WHITE & CASE

Navigating change: US M&A H1 2018

Clouds are forming on the horizon, yet appetites for big-ticket deals have not yet diminished

US M&A defies market uncertainty

An impressive first half of the year for US dealmaking reflects M&A's enduring value in an uncertain market

After a very strong 2017—when M&A in the US reached its third-highest overall deal value since the financial crisis—deal value grew again in the first half of 2018. Compared to H1 2017, value rose 30.5 percent to US$794.8 billion when compared to the same period in 2017, while deal volumes held steady.

Activity has been brisk despite increasing macro-economic headwinds. The Federal Reserve recently raised interest rates and signaled its intention to do so again twice more before the year is out. Threats of a bourgeoning global trade war are intensifying after the imposition of tariffs by the US and other large economies. And the US stock market has experienced significantly higher volatility this year than it did last.

One could reasonably expect that M&A would cool against this backdrop, but the fact that it has not suggests that deals are going ahead for essential strategic reasons rather than opportunistic ones.

Technology and its disruptive impact across all sectors is one of the main factors that has made M&A a necessity. The impact has been most apparent in sectors such as retail and healthcare, where digital platforms are ideally placed to disrupt established service and distribution channels. No sector has been untouched, however. Unless non-tech companies have the resources inhouse to write their own software and algorithms—and most do not—M&A may be the best option to keep pace with dynamic change.

We expect the second half of the year to be busy, but no one can afford to ignore the threats posed by rising interest rates, increasing protectionism, an incipient trade war that could increase tariffs, a potentially inverting yield curve, unsustainable pricing demands and a volatile stock market. Companies will need to navigate these dynamics if M&A's bull run is to continue.

John Reiss
Global Head of M&A,
White & Case

Gregory Pryor
Head of Americas M&A,
White & Case

Contents

Navigating change: H1 in review

HEADLINES

■ Deal value for the first six months of the year is up by 30.5 percent to US$794.8 billion compared to H1 2017 ■ Deal volume held steady, fractionally down to 2,593 transactions from 2,887 deals in H1 2017 ■ Inbound M&A deal value is down 45 percent to US$109.6 billion, while inbound volume falls 14.7 percent to 446 deals ■ Domestic activity hit an all-time high deal value of US$685.2 billion across 2,147 transactions

By Gregory Pryor & John Reiss

M&A's strategic importance as a tool for growth and corporate repositioning proved to be as crucial as ever in the first half of 2018. US businesses across all industries turned to dealmaking to open up new markets, respond to competitive threats and focus on their most profitable core activities.

After a near-record year in 2017 and despite escalating tensions surrounding global trade, rising interest rates and volatile stock markets, US M&A activity accelerated into the first half of 2018. Deal value for the first six months of the year jumped 30.5 percent to US$794.8 billion, while deal volumes held steady—only fractionally down to 2,593 transactions from 2,887 deals in H1 2017.

Economic conditions have supported deal activity. Although the Federal Reserve raised rates by 0.25 percent in June and signaled another two rises before the end of the year, interest rates are still low by historical standards. The US economy is growing at more than two percent a year and unemployment is at 3.6 percent. These strong economic fundamentals continue to favor M&A.

Tax savings

The reduction in the headline corporation tax rate to 21 percent from 35 percent has lifted profits and freed up cash for investment. Incentives to repatriate offshore earnings back into the US have created further inflows. Although the impact of limitations on interest deductions and the reduction of tax benefits on certain assets could still hit private equity (PE) and banks, the tax reform has improved overall business confidence. Strong balance sheets have served to boost activity between US-based firms, with domestic activity hitting an all-time high value of US$685.2 billion in the first half of 2018.

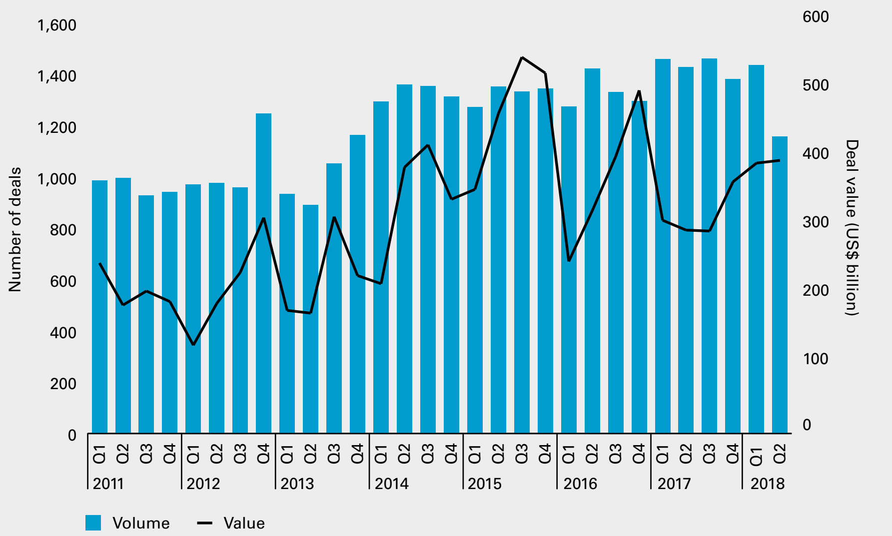
30.5%

Increase in US M&A value compared to H1 2017

Structural dynamics

Momentum behind megadeals increased in the wake of two important developments related to the Department of Justice (DOJ). In May, the DOJ gave anti-trust

US M&A 2011—H1 2018



approval for the US$63 billion merger between Bayer and Monsanto. And in June, a court ruling cleared the way for AT&T's US$105 billion takeover of Time Warner, although the DOJ—which initially challenged the deal on anti-trust grounds—has appealed the decision.

This high-profile case proves that the DOJ and FTC must present credible evidence of harm to courts and may make the current administration think twice before pushing the boundaries in merger reviews. As such, it may present opportunities for deals that were shelved for fear of aggressive (or political) anti-trust enforcement and demonstrate that courts have a clear preference for mainstream anti-trust enforcement. The potential loss in AT&T, however, will not halt anti-trust enforcement: parties can expect that large mergers, including vertical transactions, between close competitors will continue to receive close scrutiny.

Major strategic realignment across the healthcare, retail and technology sectors has ensured robust deal flow. Deals such as insurer Cigna's US$68 billion swoop for Express Scripts have been prompted by a period of regulatory flux and technological disruption. With Congress at an impasse over the future of the Affordable Care Act and Amazon announcing a partnership with Berkshire Hathaway and JPMorgan Chase to cover the medical needs of staff using technology-enabled services, established players have had to react and pursue scale and supply chain integration.

Overseas activity stalls

Despite the boom in domestic activity, dealmaking from overseas bidders faltered in the first half of 2018. A presidential order to block the hostile bid for Qualcomm from Singapore's Broadcom, on the recommendation of the Committee on Foreign Investment in the United States (CFIUS) that the deal could threaten national security, weighed on foreign appetite for US assets.

Top 10 US deals: Announced in H1 2018

Announced date	Completion date	Target company	Target-dominant sector	Target-dominant country	Bidder company	Bidder-dominant country	Deal value (US$ million)
08/03/2018		Express Scripts Holding Company	Services (other)	USA	Cigna Corporation	USA	67,899
29/04/2018		Sprint Corporation	Telecommunications: carriers	USA	T-Mobile USA, Inc.	USA	58,945
30/04/2018		Andeavor Corporation	Energy	USA	Marathon Petroleum Corporation	USA	30,153
26/03/2018		General Growth Properties, Inc. (66.2% Stake)	Real estate	USA	Brookfield Property Partners L.P.	USA	26,705
29/01/2018		Dr Pepper Snapple Group Inc.	Consumer: other	USA	Keurig Green Mountain, Inc.	USA	23,131
30/01/2018		Thomson Reuters Corporation (Financial & Risk business) (55% Stake)	Services (other)	USA	Blackstone Group LP; GIC Private Limited; Canada Pension Plan Investment Board	USA; Singapore; Canada	17,000
03/01/2018		SCANA Corporation	Energy	USA	Dominion Energy, Inc.	USA	14,303
21/05/2018		GE Transportation	Industrial products and services	USA	Wabtec Corporation	USA	11,100
22/01/2018	08/03/2018	Bioverativ Inc.	Biotechnology	USA	Sanofi SA	France	11,099
27/06/2018		Pinnacle Foods Inc.	Consumer: foods	USA	ConAgra Brands, Inc.	USA	10,778

Interest in distressed assets grows

The combination of low interest rates, steady economic growth and a buoyant M&A market has meant that there has been very little distressed debt activity in the US over the last five years. Yet despite a steady start to the year in 2018 for conventional M&A, there are indications that distressed dealflow could be on the rise. Interest in distressed debt funds is increasing globally according to a survey by Preqin, which found that at the end of Q1 2018, 52 percent of investors were seeking distressed debt investments, up from 46 percent over the same period in 2017.

Conditions tighten

Although the bankruptcy figures are seasonal and can be volatile from quarter to quarter, the spike in recent data suggests that the economic cycle is beginning to turn and that financial conditions are tightening. The Federal Reserve announced an interest rate rise in June and indicated that it will make another two rate hikes this year. As rates rise, weaker businesses will find it more difficult to refinance and raise new capital.

Retail in distress

The retail sector has been particularly hard hit, with the consumer shift to online shopping and high operational and financial gearing placing some retailers in difficulty. Women's clothing chain Nine West, jewellery chain Claire's and Toys R Us are just some of the high-profile names to either file for bankruptcy or proceed with liquidation. Figures from the American Bankruptcy Institute, meanwhile, suggest that more businesses are feeling distress, with corporate bankruptcies in Q1 reaching their highest level since April 2011.

Rising interest rates, fundamental shifts in sectors like retail and large amounts of capital targeted at distressed investments all point to more deals in this space over the coming months.

This increased scrutiny appears to have spooked overseas buyers, with inbound M&A deal value down almost half (45 percent) to US$109.6 billion for H1 2018 and inbound volume falling 14.7 percent to 446 deals over this period.

Dealmakers from China, the third-largest inbound investor in the US less than two years ago, when it invested a record US$56.7 billion in US companies, have been particularly hard hit. Frictions in US-China relations, including trade tensions, national security concerns and the uncertainty over North Korea, have slowed review of Chinese deals by US regulators and even derailed a number of transactions. For example, the Qualcomm-Broadcom Transaction was delayed by US anti-trust agencies and ultimately blocked, based on CFIUS' recommendation.

This has led Chinese investors to look elsewhere for deals. There have only been 22 inbound Chinese deals into the US in H1 2018 and the country is absent from the top ten inbound investors by value.

The pain felt by Chinese buyers is benefitting PE buyers, who now have additional opportunities to bid for assets without fear of aggressive competition from Chinese investors.

Outlook for 2018

The uptick in US domestic value suggests that large, cash-rich corporates with clear strategic rationales for big-ticket M&A have shrugged off market volatility.

Yet the fact that deal volumes have

remained relatively flat while deal values have climbed suggests that M&A is bifurcating into a busy megadeal market, where high deal premiums are the norm, and a more cautious mid-market.

Although M&A performance has been strong so far in 2018, dealmaking is facing more headwinds than it did a year ago. The Trump administration's decision to levy tariffs of ten percent on aluminum and 25 percent on steel have raised the risk of a trade war between the US and the world's other large economies. And Trump's recent decision to launch a security investigation into automotive imports will serve to exacerbate global trade tensions. Protectionist posturing and curbs on free trade have weighed on stock markets, which have been particularly volatile in the first half of 2018, and this could have a knock-on effect on M&A confidence.

M&A will remain a strategic necessity for multinationals reacting to technological convergence and regulatory change, which bodes well for activity levels continuing into the rest of the year. Yet after a period of economic stability and favorable deal conditions, markets are becoming less predictable. M&A is still in a strong position, but dealmakers may need to tread carefully.

Renewed stability encourages Latin American M&A

M&A activity targeting the Latin America & Caribbean region continued the momentum it gained in 2017 into the first half of 2018. The region has attracted 277 deals worth US$68.4 billion in the first half of the year, more than doubling the value achieved in the same period in 2017.

Turning a corner

Negative growth in Brazil, which had to navigate a high-level corruption probe, and Argentina, which suffered a sovereign debt default, weighed on growth across Latin America.

Yet political change in these countries has boosted dealmaking. A new administration in Argentina has introduced measures to simplify taxation and boost small business. Meanwhile, Brazil's stock market has posted all-time highs in 2018 as the corruption investigation progresses. Suzano Papel e Celulose's US$15.3 billion takeover of Brazilian manufacturer Fibria Celulose, the largest deal in the region this year, is a clear example of confidence flowing back into South America's largest economy.

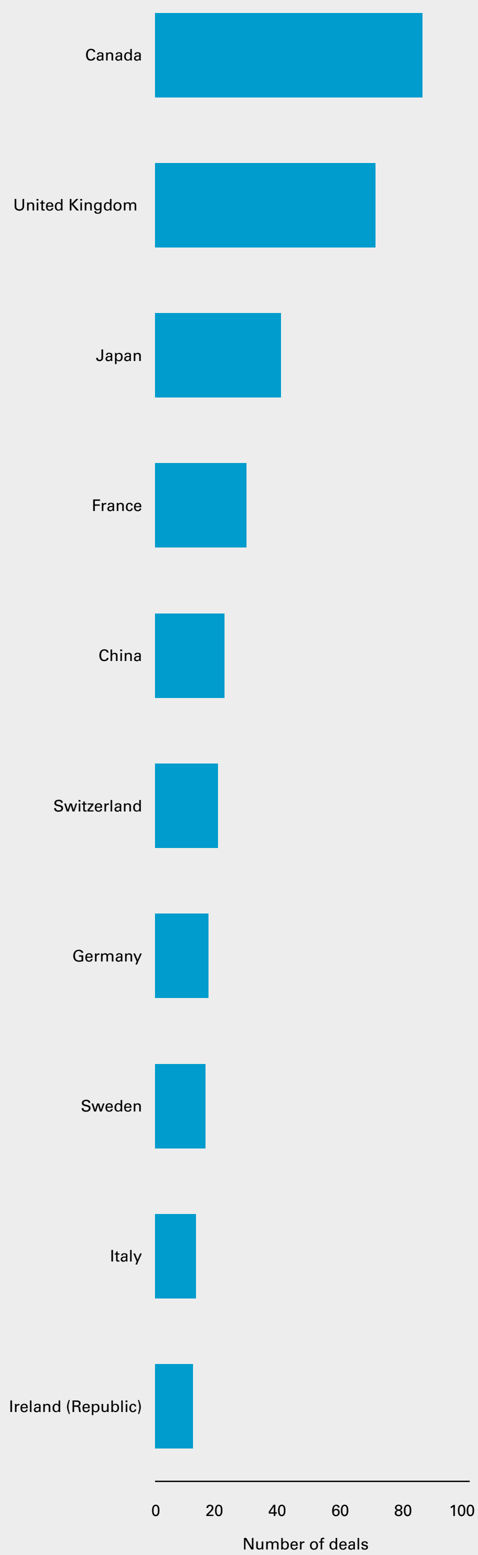
Hot sectors

The region's traditionally strong industries of energy and infrastructure were the most active sectors in the last 18 months, with Enel Chile paying US$3.3 billion for a stake in Enel Generación Chile and Neoenergia's US$3.1 billion acquisition of AES Eletropaulo in Brazil.

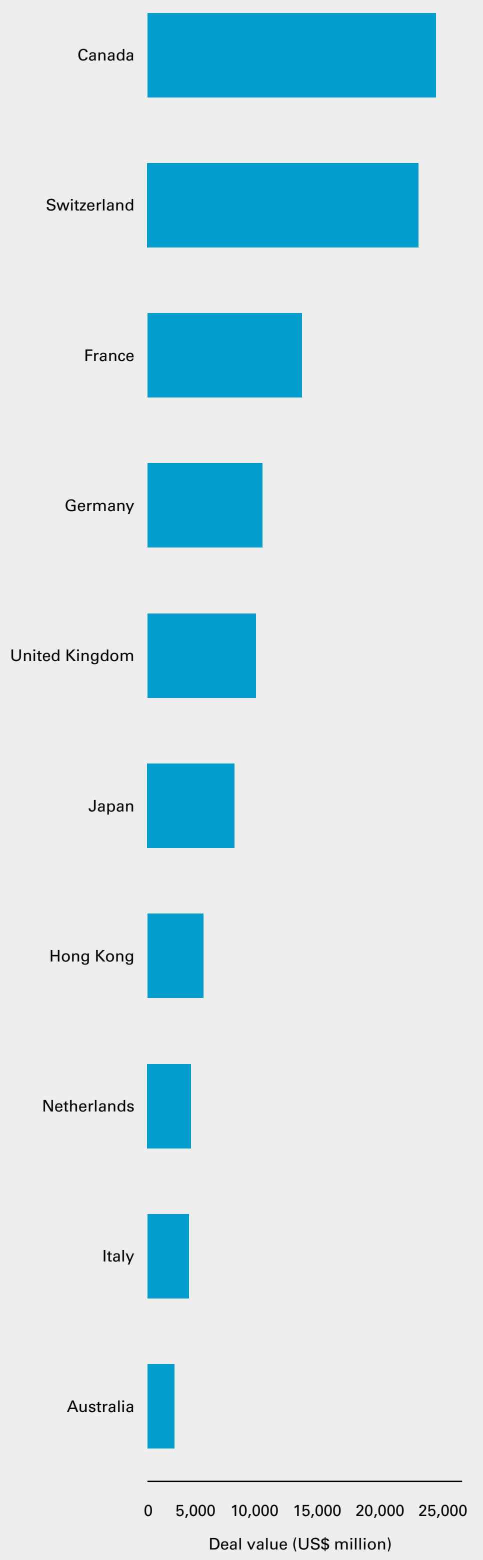
Investors seeking growth are also starting to explore deals in sectors such as retail, technology and financial services. Banco Popular de Puerto Rico acquired Wells Fargo's Puerto Rican auto finance business for US$1.7 billion, while Didi Chuxing invested US$900 million for a stake in Brazilian internet and ecommerce platform 99 Taxis Desenvolvimento de Softwares.

After a difficult period, Latin American M&A appears to be heading for more stable ground.

Top 10 inbound bidders by deal volume, H1 2018



Top 10 inbound bidders by deal value, H1 2018 (US$ million)



PE hits new post-crisis high

Despite intensifying competition within the market, US private equity activity is yet to show signs of a downturn

By Oliver Brahmst & Carolyn Vardi

US private equity (PE) had its busiest 12 months since the financial crisis in 2017, securing 1,261 buyouts valued at US$191.9 billion over the year—a record deal volume. A total of 633 buyouts valued at US$111.9 billion have been announced so far this year, marking a four percent uptick in value compared to the same period in 2017, while volume edged ahead by three percent.

Competition reaches boiling point

Growing competition within the PE asset class is increasing pressure on buyout firms looking to deploy their cash. According to Preqin figures, PE firms raised a record US$453 billion in 2017 and are sitting on US$1 trillion of dry powder—an all-time high. With so much capital seeking assets, pricing has skyrocketed, prompting some firms to step back from transactions for fear of overpaying.

Extremely high prices are making it increasingly difficult for buyout firms to match sellers' expectations. Strategic buyers are also back in full force. Their new willingness to accept risk and openness to problem-solving makes them formidable competitors to PE sponsors in the auction process, with a leg up on valuations most of the time due to their ability to harvest synergies.

Changing tactics

As competition for assets heats up, PE firms have evolved their investment strategies and tactics, finding new and inventive ways

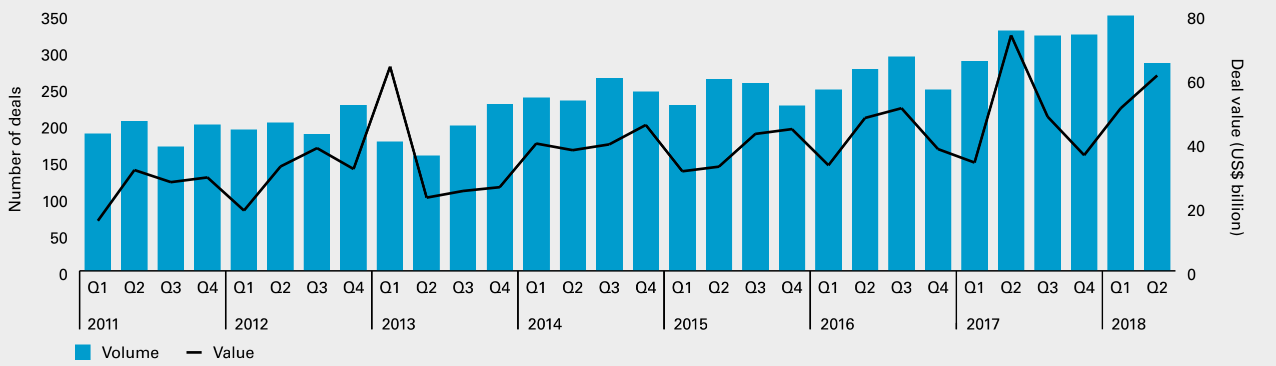
4%

Increase in buyout deal value compared to H1 2017

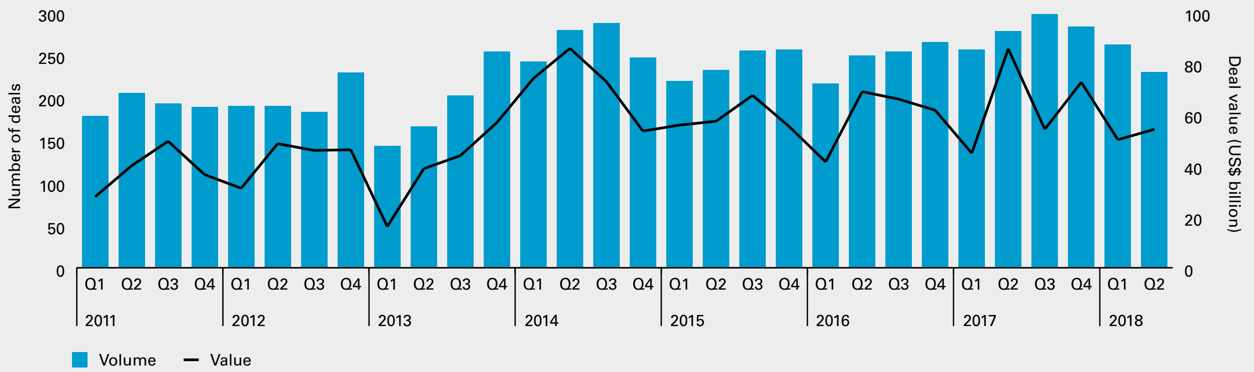
US $111.9 billion

The value of 633 buyout deals in H1 2018

Private equity buyouts 2011—H1 2018



Private equity exits 2011—H1 2018



of putting their money to work. Buy-and-build strategies, where PE firms back platform companies to pursue consolidation strategies in chosen sectors, are becoming more popular. JAB Holdings, the owner of coffee group Keurig Green Mountain, for example, is supporting the company's US$23.1 billion ongoing acquisition of soft drinks company Dr Pepper Snapple Group.

In industries that are not consolidated, firms employing a buy-and-build strategy are able to pick up smaller businesses for lower multiples than what they themselves are trading at. Buy-and-build strategies can also work in less-fractured markets, because once the PE firm has a platform, it can achieve the same synergies as a purebred strategic and be competitive on price.

Club deals are also becoming a more common way to manage high prices, as demonstrated by Blackstone, GIC and CPPIB joining forces to acquire a stake in Thomson Reuters Corporation in a planned US$17 billion deal. As mentioned, PE funds are under increasing pressure to stretch to pay higher multiples and higher overall purchase prices. Funds that are uncomfortable writing the full equity checks themselves are teaming up with other partners, who are often limited partners in their funds.

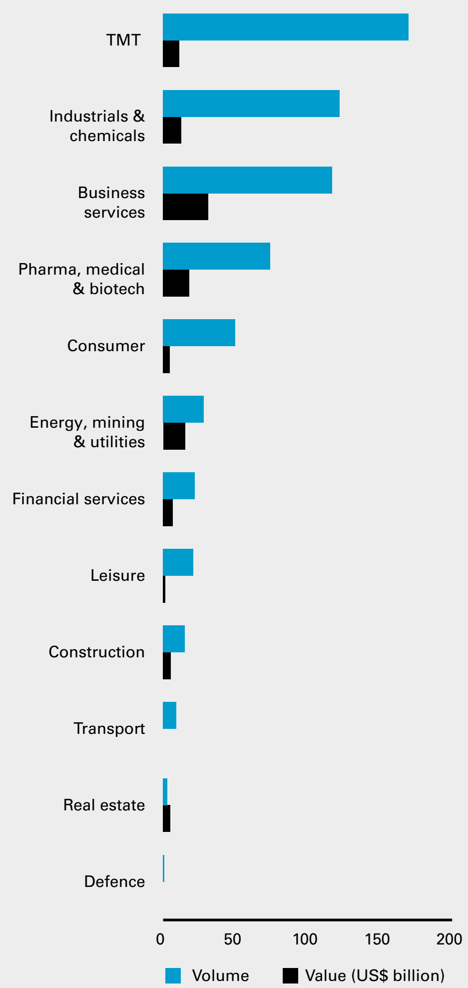
Full steam ahead

At the beginning of the year, activity was a little slower as dealmakers assessed potential impacts from tax law changes. There was also uncertainty surrounding the direction of the Trump administration. On top of this, after very high activity last year, many funds were focused on portfolio company-level integration.

Yet despite the slight hesitancy seen at the start of the year, funds will continue to put their money to work. While there has been some trepidation surrounding a downturn in the market, it appears, for now, that the bull run looks set to continue for US PE.

"In industries that are not consolidated, firms employing a buy-and-build strategy are able to pick up smaller businesses for lower multiples.

Buyouts by sector H1 2018



Sector watch: Energy, mining & utilities leads the field

Bulky oil and gas deals pushed energy, mining & utilities close to the top spot in H1, while digital disruption ensured a steady flow of tech deals

By Bill Choe, Morton Pierce, John Reiss & Steven Tredennick

Cautious optimism returns to oil and gas sector

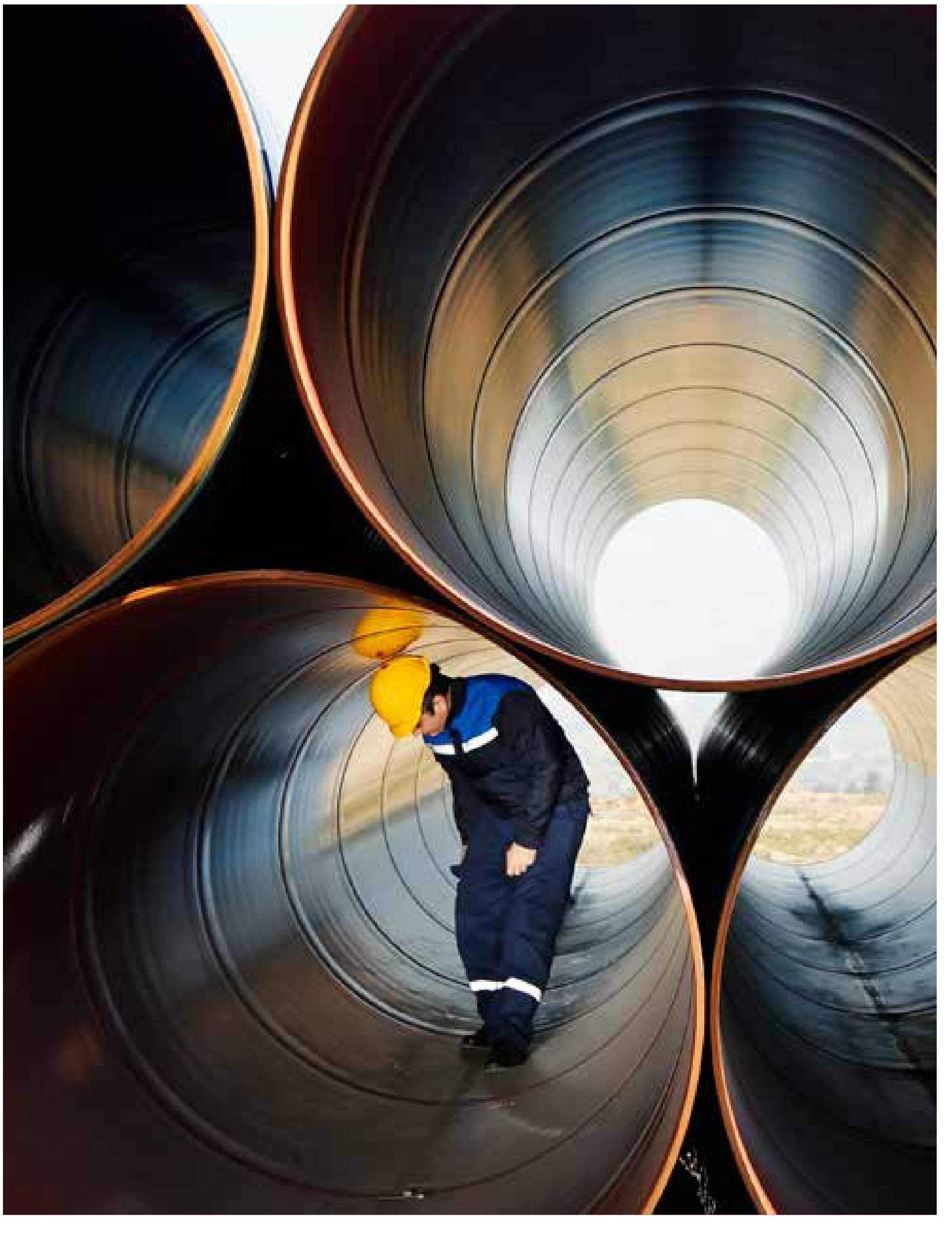
Energy, mining and utilities attracted a total of US$144.9 billion invested across 208 deals in H1. A recovering oil price has supported confidence in M&A as companies are now better placed to form longer-term dealmaking strategies. If favorable conditions continue, deal activity should continue to rise.

Despite the brighter outlook, however, much deal activity in the oil and gas sector is still driven by restructuring and the industry remains cautious when betting too heavily on growth.

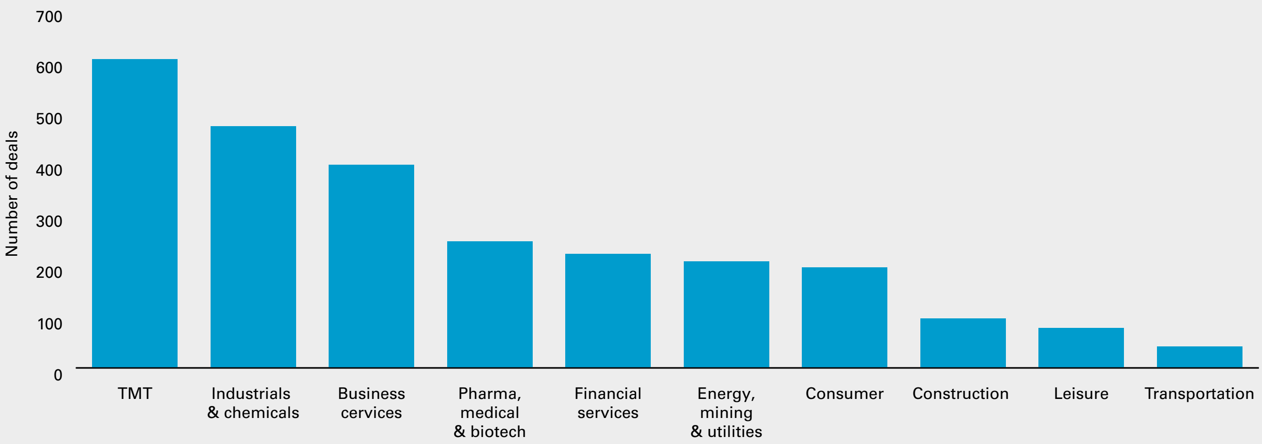
Tech deals cross sector boundaries

Following a record annual volume in 2017, the TMT sector topped the deal volume chart in H1, with technology assets accounting for the majority of activity with 483 announced transactions. Salesforce's US$5.9 billion purchase of MuleSoft and Microsoft's US$7.5 billion planned acquisition of GitHub reflect an industry where M&A is being used to gain access to content, move existing services into the cloud and improve technical and operating efficiency.

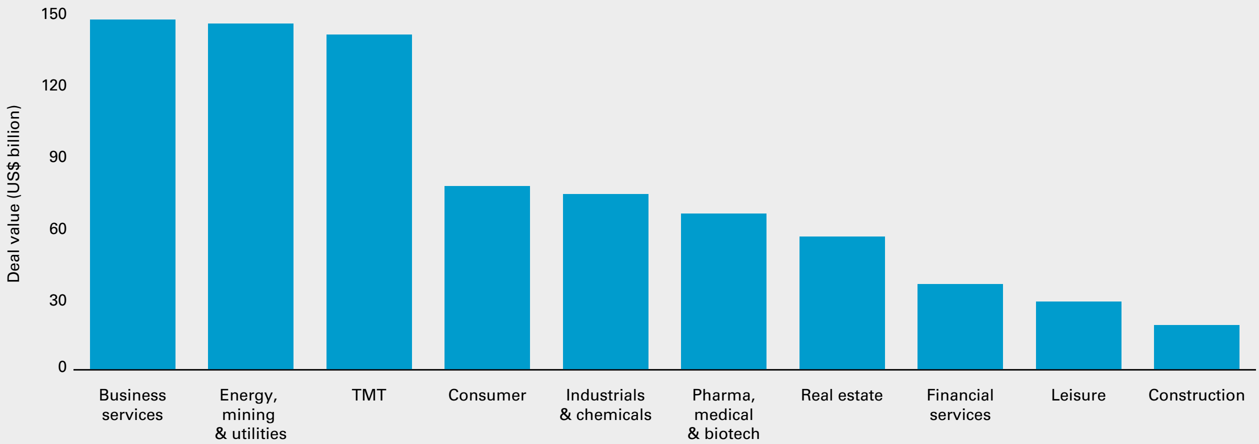
The sector continues to attract interest from bidders operating in a range of sectors, from healthcare to industrials to consumer. As digitalization has entered all corners of the marketplace, it is now of paramount importance for companies to either build or buy tech capabilities to stay relevant, regardless of their industry.



Top sectors H1 2018, by volume



Top sectors H1 2018, by value (US$ billion)



Consumer firms respond to tech threat
M&A within the consumer sector continues to be an indispensable tool for business growth. A total of 196 consumer deals worth US$76.8 billion were announced in the first half of the year—the third-highest H1 value on record following 2017 (US$142.8 billion) and 2007 (US$99.6 billion).

Responding to online disruption was a major motivation behind deals, as retailers move to buy digital capability and additional avenues to reach consumers through acquisitions. Deals such as Walmart's US$16 billion planned acquisition of a 77 percent stake in India's leading online retailer Flipkart and Albertson's US$5.5 billion purchase of 2,500 Rite Aid stores exemplify these trends.

Pharma delivers bulky deals
M&A in the sector has been driven by the need for large pharma groups to refill their product pipelines as blockbuster drugs go off patent and move into new treatment areas.

Despite an overall downturn in deal value, the sector delivered a number of multi-million dollar transactions in the first half of 2018, including, in the US: Sanofi's US$11.1 billion acquisition of Bioverativ and KKR's US$9.4 billion planned acquisition of Envision Healthcare.

Technology M&A gets white hot in 2018

Dealmakers across all industries are looking to secure US tech assets in order to keep up with the technological changes disrupting their industries

By Bill Choe & Arlene Hahn

It has been a busy period for the tech sector, with 483 deals in the first half of 2018. And value rose to US$67.4 billion in H1, a 59 percent increase compared to H1 2017.

It has become a necessity for companies to either build or buy tech capabilities to stay relevant, regardless of their industry. If companies do not have the ability or experience to build a tech solution inhouse—and most non-tech companies do not—then the M&A route may be their best option.

Connected healthcare

Healthcare has experienced a high level of disruption from tech company challengers. Personally connected devices can help monitor personal data, which tech-enabled healthcare companies can aggregate and mine to improve product distribution and even clinical determinations. This leaves the healthcare industry ripe for further digital disruption.

Pure play here to stay

M&A between tech firms has also remained strong, as firms look to consolidate in order to cut costs and stay ahead of competition. Salesforce, for example, has agreed to pay US$5.9 billion for MuleSoft, a platform that allows clients to integrate data from the cloud and in-house servers, in what will be its biggest deal ever conducted. And Microsoft agreed to pay US$7.5 billion for code-sharing platform GitHub.

CFIUS caution

Chinese dealmaking into the US tech sector has been dampened by heightened scrutiny from CFIUS. The value of cross-border TMT deals from China into the US dropped from US$11.6 billion in 2016 to just US$2.25 billion last year.

It may be no coincidence that Chinese firms are developing more technological expertise in-country as well as increasingly targeting Asian neighbors Japan, Korea and Taiwan for their tech assets.

However, the announcement that CFIUS had approved investment company China Oceanwide Holding's purchase of insurer Genworth Financial in June perhaps signals a softening of the committee's stance. The deal was first announced in 2016 and both companies had to agree to take special measures to protect customer data in order to get approval. While this may be a one-off, it does show that cross-border from China deals can get across the line.

GDPR roadblocks

Now that the General Data Protection Regulation (GDPR) has come into effect in Europe, there is increased talk of similar regulations being proposed in the US, even for companies without a European connection. This may result in some tech giants becoming more internally focused on compliance, rather than outwardly focused on growth.

Yet, despite potential headwinds, corporate demand for tech M&A is expected to rise. As many potential tech acquirers are now loaded with cash, continued improvement in market confidence could drive deal sizes skyward in future quarters.

US **$67.4** billion

The value of 483 deals targeting the US tech sector in H1 2018

59%

Percentage increase in tech M&A value compared to H1 2017

Top tech deals H1 2018

1. Microchip Technology Inc. bought Microsemi Corporation for **US$9.8 billion**
2. Microsoft Corporation agreed to buy GitHub Inc. for **US$7.5 billion**
3. Saleforce.com Inc. bought MuleSoft Inc. for **US$5.9 billion**

Consumer firms adapt to survive

Despite a drop in headline figures, M&A within the US consumer sector remains an important method to secure long-term growth

By Morton Pierce

Deal activity targeting the US consumer sector totaled 196 deals worth US$76.8 billion in the first half of the year. This marks a sharp drop in value from H1 2017, when a host of megadeals pushed deal value to a record US$142.8 billion. Nevertheless, M&A within the sector remains an indispensable tool for business growth.

Dealmaking strategies during the first half of the year often focused on building scale or expanding geographical reach, or were responses to online disruption.

Keeping up with tech

In retail, M&A remains a necessity for expanding ecommerce capabilities to diversify beyond traditional bricks and mortar business models and create additional ways to reach consumers. The threat posed by tech giants moving into the retail space has become a catalyst for deals.

These were some of the motivations behind Albertson's decision to purchase the remaining 2,500 of pharmacy chain Rite Aid's stores that were not being bought by Walgreens Boots, in a deal valued at US$5.5 billion. Amazon's ground-breaking acquisition of Whole Foods last year has forced grocery stores such as Albertson to re-focus their strategy on gaining scale in new markets and offering more diversified products and services.

Cross-border interest

For international consumer brands, M&A has formed part of a strategy to get bigger, spread-out costs over a large organization, move into new geographies and consolidate their positions in core markets.

US firms have become key targets for cross-border interest.

Ferrero, the Italian chocolate maker, acquired Nestlé's US confectionary brands in a US$2.8 billion deal to become the third-largest chocolate manufacturer in the US, a key market for Ferrero. Meanwhile, coffee group Keurig Green Mountain, which is backed by the international investment company JAB Holdings, paid US$23.1 billion for soft drinks company Dr Pepper Snapple Group to consolidate its position in the coffee and drinks space.

Expect similar deals in the coming months, as consumer firms turn to M&A to increase geographical reach and catch up with tech-savvy rivals.

US $76.8 billion

The value of 196 deals targeting the US consumer sector in H1 2018

46%

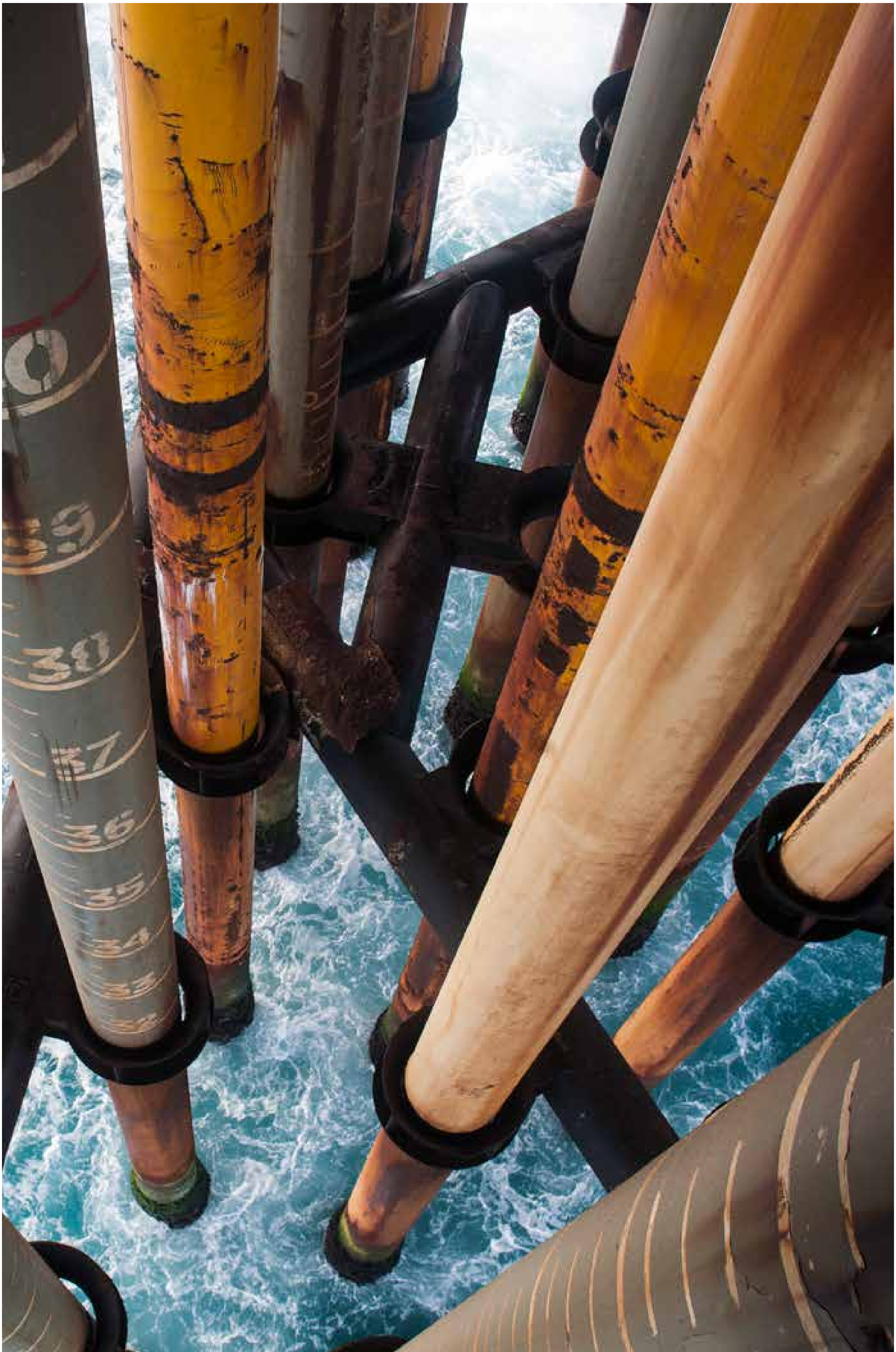
Percentage decrease in consumer M&A value compared to H1 2017

Top consumer deals H1 2018

1. Keurig Green Mountain Inc. agreed to buy Dr Pepper Snapple Group Inc. for **US$23.1 billion**

2. ConAgra Brands Inc. agreed to buy Pinnacle Foods Inc. for **US$10.8 billion**

3. General Mills Inc. bought Blue Buffalo Pet Products Inc. for **US$7.9 billion**


37
36
35

Oil & gas M&A gains cautious ground

A steadying oil price signals a brighter future for oil and gas M&A, yet market caution remains

By Steven Tredennick

Following an uncertain period for dealmaking, a recovering oil price has helped revive oil and gas M&A activity in the first half of 2018. With the brent crude oil price climbing from less than $50 a barrel a year ago to close to $70 a barrel today, US oil and gas assets have seen three consecutive quarterly rises in deal value, climbing 34 percent from H2 2017 to US$115.5 billion in the first half of the year.

Road to recovery

A higher, less-volatile oil price has put oil majors in a better position to take a five- to ten-year view on their portfolios, rationalize where necessary and make decisions on which basins to commit more resources to and which basins to exit in order to release capital for investment. Chevron, Royal Dutch Shell and BP, for example, are all reportedly in the running to acquire BHP Billiton's shale assets, which could be valued at up to US$9 billion.

Oil price stability supports M&A activity as buyers and capital providers gain confidence in the possibility of an upward trend in prices. With continued backwardation, sellers may also perceive limited upside in retaining non-core assets. If these favorable conditions persist, deal activity should continue to rise.

Caution remains

Despite the brighter outlook, however, much deal activity in the oil and gas sector is still driven by restructuring and the industry remains cautious when betting too heavily on growth. Master limited partnership transactions, which involve structures designed to give investors in the sector a blend of yield and capital gain, have dried up. Other yield-related assets are still bundled up in restructured entities controlled by hedge funds, and distressed debt investors are finding it challenging to find buyers who can make the numbers work against a low-growth backdrop.

While declaring a rebound in oil and gas M&A would be premature, the stabilization of oil prices is bringing confidence back to a market finding its feet following a prolonged downturn.

34%

Percentage increase in deal value compared to H2 2017

US $115.5 billion

The value of 139 deals targeting the US oil & gas sector in H1 2018

Top oil & gas deals H1 2018

1

Marathon Petroleum Corporation agreed to buy Andeavor Corporation for **US$30.2 billion**

2

Dominion Energy Inc. agreed to buy SCANA Corporation for **US$14.3 billion**

3

Williams Companies Inc. agreed to buy a 26.71% stake in Williams Partners L.P for **US$10.5 billion**

Big-ticket deals drive pharma M&A

Activity in the sector is fueled by the need to refill product pipelines and navigate convergence between health and tech firms

By Morton Pierce

The pharma, medical and biotech sector delivered 247 deals worth US$65.4 billion in the first half of 2018, with deal value down by 31 percent year-on-year.

Big pharma, big deals

Despite the downturn in overall deal value, the sector continues to deliver large, industry-shifting transactions, such as Sanofi's US$11.1 billion acquisition of Bioverativ—its largest deal for seven years—and KKR's US$9.4 billion announced acquisition of Envision Healthcare. These were two of the largest transactions in the sector in the US in the first half of 2018.

Building pipelines, expanding horizons

As in previous years, M&A in the sector has been driven by the need for large pharma groups to refill their product pipelines as blockbuster drugs go off patent and move into new treatment areas.

Sanofi's purchase of Bioverativ, a maker of hemophilia medicines, for example, boosts the French drug company's position in the treatment of rare diseases. Celgene's US$8.2 billion acquisition of a 90 percent stake in Juno Therapeutics, a developer of blood cancer drugs, which is close to having a treatment for lymphoma cleared by regulators in 2019, was underpinned by a similar rationale. Celgene's best-selling medicine Revlimid loses patent protection in 2022, making the Juno acquisition a key strategic investment for the group. In the case of the Novartis purchase of AveXis, a gene therapy treatment developer, the deal moves Novartis into a new and fast-growing area.

Connected health

As in other sectors, pharma M&A has been influenced by the trend toward convergence with the technology sector. Swiss pharmaceuticals group Roche, for example, paid US$1.9 billion for a stake in health-tech company Flatiron Health, with a view to speeding up research by using Flatiron's software and data analytics.

Large pharma companies are cash-rich and enjoy strong credit ratings. They will continue acquiring smaller biotech companies in order to renew pipelines and keep pace with the development of new treatments. As a consequence, M&A in the sector is expected to accelerate into the second half of the year.

31%

Percentage decrease in deal value compared to H1 2017

US $65.4 billion

The value of 247 deals targeting the US pharma sector in H1 2018

Top pharma & healthcare deals H1 2018

1. Sanofi SA bought Bioverativ Inc. for **US$11.1 billion**
2. Kohlberg Kravis Roberts & Co. agreed to buy Envision Healthcare Corporation for **US$9.4 billion**
3. Celgene Corporation bought a 90.37% stake in Juno Therapeutics Inc. for **US$8.2 billion**

Industrials & chemicals M&A gathers pace

Corporate repositioning and tax reform are two key trends driving M&A in the sector

By Michael Deyong

The US industrials & chemicals sector, which includes manufacturing as one of its subsectors, has been a rich source of deal flow over the last 18 months. M&A volume reached a record high in 2017, with a total of 949 deals announced. Activity has continued at this pace throughout the first half of the year, with US$73.6 billion worth of deals, an 80 percent increase in value compared to H1 2017.

Corporate maneuvering

Traditional corporate maneuvering has prompted a series of transactions, as large industrial groups refine their strategies, divest non-core entities and acquire targets that strengthen their core business lines. General Electric's chief executive, John Flannery, for example, has laid out his intentions to overhaul the conglomerate and scale down the business to the three core industry verticals of power, aviation and healthcare.

This has resulted in the sale this year of GE's transportation division, which makes train engines, to US rail equipment manufacturer Wabtec for US$11.1 billion; and the divestiture of the GE distributed power business to PE firm Advent International for US$3.3 billion.

Altra Industrial Motion, an electromechanical power transmission and motion control products manufacturer, meanwhile, acquired a portfolio of four companies from Fortive's automation platform for US$3 billion, in support of its strategy to widen its offering across the transmission supply chain.

US $73.6 billion

The value of 471 deals targeting the US industrials & chemicals sector in H1 2018

80%

Percentage increase in industrials & chemicals M&A value compared to H1 2017

Tax breaks

The Trump tax reform package has proven beneficial for manufacturers too. In addition to the boost to profits from lower headline rates, the capex-heavy manufacturing industry has received a lift from reforms that allow for the immediate expensing of capital assets for up to five years, with reliefs tapering off after that period, as well as the facilitation of immediate depreciation deductions.

Prospects for M&A activity in manufacturing through the rest of the year are positive. Labor Department figures to the end of Q1 2018 show that the sector has added 232,000 jobs over the last year. Meanwhile, recent tax reforms have freed up cash for investment and the ongoing trend of technology convergence will continue to open up opportunity to build new revenue streams and service lines around core product lines.

Top industrials & chemicals deals H1 2018

1. Wabtec Corporation agreed to buy GE Transportation from General Electric for **US$11.1 billion**

2. Tenneco agreed to buy Federal-Mogul for **US$5.4 billion**

3. WestRock Company agreed to buy KapStone Paper and Packaging Corporation for **US$4.9 billion**

Is blockchain M&A poised to accelerate?

US dealmakers are learning to navigate the complex world of blockchain M&A, but they will have to proceed with care in heavily-regulated sectors

By Kenneth Juster, Kevin Petrasic & Prat Vallabhaneni

As the token industry continues to mature, so do the opportunities for token project M&A. In particular, strategic buyers are increasingly active in this space as they seek to expand their operations and pivot toward new business lines. As is characteristic in highly-regulated and emerging industries, though, there are numerous legal issues that ought to be considered and resolved in order to make an M&A transaction in the token space successful.

Interest in M&A grows

While it may not have been clear to token industry participants in 2017, it should now be abundantly clear in 2018 that US federal and state securities regulators are of the view that token offerings, given the typical fact patterns under which many are conducted, are generally securities offerings. This is particularly so for token offerings that are conducted to raise capital in lieu of more traditional equity or debt financings.

Despite greater regulatory pressure, the token economy continues to grow. While token projects are reported to have raised US$5.6 billion in 2017, they have raised US$6.3 billion in just the first quarter of 2018 alone and this is gradually translating to an increase in M&A transactions. According to Pitchbook data, the emerging blockchain industry has produced 88 completed M&A transactions since 2010.

M&A among exchanges and alternative trading platforms has been particularly active this year, as they push to become fully-regulated crypto exchanges under the FINRA and the SEC. In February, US payments start-up Circle announced that it is acquiring cryptocurrency exchange Poloniex for US$400 million, and in June, US cryptocurrency exchange Coinbase announced its intention of acquiring securities dealer Keystone Capital for an undisclosed amount.

Given the highly-regulated nature of token project business models, many of the financial regulatory considerations that accompany M&A transactions involving a financial institution may apply. These considerations range from conducting focused regulatory due diligence to obtaining appropriate regulatory licenses, registration and approvals.

> **M&A among exchanges and alternative trading platforms has been particularly active this year, as they push to become fully regulated.**

Due diligence faces complex issues

Token projects that are acquisition targets present a host of complex issues when it comes to due diligence. Many projects were founded by entrepreneurs and technologists who, while often highly innovative and technically competent, are not as steeped in the complex legal, compliance and regulatory challenges that face FinTech companies. Furthermore, their risk-reward calculus as start-up founders may have led them down a risk-taking path that a mature company would not have pursued.

Acquirers should be sure they understand the culture of innovation upon which many start-up token companies were founded and conduct due diligence appropriately. FinTech start-up targets are often not without their regulatory issues, but a token due diligence investigation should be calibrated to fully assess whether these issues are both quantifiable and manageable in light of the potential upside of an acquisition.

Regulatory hurdles

In the context of regulatory authorities, there are numerous registrations that may need to be made, or licenses, charters, non-objections or approvals that may need to be obtained prior to conducting business in the token space. For example, many token companies may be operating as money transmitters under federal or state law. This may require them to register with FinCEN or obtain

money transmitter licenses from one or more states.

Some states, such as New York, have virtual currency-specific licensing and regulatory regimes. In other contexts, some token businesses may involve the extension of credit. As with money transmission, the licensing regime for lending outside of the bank or credit union context is administered by state regulatory authorities that, in various instances, may require a particular token project to obtain lending licenses.

Strategic buyers try a new approach

Strategic buyers in the token space may also pursue other structures to accelerate, but still manage, their exposure to the token economy. One increasingly popular approach is to form a joint venture whereby a mature corporate contributes capital to the joint venture and a start-up FinTech company contributes intellectual property and talent.

Joint ventures can be structured in numerous ways and can include subsequent fundraising by way of debt, equity or tokens, or options for either party to acquire equity from the other party's parent entity. Parties contemplating a joint venture should be mindful of conducting due diligence and reverse due diligence, and consider fully the regulatory implications both for the joint venture and the controlling parent companies, prior to forming a joint venture.

M&A outlook

As the token industry continues to mature, opportunities for M&A transactions will continue to abound. Start-ups will seek exits and infrastructure players in a fractured market will be consolidated and absorbed by more-efficient market leaders. And in a bid not be left behind, established market players will leverage their existing client bases to pivot toward token exposure.

In navigating these transactions, however, it is important to remember that token technologies, while novel and potentially revolutionary, are not immune from the fundamental legal, regulatory and compliance frameworks that apply to business, and in particular financial services business, more generally.

In focus: Financial services regulation

An overview of the financial regulatory landscape and key trends to watch

By Benjamin Saul

Consumer Financial Protection Bureau reform

Acting Director of the CFPB Mick Mulvaney has detailed a new vision for the agency in which it will act with restraint and not target companies without substantial evidence of wrongdoing. Since assuming his Acting Directorship, Mulvaney has announced several political appointments to key CFPB positions, issued over ten requests for information seeking public input on nearly every aspect of the Bureau, undertaken a comprehensive review of all CFPB rules, rolled back requirements under its payday, prepaid card and HMDA-related rules and announced its intention to create a regulatory sandbox to help incubate FinTech and RegTech products and services.

The Trump administration has nominated budget official Kathy Kraninger to succeed Mulvaney as the CFPB's permanent director. If confirmed, Kraninger is expected to continue Mulvaney's reforms of the agency. The CFPB, meanwhile, continues to face threats from the judicial and legislative branches concerning its current leadership structure and funding mechanisms. Given the foregoing, M&A activity in the consumer finance industry, which had slowed following the creation of the CFPB, continues to accelerate.

It will be interesting to observe how buyer consolidation activity evolves as the Trump administration continues to implement regulatory reforms and reshapes the CFPB. The roll-back of regulations, for example, concerning the payday lending industry has made such lenders more attractive acquisition targets, hastened IPO activity and bolstered debt capital markets offerings.

Favorable economic trends, meanwhile, should continue to support financing and M&A activity within the consumer finance sector as businesses reach scale and seek further consolidation opportunity.

Financial regulatory reform could encourage bank M&A

In late May 2018, President Trump signed into law the Economic Growth, Regulatory Reform and Consumer Protection Act (the "Act"), which could spur more bank combinations. One of the Act's key provisions raises the threshold for systemically important financial institutions (who are subject to more burdensome regulation) from $50 billion to $250 billion. The $50 billion threshold has been a major deterrent to bank M&A, and raising it could stimulate more deal activity. Other changes under the Act could also encourage consolidation among smaller banks.

Beyond the Act, the regulatory environment continues to ease, as new leadership at the banking agencies softens their approach to enforcement, which could especially benefit foreign banks, who (up to now) have been frequent enforcement targets and who, as such, have been less acquisitive in recent years.

Likewise, the process for obtaining regulatory approvals appears to be accelerating as, among other things, regulators

> "It will be interesting to observe how buyer consolidation activity evolves as the Trump administration continues to implement regulatory reforms and reshapes the CFPB.

“

Regulators' openness to innovation could significantly benefit M&A.

resolve community group objections more swiftly than in the past.

Finally, regulators appear increasingly open to innovative approaches to charter-structuring strategies, including dormant charter alternatives. These include industrial loan companies and new charter alternatives, such as the OCC's proposed special purpose national bank FinTech charter. Regulators' openness to innovation could significantly benefit M&A.

Other demographics also favor consolidation, as banks increasingly look to develop digital platforms and make heavy investments in technology; again, often with the support of regulators increasingly focused on FinTech and RegTech solutions that are transforming the landscape of the financial services industry.

All of these factors suggest we will see increased bank M&A activity. Indeed, concurrent with the Act's enactment, in May 2018, a number of bank deals were announced, including Fifth Third Bancorp's US$4.6 billion purchase of MB Financial. Sellers in those deals varied, from de novo to larger regional banks and from commercial to retail operations. With continued easing of the regulatory environment, there is reason to think such deal activity will continue.

Decision time for M&A in Delaware

Noteworthy rulings out of the Delaware Supreme Court and the Court of Chancery in the past six months are already having consequences for M&A activity

Dell and DFC Global: Market value may mean fair value
Two high-profile Delaware appraisal rulings from last year are already making waves in 2018.

In December 2017, the state's Supreme Court reversed an earlier ruling by the Delaware Court of Chancery, which found the 2013 buyout of computer maker Dell Inc. to be underpriced. Similarly, in August 2017 the Delaware Supreme Court ruled that the acquisition of payday lender DFC Global Corp had not been undervalued, reversing another earlier Delaware Court of Chancery appraisal decision.

In both cases, the state's Supreme Court found that deal price should have been given significant weight in the determination of fair value under the appraisal statute.

These rulings were front of mind in this year's appraisal decision regarding Hewlett-Packard Company's 2015 acquisition of Aruba Networks, Inc. The Court of Chancery determined Aruba's fair value to be the 30-day average unaffected market price of US$17.13 per share—a discount from the US$24.87 deal price paid in the transaction.

The Court of Chancery held that the Dell and DFC reversals endorsed using, in addition to share price, the market price of a widely-traded firm as an indicator of fair value, if the market for the shares of the firm aligned with the attributes underlying the Efficient Markets Hypothesis (EMH). These include: many stockholders; no controlling

stockholder; highly active trading; and information about the company being widely available and easily disseminated to the market.

In addition, the Court of Chancery found that the Dell and DFC decisions endorsed using deal price in a third-party, arm's length transaction as an indicator of fair value, but only after deducting synergies from the deal price.

Finally, the Court of Chancery found that these reversals urged caution against discounted cash flow analyses prepared by adversarial experts when reliable market indicators are available. Accordingly, the Court of Chancery declined to give any weight to expert valuations of Aruba that relied on discount cash flow analyses.

Finding Aruba's common stock to exhibit attributes consistent with the premises of the EMH, the Court of Chancery considered Aruba's 30-day average unaffected market price of US$17.13 per share to be a reliable indicator of value.

And while the Court of Chancery also considered the US$24.87 deal price a reliable indicator of fair value, adjustments would be required to exclude the value of synergies arising from the transaction as required by the appraisal statute.

As a result, the Court of Chancery concluded that the unaffected market price of US$17.13 was the most persuasive evidence of Aruba's fair value. Subject to the Delaware Supreme Court confirming this approach on appeal, dealmakers can expect unaffected market price to be fundamental to appraisal proceedings in the future.

Corwin: Controlling stockholders and adequate disclosure

The Delaware Supreme Court's 2015 decision in Corwin v. KKR Financial Holdings LLC has become a powerful tool for boards of directors defending against breach of fiduciary duty claims with regards to acquisitions.

Under this ruling, director approval of a transaction that is not subject to an entire fairness review is entitled to business judgment deference when the transaction is later approved by an uncoerced, fully-informed majority of disinterested stockholders, either by vote or acceptance of a tender offer.

The "cleansing" effect of such stockholder approval is that fiduciary duty claims will be dismissed unless there is a showing of waste.

This defense can be defeated, however, if the transaction involves a conflicted controlling stockholder– subjecting the transaction to an entire fairness review. As a result, determining the existence of a "controlling stockholder" has become increasingly important.

Tesla: Who is a controlling stockholder?

In the case of In re Tesla Motors, Inc. Stockholder Litigation, for example, the Delaware Court of Chancery sided with plaintiffs who argued that, in connection with Tesla's 2016 acquisition of SolarCity Corporation, Elon Musk was a controlling stockholder of Tesla, Inc. even though he held only 22 percent of its common stock.

As a consequence, breach of fiduciary duty claims against the Tesla board of directors and Musk, as a controlling stockholder, survived a motion to dismiss, even though the transaction had been approved by a majority of Tesla stockholders.

The Court of Chancery noted that Tesla's bylaws contained several supermajority voting requirements, allowing Musk significant control while only owning approximately 22 percent of Tesla's common stock.

In addition, the Court of Chancery cited Musk's alleged domination of the Tesla board in the lead-up to the SolarCity acquisition, including bringing the SolarCity proposal to the board three times, leading board discussions and being responsible for engaging the board's advisors.

Finally, the Court of Chancery noted alleged conflicts in the Tesla board that diminished its potential resistance to Musk's influence, as well as Tesla's and Musk's own acknowledgments of Musk's outsized influence.

Parties should be mindful of factors such as these, in addition to stock ownership, in determining whether a "controlling stockholder" exists and whether the "cleansing" effect of a stockholder vote will be available.

Appel: What's does "fully informed" mean?

A second defense to the cleansing effect of Corwin is to establish that stockholder approval was not fully informed. In Appel v. Berkman, in February of this year, the Delaware Supreme Court reversed a Court of Chancery dismissal of a stockholder challenge to the sale of Diamond Resorts International.

The chairman of Diamond's board of directors abstained from voting to approve a sale of the company, but Diamond did not disclose why. The Delaware Supreme Court held this to be material information without which Diamond's stockholders could not have made a fully-informed tender into the deal.

Failure to make such material disclosures denied Diamond's board the "cleansing" effect of stockholder approval for the transaction. At the pleading stage, this precluded the invocation of the business judgment rule standard. As a result of this decision, boards must carefully consider how dissenting opinions of directors are discussed in disclosures to stockholders.

"Determining the existence of a "controlling stakeholder" has become increasingly important.

Spotlight on public companies: cybersecurity and governance

The number and severity of cybersecurity incidents at major companies has increased, causing regulators to take a tougher approach. We look at five practical steps companies can take to manage these risks

By Michelle Rutta

Regulators, including the Securities and Exchange Commission, have increased their focus on the growing threat of cybersecurity. This trend underscores the fact that cybersecurity is not merely an IT issue, but an integral component of a company's broader enterprise-wide risk management structure, necessitating board oversight of cybersecurity risk.

And of course, cybersecurity is a critical consideration in M&A transactions. The risk profile, security protocols and cybersecurity preparedness of any possible target should be carefully evaluated when considering potential business combinations.

Proper board oversight requires the board to be fully informed about both the effectiveness of existing cybersecurity measures and the importance of any cyber incidents that have occurred. Companies must assess whether they have adequate processes in place to ensure that cybersecurity risks and incidents are identified, evaluated, and reported to the board in a timely manner.

To manage the risks posed by cybersecurity, companies should focus on five main areas:

1

Take a tailored approach

Cybersecurity risks vary by company. Companies should tailor their approach, taking into account the data for which they are responsible and the types of risks they may face. This is especially the case for personally identifiable information, such as payment or health data, as well as proprietary data and third-party data.

2

Choose the right oversight structure

Board oversight of cybersecurity can be achieved in a variety of ways. In many companies, the Audit Committee retains primary oversight of cybersecurity risks, consistent with its role overseeing enterprise risks generally. However, in some companies it may make sense to assign primary cybersecurity oversight to a Risk Committee that oversees a range of the company's enterprise risks or a Technology Committee focused on oversight of technology-related risks.

Any oversight structure should include regular meetings with the company's chief information security officer (or equivalent). In addition, there should be appropriate protocols for elevating information about significant cybersecurity risks and incidents that arise between those meetings.

3

Regularly assess the risks

The board (or relevant committee) should evaluate the company's cybersecurity risks and the effectiveness of its controls. To do this it should use appropriate benchmarks to industry standards and regulatory requirements and maintain an awareness of ever-evolving, state-of-the-art cybersecurity technologies and best practices. Directors will need to decide who should make those evaluations (management, internal audit, an external advisor, or some combination thereof) and should have a "dashboard" to look at critical issues, monitor the progress of the company, and watch for trends.

4

Develop crisis management and incidence response plans

An effective cybersecurity strategy requires expediency in responding to a breach and resilience in addressing and recovering from such a breach. Having a crisis management team in place, including representatives from investor relations, IT, legal and management, allows the company to: (i) respond quickly and effectively to a cyber incident, (ii) gather information in order to craft accurate disclosure, (iii) address shareholder concerns when information is released to the market, and (iv) understand the role of outside counsel in leading forensic investigations and maintaining privilege.

Companies should consider conducting cyber breach simulations to test for weaknesses and prepare personnel for a true incident.

5

Watch for red flags

Directors should be on alert for red flags which might indicate that cybersecurity resources are insufficient and, if appropriate, request an independent assessment of the company's cybersecurity programs. Directors should be mindful of cyber incidents at peer companies and critical vendors, which can provide insight into the types of attack the company might be subject to and highlight potential systems and supply chain vulnerabilities that should be addressed.

While board oversight of cybersecurity is critical, the directors' role is to oversee companies' risk management, not to manage those risks themselves. Directors do not need to know how specific cyber protection and detection technologies work. The board should focus on ensuring that the company identifies and assesses its key risks through adequate policies, procedures, technical resources, personnel, and organizational structures. It should also ensure that the company tracks and manages those risks effectively over time, keeps leadership fully informed and discloses incidents and other material cybersecurity risks to the full extent required.

Can the run continue? Key trends to watch in the months ahead

Acquirers shrugged off macro-economic uncertainty in the first half of the year to secure deals of strategic necessity

It has been an impressive first half of 2018 for US M&A, which delivered its second consecutive six-month increase in value, while volume remained stable. This was achieved despite shrinking inbound M&A activity, rising interest rates and volatile stock markets.

Although economic fundamentals remain sound, headwinds are building. Here we discuss four factors that are likely to shape dealmaking in the coming months.

1

Private equity could get even hotter

Private equity activity is likely to accelerate in the second half of the year. Firms have record amounts of dry powder and are finding innovative ways to deploy it, whether that be through club deals or investing through buy-and-build portfolio company platforms. Strategic buyers have become increasingly efficient and nimble, enabling them to meet vendors' demands and increasing competition in the market.

2

Sector dynamics will fuel megadeals

Megadeals defined the market in a handful of sectors such as healthcare, consumer and TMT, where industries are going through a period of realignment. At the top end of the market, buyers are paying large multiples for high-quality companies in deals where there is a clear strategic rationale, often driven by changing sector dynamics. This is likely to continue in the second half of 2018.

In the mid-market, however, where multiples are also high but strategic benefits may be less clear, it is more difficult to justify paying full prices for smaller, slightly risker companies at a time when the macro-economic backdrop is less predictable than in recent years.

3

Tax incentives will continue to encourage M&A

A boost from the cut in headline corporate tax rates and the introduction of reliefs on capital expenditure, along with incentives to repatriate US corporate cash held overseas, will start to be felt as companies report better earnings and higher cash balances. Corporate confidence, an essential ingredient for M&A, will be elevated, and there will be extra capital available for deals.

4

Tech giants face headwinds

Technology companies have been aggressive in recent years, moving into other sectors and buying up younger emerging rivals. The ongoing debate about how tech companies handle private information could change that, particularly if it leads to stiffer regulation. The General Data Protection Regulation (GDPR) has come into effect in Europe and there is increased talk of similar regulations being proposed in the US, even for companies without a European connection.

Global

John M. Reiss
Partner, New York
T +1 212 819 8247
E jreiss@whitecase.com

Americas

Gregory Pryor
Partner, New York
T +1 212 819 8389
E gpryor@whitecase.com

EMEA

Dr. Jörg Kraffel
Partner, Berlin
T +49 30 880911 400
E jkraffel@whitecase.com

Allan Taylor
Partner, London
T +44 20 7532 2126
+44 20 7532 1000
E ataylor@whitecase.com

John Cunningham
Partner, London
T +44 20 7532 2199
+44 20 7532 1000
E johncunningham@whitecase.com

Alexandre Ippolito
Partner, Paris
T +33 1 55 04 15 68
+33 1 55 04 15 15
E aippolito@whitecase.com

Asia-Pacific

Christopher Kelly
Partner, Hong Kong
T +852 2822 8740
E christopher.kelly@whitecase.com

Barrye Wall
Partner, Singapore
T +65 6347 1388
E bwall@whitecase.com


INOTORIOUS

WHITE & CASE

whitecase.com

Published in association with Mergermarket

An Acuris company

www.acuris.com

For more information, please contact:

Nadine Warsop
Publisher, Remark, an Acuris company

Tel: +44 20 3741 1370