Forefront

FEBRUARY 2014

Out with the old and in with the news.

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O'Keefe

Clarity. Results. Together.

Positive Impacts: From Businesses to our Community

by Pat O'Keefe, Founder and CEO

After finishing our 13th year in business, the end of the year is always a good time to reflect. The firm was once again recognized for successful outcomes in difficult transactions. The agricultural industry continues to provide opportunities for our services. The firm also had successes in a non-traditional industry for our services, not for profits. Steve Weber, Matt Thiede and Brad Coulter were individually recognized for successes in turning around charitable organizations that needed the firm's guidance in uncertain situations. We all have our favorite causes being responsible corporate citizens. It serves no one to see charities struggle and disappear because of the lack of strategies and tough decisions in changing environments. Nothing is more satisfying than using your God-given talents to impact the lives of others in favorable ways. I met the Director of a large charity in Chicago whose organization impacted 750 disadvantaged and physically disabled children and young adults.

There was nothing more satisfying than to hear how our strategic advisory services impacted the lives of so many who relied upon the organization's service. This discussion served as a reminder that we are all here for reasons that are sometimes unclear. The quality of a person sometimes can be measured by the number of lives that person has favorably impacted. I am proud this year of many things and thankful for even more. The result of positively impacting the communities where we live and work is probably the most satisfying of all.

This year's edition of the newsletter has a facelift which we hope you'll enjoy. Any feedback would be appreciated as we continue to strive to be thought leaders to our clients and referral services. Best wishes to all for a happy and healthy New Year.

IT Cost Management and the Cloud

by Linda McConkey, Managing Director

As goals and objectives are set for 2014 and communicated throughout companies, many employees are asking if this will be the year that the new "system" or "latest and greatest" tech devices arrive. Will we finally be able to "catch-up" and "sync-up" with increased reliability, speed, accuracy, and access?

Discussions around IT costs are constant. Oftentimes, new technology hardware and software solutions are perceived as more expensive than what is currently being used. Looks, however, can be deceiving. In many cases, continued warranty, support, and licensing fees may exceed the costs of implementing and deploying new technology that is significantly more efficient and powerful.

The ability of Finance and IT to work cooperatively with users and consumers of technology in a company is vital. All must understand the 'hidden' costs of continuing to rely on 'dated' IT solutions. This may include downtime for maintenance; patches, fixes, and required software updates; lost productivity and inefficiencies; end-user frustration; and a lack of compatibility with newer systems and devices used by clients and vendors.

How do you know when it's the right time to consider upgrading your systems, and when the 'next big thing' really is the 'next big thing'?

Some things to think about:

- Do you have older infrastructure components that are due for replacement?
- Can you reduce planned capital investments and overall ongoing IT costs such as Maintenance and Support Services, Licensing Fees and Hardware Costs?
- Can you reduce/avoid continued modifications to existing applications?
- Do your employees spend significant time and effort on 'routine' activities, such as month-end close, due to system limitations?
- Are your current applications difficult for new users to learn?
- Are you able to obtain the right information about your key business performance metrics at the right time from your current systems?

Many of these challenges can be addressed by upgrading to cloud-based computing solutions or subscription-based IT services that can enable improvement in capabilities and cost management. Advancements in the availability and diversity of SaaS (Software as a Service) and IaaS (Infrastructure as a Service) solution options enable companies to leverage them to realize performance and cost improvements.

As with any major business decision, an honest assessment of the status quo will ensure the correct approach to perhaps a road better traveled.

Bear Market for Corn?

Impact to Food and Beverage Industries

by Dave Distel, Partner and Senior Managing Director

Extreme Volatility in the Agribusiness Markets

Corn had been one of the most price-stable commodities for over 50 years, until the 1970's oil crisis and high inflation. Even so, the price of corn per bushel never reached $5 until 2008, hitting a peak of $7.63 in August 2012. The key price-drivers relate to U.S. exports to China and other developing countries, increased meat consumption, biofuel and ethanol market expansion, and the 2012 drought.

Today, most experts agree that we are in a multi-year bear market as corn prices continue to slide. The key drivers that created the peak in 2012 are now subsiding. The Grain Analyst sees 2013-2014's old crop trading in the $3.75 - $4.50 per bushel range for much of 2014. They also see the new crop trading to as low as $3.50 by the 2014 harvest.* This poses a significant risk to the food and beverage industries.

Food/Beverage Ingredient Producer Impact

Many suppliers to the food and beverage industries rely on farm grown commodities for their product offerings, and many of these commodity-types experience similar pricing volatility as corn. Although corn volatility is more easily mitigated through purchasing future contracts, there are no established markets to hedge other commodity prices like there are for corn, soybeans, and wheat.

Those industry segments that "buy at harvest," as is common with ingredient suppliers, are most susceptible. Since growers tend to agree on pricing with their customers before planting, there can be a long lag time between the grower purchase contract date and when commodities are ultimately sold to the ingredient supplier's end customers. Absent an effective hedge in these highly volatile markets, generally accepted accounting principles will require the industry to mark their inventories from purchase cost to potentially a much lower market amount.

Also, many companies operating in these industries use loans secured by inventory as collateral. The "mark-to-market" accounting, will, in the best case, squeeze seasonal cash liquidity needs, and in the worst case, could result in insufficient collateral valuations resulting in loan default(s).

Strategies to Avoid a Financial Crisis

Analyzing your business from a cash perspective is imperative. This requires forecasting and "stress testing" the projected business collections and disbursements for up to one year prospectively so that liquidity shortages are identified. Proactive companies will hire an experienced consultant well in advance of a crisis to assist them in the planning and analysis, evaluating risks, and communicating their liquidity challenges with their lenders and growers. Companies that wait will undoubtedly surprise their lenders and/or growers, resulting in weaker negotiation leverage and fewer options available to provide liquidity.

Advances above prescribed collateral formula levels are sometimes a possibility with a lender (i.e., over-advances), but not without a clear and reliable operational and financial plan demonstrating the ability to re-pay the over-advance within a relatively short time period. Lenders will need to understand how and when the business' liquidity needs will stabilize including addressing the impact from the growers' lien rights (i.e., PACA or similar statutory claims that rank ahead of the lenders in order of priority).

There is also an opportunity, if addressed early, to defer payments to growers in order to improve short-term liquidity. However, many growers are cash strapped and may even rely on their own lenders for liquidity. Therefore, providing adequate lead times to address challenges is important.

Once short-term liquidity needs are met, it is imperative that appropriate hedging strategies are formulated and implemented so that recurring pricing risks are mitigated in the future. In the absence of established, cost effective hedging markets, areas to consider include completion of customer contracts at the same time the grower contracts are placed. This way, the profit margin between purchase cost and sales price are secured. Another form of risk mitigation is joining, or when unavailable, forming industry cooperatives to pool and spread supply and pricing risk. Another model recommended by O'Keefe with other client companies are pricing models that involve "risk sharing" between suppliers on one side, and customers on the other. While this doesn't completely eliminate risk, it is a means for mitigating market price volatility.

NONPROFIT LEGACIES AT RISK:

More challenges for our communities

by Matt Thiede, Managing Director

Nonprofit organizations are critical to communities across the nation, providing resources to enrich the lives of many who would otherwise be underserved. Over the past four years, nonprofits have fought hard to maintain their private donations as Americans' discretionary income declined due to involuntary wage reductions and/or lay-offs. Now many of these organizations are at a cross roads with bank(s) that helped them finance large expansion projects pre-recession.

As these complex debt structures mature, banks are wanting to exit the relationship, leaving nonprofits to find a new bank to continue the legacy. Many reasons exist for the existing lender to exit the relationship. Two highly probable reasons are a threat to the organization's cash flow as public funding sources are financially distressed (i.e., State of Illinois and the City of Detroit), and the value of the collateral being less than the debt. Regardless of why the Bank wants to exit, re-financing complex debt structures is not easy for nonprofits in today's credit market.

Many nonprofits financed their expansion projects through publicly held variable rate, tax-free bonds issued by a state/local finance authority. These bonds require a credit enhancement in the form of a letter of credit or an insurance bond that serves as collateral for the bondholders in case of a default, usually issued by a bank or an insurance company. Organizational assets (often real estate or endowments) are typically used as collateral for banks or insurance companies to support the credit enhancement. They also often require a guarantor, whether the organization or a foundation, if one exists. Additionally, many organizations wanted interest rate protection when they took on these variable rate bonds, signing fixed rate swap agreements that matured with the bond redemption period (up to 30 years). With interest rates currently at historical lows, the swap is likely upside down and the organization will need to realize the obligation by funding the swap at close through a new note.

On the surface, it would seem that nonprofits should be able to easily refinance, especially with a history of servicing its current debt structure. Although banks are aggressively pursuing new loans because they are flush with cash, this is far from the truth, and many organizations are finding it to be time consuming, expensive and difficult exploring their options to refinance. The costs to refinance may be as expensive as the origination fees of the original bond and credit structure, in addition to the process being a full-time job for the executive team. Many of these bonds have complex redemption terms (if permitted), and hefty pre-payment penalties, which impact their ability to redeem if necessary.

> "Interest rates are trending up making it harder for cash flow challenged organizations to service these debt obligations in the future."

Very few banks have strong enough balance sheets to be able to issue large letters of credit, and if they are able to issue the letter of credit, it still may not be acceptable to the trustee for the bondholders. Interest rates are trending up making it harder for cash flow challenged organizations to service these debt obligations in the future. Very few lenders are willing to assume long term swap obligations, and even fewer issuers are interested in transferring these obligations unless they are cash collateralized. This forces organizations to cash out the obligation versus riding out the market over the life of the swap.

Lastly, many lenders that have an interest in lending to nonprofits often lack the sophistication to finance these complex debt structures, and/or don't have the lending capacity to handle the debt. Re-financing these complex credit facilities can be an uphill battle, and it all starts with free cash flow to service the new debt structure, and takes some creative maneuvering to navigate through options to find the right partner to continue the legacy.

Greenhouses not Growing?

by Matt Thiede, Managing Director

The greenhouse and nursery industry is one of the few industries in the U.S. marketplace still facing uncertainty while many other industries have stabilized and shown year over year growth from 2011 through 2013. The greenhouse and nursery industry has been hit hard over the last five years and probably has another three or more years to go until the industry turns the corner. Greenhouses and nurseries have faced continued turmoil, changes and contractions starting with big box customers transitioning growers from producers to supply chain and merchandising experts with the implementation of scan based trading ("SBT" which is a consignment inventory program). Pile on the impact of the recession, rapidly changing consumer preferences, minimal genetic improvements, bad weather, declining real estate values, and tight credit markets and the industry has found itself at a cross roads looking to catapult itself out of the hole it is in.

Growers and suppliers are finding that it is not easy to reinvent their businesses in the current market because they don't have the right resources needed to analyze their business and market to change directions and develop viable strategies that fulfill their economic objectives. O'Keefe has helped clients within the industry assess their market positions, the profitability of their products and services, market trends, and customer trends. We have worked collaboratively with our clients to implement best practices from hundreds of industries, develop long term sustainable growth strategies, divest unprofitable product and service offerings, develop customer pricing strategies to better position clients in their market as well as strategies to accommodate traditional and on-line channels, while managing risks associated with these growth strategies. Our clients are not waiting for the industry to stabilize, instead, they are leading the stabilization as market leaders.

Middle Market Forum

Our inaugural 2013 Middle Market survey was a huge success. The results were unveiled at our breakfast forum last March at the San Marino Club in Troy. The breakfast forum was attended by over 200 business professionals consisting of business owners, audit and tax professionals, bankers, attorneys, private equity professionals and other influential business leaders. Michael Ritchie, Regional President of Comerica Bank and Ric DeVore, Regional President of PNC Bank joined Pat O'Keefe and Mike Boudreau on a panel to discuss the survey results as well as to field questions from the audience. In addition to Mr. Ritchie and Mr. DeVore, our panel also included Keith Pretty, Northwood University President and Dr. Timothy Nash from Northwood. Dr. Nash presented Northwood University's study titled "2012 Michigan Economic Competitiveness Study." The study, which was originally prepared for the Michigan Chamber of Commerce, was very interesting and generated great debate and probing questions from the audience.

In addition to discussing compelling market data, the event served as a highly successful networking event. The forum received tremendous reviews from our guests and as a result, we rolled the program out to our Grand Rapids market as well. Dave Distel, Partner and Senior Managing Director acted as Master of Ceremonies and joined Mike Boudreau and our Northwood friends on the panel. In addition, the panel was enhanced by John Porterfield, Regional President, Grand Rapids & Department Manager, West Michigan Middle Market-Comerica Bank and Sean Welsh, Regional President, Western Michigan Market-PNC Bank. Our second annual Middle Market survey was just released and results are beginning to pour in. We look forward to finalizing our 2014 survey results and seeing everyone at the next breakfast forum on March 19.

GAO Patent Infringement

by Andrew Malec, Ph.D., Managing Director

Section 34 of the Leahy-Smith America Invents Act ("AIA") mandated that the United States Government Accountability Office ("GAO") conduct a study on the consequences of patent litigation by nonpracticing entities ("NPEs"). As such, the GAO's objectives were to determine (1) what is known about the volume and characteristics of recent patent litigation by NPEs; (2) what is known about the key factors that contribute to recent patent litigation trends; (3) what developments in the judicial system may affect patent litigation; and (4) what actions, if any, has the United States Patent and Trademark Office ("PTO") recently taken that may affect patent litigation in the future.

As such, the GAO published a recent study that conducted an analysis of 500 patent infringement lawsuits in federal courts from 2007 to 2011. The GAO found that the number of lawsuits increased by about a third from 2010 to 2011, most likely influenced by the anticipation of changes in the AIA which made several significant changes to the U.S. patent system.

The data also shows that companies that make products brought most of the lawsuits; NPEs brought about a fifth of all lawsuits; and that lawsuits involving software-related patents accounted for 89 percent of the increase in defendants over this period.

Stakeholders interviewed by the GAO who are knowledgeable in patent litigation identified three factors that likely contributed to recent patent infringement lawsuits. First, many lawsuits are related to the prevalence of patents with unclear property rights. Second, the potential for large monetary awards from the courts can be an incentive to file a lawsuit. Third, the recognition by companies that patents are a more valuable asset than once assumed also may have contributed to recent lawsuits.

The judicial system is implementing new initiatives to improve the handling of patent cases in the federal courts and the PTO has taken several recent actions that are likely to affect patent quality and litigation in the future.

As a result of the study, the GAO recommends that the PTO consider examining trends in patent infringement litigation and consider linking this information to patent examination data to improve patent quality and examination.

Industry Expertise in Business Valuations

by Sue Koss, Managing Director

A question that I am often asked by business owners needing a business valuation is: "Do I need a valuation expert with experience in valuing businesses in my specific industry?" In most cases the answer is no. Business valuation experts know how to value most types of businesses, as much of the valuation methodology is the same whether valuing a manufacturing company or a professional services firm. It can also be quite purposeful to go with an individual who brings a background and perspective of working with a wide range of industries. Regardless, the right valuation expert will typically employ three different methods when valuing a company, which include the asset, income and market approaches.

The asset approach analyzes the assets and liabilities of a business to determine value. The income approach derives value from the earnings related to a business. Finally, the market approach utilizes available sales of comparable companies to establish the value of a business. Generally speaking, these three methods are applied in a similar fashion to most companies by the business valuator. A person accredited in business valuation will understand how to apply these methods as he/she has acquired the appropriate knowledge and training to do so.

When choosing an expert for business valuations, it is not just about who specializes in what nor who looks best on paper. Do the due diligence and do the process (and your company) justice.

Handling Troubled Real Estate

The Real Estate Group at O'Keefe has grown into an unparalleled resource for attorneys, bankers and developers. We have assembled a team to cost effectively address all aspects of real estate including managing, maintaining, refinancing, repurposing, selling, valuations, receiverships, and if necessary, completing partially constructed commercial and residential properties. We help stakeholders protect their interest in the property and improve value.

Real estate values plummeted at an unprecedented rate in 2008 and the carnage continued through 2011. The Real Estate Group at O'Keefe is a leader in handling troubled real estate transactions and has completed over 60 receiverships since 2007. Our team provides a comprehensive approach designed to ensure all elements of a troubled commercial or residential project receive the finest financial and management support. O'Keefe has the experience and the track record to complete tough projects in a timely and cost effective manner.

Our team of professionals has over 30 years of hands-on experience and the knowledge necessary to secure, protect and preserve the remaining value of the real estate.

We can work with you and your organization when you are considering how best to:

- Protect the integrity of the collateral
- Interface with disgruntled customers and/or tenants
- Negotiate and settle disputes and construction liens
- Finish construction in order to improve recovery amounts

Armed with expertise and extensive experience, the Real Estate Group at O'Keefe stands ready to provide creative, cost effective solutions to your real estate problem.

O'Keefe Wins Restructuring Deal of the Year

O'Keefe was the financial advisor for the Restructuring Deal of the Year (up to $100 million) for the restructure of Stamp Farms on December 17th at the exclusive Gala Ceremony event held at The New York Athletic Club. The M&A Advisor announced the winners of the 12th Annual M&A Advisor Awards for deal-making excellence, recognizing leading transactions. Stamp Farms was one of the largest corn and soy bean farming operations in North America. This is the third award O'Keefe has received in the agricultural industry for strategic and financial advisory services.

This invitation only Summit featured a Faculty of over 75 industry stalwarts and 600 delegates which included the world's top dealmakers and other key market experts – academic, media and political leaders in an unparalleled forum for peer-to-peer exchange of best practices. Since 1998, The M&A Advisor has been recognizing the achievements of the world's leading mergers and acquisitions, financing, and turnaround professionals.

Patrick O'Keefe, CEO of O'Keefe, named as Top Irish American Businessman

Patrick O'Keefe was recognized with William Ford, Jr. of Ford Motor Company, Alan Mulally, CEO of Ford Motor Company, Donald Colleran, Executive Vice President of FedEx, and several other notable executives on December 5th at the Metropolitan Club of New York as one of the top Irish businessmen by Irish America. Irish America recognizes Irish American financial leaders for their extraordinary accomplishments in corporate America.

"A good leader is calm in the face of adversity. Tough, but understanding and fair. Follows through. A good listener. I never learned anything I didn't already know by opening my mouth." – Pat O'Keefe as quoted in Irish America magazine

O'Keefe Announced as Winner at the 7th Annual M&A Advisor Turnaround Awards

The M&A Advisor announced the winners of the 7th Annual Turnaround Awards on Wednesday, March 6 at the 2013 M&A Advisor Awards Gala to a sold-out crowd at The Colony Hotel, Palm Beach, FL. O'Keefe was named a winner for the 2013 Accounting/Due Diligence Firm of the Year.

"Since 2002, we have been honoring the leading turnaround transactions, companies and dealmakers. O'Keefe was chosen from over 120 nominations and over 300 participating companies to receive the award. It gives us great pleasure to recognize O'Keefe and bestow upon our highest honor for distressed investing and reorganization firms and professionals," said David Fergusson, Senior Managing Director, The M&A Advisor.

"The firm continues to be recognized for successful outcomes in preserving stakeholder equity and preserving jobs in tough transactions. I am proud of the O'Keefe professionals who deliver these outstanding results," said Pat O'Keefe, CEO of O'Keefe.

"O'Keefe represents the best of the turnaround industry and earned these honors by standing out in a group of very impressive finalists," said Roger Aguinaldo, CEO and Founder of The M&A Advisor.

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Implementation of Changes in Accounting Rules May Impact Compliance with Loan Covenants

by Pat O'Keefe, Founder and CEO

Clients with debt covenants in their loan documents should be aware that new proposed accounting guidelines for leases will require companies to put on their balance sheet all "right to use assets" with remaining lease terms greater than 12 months. The change would result in increased liabilities on many companies' balance sheets that could trigger defaults related to debt-to-equity and debt service coverage ratios.

The proposed accounting guidelines will effectively require operating leases to be put on the balance sheet as an asset with a corresponding liability. At its surface, this change appears to simply increase the assets and liabilities by an equal and offsetting amount on the balance sheet in a way that would not affect the company. However, the addition to liabilities for operating lease obligations that have historically been disclosed in footnotes will increase liabilities that could impact debt-to-equity and debt service coverage ratios depending on how they are defined in the loan documents. This unintended result of the proposed change could have a key impact for many companies and their bankers.

Bankers should be aware that the proposed changes could immediately cause their customers to have non-monetary defaults in their loan covenants for debt-to-equity ratios and, depending on the definition, debt service coverage ratios. Operating leases typically disclosed in footnotes will now be re-characterized as debt. Consequently, real estate and other personal property normally not recognized on the balance sheet will need to be included if the lease term has more than 12 months remaining. Bankers and customers should be assessing the impact of the compliance with these new accounting standards to measure whether they will be in non-compliance of their loan agreements. An amendment to the loan documents before there is a default or renegotiated covenants upon renewal may be in order before the credit comes under undue scrutiny from the regulators.

Another interesting offshoot is that tenants will be disincentivized in entering into long-term lease agreements. An unintended consequence of this change in accounting for the lessee is that it will likely become more difficult to finance long-term assets with long-term financing since tenants will not commit to longer term leases for fear they may violate their own debt-to-equity or debt service coverage ratios.

Marginally performing borrowers should be concerned that the banks may use these defaults to move credits prior to maturity, especially if they are viewed to be substandard for a variety of reasons (i.e. an industry group falling out of favor, weak collateral coverage, or marginal debt service coverage). Consider utilizing an experienced professional to assist in making the calculations with the loan documents to set a strategy for dealing with this potential risk.

An ounce of prevention is worth a pound of cure and to be forewarned is to be forearmed. We believe it is imperative for management to assess this now and develop strategies for dealing with the consequences of compliance to ensure they don't get trapped by a loan covenant that impairs their ability to cost effectively access capital to run their business.