

Reprinted from:

IPO JOURNAL

TRENDS AND TECHNIQUES FOR THE IPO PROFESSIONAL

Designed and published monthly by Bowne & Co., the world's largest financial printer, and written by the staff of Corporate Finance Institute, Inc. IPO Journal is a joint venture of Bowne Publishing Division and Corporate Finance Institute (Melissa M. Pierkowski, Executive Editor; Graeme K. Howard, Jr., Editor; David C. Glover, Research Editor; James G. Keffer, Research Associate; Carlton J. Hughes, Research Associate; Kristin L. Beane, Research Associate).

Send subscription requests and address changes to Director of Publications, Bowne, 345 Hudson Street, New York, NY 10014; Tel: (212) 229-7233; Fax: (212) 229-3421; Email: pubs@bowne.com. Send editorial questions or comments to Nancy J.F. Short, Editor, Bowne Publishing Division; Tel: (212) 229-7337; Fax: (212) 229-3421; Email: nancy.short@bowne.com or to Graeme K. Howard, Jr., Editor, IPO Journal; Tel: (410) 810-3731; Fax: (410) 810-3734; Email: ghoward@ipojournal.com.

The Bowne catalog is available by calling (800) 370-8402 or on the Internet at <http://www.bowne.com>. The IPO Journal may not be reproduced, transmitted or stored in whole or in part in any form without the written consent of Bowne and of the Corporate Finance Institute. ©2002 Corporate Finance Institute. Design and layout ©2002 Bowne. All information is from sources believed to be reliable; however, accuracy cannot be guaranteed. No data or statement herein should be construed to be a recommendation for the purchase, retention or sale of any security and no information or opinion in this publication constitutes a solicitation or recommendation for the purchase or sale of any security. This publication is distributed with the understanding that neither the publisher nor Corporate Finance Institute is engaged in rendering legal, accounting or investment services. Information contained herein has been provided solely by the staff of Corporate Finance Institute from sources believed to be reliable. No information contained herein has been independently verified by Bowne & Co.

Vol.5, No.1 - January 2002; Pages 12, 13 and 14



Vol.5, No.1 January 2002

IPO JOURNAL

TRENDS AND TECHNIQUES FOR THE IPO PROFESSIONAL

inside

IPO ARTICLES

IPO Market Overview

IPO Transactions by Year

The IPO Market Outlook

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

2001 Year in Review

IPO Industry Revenues Reflect Tough Market for Going Public in 2001

Executive Compensation *Self it what's what*... the numbers for the IPO industry for 2001 showed a continuation for IPO professionals from Montgomery Securities-Wal-Street.

IPO industry revenues, which include discounts, fees and other IPO services (page 12) rose 6% to \$2.1 billion, down 45% from the 2000 record of \$3.9 billion. IPO revenues generated in 2001 by investment banks, law firms, accounting firms and other IPO service providers. But the longer range shows that 2001 was a bad year for companies, not IPO providers, because the IPO industry revenues in 2001 were 10% of 2000's.

Year	IPO Industry Revenues	Number of IPOs	Aggregate IPO Offerings (Amount)
2001	\$2.1 billion	201	\$81 billion
2000	\$3.9 billion	161	\$86 billion
1999	\$2.7 billion	148	\$76 billion
1998	\$2.2 billion	118	\$62 billion

It means, for those in the IPO industry who worked in the IPO market for bonuses and/or some other form of pay, the focus was on the short term, and there was pain by the time September came, with 4/5 analysts warning continuing to show the IPO market for the month. Since that offering, the IPO industry has been a market recovery, including market returns from beginning a solid positive view of the IPO market in 2002.

CSFB, Goldman Lead Investment Bankers Viscio, Hunter, Simpson Top Issuer's Counsel Growth, Davis Excel as Underwriters' Counsel PwC Sweeps Auditor's Race

Who the program were able to make it into the IPO market's cycle for the 2001 or 2002 market.

Credit Suisse First Boston, which had served all three categories in December market rankings, took the blue ribbon for highest number of IPOs lead managed in 2001 (17 IPOs) and the largest aggregate IPO offering amount (\$4.1 billion), but was overtaken for **Salomon Smith Barney** in the all important 2001 fee base for highest aggregate IPO revenues, as Goldman earned \$100 million on the basis of all deals to year-end management. (See page 12 for the full ranking of the 22 investment banks that led managed IPOs in 2001.)

Rose & Dick represented the most IPO issues in 2001 with seven IPOs (more than **Wells Fargo Securities** and **Bank of America**) and the number of largest aggregate IPO offering amount (\$1.1 billion from two IPOs), with **Salomon & Smith Barney** taking second place with \$1.4 billion from three IPOs. **Simpson Thacker & Stewart** headed the list for the all important IPO issue's fee base with a company with a company \$2.2 million, and ahead of **Dunham & Sterling**'s 2001 IPO savings of \$1 million. (See page 13-14 for the complete issuer's fee base tables for 2001.)

Ernst, Yarnall & Moore represented 10 IPO auditors in 2001, followed by **Deloitte Touche & PwC** with eight. **Burns Philbrick** represented the largest aggregate IPO offering amount (\$1.1 billion) with **Simpson Thacker** taking the silver \$10 million. (See page 12-13 for the complete underwriter's fee base tables for 2001.)

PricewaterhouseCoopers rose to the top of the 2001 IPO audit competition, serving fees of \$21 million from 22 IPOs with an aggregate IPO offering amount of \$104 billion. (See page 13 for the complete issuer tables for 2001.)

The IPO Experts Speak

We interviewed five experts in different areas of the IPO process: underwriters' regulation, compensation, pricing changes, and investment or public.

Joseph Pizer, Director of the Corporate Finance Department at NASD-Regulation, Inc., explains the issues that are in the regulatory process of an IPO. (See page 15) The issue that can arise in the IPO underwriter's compensation.

Pizer describes the three types of offers that NASD may want to understand in connection with the underwriter's compensation. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

He explains in detail a program that a company should provide. (See page 15) Pizer, Director, Data, an Underwriter.

IPO FILINGS



IPO PRICING RANGES



Bruce Mendelsohn of Akin Gump Communications and the IPO Registration Process



Bruce S. Mendelsohn heads the Corporate and Securities Practice Group in the Washington office of **Akin, Gump, Strauss, Hauer & Feld**. In addition, he is co-chair of the firm's Corporate Finance Practice Group and a member of the firm-wide management committee. He focuses on securities matters and mergers and acquisitions. Mendelsohn has extensive experience in public and private offerings of debt and equity securities, representing both issuers and underwriters. He regularly counsels and represents Boards of Directors and senior management on sensitive securities law and corporate law issues. Prior to joining Akin Gump in 1983, Mendelsohn held various positions at the Securities and Exchange Commission, including chief of the Office of Regulatory Policy in the Division of Investment Management (1982-1983), counsel to Commissioner John R. Evans (1980-1982), and attorney-advisor and special counsel in the Division of Corporation Finance (1977-1980). Mendelsohn received his B.A. with honors in 1974 and his J.D. with honors in 1977 from the University of Maryland.

What is the profile of Akin Gump's IPO activity?

Mendelsohn: "We have over 250 corporate and securities attorneys in the firm, so we've seen our share of IPOs through the 18 1/2 years I've been at Akin Gump. We represent both IPO issuers and IPO underwriters. The IPOs in which we have been involved have been in all industry classifications and in many parts of the country and the world. Personally, I've represented one side or the other in IPOs from a chicken company in Arkansas back in the 80's, to a multi-billion dollar telecom company, to a watch company, to a travel company...all different industries. So it is not really industry-specific. One area, however, where we are extremely strong is in the energy sector, especially in the Southwest where we have become preferred counsel to some major underwriters."

Would you amplify what industry sectors you think will be active for IPOs in '02?

Mendelsohn: "Obviously, it is difficult to project given the nature of the economy today and the September 11th tragedies. It appears from what we are seeing that there could be a number of offerings in insurance and reinsurance, healthcare, energy and energy service-related areas. Some would suggest that, and I tend to agree with them, you are probably going to see IPOs in defense and security-related industries including some technology-type companies and technology service companies."

What are the most important changes that you've seen over the last four or five years in the IPO process?

Mendelsohn: "I guess it would go back even further than the five-year period, but certainly a ten-year period...it used to be that we would print and distribute the red herring preliminary prospectus before we ever got comments from the SEC. In my experience that is never done today. And, I would say that ten years ago, it almost always happened. So, the timing with respect to the marketing and the road show is dependent to a certain extent on the processing at the SEC, how well you prepare your documents before they are filed with the SEC, and difficult issues that may be reflected in the registration statement, particularly accounting issues."

"There should be a focus on creating the team within the company that can take care of the day-to-day blocking and tackling of the business during the IPO process. Everyone should recognize that the CEO and the CFO are going to be distracted to some extent during the IPO process, especially during the road show. Make sure that management has a plan for that hectic two or three month period. They cannot let the business suffer during that period."

Bruce Mendelsohn, co-Chair, Corporate Finance Practice Group, **Akin, Gump, Strauss, Hauer & Feld**

What recommendations would you make as far as the SEC is concerned to try and take care of IPOs taking longer than they should?

Mendelsohn: "I think the staff is certainly trying and I think that they are sensitive — at least in my experience — to time considerations. Obviously, during the hot-issue markets of 1999 and other years, especially with regard to technology and telecommunications-related offerings, they were so inundated that it was pretty tough on them to keep to a schedule that they would have liked. Consistency in the comment process would help and has always been a goal of the Division of Corporation Finance. It is very difficult with a large staff to make sure that consistency always exists in the comment process, but I know that is a high priority of the staff. I have always found that the staff is willing to discuss their comments and has encouraged registrants to involve senior staff members in the resolution of difficult issues. Given the constraints on the Division's resources, I have found them very sensitive to market timing considerations."

The SEC has allowed companies now to get comments back before the pricing numbers are put in. Will that have any significant affect?

Mendelsohn: "I think so. We've heard different things. The practice has been evolving as to when the staff requires you to include your pricing numbers. We are obviously in a volatile market and due to marketing and other considerations, issuers and underwriters are reluctant to put in price ranges that may or may not be able to be sustained. So, the more flexibility the staff gives, the better. I understand their concerns that review of certain information in the registration statement is dependent upon what the price of the security is going to be, but that is not a substantial amount of the disclosure in the registration statement. I would hope that the staff would choose to allow even more flexibility on this issue than they have to date, and they have shown some flexibility."

“Bruce Mendelsohn of Akin Gump” Continued from page 12)

In the area of communications before the IPO and during the road show, what do you think the rule should be as we go forward?

Mendelsohn: “Obviously, the communication and instantaneous flow of information through the Internet, cable TV, and other media has created some legal issues with regard to the IPO process and I think that the Commission should continue to be as flexible as possible. The rule of thumb appears to be that communications prior to 45 days before the IPO are probably not going to be presumed to be conditioning the market. As a presumption, that is pretty good. Perhaps this time period should move even closer to the IPO. The staff needs to be sensitive (and I think they are in most cases) to communications that are not meant to sell securities but are designed to sell products and services and to make the company known as a brand to the marketplace. I would hope that the Commission would continue to be flexible because a lot of the questions we get are with regard to that kind of promotion by the company – it is really a promotion of the company as a company, as a business entity, as opposed to selling stock. I think there ought to be some consideration, similar to Regulation MA which deals with mergers, to loosening the constraints with regard to pre-offering publicity. Perhaps this would be a rule that allows certain things to be made public so long as very shortly thereafter such information is filed with the SEC. I think that the more information that can get out to the marketplace the better. On the other hand, information being used to sell securities has to be scrutinized in some way. But, I think some more flexibility, given technology and given the prevalence of the news outlets, needs to be considered.”

“When a stock comes out at \$25 and goes to \$300 and now is at 20 cents and then goes into Chapter 11 within a 2-or-3-year period or shorter, shareholders and their lawyers understandably become interested.”

Bruce Mendelsohn, co-Chair, Corporate Finance Practice Group, **Akin, Gump, Strauss, Hauer & Feld**

Forecasts are the backbone of the IPO purchase decision by institutions and by retail customers. Why shouldn't it be mandatory that the forecasts be published in the prospectus?

Mendelsohn: “I come from an era at the SEC when projections were prohibited in documents with the SEC. Then, Rule 175 was adopted creating a safe harbor encouraging projections. Then the requirement for the inclusion of a Management's Discussion and Analysis was adopted requiring disclosure of certain forward-looking information such as known trends and material events or uncertainties known to management that would cause the reported financial information not to be indicative of future operating results or of future financial condition. Then, the Private Securities Litigation Reform Act created a safe harbor, but not a safe harbor for IPOs. Should IPOs be covered by the safe harbor? My view is that companies should be encouraged but not required to disclose projections. I do believe that we ought to look at whether the line for the liability with regard to projections is drawn too tightly. Now, if projections are included in an IPO, companies rely on the 'Bespeaks Caution' doctrine. I think it would go too far to require people to disclose in their documents what is, by its nature, speculative. Notwithstanding the fact that numerous qualifications can be included, I would be concerned with a requirement that classic projections be included in a prospectus. If companies believe that they need to produce projections or to give guidance in order to have a vibrant market for their securities, they are going to do so and it has been shown that they will. If they believe that on balance the risk outweighs the benefit, they are not going to do so, and I believe that is a private business decision.”

“It appears from what we are seeing that there could be a number of offerings in insurance and reinsurance, healthcare, energy and energy service-related areas... you are probably going to see IPOs in defense and security-related industries including some technology-type companies and technology service companies.”

Bruce Mendelsohn, co-Chair, Corporate Finance Practice Group, **Akin, Gump, Strauss, Hauer & Feld**

On the road show, normally the investment banker will tell the institutional analysts at the meeting that the earnings per share forecasts are A, B, C, D, and E for the next four or five years... so the institutions know. Why should the institutions get that information and retail customers not?

Mendelsohn: “I think that's a very interesting question and something that should be considered, but one must realize that what you are referring to are not typically the projections of the issuer. They are projections of an analyst who is on the other side of the wall, so that is somewhat different. Perhaps there could be some consideration of a rule that would allow those projections in a thoughtful manner, in a scrutinized manner, to be disclosed by that analyst prior to the closing of the offering without violating the publicity restrictions. Obviously, the argument by some is that the people who go to the road shows are sophisticated and are able to discern what is being said in a professional manner with skepticism. I think there is probably some appeal to the notion, almost like Regulation FD, that there should be a parity of information. But remember, this is not information from the issuer, it is not historical information, it is information that is the product of analysis by an analyst on the other side of the wall.”

There's a lot of IPO litigation these days. Would you have any comment on that?

Mendelsohn: “Obviously when markets go up and when stock prices are up, you usually have less of this type of litigation; when people lose money from their investments you usually see a lot of that litigation. I think that is the phenomenon that we are seeing now. I think the Private Securities Litigation Reform Act, that was passed in the mid-90's, has helped somewhat, with regard to ferreting out some of the frivolous litigation, but there's still quite a bit of litigation. When a stock comes out at \$25 and goes to \$300 and now is at 20 cents and then goes into Chapter 11 within a 2-or-3-year period or shorter, shareholders and their lawyers understandably become interested.”

(... page 14)

("Bruce Mendelsohn of Akin Gump" Continued from page 13)

Do you think there will be special rules put into effect to preclude laddering and extraordinary commissions?
Mendelsohn: "I assume that 'laddering' refers to allegations of a tie-in where an underwriter in the allocation process with regard to an IPO says to its customer: 'We will give you an allocation of this IPO if you agree to buy stock in the aftermarket.' News reports suggest that past IPO activities are being closely scrutinized by the authorities and that certain settlements have been or are being worked out. There is honest debate as to whether the law is less than clear with respect to certain reported IPO allegation activities. Therefore, consideration of rulemaking would be prudent in this area and would be beneficial to investor protection and create additional certainty for industry participants."

"...the communication and instantaneous flow of information through the Internet, cable TV, and other media has created some legal issues with regard to the IPO process and I think that the Commission should continue to be as flexible as possible."

Bruce Mendelsohn, co-Chair, Corporate Finance Practice Group, **Akin, Gump, Strauss, Hauer & Feld**

What would you recommend to CEOs and CFOs of companies going public now in terms of planning for after they are public? What can they do now to prepare themselves for that?

Mendelsohn: "In my experience, the biggest issue concerns the amount of time and distraction that the IPO process causes for the senior executives of the company, the CEO and the CFO specifically. I think these executives need to remember that the market penalizes companies if their performance in the near term after the IPO is not as good as the market felt it should have been. There should be a focus on creating the team within the company that can take care of the day-to-day blocking and tackling of the business during the IPO process. Everyone should recognize that the CEO and the CFO are going to be distracted to some extent during the IPO process, especially during the road show. Make sure that management has a plan for that hectic two or three month period. They cannot let the business suffer during that period." ■

Comments to dglover@ipojournal.com and jkeffer@ipojournal.com

Designed and published monthly by Bowne & Co., the world's largest financial printer, and written by the staff of Corporate Finance Institute, Inc. IPO Journal is a joint venture of Bowne Publishing Division and Corporate Finance Institute (Melissa M. Pierkowski, Executive Editor; Graeme K. Howard, Jr., Editor; David C. Glover, Research Editor; James G. Keffer, Research Associate; Carlton J. Hughes, Research Associate; Kristin L. Beane, Research Associate).

Send subscription requests and address changes to Director of Publications, Bowne, 345 Hudson Street, New York, NY 10014; Tel: (212) 229-7233; Fax: (212) 229-3421; Email: pubs@bowne.com. Send editorial questions or comments to Nancy J.F. Short, Editor, Bowne Publishing Division; Tel: (212) 229-7337; Fax: (212) 229-3421; Email: nancy.short@bowne.com or to Graeme K. Howard, Jr., Editor, IPO Journal; Tel: (410) 810-3731; Fax: (410) 810-3734; Email: goward@ipojournal.com.

The Bowne catalog is available by calling (800) 370-8402 or on the Internet at <http://www.bowne.com>. The IPO Journal may not be reproduced, transmitted or stored in whole or in part in any form without the written consent of Bowne and of the Corporate Finance Institute. ©2002 Corporate Finance Institute. Design and layout ©2002 Bowne. All information is from sources believed to be reliable; however, accuracy cannot be guaranteed. No data or statement herein should be construed to be a recommendation for the purchase, retention or sale of any security and no information or opinion in this publication constitutes a solicitation or recommendation for the purchase or sale of any security. This publication is distributed with the understanding that neither the publisher nor Corporate Finance Institute is engaged in rendering legal, accounting or investment services. Information contained herein has been provided solely by the staff of Corporate Finance Institute from sources believed to be reliable. No information contained herein has been independently verified by Bowne & Co.