Goldman Sachs

WHITE & CASE

Navigating the European M&A Landscape – Strategies for Success in 2023

Date: Thursday, February 23, 2023
1:00 p.m. – 6:30 p.m. EST

Venue: White & Case LLP | Quorum by Convene
1221 Avenue of the Americas
New York, New York 10020-1095

Time	Topic	Speaker
1:00 p.m.	Registration and Lunch	
2:15 p.m.	Welcome and Introduction	**John Reiss** – Global Head of M&A, White & Case
2:30 p.m.	European M&A Outlook/ Opportunities 2023	**Mark Sorrell** – Global Co-Head of M&A, Goldman Sachs **Andre Kelleners** – Head of EMEA M&A, Global Co-Head of the Consumer Retail Group, Goldman Sachs
3:00 p.m.	European Overview	**Ferdinand Mason** – Global M&A Partner, White & Case
3:15 p.m.	**Panel 1** Debt Strategy for US Acquirer	(*Moderator*) **Brenda Dieck** – Debt Finance Partner, White & Case □ **David Ridley** – Debt Finance Partner, White & Case □ **Jonathan Fine** – Head of Investment Grade Syndicate in the Americas, Goldman Sachs □ **Littleton Glover** – Global Head of Financing Group Origination, Goldman Sachs
4:00 p.m.	Coffee break	
4:30 p.m.	European Equity Capital Markets	**Christoph Stanger** – Chairman of Equity Capital Markets in EMEA, Goldman Sachs
5:00 p.m.	**Panel 2** Private/Public M&A in Germany, France and the UK	(*Moderator*) **Mike Deyong** – Americas Head of M&A, White & Case White & Case Panelists: □ **Guy Potel** – UK M&A Partner, White & Case □ **Joerg Kraffel** – German M&A Partner, White & Case □ **Marc Petitier** – French M&A Partner, White & Case Goldman Sachs Panelists: □ **Nimesh Khiroya** – Co-Head of UK Investment Banking, Goldman Sachs □ **Tibor Kossa** – Co-Head of M&A in Germany and Austria, Goldman Sachs □ **Anne Bizien** – Co-Head of M&A in France, Belgium, Luxembourg, Goldman Sachs
6:00 p.m.	Making European Public Deals Deliverable	**Philip Broke** – UK M&A Partner, White & Case **Marc Israel** – UK Antitrust Partner, White & Case
6:30 p.m.	Closing remarks	**John Reiss** – Global Head of M&A, White & Case
6:35 p.m.	Reception and Refreshments	

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Bars and Courts

New York State Bar

Education

JD, University of Pennsylvania Law School, 1984

MBA, University of Pennsylvania (Wharton School of Finance and Commerce), 1984

BS, University of Pennsylvania (Wharton School of Finance and Commerce), summa cum laude, 1981

Awards and Recognition

Leading Individual for M&A, *Lawdragon 500 Leading Dealmakers in America*, 2022

Leading Individual for M&A and Private Equity in the United States, *Euromoney*, 2022

Leading Individual for M&A and Corporate Governance, *Who's Who Legal*, 2022

Leading Individual for M&A (International & Cross-Border), *Chambers Global*, 2022

Leading Individual for M&A and Private Equity, *Chambers USA*, 2022

Practice Experience

Global Head of White & Case's Mergers & Acquisitions Group, John has more than 30 years of experience representing parties in virtually all manner of M&A transactions in all industries.

The Global Mergers & Acquisitions Group includes more than 600 lawyers worldwide and is consistently ranked in the Top 10 firms, globally and across regions, by Mergermarket and Bloomberg M&A League Tables. The US Nationwide and New York M&A practices have been ranked among the "Elite" law firms by Chambers USA for seven consecutive years, including in 2022.

John's practice focuses on complex, multijurisdictional transactions, some of which have set new market precedents, and many of which have been recognized with national and international awards.

A diverse range of US and international corporates and private equity firms have benefited from John's experience. John's leading contributions in the fields of M&A, Private Equity, and Corporate Governance have been recognized by many highly respected professional publications, including Chambers, Euromoney and Legal 500. He has also appeared on a number of media outlets, including Bloomberg TV, Bloomberg Radio and CNBC.

WHITE & CASE

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Bars and Courts

England and Wales (Registered Foreign Lawyer)

Netherlands Bar

Education

JD, Belgian Law, University of Leuven

JD, International Private Dutch Law, Vrije Universiteit Amsterdam

Awards and Recognition

The Financial Times ranked Ferdinand in the top 10 of "Innovative Lawyers in the UK and Europe" for his cross-border corporate solutions.

Languages

English

Dutch

Spanish

Practice Experience

Ferdinand is a partner in our Global M&A and Corporate practice based in London.

Ferdinand advises public and private companies and private equity houses on mergers and acquisitions, takeovers and takeover preparedness, sales of distressed companies and asset portfolios, joint ventures, corporate governance, and general corporate counseling. He has represented clients in the energy, finance, pharmaceutical, media, automotive, retail, technology, and manufacturing industries. Ferdinand has a focus on special purpose acquisition companies (SPACs) and also advises on innovative corporate solutions to protect and warehouse sovereign assets.

Ferdinand has extensive experience advising companies, boards, and individual directors on a wide range of corporate governance matters and legal and regulatory responsibilities, including disclosure, directors' duties, and contentious public shareholder meetings.

- Representation of multinational banks Goldman Sachs and JP Morgan as joint global coordinators in relation to the formation and listing of Odyssey Acquisition S.A., a special purpose acquisition company (SPAC) sponsored by Michael Zaoui and Yoël Zaoui, on the Euronext Exchange in Amsterdam. The newly formed SPAC has raised EUR 300 million to invest in healthcare and technology businesses in Europe.
- Representation of JTC plc, a Jersey-based FSTE 250 global professional services business with expertise in fund, corporate and private client services, on its first equity placing since it listed on the London Stock Exchange in 2018.
- Representation of JTC PLC in connection with its acquisition of SALI Fund Services, a provider of fund services to the Insurance Dedicated Fund and Separately Managed Account market, with US$15.8 billion of assets under management.
- Representation of Tokyo Electron in its $29 billion negotiated merger of equals combination with Applied Materials.*
- Representation of TSMC in its $1 billion innovation investment in ASML.*
- Representation of JTC PLC on multiple transactions involving in excess of $100 billion in assets under management primarily in the United States and Europe.*

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Bars and Courts

California State Bar

Education

Blakemore Fellowship, Inter-University Center for Japanese Language Studies, Yokohama, Japan

JD, University of Washington, Executive Articles Editor, *Washington Law Review*, with honors

BA, University of Wisconsin, with highest honors, Phi Beta Kappa

Sophia University, Tokyo, Japan

Awards and Recognition

Leading Lawyer, Banking & Finance – California – Chambers USA 2015 - 2022

Chambers USA
"Brenda Dieck boasts a substantial knowledge of the banking and finance space and is highlighted for her ability to act for both traditional banks and private equity clients. One client says she is "always on top of the subject matter, extremely thoughtful and diligent in her work."

Languages

English

Japanese

Practice Experience

Brenda Dieck is a partner in White & Case's Debt Finance practice and is the Office Executive Partner for the Los Angeles office. She splits her time between the Firm's Los Angeles and New York offices.

She was also selected by her peers for inclusion in The Best Lawyers in America for 2016 - 2023 in the field of Banking and Finance Law.

Brenda represents major commercial and investment banks, private equity sponsors and corporate borrowers in secured and unsecured syndicated financings, private placements of debt, leveraged acquisition financings, restructuring and work-out transactions and distressed debt investments. Her clients include agent banks, senior lenders, subordinated lenders, placement agents, private equity funds, borrower/issuers and other investors.

She has extensive experience with second-lien financings, cross-border financings, cash flow and asset-based lending, mezzanine debt financings, tech lending, debtor-in-possession financings, complex subordination and intercreditor arrangements and debt-for-control transactions.

Brenda's experience also includes securitization and other structured finance products, preferred equity issuances and traditional capital markets transactions, as well as mergers and acquisitions. Her representative clients include Deutsche Bank, Harvest Partners, Roark Capital and The Hertz Corporation.

Brenda has represented some the world's leading financial institutions and multinational corporations in connection with significant financings, including:

- Representation of Hertz Global Holdings Inc. on its successful financial restructuring after the rental car company filed for chapter 11 protection in May 2020 in response to the disastrous impact of the COVID-19 pandemic on its business. Brenda led Hertz Corporation in securing both its US$1.65 billion debtor-in-possession ("DIP") financing and its US$2.8 billion exitfinancing, comprised of US$1.3 billion in term B loans, US$2.45 million in term C loans,anda US$1.25 billion revolver as well as a third party investment of $1.5 of preferred stock. The facility was provided by a syndicate of banks lead by Barclays PLC, as Administrative and Collateral Agent.

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Bars and Courts

New York State Bar, 2012

New South Wales Supreme Court, Australia, 2005

Education

LLB (Hons), University of Technology, Sydney, 2005

BA, University of Technology, Sydney, 2005

Awards and Recognition

Leading Individual (Band 5), Chambers USA – Banking & Finance (2021-2022)

Next Generation Lawyer, Legal 500 US – Commercial Lending (2019-2021)

"[David] is a very good and strong technical lawyer…he's thorough and commercial…[He] has an encyclopedic knowledge of transaction terms and up-to-the-minute market standards." Chambers USA (2022)

"[David is] Solution oriented, great knowledge of where the market is, quick turnaround times, flawless, fun to work with." Legal 500 US (2022)

Languages

English

Practice Experience

David Ridley is a partner in the Debt Finance practice and is co-head of the firm's US Private Credit & Direct Lending pillar. David's practice focuses on leveraged and corporate finance across a range of business sectors. Clients who benefit from his knowledge and experience include major commercial and investment banks, private credit funds and corporate borrowers.

David steers clients through a wide range of corporate finance transactions with an emphasis on domestic and cross-border acquisition finance. He has significant experience with broadly syndicated facilities, unitranche facilities, pro rata facilities, investment grade facilities, second lien facilities, mezzanine finance, ABL facilities, DIP financing, warrants and equity co-invests. David's experience also includes distressed lending, workouts and restructurings.

Based in New York, David has also spent 12 months on secondment to the Firm's London office. Prior to joining White & Case, he worked as a Senior Associate at a leading Australian law firm.

Since joining White & Case, representative transactions include:

- Representation of the lead arrangers and administrative agent in connection with US$3.1 billion of senior secured credit facilities provided to Ball Corp., consisting of a US$1.35 billion Term A loan, a US$1.25 billion revolving credit facility and a US$500 million multicurrency revolving facility.
- Representation of a club of direct lenders in connection with senior secured credit facilities provided to Clearlake Capital to finance the acquisition of Discovery Education.
- Representation of the lead arrangers and administrative agent in connection with US$685 million in senior secured credit facilities provided to Cano Health. The financing was provided in connection with an investment in Cano Health by JAWS Acquisition Corp. (a special purpose acquisition company). Also represented the lead arrangers and administrative agent in connection with US$130 million in incremental facilities provided to Cano Health and a subsequent repricing transaction.
- Representation of the lead arrangers and administrative agent in connection with a US$225 million asset based credit facility made available to certain affiliates of Clayton, Dubilier & Rice in connection with its acquisition of S&S Activewear, a wholesaler of imprintable apparel and accessories.

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Bars and Courts

New York State Bar

Education

JD, Georgetown University Law Center, 2005

BA, University of Central Florida, 2002

Awards and Recognition

Listed as a "Stand-out Lawyer", Thomson Reuters, 2022

Listed to BTI's M&A Client Service All-Stars Survey, 2021

Leading Lawyer for M&A in the United States, *Euromoney*, 2021

Recipient of a "40 under 40 Emerging Leaders Award, *The M&A Advisor* (2015)

Listed as a "Rising Star", *Super Lawyers – New York Metro* (2014 - 2016)

Languages

English

Citizenship

United States

Practice Experience

Michael Deyong is the head of White & Case's Mergers & Acquisitions and Corporate Practice in the Americas and is a partner in the Mergers & Acquisitions Global Practice Group, resident in the New York office. Michael has extensive experience representing clients in domestic and cross-border public and private mergers, acquisitions, sales, spin-offs, going private and private equity transactions. His practice extends across a wide variety of sectors, including the healthcare, energy and telecommunications industries. Michael also has broad experience advising on general corporate law matters, de-SPAC transactions and US securities law compliance in connection with mergers, cross-border tender offers and insider filings.

Michael was recently selected by *The M&A Advisor* as a winner of its "40 Under 40 Emerging Leaders Award" in Mergers & Acquisitions, and distinguished as a "Leading Lawyer" for Mergers & Acquisitions in the United States by *Euromoney* (2021) and a "Rising Star" by *Thomson Reuters* in its "Super Lawyers – New York Metro" directory. Michael was listed to BTI's "2021 M&A Client Service All-Stars Survey", a guide where General Counsel single out the top M&A attorneys best at client service.

Recent matters include the representation of:

- Landcadia Holdings III, Inc. (NASDAQ: LCY), a SPAC, in its US$2.642 billion business combination with HMAN Group Holdings Inc., the parent company of The Hillman Group, Inc., a leading distributor of hardware and home improvement products, personal protective equipment and robotic kiosk technologies, from CCMP Capital Advisors, LP.

- Landcadia Holdings II, Inc. (NASDAQ: LCA), a SPAC, in its US$745 million business combination with Golden Nugget Online Gaming, Inc. (GNOG), one of the nation's leading online casinos, from Landry's Fertitta LLC, part of the Landry's group of restaurant and hospitality businesses.

- Flying Eagle Acquisition Corp. (NYSE: FEAC), a SPAC, in its US$4.3 billion business combination with Skillz Inc., a mobile-gaming company based in California.

- Diamond S Shipping Inc. (NYSE: DSSI), one of the largest publicly listed owners and operators of crude and product tankers, in its US$2 billion merger with International Seaways, Inc. (NYSE: INSW), one of the largest tanker companies worldwide providing energy transportation services for crude oil and petroleum products.

WHITE & CASE

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Bars and Courts

England and Wales, 2001

Education

CPE, The College of Law

BA, University of Leeds

Awards and Recognition

Ranked as a leading individual in high-end complex M&A and described as 'very impressive'" Chambers UK

Languages

English

Citizenship

British

Practice Experience

Guy Potel is a partner in our global M&A and Corporate practice based in London.

With more than 20 years of experience, he advises both listed and private companies on acquisitions, equity capital raisings, joint ventures and minority equity investments. Guy has a reputation for being an impressive negotiator and commercially astute. His advice is sought by companies across a variety of industry sectors, particularly in the fintech and technology sectors.

Listed companies seek Guy's advice to help the navigate the complex landscape of securities laws that apply to them (including the Market Abuse Regulation, Listing Rules, the UK Takeover Code and various corporate governance codes). His depth of experience in this field has also made Guy a go-to individual for activists in their public market value creation strategies.

Public M&A (sell-side)

- Ocean Outdoor Limited in connection with Atairos' US$580 million takeover by way of BVI statutory merger
- Representation of Monitise in connection with Fiserv's £75 million takeover offer for Monitise
- Representation of Northumbrian Water in connection with UK Water's £4.7 billion takeover offer for Northumbrian Water*
- Representation of New Star in connection with Henderson's £115 million takeover offer for New Star*

Public M&A (buy-side)

- Representation of Echostar in connection with its £3.2 billion approach to Inmarsat plc
- Representation of Antin Infrastructure Partners and Goldman Sachs' West Street Infrastructure Partners in connection with their £540 million takeover offer for CityFibre
- Representation of UBS in connection with Ion Capital's £1.5 billion takeover offer for Fidessa
- Representation of Standard Chartered Bank in connection with with PT Medco Energi Internasional Tbk's £400 million takeover offer for Ophir Energy plc

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Bars and Courts

Notar, Notarkammer Berlin, 1996

Rechtsanwalt, 1990

Education

Second State Exam, Higher Regional Court of Berlin, 1990

Dr jur, Free University of Berlin, 1990

Free University of Berlin, 1987

Awards and Recognition

Best Lawyer Germany in Corporate Law, Mergers and Acquisitions Law, Handelsblatt 2009-2023

Highly Recommended Lawyer for M&A and Corporate, JUVE 2021/2022

Highly Recommended Lawyer for Energy law: Regulatory and Energy sector: Transactions/finance, JUVE 2021/2022

Languages

German

English

Citizenship

Germany

Practice Experience

Jörg Kraffel is a senior partner in our worldwide M&A Practice. He supports clients with large-scale M&A transactions and on all aspects of corporate law and is recognized by respected legal guides as a leading practitioner in his field.

Clients benefit from Jörg's extensive domestic and international experience, which spans more than 25 years - both as a partner at White & Case and as a partner in the M&A practice of another leading global law firm. During this time, he has been called upon to advise major clients such as Vattenfall, E.ON, EWE and JP Morgan.

Jörg's practice is particularly focused on helping companies and investors to structure and execute technically complex national and cross-border transactions, including joint ventures. He has also developed a significant track record in investments and acquisitions in the infrastructure sector.

Experience

- **E.ON**
  Advising German energy company E.ON on establishing a joint venture with Igneo Infrastructure Partners for the roll-out of high-speed broadband infrastructure in Germany. To this end, Igneo has acquired a 50% stake in Westenergie Breitband GmbH, a wholly owned subsidiary of E.ON SE.
- **Fluxys**
  Advising Fluxys on the potential acquisition of Thyssengas from DIF Capital Partners and EDF.
- **JP Morgan Infrastructure Investments Fund (IIF)**
  An institutional investors advised by the Global Infrastructure group at J.P. Morgan Asset Management.
- **Swiss Life**
  Advising Swiss Life in a complex bidding process for a participation in Ferngas.
- **Swiss Life**
  Advising Swiss Life as a bidder for the acquisition of 45% of the shares in MVV, a listed utility, which is one of the leading utilities in Germany.
- **Statkraft**
  Advising Statkraft on the acquisition of the Breeze Three wind portfolio. The Breeze Three portfolio comprises of 38 windfarms in Germany and four wind farms in France with a total capacity of over 350 MW.

Marc Petitier
Partner, Paris

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Bars and Courts

Avocat, Paris Bar

Education

Postgraduate degree in business administration, Panthéon-Sorbonne (Paris 1)

Master in corporate law and postgraduate degree in contract law, University of Versailles, Saint-Quentin

Languages

French

English

Citizenship

France

Practice Experience

Marc Petitier is a partner in the EMEA Mergers & Acquisitions team.

He is a renowned corporate lawyer having more than 20 years' experience representing clients in all manner of M&A, including public and private M&A deals, sales and joint ventures primarily belonging to the jumbo-cap to mid-cap market segments. Marc also advises his clients in connection with corporate governance strategy and issues.

Native in French and fluent in English, Marc is at ease navigating both domestic and cross-border mergers and acquisitions on behalf of multinational clients, including investment banks, entrepreneurs, industrials, listed and non-listed companies, from all sectors notably highly regulated ones. Recently, Marc has demonstrated particular strength in the financial, banking and insurance sectors, as well as in tech/fintech, energy and infrastructure sectors.

Marc has also gained a significant experience in Africa-related deals.

Marc joined the Firm in December 2020 from an international law firm in Paris, where he was a partner. During his career, he has been on secondment for a law firm in London office and to J.P Morgan. Previously he worked as an associate at an investment relations consultancy in London.

Experiences:

- **Biosynex (2023)**
  Representation of Biosynex SA, a market-leading designer and distributor of rapid diagnostic tests, on its entry into a definitive merger agreement with Chembio Diagnostics, Inc. (Nasdaq: CEMI), a leading point-of-care diagnostics company focused on infectious diseases, under which Biosynex will acquire Chembio by an all-cash tender offer for US$.45 per share.

- **Agence des Participations de l'Etat (2022)**
  Representation of the French state, acting through the Agence des Participations de l'Etat (APE), as shareholder of Aéroports de Paris (Groupe ADP) on unwinding the cross-shareholdings held by Groupe ADP and Royal Schiphol Group (RSG).

- **Casino Group (2022)**
  Representation of Casino Group, together with Tikehau Capital and French public investment bank Bpifrance, on the sale of their majority stake in GreenYellow, the energy subsidiary of Casino group, to Ardian Infrastructure for an enterprise value of €1.4 billion and an equity value of €1.1 billion.

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Bars and Courts
England and Wales, 1988

Education
MA, Cambridge University, 1985

Awards and Recognition
"Philip Broke is active on high-end M&A and corporate finance matters on both the domestic and international stages. His broad sector experience includes advising on deals in the healthcare, infrastructure and technology spaces."
Chambers UK 2020

"A top firm. Really strong, they stand out from their competitor firms."
M&A: Upper mid-market and premium deals UK Legal 500 2020

Languages
English

Citizenship
British

Practice Experience

Philip Broke is a partner in our global M&A and Corporate practice based in London.

Philip counts public listed companies, international corporations, investment banks and funds among his clients. Organisations that have recently benefited from his expertise include Blackstone, The Co-operative Bank, Igneo Infrastructure Partners, Cordiant Digital Infrastructure, Fenwick, Morgan Stanley Infrastructure Partners, International Game Technology, JTC and Ocean Outdoor.

Philip focusses on mergers and acquisitions and equity capital markets and he has extensive experience in both public and private mergers and acquisitions.

Examples of M&A transactions include advising:

- Representation of Barclays Bank Plc as financial adviser to the consortium that made a public offer to acquire Flybe Group plc. The consortium consisted of Cyrus Capital, Virgin Atlantic and Stobart Air
- Representation of the Ministry of Economy, Trade & Industry of Japan on designing the Public M&A regime in Japan
- Representation of AIM-listed digital communications group, Next Fifteen Communications Group plc, on acquisition of Creston Plc US Holdings Inc. and its subsidiary, Health Unlimited LLC, a global health consultancy and communications agency
- Representation of Houlihan Lokey, financial adviser to the private equity fund Epiris, in their public offer for IFG Group plc, an Irish company with a listing in London and Ireland
- Representation of Seplat Petroleum Development Company PLC, a Nigerian oil & gas business listed on the Nigerian and London Stock Exchanges, on its £382 million recommended cash offer for Eland Oil & Gas PLC, an AIM listed company with oil and gas assets in Nigeria, to be implemented by means of a scheme of arrangement
- Representation of Barclays Bank Plc as financial adviser to Boston Scientific Group on its £3.3 billion offer for BTG Plc, a global healthcare company

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Bars and Courts

England and Wales, 1997

Republic of Ireland, 2019

Education

Legal Practice Course, The College of Law, London, 1994

Common Professional Examination, The College of Law, London, 1993

Master of Arts, University of Cambridge, 1993

Modern & Medieval Languages, St. John's College, University of Cambridge, 1991

Awards and Recognition

Marc is recommended in the *Global Competition Review 100*

Languages

English

French

Citizenship

British

Practice Experience

Marc Israel is a partner in our global Antitrust practice based in London.

He has considerable experience in a wide range of antitrust work and has been involved in some of the most high-profile UK and European cases in recent years in the fields of M&A, cartels and antitrust litigation.

Much of Marc's work involves dealing with cross-border cases (both for UK and overseas clients) and he regularly represents clients before the UK and European competition authorities, and has also appeared before the UK and European courts in competition cases.

Details of selected cases, some of which established legal precedents now reflected in guidance published by the relevant antitrust agencies, are set out below.

On mergers:

- Advising Avast Software on its US$9.2 billion merger with NortonLifeLock. The deal requires approvals in the US, the UK, Germany and Spain, Australia and New Zealand.
- Representation of Brookfield Infrastructure Group, partnering with GIC (Singapore's sovereign wealth fund), on the US$8.4 billion acquisition of Genesee & Wyoming requiring antitrust clearances in several jurisdictions including a remedy (agreed up-front) in Australia
- Advising Kobalt Music Group Limited and AWAL on the CMA's Phase 2 investigation into the sale of its recorded music operations, including AWAL, a leading provider of services to independent recording artists, and Kobalt Neighbouring Rights, its global neighbouring rights agent, to Sony Music Entertainment.
- Representation of EQT, the leading Swedish private equity firm, on the acquisition of Trimb, by its portfolio company – Karo Pharma – and securing from the Swedish Competition Authority a Phase 1 clearance with remedies limited to only one product despite overlaps in a number of product categories
- Representation of JLA in connection with the Phase 2 investigation in the UK relating to its acquisition of its major competitor, Washstation, and limiting remedies

Jonathan Fine
Global Banking & Markets
New York

Jonathan is head of Investment Grade Syndicate in the Americas and is also responsible for the Financial Institutions Group (FIG) Debt Capital Markets business. He is a managing director ally to the LGBTQ+ Network and a sponsor to the Investment Banking Division (IBD) Council for the Advancement of Racial Equity. Previously, Jonathan served as co-chair of the IBD Sustainable Solutions Council, and has served as a member of the Firmwide Finance Committee and Bank Relations Working Group. Previously, he shared responsibility for European Financial Institutions Debt Capital Markets and Syndicate in London. Before that, Jonathan worked in the Derivatives Marketing Group within Fixed Income, Currency and Commodities. He joined Goldman Sachs in 2001 as a vice president and was named managing director in 2007 and partner in 2014.

Prior to joining the firm, Jonathan worked at JP Morgan, initially as a spot foreign exchange trader and later in the Derivatives Marketing Group.

Jonathan sits on the Fundraising Committee of Global Citizen, focused on ending extreme global poverty by 2030.

Jonathan earned a BSc (Hons) in Banking and International Finance from City University Business School, London, in 1995.

Littleton Glover
Global Banking & Markets
New York

Littleton is global head of Financing Group Origination. Previously, he served as EMEA head of Financing Group Origination, with responsibility for capital commitments and cross-product origination of financing products working with corporate, sponsor and family office clients. Prior to that, Littleton was EMEA head of Leveraged Finance Origination from 2014 to 2017 across all industry sectors. From 2009 to 2014, he led the team responsible for all leveraged finance transactions in the Technology, Media and Telecom (TMT) Group, Financial Institutions Group, and Real Estate industry sectors throughout EMEA. Littleton was also responsible for leading Leveraged Finance transactions in the Industrials sector. From 2007 to 2009, he led a team responsible for all debt-related transactions in Central and Eastern Europe and Russia, including Leveraged Finance, Investment Grade, Acquisition Finance and other debt-related products. Littleton focused on EMEA TMT Leveraged Finance from 2003 to 2007. Earlier in his career, he worked in Structured Finance from 2001 to 2003. Littleton joined Goldman Sachs in 2000 as an associate in EMEA Leveraged Finance in London and was named managing director in 2007 and partner in 2014.

Prior to joining the firm, Littleton worked at Merrill Lynch as an analyst in Mergers and Acquisitions in Singapore from 1997 to 1998 and in Real Estate Investment Banking in New York from 1995 to 1997.

Littleton earned a BA, with honors, in Foreign Affairs from the University of Virginia in 1995 and an MBA, with honors, from the Colgate Darden School of Business Administration of the University of Virginia in 2000.

Andre Kelleners
Global Banking & Markets
London

Andre is global co-head of the Consumer Retail Group in the Investment Banking Division (IBD) and head of Mergers & Acquisitions (M&A) in EMEA within IBD. He is a member of the IBD Executive Committee and serves on the EMEA Inclusion and Diversity Committee. Andre is a managing director ally and co-head of the EMEA LGBTQ+ Network. He also serves as co-chair of the firm's Global Fairness Committee within M&A. Andre joined Goldman Sachs as an analyst in Frankfurt in 2000, and transferred to Sydney in 2006, New York in 2007 and London in 2017. He was named managing director in 2010 and partner in 2016.

Andre serves on the boards of the Atlantic Council in Washington, DC, Salzburg Global Seminar in Washington, DC and the American Council on Germany in New York. He is also a member of Atlantik-Bruecke.

Andre earned an MBA from European Business School and a PhD in Finance from the University of Witten.

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Nimesh Khiroya
Global Banking & Markets
London

Nimesh is a managing director in the UK Advisory business of the Investment Banking Division and head of Activism and Shareholder Advisory in EMEA. He joined Goldman Sachs in 2005 as an associate and was named managing director in 2011 and partner in 2020.

Prior to joining the firm, Nimesh worked at JP Morgan.

Nimesh earned an undergraduate degree from the London School of Economics.

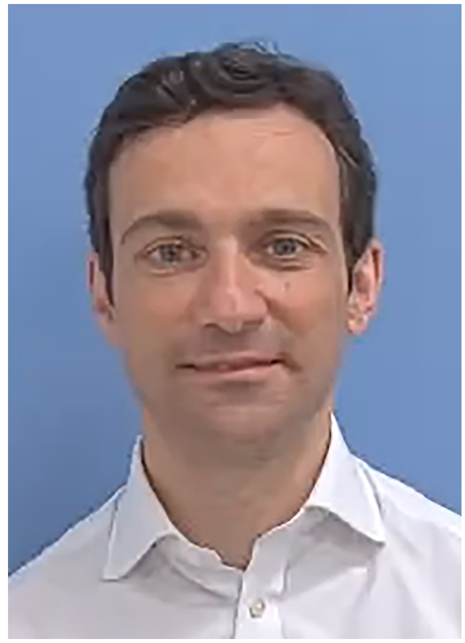
Tibor Kossa
Global Banking & Markets
Frankfurt

Tibor is co-head of Mergers and Acquisitions (M&A) in Germany and Austria. He joined the firm as a managing director in 2018.

Previously, Tibor was head of M&A Germany and Austria at Credit Suisse since 2013 and a member of the European Investment Banking Committee since 2017. He joined Credit Suisse as an analyst in 2002 and was named managing director in 2015.

Tibor earned a degree in business administration from the Catholic University of Eichstaett in Germany in 2002.

Mark Sorrell
Global Banking & Markets
London



Mark is co-head of Global Mergers & Acquisitions (M&A). He is a member of the Investment Banking Division (IBD) Executive Committee.

Previously, Mark was head of M&A for EMEA and co-head of IBD in the United Kingdom. Before that, he was co-chief operating officer of IBD in the UK. Prior to this role, Mark was chief operating officer of the Natural Resources Group in EMEA and worked on the UK Coverage team in London. He also worked in the Equity Capital Markets Group in New York. Earlier in his career, Mark worked in the Advisory Group in London and in the Healthcare Group in New York. He joined Goldman Sachs in 1994 as an analyst in London. Mark was named managing director in 2005 and partner in 2010.

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WHITE & CASE

Mixed signals: US M&A FY 2022

Despite a strong start to the year, deal activity in the US faced new challenges in 2022 as headwinds gathered

Foreword

Although the record-breaking deal activity of 2021 spilled over into 2022, headwinds in the first quarter developed into a significant slowdown during the rest of 2022, with an expectation of continued slowness as we enter 2023

John Reiss
Global Head of M&A
White & Case

Michael Deyong
Head of Americas M&A
and Corporate
White & Case

This time last year, the US M&A market continued to be busy with deals in the pipeline from 2021, both deals proceeding to signing, and signed deals in the process of moving to closing.

However, it was evident from early in 2022 that new M&A activity was going to be down significantly from 2021. Cracks were already beginning to show the year before, as the Federal Reserve's language took a more hawkish turn. Talk of inflation being "transitory" shifted. By March, the Fed had made its first interest rate hike in four years. By mid-year, the S&P 500 had entered a bear market.

Since first tightening its monetary policy, the central bank has raised the federal funds target rate by a full 425 basis points (bps). This is the fastest pace of change in modern history. By December 2022, the brakes were being pumped a little less, rounding off the year with a 50 bps increase.

Nevertheless, Fed chair Jerome Powell's language remained resolute at a December 14 press conference announcing the increase: "We have covered a lot of ground, and the full effects of our rapid tightening so far are yet to be felt. Even so, we have more work to do."

Officials forecast up to a total three-quarter point more in interest rate increases this year—the Fed's policy extending longer than many had anticipated. Some are still hopeful that a pivot is not far away. Bond markets have been calling the Fed's bluff with two-year US Treasury yields peaking in November and dipping below the federal funds rate.

As inflation shows signs of rolling over and economic growth stalls, opinion is divided over what 2023 holds in store—a soft landing or a hard landing. Even if the Fed eventually walks back its recent comments with a course correction, that would suggest that it has overshot the mark.

What is clear is that the first half of 2023 will not carry with it the spillover momentum seen in early 2022, and some investors are bearish on how 2023 will fare. Nevertheless, another camp remains cautiously optimistic. Taken as a whole, 2022 put in a solid performance as compared to historic performance. The real story, however, is that deal activity trended down with each successive quarter as valuations fell, corporate equity issuances became less attractive and debt financing was increasingly costly and less accessible.

As the articles in this report demonstrate, we do not see an early return to a busy M&A market. Opportunistic strategic M&A will dominate until questions regarding a recession are answered and confidence in the stock market returns.

Contents

US M&A in review: Momentum can only take you so far

M&A started strong in 2022 with robust deal activity and megadeals dominating the landscape that was largely the result of unprecedented spillover from 2021. But then, things took a turn and deals stalled in the second half of the year, as shifting macro-economic conditions began to take hold

By Michael Deyong and Gregory Pryor

On the surface and compared to historical performance, it was another solid year. According to Mergermarket, a total of 8,468 M&A deals were announced in the US in 2022, worth in aggregate US$1.6 trillion. Although this was a year-on-year decline, in terms of volume and value, of 10 percent and 38 percent respectively, it was still exceptionally strong. Put into perspective, the deal tally is higher than in any year except for 2021.

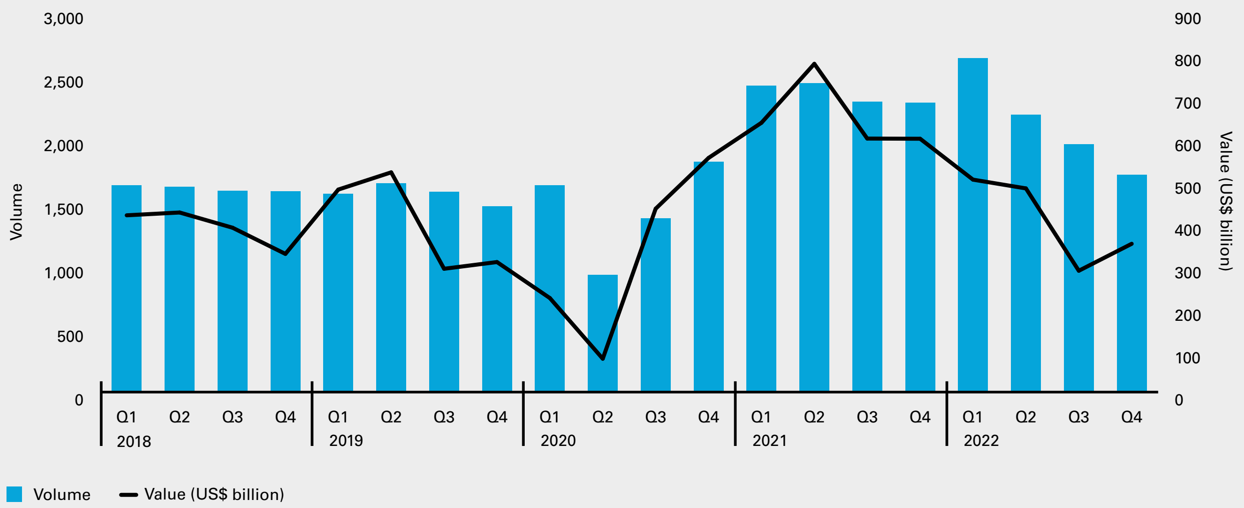
US $1.6 trillion

The value of US M&A deals in 2022—a 38% decrease compared to 2021

Megadeals worth upward of US$5 billion were also a major feature, thanks to some monumental technology transactions. Mergermarket data shows large-cap deals accounted for more than 40 percent of total deal value, matching 2021. Based on these stats alone, 2022 looked like a strong year for M&A.

Looks can be deceiving, however, and 2022 was a year of two halves. Several large tech deals boosted deal values through the first half of the year. Microsoft's US$75.1 billion merger bid for video game developer Activision Blizzard, Broadcom's US$71.6 billion offer for VMWare and Elon Musk's US$44 billion Twitter takeover—the year's top-three largest deals—were all announced between January and May. These helped ensure that technology remained the dominant sector by value, with deals worth in aggregate US$612.6 billion, and retained the top spot measured by volume at 2,589 deals.

US M&A 2018 – 2022



Top-ten US M&A deals 2022

Announced date	Target company	Consolidated sectors	Bidder company	Bidder-dominant country	Deal value US$(bn)
01/18/2022	Activision Blizzard, Inc. (100% stake)	TMT	Microsoft Corporation	USA	75.1
05/26/2022	VMware, Inc. (100% stake)	TMT	Broadcom Inc.	USA	71.6
04/14/2022	Twitter, Inc. (91.24% stake)	TMT	Elon Musk (Private Investor)	USA	44.0
12/12/2022	Horizon Pharma plc (100% stake)	Pharma, medical and biotech	Amgen, Inc.	USA	28.3
10/14/2022	Albertsons Companies LLC (100% stake)	Consumer	The Kroger Co.	USA	24.8
05/10/2022	Duke Realty Corp. (100% stake)	Real Estate	Prologis, Inc.	USA	22.8
12/15/2022	GE HealthCare Technologies Inc (80.1% stake)	Pharma, medical and biotech	General Electric Company (Existing Shareholders)	USA	22.0
09/15/2022	Figma, Inc. (100% stake)	TMT	Adobe Systems Incorporated	USA	20.0
11/01/2022	ABIOMED Inc. (100% stake)	Pharma, medical and biotech	Johnson & Johnson	USA	19.3
01/31/2022	Citrix Systems, Inc. (100% stake)	TMT	Vista Equity Partners Management, LLC; Evergreen Coast Capital	USA	16.6

Second-half slowdown

A very different picture emerged in the second half of the year once the spillover from 2021 receded and the momentum was lost. Deal announcements were fewer and farther between as the reality of surging inflation and the Fed's tightening path came into sharp relief and the S&P 500 entered bear market territory. Fears of a future recession began to enter the conversation.

There were 3,659 deals in the second half of this year, worth US$636 billion. This compares with first-half totals of 4,809 transactions worth US$981.6 billion (representing respective declines of 24 percent and 35 percent). Drilling down further, M&A levels continued to fall throughout the year, each quarter showing a successive decline in deal volume and value.

35%

The fall in US M&A deal value in H2 2022 compared to H1 2022

SPAC activity followed a similar path, with 16 listings on US exchanges in the second half of 2022 worth US$1.3 billion, versus the 70 listings worth US$12.1 billion in the first half of the year.

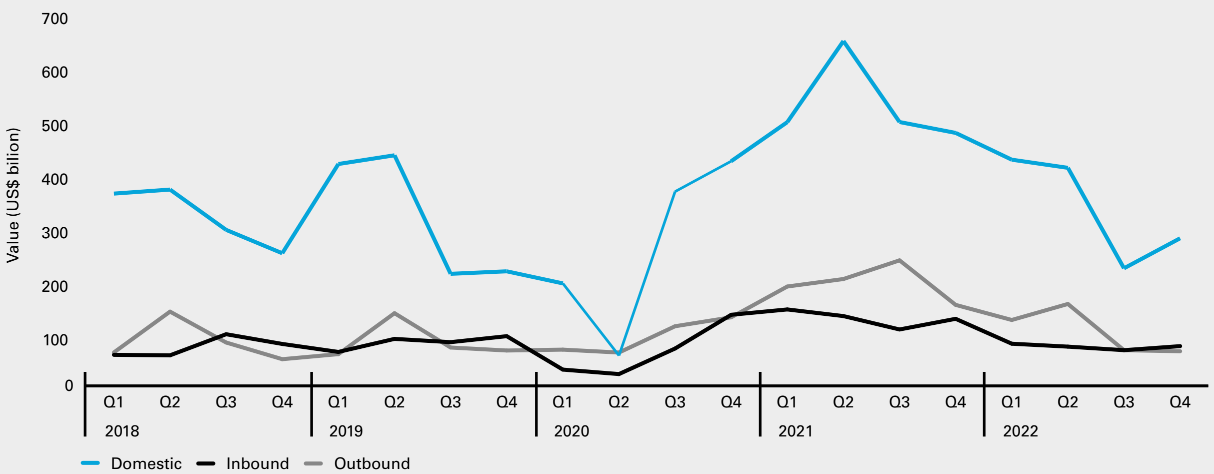
Market corrections

This year's Fed policy switch has had two main impacts on capital markets that are clearly dragging on confidence and deal activity. The broad fall in share prices—and therefore corporate valuations—has made it far less attractive to targets and dilutive to stockholders to issue equity to fund deals. This is especially true in the technology sector. By mid-December 2022, the tech-heavy Nasdaq 100 was down 32 percent on the start of the year (compared with a decline of less than 20 percent for the S&P 500).

It can take time for private market valuations to catch up with the declining public market equity valuations. The resulting mismatch in value perspectives between buyers and sellers negatively impacts deal activity. Some potential sellers may feel compelled to wait for more positive macro news, and instead are focusing their attention on operational support and protecting value until the dust settles.

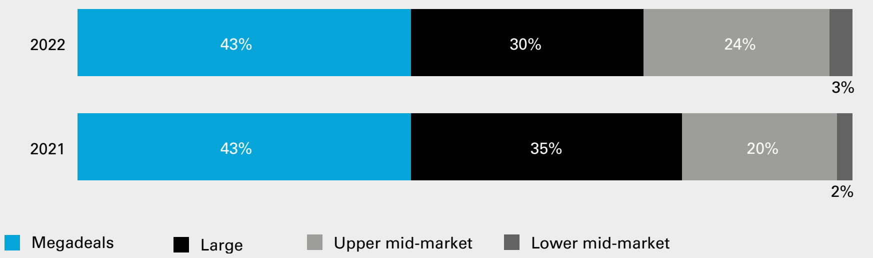
In principle, this could be an unmissable buy opportunity for PE. Middle-market operators have found themselves at a distinct advantage, buttressed by a supportive private credit ecosystem. This lifeline is not available for the largest PE deals, and the material weakening of public debt markets in the second half of the year is hamstringing the upper end of the PE buyout market in particular. Rising interest rates

US M&A: Domestic, inbound and outbound value



also have made loans prohibitively expensive, where they are even available at all. According to *Debtwire Par*, primary issuance across institutional loan and high yield bond markets in the US was down 68 and 78 percent year-on-year respectively.

US M&A value by deal size 2022 vs. 2021



Mixed signals

Outside of fundamental market forces, there are policy and enforcement developments that are proving to be both carrots and sticks. The recently passed Inflation Reduction Act has created compelling tax incentives for investment into the renewable energy sector, unlocking some US$400 billion in federal funding. Investors are actively strategizing to capitalize on this opportunity, and this will play out for years to come.

At the same time, antitrust actions are being enforced with a fervor and level of coordination not previously seen. In December 2022, the Department of Justice and the Office of the Inspector General of the Department of Health and Human Services announced a new partnership to protect healthcare markets, while the Federal Trade Commission has thrown some of last year's largest deal announcements into doubt.

These mixed signals are complicated by the uncertainty of the macro outlook. Inflation is showing signs of improvement but remains well above the Fed's 2 percent target. Jobs reports also continue to beat expectations. To date, however, the Fed is not diverting from its plan to slow the labor market and tackle inflation just yet.

As we look ahead to a new year, there are two camps. Some expect more pain ahead—certainly, debt financing will remain costly until further notice—but a full-blown recession looks increasingly unlikely. Optimists, meanwhile, are not ruling out the Fed achieving its fabled soft landing. One thing is clear, the first half of 2023 will look more like the second half of 2022 than the upbeat opening half of last year.

> **"It can take time for private market valuations to catch up with the declining public market equity valuations. The resulting mismatch in value perspectives between buyers and sellers negatively impacts deal activity.**

Private equity in focus: Value slips as volume persists

The US private equity (PE) market in 2022 aligned overall with the broader M&A trend—activity eased off considerably, year-on-year, but remained above historic levels—and like the M&A market at large, it tailed off as the year progressed, but what does this mean for the year ahead?

By Oliver Brahmst, Luke Laumann and Justin Wagstaff

In 2022, there was an 18 percent drop in the number of US PE deals, year-on-year, to 3,293 transactions. Total value fell 33 percent in the same period to US$696.7 billion. While these drops are large, 2021 was the highest volume and value on Mergermarket record.

As expected, the volume of buyouts held up more firmly than exits as conditions transitioned from the unprecedentedly supportive seller's market of 2021 to something closer to a buyer's market—albeit with some important caveats.

This transition is evident in the freefall in exit volume, which had already been in steady decline as far back as Q2 2021. Divestitures were down by as much as 45 percent year-on-year to 873 transactions in 2022. Value fell by 27 percent in the same period to US$363.1 billion, even though the top-three largest PE transactions in the US were all exits, according to Mergermarket. The US$71.6 billion merger of VMWare and Broadcom saw Silver Lake Partners cash out. Cerberus Capital Management took Albertsons public in 2020 and is now realizing its holding through Kroger's US$24.8 billion takeover of its competitor, Albertsons. And, when Adobe Systems made its US$20 billion Figma play, a collection of VC funds including Index Ventures, Greylock, Kleiner Perkins, Sequoia Capital, Andreesen Horowitz and Durable Capital Partners cracked open the champagne.

US $696.7 billion

The value of US PE-related deals in 2022

Out of debt

On the buy-side, a total of 2,676 buyouts were made in 2022—an 8 percent drop in volume, but far and away the highest total on record for any year aside from the outlier 2021. The next-closest year was 2020, which saw 1,455 deals, compared to 2,905 in 2021.

It is in value terms where real weakness has been showing and there is good reason for this. The US$394.3 billion in new deals is down 45 percent year-on-year. By Q4 2022, buyout value had ebbed to its lowest level since the pandemic nadir in Q2 2020.

One main reason relates to access to debt financing (in particular the syndicated debt market), which became painfully restrictive in the second half of 2022, to the extent that some of the industry's very largest deals were simply impossible to execute on economically feasible terms. However, at lower value deals, private credit funds were willing to lend to fill the funding gap, though notably at lower overall commitment levels and materially higher yield profiles. This resulted in larger deals still being able to be executed with private credit funds clubbing up to provide the larger debt packages. For example, in May, Blackstone led a group of direct lending funds including Ares, Blue Owl and Oak Hill to provide a US$4.5 billion unitranche loan for Hellman & Friedman's acquisition of Information Resource.

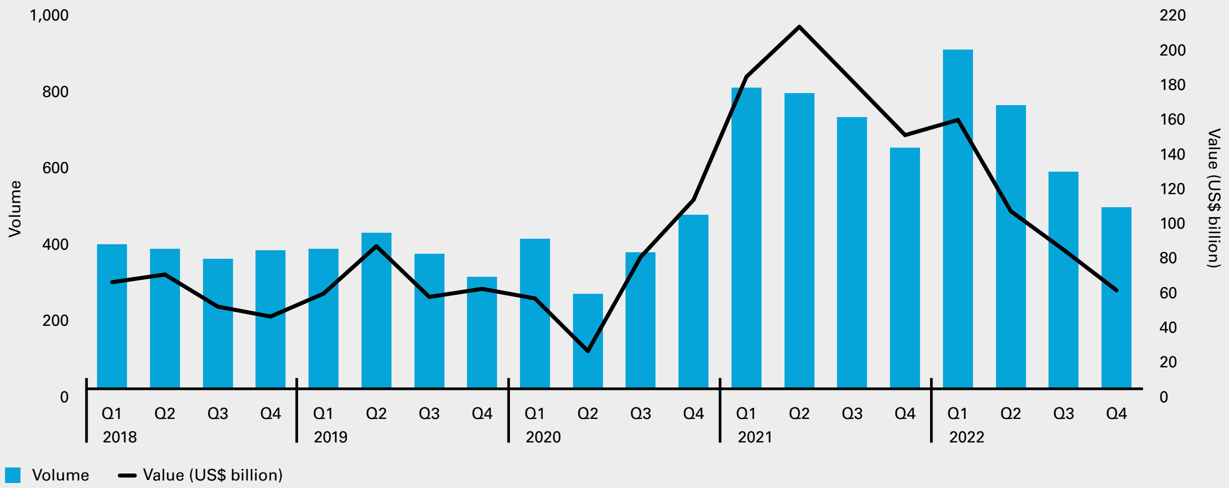
Adapting to change

More recently, as macro-economic uncertainties continue to persist, even these larger unitranches have become more difficult to pull together. Private debt funds have continued downsizing their quanta to reduce their concentration risk in the face of a weakening economic outlook and the prospect of rising default rates.

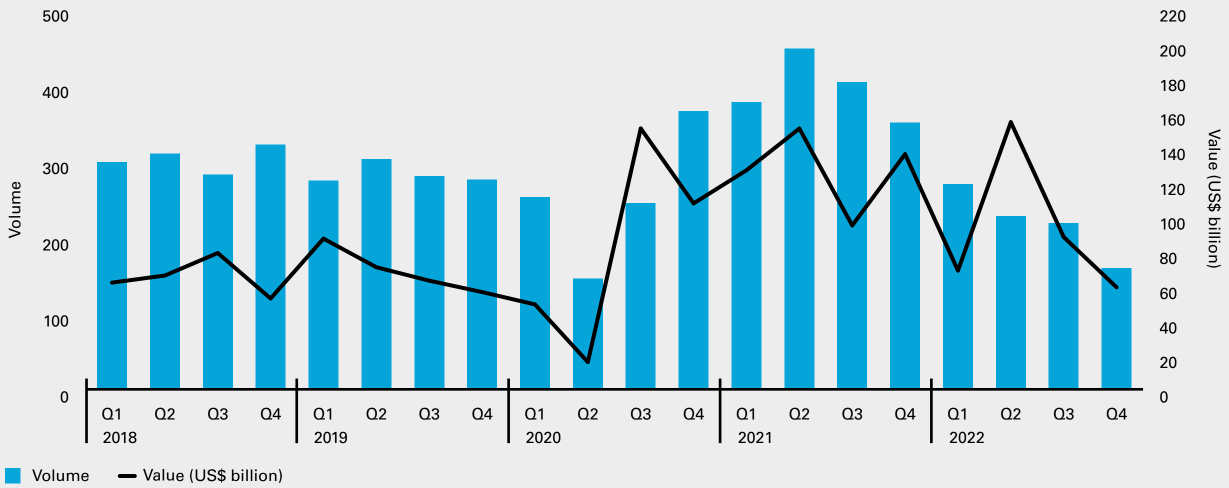
For this reason, the bifurcation between relatively strong volume and depressed value is likely to persist in the near term as sponsors focus on deals that are still possible in the constricted environment. This may include smaller platform deals or minority investments that do not involve a change of ownership control and, therefore, existing debt instruments are portable.

Add-ons have also been an increasingly popular strategy in the more recent past, since current portfolio companies will already have debt agreements and borrowing relationships, making it easier to access capital for the right acquisitions, even if it comes with the potential for existing debt to reprice at closer to today's market rate.

US private equity buyouts 2018 – 2022



US private equity exits 2018 – 2022



In keeping with the Fed's "higher for longer" mantra, sponsors should expect debt financing to come at a higher cost for the foreseeable future, even if access to leveraged loans shows signs of improving in 2023. At the same time, pedigree sponsors with a long history will have experience with a higher interest rate environment and will consider lower returns to be only temporary. Such firms will lean on lending relationships they have formed over the years, and those lenders will likely continue to support them as both sets of dealmakers rely on deal activity to advance. If PE has proven one thing time and time again, it's that it is a highly adaptable industry.

> **"The volume of buyouts held up more firmly than exits as conditions transitioned from the unprecedentedly supportive seller's market of 2021 to something closer to a buyer's market.**

Sector overview: M&A activity ebbs across the board

With some rare exceptions—namely in the oil & gas and energy sectors—deal activity was down in 2022 as a sense of fatigue set in following a prolonged period of high deal activity and as inflation and rising interest rate concerns took center stage

By Chang-Do Gong and Kristen Rohr

The top-five sector rankings were largely unchanged for 2022. The technology sector once again led deal activity, with 2,589 transactions worth US$612.6 billion. This represents an 11 percent and 40 percent year-on-year decline, respectively.

The second leading sector was pharma, medical and biotech (PMB). A total of US$254.7 billion worth of M&A transactions were announced—a 20 percent drop compared with 2021. Volume in the sector was down by only 2 percent year-on-year, with a total of 1,187 deals.

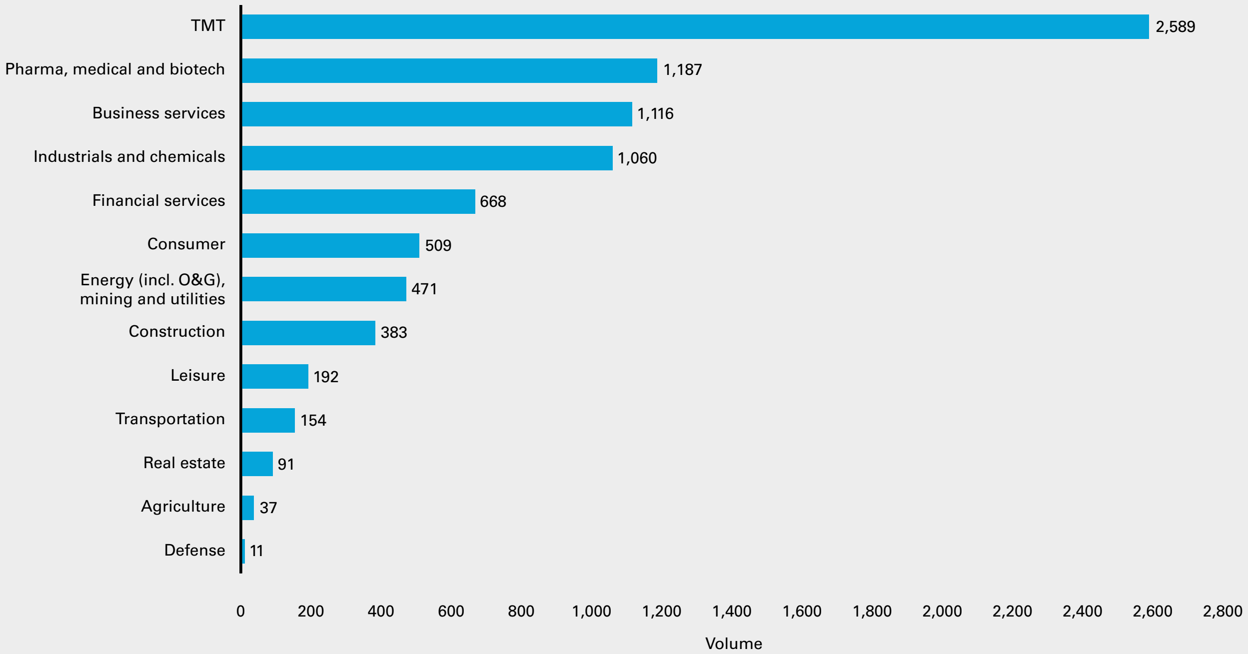
The steepest fall among the top-three sectors was seen in industrials and chemicals (I&C), which came in third behind technology and PMB. I&C was responsible for US$146.3 billion in aggregate deal value with a total of 1,060 deals, resulting in a 50 percent decline in deal value and 20 percent decline in deal volume compared to 2021 figures.

Although industrial and manufacturing output, in particular, is tied to consumer demand, which remained remarkably robust through 2022, dealmakers pulled back as a weaker economic outlook came into view. Companies in the I&C sector typically have high fixed costs because they require expensive equipment, facilities and maintenance to produce products and components, which can leave them exposed to rising costs and falling demand.

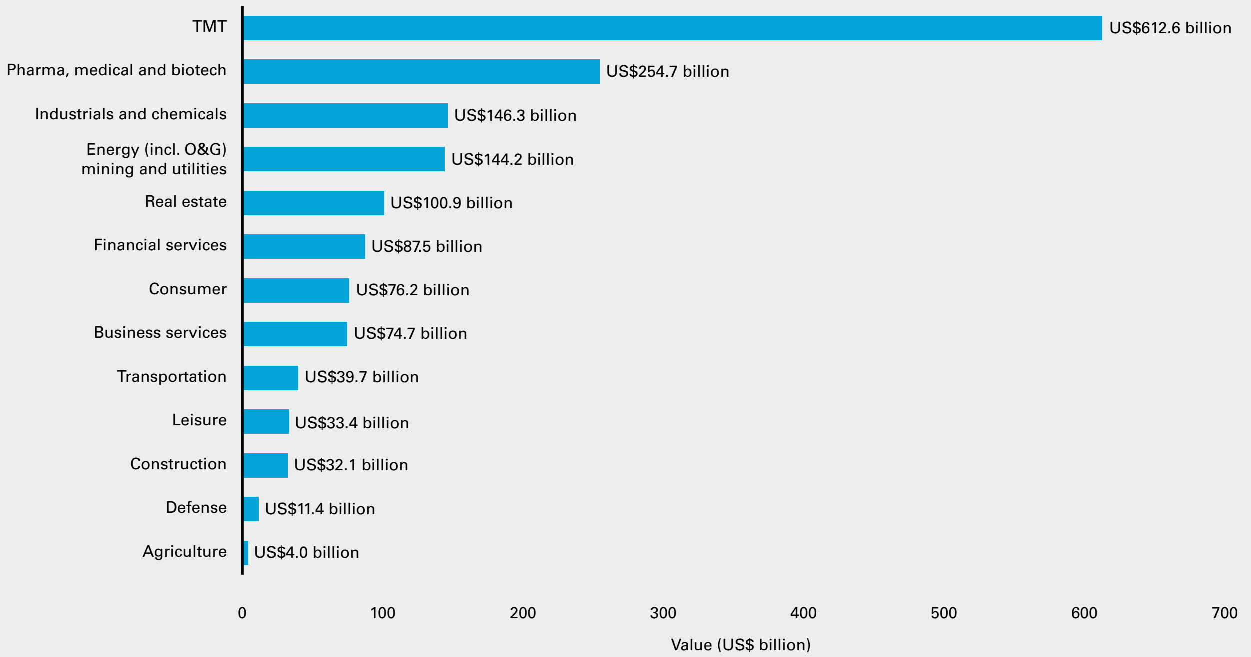
Looking further down the list, the real estate sector stands out for its comparatively robust year. Consistent with past trends, it saw relatively low deal volume compared to other sectors, with 91 deals recorded, up 3 percent year-on-year. However, in terms of value, the sector jumped from eighth position in 2021 to fifth place in 2022 despite a year-on-year decline in deal value of 17 percent, with US$100.9 billion in deals.

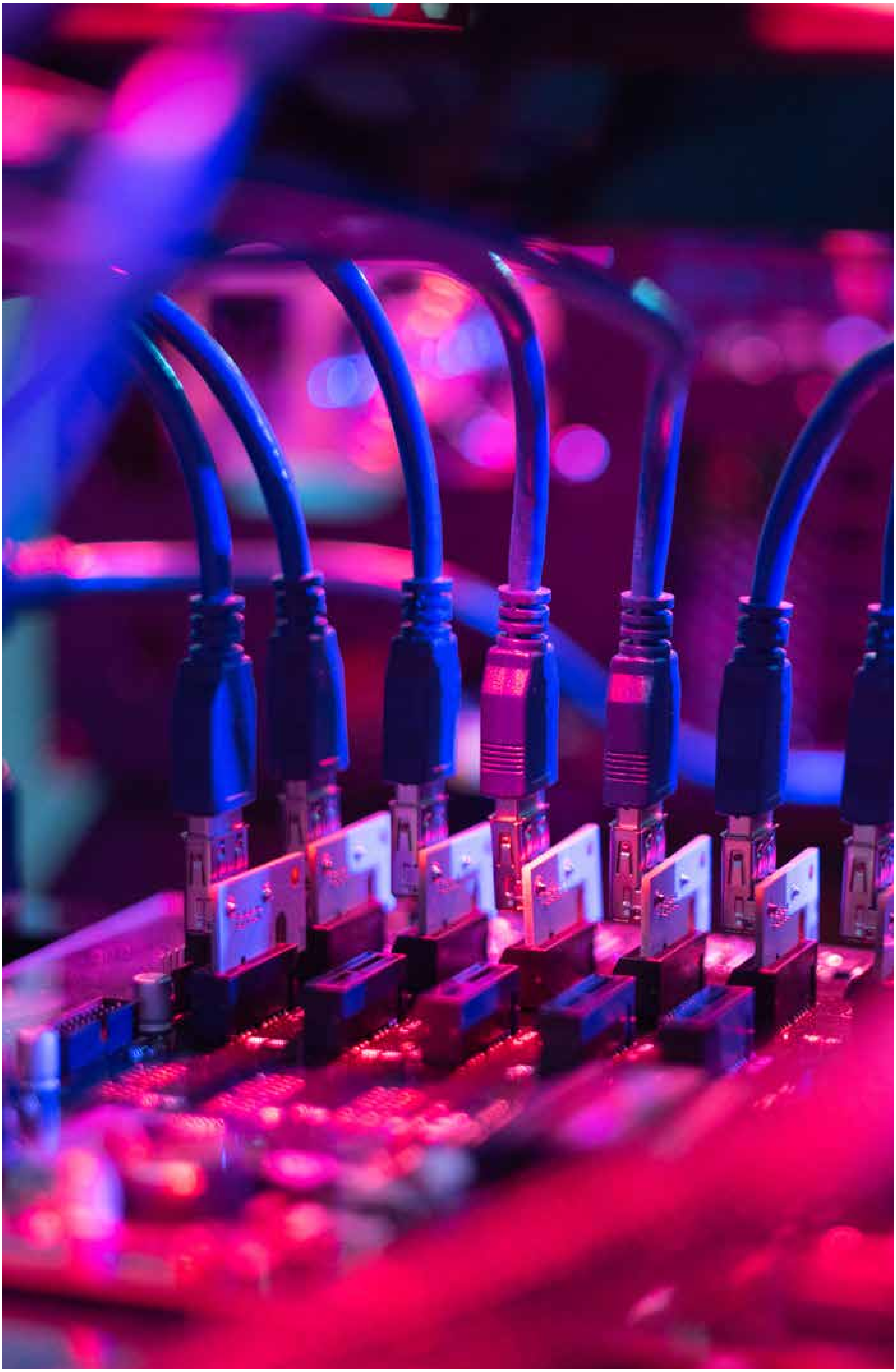
It is also worth noting that the only sectors that have seen an uptick in M&A volume year-on-year are oil & gas (up 19 percent), energy (up 21 percent during the same period) and mining (up 15 percent). In all three cases, their 2022 activity is connected to the price of crude oil (which, while it has declined considerably since peaking mid-year, remains well above the average seen in the past eight years) as well as the ongoing energy transition, both of which have driven deals. The resilience of oil & gas and energy sector volume seen in 2022 is likely to have staying power. Producers in the sector are equipped with cash and highly motivated to repurpose their portfolios amid the ongoing energy transition.

US M&A sectors by volume 2022



US M&A sectors by value 2022





Technology leads the charge yet again

Technology continued to drive M&A activity in 2022 despite the odds being stacked against the sector

By Arlene Arin Hahn, Tali Sealman and Linda M. Sim

There were 2,309 technology M&A transactions in 2022, worth US$546.6 billion—down 11 percent and 32 percent year-on-year, respectively, but still the second-highest total of any year on Mergermarket record measured by either metric, after the outlier year of 2021.

Five of the top-ten largest deals of the year belonged to the sector. The targets were video game developer Activision Blizzard, cloud computing company VMWare, social media giant Twitter, cloud-based design tool business Figma and cloud virtualization business Citrix Systems. These five deals alone were worth US$225 billion.

Much of the continued technology M&A activity is due to private equity (PE) taking full advantage of a buying opportunity. The pandemic supercharged the technology sector, as remote working pushed many businesses into a digital-only mentality. As a result, valuations and M&A (including de-SPAC deals) soared. By 2022, however, this trend had begun to show signs of slowing.

The sector is also particularly sensitive to a higher interest rate environment. Investment in a high-growth technology company can be speculative, with investors often using a discounted rate to calculate the present value of an asset's future cash flows. Higher interest rates increase that discount.

Even in the case of highly cash-generative technology companies with proven earnings margins, the rotation out of cyclical stocks into value stocks brought multiples back down to earth. Tech-focused PE funds such as Vista Equity Partners and Thoma Bravo were especially active in 2022, making the most of trampled equity prices to take large companies private.

Technology can reduce costs for struggling companies in times of economic uncertainty. This should continue to fuel deal activity, particularly as going public will no longer be an option for most businesses until there is an assured improvement in market confidence, and some will likely end up in distress. In the short term, technology companies may be less acquisitive due to ongoing headwinds, including higher interest rates, market uncertainty and lower valuations for their shares. However, PE still has ample dry powder at the ready and a strong appetite for what may soon be viewed as discounted assets. Do not be surprised if technology maintains its leading position in 2023.

US $546.6 billion

The value of 2,309 deals targeting the US tech sector in 2022

32%

Percentage decrease in deal value compared to 2021

Top technology deals 2022

1. Microsoft's **US$75.1 billion** acquisition of Activision Blizzard
2. Broadcom's acquisition of VMWare for **US$71.6 billion**
3. Elon Musk's acquisition of Twitter for **US$44.0 billion**

PMB performs as pharma groups repurpose their portfolios

After a year of historic profits in 2021 following the mass roll-out of COVID-19 vaccines and related treatments, big pharma companies armed with cash for deals have been shifting their attention

By Michael Deyong and James Jian Hu

Overall, pharma, medical and biotech (PMB) was the second most active M&A sector in 2022, after technology. A total of US$254.7 billion worth of deals were announced, a 20 percent drop compared with 2021. Volume fell at a far slower rate, edging down by just 2 percent to 1,187 deals.

Amgen—which did not have a COVID-19 vaccine but brought in additional revenue via a collaboration with Eli Lilly to help supply COVID-19 antibodies—made the biggest deal of 2022 across the sector. The company paid US$28.3 billion for Horizon Pharma, giving it a new pipeline of drugs for rare autoimmune and inflammatory diseases. This was followed by General Electric's spin-off of GE HealthCare Technologies for US$22 billion.

Johnson & Johnson and Pfizer, respectively, claimed the third- and fourth-largest transactions of the year, the former paying US$19.3 billion for heart pump manufacturer ABIOMED and the latter meeting a price tag of US$11.6 billion for Biohaven Pharmaceutical, maker of the migraine treatment Nurtec ODT.

Several pharmaceutical companies are facing key patent expirations toward the end of the decade. This patent cliff can have a serious impact on pharma groups' top line and continues to be a major impetus for M&A, as companies restock their drug portfolios to secure their next growth phases.

20%

Percentage decrease in the value of deals targeting the US healthcare sector in 2022 compared to 2021

US $254.7 billion

The value of 1,187 deals targeting the US healthcare sector in 2022

Biotech is also garnering interest and the reset in valuations in the sector in 2022 makes these companies increasingly appealing targets. Globally, the biotech industry is expected to almost triple in value from US$1.37 trillion in 2022 to US$3.88 trillion by 2030, according to Grand View Research.

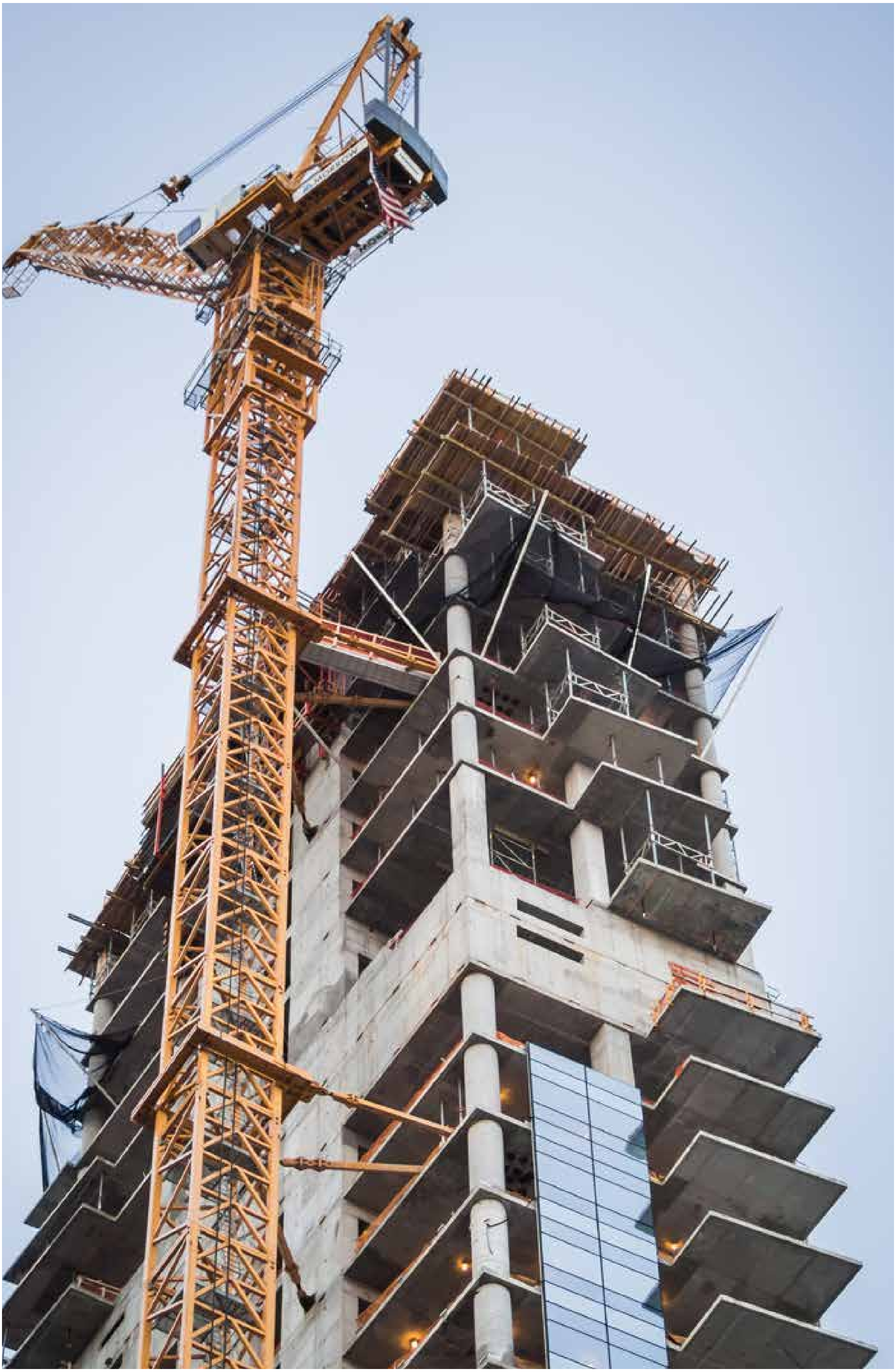
The pandemic raised healthcare to the top of the public agenda and emerging areas such as gene editing and genetic research are seeing increased funding, including government support. The National Institutes of Health awarded several grants totaling US$89 million in 2022 for related research that may uncover new disease treatments or cures. These fundamentals could see PMB retain its second-place position in 2023 and it will almost certainly remain among the top-five M&A sectors.

Top healthcare deals 2022

1. Amgen announced a **US$28.3 billion** acquisition of Horizon Pharma

2. General Electric announced the spin-off GE HealthCare Technologies for **US$22 billion**

3. Johnson & Johnson announced a deal to buy ABIOMED for **US$19.3 billion**



A flurry of activity early in 2022 sees real estate outperform

Real estate has historically shown resilience during challenging economic periods and is considered a reliable hedge against inflation—but not all assets are created equal, and dealmakers were highly selective in the transactions they pursued in 2022

By Eugene J.M. Leone and Ted Smith

Real estate ascended the M&A ranks in 2022, becoming the fifth-highest sector by value. This is a big move up from the year before and is due primarily to a spate of large deals that closed in the first half of the year, before a material softening in the market. Indeed, of the top-ten biggest real estate deals made in the year, just two fell in the second half.

All told, there were 91 transactions—a 3 percent increase compared with the 88 deals in 2021, making it the highest year for the sector, by volume, on Mergermarket record. Value came to US$100.9 billion, a 17 percent drop year-on-year, but again, the total was topped only in 2021 and 2006.

Prologis, a real estate investment trust (REIT) that invests in logistics facilities, sealed the largest acquisition with its US$22.8 billion takeover of fellow warehouse-focused REIT Duke Realty. The central role that logistics assets play in global commerce makes them hot properties, and they outperformed during the pandemic. Prologis was able to fund the all-stock deal by issuing new equity at a share price well above its pre-pandemic level.

In a similarly selective deal, Singaporean sovereign wealth fund GIC and Oak Street Real Estate Capital together bought STORE Capital for US$13.8 billion. The REIT specializes in single-tenant, triple net leased properties, which are generally considered to offer lower-risk returns. STORE's properties are generally leased to tenants with strong credit.

Blackstone claimed the sector's third-biggest deal when it acquired American Campus Communities (ACC) for US$13.1 billion. ACC is the largest owner, manager and developer of student housing communities in the US, its portfolio comprising 166 properties in 71 university markets.

High interest rates are having a pronounced impact on the real estate investment market. As yield-bearing assets, the higher cost of debt is forcing acquirers to push harder on entry prices and, in many cases, sellers are unwilling to accept these discounts. The sharp slowdown in activity in the second half of 2022 is likely to persist until the expectations of sellers and the aspirations of buyers are better aligned.

US **$100.9** billion

The value of 91 transactions in the US real estate sector in 2022

3%

Percentage increase in deal volume compared to 2021

Top real estate deals 2022

1. Prologis announced the **US$22.8 billion** acquisition of Duke Realty
2. GIC Private Limited and Oak Street Real Estate Capital together agreed to buy STORE Capital for **US$13.8 billion**
3. American Campus Communities, Inc. was acquired by Blackstone for **US$13.1 billion**

CFIUS: The FDI watchdog bares its teeth

2022 was a big year for the Committee on Foreign Investment in the United States (CFIUS)—notification filings as well as mitigation agreements were both trending up, adding to the already challenging landscape for cross-border transactions

By Farhad Jalinous

CFIUS activity was already on the rise before September 15, 2022, when President Biden signed the first-ever CFIUS executive order (EO 14083), the first of two milestones last year that increasingly sharpened the US foreign direct investment watchdog's teeth.

EO 14083 clearly articulates national security risks that the Committee must consider when reviewing covered transactions. The five areas of focus are: supply chain resilience; impact on US technological leadership; assessment of aggregate investment trends in industries; cybersecurity risks; and sensitive data.

The Committee chair (the US Department of the Treasury) takes the lead in each case, supported by a co-lead—the federal agency with the most appropriate expertise to review a particular case.

While the five areas identified by the recent EO have traditionally been championed by co-leads on a case-by-case basis, they are now indisputable codified areas of focus by CFIUS.

A good guide

A second milestone came on October 20, 2022, when the Department of the Treasury published the CFIUS Enforcement and Penalty Guidelines. These describe, for the first time, how CFIUS identifies, processes and assesses National Security Agreement (NSA) violations and imposes penalties.

The guidelines identify three acts or omissions that constitute a violation:

- Failure to file a mandatory declaration or notice
- Conduct that is prohibited or otherwise fails to comply with CFIUS mitigation agreements, conditions or orders
- Material misstatements or omissions relating to information filed with CFIUS, including false or materially incomplete certifications filed in connection with assessments, reviews, investigations or CFIUS mitigation

Together with the CFIUS EO, the guidelines are a clear signal that the Executive Branch, from the White House to the CFIUS member agencies, is committed to protecting US national security interests across the entire deal screening process, from case assessments to monitoring NSAs.

As a result, deal parties are increasing their scrutiny of covered transactions for any national security concerns that may draw the attention of CFIUS, motivated by the more central role that penalties may play in the future. To date, CFIUS has publicly announced only two instances of civil penalties, one valued at US$1 million in 2018 and a US$750,000 fine in 2019.

This will change as CFIUS increases its emphasis on enforcement. Indeed, the explicit inclusion of what constitutes a violation and the setting out of the penalty process is a sign that non-compliance is likely to be met with a more forceful response.

> **"EO 14083 clearly articulates national security risks that the Committee must consider when reviewing covered transactions. The five areas of focus are: supply chain resilience; impact on US technological leadership; assessment of aggregate investment trends in industries; cybersecurity risks; and sensitive data.**

ESG is increasingly critical in US M&A, but greenwashing concerns persist

Environmental, social and governance concerns are being raised in M&A transactions across the board as regulatory pressure continues to climb

By Maia Gez, Seth Kerschner, Taylor Pullins and Tami Stark

Questions concerning the environmental sustainability of acquisition targets are increasingly important in M&A transactions. Buyers are scrutinizing everything from an acquisition target's projected greenhouse gas (GHG) emissions to ways in which a deal may impact their own climate mitigation strategies. In this regard, reliable and verifiable reporting of climate performance is set to become an essential tool for improving transparency.

Meanwhile, the government is increasingly focused on efforts to mandate extensive environmental, social and governance (ESG) disclosure. For example, in March 2022, the Securities and Exchange Commission (SEC) proposed rules that would require public companies to disclose information about their direct GHG emissions and certain indirect emissions from their supply chains and customers. Another proposed regulatory regime in the works is the Federal Supplier Climate Risks and Resilience Rule, announced by the Biden administration in November 2022. This proposed rule would require large federal government contractors to "disclose their greenhouse gas emissions and climate-related financial risks and set science-based emissions reduction targets."

Supply chain risk is another area of increasing scrutiny in M&A due diligence, and the government is once again placing this under the ESG spotlight. Buyers often assess reputational and litigation risks associated with potential human rights concerns in the supply chains of acquisition targets. For example, the supply of critical minerals will need to expand to support growing renewable energy production in the US. To mitigate supply chain risk, US regulations and laws, including the Inflation Reduction Act that was signed into law in August 2022, encourage investment in the domestic production of these materials and reliance on "friendly" foreign trade partners, with processes in place to avoid human rights abuses. For the time being, however, many renewables developers are heavily reliant on foreign sources of critical minerals, particularly China and the Democratic Republic of the Congo. Between the risk of enforcement under the Uyghur Forced Labor Prevention Act—signed into law in December 2021—and the potential for other regulatory scrutiny, these considerations can be important in M&A transactions and will become increasingly significant as the energy transition builds momentum and investment into renewable energy assets continues to rise.

Greenwashing claims

While climate reporting can be fundamental for M&A decision-making, a lack of defined standards and the marketing of ESG claims without support remain a concern. Allegations of greenwashing continue to run rife. In December, the House Committee on Oversight and Reform issued a follow-

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> **Buyers are scrutinizing everything from an acquisition target's projected greenhouse gas (GHG) emissions to ways in which a deal may impact their own climate mitigation strategies. In this regard, reliable and verifiable reporting of climate performance is set to become an essential tool for improving transparency.**

up memorandum to a report originally published in September 2022 entitled *Investigation of Fossil Fuel Industry Disinformation*.

The new memo focuses on inconsistencies between energy companies' public support for GHG emissions mitigation and internal statements indicating long-term commitments to fossil fuels. The Committee says that new internal documents show that energy companies' public support for carbon-capture technology and methane regulations are part of a larger effort to entrench fossil fuel use, specifically natural gas, rather than pursue emissions reductions.

While the Committee is unlikely to release significant additional documents or conduct further investigations into alleged greenwashing in the next two years, the attention of US lawmakers on these alleged misrepresentations means it is important for businesses to substantiate their environmental claims with objective data and analysis to mitigate greenwashing risk. The Federal Trade Commission recently began considering updates to federal guidance, commonly referred to as Green Guides, designed to prevent companies from making deceptive environmental benefit claims, as consumers increasingly demand environmentally friendly products.

These Green Guides have not been updated since 2012, before the current spotlight on ESG-focused investment. Clear guidance from the government on how companies can accurately describe the environmental benefits of their products and carbon credits generated from activities that sustainably manage natural ecosystems would be a helpful area for the Green Guides to update. The deadline for public feedback is February 21, 2023. This will be one of several forthcoming steps aimed at improving ESG transparency among companies across the country, with more expected to come.

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While climate reporting can be fundamental for M&A decision-making, a lack of defined standards and the marketing of ESG claims without support remain a concern. Allegations of greenwashing continue to run rife.

SPACs struggle amid regulatory uncertainty and volatile markets

As economic and regulatory headwinds gather, SPACs must adapt in order to position themselves for a comeback

By Andrew Hammond and Joel Rubinstein

The 2022 US SPAC IPO market was a shadow of its former self. There were 86 SPAC listings on US exchanges, totaling US$13.4 billion in proceeds—a far cry from the 613 listings in 2021, which raised US$162.6 billion in proceeds. The largest SPAC IPO of the year, Screaming Eagle Acquisition Corp, sponsored by Eagle Equity Partners (EEP), raised a relatively modest US$750 million on Nasdaq, compared to the previous SPAC sponsored by EEP, which raised US$1.725 billion in 2021.

While record sums of capital were collected in 2021, leaving plenty of dry powder for deals, de-SPAC transactions also slowed. These transactions nearly halved to 101 in 2022 from 199 a year prior. In terms of total value, US de-SPACs came to US$167.5 billion—a major step down from the US$502.8 billion announced in 2021. The largest of these was the announced US$3.1 billion merger between Horizon Acquisition Corp II and Flexjet, a provider of fractional ownership aircraft, leasing and jet card services.

Taking stock

Perspective is important here: After growing in popularity in the second half of 2020, it is no exaggeration to say the US SPAC market exploded in 2021, as capital markets and M&A markets were each flooded with liquidity. It was to be expected that 2022 would be slower. A proposal in March 2022 by the Securities and Exchange Commission (SEC) to impose stricter rules on the asset class further dampened activity.

Statements made by the SEC in connection with its announcement of the proposed rules about various stakeholders including SPACs, targets, underwriters and other transaction participants being potentially liable for information included in SEC filings during de-SPAC transactions—including projected financial information—were enough to seriously temper the market. The SEC said that it considered it important that there be liability on so-called "gatekeepers" in de-SPAC transactions akin to the liability that underwriters would have in a traditional IPO. A number of law firms, industry associations and other SPAC market participants submitted comments to the SEC, questioning various aspects of the proposed rules. The SEC has yet to respond to the comments or adopt any of the proposed rules.

As a result, the SPAC marketplace finds itself somewhat in limbo. Mergermarket reports that, in Q4 2022, the average time between a SPAC IPO and the announcement of a merger was 15.2 months, up from 8.7 months in Q1. By comparison, it took just 5.9 months for SPACs to find a merger target in Q4 2021.

Similarly, on average, the gap between a SPAC IPO and completion of a merger was 22.5 months in Q4 2022, versus 15 months in Q1 2022 and 11.2 months in Q4 2021.

In addition, the number of SPACs that liquidated more than doubled in each quarter of last year. Per Dealogic data, more than 60 US-listed SPACs announced they would return nearly US$24 billion to investors in 2022. The Inflation Reduction Act—which includes a 1 percent excise tax on corporate stock buybacks that takes effect in 2023—has been cited by some as part of their motivation to liquidate earlier than required. For example, the Gores Group returned cash in the trusts of three of its SPACs in 2022, rather than wait until 2023. However, based on guidance issued by the Departments of the Treasury and the Internal Revenue Service on December 27, 2022, that redemptions in connection with liquidations are not subject to the excise tax, many of those accelerations may have been unnecessary.

Many SPACs waiting to go public, faced with potential SEC scrutiny among other restrictions, simply decided to pull the plug—115 SPACs valued at US$31.5 billion withdrew IPO paperwork in 2022, according to *Dealogic*. In addition, more than 50 SPAC mergers were terminated in 2022.

Facing litigation

In addition to regulatory and economic pressures, 2022 presented SPACs with a number of civil litigation challenges. These included both breach of fiduciary duty claims and securities litigation.

On January 3, 2022, the Delaware Court of Chancery issued a long-awaited decision in the *In re MultiPlan Stockholder Litigation* case relating to the de-SPAC transaction between Churchill Capital Corp III, a SPAC founded by Michael Klein, and MultiPlan, Inc.

The complaint in the MultiPlan case generally alleged that the structure of the SPAC created divergent interests between the Class A stockholders (public investors) and Class B stockholders (the sponsor, directors and other founders), and alleged that the defendants (including the directors of the SPAC, the sponsor and the alleged controlling stockholder, Klein) prioritized their personal interests above the Class A stockholder interests in completing the merger and issued a false and misleading proxy statement that deprived Class A holders of the right to make an informed decision as to whether to redeem their shares. In this respect, the complaint asserted breach of fiduciary duty claims against the directors of the SPAC, Klein and the sponsor, among others.

The court "applying well-worn fiduciary principles" concluded that the plaintiff's allegations were sufficient to survive defendants' motion to dismiss, principally because of the potential conflicts of interest between the public stockholders (who would only profit if the stock were to trade above the redemption price of US$10.04 per share) and the defendants (who would profit from their Class B shares even if the stock were to trade substantially below that price). In November 2022, MultiPlan announced that the case had been resolved with plaintiffs for US$33.75 million.

Many SPACs do not have the same level of alleged conflicts as witnessed in the MultiPlan case. In the latter, among other things, the sponsor had the ability to elect all directors prior to the de-SPAC closing, the directors held substantial amounts of Class B shares and there were longstanding relationships between Klein and the other directors. Nonetheless, plaintiffs have looked to the MultiPlan case to craft breach of fiduciary duty allegations in subsequent lawsuits.

In addition, cases have been filed in Delaware and in the US District Court for the Southern District of New York against SPACs that received termination fees stemming from failed mergers and subsequently liquidated. These cases generally focus on whether the Class A holders are entitled to receive additional distributions above and beyond their pro rata share of the trust account in the event the SPAC liquidates. The Delaware courts have yet to issue a dispositive decision on any of these cases and this will be an area to watch in 2023.

Finally, plaintiffs' lawyers continued to aggressively target SPACs with securities litigation in 2022. According to the Stanford Class Action Securities Clearinghouse, there were 25 class action securities litigations filed involving SPACs in 2022. We expect this trend to continue into 2023.

Looking ahead

Despite the slowdown in activity, SPACs remain a viable method of reaching public markets. They give private companies access to growth capital and investors a means of getting in on the ground floor to back high-potential companies. Nevertheless, the volatile markets and regulatory environment have imposed challenges that SPACs will need to address in order to stage a comeback.

For the time being, with the broader IPO and M&A markets remaining challenged and investors leaning away from more speculative assets—which have often been the target of SPACs—SPAC activity is likely to remain subdued. Once the broader markets recover, and the regulatory picture is clarified, SPACs likely will adapt and retake their place among capital markets alternatives, although nobody expects—or even wants—a return to the overheated market of 2021.

Antitrust scrutiny intensifies as the DOJ and FTC step up enforcement

The federal government continues to aggressively pursue its antitrust agenda, seeking to block several headline deals, rejecting remedy offers, increasing filing fees for the largest deals and setting out new guidelines

By Rebecca Farrington and Heather Greenfield

Merger filings in the US remain above historical averages and enforcement continues to be aggressive. The pace of merger filings under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act—which requires detailed filings about larger mergers and acquisitions to be provided to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) before they occur—fell in 2022, but still surpassed historic levels. According to White & Case's Global Antitrust Merger StatPak, HSR filings in the first half of 2022 were 47 percent above the ten-year trailing average.

The FTC and DOJ Antitrust Division have continued their aggressive posture toward merger enforcement. The antitrust agencies have implemented policy changes that have created an uncertain regulatory environment. Early termination, for example, remains "temporarily" suspended until further notice. Since the suspension in February 2021, all reportable deals are subject to the standard 30-day waiting period. This is prompting some dealmakers to submit their HSR filings early (and on term sheets or letters of intent) to stay ahead of schedule.

Notably, on December 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023, which includes the Merger Filing Fee Modernization Act of 2022 (Merger Filing Fee Modernization Act).

The Merger Filing Fee Modernization Act, among other changes, will increase US merger filing fees for the largest transactions. While some transactions will see a drop in US filing fees, the largest deals (any deal with a total value of US$5 billion or more) will see a nearly ten-fold increase, to US$2.25 million. Companies pursuing larger transactions should consider commercial solutions, including whether to split the HSR filing fee or to reconsider filing on a letter of intent versus waiting for more deal certainty.

Deals of all sizes

Private equity deals and transactions in the healthcare and technology sectors continue to attract heightened antitrust scrutiny, and it is not only mega-cap deals that are being pursued. Both the DOJ and the FTC investigated and challenged several transactions of all sizes and deal values across industries in 2022. The antitrust agencies also announced a strong preference for challenging transactions in court instead of pursuing settled remedies, suggesting an increased appetite for litigation.

The US agencies have also demonstrated an increased interest in challenging vertical transactions. That was certainly true for the largest M&A deal of the year. On December 8, 2022, the FTC issued a complaint to block Microsoft from acquiring video game developer Activision Blizzard, alleging that the US$69 billion tie-up would suppress

> **"The FTC and DOJ Antitrust Division have continued their aggressive posture toward merger enforcement. The antitrust agencies have implemented policy changes that have created an uncertain regulatory environment.**

competitors to its Xbox consoles and its subscription content and cloud-gaming business. Activision produces some of the world's most popular video game titles, including *Call of Duty*, which are currently available on a range of gaming platforms. Microsoft intends to fight the lawsuit.

The FTC has sought to block/prevent other vertical mergers. In January 2022, for example, the FTC sued to block Lockheed Martin's US$4.4 billion proposed acquisition of Aerojet, which the parties subsequently abandoned.

It's not all been smooth sailing for these challenges, however. In September 2022, the administrative law judge dismissed the FTC's complaint against DNA sequencing provider Illumina's US$7.1 billion vertical acquisition of Grail, which was brought in March 2021. The FTC has since appealed the case.

Similarly, the DOJ's challenge to UnitedHealth's bid to buy vertical Change Healthcare, filed in February 2022, was also dismissed by a judge in September and the deal ultimately closed in October. Nonetheless, the DOJ subsequently announced its intention to appeal the verdict.

Other losses include DOJ's challenges to U.S. Sugar's acquisition of Imperial Sugar and Booz Allen Hamilton's acquisition of EverWatch.

The DOJ did have a win on October 31, 2022, however, when the court blocked publisher Penguin Random House's proposed US$2.2 billion takeover of Simon & Schuster, with the parties abandoning the deal.

Increased enforcement, combined with the agencies' reluctance to approve remedies, has created an uncertain environment where commercial parties should be increasingly prepared to litigate mergers.

Merger Guidelines—looking ahead

One area to watch in 2023 is the release of the new merger guidelines, the key framework for the US antitrust agencies when reviewing transactions.

In January 2022, the DOJ and the FTC announced plans to revise the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines. The FTC and DOJ launched a joint review of the guidance in early 2022 and were initially expected to release the new guidelines before the end of the year. This is a potential game changer and could force dealmakers to adjust their calculus when reviewing potential transactions.

The ramping up of antitrust enforcement in 2022 may well be a sign that the guidelines will significantly alter the existing frameworks for assessing mergers.

Down but not out: Crypto takes a hit in 2022 but is not going anywhere

Never has the digital asset space experienced such a succession of high-profile implosions and steady flow of negative mainstream press coverage, leaving many to ask—what next?

By James Jian Hu, Gregory Pesce and Prat Vallabhaneni

The crypto industry has endured arguably its toughest year to date. Nonetheless, it remains a fertile ground for innovation as developers use "crypto winters" to build the next cycle's most exciting products.

The first shoe to drop was Terra Luna in May 2022. Investors were lured in by the high yields in exchange for staking their TerraUSD (aka UST) stablecoin which, unlike Tether (USDT) and Circle (USDC), was not collateralized by real assets. Critics had argued for some time that the algorithmic dollar-pegged coin was doomed to fail—and that is exactly what happened. The resulting contagion surprised even the biggest crypto skeptics, with ripples felt for months to come. Some of the largest centralized finance (CeFi) companies would soon topple and declare bankruptcy.

Insolvency opportunities

The wave of insolvencies that emerged in the second half of the year has already produced some market activity. In December, Binance.US agreed to pay US$20 million to acquire Voyager Digital's customer accounts plus the market value of its crypto assets, which at the time of the announcement was approximately US$1 billion.

The deal, essentially, is intended to provide Voyager's customers with a crypto-based recovery and liquidity while expanding Binance.US's user base, although there are no certainties the sale will obtain regulatory approval or close. Post-close, it is uncertain whether customers will stick around.

This could be the first of similar deals, with existing crypto players seizing on a consolidation opportunity by acquiring certain assets from their fallen competitors. For example, Celsius Network, FTX and BlockFi, all of which filed for bankruptcy after Voyager, are running processes to solicit proposals to fund their chapter 11 exits.*

There are three primary motivations for crypto natives to acquire assets out of bankruptcy. One is access to new customers, as illustrated by the Binance.US-Voyager deal. Another is to acquire technology infrastructure and human capital, though there is typically an exodus of talent in any insolvency situation. Finally, acquirers may be attracted to a failed target's regulatory infrastructure, licenses, and authorizations. It is not only large buyers acting alone that are reviewing current insolvency acquisitions; industry consortia have also been sizing up potential deals.

Moving through Congress

The biggest short-term challenge for the digital assets industry is uncertainty surrounding the impact of incoming legislation and regulation. The Digital Commodity Consumer Protection Act (DCCPA), introduced in August 2022, seeks to give the Commodity Futures Trading Commission (CFTC) more oversight of the industry, to the extent digital assets are considered commodities.

At a December 1, 2022 hearing, Democratic Senator Debbie Stabenow, chair of the Senate Committee on Agriculture, Nutrition and Forestry (which oversees commodities) and the DCCPA's sponsor, remarked that the purpose of the legislation is not to take authority away from other financial regulators. She added: "Because crypto assets can be used in many different ways, no single financial regulator has the expertise or the authority to regulate the entire industry."

This is what makes crypto such an innovative area of the digital economy—and a challenge for regulators. For example, Bitcoin (BTC) is accepted as a commodity, playing the role of a fungible, digital gold. But the next largest crypto by market capitalization, Ether (ETH), is a very different animal. Developers can readily build decentralized apps (dApps) on the Ethereum network, providing users with banking services, the ability to trade collectibles and artwork in the form of NFTs, play video games with financial incentives, and socialize and make transactions in the metaverse.

In 2018, the then-Director of the Division of Corporation Finance at the Securities and Exchange Commission (SEC) publicly stated that ETH is not a security due to its decentralized nature and its long-term development.

On September 15, Ethereum transitioned from a proof-of-work (PoW) to a proof-of-stake (PoS) network, slashing its carbon footprint.

It is not only the DCCPA that will be watched closely in 2023. In December, Democratic Senator Elizabeth Warren and Republican Senator Roger Marshall introduced the Digital Assets Anti-Money Laundering Act. The proposed legislation seeks to extend know-your-customer requirements to digital asset wallet providers, miners, validators and other blockchain network participants, and calls for these to be designated as money service businesses by the Financial Crimes Enforcement Network.

A path forward

While these developments have the potential to hamper decentralized innovation, consumer demand for digital assets remains strong, even amid ongoing market volatility. Proponents of decentralized finance (DeFi) argue that, thus far, it has worked as designed, unlike some centralized products—self-liquidating loans administered via smart contracts on the blockchain functioned just as expected—and this is likely to keep DeFi in the spotlight.

Use cases for blockchain technology also continue to emerge, including in the institutional world. For example, in September 2022, KKR, one of the largest private equity firms in the world, made its Health Care Strategic Growth Fund available on the Avalanche blockchain.

Meanwhile, some of the biggest consumer brands, including Walmart and Nike, continue to plant their flags in the metaverse, the latter launching its first line of digital sneakers last year following its acquisition of NFT company RTFKT.

Fashion brands have been particularly active in expanding their digital footprint in this new frontier. In June 2022, Salvatore Ferragamo opened a concept store in New York offering customizable sneakers via hologram, as well as 256 NFTs created in collaboration with digital artist Shxpir. That same month, Burberry launched its second NFT collection in Mythical Games' Blankos Block Party, the branded limited edition Burberry Blanko NFT (aka, a unicorn named Minny B) as well as a variety of digital accessories. Tag Heuer even launched a smartwatch that allows users to display their collection of NFTs.

The digital assets space moves at such a rapid pace that it is difficult to predict where the biggest innovations and M&A opportunities will be by the time the current crypto winter thaws. There is evidence of products that could solve the issues underpinning some of 2022's biggest collapses. Within DeFi, decentralized trading platforms became popular in Q4, allowing users to trade leveraged products while acting as custodians of their assets rather than entrusting them to centralized exchanges.

In the venture capital space, 2023 will bring renewed focus on due diligence, risk management and compliance with incoming laws and regulations. Hard lessons were learned in the past 12 months and these should make for a more resilient, battle-hardened industry over the medium to long term, even if asset prices remain deflated in the coming months. Whether it is called crypto, Web3 or is soon known by another name, this space is here to stay.

** White & Case LLP represents parties in interest in the Celsius Network and FTX Trading restructuring processes.*

The decisive decade: The race to net-zero gets underway

The US made its energy transition intentions clear when the administration announced its commitment to reach net-zero emissions by 2050—the clock is ticking, but how will M&A play a part?

By Jay Cuclis, Arlene Arin Hahn, Michael Rodgers and David Strickland

In December 2021, President Biden announced a new target for the country to achieve "a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030." To put that into context, in 2020, net greenhouse gas (GHG) emissions were approximately 17 percent below 2005 levels.

As a result, fossil fuel operators are now aggressively trying to reduce their emissions. Sustainable energy companies from renewable natural gas to renewable methane are being bought up by oil & gas super-majors, whose balance sheets have expanded thanks to the surging price of energy and fossil fuels in the past two years.

By acquiring these assets and incorporating them into their existing infrastructure, thereby creating larger diversified energy companies, these groups have the potential to establish profitable renewables businesses. The bottom line is that fossil fuel companies are adapting to this new environment, and one of the fastest ways to achieve this transformation is through buying rather than building, meaning that there is likely to be substantial M&A activity in this sector. Case in point: Chevron Corp made its biggest investment to date in alternative fuels when it acquired biodiesel maker Renewable Energy Group for US$3.15 billion in February 2022.

A game-changing law

A major catalyst for investment in energy transition is the landmark Inflation Reduction Act (IRA), which Congress passed in August 2022. It is the most sweeping legislative development in the history of renewable energy income tax incentives. The IRA has reset existing tax credits while introducing new incentives for a variety of renewable energy sources and projects in what will amount to an expenditure of more than US$400 billion.

Under the IRA, extant tax credits for traditional solar and wind projects (the value of which, under prior law, had begun to taper off significantly), have been restored to their original dollar value and extended until 2032—and potentially later if emission targets are not achieved in that time. The tax credits are available on the condition that claimants comply with new "wage and apprenticeship" requirements designed to ensure that construction workers are paid prevailing wages, and qualified apprentices registered with the US Department of Labor are used for projects. Moreover, in what will likely serve as a significant boon to the burgeoning carbon-capture, utilization and storage (CCUS) industry, under the IRA, tax credits associated with carbon oxide sequestration will enjoy both significant increases in credit value and significant decreases to applicable minimum capture thresholds.

Additional incentives under the IRA include tax credits for standalone battery storage, clean hydrogen, and manufacturers of components for qualifying clean energy projects and facilities. The legislation also provides for new and potentially game-changing ways to monetize tax credits. This includes transferability provisions—which, for the first time, allow tax credits to be bought and sold between taxpayers—as well as so-called "direct pay" provisions, which allow for taxpayers in loss positions to simply collect cash from the Treasury Department rather than being forced to wait until they have taxable income in order to make tax credit claims.

> "Sustainable energy companies from renewable natural gas to renewable methane are being bought up by oil & gas super-majors, whose balance sheets have expanded thanks to the surging price of energy and fossil fuels in the past two years.

Focus on energy security

There is a notably different emphasis in how US energy incumbents are attempting to decarbonize. Unlike in Europe, where companies are far more focused on renewables, US businesses are directing more investment toward CCUS. This extends beyond the energy sector into adjacent applications.

For example, in December 2022, ExxonMobil, the largest oil & gas company in the US by market capitalization, partnered with Mitsubishi Heavy Industries to deploy the latter's carbon-capture technology as part of ExxonMobil's end-to-end carbon-capture and storage services for heavy-emitting industrial customers.

There are two key reasons for the growing investment in CCUS. Rapidly weaning the world off carbon-based fuels will be incredibly challenging because of their widespread accessibility and lower cost relative to renewables.

Then there is the question of energy security—renewables continue to face energy storage constraints. Prevailing battery technology, lithium-ion cells, are limited by raw material scarcity and have a relatively short effective operating life.

Private financing is working to solve this. For example, in December 2022 Houston-headquartered energy infrastructure company Schlumberger and Saudi Aramco's corporate venture arm backed a US$100 million Series A round for EnerVenue, a California startup developing long-life nickel-hydrogen batteries. In due course, advanced battery technologies have the potential to further unlock renewables' contribution to the overall energy mix.

In the shorter term, CCUS offers a timely solution for reducing carbon emissions to help offset the impact of the continued use of traditional energy sources. Like renewables, the space has received a substantial boost from the IRA, which has significantly increased the tax credit value and decreased the applicable minimum capture thresholds for carbon-capture projects. All of this will go a long way toward the government's goal of achieving net-zero by 2050.


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European M&A: The mighty dollar opens doors for US bidders

US bidders had the opportunity to capitalize on the strength of the dollar in 2022, which rallied as the Federal Reserve took action on its interest rate policy to curb inflation

By Jörg Kraffel, Ferdinand Mason and Jarlath McGurran

There were 1,309 M&A deals in Europe involving US bidders last year—a 9 percent decrease in volume, year-on-year, and a 41 percent decrease on 2021's total value, at US$423.3 billion. Despite these declines, however, US buyers who pursued targets in Europe enjoyed one of the strongest exchange rates in years, with the US dollar achieving parity against the euro for the first time since 2002.

The largest deals of the year all have one thing in common: They center on infrastructure assets. In the lead was the US$46.4 billion acquisition of Atlantia. Blackstone financed a take-private of the Italian infrastructure firm, taking a minority stake alongside existing majority shareholder Edizione, the investment vehicle of the Benetton family.

The second biggest deal also involved Blackstone, which made a US$23.8 billion recapitalization of Dutch last-mile logistics real estate firm Mileway, passing an interest in the company to one of its long-term funds. In the year's third-largest deal, Brookfield Infrastructure Partners and DigitalBridge Group took a 51 percent stake in Deutsche Telekom's towers assets for US$10.7 billion.

A safe haven

Infrastructure is something of a safe haven for investors. These assets provide essential services spanning transportation, energy and water supply and distribution, through to communications and data storage. Demand for these services is typically stable, even in times of economic weakness. Many infrastructure assets are also regulated, with contract provisions tying their revenues to inflation. This is especially relevant in the current macro environment, as infrastructure delivers an attractive hedged yield.

However, in a cross-border context, the sector also sits squarely in the line of sight of Europe's national foreign direct investment (FDI) regimes. Infrastructure assets are often considered highly strategic and critical to national security.

The pandemic only tightened these regimes and events in Ukraine further cemented this resolve. Indeed, in some instances, the scope of FDI regimes was expanded to include more sectors, covering everything from medical technology to pharma, cybersecurity and banks.

Thresholds have also been lowered and while these measures were initially considered a temporary response to pandemic-related disruption, 2022 saw some stricter regimes made permanent, as was the case in Italy and Spain.

For deal certainty, it is essential that US acquirers develop a clear FDI roadmap that accounts for any potential obstacles and, where possible, the geopolitical intricacies involved in any proposed transaction.

ESG considerations

Naturally, this roadmap should not stop at FDI. All US bidders developing a European M&A strategy will require a sophisticated understanding of the region's progressive environmental, social and corporate governance (ESG) legislative developments. Bidders should expect to pay an ESG premium for companies that have sustainable business models, have made major progress in decarbonizing their operations, or are otherwise positioned to benefit from the concerted policymaking efforts of the European Commission and member states.

There are also capex requirements to consider, particularly with regard to highly regulated assets in the infrastructure space. These investments need to account for any short-term and long-term capital necessary, for example, to reduce companies' carbon footprints or audit and improve supply chains to meet stricter regulatory standards.

After peaking in September at a two-decade high, the dollar finally fell back below parity against the euro in Q4 2022. If this continues through 2023, there will be pressure on US bidders to continue making the most of this forex advantage in the near term while it is still available.

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For deal certainty, it is essential that US acquirers develop a clear FDI roadmap that accounts for any potential obstacles.

The SEC scored record penalties in fiscal year 2022

Many were anticipating an enforcement crackdown by the Securities and Exchange Commission (SEC) in the first full fiscal year under chair Gary Gensler and enforcement director Gurbir Grewal, and those expectations were certainly met

By Tami Stark

In fiscal year 2022, the SEC recovered its highest recorded sum of monetary penalties—US$6.4 billion in civil penalties, disgorgement and prejudgment interest. This was almost double the US$3.9 billion collected in fiscal year 2021, and while the volume of enforcement actions was lower than during pre-pandemic years, 2022 also saw a 9 percent increase over the prior fiscal year.

Of this record haul, US$2.8 billion was attributable to public company and subsidiary actions, a full US$900 million higher than in the previous year, per an analysis by Cornerstone Research. And in another record, almost all of the 75 public company and subsidiary defendant settlements during this period involved a monetary penalty, according to an analysis by Cornerstone Research. Of the 3 percent that were not fined, the SEC reported that the entity had cooperated in about two-thirds of these cases. These results call into question the value of cooperation under the SEC's current administration.

In terms of the highest number of actions taken, investment advisers and investment companies were the primary target, with 174 cases, followed by broker-dealers, with 132 actions.

In yet another first for the agency, charges were brought against a registered investment adviser for failing to disclose a conflict of interest arising from its staff's ownership of the sponsors of special purpose acquisition companies (SPACs) being pitched as investment products.

A clear message

It came as no surprise that, in its enforcement round-up for the year, the SEC chose to highlight actions against 16 broker-dealers and one affiliated investment adviser for failures to maintain and preserve certain text message communications. These settlements alone were valued at about US$1.2 billion.

This has been a point of focus for the securities watchdog, which is concerned about the use of unauthorized personal mobile devices for off-channel private communications, in violation of federal securities laws. The move is a warning shot for firms engaged in these behaviors and those failing to put in place adequate policies to prevent such abuses.

Crypto enforcement

Cryptocurrency cases also picked up the pace, with the SEC drawing attention to its first action against a crypto lending firm and an insider trading case involving digital assets. These are just the tip of the iceberg.

In 2022, the agency announced plans to nearly double the headcount of the Enforcement Division's Crypto Assets and Cyber Unit, previously simply known as the Cyber Unit. And, in December 2022, charges were brought against Samuel Bankman-Fried for "orchestrating a scheme to defraud equity investors in FTX Trading Ltd. (FTX), the crypto trading platform of which he was the CEO and co-founder"—a headline-grabbing incident and one surely to keep the SEC's crypto enforcement activities in the limelight in the months ahead.

SEC Chair Gary Gensler has certainly followed through on his promise to lead a more aggressive SEC. The agency has not only committed to pursuing violations wherever and however they occur, the SEC Enforcement Director Gurbir Grewal also testified in 2022 that he sees "robust enforcement, robust remedies, and robust compliance" as a priority.

The writing is very much on the wall. The SEC broke a lot of records in 2022 and there is every possibility it will do so again in 2023.

> **The SEC chose to highlight actions against 16 broker-dealers and one affiliated investment adviser for failures to maintain and preserve certain text message communications.**

Notable decisions from Delaware courts

In the second half of 2022, Delaware courts issued several decisions affecting M&A deal-making

By Thomas W. Christopher, James Jian Hu and Daniel Kessler

***Trade Desk*: Challenge to certificate of incorporation amendment dismissed under *MFW* analysis**

In *City Pension Fund for Firefighters and Police Officers in the City of Miami v. The Trade Desk, Inc.*, the Delaware Court of Chancery dismissed breach of fiduciary duty claims made in connection with an amendment to the certificate of incorporation of The Trade Desk, Inc. (TTD). TTD's co-founder and chief executive officer proposed the amendment extending the duration of its dual-class stock structure, which would have the effect of prolonging his voting control. As part of this proposal, the co-founder explained his belief that it would be in the best interest of the company if the company "continue[d] to be guided by the same vision and long-term perspective." Since the amendment was an interested transaction involving a controlling stockholder, Delaware's exacting "entire fairness" standard would generally apply. However, defendants argued that since the transaction was conditioned on the approval of an independent special committee and a majority of the minority stockholders, the transaction complied with the framework articulated by the Delaware Supreme Court in *Kahn v. M&F Worldwide Corp (MFW)* and thus was entitled to business judgment rule deference.

The Court in *Trade Desk* outlined the specific conditions required for a conflicted controlling stockholder transaction to avoid entire fairness scrutiny:

(i) The controller conditions the procession of the transaction on the approval of both a special committee and a majority of the minority stockholders

(ii) The special committee is independent

(iii) The special committee is empowered to freely select its own advisors and to say no definitively

(iv) The special committee meets its duty of care in negotiating a fair price

(v) The vote of the minority is informed; and

(vi) There is no coercion of the minority.

The plaintiff challenging TTD's amendment alleged that defendants failed to satisfy elements (ii) and (v) of the *MFW* framework. The plaintiff argued that the special committee was not independent and that the stockholder vote was not informed. While the plaintiff alleged six material disclosure deficiencies with respect to the proxy for the stockholder vote, the Court ultimately found that they did not, individually and collectively, result in an uninformed stockholder vote. With respect to the independence of the special committee, the Court found that the plaintiff failed to allege facts supporting a reasonable inference that a majority of the special committee members were not disinterested and independent. In particular, the Court rejected the argument that the special committee's lack of independence was self-evident because it decided to maintain the dual-class structure. The Court ultimately found the plaintiff's challenge to the special committee to be grounded in the belief that maintaining the dual-class structure was a bad deal for TTD. The Court made clear, however, that its role in applying the *MFW* framework is limited to a process analysis, "not second guessing the ultimate 'give' and 'get'." The *Trade Desk* decision should reassure controlling stockholders that if they appropriately subject their transactions to the *MFW* conditions, courts will grant business judgment rule deference.

***SolarWinds Corporation*: Chancery dismisses *Caremark* claims regarding cyberattack**

In one of an increasing number of breach of the duty of oversight claims, the Delaware Court of Chancery dismissed breach of fiduciary duty claims against directors of a software company, SolarWinds Corporation, in connection with a 2020 cyberattack by Russian hackers. In *Construction Industry Laborers Pension Fund v. Bingle*, plaintiffs alleged that the directors failed to adequately oversee the risk of criminal cyberattacks. The Court noted that duty of oversight claims (*Caremark* claims) have recently "bloomed like dandelions after a warm spring rain," but reaffirmed that they remain one of the most difficult claims to prevail upon. Because Section 102(b)(7) of the Delaware General Corporation Law exculpates directors (and due to a recent amendment, officers as well) for breach of duty of care claims, a lack of oversight "must be so extreme that it represents a breach of a duty of loyalty," which "in turn requires a pleading of scienter, demonstrating bad faith." While the Court determined that cybersecurity is "mission critical" for a company like SolarWinds, and that the directors failed to prevent a significant corporate debacle, the Court ruled that plaintiffs failed to plead specific facts from which to infer bad faith on the part of a majority of the directors. Interestingly, the Court distinguished a cyberattack, a crime by a third party, from recent successful *Caremark* claim cases that involved alleged violations of law by the corporation (e.g., *Marchand* food safety regulations and *Boeing* air safety regulations). While the Court questioned whether incidents involving crimes by third parties were appropriate to implicate oversight liability, it ultimately determined it need not resolve that issue. While plaintiffs alleged that SolarWinds' nominating and corporate governance committee ignored a cybersecurity presentation, the Court found that such briefing did not indicate an imminent threat and was not a red flag but actually "an instance of oversight." While the committee did not report to the full board during the two years after it was delegated responsibility for cybersecurity, the Court held that "Without a pleading about the committee's awareness of a particular threat, or understanding of actions the Board should take, the passage of time alone under these particular facts does not implicate bad faith." The Court ultimately ruled that plaintiffs failed to plead sufficient facts for the Court to infer scienter on the part of the directors. The decision in *Bingle* reaffirms the high bar for successful *Caremark* claims.

***In re P3 Health Group Holdings, LLC*: Carve-out in non-reliance provision allows fraud claims to proceed**

While finding that its complaint contained "the barest minimum of allegations," the Delaware Court of Chancery failed to dismiss, at the pleading stage, a fraud claim brought by Hudson Vegas Investment SPV, LLC in connection with its 2019 investment in P3 Health Group Holdings, LLC. The decision highlights that even projections can be the subject of a fraud claim, as well as the importance of carefully drafting non-reliance and no-recourse provisions meant to eliminate (or at least limit) fraud claims in the first place.

In November 2019, Hudson invested US$50 million in P3 Health, a healthcare management company, in exchange for 20 percent of its equity. Hudson's investment made it P3 Health's second-largest equity holder. Hudson's lawsuit alleged that while it was considering its investment, the founders of P3 Health, as well as its private equity sponsor, provided materially incorrect financial information—including projections—regarding P3 Health. In particular, while these projections indicated EBITDA was estimated to be greater than US$12.7 million for 2020, the company actually reported a loss of US$40 million for the year—a US$52 million swing. Hudson alleged that the founders and members of the private equity sponsor who crafted and provided financial materials to Hudson knew that they were materially false and misleading, and that they were material to Hudson's decision to invest in P3 Health.

Importantly, the Court found that while fraudulent statements generally involve assertions of fact, the fact that Hudson's claim involved projections "does not doom it." According to the Court, "[a] projection can be actionable if it is sufficiently specific and if the plaintiff pleads that the projection was fraudulently conceived." In this case, the Court found that the projection was a specific financial figure that addressed EBITDA for the upcoming year. "The statement did not involve puffery about the business, nor was it a projection about the firm's performance stretching across multiple years into the future." With respect to whether sufficient facts were alleged to support an inference that the defendants either knew that the projections could not be achieved or were recklessly indifferent to their truth and accuracy, the Court found that "the timing, magnitude and surrounding circumstances support a pleading-stage inference of scienter." While the Court acknowledged that missing a near-term projection by a large margin supports several possible inferences, "at least one possible inference is that the near-term projection was knowingly false." Therefore, according to the Court, at the pleading stage, Hudson is entitled to the inference that is favorable to its claim.

Defendants argued that Hudson's fraud claim should be dismissed because Hudson agreed in its purchase agreement that it was not relying on any representations about P3 Health, including the projections. The Court confirmed that Delaware law will enforce "a clear non-reliance clause by which the plaintiff has contractually promised that it did not rely upon statements outside the contract's four corners." However, the Court found that the non-reliance clause agreed to by Hudson contained a fraud carve-out. As a result, the non-reliance clause did not foreclose Hudson's fraud claim with respect to P3 Health's EBITDA projections.

Finally, defendants argued that the purchase agreement's no-recourse provision prohibited Hudson from suing them, as they were not parties to the purchase agreement. The Court, however, found that Delaware public policy does not permit parties to use a no-recourse provision to insulate themselves from fraud.

The Court's decision serves as a reminder that financial information prepared by sellers and target companies and provided to buyers should be carefully prepared and that projections should be supported by reasonable facts and assumptions; otherwise such information may form the basis of a fraud claim. In addition, parties should appreciate

that the inclusion of a fraud carve-out in a non-reliance provision—which is a common feature of many purchase agreements—could expose sellers (and potentially their principals) to liability for statements made outside the four corners of the agreement.

***Bandera*: Delaware Supreme Court reverses US$690 million Court of Chancery award**

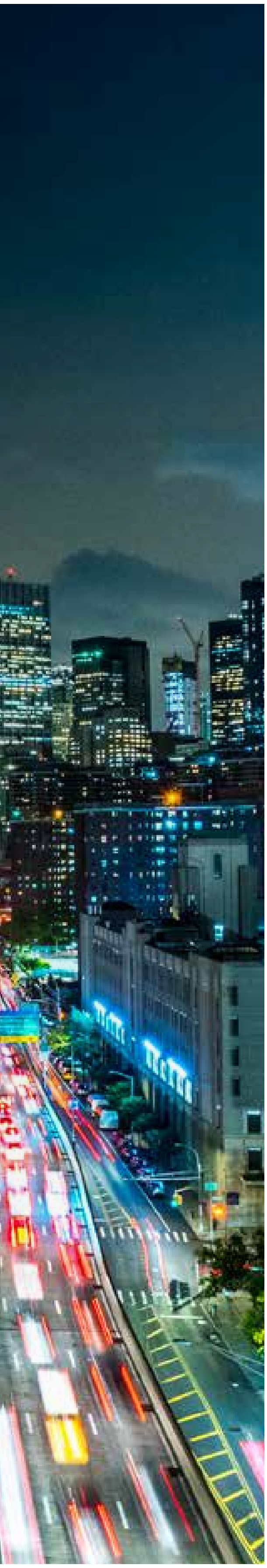
The Delaware Supreme Court reversed last year's Court of Chancery decision awarding US$690 million in damages for breach of a partnership agreement in connection with Lowes Corp.'s acquisition of limited partnership interests in Boardwalk Pipeline Partners, LP. In finding a breach of the partnership agreement, the Court of Chancery determined that a legal opinion (delivery of which was a condition to Lowes exercising its call right) was not delivered in good faith and that the protective provisions of the partnership agreement with respect to the general partner's reliance on legal opinions were not available. In *Boardwalk Pipeline Partners, LP v. Bandera Master Fund LP*, the Delaware Supreme Court disagreed with this decision, finding that the general partner had the right to rely on a second legal opinion (delivered by another firm) that the original opinion was reasonable. Importantly, the Court of Chancery did not find, and plaintiffs did not argue, that the second opinion was given in bad faith. By relying on the second opinion, the general partner triggered a provision of the partnership agreement providing that the general partner was "conclusively presumed" to have acted in good faith when it relies on advice of counsel "as to matters that the general partner reasonably believes to be within [counsel's] professional or expert competence."

As a result, the Supreme Court found the general partner was exculpated from damages. The *Bandera* decision confirms that Delaware courts will give full effect to protective provisions contained in limited partnership agreements when the parties properly complied with them.

Possible return to "normal," but it could take a while yet to get there—six M&A trends for 2023

After peaking in 2021, the 2022 US M&A market was always going to seem slow by comparison—but what is likely to drive activity in the months ahead?

By Michael Deyong and Gregory Pryor



Last year was a transition period following a record-shattering 2021. The deceleration in M&A activity was palpable in the second half of 2022 and raises concerns for some that the worst is yet to come. Although there are signs that we may be turning a corner, deal volume will likely lag until confidence is restored. Here are six key trends that will define the US M&A market and regulatory environment in 2023.

1

Lower inflation and market stability will stir the M&A pot

Although it is difficult to know for certain how the macro picture will play out, there are encouraging signs that inflation may be losing steam. After having peaked at 9.1 percent in June, the US 12-month inflation rate dipped to 6.5 percent by December.

Further signs of this trend continuing—if not accelerating—in the first half of 2023 should see equity markets bottom out and a shift in sentiment. In this scenario, there would be less impetus for the Federal Reserve to keep tightening even if labor markets remain firm, as they have.

Stock market volatility was also high in 2022, with the VIX Volatility Index averaging above 25 through the year, which has historically been followed by a more stable year. Stability across equities and a drop in inflation to more familiar levels should, in principle, cement confidence among dealmakers and bring M&A activity back to pre-pandemic levels—though that is the glass-half-full view.

2

Interest rates are set to stabilize

This time last year, interest rate hikes were seen as inevitable, but few could predict just how aggressively they would be applied. Whichever way you look at it, the Fed is now closer to the end of its interest rate cycle than the start, after a sharp rate of change in 2022. In December 2022, the Federal Open Market Committee projected a 5.1 percent federal funds rate for 2023 year-end, indicating that three further 25 bps hikes may be on the table. That is most likely the worst-case scenario—it is also possible that only some of these increases will be made. Inflation trends and, perhaps more importantly, the Fed's reaction to them, will likely dictate the direction of travel for interest rates, financing and M&A activity in 2023.

3

Debt accessibility should improve

A lack of financing was an impediment to deal activity in the second half of 2022, to say nothing of the rising cost of debt. Syndicated loan and high yield bond markets seized up, which impaired private equity's (PE) ability to get deals done. As a result, sponsors turned to private credit and focused on smaller deals.

Assuming macro conditions stabilize, access to financing should also improve, especially for higher-quality deals involving companies with stable credits that have demonstrated robust growth through the pandemic and subsequent inflation. However, there is uncertainty regarding how long it will take for improved conditions to return, and the cost of financing will remain high for the foreseeable future. PE funds responded to this last year by adjusting their bid levels and will remain similarly prudent until the base rate is meaningfully reduced.

4

Antitrust agencies are broadening their scope

This year, among other antitrust challenges being made against major mergers, the Federal Trade Commission (FTC) is attempting to block Meta's planned purchase of virtual reality company Within. But Big Tech will not be the only ones in the crosshairs.

As the past two years have shown, antitrust agencies are taking a far more interventionist approach. Revised merger guidelines are due to be published and will set the stage for what follows. Until then, uncertainty remains over how anticompetitive behavior is being identified and interpreted, and how exactly the agencies will view any given acquisition. Dealmakers should prepare to seek counsel early.

5

New legislation will drive deals

The Inflation Reduction Act is a big step toward boosting the growth of clean energy and the sheer scale of the incentives involved will propel M&A deals in the space. Oil & gas companies and PE are already keen to capitalize on the opportunity.

The CHIPS and Science Act will prove to be another legislative incentive for years to come. In a bid to boost domestic semiconductor manufacturing, approximately US$280 billion will be made available in the next decade for investment in chip research and production.

This is already producing results—shortly after the law was signed on August 9, 2022, Intel and Canadian PE firm Brookfield Asset Management signed a US$30 billion joint investment agreement to support the semiconductor maker in the expansion of two plants, in exchange for a 49 percent stake in the project. There are also second-order effects to these landmark pieces of legislation, with PE actively seeking to back companies in these industries' extended supply chains.

6

The SEC is coming for crypto

The Securities and Exchange Commission (SEC) started issuing its first charges against participants in the cryptocurrency industry in 2021. Predictably, these ramped up by the final weeks of 2022, as alleged bad practices came to light amid the implosion of asset prices. This initial period of enforcement could be a preview of what is to come. The SEC has beefed up its resources to pursue the industry and SEC chair Gary Gensler has said the watchdog does not need to wait for Congress to pass laws on how the space should be regulated.

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M&A Explorer

M&A Explorer is a platform that combines an interactive tool with a regular flow of short articles from White & Case partners. The tool enables users to create charts to explore trends in M&A in every country and sector, drawing on more than a decade of data from Mergermarket.

mergers.whitecase.com

WHITE & CASE
Debt Explorer

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debtexplorer.whitecase.com

CFIUS
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whitecase.com/cfius-firrma-tool

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