THE PIPEs REPORT
NEWS, INFORMATION, AND ANALYSIS OF PRIVATE INVESTMENTS IN PUBLIC EQUITY
Volume VI, No. 3 February 19, 2008

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TRIPPING OVER ALTERNATIVE ENERGY STEPPING STONES

PIPE Issuer Promotes Ethanol Production Methods It Didn't Have

Part One of a Two-Part Series

by Max Frumes

The overzealous cash infusion into a risky and speculative market with the promise of outsized returns has led to numerous implosions, bankruptcies and losses – and it's not the mortgage market.

A ring of interconnected alternative fuel companies issuing exuberant press releases about ground-breaking fuel technology has attracted tens of millions of dollars from PIPE investors – and has no revenue to show for it. As is wont to happen when money is lost, litigation, including a class-action law suit, abounds against one such company, **Xethanol Corp.**, for allegedly making false promises about its innovations in the business of producing a non-corn based cellulosic ethanol. The cast of would-be alt-fuel pioneers that populate the boards and executive chairs of Xethanol and related companies re-emerge time and again in an interlacing network of failed companies, regulatory actions and scientifically questionable propositions.

Alternative energy accounted for 6.5% of all energy production in the U.S. in 2005, according to the Energy Information Administration. Included in that number is a widely varied and enticing fuel category that includes everything from French fry fat to woodchips, known as biomass, which accounts for half of the alt-energy output.

Experts interviewed by *TPR* said that these methods present meager opportunities for profit bolstered by government subsidies and tax benefits, and are not ultimately sustainable – though perhaps are a good stepping stone away from using fossil fuels.

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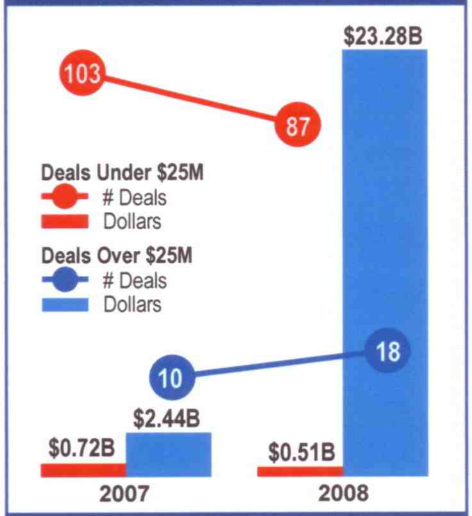
JANUARY DEALS & DOLLARS 2007 VS. 2008



Source: PrivateRaise

TREND Watch

DON'T MIND THE GAAP

Foreign Issuance Entices U.S. Funds

Last April David Batista was bringing the world together. Waking up at four in the morning to talk with investors in Germany and Switzerland, then getting **Pfizer**, **Centrecourt Asset Management**, **Heights Capital Management**, **Nite Capital** and other U.S. investors on the phone during the day, he had to then report back in the evening to the recipient of the capital, **pSivida Limited**, a pharmaceutical company out of Perth, Australia.

Batista is the managing director at **HPC Capital**, a U.S. placement agent that has carved a niche for itself hooking up American capital to Australian companies. He is part of the PIPE contingent advocating that foreign public equity markets – beyond those of booming China – continue to present more opportunities for PIPEs.

The Securities and Exchange Commission, at the urgings of market

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participants interested in keeping U.S. capital focused in the U.S., has made small efforts to suture the gaping wound that is the U.S. public equity market, which may stem some of the blood flow. But stop it entirely? It won't and doesn't necessarily want to.

Meanwhile, PIPE structures have taken on the characteristics of a fast growing, non-indigenous plant, remaining abundant in its homeland while quickly proliferating in foreign environments.

Take the Australian Stock Exchange. There have been 639 PIPEs announced this year so far on the ASX, compared to 628 all of last year, according to Capital IQ, which tracks PIPEs as any shares issued by a publicly traded company to a private entity for the purpose of raising capital. That's compared to just 181 total on the ASX in the previous five years.

HPC Capital began its international initiative in February, when it was invited by the ASX to go on a three-city tour in Australia. Along with longtime PIPE investment partners **Cantara** and **The Palisades Fund**, HPC pitched ASX companies on the fact that there's a huge amount of capital in the U.S. interested in making direct investments in Australia.

The benefits were highlighted in the pSivida transaction. HPC had a choice between issuing ordinary shares of common stock on the ASX, or ADRs, American Depository Receipts, which represent ownership in the shares of a foreign company. So HPC did two back-to-back transactions and found the ordinary shares to be preferred over the ADRs. This could be because of how easy it is to register those shares. In Australia, shares issued in a private placement transaction are restricted for a year unless the company files a prospectus, which can be difficult, or – and this is the most common and most appealing method – if the company has been public for a year it can issue a "cleansing notice" lodged with the ASX, and the next day the shares are free trading.

> *If lack of trust is an obstacle to be overcome by the U.S. investors looking to invest in China, the abundance of trust and prevailing informality of the Aussies seems to be a none-too-difficult, and at times entertaining, cultural barrier.*

Rule 144 Impact

Tablis said the recent shortening of the Rule 144 holding period will affect U.S. investors' appetite for foreign PIPE issuance.

"One of the reasons that U.S. institutional investors are attracted to foreign PIPEs," said Tablis, "is that under foreign laws and in compliance with the U.S. Regulation S, they could often resell foreign PIPE issuers' securities on their local non-U.S. exchanges within shorter periods than they would be able to if they had invested in comparable U.S. companies. Now with the shortening of the holding periods in the U.S., U.S. PIPEs become more attractive for U.S. investors. Consequently, the importance of one of the reasons for doing foreign PIPEs is diminished," said Tablis. He notes, however, that the effective absence of a holding period under the local law in the case of most of his Australian issuer clients still beats even the reduced Rule 144 holding period.

Also the other reasons for foreign PIPEs remain:

"There's an economical development with the sliding U.S. dollar. I think an investment in a foreign public company is perhaps used by some institutional investors in the U.S. as a natural currency hedge," said Tablis. What's more, at least in the case of his Australian issuer clients, in 99% of the cases, according to Tablis, companies don't have to disclose the identities of investors under their local law — and U.S. investors love that because they have the privacy they want, he says.

If lack of trust is an obstacle to be overcome by the U.S. investors looking to invest in China, the abundance of trust and prevailing informality of the Aussies seems to be a none-too-difficult, and at times entertaining, cultural barrier. Tablis related an anecdote that demonstrates an extreme case of this "no-worries" philosophy.

"Generally, even though Australia is a very sophisticated economy with a very similar legal system to the U.S., it's not nearly as litigious. So what happens when Australian clients come across the level of due diligence that U.S. investors do, and the level of detail involved in the documentation, they're quite often taken aback," said Tablis. "I was involved in a transaction where the client thought that the U.S. investment fund would just write a check."

Crossing the Language Barrier

Australia represents fewer complications than looking to other foreign markets, as it stems from the same system of law as did the U.S., and of course, people speak English, albeit with an accent. **Yorkville Advisors** has been a PIPE vanguard in learning the regulations of multiple countries to get into undersold foreign PIPE deals, which has required a high level of commitment to getting multi-lingual employees, office locations and joint ventures, due diligence and cultural education.

Founder and president of Yorkville Mark Angelo saw so many quality foreign companies not listing in the U.S. that just over four years ago he shifted the whole strategy of his fund towards the global market.

"Many people feel that the U.S. is one of the hardest countries to do business in," said Angelo. Many quality companies, he says, thus become inaccessible to those who invest solely in U.S.-listed companies.

"I see a lot of high quality names that won't even consider listing in the U.S. that we're clearly losing out on," Angelo said.

In addition to Yorkville's three U.S. locations, it has offices in London and joint venture offices in Milan, Italy and Tel Aviv, Israel, and has tentative new ventures in Greece and Japan. The varying countries that Yorkville has invested in include Australia, Brazil, Canada, Germany, India, Italy, Singapore and the U.K. Angelo said that Yorkville has invested $250 million outside the U.S. in the last six months.

"It's a real commitment. It takes a lot of time to find the right partners and then build the proper relationships," said Angelo, adding a cautionary note that "you can spend a lot of time and not get anywhere."

A lot of the small- to mid-cap companies are receptive to PIPE-style investments, something Angelo pitches as spoke financing, as it offers the ability for both the issuer and investor to negotiate terms. Yet when Yorkville invests outside the U.S., it tends to be in larger issuers, several hundred million-, sometimes billion-dollar companies, according to Angelo. Yorkville had invested almost 30% of its capital internationally at the end of 2007. —*MF*