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Guinness lessons

For all who believe that a bit of share price ramping can be a useful way out of a tight situation, the Department of Trade and Industry inspectors' report into the Guinness affair is far from being an outdated and irrelevant document.

Those eager to avoid the blunders that led to the downfall of Ernest Saunders and several of his City advisers can find all the dos and don'ts within it.

The first message is: do not try and set up a share support operation in the heat of a bid battle. Prepare well in advance documentation to provide a plausible explanation for all payments that will have to be made afterwards to the members of your "fan club". Backdating letters and invoices months after the event and using bland narratives such as "For financial services" to disguise their true purpose is simplistic and dangerous.

Second, keep your supporters to as small, intimate and loyal a band as possible. Make sure most are offshore so that they cannot be forced to testify against you.

Third, if you need to keep the identity of any supporter secret, or want to siphon off company money to yourself (like Ernest Saunders), merely arranging for payment to be made to a Channel Islands company is not good enough. Your cover will swiftly be blown, as was that of ex-Guinness director Thomas Ward. But even using a more secure tax haven such as the Dutch Antilles or Panama (chosen by other Guinness supporters) to pay out and receive money will be to no avail if your supporter deals directly with his broker to buy the shares. A lengthy chain of offshore intermediaries should be used.

Fourth, make sure that you put nothing sensitive in writing, that none of your conversations is taped (which led to the downfall of Morgan Grenfell corporate financier Roger Seelig) and that no sensitive conversation is held on anything other than a one-to-one basis. It was either the good fortune or the misfortune of Cazenove's David Mayhew to have held all his crucial conversations one-to-one and untaped, leaving the inspectors unsure where the truth lay.

Fifth, if things go wrong and you want to avoid imprisonment, do not simplify matters by rushing to confess, as did Gerald Ronson. With the help of the European Court of Human Rights, you should be able to avoid confessing altogether. The more complicated your defence, the more chance you have of escaping prosecution – as Ephraim Margulies, former chairman of S&W Berisford, did. However, if your main concern is reputation, don't die before any official reports have been published, otherwise you may be savaged as much as the late Mr Margulies.

The most important lesson from the report is just how difficult it is to manipulate the price of an actively traded, well followed stock. Guinness paid £25m to its supporters to buy no less than 25% of the company's share capital. Yet all that effort boosted the share price in the closing days of the bid by no more than 5% because, as the price edged up, more genuine holders realised it was becoming overvalued and sold.

In today's markets, with greater disclosure of share stakes and dealing and the prospect of more to come (for example, of individual securities borrowing), the impact of a ramping operation is likely to be even less. That, rather than the regulators' claims that a Guinness-style operation is no longer possible, is the greatest source of comfort from last week's report.

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Japanese authorities must take action in the wake of the Yamaichi collapse, says Gerard Lyons

How to restore confidence

Yamaichi's collapse provided the clearest sign that the long overdue shakeout of Japan's financial sector is underway.

It also marks a dramatic change with the past, showing no Japanese firm is too big to fail.

The negative market reaction to Yamaichi's failure was in sharp contrast to that following the collapse of Hokkaido Takushoku, Japan's tenth largest bank, the previous week. Yamaichi's hiding of bad loans off balance sheet has fed worries that others may have broken the rules, with bad loans larger than announced.

The Japan premium has soared. International concern is justified, but if the Japanese Government adopts the right policies, the future for the financial sector could be very bright. The question is whether the right policies will be announced and in sufficient time.

Two factors led to the present situation. First, the inability to deregulate the financial sector at a faster pace. Second, the bursting of Japan's Bubble in 1990 and the subsequent poor economic performance left the banks and securities firms nursing bad loans.

Regulations governing the financial sector were established after the second world war with one aim in mind, to establish Japan as a leading industrial economy. To achieve this success, barriers were established between different types of banks and financial institutions, limiting the business they could engage in.

The specialisation this encouraged proved successful for some time, helped by the booming economy, but the regulations constrained competition.

The financial sector should have been deregulated in the 1980s, when the economy was booming and any shake-out could have been handled easily. Yet, because things were going well, there was little pressure to change. The situation changed after the Bubble burst, and the Nikkei collapsed. The financial sector was left nursing bad loans, discouraging deregulation. Instead, big banks had to bail out smaller and more vulnerable ones.

Bad loans have steadily been reduced. At the end of September the total problem loans of the major 19 banks had fallen to 16.1 trillion yen, down 2.9 trillion yen from a year earlier, and most banks have made provisions for these. Whilst the markets are concerned that this is not the true picture, a more valid concern is that new bad loans will be incurred as a result of lending to the rest of Asia, which reached $264.8bn at the end of 1996. A third of this was to Hong Kong and $24.3bn to the collapsing South Korean economy.

> **So far, the theme of the Japanese authorities has been to maintain public and international confidence in the financial system**

So far, the aim of the Japanese authorities has been to maintain public and international confidence in the financial system. The focus has been on guaranteeing depositors' money and providing ample liquidity through the Bank of Japan.

But even this has not prevented short-term rates from creeping up, as concern about counterparty risk has risen. More needs to be done, particularly in three policy areas.

First, public money needs to be used to allow the financial sector to return to normality and ensure problems do not spread to sound financial institutions. The Deposit Insurance Corporation, used to safeguard depositors if a bank fails, needs a significant cash injection.

Public money is needed to remove the bad loan problem once and for all. There are two ways to achieve this. The authorities could boost banks' capitalisation by buying their preferred stock or subordinated debt. Better still, Japan could establish its version of the US Resolution Trust Corporation, which was established in 1989 to finance the bail-out of bankrupt US savings and loans firms. Japan's RTC could take the bad loans off the books of the banks and financial institutions, but to do this it needs sizeable funds, raised through increased bond issuance.

Second, Yamaichi's failure highlights the need for complete transparency and effective regulation. Although this may take some time, an essential first step is complete disclosure by banks and brokers of their bad loans, to ensure none are hidden.

Third, a large fiscal boost is needed to ensure economic recovery, making it easier for the financial sector to adjust and help the Nikkei. Life insurers and banks are vulnerable to a falling stock market, as the level at which hidden profits disappear is much higher than before.

These policy measures will eventually have to occur in order to restore confidence and allow the markets to distinguish between the strong and the weak financial institutions. The longer the delay in their implementation the more likely it is there will be further failures of small brokerages and banks. Despite current problems it is essential that the Japanese Government remains committed to its timetable for Big Bang.

Dr Gerard Lyons is chief economist of Dai-Ichi Kangyo Bank (DKB) International.

Brian Marber takes a lighthearted look at life for a bearbrained dealer on Wall Street

Bad News Charlie tells all

Delmonico's it ain't (and Delmonico really isn't anymore).

For that matter, neither is Shiraz biz, so all things considered eating a pastrami al fresco on the corner of Wall & Broad is a fate worse than death. Pastrami I like. Al fresco I like, too.

There is only one thing I like more than one pastrami sandwich.

Two pastrami sandwiches. Mustard is the only hassle: squirting from mitten drinen the pastrami and bombing the bull and bear motif on my necktie.

Where? Right on the bull. Right on? Right off! A bad omen, as yet another bull position gets geschmettered. I am head down wiping the mustard off so I do not see the sidling approach of Bad News Charlie.

Bad News is a broker who earns his name, but not his living, by the poor information he peddles, so if I see him, I run. If I don't see him, I don't run. And then, even when I don't have time to listen, I have to make time. This time I listen.

"You want the dope on the floor?"

"I thought you were the dope on the floor," I riposte.

Bad News, a high school right back, comes right back. "You want some good information, Mr Bearbrain?" says Bad News Charlie.

I would like to share with you that I am called Mr Bearbrain because it is an anagram of Brian Marber and I get bear market movements right sometimes.

And sometimes, when I get market movements wrong, Brian Marber has another anagram, Mr Bare Brain.

> **Maybe Charlie gets it right once in his life: now is not the time of year to be bearish**

"Bad News Charlie," I say. "Who doesn't want good information, but since when are you selling any?"

"If the information is good, will you give me an order?"

"OK Charlie, OK", I say, even though he's no contender and not on any waterfront. This year I am into bonds when I should be into blue chips and into small-cap stocks when I should be into cash and into glamour when I should be into bed, while today's blue chips will surely be tomorrow's cold potatoes and even the Nifty Fifty may not be so nifty.

"OK Charlie, even a schlemiel like you gets it right sometimes. Make with the whispers and I'll make with the order."

Charlie comes in real close and halitosis in my ear: "It's less than six weeks to New Year."

"Charlie, if that's the news, then here is my order: drop dead!"

"Mr Bearbrain," says Charlie, "that is the news and however bad the market looks in any November, it usually starts climbing late in the month and goes mountaineering in December, while sharebiz gets shikker ahead of Xmas.

"And what goes here on Wall Street goes ditto for the Limeys on Throgmorton ditto."

As I walk away, I think maybe Charlie gets it right once in his life: now is not the time of year to be bearish, unless the S&P closes below 876.99 and the DJIA below 7161.15. As for the Limeys, by January the FTSE should be saying hello to 5330.8.

Brian Marber is a leading technical analyst.