

# THE BOULDER COUNTY BUSINESS REPORT

## *Strategic alliance often a good fit*

BY NANCY NACHMAN-HUNT

BOULDER — As most entrepreneurs know, business development strategies come and go with nearly the same regularity as fashion.

In the '60s fashion swung from gray flannel suits to bell bottoms and the key to corporate success was in building conglomerates. In the '70s and early '80s, fashion was disco funk and business success was gauged by how creatively excess assets were unloaded. Then came the financiers and their high-risk leveraged buyouts. And slicked back hair a la Miami Heat Coach Pat Riley.

In the '90s, with the exception of the confusing fashion statements made by the always interesting Chicago Bull Dennis Rodman, it's back to basics in both clothes and business strategies.

Welcome to the decade of the strategic alliance.

Of all the business development strategies to come along in the past 40 years, the strategic alliance appears to fit the needs of Boulder County's smaller, innovative, niche-oriented high-tech companies best, company executives and business lawyers say.

How do they work?

Strategic alliances allow small, technology-driven companies to concentrate on what they do best, which normally is to develop technology. They are long-term relationships between companies that generally align smaller technologically innovative organizations with the management expertise for product development and market penetration found in large companies, according to Jeremy Makarechian, an attorney with Brobeck, Phleger & Harrison, a Silicon Valley-based law firm with offices in Denver.



MARK IVINS

*Strategic alliances, says Euphonics President Jeffrey Barish, is "the only way we do business." Euphonics, which develops software creating sounds and music for computer games, offers its technology to much larger companies that sell products directly into the marketplace.*

They are long term and flexible.

### *Holy matrimony*

In essence, strategic alliances are business-to-business marriages.

Like person-to-person marriages, in strategic alliances it's best to get to know your partner well before tying the partnership knot. "They don't work when you move too fast. They don't work when you don't know your partner," says Cameron Kuelthau, an attorney with Denver-based Holland & Hart's Boulder office.

While the documentation of the alliance takes the form of a legal agreement, "The focus is on the relationship,"

Makarechian says.

That relationship can be developed all at once or in stages. The stages might include, first, a disclosure phase, next a joint development agreement, and finally, if all parties are still amenable, a marketing and licensing agreement, Kuelthau says.

In addition, it's critical to determine who owns the technology and who controls it. Needless to say, the technology in question should be protected either by patent, copyright or trademark.

"Don't give away the store," Makarechian says.

Always have a plan. "You want to have a business plan of the relationship — do

the same kind of thing as when you created your own company's business plan. Once you've defined your goals, the legal structure of the agreement comes out of them," Kuelthau says.

### *When to say when*

Smaller companies need not be bowled over by the prospect of an alliance with a much larger company, either. "Know when to say 'no.' A big company will accept a 'no,'" Makarechian says.

While well-crafted strategic alliances work to the benefit of those involved, like marriages, "there's lots of romance up front," says attorney Homer Knearl, also with the Boulder office of Holland & Hart. But "you end up living with your partner in ways you couldn't imagine in the beginning."

That's why Knearl, Kuelthau and Makarechian recommend addressing exit strategies at the beginning of the alliance. "Entrepreneurs like to do things with a hand shake. They hate lawyers. And the last thing they want to talk about is termination. Force yourself to listen to advisers when they talk about terminations. Nobody wants to talk about how you get out (of a partnership). Everybody wants to talk about how you get in," Makarechian says.

But since the relationship is the thing in these agreements, negotiating agreements without lawyers present can be an effective alliance building tool. Knearl offers relatively simple guidelines for negotiating a strategic alliance. If his client is the chief executive officer of a smaller company, for example, "I like to have the executive come in and explain what he's trying to do. He needs to know what the big company's needs are. Then we try to structure the deal. After outlining the structure and the alternative choices, the businessmen should negotiate the deal without lawyers present. Once the deal is reached, lawyers come in and put it on paper."

At what stage of a smaller company's development should strategic alliances be considered? At the earliest stages, says

*"Know when to say 'no.'  
A big company will  
accept a 'no.'"*

Jeremy Makarechian,  
attorney,  
Brobeck, Phleger & Harrison

Makarechian. Alliances with big, high-profile corporate partners can give smaller companies almost instant credibility.

That's only one of the reasons why Boulder-based Euphonics uses strategic alliances to grow its business. The company licenses its technology to its long-term partners.

"It's the only way we do business," says Euphonics President Jeffrey Barish.

Euphonics develops the software that creates the sounds and music that go with computer games. "We don't compose music, but we synthesize musical output for the games' presentation," Barish says. Twelve extremely talented people in jeans and t-shirts sit in offices in the Pearl East business park and create the software. There is no marketing department, no distribution network.

The company's strategic alliance partners provide those. They want Euphonics' technology, but they don't have the in-house expertise to develop it and aren't necessarily interested in having such a niche-oriented capability. Euphonics software needs marketing and distribution, but Barish isn't interested, at the moment, in developing those capabilities.

Currently, the strategic alliances that Euphonics' Barish can discuss publicly are with Boston-based Analog Devices Inc. and Santa Clara, Calif.-based DSP Group.

### *Anticipation*

"Our job is to anticipate the technology they will need next. If we do our job, they have no incentive to develop the technolo-

gy to compete with us," Barish says.

For Euphonics, strategic alliance is the second step in an evolving business development scheme. The first step was consulting — essentially selling expertise. Licensing Euphonics' technology to its strategic alliance partners was the next step. "We found it much better than consulting. It produces recurring revenues," Barish quips.

Ultimately, the company may create its own product and sell direct to consumers. For now, however, strategic alliances make the most sense for Euphonics.

For Peak Audio, also a Boulder-based firm, strategic alliances are not a step in an evolutionary process. They are the way the company will continue to do business.

"We like them," explains Richard Zwiebel, Peak Audio's vice president.

Peak Audio develops digital audio software products that let other companies design and develop sound systems. Big sound systems. Sound systems for major theme parks that insist their names not be published. Sound systems for the U.S. Senate, the Chinese Parliament, the Olympics, the Super Bowl and the Sydney, Australia, Opera House, to name a few.

The company has a number of strategic relationships with very large electronics companies. Like Euphonics, Peak Audio licenses its technology to its partners. In return, the partners provide the international marketing, distribution and customer support.

### *The downside*

"The downside is that you do lose a certain amount of control. For example, you may think the product should be marketed differently," Zwiebel says.

On the other hand, "We don't have to have a beautiful building or a receptionist. We don't have the overhead. It really is a good situation for us. We'd rather get a piece of a lot of pies rather than bake the whole pie and have to keep the flies away."

Peak Audio gets it, Knearl says.

"You can't do it all yourself. It's not possible to do everything you need to do to compete in a global marketplace."