Floyd Advisory

Deals, Dollars, and Disputes

MAXIMIZING VALUE
MINIMIZING RISK

A Summary of Private Equity Transactions for the Quarter Ended September 30, 2015

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Introduction and Our Objective

We are pleased to present you with our *Deals, Dollars, and Disputes* report for the quarter ended September 30, 2015. Our quarterly report involves a study of the merger and acquisition transactions involving private equity firms ("PE firms") during the recent quarter and over the past five quarters.

Our objective in preparing this report is to provide a general overview of the volume and value of transactions during the year along with an analysis of trends when compared to prior periods.

As an independent consulting firm with financial and accounting expertise, we are committed to contributing thought leadership and relevant research regarding business and valuation matters to assist our clients in today's fast-paced and demanding market. This report is just one example of how we intend to fulfill this commitment.

We appreciate your comments and feedback and welcome requests for any additional analysis that you might find helpful.

Floyd Advisory
DECEMBER 2015

Our Process and Methodology

We studied financial data for transactions involving PE firms, both as buyers and sellers, over the past five quarters for target companies headquartered in North America.

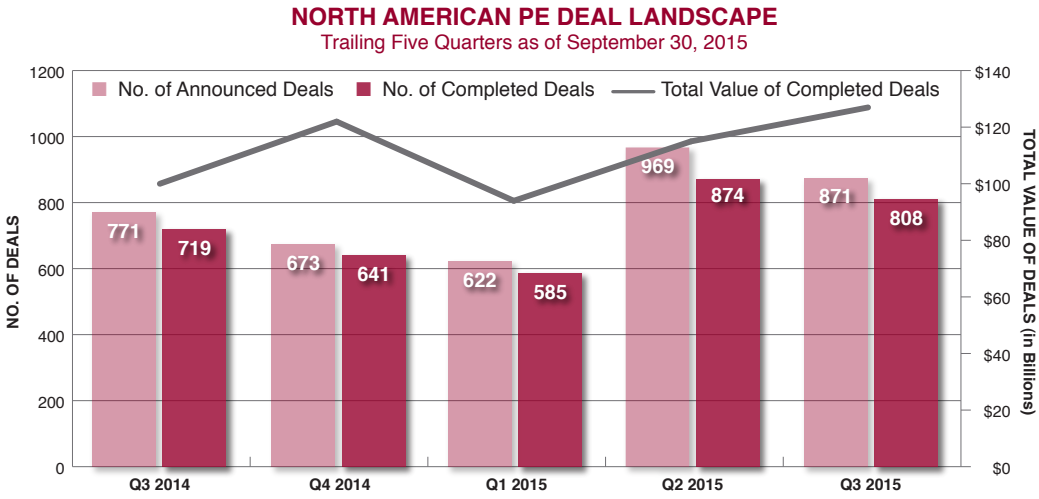
As part of our review, we gathered and analyzed relevant transaction information and data such as industry sector, equity interest, and deal structure, and created a database for our further analyses. From this information, we analyzed market trends by industry, common attributes, valuation premiums, and other characteristics. Applying our professional judgment to these observations, we have prepared this report.

For the purposes of this report, the transaction data we have analyzed is limited to publicly available information.

Summary of Q3 2015 PE Firm Transaction Activity

Deal Value and Volume Remain High in Q3 of 2015

The value and volume of deals in the third quarter of 2015 continue to be among the highest levels seen in recent quarters.



Source: Zephyr
Note: Includes data for which transaction details were reported and available.

The value and volume of deals in the third quarter of 2015 continue to be among the highest levels seen in recent quarters. Although the third quarter of 2015 saw a slight decrease in the total number of deals completed as compared to the second quarter of 2015, the overall value of deals completed continued to increase, reaching a level of $127 billion.

When compared to the prior year, the volume of deals completed in the third quarter was up 12%, and the value was up 27% over the third quarter of 2014.

Over the last five quarters, an average of 8% more deals have been announced than completed. This disparity results from a range of potential factors that include timing of deal execution, break-ups, terminations, pending regulatory approval, and challenges confirming settlements of announced deals when transactions involve privately-held companies.

Top 20 PE Firm Transactions by Deal Value Completed During Q3 2015

	Deal Value USD (in Millions)	PE Role(s)	Target	Seller	Deal Type	Acquiring Entity (Advisors)	Target Primary US SIC Description
1	$40,000	Buyer	Kraft Foods Group Inc.	Shareholders	MAJ	The Kraft Heinz Company (3G Capital Partners Ltd)	Pickled fruits and vegetables, vegetable sauces and seasonings, and salad dressings manufacturing
2	$8,050	Seller	Par Pharmaceutical Holdings Inc.	Shareholders TPG LLC	MAJ	Endo International PLC	Pharmaceutical preparations manufacturing
3	$7,200	Seller	Receptos Inc.	Arch Venture Fund VII LP Polaris Venture Partners VI LP Lilly Ventures Fund I LLC Venrock Associates V LP Flagship Ventures Fund 2007 LP	MAJ	Celgene Corporation	Commercial physical and biological research
4	$5,300	Buyer, Seller	Informatica Corporation	Soros Fund Management LLC Shareholders Elliot Management Corporation Praesidium Investment Management Company LLC	MAJ	Italics Inc. (Canada Pension Plan Investment Board, Permira Advisers LLC)	Computer programming services
5	$2,750	Seller	RKI Exploration & Production LLC	First Reserve Corporation LLC Shareholders Mr. Ronnie Irani	MAJ	WPX Energy Inc.	Oil and gas field exploration services
6	$2,533	Buyer	Heritage Royalty LP	Cenovus Energy Inc.	MAJ	Natural Resources Group (Ontario Teachers' Pension Plan)	Oil and gas field exploration services
7	$2,500	Seller	Capital Safety Inc.	Kohlberg Kravis Roberts & Company LP	MAJ	3M Company	Fabricated metal products, not elsewhere specified
8	$2,100	Buyer	Standard Aero Holdings Inc.	Dae Aviation Holdings Inc.	MAJ	Veritas Capital Fund Management LLC	Airports, flying fields and airport terminal services
9	$2,000	Seller	Ann Inc.	Golden Gate Capital LP Shareholders Red Alder GP LLC Engine Capital LP	MAJ	Ascena Retail Group Inc.	Women's clothing stores
10	$2,000	Buyer, Seller	The Kenan Advantage Group Inc.	Goldman Sachs Capital Partners Centerbridge Capital Partners LP	MAJ	Management Omers Private Equity Inc.	Trucking, except local
11	$2,000	Buyer	Excel Trust Inc.	Shareholders	MAJ	Blackstone Property Partners LP (The Blackstone Group LP)	Real estate investment trusts
12	$1,900	Seller	Fibertech Networks LLC	Shareholders Court Square Capital Partners LP	MAJ	Light Tower Fiber LLC	Telephone communications, except radiotelephone
13	$1,750	Seller	AHS Medical Holdings LLC	Welsh Carson Anderson & Stowe Shareholders Ferrer Freeman & Company LLC	MAJ	Ventas Inc.	General medical and surgical hospitals
14	$1,630	Seller	Pro-Build Holdings Inc.	Devonshire Investors LLC	MAJ	Builders Firstsource Inc.	Wood products, not elsewhere classified manufacturing
15	$1,500	Buyer	Protection One Inc.	GTCR LLC	MAJ	Apollo Global Management LLC	Security systems services
16	$1,350	Seller	The Waddington Group Inc.	Olympus Partners LP	MAJ	Jarden Corporation	Packaging paper and plastics film, coated and laminated manufacturing
17	$1,325	Seller	TGG Medical Solutions Inc.	TGG Medical Holdings LLC	MAJ	Mallinckrodt Enterprises LLC	Commercial physical and biological research
18	$1,200	Buyer	Cirque du Soleil Inc.	Mr. Guy Laliberte	MAJ	La Caisse de Depot et Placement du Quebec Claridge Inc. Fosun International LTD TPG Capital Management LP Mr. Daniel Lamarre Mr. Mitch Garber	Theatrical producers and miscellaneous theatrical services
19	$1,115	Seller	The Harvard Drug Group LLC	Court Square Capital Partners LP	MAJ	Cardinal Health Inc.	Drugs, drug proprietaries, and druggists'sundries
20	$1,000	Buyer	Uber Technologies Inc.	Shareholders	MIN	Microsoft Corporation Bennett, Coleman & Company LTD Hillhouse Capital Management LTD	Prepackaged software

Source: Zephyr
Deal types: MAJ = Majority Stake Acquisition, MIN = Minority Stake Acquisition, IPO = Initial Public Offering

"Kraft Heinz was formed following the merger of two food giants—Kraft Foods Group, Inc. and H.J. Heinz Company—per a deal announced in March this year. The deal was backed by Brazilian private equity firm, 3G Capital, and billionaire investor, Warren Buffet. Heinz was jointly owned by 3G Capital and Buffet's Berkshire Hathaway, Inc. The investment companies had acquired Heinz for $28 billion in 2013. … The Kraft Heinz Company, which is the third-largest food and beverage company in North America and the fifth-largest food and beverage company in the world, intends to integrate the two businesses and create a new organizational structure."

"Kraft Heinz Company to Debut on NASDAQ Floors Today." *Zacks Investment Research.* 6 July 2015

"WPX Energy's purchase of privately held Oklahoma City company RKI Exploration & Production LLC has officially closed, WPX announced Monday. The completed acquisition gives WPX a substantial presence in the core of the Permian's Delaware Basin, located in west Texas and eastern New Mexico. Tulsa-based WPX announced in July that it would acquire RKI for $2.35 billion plus assumption of $400 million in debt. The deal with RKI is one of more than $4 billion in transactions that WPX has made during 2014 and 2015 as part of efforts to transform and enhance its portfolio."

"WPX Energy Closes Acquistion of RKI Exploration & Production." *Tulsa World.* 18 Aug. 2015

"Lightower Fiber Networks, the premier provider of all-fiber, high-performance networking solutions delivered over our own network, announced today the closing of its $1.9 billion merger with Fibertech Networks. The combined company elevates Lightower's position in the telecommunications industry and further solidifies its leadership role in the U.S. fiber-networking market. The company offers best-in-class, all-fiber solutions combined with award-winning customer support across an expanded service area that now blankets the Northeast, Mid-Atlantic, and Midwest regions of the country."

"Lightower Closes Merger with Fibertech Networks to Double Its Network Reach and Strengthen Its Position in U.S. Networking Market." *Lightower Fiber Networks.* 13 Aug. 2015

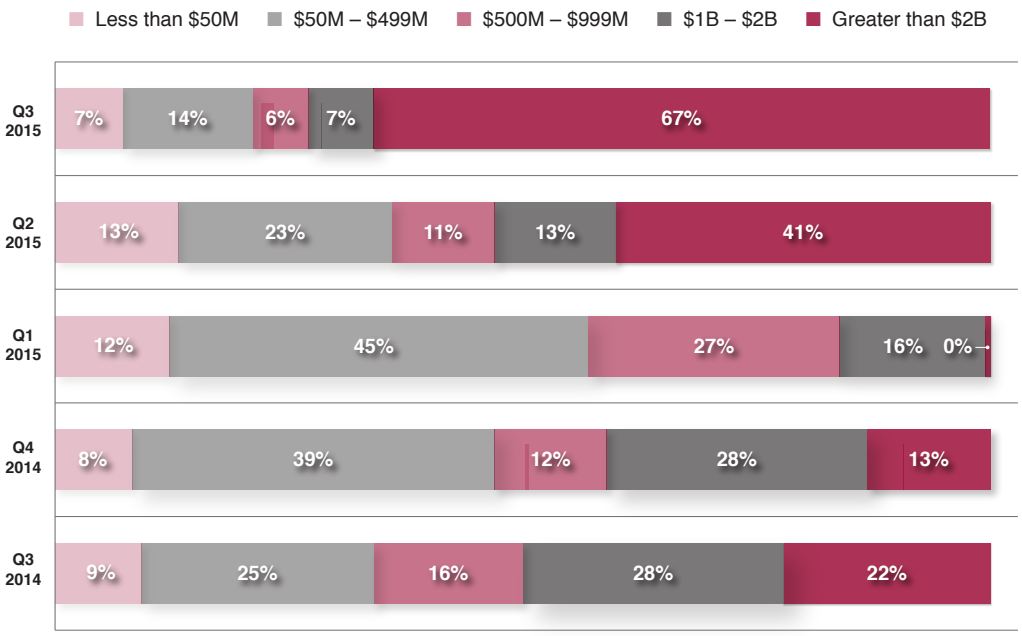
"Cirque du Soleil, the world's leading producer of high-quality live artistic entertainment, today announced an agreement under which TPG, a global private investment firm, will acquire a majority stake in Cirque du Soleil to fuel growth and take Cirque's iconic blue and yellow big top to exciting new markets. Cirque du Soleil's Founder, Guy Laliberté, will maintain a stake in the business and will continue to provide strategic and creative input to the company. Fosun, one of China's leading privatelyowned investment groups, will acquire a minority stake in Cirque du Soleil via a fund under its management, and together the firms will work with the company to launch and expand in China. In addition, Caisse de dépôt et placement du Québec (the "Caisse") will also acquire a minority interest in the company."

"Cirque Du Soleil Finds New Strategic Majority Partner in TPG-led Investor Group." *Caisse De Dépôt Et Placement Du Québec.* 20 Apr. 2015

The Trend Towards Large Deals Continues

Looking at PE acquisitions and PE divestitures separately, the two graphs that follow provide percentages of quarterly deal totals in incremental ranges of value. The transaction data behind the percentages depicted in these graphs does not encompass secondary PE buyouts, wherein both the buyer and seller groups included PE firms.

DISTRIBUTION OF VALUE – PE ACQUISITIONS



Source: Zephyr
Note: Includes data for which transaction details were reported and available.

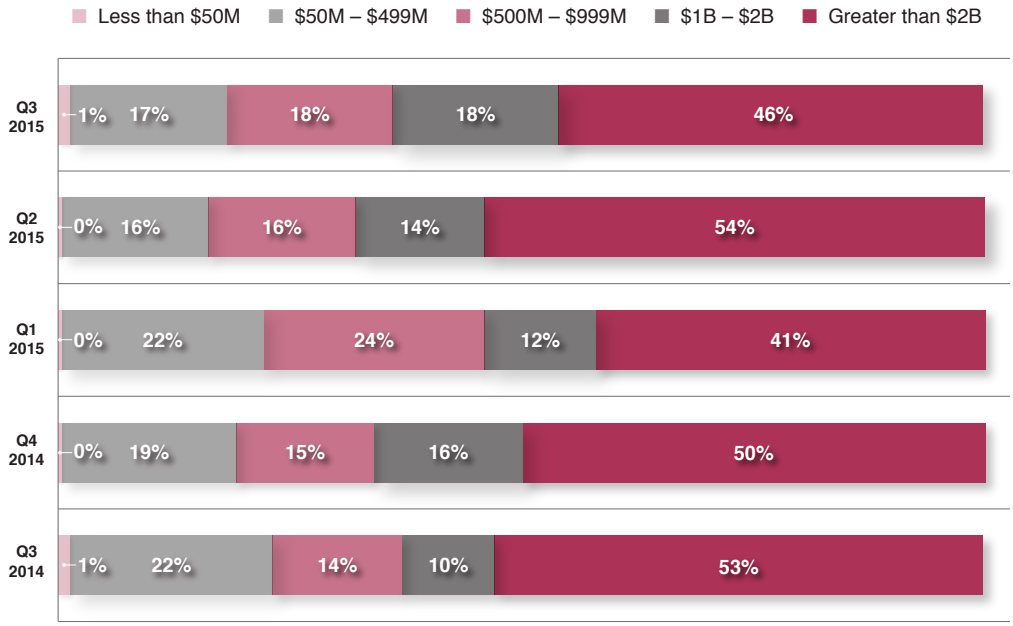
"The surge in megadeals is expected to continue, at least for a while, if not at record levels. "This is not yet the end of the cycle, but it may have seen its peak," says [Wharton finance professor Doron] Levit. With interest rates expected to creep up, more costly financing would make it more difficult for private equity firms and others to do deals, although a lot of money will remain available, he adds."

"Mega-mergers Are Back, but Will the Pace Last?", *Knowledge @ Wharton*, 20 Jul. 2015

The proportion of acquisitions individually valued at greater than $2 billion continued to grow in the third quarter of 2015, driven significantly by the $40 billion acquisition of Kraft Food Groups, Inc. by 3G Capital and Berkshire Hathaway. The purchase resulted in the immediate merger of Kraft Food Groups, Inc. with H.J. Heinz Co., a company already controlled by 3G Capital and Berkshire Hathaway, to create The Kraft Heinz Company. The new company is expected to be the third-largest food company in the U.S. and the fifth-largest in the world.[1] Shareholders of H.J Heinz Co. received a 51% stake in the new company, while the shareholders of Kraft received the remaining 49% share of the company, plus a one-time cash dividend of $16.50 per share.[2]

[1] *Forbes. "Analysis of the Kraft-Heinz Merger". March 30, 2015.*
[2] *Id.*

DISTRIBUTION OF VALUE – PE DIVESTITURES



Source: Zephyr
Note: Includes data for which transaction details were reported and available.

For PE divestitures, the seller's market remains healthy, with close to half of the value of total divestitures coming from deals with a value greater than $2 billion. There were five divestitures greater than $2 billion in value in the third quarter of 2015, including the $8 billion sale of Par Pharmaceutical Holdings to Endo International PLC. The acquisition by Endo International PLC follows Par Pharmaceutical Holdings' recent "tax inversion," when the company relocated its corporate headquarters from Pennsylvania to Ireland, a practice of shifting revenues from the U.S. to foreign markets with lower corporate tax rates that has recently gained greater attention from U.S. regulators.[3]

"Most divestitures start with a strategic decision that a company is no longer the best owner of one of its businesses. It's a natural move for executives who see value in actively managing their portfolio of business units—recognizing that to grow, they sometimes have to shrink first—to deploy capital into a business with higher returns, for example, or to reshape the company's strategy."

Fubini, David, Michael Park, and Kim Thomas. "Profitably Parting Ways: Getting More Value from Divestitures." *Profitably Parting Ways: Getting More Value from Divestitures.* McKinsey & Company, 1 Feb. 2015

[3] *The Wall Street Journal. "Endo to buy Par Pharma for about $8 billion". May 18, 2015.*

The Growth in Acquisition Activity Outpaces Divestitures

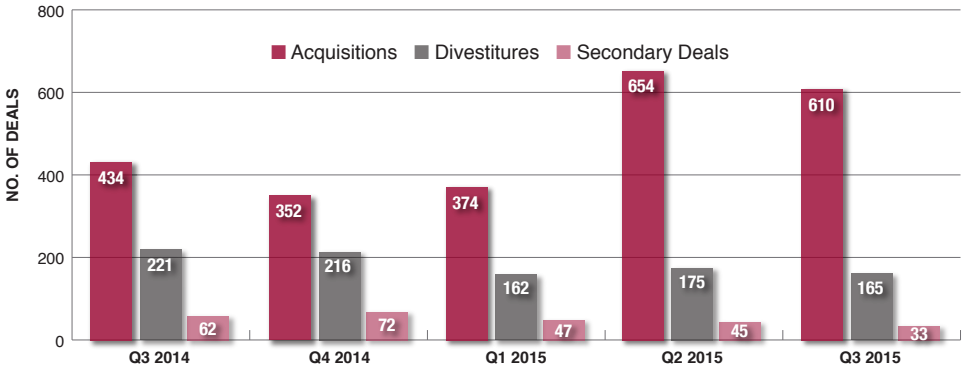
The growth in PE acquisition activity continues to outpace the trend in divestitures. The number of acquisitions in the third quarter grew 40% over the prior year while the number of divestitures fell by 25%. Of note, the 2:1 ratio of acquisition vs. divestiture activity seen in the third quarter of 2014 increased to greater than 3.5:1 in the third quarter of 2015.

Many analysts predict PE activity will remain robust through the rest of this year and into 2016. Some near-term events expected within the PE sector include larger-sized deals and buyouts, more exit activity through IPOs and strategic sales to trade buyers, and similarly, an eventual boom in the private equity secondary market.[4]

"On the private equity side, 94 percent of respondents—well above last year's expectations—said they foresee an extremely active year for transactions in 2015. A strong M&A environment is expected across the board, in private and public businesses, in multiple industry sectors, in companies and private equity firms large, small, and in between."

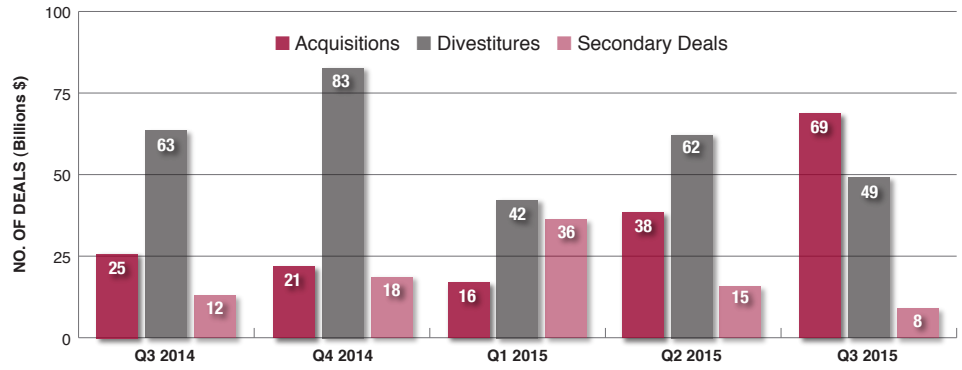
McGee, Tom. "Executive Summary." *M&A Trends Report 2015: Our annual comprehensive look at the M&A market.* Deloitte, 2015.

ACQUISITIONS VS. DIVESTITURES BY COUNT OF DEALS
Q3 2014 – Q3 2015



Source: Zephyr
Note: Includes data for which transaction details were reported and available.

ACQUISITIONS VS. DIVESTITURES BY VALUE OF DEALS
Q3 2014 – Q3 2015



Source: Zephyr
Note: Includes data for which transaction details were reported and available.

[4] *"PwC M&A 2014 Review and 2015 Outlook." PricewaterhouseCoopers. Web. 1 Jan. 2015.*

PE Transaction Analysis by Industry

VALUE AND NUMBER OF DEALS BY INDUSTRY
For Q3 2015

Industry*	Median Deal Value (In Millions)	Average Deal Value (In Millions)	Total Completed Deals**	
			Value (In Millions)	Count*
Mining	$250	$717	$6,454	9
Agriculture, Forestry, & Fishing	$9	$9	$17	2
Retail Trade	$35	$241	$2,656	11
Finance, Insurance & Real Estate	$60	$220	$5,498	25
Wholesale Trade	$715	$623	$1,869	3
Manufacturing	$16	$582	$62,253	107
Transportation, Communications, & Utilities	$251	$575	$8,618	15
Public Administration	$0	$0	$0	0
Services	$20	$118	$39,739	337
Construction	$0	$0	$0	0

** Industries are based on main divisions defined in the United States Department of Labor's Standard Identification Codes.*

*** Calculations are based on our Zephyr data and include only deals that list values.*

All but two industries had median deal values significantly lower than their averages for completed deals during the third quarter. The large outliers in deal value for these industries, not including Wholesale Trade and Agriculture, Forestry, and Fishing, were significantly higher than others for transactions within their respective industry sets. For example, Manufacturing, the industry sector with the highest total deal value in the third quarter of 2015, was driven primarily by 3G Capital and Berkshire Hathaway's $40 billion takeover of The Kraft Heinz Company, which by itself is the largest deal value relative to any other transaction among the other industry sectors.

The Services industry continued as the most active sector with over 200 more PE deals completed than any other sector during the third quarter of 2015. Deals in this sector were primarily centered on commercial physical and biological research, computer programming services, and general medical and surgical hospitals. Of the 337 completed deals in the services industry, seven deals were greater than $1 billion in value, accounting for nearly 50% of the total services industry deal value for the quarter. Significant deals in the services industry included the $7.2 billion sale of Receptos Inc. by a consortium of PE firms to Celgene within the integrated global biopharmaceutical industry. Also, data integration software provider Informatica Corporation was acquired through a leveraged buyout by Italics Inc., a company controlled by Canada Pension Plan Investment Board and Permira Advisers, for $5.3 billion.

"…the average PE-backed buyout deal among North American industrial manufacturers grew from less than $350 million in 2013 to greater than $500 million in 2014. Deals exceeding $1 billion more than doubled in the same timeframe. This represents the highest average value since before the financial crisis and the second highest of the century."

Ross, Sean. "Manufacturing Private Equity: Strong and Gaining Steam in Q4 2015." *Forum.* Axial, 14 Oct. 2015.

"Most people don't normally associate food with high technology (Apple notwithstanding). But innovation plays a vital role in creating opportunity and value for investors. Innovation can be applied to an existing company to bring fresh live—and significant returns. Or it can be the foundation of a new company. … Food companies and their private equity backers are now turning to social media to spot new innovations and emerging themes."

"Food & Beverage: Hungry for Growth: The private equity opportunity in the food and beverage industry." ***Privcap/ Briefing.*** **RSM, Q4 2013**

INDUSTRY FOCUS: THE FOOD INDUSTRY

PE firms participated in 38 deals involving targets in the North American food industry in the third quarter of 2015. PE transactions in the food industry involved businesses that span retail trade, the services industry, and manufacturing. Goods and services from these businesses included grocery and variety stores, restaurants, and catering, as well as food processing, cooking product, and packaging. Other transactions involved manufacturing of specialty machinery and products for agricultural production. Food industry business activity also encompasses research and development, food-related computer processing, data services, and prepackaged software for e-commerce and sales. The deals with listed values had a total value of approximately $44.3 billion, equaling almost one-third of the total value of all listed deals completed in the quarter. Only two deals had a total value equaling more than $1 billion each, but the $40 billion acquisition of The Kraft Heinz Company by 3G Capital and Berkshire Hathaway was the single largest outlier in this group and was the largest North American PE transaction overall during the third quarter. In all, more than half of the transactions in the food industry were acquisitions (25), with 11 divestitures and 2 secondary transactions between PE firms rounding out the activity. Trade in the food industry dates as far back as the spice trade four thousand years ago, has evolved into frozen foods, freeze-dried foods, and microwavable foods, and today takes on a new dynamic with the online food business. The food industry caters ultimately to everyone who doesn't grow and raise their own food and livestock, and has seen a recent uptick in PE investment activity.

Featured Transactions and Insights

Among the transaction activity and related events in the quarter, we select certain deals and market trends that present information we consider especially worthy of further review and analysis by those involved in structuring and negotiating business sales and acquisitions. Our goal is to feature topics that raise unique considerations from a valuation, deal-structure, or subsequent-dispute standpoint.

Our first feature takes a close look at the confidential IPO submission process and considers its impact on private equity. Confidential reviews provide valuable SEC feedback with a confidentiality requirement that applies solely to the SEC, therefore allowing emerging companies to avoid any unfavorable buyer market attention while holding off for favorable market conditions, or for the buyer of their choice.

Our second feature this quarter explores the risks and benefits of seller-financed deals as demonstrated in the recent Forbes Media acquisition and its subsequent dispute. We highlight the importance of finding a "partner" in a seller-financed deal and the importance of conducting a sufficient amount of due diligence of the seller-financed buyer prior to making a sale.

"The law forbids the Securities and Exchange Commission from publicly releasing the names of companies that file confidentially for IPOs. But it doesn't preclude the companies themselves from disclosing that information, or selectively telling potential buyers about their confidential IPO filings, if they choose to do so."

Chasan, Emily. "Secret IPO Filings Feed Deal Frenzy." *Business/CFO Journal.* WSJ, 27 July 2015.

Confidential IPOs and the JOBS Act

The Jumpstart Our Business Startups Act ("JOBS Act") was enacted in 2012 to provide smaller "emerging growth companies" ("EGCs") with greater access to the capital markets. The JOBS Act includes a number of measures to help facilitate an easier path to initial public offerings ("IPOs"), including: an opportunity to "test the waters" and meet with qualified institutional buyers to gauge the market interest in the offering, reducing the required number of years of audited financial statements from three to two years, exemption from the internal controls audit requirement of the Sarbanes-Oxley Act, and the option to adopt private company phase-in periods if adjusting to new accounting standards under Generally Accepted Accounting Principles. Notably, an additional key JOBS Act provision enables EGCs to file their IPO registration statements and amendments with the SEC for non-public review, allowing companies to keep proprietary data out of the public eye while privately addressing regulators' questions and critiques. Confidential reviews by the SEC can be an effective tool for companies seeking SEC feedback and avoid the investor relations and media attention, while waiting for favorable market conditions. Confidential IPO submissions are quite popular with 90% of EGCs that priced an IPO in the second year of the JOBS Act confidentially submitting at least one draft registration statement prior to filing a public registration statement.[5]

"Since the owners of a company preparing to go public want to monetize their investment, the very existence of the confidential filing can accelerate a sale process for a company, and ultimately lead to a less risky outcome for private-equity and venture-capital investors, who can get paid in one fell swoop once an acquisition closes."

Chasan, Emily. "Secret IPO Filings Feed Deal Frenzy." *Business/CFO Journal.* WSJ, 27 July 2015.

Three Weeks…or Less

One significant element of confidential IPOs is that companies aren't required to reveal filings until 21 days before the IPO road show. Three weeks may seem like a short time, but certain legislators want to shorten it further—specifically, to just 15 days.[6] Some have questioned whether this short time period allows for adequate due diligence by potential investors, who may be left scrambling to analyze the financial information and assemble valuation models. Investors may find themselves in a bind completing these tasks, and any other due diligence analyses that may arise, in 21 days, much less 15. Should the new legislation pass, we look forward to seeing how it may influence the IPO landscape.

An Unintended Side Effect?

Confidential IPO filings can have an unexpected side effect: in many cases, a confidential IPO can actually pique the interest of potential buyers. With confidential IPO filings, the confidentiality requirement applies to the SEC, not the company itself. Some businesses opt to disclose IPO proceedings of their own volition, either through a press release or to potential interested parties. Twitter, for example, tweeted its confidential submission in 2013, while discount gym chain Planet Fitness revealed its confidential filings via press release. Announcing confidential IPO proceedings signals that the company is serious about going public, thereby attracting attention from potential acquirers. Ultimately, an acquisition driven by increased interest from publicly announced confidential IPO submissions can lead to a less risky result for private equity investors who would get paid in a lump sum once the acquisition closes.[7]

[5] *Latham & Watkins LLP. "The JOBS Act, Two Years Later: An Updated Look at the IPO Landscape." 5 April 2014. Web. 22 Oct. 2015.*
[6] *Chasan, Emily. "How Long Should Confidential IPOs Be Secret?" Wall Street Journal. 28 July 2015. Web. 22 Oct. 2015.*
[7] *Chasan, Emily. "Secret IPO Filings Feed Deal Frenzy." Wall Street Journal. 28 July 2015. Web. 22 Oct. 2015.*

Although 2015 has been a strong year for IPOs in general, particularly the second quarter which saw a total of 75 financial-sponsor backed IPOs completed and proceeds of over $13 billion,[8] it will be interesting to follow the impact of the confidential IPO submission process on the private equity industry in the coming years and any resulting trends in financial-sponsor backed IPOs.

Forbes Media LLC – A Seller-Financed Acquisition Dispute

Seller-financed transactions offer benefits to both parties, but as demonstrated in the recent Forbes Media acquisition, come with certain risks as well. Below we discuss the Forbes Media acquisition and subsequent dispute as well as explore some pros and cons of seller-financed deals.

Forbes Media LLC Acquisition

Forbes Media LLC ("Forbes") is a global media, branding, and technology company that focuses on being an authoritative source of news and information on business, investing, technology, entrepreneurship, and affluent lifestyles. In the U.S., Forbes is best known for Forbes magazine, its iconic publication perhaps most popular for its annual "rich lists." Internationally, Forbes is focused on expanding its publishing activities by growing its digital footprint; they now operate 24 international web sites. The company has also fueled growth via real estate, education, financial services and technology license agreements.[9]

Forbes has been privately owned by the Forbes family since its founding in 1917. However, amid the changing media landscape, Elevation Partners, a private equity firm, purchased 40% of the enterprise in 2006 – reportedly for $300 million.[10] Over the next several years, like many in the magazine industry, Forbes focused on cutting costs to better position the publication in the new digital media world. Because advertisers continued to shy away from traditional print media in the U.S., Forbes focused on expanding its reach internationally. To help accomplish this goal, Forbes agreed in July 2014 to sell a majority stake in its business to a group of international investors who agreed to provide capital and leverage their international relationships to expand Forbes' global reach. The investor group, Integrated Whale Media Investments ("Integrated Whale"), was led by Integrated Asset Management Limited, a Hong Kong-based investment company with expertise in telecommunications, finance and technology.

It is widely reported that Integrated Whale paid $475 million in cash for an 80% stake in the entity. Subsequently, Integrated Whale agreed to borrow approximately $71 million from the Forbes family in order to acquire an additional 15% stake and issued three promissory notes to Forbes in connection with the transaction.[11] Although they had varying maturity dates, each note required quarterly interest payments. The first payment became due on October 1, 2014; however, Integrated Whale missed this payment.

"Founded 98 years ago, Forbes became famous for championing the free market, and for its annual rich list. In recent years it has aggressively pursued internet traffic, enlisting contributors who are paid according to the clicks on their stories and allowing advertisers to publish articles directly on its site. The publisher has sought to cut costs, moving its headquarters from New York to New Jersey in late 2014."

Fontanella, James, and Henry Mance. "Forbes Family Sues Chinese Investors over Deal." *Financial Times.* FT.com, 3 Nov. 2015.

[8] *Corzett, Stephanie. "IPO Market Heats Up in Second Quarter, According to PwC's Deals Practice." US Press Room. PwC US, 8 July 2015.*
[9] *"About Forbes.com." Forbes.com. Forbes Magazine, 2015.*
[10] *Carr, David. "Even Forbes Is Pinching Pennies." The New York Times. The New York Times, 14 June 2009.*
[11] *Picker, Leslie. "Forbes Sues Integrated Whale Media Over Deal." The New York Times. The New York Times, 5 Nov. 2015.*

The notes provide that a failure to make a required interest payment constitutes default, which allows Forbes to accelerate the entirety of the outstanding principal and interest payable under the notes. Following the missed interest payment on October 1, 2014, Forbes demanded the immediate payment of all outstanding notes. Integrated Whale failed to make the accelerated payments forcing Forbes to file suit against the investor group in Delaware Chancery Court to recoup the amount owed.[12]

The litigation is still in the early stages, yet there is speculation that Integrated Whale may be dissolved because of its failure to make timely interest payments and Forbes Media will be put back on the selling block.

Seller-financing – Benefits and Risks

Similar to the Forbes transaction, many sellers eager to divest from their ownership interests may decide to assist buyers with financing, rather than accept a lower sales price. Although financial investors such as PE firms prefer cash sales, which allow them to completely exit an investment and collect any proceeds, there can be several benefits to seller-financed transactions, including: a continued interest in the business, a potentially higher selling price, and an increase in the number of potential buyers. In a seller-financed transaction, the owner will continue to be tied to the business, collecting principal and interest on the debt owed over a period of years. This continued interest will be beneficial to the seller if they believe the new owner will be successful, as they can reap the benefits of a higher interest rate in the current low-yield environment. Another benefit of offering seller-financing is the ability to obtain a higher selling price. Although markets ultimately dictate the purchase price of an entity, seller-financing commands a higher sales price than cash deals because it is more appealing to a buyer as the upfront costs are significantly reduced. Along the same lines, in a seller-financed situation, buyers with less access to capital are likely to take interest in the transaction, and a larger pool of potential buyers can create a more competitive bidding environment, providing more negotiating leverage to the seller.

Despite some of these benefits, the seller-financing creates additional risks that don't exist in cash deals. The biggest risk is the continued health of the business following the sale. In order for the seller to collect the debt owed, the business needs to survive and provide the new owner with sufficient cash flow to cover business expenses and the expenses related to the repayment of the loan. It is imperative that sellers offering financing closely vet potential buyers. Another risk of seller-financing is the possibility of being a subordinated creditor. If the buyers' down payment is financed by a bank, a seller may find themselves in a second secured position behind the bank. Ultimately, the parties to a seller-financed transaction need to assess and consider the balance of the benefits and inherent risks.

"The deal allows the family to buy out minority shareholder Elevation Partners LLC, a private-equity firm that invested $264 million in 2006 and had the right to redeem the stake in 2016. A person close to the situation said Elevation would recoup substantially all of its investment. The Forbes family will take some cash out as well, although the precise amount isn't known. The need to buy out Elevation, which was still owed the bulk of its original investment, meant the family had a big incentive to reach a price close to $400 million."

Trachtenberg, Jeffrey. "Forbes to Sell Majority Stake to Group of International Investors." *The Wall Street Journal.* WSJ, 18 July 2014.

[12] *Verified Complaint, Forbes Media Holdings LLC v. Integrated Whale Media Investment Inc., dated October 29, 2015*

Seller-Financing – Market Trends

Partially financing acquisitions using seller funds has become a more common practice since the financial crisis. There are numerous macroeconomic factors that impact overall lending; however below we will focus on two specific market trends that have contributed to the overall increase in seller-financed acquisitions.

One explanation for the increase in seller-financed acquisitions is that traditional funding sources have been limiting the availability of credit due to the inherent risks in recent business valuation trends. Since the financial crisis, the average price-to-earnings ratio for the S&P 500 has increased dramatically, indicating that valuations are increasing faster than earnings. On January 1, 2007 the average P/E ratio for the S&P 500 was 17.4 compared to an average ratio of 21.8 as of October 1, 2015, representing a 26% growth over the approximately 9 year period.[13] Research suggests the private market is experiencing similar trends.[14] The higher valuations are forcing banks to be more selective when providing loans because they are incurring more risk than they have historically.

The frequency of seller-financed acquisitions also increases in industries with negative outlooks. In the Forbes example, the magazine publishing industry has seen declining revenues for several years,[15] creating increased lending risks due to significant uncertainties surrounding print media and questions regarding the monetization of digital media.[16] Traditional newspaper companies dealt with similar problems immediately following the financial crisis as liquidity from banks completely dried up, driving companies to provide seller-financing in order to sell their business.[17]

Although seller-financing can benefit all parties involved, the case of Forbes and Integrated Whale highlights the importance of finding a "partner" in a seller-financed deal as opposed to a "buyer" due to the importance of the long-term relationship. Some believe the Forbes dispute will impact the seller-financing market overall, as sellers become more cautious. "This will force people to rethink seller financing altogether," said Minor Myers, a professor at Brooklyn Law School. "To the extent that a seller is willing to finance a transaction, it will cause people to do a lot more due diligence, not just on the entity that's on the hook but also who they are."[18]

"Already the Delaware complaint has revealed the unusual fact that the Forbes family lent tens of millions of dollars to Mr Yam to finance part of the acquisition. Such vendor financing—where the seller lends money to the buyer to finance the acquisition—is uncommon but not unprecedented."

Hornby, Lucy. "Forbes: Selling the family jewels." *Financial Times.* FT.com, 23 Nov. 2015.

[13] "S&P 500 PE Ratio by Month." S&P 500 PE Ratio by Month. Multpl.com, 2015.
[14] Ver Ploeg, Eric. "VC Bubble" a Reflection of Public Markets." Medium. Medium Corporation, 6 Apr. 2015.
[15] "Executive Comment." Fipp Insight. Fipp World Magazine Trends, 2015.
[16] "Seller Financed Newspaper Transactions." Cribb Green. Inland Press, Spring 2015.
[17] Id.
[18] Picker, Leslie. "Forbes Sues Integrated Whale Media Over Deal." The New York Times. The New York Times, 5 Nov. 2015.

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