuals, because the individuals have contractual rights as opposed to rights growing out of relevant statutes and the company's bylaws.

JACK FRIEDMAN: One example of that is a new owner, management, or directors of a company, and they say, "The people before us gave you this protection, but we're starting again and we're going to change the rules." Is that basically the concern that you would have?

WILLIAM BOECK: That's definitely one of them. The other one I've seen, more unfortunately, frankly, is a situation where a company is adverse to its former management and determines that they're going to limit the indemnity provided to former management for whatever reason they see fit, and as a result, the individuals are denied indemnity that they counted on. An indemnification agreement, a contractual right, limits the ability of the company to do that, because a company that has entered into an agreement with its directors and officers will breach that contract if they change the scope of the indemnity provided. Enhanced indemnification is very, very important to protect the individuals.

Indemnification by the company isn't the whole story, though, as you would expect somebody from an insurance brokerage to tell you. The reality is that there are situations where a company cannot indemnify an individual, either because it's legally prohibited from doing so, or perhaps the company is in financial trouble and simply lacks the economic ability to cover the defense expenses or settlements or judgments that may be levied against an individual.

So, the individual is best protected by having a robust directors and officers liability insurance program. I have brought a number of slides, and I'm going to skip ahead through quite a few of them to give you a picture of a directors and officers liability insurance program, and I'll talk about it briefly.

This is what you would describe as a typical D&O insurance program. A D&O policy is basically designed to do three things. First, it is designed primarily as protection for the individuals, and the primary protection being coverage for loss if the company is not allowed to indemnify, or does not indemnify, largely for financial reasons — again, the company may be in bankruptcy and cannot indemnify. That's what those of us in the insurance industry refer to as "Coverage A" and you'll see that on the chart.

The second thing the policy is designed to do is to cover the company for amounts for which the individuals are indemnified. In other words, loss that the individual has sustained, be it defense expenses or claim settlements, but the company is obligated for some reason to indemnify and does indemnify. This "Coverage B" part will respond to that and will reimburse the company.

"Coverage C", which you see on the chart, is the only part of the policy that covers the company for its own liabilities, and it covers the company *only* for securities claims. Those would be shareholder claims and actions by law enforcement or the SEC. Not investigations — we can talk about that in a moment — but actual litigation, civil and criminal.

JACK FRIEDMAN: Besides the securities area, if you have a dispute between, let's say, a Chinese company and a foreign company over intellectual property, "you're taking our intellectual property" or "you didn't deliver all the goods." These are the more usual commercial

disputes. Does insurance cover for that, or is it basically issues that have to do with securities and ploys under the government laws? Can you clarify it?

WILLIAM BOECK: I'd be happy to. In the public company context, disputes between the company and its rivals are typically not covered. Where you do see something like that covered is for private companies that have D&O coverage that is broader. But that's probably beyond the scope of what we're going to talk about today.

JACK FRIEDMAN: If you had a dispute between you and a customer? A big customer, like one you are exporting to the States. Is that considered not covered usually, too?

WILLIAM BOECK: Correct. The D&O policy will cover the company *only* for securities claims. Now, let me qualify that by saying that in my experience, many of those claims will also name a director or officer. In the event that happens, the policy *will* respond, and under those circumstances, we would challenge insurers to effectively cover at least the defense expenses of everyone involved, including the company.

JACK FRIEDMAN: Even in a contract dispute, the individual gets broader coverage than the company does.

WILLIAM BOECK: Absolutely.

JACK FRIEDMAN: That's all I meant.

WILLIAM BOECK: Right. To finish the thought on this chart I have, one of the things I think is particularly important is that you'll see, on the far left, a gold tower. This is there to represent a different type of D&O policy that I've just described. It's one designed *solely* to cover individuals, and *solely* for loss that the company does not indemnify.

Now, these policies are bought by an increasing number of public companies in the United States. The vast majority of our clients certainly do buy them. They do so because these

policies do a handful of things differently. First and foremost, the coverage is broader. There would be fewer exclusions and broader coverage grants in what's known as a "Side A" or "Side A DIC" — Difference in Conditions — policy. In addition to providing broader coverage, it will respond — if there is an insurance tower with multiple layers and one or more insurers does not fulfill its obligations, that policy can be constructed to fill in and to continue to provide coverage. Again, that is only for loss that the company does not indemnify.

But it's also important as a tool to protect the individuals, because it is something that cannot be caught up in a bankruptcy by the company. Now let me explain that for a moment. As I mentioned earlier, a typical D&O policy includes coverage for the company. In the event the company goes into bankruptcy, the bankruptcy trustee or the company's debtor-in-possession will assert rights to the proceeds of the policy — again, because potentially it will pay the company's liabilities. So where there is a bankruptcy, the D&O policy may not respond on behalf of the individuals, even if they aren't being indemnified, once again because the policy could be part of the bankruptcy estate.

Now, there are things that we do in policy wording to try to avoid that, but they are not considered absolutely reliable. So, a separate Side A, Coverage A policy, will accomplish that. It's what we refer to as being "bankruptcy remote" — it cannot be caught up in the bankruptcy, and remains viable protection for the individuals, no matter what. Again, it's broader protection.

I'll go to one additional slide that illustrates the various types of these policies. I won't spend time discussing them, but I'll say only that the insurance industry has been very innovative in tailoring these policies to respond to particular risks. You'll see policies tailored for independent directors, retired directors, and one insurer will even sell a policy that will follow an

individual around from company to company. Again, these are just a few ways to respond to exposures that individuals feel they may have.

JACK FRIEDMAN: A good insurance plan starts with the company itself saying, "We'll pay you back for legal problems," to a director or a senior officer. In addition, you get a contract with the company specifically naming the person. Another thing you would do is get a D&O insurance policy to maximize protection, if your company doesn't have money to protect you. So you have a coordinated program.

From a lawyer's point of view, do you get involved in advising clients on their insurance policies?

SHUANG ZHAO: Yes. In the process of preparing for an IPO, most of the Chinese companies will get advice from company counsel. Some companies start with the intention to purchase insurance from underwriters directly. It takes some education for these companies to realize it's in their best interests to purchase the D&O insurance through a brokerage firm, partially because there are very limited D&O underwriters, and they are very big companies. In comparison, Chinese companies are small clients, with less bargaining power and are not sophisticated enough to negotiate with the underwriters directly, and their interests are best served by using a brokerage firm, which tends to be a big company with global operation, and is experienced in advising clients dealing with insurance underwriters.

The brokerage firm gets paid a percentage or a fixed amount of the insurance premium by the insurance underwriters. But they actually work for the company. So we usually educate our clients that they can get much better D&O insurance coverage by actually going through a D&O brokerage firm.

JACK FRIEDMAN: You use their expertise and representation to argue on your behalf.

SHUANG ZHAO: Yes. A lot of brokerage firms actually have settlement people on the ground. If you actually need to use your D&O insurance policy, that is, when a company has an insurance claim, the brokerage firm can help you coordinate on a settlement. That's all very important.

The other thing is, D&O brokerage firms have their own in-house experts, and they can help you get the best coverage with a fixed insurance premium. The insurance policy itself is a big document, about an inch thick. There are things it does not cover, and a good broker will help you minimize the exclusions in the coverage. But everybody should know that fraud is never covered if it's proven to be true.

In the event that there is a litigation, people need to be mindful of conflict of interests. Too often, I've seen companies, chairmen, and founders are insensitive to these conflicts. For example, if something happened, a chairman may decide to confess to their auditor friend, but no offense, your auditor may be the last person to whom you confess! You should talk to your lawyer first. Also, you also need to know that the company's lawyer is not your personal lawyer. The company's lawyer has a fiduciary duty to the company and to the Board. So certain personal information you give to the company's lawyer, may not be privileged.

In light of potential conflict of interests, when an issue comes out, relevant parties may want to have individual representation to protect themselves, but an insurance company may not want to pay for all these separate representations and may want the company counsel to represent everybody in the beginning. You should talk to the company counsel, and may also talk to other knowledgeable people — obviously in general terms, to find out when you should seek separate representation. It's really, really important.

The other advice I want to give you is, whatever you communicate with your own counsel, be honest. He or she cannot guide you to navigate a situation if you do not tell him what's happened, because then he will design a strategy based on a false premise, and in the long run, it's not really in your best interest — whether you're dealing with the SEC or dealing with a civil litigation.

JACK FRIEDMAN: There are very important rules in the United States that say that you have to be honest with your auditor. It's taken very seriously. But what is also true is that there is an ultimate privilege in the U.S. of being able to talk privately to your lawyer and not have the government know what is said. Lawyers in the United States can keep what they're told by their client private. Although ultimately you will have to share things with the auditor, the first person you go to is your lawyer.

Jasper, can you talk about the importance of a relationship with an audit firm like yours?

JASPER XU: Yes, I'm not a legal expert, but usually we set aside the auditor responsibility from the accounting responsibility. If you look at some of the public opinions, you will notice that the auditor will say that the company management owns the financial statement, and also the responsibility for the truth and fairness of those financial statements. What the auditor would perform as part of their independent procedures is done in accordance with a specific country's auditing standards, to opine on the truth and fairness of those financial statements from a materiality perspective.

What does that mean? It's not clear-cut sometimes. You see, in some fraud cases, it is sometimes reported that there were back-and-forths between the accounting responsibility and the auditing responsibilities. Also, that some commonly recognized auditing procedures were unfortunately omitted during the auditing process. For example, for a number of Chinese

companies with poor controls over bank and cash, it was reported in public that they had reported fictitious cash. An investor, obviously, will question whether the auditors have done enough in terms of getting the right confirmation through the right procedures. If that's not done correctly in accordance with internationally or U.S.-recognized auditing procedures, then the auditor can get himself into trouble from that perspective.

JACK FRIEDMAN: I don't know if I'm reporting this correctly, but there's a famous case from Europe. A giant company had false books to the extent that somebody got false stationery from a global bank, saying that $2 billion was on deposit in cash from the company. Well, lo and behold, when someone asked about this — the question was, whose fault was it that the money wasn't there? The bank said, "We were honorable; it was a fake paper." The accountant said, "We checked this."

The point goes back, the first person you'd better talk to is your lawyer, and have a confidential conversation, honorably, about the situation.

SHUANG ZHAO: It takes time to develop trust. If you are not comfortable talking about your case directly to a lawyer, you can talk about a hypothetical situation, and evaluate the advice you are getting. Lawyers, obviously, are supposed to look after their clients' best interests. But some people in China, rightly or wrongly, suspect that lawyers will also want to maximize their personal gain, so they can get the most legal fees. You may be able to get a better feel for the advice you are getting by asking a hypothetical question.

JACK FRIEDMAN: Jenny, could you give us a sense of what is involved with a company going public, such as filing a U.S. quarterly or annual report? Certainly, you wouldn't wait until the last minute.

JENNY ZHANG: In our case, this is a very standardized process. I suppose it's also that way in most of the listed companies. In general, you have your standard accounting procedure to close each month, each quarter and each year. There are certain kinds of checklists you would need to go through. Once you close the books, you put all the information together. Often, our quarterly report would involve not only financial data, but also operational data. So you put all of those things together, and then you would start to organize the information into a meaningful news release. This would involve analysis and an explanation about the trends. Then we will also invite our auditor, as well as our lawyer, to do a final proof and review.

JACK FRIEDMAN: Nothing important like that goes out unless your advisors read it themselves and it looks good to them.

JENNY ZHANG: Often, we don't get that many comments from the auditors and the lawyers. So typically, you know that before you gather, get down to that level, in the normal closing process, after the books are closed, you also need to allow a few weeks for the auditor to perform their quarterly review. So in our case, we have a fairly steady and stable working relationship with our auditor. Typically it takes about a month after the month-end to finish all of that.

JACK FRIEDMAN: Do most Chinese companies give predictions saying, "To the best of our information, we think this quarter or year will look this way."?

SHUANG ZHAO: It's not a required disclosure. Before the financial crisis, some companies preferred to give quarterly forecasts.

JACK FRIEDMAN: Now they speak less?

SHUANG ZHAO: During the financial crisis, some companies found it was very hard to predict their business with any degree of certainty and thus dropped the forecasts. Some

companies did not want to re-issue the forecasts as they did not think their stock price would be positively rewarded, and there is always a chance to be punished if they missed their own forecast. So I think you see it less now.

Also, there are different types of forecasts. Some people give basically production or volume forecasts; some people give revenue forecasts; but when you get to the income level, it's starting to be a more risky forecast.

NELSON GRIGGS: It is more risky to do it, but certainly when you don't, it leads to more volatility! If you look at the trend in the U.S. is still upward to giving guidance. About 65% of the companies in the U.S. do give some form of guidance. It's a lot less, and obviously when you get to a technology business, earnings can be much, much harder to predict the growth rate. But if you look at the investor, again, getting back to information that they do have access to, if you are giving quarterly guidance and you're within a range of that guidance every quarter, you see a lot more stability in your stock price. So guidance is on the trend where, globally, it's going up, but I would say in China, it's probably flat to down.

JACK FRIEDMAN: Bill, if a company gets bad news and someone says "We're thinking of investigating or suing you," what is the proper thing for you to do with your insurance company and your insurance broker?

WILLIAM BOECK: That's a great question.

JACK FRIEDMAN: It's only a threat at this point.

WILLIAM BOECK: Yes. That's increasingly common, particularly with respect to the number of investigations pending from regulators, and law enforcement companies look at investigations and think that they see the germ of the future claim, a future lawsuit by an investor or some other source.

What can a company do vis-à-vis his insurance? Most D&O policies give the company the right to give the insurer a notice of potential claim, and the policies specify what type of information must be provided to the insurer. Typically, the notice has to identify who might be sued, what they might be sued for, what they allegedly did wrong, how much the loss might be, and when the company learned of the circumstances that could give rise to a claim. If they give a notice that contains all of that information, the insurer will respond by saying, "We accept this," and if there is a claim, and a lawsuit is filed down the road, they will handle that claim under the policy that received that notice.

So, to put it most simply, that kind of a notice locks a claim in to a particular policy in a particular policy year. That carries the benefit of preserving future policies to respond to other matters.

I should give one cautionary note, though, that while it's very common to give these notices, and it's also common for insurers to accept them, that is not universal. Insurers do reject these notices. A rejected notice carries a risk, and very briefly, that risk is this: If a notice is rejected and a claim is made later, the insurer — typically it would be a different insurer in a later policy year — could say, "You knew about this, you gave notice of this under an earlier policy, and therefore, it's excluded under the policy in force when the claim was made."

Now, I won't spend time talking about how to address that; I'll simply leave you with the thought that a well-constructed policy *can* address that and reduce, it not entirely eliminate, that risk.

JACK FRIEDMAN: We have a Lockton document here that talks about the current claim environment in the U.S. for Chinese companies. We have some that are in Chinese and others that are in English.

We have twenty years of programming in this area, and I found the document very interesting. It's very well written and has a lot of good information.

I don't know if it's possible to generalize the broad area of compliance because there are so many companies in China. If you were called into a boardroom, and the Board said, "We want you to put in a compliance program and we'll spend the money that's needed, but we don't really understand what it is." What would you consider some of the most important things that a Board should understand, right at the beginning, about what is in a good compliance program?

JASPER XU: That's a good question. Usually we would recommend a framework first, a framework in terms of how the different stakeholders are going to get connected with the program that we're going to suggest to the Board. We already discussed several things about the CFO. The CFO plays a very significant role in the process. When you walk into an environment where the chairman still owns more than fifty percent of the shares, we would make a recommendation for a given framework, but how to get the owner to endorse and support the whole thing, is critical.

The internal auditor could be part of the process, as well, if the company has an internal audit function. Some companies do have a compliance function which is separate from the internal auditing function, which deals with some of the day-in, day-out components of the company's processes.

So usually we will mobilize a session and get all the relevant people connected. If it is under a corporate structure where the shareholder still has significant influence, then in my experience, getting genuine support from the Chairman is quite critical. Otherwise, everything you do is relatively superficial, from my perspective. Cases where we've been successful in helping companies were successful because we received the right support from the right

stakeholders. But in some cases, they just don't work. For example, you might produce nice documentation supporting Sarbanes-Oxley, attestation, etc., but you come away thinking that you are just allowing them to tick the box and what you have done may be just superficial, just paperwork.

[AUDIENCE MEMBER]: There have been a few instances where Chinese firms have listed overseas, and auditors from China have written off on financial statements, but there has been faulty representation of the numbers. So if audit firms are signing off, and there has been government intervention locally in China, saying that there won't be more transparency for the SEC to investigate, what's the outlook for the credibility of the Big Four, or for Chinese firms listing overseas? What will happen in the future?

JACK FRIEDMAN: What happens when two governments have two contrary views and a business person operates in both countries?

[AUDIENCE MEMBER]: Also, the Big Four don't want to actually leave either market, and so it's an interesting scenario.

JASPER XU: That's a very good question, and also a very challenging question. We have had many discussions, actually, internally, involving several of our senior partners from the States who deal with the SEC and PCAOB day in and day out. I don't want to mention any specific company cases, but there were some instances involving questions around why the U.S. regulators cannot come over to China for an inspection.

I think the Big Four have been practicing in China for many years. I don't see this issue; that's my personal view. I think it's going to drag on, but I don't see that there would be any major obstacles for an international accounting firm to continue practicing over here. That's one thing.

The other thing is, from the inspection perspective, I think that there have been some discussions over a phased approach, because the Chinese government's response is to quote the state secrecy laws. They have a lot of critical industries which might be exposed to certain intelligence issues. But a phased approach could involve a selected inspection by the overseas regulator for some companies in China, as a first step, then move onto a second phase. That was my understanding of the status right now.

The PCAOB has already performed inspections in Hong Kong, which served as a pilot. They looked at a number of big companies, which included some of our clients. The inspection results were quite satisfactory, and I believe that they considered that the Hong Kong practitioners have the same standard of professionalism as anywhere else in the world. Even better than some of the sectors they commented.

So there are a lot of challenges, of course, and some of them may involve political battles going forward, but I do foresee that there will be a phased approach working out, going forward.

NELSON GRIGGS: I'll just make two comments to that. First off, definitely, the overwhelming number of cases did not involve the Big Four. Although there have been some cases that have involved the Big Four and they probably got the most attention. Keep in mind there's been a big change from the SEC and from the exchanges about what auditing firms are willing to sign off on, on numbers, and the host of the ones that did not have a person to ground in China that would sign off on documents.

So I think you really want to separate the headline from what actually has happened, and the majority of cases did not involve the Big Four.

The last point I'll make is that it really is probably less about what rules will NASDAQ put in place, what changes will you have and historically, you can only regulate to a degree.

There has to be a mindset change; if an individual wants to get around a NASDAQ rule, get around something in place their auditor has put, or their attorneys have put, they can do that. That's mostly cases that we are seeing where it really has to be, again, a bit of a mindset change from the management, from the boards, how they will operate vs. new rules, vs. new regulations, etc. If an individual wants to get around them for a certain period of time, they can.

JACK FRIEDMAN: Let me mention something that's overlooked. The great majority of large transactions require some credible review of the financials even if they are not required to be filed with the government. You go to a bank about a loan and they say, "Show us your financials." A purchaser says, "I want to buy X or Y from China; I want to know the company I'm doing business with. Give me something that shows you're a solid company."

When people do business together they need to have somebody who's independent, credible, with known standards to review financial statements. Neither China nor America nor any country in the world can have their companies operating successfully unless there's some system of credibility, regardless of where they list.

SHUANG ZHAO: I think the cost has been factored in somewhat. We've been working on a lot of U.S. securities litigation cases. As you know, at the motion to dismiss stage, if you can actually get a judge to dismiss the case successfully, the case is stopped right there. We observe that the success rate of Chinese companies in getting their cases thrown out at the motion to dismiss stage is relatively lower. This may partially because U.S. judges want to give investors the additional opportunity to proceed to discovery – they may be considering how an ordinary U.S. investor could find out the truth from a pure Chinese company if the company operates in China, with its auditors based in China, and so on. This may actually build in

additional costs for Chinese companies in defending their cases. At the end of the day, it pays for a company to stay out of trouble if it operates in a system with credibility.

JACK FRIEDMAN: Let me thank everyone, not only the speakers, but also the audience.

OPPORTUNITIES & CHALLENGES IN CHINA-U.S. BUSINESS AND INVESTMENT

- **Financing & Deals**
- **Governance & Regulation**
- **Stock Exchange Listing**

DIRECTORS ROUNDTABLE
December 6, 2011
Beijing, China

China and the United States are leading partners in business and investment, and future opportunities for Chinese companies to raise capital remains favorable. These distinguished speakers will begin by discussing opportunities for dealmaking, investment, and stock exchange listing. They will then review current challenges facing Chinese companies, including regulatory issues that have a significant effect on the success of deals, and protecting against risk to personal and corporate assets. Boards and general counsel play an important role in obtaining the confidence of American investors and the U.S. government through effective governance and oversight of compliance.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors including General Counsel.

DISTINGUISHED SPEAKERS

Nelson Griggs	President of Asia Pacific, NASDAQ OMX
Sam Kendall	Head of Asia Equity Capital Markets, UBS
Brewer Stone	Managing Director, Head of Asian Investment Banking, Pacific Crest
Alan Seem	Managing Partner — Beijing Shearman & Sterling LLP
Stephen Ducker	Partner, Risk and Controls Solutions, PwC China
William Boeck	Senior Vice President, Insurance & Claims Counsel, Lockton Companies
Jack Friedman (Moderator)	Chairman, Directors Roundtable

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our Website, directorsroundtable.com.)

TRANSCRIPT

JACK FRIEDMAN: I am Jack Friedman, Chairman of the Directors Roundtable. My first visit to China was as a student in 1969, and throughout my life I very much like to study Chinese history and culture. It's a privilege for me to have this opportunity.

The subject of the program today is very important because the governance and conduct of companies throughout the whole world is becoming a more serious matter. Every part of the world is seeing that companies are trying to make sure that they not only make proper economic and business decisions, but also before, during, and after deals make sure that they always conduct themselves in a proper manner.

This subject is of global interest and has great value for the business leadership in China.

Afterwards, we're going to have a transcript of the program, and it will be sent out on a global basis. So people who are not here today will benefit from what's said.

I want to thank the University, and the many people who have helped here. I'll be introducing the Distinguished Speakers in a moment. The structure of the program is that we're basically going to have two themes. The first is dealmaking and expectations of investors.

The second is governance, audits, Directors & Officers insurance, and compliance.

Each of our speakers is a world authority on his or her subject. It's great to have so many leaders in their fields together at one time.

I'd like to introduce Nelson Griggs, who is the President of Asia Pacific for NASDAQ OMX; Sam Kendall, Head of Asia Equity Capital Markets, UBS; Brewer Stone, the Managing Director and Head of Asian Investment Banking for Pacific Crest; and Alan Seem, the Managing Partner in Beijing for the worldwide law firm of Shearman & Sterling. That's our first group.

For the second group we have Stephen Ducker, a Partner of Risk and Controls Solutions at PwC China and William Boeck, Senior Vice President and Insurance & Claims Counsel for Lockton Companies who works in the D&O and Risk Management areas.

Sam, can you start by giving us an orientation on the dealmaking environment now, and what's expected in the future?

SAM KENDALL: It's a very fair question to start, and I think certainly IPO markets globally are very difficult because of what's going on in Europe, but specifically, the Chinese IPOs in the U.S. are particularly difficult. I would even say that there was a buyers' strike on with regards to Chinese IPOs. That comes from investors. It's not around valuations; I think it's around after-market performance of Chinese deals. Some of that comes around because of the markets, and some of it has come about, around in corporate governance questions that have been raised, some fairly and some unfairly, but investors, in my experience, act in a binary manner. They either care about something, or they don't care about something, and they all seem to act like sheep, so to speak.

So at the moment, corporate governance is a real concern for investors. We have reset corporate governance in a Chinese context. Investors largely get that corporate governance is a relatively new concept in China; it's twenty or thirty years old versus in a Western context, it's much older. They have, at times, been accommodating. But the questions that have been raised in recent times have made people question, should we be holding these companies to the same standards as the rest of the world? That's not an unfair question. Going forward, investors will ask for the same standards, and will hold companies accountable to the same standards to which they hold all other companies in developed markets.

It's not a China-specific issue; it's emerging markets — other emerging markets probably have some of the same corporate governance issues. So investors will ask for more as we come out of the markets. As markets generally improve, IPO markets reopen, Chinese IPOs reopen, and investors will ask for more around the subject of corporate governance.

JACK FRIEDMAN: From the standpoint of American investors, why are they interested in China and Chinese companies?

BREWER STONE: We focus only on technology and clean tech; Sam's firm, in his role, has a broader perspective. But within that market, fundamentally, what investors are excited about is companies that have high growth of what we call large TAM, or total addressable market, and sustainable differentiation. At the core, it's those three things. Investors want to buy growth. They want to buy growth that is going to continue for a long time. They look at companies like Tencent, and if you had invested around the IPO early in their existence and just held the stock for a long time, you would have multiplied your money, as many investors have. At the core, that is what is exciting.

What's helpful here is perhaps to step back a bit and just tell the story of what's happened over the past year. It's been a very interesting ride.

Mid-last year, as the market started to reopen generally to issuers after the financial crisis, there were a number of high-quality Chinese companies that started coming to address the market. We were involved in one of the first deals, a company called AutoNavi, Gao Ze, the Kleiner Perkins-backed company that does location-based solutions, mapping and so on for the automotive and mobile industry. It is a very nice, high growth company. We did that deal and it's traded up forty, fifty percent early on.

We did ChinaCache, roughly a hundred percent. Then we did Youku in December, and Dangou happened around the same time, and those traded well over a hundred percent in the first day.

There was the presumption out there that maybe we were not really realizing or pricing these deals right; that there was more demand for them in the market than we had previously thought. When stocks trade up that much, management teams want to capitalize on it. The Dangou CEO was publicly pissed at Morgan Stanley, as you all may recall, about being underpriced.

There was a certain amount of pressure, on the capital markets guys like Sam and others to find the right pricing for these.

Then we came into the spring. I remember a trip I took in January; I met with ten companies, all of whom wanted to race to the IPO as fast as possible. It was just an incredible sense. I've never been through a period of meetings in my entire seventeen-year banking career where there was that much excitement about trying to race out as soon as possible.

Obviously that creates a hothouse environment; everybody's hiring a CFO last week, to take them out the next week; there's this real rush to race through the window. The perspective in all that, and frankly, these teams are fantastic entrepreneurs. I have enormous respect for the companies and the businesses they're building, the passion they bring to it, how much hard work they do, and the dedication to driving their teams to grow. But they're not necessarily coming at this with enormous amounts of experience in being long-term participants in the U.S. global capital markets.

By the way, we looked across all of our emerging market transactions, about fifteen or so in the last year and a half, and eighty percent of the buyers are out of the U.S. So that's more

than you would think. You'd think that out of Hong Kong, you'd have a larger pool. But in our deals, at least, eighty percent of the buyers are out of the U.S. The buyers are fundamentally concentrated in a group of about twenty or so big funds which are the most important pricers in the market. There's another two or three hundred that participate. But there's a fairly small group that really participates.

Anyway, we came into the spring, and there was a fair amount of pressure on pricing these deals. There were two deals that I was directly involved with, one was 21 Baina, She Di Fu Yeh, and this next was Renren. With both those cases, there was enormous demand. We'd run around; we set up road show meetings; management; we'd talk about one-on-one conversion rates. You'd go, how many of your meetings do you have with the investors that in turn would be giving an order?

In the case of 21 Baina, eighty-five percent of the people who took one-on-one meetings bought stock. In Renren, which it turned out, became toxic to market, ninety-five percent of the companies that did one-on-one meetings bought stock. There was upward pressure on the pricing, even among the most sophisticated funds in the world who were generally priced, coming in a little bit below the hedge funds, who'd tend to want stock, and so you'd bid large amounts in the hope of getting some.

As you came into the Renren, in particular, issues were coming out; there were concerns about a typo in the filing; there were concerns about a board member leaving because it went over the loan top, and other issues, but none of that affected pricing. It turned out that was really pricing these companies very aggressively.

Renren came out roughly fifty times current year revenues. In an historic perspective, that's a very high value for any company. All that has happened, and then we can talk further

about what's happened since. But we've had a series of concerns emerge that really have fundamentally affected the relationship between Chinese issuers and U.S. investors, and it's a relationship that needs to develop into a more mature one.

JACK FRIEDMAN: A few years ago, American investors thought, "We're going to put our factories in China because it has an inexpensive, talented labor force. Then more recently, China more and more is also getting a reputation as a leader in the tech field. For example, there is a lot of conversation in the United States as to why it is that the United States, with Silicon Valley, is not doing better in developing solar technology. In the solar field the Chinese have become the world leaders. So how is it that this perception of China moving into the whole tech leadership field is happening?

BREWER STONE: If you look at the core, from an investor perspective and thematically, the biggest theme that people are playing is really the coming together of Internet penetration and growing disposable income. It's happens as they get wealthier, a larger percentage of their income can be available for buying. The Internet takes the friction out of that process and makes it easier to buy, with close to 500 million Internet users, and close to a billion mobile phone users. This creates a very large platform, a very friction-free opportunity for opportunities, for companies to grow businesses very fast, to address what is fundamentally growing middle-class consumer demand.

So that's the core. Many of the entrepreneurs obviously see businesses grow up in the U.S. and they will do the "blank of China" — you know, "Facebook of China" or whatever it may be. Now you're also seeing companies that really are pushing innovation. I just met, yesterday, with a company called Xiaomi, which is doing a mobile phone that is based broadly on the Apple model. It's trying to do a closed system, robust, what they call a user interface

software. But they actually have some interesting innovations, that they're going beyond what is available in the current market in the U.S. So they're actually developing things in their tax service and the way you can adjust your UI and things like that, that are innovative, that are truly new in the market.

Zynga's idea was actually a copy of a game that was developed in China! So there is real innovation starting to happen, and that's part of what's exciting about it.

JACK FRIEDMAN: That's part of the new reputation in China that Chinese companies are not just an inexpensive labor force, but they are technology leaders.

SAM KENDALL: China has obviously the growth that you said, but through the financial crisis, China has gained a lot of credibility. The banks, when they went to the market last year to raise capital, were raising capital for growth, to fund growth; not to be bailed out, not to pay down debt-laden balance sheets. So investors' view of China's companies is they are very well-run companies; they're leaders in their field, whether around construction machinery, Internet, or banks — the biggest banks in the world are now Chinese.

Over the last couple of years, there has been a welcoming of China to the global stage. Just look at the capital that has come into Hong Kong, to Singapore, even to China, of investors wanting to invest in both the international eight share and the eight share market. So I certainly agree with everything that Brewer was saying, that investors are really looking at Chinese companies and saying, "We've got some world-class companies here in China." I also agree completely with the idea that they're not just the "Facebook of China"; they're companies in their own right, which are leaders. It's not just tech. It's really everything, from dance to construction machinery to software.

JACK FRIEDMAN: I wanted to turn to Nelson for his thoughts since NASDAQ OMX is such an enormous world leader in the stock market.

NELSON GRIGGS: Sure. Thanks very much. Sam made a great point that the perspective of investors and NASDAQ are asking for more. I think we have reached a stage where, from a corporate governance standpoint and a qualifications standpoint, and this applies to IPOs but also NASDAQ has a 155 listed Chinese companies.

You are seeing our listing qualifications, our regulatory arm, getting a better understanding of what their responsibilities are. If you put it in context, you would hope that you would already have a good idea of what NASDAQ should be doing — we've been around for forty years — but the amount of Chinese companies listed on NASDAQ over the last three years has more than doubled. So if you put that in context, the fact that we were eight thousand miles away, the SEC as well, and getting our arms around the proper questions to be asking. When it comes to our partners, the bankers, the lawyers, etc., we are just at that stage now of having a much better understanding of what our responsibilities should be, and we are in turn asking our listed companies and prospective listed companies to be more transparent without providing more information. That also falls into the same thing we're seeing from the investment community. NASDAQ has a corporate solutions arm that helps companies understand buyers, who buys and sells their shares. Twice a year, we do a perception study about Chinese companies and what investors are looking for. The most recent one came back with the highest issue of concern, which is we wanted to make it very broad, but it is transparency, and there were twenty things under transparency that they were concerned about that they wanted to see. It all boiled down to wanting more information; wanting more specifics about the marketplace, how they're structured from the governance perspective, how they communicate through their

investor relations web site — things of that nature. They love all the factors and they drive the business, but they wanted to make sure that they completely understand the picture better. With location, distances, etc., there is a great hunger for more information and more transparency into how businesses are run, and how companies are structured.

So from our perspective, quite honestly, it has been a very fairly painful year, a learning experience. The average for the S&P is up about one percent for the year; the NASDAQ China index is down about sixteen, sixteen and a half percent, as of last night. So it's not the end of the world; fifty percent in the U.S .market is soaring; it's been a very challenging year on a global perspective. But in 2011, looking at the year from recent expectations a bit, both from what our responsibilities are, from the companies' responsibilities, and move this forward. We think it's going to be a fantastic learning experience, and will be doing more events like this. You'll see a lot more from NASDAQ in 2012 on the educational front. As long as it's a two-way street, clearly, the backdrop of the quality of companies, the growth perspective across the board, investors are ready to line up and participate again. But clearly we need to work on some issues.

SAM KENDALL: I want to say, just picking up on your point about the down sixteen percent for the Chinese companies. I do think that Chinese company performance is amplified, so every one either thinks that a billion people in China are going to buy everything, or they're going to buy nothing. There doesn't appear to be any in-between. Regarding the issues around transparency this year, it's been unfortunate that they hit at the time when there were concerns in the middle of the year around a China hard landing. Those who have spent a lot of time in China, just realize that that's highly unlikely to happen. But investors that say that they're global but don't get outside of the Tri-State area.

JACK FRIEDMAN: That's Greater New York.

SAM KENDALL: They're living in New York and they say they are global investors, but the world gets a bit of a funny place and they go back to New York and all they do is invest in U.S. stocks. We'll buy the upside and punish on the downside. Investors have punished. Now I think some of the concerns around transparency, again, like investors saying, "Well, all Chinese stocks …," and then branding everything with the same label here, right? Some of that's been driven by performance because they haven't made any money. It's been a difficult year for investors, in *all* markets. Then when they've tried to back China, they haven't made any money.

NELSON GRIGGS: Yes, and maybe you two have come across something like we saw over the last two or three years, a ton of new money coming into Chinese stocks. We always have had a good base of investors in China, when you have Baidu and others. There are wonderful companies that came out four to seven years ago. But there's also a lot of new money that came in. Clearly this year they were in a "shoot first and ask questions later" mentality. We do look, when some of these reports come out, that they are reports on companies, the volume that's driven, it's incredible.

So what that means is that a headline comes across, and they sell. The reactionary aspect of the U.S. investors is fairly extreme, and this year, that's been taken to a whole new level. So that's a part of it.

BREWER STONE: Yes, there's a couple of points here that are important to understand. As a backdrop, at Pacific Crest, where we just focus on technology, we focus on the top four hundred investors globally that invest in technology companies. We've gone from roughly ten percent of that investor base to maybe thirty-five percent being really interested in

China and having some dedicated resources and understanding Chinese investment opportunities.

So that means that twenty-five percent or so are just getting to understand China for the first time. Understand that.

The other thing you can understand is how does an investor think? An investor is focused; he or she is measured by their performance against some set of indexes or some index. So they live and breathe and they're compensated, and they're buyer to hire, on the basis of their ability to out-perform on a quarter to quarter basis, and beat some broader index. So what are they trying — they're trying to look either for differentiative alpha, if you will, which is alpha upside, a growth, or reasons for stocks to trade up.

Then, of course, that's for the long only piece of the market; that happens to be about seventy percent of our client base were biased that way. But there's also this long-short piece of the market, or the short piece of the market, which is looking really for opportunities to sell stocks or borrow stocks in anticipation of a decline in price. That's become, frankly, a bigger and more active part of the global market over time. So that's a little bit of broad context.

What's most important, I've had the opportunity in the last month or so to go around and meet with ten or so of the top VISI funds in the U.S., and really talk about how they're seeing China and what some opportunities are.

What's important to understand is, first and foremost, there is a group that matters, and they are people. These are not machines. They react to relationships. They react to trust. Many Chinese companies, there's a fundamental view that I've come across too much, that if we're hot and we're great and we're really excited about our business, everybody's just going to get it, and

they're going to run with us and buy, and our stock's going to trade up, and we're all going to be rich.

It's a more complicated process than that. You've got to think of this as many marriages or girlfriends or whatever you want to think of. You have to really build trust relationships with the important people around the street. If you look at a guy like Victor Koo at Youku, he does a pretty good job of that. He's very credible. He spends time meeting regularly with his client base. He's built real relationships, and he started doing that prior to becoming a public company. While he's certainly had a lot of volatility in his stock, he's still well above his IPO price and he's got plenty of capital to continue to focus on building his business.

What we wanted to turn to is "what are the mechanics of how you can really build and sustain a meaningful trust relationship with the people that are most important to the value of your stock over the long period of time." You're not going to get rich on the IPO. You generally can't sell. The earliest is six months after to two years after. You'll be able to use a 10b5 and sell out your stock over a period of time.

You need to have support of investors in a sustained way. You've got to trust.

JACK FRIEDMAN: What is the difference between how different types of American investors look at their investments: institutions, wealthy families, or other types. Investors can't be the same all over the world. There must be some differences.

SAM KENDALL: It's a good question. There are obviously different types of investors, whether it be retail wealth management, institutions, or hedge funds. The guys in Asia are predominantly Asian investors, meaning it might be a U.S. hedge fund, but the money that they're running in Asia is only investing in Asia.

They're very regionally focused. Very few funds that have started in Asia have a reason to go and invest globally. If they're doing this globally, it's usually with an Asian beat. So they'll retain their roots to Asia. Whereas I think the U.S. — there's obviously a number of Asian specialists sitting in America, but I think there's more global money that has the ability to invest in Asia or not invest in Asia. Their benchmark is a global benchmark. It's a point around that's how they're paid, is underperforming or outperforming a benchmark determines how they do at the end of the year, whether they've got a job or they haven't got a job.

They can decide to be overweight Asia, underweight Europe, for example, they might be neutral U.S. So the big money coming out of America which will skew flows is that global money, where they can invest anywhere in the world and they choose to invest in China stories. Now they may be listed in the U.S.; they may be listed in Germany; they may be listed in Hong Kong. But it's a China story or an Asian story. That's a different issue.

JACK FRIEDMAN: Is there some wisdom or experience you've had that you'd like to pass on about better practices, such as better practices of a Chinese company communicating in the early part of the deal process to American investors.

BREWER STONE: That's actually one of the points that I'm most passionate about right now, to be bringing. So, I'll give two examples of companies that are handling this well; one that is a company that's already public, and one is a company that will be public and, we hope, I believe will be a very successful little company.

But the already public company is Youku. So Youku, Victor, these are companies backed by top-tier venture capitalists. Victor's a very sophisticated guy. He's an old friend from Shanghai days, years back. He made the effort, in the eighteen months prior to becoming a public company, to go around and do what are called non-deal road tours and ERs. So they

basically take a week or so, and they go and meet all the public — usually an investment bank will help them set up a day in Boston, a day in New York, a day in San Francisco. You run around and you basically meet a lot of guys. These guys are interested in meeting you, because they want to build relationships with you and build trust with you before you're a public company. You also get to hear their perspective, understand what their concerns are about your business and about some broader issues, like China. It really helps you, then, to hone your message.

Another example is Qunar, which is still a private company in the online travel space that just did a big deal with Baidu. They're doing the same kind of thing, with a very sophisticated team that is taking the time to go around. They attend investor conferences. Many of the investor conferences with Sam or Pacific Crest or UBS or Goldman or others have, will invite a certain percentage of private companies. Those guys have the opportunity and do one-on-one meetings with some of these companies.

In addition, and what is critically important is that they understand the importance of using best-of-breed auditors, of using folks like Sam, like Alan Seem of Shearman, on the legal side. So they have really world leaders in understanding issues around corporate governance, deal structure, auditing, due diligence, and other areas. This can really help do it right and build trust. They also bring in CFOs and give them a little time before they go public, to really understand the business and understand what accounting challenges they may face.

So they can really, when they're quizzed about this, they can quickly take the buck. Sam has alluded, there are times when investors focus more on this, and there are times when they focus less on it, and it really depends on how hot the market is and if the window's open or shut. Right now, we are in a time where, to be successful, you do need to focus on this. Investors are

setting a high standard, and perhaps particularly for Chinese companies. Forty fraud cases; of those, only about two or three have any venture backing; they're mostly reverse takeover companies. But it's still, there's a perception out there in the small community of top-tier investors that there is a trust issue. To fight through that, you need to work a little harder. You need to be a little better. Frankly, this is great for the health of the market long-term. If people build these habits and practices, and they become standard among the entrepreneurial class, which you guys are all hopefully a part of here in China, and people understand the value of doing this, of building those relationships and having good corporate practices, everybody's going to make more money, everybody's going to be more successful over the medium and long-term. It's just worth making the investment.

SAM KENDALL: Well, I was going to say, the issue of trust is not just a Chinese one. There is something going on in the European capital markets, in the U.K. capital markets at the moment, where there has been a buyers' strike. There have been almost no IPOs done in the U.K. this year, whereas there are twenty IPOs left to be done in Hong Kong, for example, for the rest of the year. There is nothing planned in the U.K.

The IFR, International Financing Review, held a panel not dissimilar to this yesterday, actually. What came out of that was exactly what Brewer was talking about, which investors wanted to see the companies to build up a level of trust with management twelve to eighteen months before an IPO. So that trust issue goes to the heart. The numbers will be the numbers. The valuation will be the valuation. What Renren got at fifty times revenue was achievable in that market; it wouldn't be achievable right now. You have no control over those. But what you do have control over is the execution of strategy, and if you have a trust in management, you've met management two or three times before you come to an IPO, you have a higher level of

comfort around their ability to execute a strategy, and that will ultimately lead to higher valuations, because you will give them the benefit of the doubt.

So I think this level of trust, it is a bedrock around anything that a company takes away from best practices, it is building that level of trust, because once you become a publicly listed company, investors can choose you or they can choose any other company that is a publicly listed company. At the heart of all of this, really, is that level of trust.

But it's not just a Chinese issue, as I said. It's a global issue right now. There is a level of mistrust between issuers, and some of them have been, as in the case of the U.K., more private equity-led than entrepreneurs, and in the case of the Chinese companies going to the U.S., it's been some of the backdoor listing types of structures. Sorry.

ALAN SEEM: I just wanted to follow up on that. I've been focusing on doing IPOs out of China since 1996. One of the big changes we've seen in the last twelve to eighteen months is a much greater frequency of class action lawsuits against U.S.-listed companies that are listed in China and, as Brewer mentioned, it started against smaller, reverse-merger companies.

But one of the big turning points in terms of the effect on the Chinese market was right around the time of the Renren IPO (on which I also worked). There was a short-seller attack on Longtop, which seemed to constitute a shift, or at least a perceived shift in the market sentiment. There was a shift from lawsuits or short-seller attacks on smaller companies that people generally assumed weren't at the highest level of corporate governance to attacks on more mature, established companies that actually went through a proper IPO process with high profile advisors.

In addition to Longtop, two weeks ago there was also a short-seller attack by Muddy Waters on Focus Media. These are companies that have gone through the a traditional IPO

process; they've had top-ranked lawyers, accountants, bankers all involved in the deals. Now they're being accused of very serious matters, and a lot of them relate directly to corporate governance, such as improper related party transactions. These short-seller attacks are one of the reasons why this panel today is so important. Whether investors feel like it's an issue or not, the general market sentiment seems to reflect a decidedly negative view of Chinese companies.

ALAN SEEM: Investors have to take into account what the general market view is and how that's going to affect the share price, regardless of their own view of the quality of the company and its internal controls. I get a lot of questions from companies about these short-seller attacks, saying, "What can we do about it? Can we sue them? Is the SEC doing anything about this?" Frankly, the SEC actually encourages what's known as "whistleblowers" in the market, people who expose wrongdoing within companies. That's something the SEC encourages, both within a company and anybody externally. The people writing the short-seller reports, are not insiders at the company, so there's not an issue of misusing insider information, and there are no laws against short-selling in the U.S. It's seen as part of the properly functioning market. So the best defense for a company is to put good corporate governance measures in place in the first place, so that they can try to avoid being the subject of these attacks. If they become the subject of these attacks, the best thing is to act quickly and explain why the accusations are incorrect. At the same time, you need to be careful not to give more "fuel to the fire" with your rebuttals and make sure those statements are 100% accurate.

In any case, it is a difficult position to be in, since all you can generally really do is refute their claims. To actually bring a criminal action against the short-sellers, a company would have to prove that the short-sellers knowingly put out false information in the market. That's a difficult standard to meet.

[AUDIENCE MEMBER]: I just wanted to, Alan, if you're familiar with the defamation lawsuit abroad against short-sellers continuing and growing, as a way to fight back?

ALAN SEEM: It is, but it's frankly a hard standard to meet. The short-sellers are not stupid. They understand that they need to protect their own potential liability, too. So presumably they're not completely making things up. They are going out and doing some sort of research to substantiate to some degree their claims. But one thing that I've seen a lot of Chinese companies get very upset about is the short-sellers taking something that may be a fact, and re-characterizing it in a way that seems disingenuous. Let's just say it's not what you would call a fair and balanced discussion of a company. These guys definitely have an agenda; they say up front that they've taken a short position in the company, and they're going to profit by this report. So these reports have one purpose -- to drive the share price down.

But once again, unless you can show that they're doing this by knowingly putting out false information, it's hard to launch a true counter-attack before the damage has likely already been done. You are just left to explain to the market why the allegations in the report are wrong, and regain the investors' trust.

Actually, my firm is also very involved not only in the IPO side, but also on the defense side. So we've been defending a lot of Chinese companies and their directors and officers against these kinds of attacks and lawsuits, as well.

It's a difficult situation, but I agree with Brewer that overall, this is not a new thing. These short-seller attacks have happened in the U.S. for many years already. It just so happens that now they're targeting China-based companies. If this ultimately results in companies taking corporate governance more seriously and understanding that it is something that will affect their share price, then at least some good will have resulted from the current situation.

SAM KENDALL: Do any of us on the panel actually think that, not just in a Chinese context, but when a company has had either a corporate governance issue or a PR issue, and when you think of Olympus or you think of BP, does a company ever recover back to the previous highs? Is it ever able to recapture the glow that it may have had before the issue came up? Even if a short-seller report seems to be completely fraudulent and someone does have a win on a lawsuit against someone like Muddy Waters, is it possible? It's going to be very hard for a company like Olympus to ever come back and regain the former glory that it had.

The best event has to be to set the standard very high, and try to achieve it. Because I personally don't think you come back from these sorts of PR disasters.

NELSON GRIGGS: Just to offer my perspective, I've been with NASDAQ for the past twelve years. One thing that U.S. companies share with Chinese companies, no one's a big fan of short-sellers or class action lawsuits, so we all have that in common. But it all depends on who's doing the short report, how accurate they are, and what their background has been. I can't comment too much on specific companies other than to say that if you look at how the process that Focus Media has taken, they have a pretty good playbook to respond to the allegations. They've been extremely aggressive with how they've communicated; very, very transparent. They've hired independent auditors to review the information, and are quite candid, from our perspective, doing the right things.

Now the best defense against the short-seller situation and to grant Muddy Waters is the more they get wrong, the better it is for all of us. There is clearly — I'm not pointing to the Focus Media case, but there are people investigating what he's doing from a factual standpoint, and hopefully they'll find cracks. There is definitely some lower quality shorts out there that I think are doing much, that the result is not very good. So why Muddy Waters got to where he

was is because, unfortunately, he got some things very right. Again, if you look at the reaction of the Focus Media news, they traded 77 million shares that day, and they usually trade 2 or 3 million. It was, "This guy's got some credibility; I'm going to get out of the stock and see what happens."

Since then, it has rebounded. I don't know where it ended up last night, but it was right around 20 or 26 when the news came out. So the big message to companies is no one wants to have this happen, and I'm not trying to say that there will be other issues, but you want to have a crisis communication plan, a playbook in place, because clearly there is focus on the Chinese companies. Having worked in the Silicon Valley for a while, there were attacks on Silicon Valley companies that came back to the options expensing and things of that nature. So this is nothing really new. Right now we are under the spotlight here in China, and that more companies are prepared to defend against hopefully what is an unlikely attack. But if we do things the right way, we'll be better off, and as Alan said, the best case is that everyone, from our perspective and companies learning from this, do things in a very transparent way.

Again, the more they get wrong, the better off we are. But I'm going to make one quick comment, because a lot of the discussions were on pre-IPO companies and what to do leading up to an IPO.

Across the globe, we have 3,500 global companies listed on NASDAQ. Part of what we've done very well in the U.S. that we're trying to bring into China now is how we've learned from other companies and what the best practices are of the companies. It's a big push for us. I've recently hired Eight Year people in Hong Kong to work with our listed companies on investor relations. If you look at when I joined NASDAQ twelve years ago, the investor relations function, where that applies to the CEO, CFO, Board or the Investor Relations person,

has become much more sophisticated across the boards, from how they create their IR websites to what they share, how they communicate with investors, down to the discussions they would have with investors they're going to give access to, and whether they let board members communicate with investors.

So what we like to do is be a part of that solution and share. If you have peers in the U.S., let's look at their website together, what they're sharing. We have a team that does that. If you look at if you have a peer in the U.S. and would like to speak with their CFO or their Investor Relations Officer about how they conduct their discussions with investors, talk to your NASDAQ person, talk to people you know if you want to connect with them.

In the U.S., there's a very big infrastructure through some organizations about sharing best practices. It's a pretty important time that we do that and in China, develop those messages so you understand what's in the mindset as in what Sam and Brewer alluded to as to what their expectations are. It's an evolving topic.

JACK FRIEDMAN: I'd like you to elaborate on what an exchange like yours does for company, how it supports their efforts.

NELSON GRIGGS: It falls for us into two categories, and the first one is the network. We have 3,500 global companies, and getting them to talk to each other about how they communicate with investors is probably the very best thing that we do and can help out with. That comes to, this week in Europe, for example, we're taking a hundred companies to meet with investors. We have taken a handful of Chinese companies to Europe in the past and when we're there, they'll meet with investors. Also we have side groups and talking about, again, the concept of best practices. So we'd like to do more of that with our China-specific companies,

but also start leveraging some of the expertise and thought leadership from the U.S. to bring over investors, to bring over investor relations professionals, CFOs, and conduct more roundtables.

So that takes a while to develop. Again, what I have seen is, from a U.S. perspective, over the last twelve years, that's just grown tremendously, as everyone's sharing various ideas.

The best practices or the networking is something that we focus on, getting our companies to talk to each other. Then they get the concept of best practices. So NASDAQ, we operate the investor relations websites of 1,500 companies, from Intel on down to smaller cap companies.

When we do hopefully go into a company to partner with them to do that, we'll run through the twenty or thirty things they should be thinking about that they're not doing today. They might only want to do five of them, but we think that moves the needle. The very first place that an investor goes today is their investor relations website. If it looks like Apple's or like Intel's and has the same sort of disclosure and clarity and tools to help them communicate, it helps.

We also run a very sophisticated stock surveillance group that helps them understand buyers and sellers and roadshow planning. So across the gambit of investor relations, we have experts who will come in and sit down with teams and discuss how they may want to be conducting their investor relations.

But that's really the whole idea of helping public companies be better public companies and this is not meant to be directed just at the Chinese audience, but we're growing this business in Europe; we're doing it obviously in parts of Asia; and we've been in the U.S. now for just the last six or seven years. So it's been something of a passion with NASDAQ that's taken off.

JACK FRIEDMAN: Since the 1970's, I've done some guest articles for the New York *Times* and *The Wall Street Journal* related to American economic relations with other countries. The theme comes back. In the 1970's, there was the idea during the oil embargo that the Arab countries were going to make all this oil money and buy up America." Then in the 1980's, it was "Japan is doing so well and their money is going to come buy this hotel or something else. They're going to buy up America. Then now, there's the fear, "China's successful in their economy, so the Chinese are going to get rich and they're going to buy up America. They'll buy up real estate; they'll buy up a bank; they'll buy up an airline." I don't know what the Chinese will buy, but whatever it is, it will be in the news.

America is a country where for two days, this is the story, and then two days later something else is the story. Things can seem incredibly important or negative for the short run. If you take a long-term view, it will settle down and in the long run, work out.

People in America have not adjusted to the idea that China has a large economy and is getting larger and will have a world economic role. Once they do however many years it takes, it's not going to be such a sensitive issue. But because it's new, you'll read things that say, "Oh, the Americans are afraid of this and afraid of that." It's just a thing we go through. You have to be patient and respectful.

BREWER STONE: I have one other comment I just wanted to make quickly to follow up, and then please, we should definitely open it up to the audience.

If you step back — you guys are all students, or many of you at least have been students here. So you can understand this broad concept. But what's really driving all this and what makes the market both generally volatile and creates an opportunity for short-sellers is fundamentally what you would consider information asymmetry. There are people who don't

share knowledge, it is not perfectly shared. That creates a really interesting investment opportunity on the long side and on the short side. That is going to continue to exist. It's because Chinese companies are new to the market, because of geographic distance, and as Jack just pointed out, some of this is a hype cycle thing that everybody gets all worked up about it and then it settles down pretty quickly. That's absolutely right. You have to be patient and not get caught up in it, because these things do go through their cycles. People learn, and they recover, and they heal, and everybody grows up and hopefully improves and is more mature.

But there are some specific things that you can do as a company, or as an investor in a company, that really help. First, (a) as alluded, work with a great exchange like NASDAQ that provides you with all these types of value item services. Hire an IR professional, somebody who can really help you if you've got any scale at all. These investments, they're just not willing to make these investments in things that really will have a huge effect on their value. So these might be relatively small investments, relative to the impact you can have over time on your company's performance.

So make investments in best practices. Understand the metrics of your business. When Focus Media gets called on how many screens they've got out there, their response was they put out lots of specific numbers. And they explained that Muddy Waters had just made a mistake in understanding their accounts. So that's a pretty healthy response, as Alan alluded.

You've got to know this stuff, and you've got to know it cold. You've got to be talking about it all the time in the street. So you have to have great internal B.I. systems. You have to really understand your business and be able to know it real-time. If you don't understand your business, then you can't predict your business. One of the things Chinese companies have been historically pretty poor at, frankly, is giving guidance. Giving guidance is a fine art.

Fundamentally, you need to understand your business, understand the leverage of your business, and invest in that. If you do a good job with guidance, it makes an enormous difference in how your company is valued. You can come out quarter after quarter as one of our clients did and doing great, and just come in and be five percent below your actual results, eight quarters in a row, you will start to see value differentiation in your stock. That's investments in business intelligence. That's investments in understanding your own business, and being able to predict it effectively. Those are critically important. Those are just a couple of points I wanted to add.

JACK FRIEDMAN: Let me thank the Panel for their wisdom. We'd like to give the audience a chance to ask any questions, make some comments, or share some ideas.

[AUDIENCE MEMBER]: I don't look at most IPOs and the gain for some of the companies. You can see that, all these options you can gain from foresight. The second question is, if you ask is it a dangerous water to be in, is Hong Kong a great market for preventing a short seller attack? For example, there is the Tencent case and Baidu.

SAM KENDALL: Why don't I start on the Hong Kong vs. NASDAQ. Hong Kong has not been without its own issues. You've had Chauda Morden. I think Charlie Yuen was another one that had a Muddy Waters report. So I think Hong Kong has had some of its own issues.

Best practice is best practice. All the things that Brewer was just talking about, about investing in business, investing in CFOs, there's a little bit where the differential of all the IPOs I see is the ones going to the U.S. are probably a little bit earlier in their incubation period, so the CFO hasn't been with the company for two years. Maybe he's been there for six months, or there's been a recent change in some of the key personnel, because it's a much younger company. So I think that's a bit of a differentiation. I don't think it's "go list in Hong Kong,

there's no issues" or "investors are different" or "they're stupider." You have the same investors with the same concerns. I just think there is a different type of company being listed.

NELSON GRIGGS: I guess what I would say is that in the end, I totally agree with Sam that the investors that matter, really, over time, to your share price, tend to be more or less the same investors globally. There are different fund groups within a family, perhaps, but in the end, they're all investors; they're all measured in the same way; and they're getting more sophisticated everywhere in the world, all the time. So I don't think there is any safe haven.

China, domestically in China is another option for some companies. It's a fifty percent retail market, so information is generally poor and a less sophisticated investor base. But then you end up just as much being whipsawed by other factors beyond your control, perhaps even more so.

In the U.S., because you have such a deep capital market, you have such a robust research base, at the very least you've got the advantage of over time, if you perform well, your value should be recognized, at least for periods of time. It's not to say you won't be subject to broader volatility, but if you do your job, and you're transparent, and you adhere to best practices, and you deliver results, there will be periods of time when you will be fairly valued or overvalued. You can therefore earn, as you are a shareholder of that company, a return by somehow managing to liquidate at the right time, which will give you one indicator of the price to start selling! So that's the nature of the beast.

SAM KENDALL: What was your question around volatility? I didn't quite understand.

[AUDIENCE MEMBER]: I'm saying, I think volatility is two-way. A hedge fund profits from volatility. So you cannot blame short-sellers for going after volatility. So I think the post-IPO gain is very dangerous if you're from the short-seller point of view. It's a game for

them, but from the issuer point of view, if you just dabble in a couple of days and then there's got to be some opportunity for short-sellers. That's what I'm asking about.

SAM KENDALL: I actually disagree with you, to be honest, about all the investors liking volatility, making money out of volatility. I mean, investors hate volatility. There are certain strategies which trade volatility, but speaking broadly, investors dislike volatility.

I sat down yesterday with probably one of the most prominent convertible arbitrage, long-short hedge fund managers in the world. Because he's a convertible bond arbitrage, he should love volatility, right? He said that volatility is killing him at the moment, because it's down ten percent one day and it's up ten percent the next day. The stocks — he's just trying to pick the bottoms and the tops; he's finding he's buying at the top and selling at the bottom, and because there is no logic around the volatility. So actually, what they're doing is staying away. So sometimes you get share price performances in a day one pop, because there's just a supply-demand factor. People are valuing things differently — in the case of Renren, fifty times revenue. At the time, that was the right valuation, because that's what investors were valuing it. Then they were going to value it even higher it the next day, because there was all blue sky.

We would rather not have stocks double in two days. That's bad, because when you have high volatility, there's every chance it comes back down, and then the people that bought it when it's doubled and it corrects fifty percent have lost money. As an issuer, you don't want people losing money when they partner with you as a shareholder. So investors dislike volatility, because it's just difficult to make money in a volatile market.

BREWER STONE: I would strongly concur with that. The reason is, just think about it as an individual. You want to make money in ways that you can understand. So if you have a theme — "China Internet meets consumer disposable income growth," and you want to play that

over time, what you want is you want that theme to play out in a sensible way so that you see a trajectory in those stocks, and you can make money on it or predict it. That helps you sleep at night, and it's a lot easier life. When you've got this incredible, perfect storm of Jacmar shocking the world by taking Alibab out of Alibaba and make people wonder what they own; you've got accounting issues; you've got European credit issues; you've got United States political gridlock. It's just all this stuff that is beyond the control of any company. This is an unusual time. We've had a few unusual times of late because we've had obviously an unusual time in 2008. But what investors like is times where they can invest in predictable themes.

JACK FRIEDMAN: I don't have a vested interest in the stock market. I'm not in the brokerage business or anything like that. American markets have a good reputation, in terms of listings and doing business. That's why the money comes. Companies that are interested in a market that has a lot of credibility come to America even if another market somewhere else has less regulation. I'm not trying to take away from Hong Kong or any particular market.

ALAN SEEM: Another thing worth noting is that the Hong Kong Stock Exchange is adopting new corporate governance rules that are going to take effect on January 1st, so I think corporate governance is not just an issue in the U.S. Obviously, other markets around the world see what's happening. There even was a big attack against Sino-Forest, which was traded in Canada. So I don't think saying, "Oh, I'm not going to go to list in the U.S. because that will make me less susceptible to these kinds of issues," is the right way to approach this issue. Every market values solid corporate governance.

[AUDIENCE MEMBER]: I've been investing in China for a while. My observations pretty much agree with what Brewer just said, which is most Chinese entrepreneurial and management has less peace of mind in building infrastructure.

By the way, I saw this today is basically I caught a personal data exchange between investment bankers and the lawyers. So you all try to help the company to build infrastructure.

On the other hand, because as I said, I'm poor, I saw the management also had to struggle, which they see the market and there's a great potential for their business, so they then had to make a determination of whether they pay a visit to the investor, like you said, as an investment, or they pay a visit to a major customer to get revenue, right? So this is always a priority issue, right? So my question for you is, how to strike a balance between business and infrastructure for the management. Obviously we don't want to see a Sarbanes-Oxley happening in China. I don't see that's going to happen, by the way. But you know what I mean. Sarbanes-Oxley is a little bit over in terms of building infrastructure. What's your advice to management?

NELSON GRIGGS: Yes, Chris, thanks for that. It's a great question and one that, frankly, we talk about with VCs like you on a regular basis. Frankly, I think the sentiment in the last few years has been very biased in my view towards "Let's focus on the business, and the results will drive the outcome." "Let's focus on the customer," in your choice. I think my point, and I make this passionately and emphatically, is that it just doesn't work. There is more to being successful in the capital markets than just delivering numbers. As everybody here has pointed out, people have to believe them. People have to know you. These are human beings. You have to build a relationship with them. It really has to be part of your exit strategy to create infrastructure and a relationship network for the company that will help you enable to realize that value.

So what am I saying, what's the balance? I'm not saying you go have the CEO or your CFO running all over the world all the time. Maybe twice a year, and in the two years prior to an IPO, to be specific, have the CFO and some senior manager — it may not even need to be the

CEO, if you've got the strategy guy who can talk well — you know, something like that. But have some senior guys that really can explain the business clearly and understand the metrics. Then two weeks a year, go to a couple of investor conferences, do a little bit of an NDR, something like that. Then within a year before you're public, hire an IR person who will come and start thinking through who the right investor base is.

These are investments. If your company is worth 500 million or more, on a relative basis, these are small investments, right? But the return it can give you on your stock price and your ability to exit, which obviously only starts six months after you list, is much, much higher.

SAM KENDALL: I concur with all that Brewer said, but I think there's smart ways to do the building the investor trust, and efficient ways. The conferences, for example, we have a conference in Shanghai every year called "The Greater China Conference", with a couple of thousand investors who come through. Other banks, you'll find there will be two or three conferences all at the same time, because we understand that investors have traveled all the way over here and it's just an efficient way to do that. So get a company to go to one of those conferences; get on the track that says "pre-IPO investors."

One of the things that we're doing is we're asking our sales guys that sit in the U.S. or sit in Europe, "Tell us when your investors are coming to Asia," and instead of just seeing listed companies, let's take you on tour to see two or three companies that may IPO in the next twelve to eighteen months, right? So I think it's about being efficient with your time, because ultimately, we, as bankers or lawyers or exchanges, don't want you to be distracted from running your business. That's how you make your money. *We* make our money by IPO'ing you. That's how *we* get paid. So it shouldn't just be about what we want. There has to be a balance; I

completely agree. But there's very efficient ways to do it. It doesn't necessarily mean a CFO getting on a plane and spending two weeks every three months traipsing around the world.

[AUDIENCE MEMBER]: Before he responds. I just want to clarify. I'm more on your side rather than the managers. I need a reason, I need a reason that I can convince my management to spend a little bit more on this infrastructure. There's lack of a reason. Because people, like typical management or entrepreneurs, they don't see the ROI, especially short-term ROI. They don't see it, so they say, "Why spend a legal fee on the document?" "Why pay a visit to an investor which I don't even know what my price is going to be."

SAM KENDALL: The questions you raised are exactly the questions everyone raised, and in fact, I don't know if anyone read *The Wall Street Journal* yesterday, but X.D. Yang, who runs Carlyle in Asia, raised exactly the same point in an article on the back page yesterday. "How do I get my investor, my company to invest in an IR guy?" It was exactly that question.

You have to try to manage, but I think that's probably too nice a word — cajole, whatever — them into believing be long-term greedy vs. short-term greedy. That's the concept. Do you want a dollar, or do you want a dollar fifty? So it's easier said than done. You're the one that has to look the entrepreneur in the eye and say, "We all want a dollar fifty, maybe a dollar seventy-five." He's focusing on a dollar, dollar twenty-five. It's not easy. But that's why you're paid the big bucks!

NELSON GRIGGS: I'll make a quick comment now, and maybe this is a way that NASDAQ can help a bit. If you do look at the investor relations makeup in the United States, again, it's had to grow tremendously over the last five, six years, but ours as NASDAQ, we're public, ours is the Senior Vice President role, someone who's involved in board meetings; somebody's who's involved in strategy. I can go across the entirety of the U.S. landscape and

once you reach that $500 million mark, maybe eight, near the billion dollar mark, you're talking about a team of investor relations of two or three that are making an investment in that role. A lot of the focus that we do with pre-IPO companies is the IR firm, and hiring an IR manager late in the process. We even had a company out of India go public on NASDAQ last year make my trip, and they put their investor relations person in the United States. We got it — when I was still in the U.S., we got a tremendous feedback on that from the U.S. investors.

So I think it's providing some metrics about what it means, but our CEO hates investor relations. He wants to work on NASDAQ's business. But he knows he has to dedicate five or ten percent of his time. But what helps him is the team he has behind it, so it's our finance people and it's our investor relations that do a heck of a lot of work, that takes that from what maybe could be fifteen percent down to that five percent time.

So that's a good message for me to hear in 2012, to roll out some ideas about how teams are structured in the U.S. and maybe share that.

[AUDIENCE MEMBER]: I'm Robert. This is a great topic and a good panel. I appreciate it a lot. Today we're talking about all the trust about Chinese companies, about the governance. I mean, that's really the topic in the market, for sure. But if we think about these crashes, about these issues, in a bigger, longer time scale, think about the last ten years, Chinese companies, at least in the U.S., they all have governance issues. They have all these trust issues without, "This is two countries and encounters." So if we think about this one in a longer time scale, you will see the coming of the short-sellers to Chinese companies, I think, they picked out the right timing. Right now, for the last ten years, the Chinese economy is not the brightest one, but at least it's the eye-catching one. Nobody as an investor can avoid it, right? So this is very hot. But right now, what is the macro condition in China's economy? We have our own

fundamental issues, right? We have the real estate overpriced; we have CPI out of control. We have a lot of issues. So, I mean, at least to my own point, the timing of the short-sellers, they picked out the right time.

Also think about in the last ten years, I think in the year 2008, there were also coming some short-sellers that short-sell some Chinese companies. But the result of that is not very good. At least the stock price, they keep it really high after the short-sellers, right? For that time period, for the last — excuse me, two years, there is no short-sellers, most of them, because we have an economy stimulus plan, right? We have a lot of money pumping into the economy. So the short-sellers are scared. Right now, they're coming back, and they picked out the right timing.

So the fundamental issue of the Chinese economy is one of the key factors why he can really still breathe to shop Chinese companies. If we put that situation in about five years ago, I don't believe there are some of the short-sellers really could do this kind of article and do these kinds of things to Chinese stocks. So my point is, there are some fundamental issues in the Chinese economy, and that bring these short-sellers coming. Also, there are some fundamental issues. I believe all the panel members are very fair, we need to find a way to create infrastructures. There is definitely a fundamental risk to all the Chinese listed companies, and if we cannot solve their problems, this is a fundamental issue.

Also, maybe another point I want to bring to the panel is the thing about the international board the Chinese government is planning. They want to bring some high-quality Chinese companies to their own board. That is great, I mean the great board. But they can have all their own interest. So that's why they put these kinds of, you know BIE issues outstanding. They all know that. BIE is not new. It's been there for about ten years, maybe a long time. So while

they bring it back, so maybe they have their own interest. So that is always a kind of fundamental. Chinese companies need to spend time on boards, spend time on governance, but sometimes this is a big picture we cannot change much.

So my point maybe is we should defend ourselves; we should spend, for sure, for that; but if it's something we cannot change, we should be guided to prepare for that. That is my own input to share with the panel.

SAM KENDALL: I do agree with you, Robert, that what's going on here has been amplified by the environment that we're in and the timing. Short-sellers don't make a stock go down seventy or eighty percent. What makes a stock go down seventy or eighty percent is long-sellers, like long only, or they might be hedge funds, who are coming from the long side, saying, "I'm out. This performance is hurting me." Particularly in a year like this year, there has been a mentality of, "I would rather be absolutely wrong in this and sell now and the company be proven innocent than hold on and see a stock go to seventy percent." Because there have just been too many of these. Because they're trying to protect performance, because they've lost money in a European bank that they've been invested in. So holding what was once a $50 million position in a Chinese Internet company, which could very quickly become a $5 million position, is like, "Let me sell it when I've only lost $20 million." That's really what's causing it.

So I think it's amplified, as I said earlier on, this issue, and I think it's an opportune time for us as an industry, both ourselves on this side of the table, and you guys on that side of the table, to make sure that we're chasing best practice, and when markets do reopen and IPOs globally start to reopen, we're trying to reach all of those best practices that we've discussed. We're really at an opportune time right now.

JACK FRIEDMAN: A few years ago, we did a program in Los Angeles on U.S.-China business. Many people from China who were living in California at the time joined the program. I learned very quickly that at least in California, the Chinese so much enjoy visiting with each other that we couldn't get the group to sit down because everybody was talking to their friends. Doing the programs with the Chinese in America has always been very positive.

I'd like to again introduce three speakers here. Alan, you already know is Managing Partner at Shearman & Sterling. Stephen Ducker is from PwC China. William Boeck is from the Lockton Companies, which is an important global insurance brokerage company.

I'd like to start with Alan talking more about board and governance issues.

ALAN SEEM: Thanks, Jack. The earlier panel did a good job of setting the scene for this panel, which I think is aimed at discussing in more detail what "good governance" means, and what companies should be thinking about, particularly companies with a business based in China who are considering an overseas listing. Since the core of my work is assisting Chinese companies who want to list overseas, I often get questions from companies about what it is they need to do to get ready for this process.

Picking up on what Brewer was saying this morning, really the ultimate goal is to develop trust with investors. In terms of corporate governance, that really comes down to the people you have in place and the systems that are in place. So as Brewer mentioned, one thing that you often see from companies that are planning to do an IPO, is that they will make significant changes in personnel just months before the IPO.

I've been involved in deals where the CFO was not even appointed until after we made the first filing with the SEC. When the CFO came on board, he had to get up to speed very quickly.

It's a challenge in a company that's developing very quickly to get all these things together at the same time they're trying to grow their business, but it's important. The first thing I would say is to try to get the key management positions filled as soon as possible before the IPO. That will reflect also on the roadshow and in communications with investors. If you have a CFO who's only been on board a couple months, then he or she is not going to have the same level of understanding of the business as somebody who's been on board much longer. That's something that could negatively impact investor trust of the experience and level of integration of the management team, which are important factors.

Another thing that was talked about is hiring good advisors, hiring top-level investment bankers, auditors, and law firms, which is critical.

One thing, though, that I have also seen, which is worth noting, is that some companies, instead of putting in their own internal corporate governance measures, will hire a bunch of outside consultants, and want to disclose in their IPO prospectus that, "We've hired XYZ firm to advise us on this, and another firm to advise us on this, and therefore, that shows how seriously we take these matters." But a lot of investors can see through that. They want to know how the company itself functions, not that they paid $50,000 to an outside consultant to give them some advice. So it's not just who you hire externally, but more importantly it is the people that you have in place internally at the company.

It is also important to reference the best practices of the largest companies. For the past nine or ten years, my firm has compiled a survey of corporate governance practices of the top one hundred listed companies in the United States as measured by revenues as well as market cap. This survey report is actually available on our website for free. It contains a lot of

interesting data. One of the things it highlights is that, in terms of corporate governance, people are focusing on the board of directors and independent directors in particular.

If you're listed in the U.S., there's a requirement that within one year, the majority of your directors must be independent. We often get questions about who is independent and what constitutes an independent director. For example, a director could be an old friend of the founder of the company, who probably will not challenge the founder or cause any problems at the board meetings, but still might be deemed technically to be independent.

On the other end of the spectrum, you might have as a director a completely independent and outside person that maybe is recommended by your underwriters or some other person, who has no prior connection with the company. That can actually make a big difference in terms of perception. Investors can often tell who has truly independent directors with a good background in corporate governance, and who have directors who are technically independent, but probably are not going to be that rigorous in terms of cross-checking what management is doing.

That can really become a marketing point for companies, particularly in the current market environment. Investors do look at who's on the boards of companies, and who are the independent directors, and who's going to be actively overseeing the management.

So therefore I think a key focus needs to be on the independent directors.

Another trend that was highlighted by our governance survey is that more and more large-sized companies are establishing separate risk management committees. As a small growth stage company, you may not necessarily have the resources to add another committee to your board that's focused just on risk management. But it is very important to make sure that risk management is a function that is assumed by either the audit committee or some management

committee within the company that reports to the independent directors. So companies should consider what risk management and internal audit functions they have in place internally.

One other suggestion I often make is for companies to bring the independent directors on board well in advance of the IPO.

What you'll typically see for an IPO is that they have a group of independent director appointees that only become independent directors of the company upon the IPO. So that means that the company does not have a functioning audit committee, compensation committee, or corporate governance committee before the IPO. So it is usually not until after the IPO that these directors actually will get together for their first meeting, get to know each other, and start to figure out what it is they're collectively supposed to do.

As Brewer said, these are all just people. At the end of the day, the governance function is run by people who need to learn how to best interact with each other. So it's important to select a group of people that can work well together, that know what their role is, and are able to fulfill that. Therefore, it would be much better, and actually could be a very good marketing point for a company, if they could bring their independent directors on board and allow them to begin to function as a cohesive boards and various committees prior to the IPO. I'm not saying a long time in advance, because oftentimes a company hasn't formulated its IPO plans that far in advance. But even a few months before an IPO, to have the independent directors come on board, have a few audit committee meetings, get a feel for what kind of issues are involved with the company, and then have that in place for the IPO could actually yield a lot of benefits for a company.

One issue with that is that many independent directors don't want to be involved in the IPO process. They don't want to have potential liability in connection with the IPO, and maybe

Bill can speak to that. Perhaps they also don't have the time, or the company doesn't want to start paying these guys to come on board early. These are all real issues.

But I do believe that trying to get that structure in place before an IPO will have a real impact on the corporate governance of the company and the actual way it functions, and will also have a positive marketing impact during the IPO.

JACK FRIEDMAN: Stephen, would you like to make your comments?

STEPHEN DUCKER: Certainly. What I wanted to talk about follows directly from Alan's been talking about as well.

As we discuss corporate governance, I want to make sure that we focus on corporate governance and what it's there to achieve. It's not just a compliance exercise, a box to be ticked; an unwanted investment the company has to make in order to get through the process.

The people, the process, the structures in place under this big banner of corporate governance are there for a real purpose. They're there to bring value to the company and through the company to the investors and all the stakeholders.

So let's look at some of the people in these key roles and I'll start with the independent directors, because that seems like a natural follow-on.

Too often, we see companies (a) bring the independent directors in far too late, and (b) do not really understand what that role is there to do. They bring in people who are either just going to attend, tick a box, take their fee and not add anything, or they bring in people who, as was suggested earlier, are independent in name but really not in substance, and so they are not going to bring in any real value to that role.

When you're looking for an independent director, look for someone who's got experience and can really help take the company through all these challenging processes that are involved in

the build-up to the IPO and in life as a listed company afterwards. You want somebody who's got real experience, whether it's from industry, in the markets, or from an accounting/financial point of view. If you bring the right people in, then you also need to give those people the right opportunity to deliver that value.

Over the course of the last eight years in China, I've seen some great examples of boards and audit committees that would stand comparison with their counterparts across the world. But I've also been in meetings where the audit committee agenda is squeezed to the last fifteen minutes of the board meeting; where governance issues are always the last item on the agenda; where the A/C meeting is held on a different day so few people can attend; where all meetings are conference calls, with no face-to-face meeting; five-minute meetings where no one's in the same room and talking to each other. That's not a company taking corporate governance seriously. Not only are they really not living up to the substance of the legislation and regulation, but they're not getting the benefit of what those people could bring. You need to give those people time to talk. You need to give those people time to ask their questions, to share their experience, and to guide the company. If you do that, then the investment you're making in those people will pay a much greater dividend than simply paying them a flat fee and really getting no return.

If you look at the process, it is not just about holding the meetings. The audit committee can only be as good as the information they're getting. So providing the right kind of information on a timely basis, giving them time to actually read it, giving them an internal audit function that actually has some experience, and is capable of asking the right questions and providing information back to the audit committee, all combine to help them to do their jobs. Too often, the internal audit teams that get set up are very junior people who really don't have

enough experience to do the job effectively, or the ability to sit down and have a face-to-face discussion with a board director or with senior management, and actually ask difficult questions and get answers that they can then bring back to the audit committee.

Let's think a little bit about the role of the CFO, as well. Because the CFO, like the independent directors, may only come on board at the last minute. One of the structural issues with many of the companies that we work with is — and this isn't uniquely a China issue; this is a start-up company issue —that the company is set up by an entrepreneur and a small, close group of advisors. Suddenly, as they approach their IPO, there's this whole group of outsiders coming to give them advice. There are the bankers, the lawyers, the auditors, and the CFO. In many cases, the CFO is not a longstanding, trusted part of the company. He's a hired professional who's come in for a specific task, to take the company through the IPO. In many cases, he's very much wanted as a public/market face for the company, an IR person who's going to go out there and talk coherently and tell the story and sell the IPO in the market.

But while that is a key part of the CFO role, it is only half of the story: what about the other side of the role? The SEC is very focused on U.S. GAP experience; who within the company really has the experience of accounting and market reporting? Well, if your CFO is (a) running around doing roadshows and being your IR face to the company, and (b) has been somewhat kept at a distance from the day-to-day operations of the company, even with the best board in the world and with all the experience that they might bring, the CFO is not really in a position to deliver this other essential part of his role.

So companies need to make an investment in the right CFO. But they also need to invest in depth, so that the CFO has a proper, experienced controller to back him up. Because you can't expect the CFO to fly around doing roadshows and also be back in the office reviewing in great

detail every last transaction. You've got to have the right structure, the right processes, and the right people.

These have all been fairly high-level considerations, so let's turn for a minute to the more detailed level: the day-to-day controls which get covered under the SOX 404 process. These too have a really key role, because they are about embedding good practice within a business and putting in place a governance structure that is being set by the board and the independent directors and senior management.

Again, you can't do those at the last minute. These aren't things that you can just paste on top of a business and create a nice face to present to the world. These have got to be something which are put in place in advance, giving teams and staff time to work with them and get used to them and have backup plans for when things don't quite work out.

That's the structure which takes time to implement. And more and more companies are now recognizing the importance of these things; we're seeing pressure coming from the investment bankers, the PE funds, to really get ahead of the game, and rather than waiting until the IPO is finished and the dust has settled and the money's in the bank, and *then* worrying about governance and controls.

These things are being brought forward in the agenda. People are recognizingthe value of addressing governance issues pre-IPO. Partly because the investors are expecting it — it needs to be disclosed, it needs to be talked about on roadshows — and partly because fundamentally, those things are there to ease the process, to give management better, more reliable information so that they know when they're getting asked difficult questions, they can confidently reply that these are the right numbers. It's not just the financial numbers that we've

seen in so many of the analyst reports recently; it's the business numbers that back up the financial numbers, making sure there aren't discrepancies between the two.

So I think it's asking the board to take that much broader perspective on managing a company's risks. That is a good point, too, to go on to risk management.

JACK FRIEDMAN: Just to put some of these comments in an historical context in the States. There used to be the tradition that people who were friendly to the founder or CEO of a public company would be appointed to boards. There'd be friendly meetings. Then what happened in one case changed a lot. That was the Enron case. Enron was a company of incomprehensible good reputation as an innovative, dynamic, huge company. They found out that illegal accounting had been going on, and the Board never asked questions. The head of the audit committee was for twenty years the head of the committee and the former dean of a renowned business school. He had written one of the leading books on auditing. The company went bankrupt.

After that Directors discuss more; review the internal controls more; etc. I don't know if the Olympus case will change governance in Japan, but I assume when you're talking about something like a billion dollars being lost, it's going to change a lot.

Finding directors who are truly independent is very important to protect the interests of the shareholders and create credibility with business partners, governments, banks, and others.

ALAN SEEM: I just want to make a comment, following up on what Stephen was saying. A real-life example that is representative of what I frequently see, because I participate in a lot of board meetings for listed companies, relates to a company that had recently gone public in the US. The company had a strong founder who was very used to doing things his way. Prior to the IPO, he would make a decision, take action, and maybe afterwards have

somebody draw up a board resolution and sign it for the record. For the most part, whatever he wanted to do, he would just go ahead and do it. Of course, part of our job in the IPO process is to teach companies about what is going to have to happen after the IPO, what types of internal processes they need to set up, and the fact that a majority of the board is going to consist of independent directors. It's not going to be the founder making the final key decisions on his own anymore.

In the example I mentioned, the chairman of the board, who was the founder of the company, instructed the board secretary to call an immediate telephonic board meeting to approve an acquisition the chairman had lined up. The board secretary called up the other board members and said, "The chairman wants you on the phone in four hours." These guys were all over the world. Some of the other directors managed get on the phone on short notice and after a five-minute description of a proposed acquisition, the chairman said "Alright, let's vote." The independent directors replied, "Well, wait a minute, wait a minute. This isn't the way it works." In this case, they had truly independent directors that were unknown to the chairman prior to the IPO. On top of that, all the independent directors were foreigners who didn't speak Chinese. So as an aside, that's something else to consider - the ability of board members to communicate in a common language and how that affects the functioning of the board.

In any case, the independent directors said, "Wait. We're not going to vote on this. We need to show that there's been careful consideration of the transaction; that we've deliberated about it." They then requested the chairman to go back and put together a feasibility study on the proposed project. The chairman went back and quickly prepared materials and sent it to the directors and immediately called another meeting and said, "Ok, now let's vote!" The other directors said, "Well, we only received the materials an hour ago, and we need time to review

and consider them." At this point, the chairman was basically pulling out his hair out, saying, "What's going on here? This is a good deal, just believe me and approve it! Why do I need your approval anyway? This is my company!" It was at that moment when he was finally beginning to realize what it meant to be a public company. He couldn't just do what he wanted to do. He had to go through the process; he basically had to appease the other directors before the acquisition could be voted through. Meanwhile, the independent directors are approaching it from the standpoint of, "I'm not going to just rubber stamp something, and put myself in the position where I can be accused of not properly performing my job in the future and face potential liability." They wanted to do it the right way, and show that they had requested and reviewed requisite materials, thought about them, and thoroughly discussed and deliberated, and then have all these things recorded in the board minutes. So that's eventually how they proceeded with the transaction.

That's just a single case. I've found in a lot of cases that it's often not until after the IPO when the founders of the company have a wake-up call and realize, "Wow, I actually don't control this company to the same extent I used to!" They often do at the shareholder level, but at the board level, they have to get buy-in from at least a majority of those independent directors, to be able to do what in the past they could have just done at their own discretion.

JACK FRIEDMAN: The chairman of Facebook, the founder, is famous for enjoying the privilege of running the company the way he wants to, and once he goes public, he has constraints. Still, he is going ahead with an IPO.

ALAN SEEM: One more quick comment, please, because I think this is important, as well. If you look at all the attacks on Chinese companies from short-sellers, as well as many class action lawsuits, one thing that a lot of them will focus on is related party transactions.

You'll often see questions about whether there's a real economic basis for the transaction, whether the price was fair. I always remind companies these days that this is one of the areas they really need to focus on from a corporate governance standpoint. The rules in the U.S. are that any related party transaction such as the sale of a substantial asset to the company by the founder, require the approval in advance from the audit committee. Once again, what you'll find a lot of times is the company will first sign the deal. The founder, who's also CEO, will sign up this deal with his own company. Then subsequently it will be reported to or discovered by the independent directors, putting them in a very difficult position. Because this is now a deal that's already been signed up, they are forced to consider it only after the fact. At this point, it is much more politically difficult to go back to the chairman and say, "We don't agree with this deal that you've already signed and begun to implement. You have to unwind it."

So it's very important that people within the company know the procedures for related party transactions. Any time they identify one, they need to bring it to the attention of the audit committee, and the audit committee needs to review and approve it in advance. If companies followed that process, in a rigorous way they could protect themselves against attacks challenging the legitimacy of the related party transaction in question.

People, boards and companies need to think about it that way, too. They need to think about what's best for the company, but they also need to think about it defensively. They need to ask themselves, "After the fact, if somebody wants to challenge us, how do we best show in the record how this process was done, what we considered in approving this transaction, and that it was done in the right way." I think that is very important.

JACK FRIEDMAN: We're ready for Bill Boeck.

WILLIAM BOECK: Thank you! We spent the last few minutes, and even part of the earlier session, talking about corporate governance. Corporate governance, obviously, is important. If you come away with anything from today's discussion, it is that corporate governance is vitally important to the success of a public company, particularly in the U.S.

Good corporate governance does not eliminate the risks. That, we can all agree on. A very well-run company, governed according to all best practices, can still face a claim — the directors and officers can still face very significant potential personal liability. So what I want to talk about for a few minutes is how you manage that risk.

I've prepared a number of slides here, and I make a promise to you that I won't talk about each one. As we discussed earlier, in the category of what can go wrong in the world of a claim, we are in an environment where we're seeing increased investigation activity by both the SEC, the U.S. Department of Justice, and other regulators around the world. More importantly, perhaps, for discussion now, is that Chinese companies in particular, as everyone in the room is no doubt well familiar, are a target of class actions in the United States. Nearly twenty-five percent of the suits filed in 2011 have been against Chinese companies, largely due to the actions of short-sellers.

So in view of the fact that there is increased claim activity, and to that I will include investigations, companies, and in particular Chinese companies right now, are very much under a magnifying glass within the United States, both in the regulatory and in the civil litigation arenas.

In this slide, I've highlighted two dollar amounts that are important, because we're going to talk about financing risk. We need to understand what that risk is. The first number talks about median size. Fully half the settlements last year were below $11 million; the other half

were above. What's important there is that for a lot of the claim activity, the Chinese companies that have received class actions in the United States, most of those are smaller companies, and they will be in the lower half of that. But what also needs to be remembered is that these cases are extraordinarily expensive to defend. Firms like Alan's and others need to spend a great deal of time preparing for and litigating these, and the number at the bottom gives you some indication of what that cost can be.

I should tell you that the cost to defend a claim is not necessarily dictated by what it could be expected to settle for. It's not inconceivable that a case could cost vastly more to defend, to pay the lawyers, then it would ultimately settle for, particularly if the lawyers have done a great job.

But these numbers are relevant from the standpoint of considering whether and how much directors and officers liability insurance the company should consider purchasing.

Mitigating risk and preventing loss is corporate governance. I've got a slide here that I would like you to focus on. There are three things that should be a part of a well-formed, integrated risk management strategy, corporate governance being the key item. If a company is well-run, the risk profile is decreased; the likelihood of a claim is reduced. That's obviously what we would all like to see happen.

To guard against the possibility of a claim, which we all know can arise even under the best of circumstances, there are two things that board members should consider — directors and officers insurance, and enhanced indemnification. I'll speak very briefly about that in a moment. They should also consider enhanced D&O insurance policies.

From the standpoint of indemnification, I've got a number of slides here which I won't go through. I simply want to make this point. Indemnification under U.S. law, in most states, is

required under certain circumstances, and it is the province of the board to determine the extent of indemnity that will be provided over and above what the statutory minimums are. That's important. Because a board has latitude to make decisions; the board can change those decisions.

Now, any of you that are directors and officers of companies can be confident of being indemnified under U.S. law to some extent. You may not be confident that you are being indemnified to the maximum possible extent. To achieve that, and to create a level of certainty that that level of indemnification is not going to change, we strongly recommend that indemnification agreements, contracts between board members and the companies, memorialize indemnification obligations, the primary benefit to that being that no subsequent decision by the company can change the terms of that contract. The board member can be confident that the indemnification negotiated will remain constant through his or her service, unless obviously the contract is changed.

JACK FRIEDMAN: Could I clarify that indemnification is basically that the company will pay your legal bills. Not the insurance company paying, but the actual company you serve as a director will pay the legal bills for a director and top officers of the company.

ALAN SEEM: And the losses, too.

JACK FRIEDMAN: And the losses — all the ramifications. You're looking for the company, your own company to pay the legal bills.

WILLIAM BOECK: Yes. That's exactly right. So enhanced indemnification is, in our view, critical, should be critical to all directors and officers of companies. Companies, as we all know, and as Enron is a terrific example, even great companies, very large companies, seemingly impervious to significant action, significant losses, can be taken down.

What that can do is it can rob the company of the ability, the financial ability, to make good on its indemnity obligations. So part of the reason, in recognition of that, companies and directors and officers will buy D&O liability policies. And the notion there is simply to finance the risk, have a third party that may not be subject to whatever took the company down, made the company unable to indemnify, to transfer that liability to them.

I have a slide here that I won't discuss in great detail, but it shows what a typical directors and officers liability insurance program will look like. The policy itself is designed to do essentially three different things: One, it's designed to provide coverage for directors and officers who are not indemnified by the company, for whatever reason — either the company lacks the financial ability to do so, or the company is legally prohibited from providing indemnification, or the company may wrongfully refuse to provide indemnification. That's not as unusual as you might think. It is not common, but I see it on a regular basis. So what you see here on this chart is Coverage A, provides that type of coverage to the individuals.

Policies are also designed to provide coverage to the company for losses that it indemnifies. Legal bills, claim settlements, judgments that the company is required to indemnify, the policy will reimburse the company for.

The third thing most policies accomplish is to cover the company's own liabilities in securities claims, class actions being a prime example. That is on this chart as Coverage C.

Now, one of the other features that many public companies and most of our clients now buy, and we highly recommend, is what we call a "separate Side A DIC" ("DIC" standing for "difference in conditions"). It provides enhanced coverage — coverage beyond what the typical D&O policy would provide. It will have fewer exclusions, and it will be triggered typically any

time a company does not indemnify, sometimes even when another insurance policy does not respond. We think of it as the ultimate safety net for directors and officers.

The earlier slide I put up is very typical of what a public company buys, policy-wise.

ALAN SEEM: What are the limits on typical D&O policies, about how much do companies typically cover themselves in terms of lawsuits?

WILLIAM BOECK: I'm very glad you asked me that question. Companies here in China — and I have colleagues here that can probably speak to this in great detail — companies here in China typically buy very low D&O policy limits, five million dollars, perhaps. If you'll recall the numbers that I put up earlier about the costs to defend a claim, it could be between $2 million and $4 million; that's to say it could be less, but it could easily be higher. When you consider that and you consider the cost to settle the claim, and the vast majority are settled, you begin to realize that a $5 million policy is woefully inadequate to cover the entire expected liability, should it come to a suit in a class action.

But nevertheless, that's what companies here buy. If you look at benchmarking, looking at a company's revenues, for example, or its market capitalization, and you look at other similar companies, you can get to numbers that look like $5 million as an exposure. That may be a valid decision for companies who believe they aren't going to face a claim, that don't want to over-buy insurance. Obviously you don't want to spend more money buying coverage that you're not going to use. But in the event that you do need coverage, $5 million likely will be inadequate.

But the numbers I have here are purely for demonstrative purposes. Thirty million dollars would be a number for a mid-sized U.S. public company, and again, this is purely for demonstrative purposes.

JACK FRIEDMAN: One key point to clarify. The issue in the United States is that a company (a) may not be able to have the money to pay for its promises to protect you, and (b) the government may have a policy or a rule that says that there are certain things for which the company isn't permitted to pay. What am I to do as a director or senior executive of the company to be absolutely sure I'm covered? The answer is, you buy insurance from another company that isn't involved with you. That's why you don't trust the indemnification alone. You always want to make the company buy the insurance policy to strengthen your protection.

WILLIAM BOECK: You're absolutely right; I couldn't have said it better myself.

The last point I want to leave you with briefly is that a D&O policy is not like a fire insurance policy, which frankly doesn't require a great deal of effort to buy — you simply identify the locations that could catch fire, and in the event you do have a fire, you submit the claim to your insurer and get paid. A D&O policy is probably best viewed, although somewhat cynically, as an invitation to a negotiation.

What I mean by that is that there are a number of defenses to coverage — a lot of reasons why a claim may not be covered. The practical importance of that is that you must pay great attention to the terms and conditions of your insurance policy. We strongly recommend that board members be actively involved, meet with their insurance brokers, and indeed, meet with their insurers, to fully understand what they're getting, and as important, if not more so, what they're not getting.

But this is a period of time, due to a number of factors in the insurance market, where insurance underwriters are being very innovative and very creative in enhancing coverage. We can cover things now that we couldn't cover a year ago or two years ago or more. So it's

critically important — essential — that companies pay great attention to the terms and conditions of the policies, and to make sure that they are, in fact, state of the art.

ALAN SEEM: What would be a good example of a loophole that companies did not recognize when they signed the policy, and then found was not covered when they made a claim?

WILLIAM BOECK: Well, there are a number of them. Probably the most important one right now is that companies don't realize that coverage for investigations by the SEC and other entities is limited. It can be enhanced through well-brokered policies, but it is not unusual for a company to be investigated by the SEC, and to make an insurance claim and to have the insurer respond by saying it's not covered. Truthfully, they're right. If they're only investigating the company, and not directors and officers, in all likelihood, coverage doesn't exist.

What we've accomplished over the last couple of years, and what insurers have done, is introduced coverage for the liability that a company incurs on its own behalf to respond to the SEC. This is very cutting edge; this is not available in all policies. Indeed, in some cases, you have to buy a separate insurance policy to do it. But it's something that companies seldom realize, but once it happens, they have no coverage for hundreds of thousands, if not millions of dollars' worth of legal expense incurred in responding to regulator's requests for information. Remember, we're in an environment now where the regulators are more active in investigating companies than they have in the past eight, ten years.

ALAN SEEM: What is the current price for D&O insurance coverage how has that been affected by recent activity?

WILLIAM BOECK: I'll give you two answers to that question. D&O insurance pricing worldwide has been on a steady decline for the past eight years. It's fair to say that I think that pricing has hit rock bottom. We will probably see it start to go up.

Now, my second answer to that is limited to Chinese companies. Unfortunately, in this environment, given what we talked about earlier with respect to class actions and investigations and activities of short-sellers, underwriters are frightened of Chinese companies. Or, more accurately, they don't understand them, and therefore are charging, when they're willing to write Chinese companies at all, are charging quite a lot for D&O policies. We find that we're able to moderate that by effectively helping the underwriters understand the company and indeed underwrite the risk. But it can be quite a lot of work for us, for our clients' lawyers, their auditors, and companies.

JACK FRIEDMAN: A point is that a few bad cases temporarily make people nervous. Part of the message is that Chinese companies have to expend more effort in educating investors, insurance companies, and others as to their business.

Let's take a few questions from the audience.

[AUDIENCE MEMBER]: You were going on about the concept of indemnification. That's clearly well established in the U.S. context. But how does that work in China?

WILLIAM BOECK: Well, there's definitely the concept of indemnification in China. But I think in this context, we're really talking about indemnification for liability in the U.S., anyway, so you really do look to the U.S. to make sure that you can get the coverage under U.S. law.

JACK FRIEDMAN: I want to make one comment about the role of the accounting firms. Accounting firms have part of their work to be an advisor for establishing compliance

systems. They are good at that. It's very important to understand that on the audit side, when you have a global accounting firm, their job is to be independent. They are not the salesmen or cheerleaders to say to management, "You're great people." Their job is to have the highest possible integrity, so that investors know that the numbers are correct. Having a very good, professional relationship with the audit people is very important.

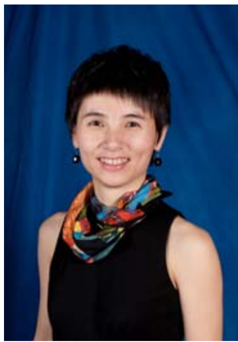
STEPHEN DUCKER: That's very true, and good of you to raise the point. It goes beyond simply the public perception; it's also the value of the advice and guidance of the audit firm, lawyer, or banker. It's really investing enough in your advisors to make sure that the advice you're getting is really the best kind of advice you can get, and it's frank and honest. That's also about trust. It's about working with a firm, whether it's your lawyers or your auditors, for long enough to build the trust so that if there is a difficult message to be communicated or if they need to tell you that the situation really isn't acceptable, they would be able to have that discussion, and help the company avoid or mitigate the risks they face.

JACK FRIEDMAN: I want to thank the speakers for sharing their wisdom and also the audience for coming. The basic underlying theme is that as China or Chinese companies become more active in the world economy, many interesting and important issues for their leaders will come up. This is just the start of a historic process for China.

Thank you.

BIOGRAPHIES

Nelson Griggs has been with the NASDAQ OMX Group since 2002 and currently serves as Senior Vice President and Head of Asia Pacific for the Global Corporate Client Group. Mr. Griggs was previously Vice President of New Listings in the Corporate Client Group were he was responsible to managing NASDAQ's efforts to deliver the benefits of the exchanges superior market structure and value-added services to prospective listed companies. Mr. Griggs has also serviced as a Managing Directors in NASDAQ's corporate client services group, where he worked with currently listed NASDAQ companies. Prior to his tenure at NASDAQ, Mr. Griggs worked for Fidelity Investments and a San Francisco based start-up. He is a member of the Executive Board at The executive Council. Mr. Griggs graduated from Denison University in Granville, OH.



MIN ZHANG (JENNY)
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education

2001 - 2003 **HARVARD BUSINESS SCHOOL** **BOSTON, MA, US**

Master in Business Administration. 2nd Year Honor. Publisher of HBS Survival Guide 2002-2003. Panel Manager of Harvard Asian Business Conference 2002. Treasurer of Sailing Club. Member of Finance Club.

1990 - 1997 **UNIVERSITY OF INTERNATIONAL BUSINESS AND ECONOMICS** **BEIJING, CHINA**

Master in Economics. Led a team to win the 2nd place in National Management Decision Simulation Contest.

Bachelor in business management. Honored Graduate. Outstanding Student of Beijing City. Highest academic score in class. Director of Sports and Entertainment Club. Captain of UIBE Women's Soccer Team.

experience

2007 - now **Hanting Inns & Hotels** **SHANGHAI, CHINA**

CFO

- A core member in the management team, in charge of finance, legal and training
- Introduced comprehensive financial management tools which was instrumental to the company's growth from 60 to 600 hotels within 4 years
- Led the restructuring of finance and HR functions, resulting in 4 times productivity gain
- Led a successful IPO and managed post-IPO investor communication and compliance project effectively

2003 - 2007 **ELI LILLY & COMPANY** **US/CHINA/THAILAND**

(A multinational pharmaceutical company with annual sales of US$15.7b)

2005 – 2007 **Finance Director, ELI LILLY (ASIA) Inc, Thailand Branch** **BANGKOK, THAILAND**

- Led accounting, finance, planning, IT , distribution, purchasing and product divestment.
- Introduced innovations and process/product improvements. Trained and developed staff effectively. Turned around the finance department from a high-turnover unit to 'the best in Lilly Thailand history"
- Drove key business decisions, i.e. pricing, target setting, resource allocation, etc., as a core member of management team
- Ensured financial control and compliance to internal and external regulations

2003 - 2005 **Planning and BD Manager, ELI LILLY & COMPANY, China** **SHANGHAI, CHINA**

- Led strategic and financial planning process
- Monitored sales and opex performance and conducted 8-quarter rolling forecast
- Analyzed product launch, brand investment and other business initiatives
- Led product divestment initiatives

2003 **Senior Financial Analyst, ELI LILLY & COMPANY, Latin America** **INDIANAPOLIS, IN, US**

- Oversaw financial reporting and planning of Latin American countries
- Reviewed capital investment, product launches and financing initiatives
- Analyzed product divestment opportunities

Summer 2002 **Summer Intern, ELI LILLY & COMPANY, Merger and Acquisition Department** **INDIANAPOLIS, IN, US**

- Built a company-wide knowledge base for general process and best practices in acquisition integration
- Led cross-functional discussions and made recommendations about Lilly's action plans in foreseeable acquisition integration events
- Developed an acquisition target risk evaluation model for early screening and risk monitoring
- Applied integration planning tools in an upcoming acquisition deal

2000 - 2001 **McKINSEY & COMPANY, INC.** **BEIJING, CHINA**

Senior Business Analyst

- Designed organizational structure for a global pharmaceutical company's operations in China. Analyzed best practices in Chinese legal environment and incorporated global structure into the regional design.
- Created financial performance reporting system for a leading Chinese bank. Laid down the fundamentals of a result-oriented management information system. Introduced profitability discipline into strategic decisions.
- Defined and instituted the strategic and financial planning process for a fast-growing software/system integration company.
- Developed corporate strategy for a leading technology company. Redesigned the organizational structure to fulfill strategy needs.

1995 - 2000 **ASIAN STRATEGIC INVESTMENT MANAGEMENT COMPANY (ASIMCO)** **BEIJING, CHINA**

(A $500 million private equity firm investing primarily in auto components manufacturers in China)

1998 - 2000 **CFO, ASIMCO Casting (Beijing) Company, Ltd. (A startup company invested by ASIMCO)**

- Developed long-term and short-term business plans for the company. Monitored fulfillment of financial targets and communicated with investors.
- Designed and implemented an accounting system for the new company. Recruited and trained all accounting and finance personnel.
- Led a cross-functional team to install standard costing system.
- Established internal control procedures on procurement, sales, capital expenditures and expenses.
- Managed cash flow, including evaluating capital investments and securing equity and debt financing.

1999 - 2000 **International Business Development Manager, ASIMCO Casting (Beijing) Company, Ltd.**

- Grew export business from zero to $4 million within one year by defining an effective marketing strategy and actively selling to auto parts companies in US and Europe.

1997 - 1998 **Financial Manager, ASIMCO Components Group**

- Oversaw reporting and analysis of 15 subsidiaries in China (sales: $0.25 billion). Led a department of 4 Financial Analysts and 15 Financial Representatives.
- Led projects that enhanced accounts receivable and inventory management in various subsidiaries.
- Managed long-term and short-term business planning of the Group.

1995 - 1997 **Financial/Investment Analyst, ASIMCO Components Group**

- Screened and valued joint venture candidates
- Assisted in joint venture negotiations
- Participated in joint venture set-up and monitored financial and operational activities

personal Fluent in Chinese Mandarin and English. Enjoy traveling, reading and various sports

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学历

2001 - 2003 **哈佛商学院** **美国波士顿**

工商管理硕士。获第二学年优秀奖。任《哈佛商学院生存指南 2002-2003》出版人， 2002 哈佛亚洲商业年会专题负责人, 及帆船俱乐部司库。金融俱乐部会员。

1990 - 1997 **对外经济贸易大学** **中国北京**

经济学硕士。代表对外经济贸易大学获全国管理挑战赛第二名，任队长。

经济学学士。优秀毕业生，北京市三好学生，以全班第一的成绩毕业。历任班长，工商管理学院体育部和文艺部部长。校女子足球队队长。

工作经历

2003 至今 **礼来公司** **美国/中国/泰国**
(一家年销售额 157 亿美元的跨国制药公司)

目前 **礼来公司中国分公司，全面管理培训生** **中国上海**

2005 - 2007 **礼来公司泰国分公司，财务总监** **泰国曼谷**

- 全面负责会计，财务，计划，信息技术，分销，采购和产品转让。
- 引入多项业务创新和流程改进。有效地培训和培养了一支过硬的队伍。将财务部从一个高人员流失的部门改造成“礼来泰国历史上最好”的财务队伍。
- 作为管理团队的核心成员，推动重大商业决策的制定和执行，如定价，销售和费用目标设定，资源分配等。
- 实施内部财务控制，确保商业行为符合内部规定和外部法令

2003 - 2005 **礼来公司中国分公司，计划和业务发展经理** **中国上海**

- 负责公司战略计划和财务计划，包括分析市场/利润状况，确定地域和产品投资方向，设定销售和费用目标等。
- 及时分析销售业绩和费用状况，对未来业绩进行两年滚动预测
- 为产品上市，品牌投入和其他重大商业决策提供分析作为决策依据
- 负责产品转让业务

2003 **礼来公司，拉丁美洲分部，高级财务分析师** **美国印第安那玻利斯**

- 统管拉丁美洲各国的财务报告和分析
- 分析审核资本投资，产品上市，融资要求
- 分析产品转让机会

2002 夏 **礼来公司，企业购并部，暑期见习** **美国印第安那玻利斯**

- 建立了购并后整合流程和最佳范例的知识库，向公司有关各部门介绍推广
- 推动近期收购后整合计划的跨部门讨论并作出建议
- 开发了收购目标风险评价模型，用于早期筛选和风险监控
- 应用整合计划工具于即将签约的收购项目

2000 - 2001 **麦肯锡公司** **中国北京**

高级商业分析师

- 为一家跨国制药企业的中国业务设计组织结构。分析基于中国法律环境的最佳范例并将全球结构与地区结构相结合
- 为中国一家领先地位的银行建立财务业绩报告系统。为该企业建立业绩导向的管理信息系统打下基础。在战略决策中导入利润考量。
- 为一家快速成长的软件/系统集成商设计和实施战略计划和财务计划流程
- 为一家领先的信息技术公司制订公司战略。重新设计了组织结构以满足战略需要。

1995 - 2000 **亚洲战略投资公司（后更名为“亚新科公司”）** **中国北京**

(一家拥资 5 亿美元的风险投资公司，主要投向中国机动车零部件行业)

1998 - 2000 **亚新科铸造（北京）有限公司，财务总监 (亚新科投资的一家新创企业)**

- 为公司制订长期和短期业务计划。监督财务目标的达成并向投资者报告
- 设计和建立新公司的会计系统。招聘并培训所有会计和财务人员。
- 领导跨部门的团队实施标准成本系统
- 建立关于采购，销售，资本投资和费用的内部控制流程
- 管理现金流，包括资本投资分析决策和确保取得需要的权益性和债务性融资

1999 - 2000 **亚新科铸造（北京）有限公司，国际业务经理（兼）**

- 在一年内将出口业务从 0 做到 400 万美元。确定有效的营销战略并积极向美国和欧洲的汽车零部件企业推销

1997 - 1998 **亚新科零部件集团，财务经理**

- 统管中国 15 家子公司（年销售 2.5 亿美元）的业务报告和分析。领导 4 名财务分析师和 15 名驻子公司财务代表。
- 在多个子公司领导实施了应收账款和存货管理改进项目
- 管理集团的长期和短期业务计划

1995 - 1997 **亚新科零部件集团，财务/投资分析师**

- 筛选和评价合资对象
- 协助合资谈判
- 参与合资企业设立并监管合资企业财务和业务活动

专业资格 中国注册会计师协会非执业会员

个人情况 能流利使用中文和英文。爱好旅游，读书，和多项体育运动

SHEARMAN & STERLING

Biography

Shuang Zhao

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Practice

Shuang Zhao is a partner in Shearman & Sterling's Hong Kong office. Her practice focuses on capital markets matters and she has worked on a variety of equity, equity-linked and debt offerings. Transactions in which she has been involved include SEC-registered offerings, Rule 144A/Regulation S offerings and listings in the United States and Hong Kong. Ms. Zhao regularly advises public companies on corporate governance and regulatory compliance matters, including issues arising under the Sarbanes-Oxley Act.

Recent Experience Includes Representation of:

Capital Markets

- Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the initial purchaser, in the private placement by China Medical Technologies, Inc. of US$150 million aggregate principal amount of 6.25% Convertible Senior Notes due 2016, convertible into American Depositary Shares, including a concurrent capped call transaction
- Jefferies & Company, Inc. as the Sole Bookrunner and Underwriter in connection with the follow-on offering of ordinary shares by China Cord Blood Corporation. China Cord Blood Corporation is the first and largest cord blood banking operator in China in terms of geographical coverage and is the only cord blood bank operator in China with multiple licenses
- Goldman Sachs, Credit Suisse and Barclays Capital, in connection with Trina Solar Limited, a leading solar energy company, in its US$184 million follow-on offering and listing on the New York Stock Exchange of 7,900,000 ADSs
- Goldman Sachs and Credit Suisse, in connection with Trina Solar Limited's US$148.8 million follow-on offering and listing on the New York Stock Exchange of ADSs
- The underwriters, in connection with Jinko Solar, a leading solar energy company, in its S64.2 million initial public offering and listing on the New York Stock Exchange
- Suntech Power Holdings Co., Ltd., a leading solar energy company in the world, in connection with its US$287.5 million follow-on offering and listing on the New York Stock Exchange of 4,000,000 ADSs
- China Medical Technologies, Inc. in its SEC-registered concurrent offerings of 4.00% Convertible Senior Notes due 2013 in the aggregate principal amount of $276 million and up to 4,700,000 ADSs

Biography

Shuang Zhao

- Credit Suisse, ABN AMRO and Deutsche Bank, in connection with Trina Solar Limited's SEC-registered concurrent offerings of 4.00% Convertible Senior Notes due 2013 in the aggregate principal amount of $138 million and up to 4,000,000 ADSs
- Suntech Power Holdings Co., Ltd. in connection with its Rule 144A offering of US$575 million convertible notes.
- China Nepstar Chain Drugstore Ltd., the largest retail drugstore chain in China based on the number of directly operated stores, in connection with its US$384 million initial public offering and listing on the New York Stock Exchange of 23,718,750 ADSs
- Simcere Pharmaceutical Group, a leading manufacturer and supplier of branded generic pharmaceuticals in the fast growing China market, in connection with its US$260.5 million initial public offering on the New York Stock Exchange of 15,625,000 ADSs.
- Suntech Power Holdings Co., Ltd. in connection with its Rule 144A offering of US$500 million convertible notes
- China Medical Technologies, Inc. in its Rule 144A offering of US$125 million convertible notes
- Suntech Power Holdings Co., Ltd. in its initial public offering on the New York Stock Exchange
- Vimicro International Corporation, a leading fabless semi-conductor design house in its NASDAQ IPO
- Ctrip.com International Ltd. in a secondary public offering of ADSs
- Deutsche Bank as new depositary for a F-6 registration of level-one ADSs for New World Development Company Limited
- Citigroup in CSMC Technologies Corporation's Initial Public Offering on the Hong Kong Stock Exchange
- Goldman Sachs in High Tech Computer's offering of 6,550,000 Global Depositary Receipts
- Lehman Brothers in CMC Magnetics Corporation's offering of US$168 Million Convertible Bonds
- JP Morgan in CMC Magnetics Corporation's offering of 10,000,000 Global Depositary Receipts
- ABN AMRO in Hon Hai Precision Industry Co., Ltd.'s offering of US$450 Million Zero Coupon Convertible Bonds due 2008
- UBS Warburg in Far Eastern International Bank's offering of US$100 Million Zero Coupon Convertible Bonds due 2008
- Taishin Financial Holdings Co. Ltd. in its offering of US$200 Million Zero Coupon Convertible Bonds due 2008
- JP Morgan in CMC Magnetics Corporation's offering of US$135 Million Zero Coupon Convertible Bonds due 2008
- UBS Warburg in High Tech Computer Corp.'s offering of US$60 Million Zero Coupon Convertible Bonds due 2008
- JP Morgan in Chinatrust Financial Holdings Company, Ltd.'s offering of US$400 Million Zero Coupon Convertible Bonds due 2008

Biography

Shuang Zhao

- Salomon Smith Barney in Acer Communication & Multimedia Inc.'s offering of US$200 Million Zero Coupon Convertible Bonds due 2006
- Goldman Sachs in Hon Hai Precision Industry Co., Ltd.'s offering of US$345 Million SIZeS due 2005

M&A/ Private Equity

- Simcere Pharmaceutical Group in joint venture with Merck & Co., Inc.
- Trony Solar Holdings Limited, a leading thin film solar energy company in China, in connection with its US$50 million pre-IPO preferred stock financing transactions involving private equity investors
- An existing shareholder of Simcere Pharmaceutical Group, a leading manufacturer and supplier of branded generic pharmaceuticals in the fast growing China market, in connection with its private sale of its ordinary shares to Trust Bride Partners
- Suntech Power Holdings Co., Ltd. in its acquisition of MSK Corporation, one of Japan's largest PV manufacturers. The acquisition took place in two-steps with a total consideration of up to US$300 million. This transaction marks the first cross border acquisition by Suntech Power and is one of the largest cross border acquisitions by a non-state owned Chinese company to date
- China Medical Technologies, Inc. in its pre-IPO financing, acquisition, restructuring and NASDAQ IPO
- DBS in a private equity transaction
- A PRC retailer in a restructuring and subsequent M&A transaction

Education

Georgetown University Law Center, J.D., 1999, *cum laude*; Member of Journal of Law and Policy in International Business

The University of Mississippi, M.B.A., 1995

The University of Mississippi, B.A., *cum laude,* 1993

Bar Admission/Qualifications

New York and Hong Kong

Languages

English and Mandarin

Jasper Xu

RCS (Risk & Control Solutions) Partner

Jasper is a Partner in PricewaterhouseCoopers' Risk & Controls Solutions (RCS) practice and the Lead Partner responsible for PwC China's Internal Audit and Internal Control Advisory practice.

Jasper has over 17 years of experience working in China, Canada and the U.S in providing a wide range of assurance and advisory services ranging from internal audit, internal controls, Sarbanes Oxley S404 advisory, risk management and corporate governance services to multinationals, Chinese foreign private issuers in the U.S, and Chinese stated owned companies.

Jasper is also actively involved in professional organisations. He is a member of Chinese Institute of Certified Public Accountants (CICPA) and a Certified Internal Auditor (CIA).

COMMERCIAL INSURANCE
FINANCIAL SERVICES

LOCKTON®

William Boeck
Senior Vice President
Insurance & Claims Counsel
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Professional Profile

William Boeck is a Senior Vice President and Insurance and Claims Counsel with Lockton Financial Services. He is located in the company's Kansas City office.

Bill is Lockton's worldwide senior legal and claims resource for management and professional liability coverages and claims. He is also a member of Lockton's Global Technology and Privacy Practice. He advises Lockton clients and staff concerning claims under D&O, E&O, Cyber Liability, EPL, Crime and Fidelity, Fiduciary Liability, and other lines of insurance. His work includes policy and program evaluation, policy drafting and negotiation, the creation of unique solutions to claim and underwriting issues, and assisting clients to understand the effect of legal developments and trends on the coverage available to them.

Bill has worked extensively with clients and insurers in China and Hong Kong to help them build productive working relationships and to resolve difficult claim issues.

Bill writes and speaks regularly on insurance issues. He has written articles for *Business Insurance*, *Risk & Insurance Magazine*, *National Underwriter*, the *Professional Liability Underwriting Society (PLUS) Journal*, and other publications, and is a contributing author to the *Directors and Officers Liability Insurance Deskbook (1st ed.)* published by the American Bar Association. Bill has spoken on insurance and claims issues to PLUS, Florida RIMS, the Association of Corporate Counsel, the American Bar Association, and other organizations.

Bill is also a trained consultant to boards of directors in the area of board effectiveness assessments.

Current and Previous Positions

Before joining Lockton, Bill was in St. Paul Travelers' Professional Errors and Omissions Claim Unit and was the National Practice Leader for Fiduciary Liability Coverage. Prior to that, Bill was a Senior Client Advisor and Claims Advocate with Marsh in its Financial and Professional (FINPRO) Practice Group.

Bill spent over 17 years in private legal practice before joining Lockton. Most recently, Bill was Of Counsel to the national law firm of Arter & Hadden LLP. Before that, he was a partner with the international law firm of Sedgwick, Detert, Moran & Arnold LLP. He represented many foreign and domestic insurers as coverage and monitoring counsel in connection with claims under D&O and other professional liability policies, and crime and fidelity policies. In the early years of his career, Bill also represented insurers with respect to claims under commercial general liability policies. Bill has extensive experience representing insurers in coverage and "bad faith" litigation.

Education

J.D., Loyola Law School, Los Angeles, CA

B.A., Loyola Marymount University, Los Angeles, CA

PacificCrest The Best Investment Bank in Technology

Brewer Stone

Managing Director, Head of Asian Investment Banking

Brewer Stone is head of Asian investment banking at Pacific Crest. Throughout his 16-year banking career, he has focused on advising technology companies in Asia and the United States in completing equity financings and M&A. Most recently, Mr. Stone led FBR Capital Markets' Communications and IT Services investment banking practices, where his clients included Excel Telecom, NeoPhotonics and Siemens Enterprise Communications. After beginning his finance career in New York, he opened Prudential Securities' first office in China in 1994. Mr. Stone then served as managing director and head of Asian investment banking at Prudential in Hong Kong, and subsequently as managing director at the Prudential Volpe Technology Group in San Francisco. After working at Crimson Ventures, he co-founded East Peak Advisors, where he led the firm's successful communications practice until its acquisition by FBR. Mr. Stone holds a B.A. with highest honors from the University of California at Berkeley; an M.A. with distinction from the Johns Hopkins School of Advanced International Studies; and a Ph.D. from Harvard University. At Harvard, he won Fulbright and MacArthur scholarships for his work on China and India. Mr. Stone is fluent in Chinese.

Biography

Alan Seem

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alan.seem@shearman.com

Practice

Mr. Seem is the head of the firm's Asia Capital Markets practice, and managing partner of the firm's Beijing office. His primary areas of focus are SEC-registered and Rule 144A/Regulation S securities offerings, cross-border mergers and acquisitions, private equity, hedge funds and venture capital investments.

Mr. Seem has been recognized as one of the leading individuals for China capital markets work by both *Chambers Asia* and *Asia Pacific Legal 500* for consecutive years since 2003. He is also noted for his work with leading technology clients and private equity investments both in to and out of China.

Recent Experience Includes Representation of:

Securities offerings

- The underwriters led by Morgan Stanley, Deutsche Bank and Credit Suisse, in connection with the US$855 million NYSE initial public offering by Renren Inc., one of the largest China-based social networks.
- The underwriters, led by CICC, Goldman Sachs, J.P. Morgan, Morgan Stanley, Credit Suisse and BOCI, in the US$ 1.7 billion initial public offering, Rule 144A/Regulation S offering and Hong Kong Stock Exchange listing of the H shares of Changsha Zoomlion Heavy Industry Science and Technology Development Co., Ltd., a leading China-based construction machinery company
- Solarfun Power Holdings Co., Ltd. in its US$72 million follow-on offering of ADSs pursuant to an underwriting agreement entered into with Morgan Stanley & Co. International plc and UBS Securities LLC.
- The initial purchasers, represented by Morgan Stanley & Co. Incorporated, in the offering of US$130 million principal amount of 6.5% Senior Convertible Notes due 2015 by ShengdaTech, Inc., a Nevada corporation
- The underwriters led by Deutsche Bank Securities Inc., UBS AG and Citigroup Global Markets Inc. in the US$149.5 million follow-on offering of American Depositary Shares of PRC-based HiSoft Technology International Limited

Biography

Alan Seem

- Lentuo International Inc. in connection with its US$52 million initial public offering of American depositary shares and listing on the New York Stock Exchange. Lentuo International Inc. is the biggest private automobile dealership in China.
- The underwriters led by Morgan Stanley & Co. International plc in the US$67.2 million initial public offering and New York Stock Exchange listing of American Depositary Shares of PRC-based SYSWIN Inc.
- China Xiniya Fashion Limited, a PRC-based company, in connection with its US$88 million initial public offering and New York Stock Exchange listing of American depositary shares
- The underwriters led by Citigroup Global Markets Inc. and UBS AG in the US$127.2 million initial public offering and New York Stock Exchange listing of American depositary shares of Bitauto Holdings Limited, a leading provider for Internet content and marketing services for China's automobile industry
- Certain entities affiliated with the CID Group, JAFCO Asia Technology Fund III and Jefferies & Company, Inc. as the selling shareholders in the US$106.8 million initial public offering of Ambow Education Holding Ltd. on the New York Stock Exchange. The secondary offering represented more than 25% of the total offering size
- The underwriters led by Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. International plc in the US$138 million initial public offering of American Depositary Shares of PRC-based TAL Education Group
- Deutsche Bank AG, UBS AG and Citigroup Inc., in connection with the US$85 million Nasdaq initial public offering by HiSoft Technology International Limited, a leading provider of outsourced information technology and research and development services headquartered in Dalian, China.
- Goldman Sachs as sole bookrunner in connection with the US$236 million follow-on public offering of American Depositary Shares of Ctrip.com International, Ltd., a leading travel service provider for hotel accommodations, airline tickets and packaged tours in China
- Jefferies & Company, Inc. as sole bookrunner in connection with the US$152.8 million follow-on public offering of American Depositary Shares of Mindray Medical International Limited, a leading developer, manufacturer and marketer of medical devices worldwide
- Ruinian International Limited in its US$115.9 million Rule 144A/Reg S initial public offering and Hong Kong Stock Exchange listing
- The underwriters led by Jefferies & Company, Inc. in the US$45.0 million initial public offering of American Depositary Shares of PRC-based China Nuokang Bio-Pharmaceutical Inc.
- Oppenheimer & Co. Inc., Roth Capital Partners and Cowen and Company, in the US$33.05 million follow-on offering of shares of common stock of China Integrated Energy, Inc., listed on Nasdaq
- Morgan Stanley, Citigroup, China International Capital Corporation and CITIC Securities, the underwriters, in connection with the US$ 2.4 billion initial public offering, Rule 144A/Regulation S

Biography

Alan Seem

offering and Hong Kong Stock Exchange listing of the H shares of Metallurgical Corporation of China Ltd.

- The underwriters, represented by Oppenheimer & Co. Inc., in the offering of US$115 million (including 15 million over-allotment value) principal amount of 6.0% Convertible Senior Notes due 2018 by ShengdaTech, Inc.
- Morgan Stanley and Credit Suisse, the underwriters, in connection with the HK$1.74 billion initial public offering and Rule 144A/Regulation S Offering by China Shanshui Cement Group Limited on the Hong Kong Stock Exchange
- China Mass Media International Advertising Corp. in connection with its US$50 million initial public offering and NYSE Arca listing
- Merrill Lynch and UBS as joint lead underwriters in connection with the US$1.02 billion initial public offering and New York Stock Exchange listing of Giant Interactive, an on-line games company in China
- Qiao Xing Mobile Communication Co., Ltd. in its US$160 million initial public offering and New York Stock Exchange listing
- Merrill Lynch and Deutsche Bank as lead underwriters of the US$137 million initial public offering and New York Stock Exchange listing of Acorn International, Inc.
- Goldman Sachs (Asia) L.L.C. as lead underwriter of the US$260 million initial public offering of Simcere Pharmaceutical Group
- The underwriters, led by Morgan Stanley, Citigroup and CICC, in the US$1.69 billion initial public offering and Rule 144A/Regulation S offering of H shares by China Coal Energy Company Limited
- Solarfun Power Holdings Co., Ltd. in its US$150 million initial public offering and Nasdaq listing and subsequent convertible bond offering
- Credit Suisse Securities (USA) LLC and Goldman Sachs (Asia) L.L.C. in New Oriental Education & Technology Group Inc.'s US$112.5 million initial public offering and listing on the New York Stock Exchange and New Oriental's subsequent follow-on equity offering
- Air China Ltd. in its establishment of a Level 1 ADR program
- The underwriters led by Bank of China International, Goldman Sachs and UBS in connection with the US$11 billion privatization, Hong Kong Stock Exchange listing and Rule 144A/Regulation S initial public offering of Bank of China Limited
- Goldman Sachs (Asia) L.L.C. and The Hongkong and Shanghai Banking Corporation Limited as joint global coordinators and joint bookrunners of the HK$16.8 billion (approx. US$2.2 billion) IPO and a Rule 144A/Reg S global offering of H shares by Bank of Communications Co., Ltd.
- PetroChina Company Limited in its US$2.4 billion follow-on offering

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- Goldman Sachs, China International Capital Corporation and Citigroup as global coordinators for the US$1.3 billion primary and secondary initial public offering on the NYSE and Stock Exchange of Hong Kong Limited of China Netcom Group Corporation (Hong Kong) Limited
- Merrill Lynch, Morgan Stanley and JP Morgan as international underwriters of the US$730 million initial public offering and listing on the Thai Stock Exchange of Thai Oil Public Company Limited
- Semiconductor Manufacturing International Corporation in its US$1.65 billion primary and secondary initial public offering on the NYSE and Stock Exchange of Hong Kong Limited
- Chi Mei Optoelectronics Corp. in two separate Regulation S offerings of an aggregate of US$500 million in zero coupon convertible notes
- Brilliance China Automotive Finance Ltd. in its US$230 million Regulation S offering of zero coupon guaranteed convertible bonds
- Goldman Sachs (Asia) L.L.C. as global coordinator in the US$1.17 billion global follow-on ADR offering by Taiwan Semiconductor Manufacturing Company Limited
- The underwriters, led by China International Capital Corporation, Goldman Sachs and Merrill Lynch, in the simultaneous US$2 billion global follow-on equity offering and the US$600 million global debt offering, respectively, by China Mobile (Hong Kong)
- KGI Securities Co., Ltd. in a Regulation S offering of US$104 million in zero coupon convertible bonds
- Brilliance China Automotive Holdings Limited in its follow-on equity offering and Hong Kong listing
- Siam Commercial Bank in its global offering of preferred shares and warrants

Cross-border mergers and acquisitions

- iTour International Holdings Ltd. issued convertible notes to Deutsche Bank AG, London Branch, Linden Ventures IV (BVI) Ltd. and China Seed Ventures L.P.
- Solarfun Power Holdings Co. Ltd. in its sale of a 28.4% interest to Good Energies Investments Ltd.
- ATI Technologies Inc. in its acquisition of Macrosynergy Technology from XGI Technology Inc.
- Tsinghua-Shenxun Science & Technology Co. Ltd in its acquisition by Microsoft Corporation
- Huawei Technologies Co., Ltd. in its formation of a US$400 million enterprise networking joint venture with 3Com Corporation
- SK Corporation in the formation of a joint venture with Enron Corp. in the Korean gas industry
- International Petroleum Investment Company in the formation of its joint venture with Hyundai Oil Refinery Corporation
- Abu Dhabi National Oil Company in the formation of The Petroleum Institute, an oil and gas engineering institution for higher learning, with the Colorado School of Mines

Private equity, hedge funds and venture capital investments

- Kingsoft Corporation in connection with its private placement to Tetrad Ventures Pte Ltd., Intel Capital Corporation and New Horizon Goldensoft Investment Co., Ltd.

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- Jiangu Linyang Solarfun Co. Ltd. in connection with its Series A financing and private placement to Citigroup, HONY Capital and Good Energy
- CDP Group Limited in connection with its Series B financing
- International Data Group in connection with its purchase of Series B shares of Blog.cn
- Hangzhou Easycomm Technology Co., Ltd. in connection with its Series A financing
- Peptalk Limited in connection with its Series A financing
- Yuan Chuan (Cayman) Limited in connection with its Series A financing
- China DRTV, Inc., a television-based retail sales company operating in China, in its issuance of Series A preferred shares and warrants
- Compass Venture Partners, a Cayman Islands investment fund, in its formation and initial portfolio investments in the Chinese media and technology sectors
- Dalton Japan Absolute Return (US Feeder) Fund LP, a Delaware limited partnership, in connection with its formation and preparation of offering documents
- Dalton Greater China (US Feeder) Fund LP, a Delaware limited partnership, in connection with its formation and preparation of offering documents
- The First Eastern Group, in connection with the establishment of FE Select Holdings II, L.P., a China-focused private equity investment fund, The Euro-China Fund, L.P., The Gulf-China Fund, L.P. and The Korea-China Fund, L.P.
- Asia Absolute Return (US Feeder) Fund, L.P., a Delaware limited partnership, in its formation and preparation of offering documents
- The Tantallon (US Feeder) Fund, L.P., a Delaware limited partnership, in its formation and preparation of offering documents

Education

Columbia University School of Law, J.D., 1996

University of Amsterdam, Amsterdam Law Program, Spring 1996

Dartmouth College, B.A., 1991

Tunghai University, University of Massachusetts in Taiwan Program, Fall 1988

Beijing Normal University, Dartmouth Foreign Study Program, Summer 1988

Bar Admission/Qualifications

New York

Languages

Mandarin Chinese

Stephen Ducker

RCS (Risk & Control Solutions) Partner

Stephen is a Partner in PricewaterhouseCoopers' Risk & Controls Solutions practice, specialising in External Audit, Internal Audit, Sarbanes Oxley and Corporate Governance related services. Stephen has over22 years of professional experience and has worked in the UK, the Middle East, Hong Kong and now mainland China where he has been based in Beijing since 2004.

Before joining PwC in 2000, Stephen spent over five years with a leading UK mutual life insurance company as the Head of its internal audit function and was responsible for the provision of a comprehensive internal audit service, including regular meetings with senior management and Audit Committee, advising on risk management, control and corporate governance issues.

Since joining PwC in 2000, Stephen has provided a full range of internal audit and corporate governance services to a variety of clients in both the public and private sector. Stephen leads our Internal Audit service line in China, and has oversight of our Sarbanes-Oxley Act consulting services practice. He also leads a number of RCS teams undertaking the systems/controls work which forms an integral part of the firm's financial, IPO and SOX "Integrated" audits . His recent clients include several major US-listed media and internet companies and many US and other multi-nationals with operations in China.

Stephen is a UK Chartered Accountant (ICAEW), a member of the HKICPA and a Certified Internal Auditor, and has an MA from St Catherine's College, Oxford University.

Jack Friedman
President
Directors Roundtable Institute

Jack Friedman is an executive and attorney active in diverse business and financial matters. He has appeared on ABC, CBS, NBC, CNN and PBS; and authored business articles in the Wall Street Journal, Barron's and the New York Times. He has served as an adjunct faculty member of Finance at Columbia University, NYU, UC (Berkeley) and UCLA. Mr. Friedman received his MBA in Finance and Economics from the Harvard Business School and a J.D. from the UCLA School of Law.