Equity markets: Aim higher than a quick exit

By Martin Kenney

Rei Estrada/Daily Journal

For the last three decades, there has been an ever louder crescendo of pundits, politicians and editorialists arguing that markets must be liberalized to allow quicker and more profitable public exits from private investments in firms. A large capital gain and liquidation of both the private investors (in the 1930s, they were termed "promoters") and entrepreneurs at a sale to the public is touted as the societal goal for which our equity markets system was created. I argue that this is a fundamental misunderstanding of why stock markets were created and then regulated by society and, as I have argued in earlier editorials, such a single-minded pursuit of exits as the goal will lead to the destruction of markets, rather than increasing their ability to encourage entrepreneurship and the social good.

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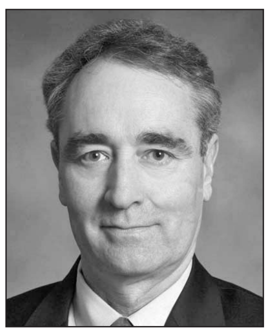
The social justification for stock markets is to more efficiently aggregate capital from disparate individuals so that firms can tap this money to invest and grow. In return, investors receive some control rights and the possibility of earning a return, in the form of either dividends and/or capital gains upon selling their share, as the firm productively invests this capital. The societal goal is to provide the firm with more growth capital, but as company-issued stock is sold the previous owners will suffer dilution, as their ownership share is decreased. Of course, if the price the new owners are willing to pay is greater than what the promoters paid, they experience a capital gain in the value of their remaining stock. This is the reward for their investment. Whether selling the firm to an acquiring firm or in a public stock offering the goal for initial investors is the same.

None of the previous discussion about exits says anything about the quality of the firm. The exit of a fraudulent Ponzi firm is just as much an exit as that of a Google or Microsoft. For the most part, private exits such as acquisitions are left to contract laws, with the exception of issues such as fraud that can be prosecuted under criminal law. For public markets, most people believe that Depression-era regulations mandating truthful filings, lock-ups on insiders, restraints on touting stocks prior to the offering, etc. were to protect investors, which is part of the truth, but more importantly the regulations were to protect the markets themselves by creating trust.

The key to having successful public equity markets is listing good firms. If an individual equity listing fails, then it is a loss for unlucky investors. However, if too many firms newly listed firms result in investors losing their money, then it would be natural for them to stop investing, leading to the collapse of the market. Is this possible? During the dotcom boom of the late 1990s, around the world growth-capital markets such as the German Neuer Markt, French Nouveau Marche, Italian Nuovo Mercato, and Brussels-based NASDAQ Europe were formed, but nearly all of them have disappeared. The reason is quite simple: the firms listed on these exchanges collapsed in such large numbers that investors abandoned the entire market concluding that the market itself was fraudulent. In retrospect, given that the goal of these exchanges was not really to raise money for deserving young firms, but rather to provide "exits" for the "entrepreneurs" and promoters, these markets filled with various corrupt get-rich quick schemes and the investors got their just deserts.

When you hear someone advocating market changes so that there can be more and easier "exits," you should question whether they are interested in the social benefit and the long-term good for markets or have other motives. Our goal should be to ensure the most effective public markets for raising capital for growing young firms. Public markets are extremely effective for this. If the goal in public markets is merely to get as many "exits" as possible as quickly as possible, then confidence in public markets themselves will be destroyed and it will be correspondingly more difficult for deserving firms to raise capital. All participants in debates about easing stock listing requirements should always keep in mind the societal good.



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Firm merger nears to create IP 'superboutique'

By Alexandra Schwappach
Daily Journal Staff Writer

Intellectual property law firms Novak Druce & Quigg LLP and Connolly Bove Lodge & Hutz LLP are nearing final discussions in a plan to merge by early next year, the two firms announced Wednesday.

The merger, which would create the seventh largest intellectual property boutique firm in the nation, is expected to occur Jan. 1, pending final discussions, closing conditions and partnership voting. The merged firm would be known as Novak Druce Connolly Bove & Quigg LLP and would be comprised of 140 attorneys, agents and technical advisers.

Headquarters would be in Houston with offices in San Francisco, Cupertino, Los Angeles, Washington, D.C., Wilmington, Del., and West Palm Beach, Fla.

Houston-based Novak Druce has had a San Francisco office since 2007 and opened its Cupertino office last year. Wilmington, Del.-based Connolly Bove has been listed as one of the country's largest IP firms. Both firms share a strong technical background and U.S. Patent and Trademark Office experience helping clients who develop emerging technologies.

"With our anticipated combination with Connolly Bove we are well on the road of emerging as an IP superboutique with an unparalleled national platform and presence," Gregory V. Novak, current managing partner of Novak Druce, said in a statement. Novak would retain his current role at the merged firm.

Novak helped launch Novak Druce & Quigg in early 2005 after leaving Howrey LLP, the Washington, D.C.-based law firm that voted to dissolve last year after severe financial struggles.

"I'm personally very excited about having an L.A. office," he said by phone. "It would not surprise me if in the next year or so that we grow more in our IP practice — in entertainment, copyright and the like. L.A. is just perfect for that."

Jeffrey B. Bove, managing partner at Connolly Bove, said he did not wish to discuss specifics of the merger but said the firms plan to expand significantly in California and especially in Los Angeles. In a statement, Bove said his firm "could not be more excited" about the possibility of a merger and that "the combination fits perfectly with our long-term strategic goals."

Bove would remain at the merged firm as senior partner with Novak Druce's Donald J. Quigg, who served as the under secretary of commerce and U.S. commissioner for patents and trademarks under President Ronald Reagan.

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BRIEFLY

A bill to curb alleged abuses of the Americans with Disabilities Act was signed by Gov. Jerry Brown on Wednesday. SB 1186, authored by Sen. President Pro Tem Darrell Steinberg, prevents attorneys from sending letters to businesses or property owners eliciting a cash settlement for alleged violations of the disabilities law. The law also requires attorneys who send allegations of ADA violations to businesses and property owners to also submit copies of those letters with the state bar and state disability access commission. Additionally, it prevents multiple claims from being filed for the same violation and allows reduced penalties for business owners who correct some violations within 30 days to 60 days.The bill was proposed earlier this year after U.S. Sen. Dianne Feinstein sent a letter to Steinberg urging state law be changed to better protect businesses.

Computer and printer maker Hewlett-Packard said Wednesday that it has resolved an ink cartridge patent infringement lawsuit with Brazil's Rio Branco Ltda., a distributor of Maxprint ink cartridges. HP had filed a suit in Brazil in April 2011, alleging that HP-compatible inkjet print cartridges were being imported and sold in Brazil that infringed on HP patents. It described the settlement with Rio Branca as amicable. The settlement includes the Maxprint brand's acknowledgement that HP's patents relating to its integrated printhead inkjet cartridges are valid and enforceable, HP said. HP said Maxprint has also agreed to stop selling the ink cartridges in question in Brazil and in other countries that offer Maxprint cartridges. Maxprint, in agreement with HP, has until Dec. 1 to sell any remaining inventory, HP said. Once that date passes, HP said Maxprint may no longer sell the cartridges that infringe on the patent. Maxprint must also reimburse some of HP's litigation costs, but the exact amount was not specified, HP said. HP also said Wednesday that it has reached deals with several other companies regarding print cartridge sales in Brazil.

"Indifference" leads to disbarment ruling

Lawyer didn't report paralegal whom clients accused of mishandling funds

By Don J. DeBenedictis
Daily Journal Staff Writer

A Los Angeles criminal defense lawyer should be disbarred for his "unacceptable indifference" to how a paralegal operated a Van Nuys branch office in the lawyer's name, the State Bar Court has ruled.

Rene William Sanz, 44, admitted that his paralegal, Nancy De Duling, accepted more than $38,000 from a couple seeking a mortgage modification without ever putting the money in a client trust account or sending it to the couple's lender.

The couple eventually lost their home and now live in a trailer inherited from a parent, according to the court's opinion. *In re: Sanz*, 11-O-14208 (State Bar Ct., filed Sept. 12, 2012)

Neither Sanz nor his bar defense attorney, Michael E. Wine, could be reached Wednesday.

In an Internet advertisement, Sanz says he specializes in drunken driving defense and his grandfather was the late Los Angeles County Superior Court Judge Manuel Q. Sanz. He allowed De Duling to open the branch office and take on loan modification work in hopes of attracting criminal clients, the opinion says.

Sanz provided "little or no supervision or involvement" in the branch office's operation. His lack of attention to the couple's mortgage matter was "particularly unjustified" because he knew it was being handled by a non-attorney, according to the court.

When the couple tried to discuss their complaints with him, "he chose not to respond to their inquiries, conduct any independent audit of the situation, or even to return their calls," Judge Donald F. Miles wrote in his 24-page opinion.

Although Sanz acknowledged that he knew De Duling had mishandled and perhaps stolen some client funds, "he never reported her to the police nor filed any civil action against her," Miles wrote. "Instead, he has allowed her to continue to operate under the auspice of his office...even after the disciplinary charges in this matter were filed."

> 'Respondent's claim of ignorance is not 'bliss' in this case.'
>
> *— Judge Donald F. Miles*

At one point, the couple sent a series of certified letters to Sanz's Los Angeles office complaining that they would lose their home. Sanz apparently "flipped his lid," according to the opinion, but he never contacted them or returned any fees.

In a second client matter, De Duling accepted more than $3,000 from a man seeking to recover his repossessed Nissan automobile. De Duling apparently never sent any money to Nissan, but she did provide the man with a copy of a lawsuit she supposedly filed against the company in his name. The court stamp on the document was forged, according to the opinion.

De Duling was called as a witness in the bar court trial but didn't appear, according to bar spokeswoman Laura Ernde.

Miles ruled that Sanz's indifference to De Duling's handling of client funds amounted to moral turpitude, justifying disbarment.

"Respondent's claim of ignorance is not 'bliss' in this case," Miles held, "it is intolerable." The court put Sanz on inactive status and forwarded the disbarment recommendation to the state Supreme Court.

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