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Implications of the Amended Best Price Rule: A New Era in Private Equity Deal Making

By Charles Nathan and John Giouroukakis

After many years of lobbying, the SEC has finally amended its Best Price Rule to revive the functionality of tender offers as a practical structural alternative to the conventional merger for the acquisition of public companies.

While many will see the SEC rule revision as a modest, but long needed, correction of a dysfunctional misuse of the old rule by the plaintiffs' bar, the consequences of the amended rule have the potential to be farther reaching.

- Ironically, revitalization of the tender offer should not have much impact on hostile deal making, notwithstanding that hostile bids are often thought to be the principal function of tender offers.
- Rather, the rule revision's greatest impact will be on consensual deal making because the tender offer provides speed of execution, which reduces exposure of buyers to topping bids and sellers to material adverse change and similar risks.
- Speed of execution will be most telling in deals lacking regulatory issues, such as corporate diversifications and, more important in today's market, leveraged buy-outs.
- For corporate buyers, the practical availability of the tender offer structure will allow for the first real test of the SEC's early commencement rule for offers involving the issuance of securities. If the implicit commitment of the SEC to process exchange offers on a 20 business day timetable is honored, the exchange offer will become competitive with the cash tender offer and will provide public company buyers greater structuring flexibility.
- The critical issue for cash buyers, particularly private equity sponsors, will be financing the tender offer in compliance with the Federal Reserve Board's Margin Rules. This, as we will see below, is likely to be the most important determinant of the ability of private equity (and smaller public company buyers) to utilize the tender offer as a means of achieving tactical equality and, in many cases, tactical superiority over other bidders for public companies.
- While financing cash tender offers in compliance with the Margin Rules is not without some cost and complications, there are a number of available financing structures (several of which have rarely been used but are eminently feasible) for cash tender offers. Accordingly, we believe tender offers will soon permeate LBO deals and become a

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dominant structural form for private equity purchases of public companies where regulatory approvals are not critical to the process.

Background

The saga of the SEC's Best Price Rule is well known and needs little explanation. The Best Price Rule is intended to ensure that all shareholders receive the same price for their shares in a tender offer—hardly a controversial principle. However, a seminal federal court decision in 1995 made application of the rule dependent on an intensely factual analysis into whether other aspects of a business combination (such as disparate forms of consideration to large shareholders, pre-and post-tender compensation payments to the target's management or ancillary business arrangements between the buyer and large shareholders of the seller) actually constituted additional consideration for the tender of shares. If so, under this judicial construction of the Best Price Rule, all of the target shareholders would be entitled to receive the highest per share consideration paid to any favored shareholder.

The plaintiffs' bar quickly saw that claims based on alleged violations of the Best Price Rule could not be easily disposed of short of a jury trial because the factual nature of the claims made dismissal on the pleadings and summary judgment inappropriate. Given the out-sized value of the claims (often totaling billions or trillions of dollars because an "excess" payment to one shareholder would require the same amount of excess for all other shareholders), settlement was the only practical alternative open to the bidder. It didn't take too many of these "hold up" suits to convince the M&A community that the advantages of the tender offer were outweighed by the litigation and settlement costs. Absent special circumstances or a bidder with a very strong stomach for litigation risk, tender offers became a structure of the past for consensual deals.

Without delving into the interstices of the SEC policy and rule-making process, the SEC has finally amended its Best Price Rule expressly to deal with the factual quagmire created by the judicial decisions. The amendment clarifies that the Best Price Rule applies only to consideration paid to shareholders for securities tendered in the tender offer, not to employment compensation, severance or other employee benefit arrangements with shareholders of the target company. The amendment also provides for a "non-exclusive safe harbor" for arrangements approved by the compensation or other independent board committee of either the target company, regardless of whether the target company is a party to the arrangement, or the acquiring company.

We believe the revision will have the intended effect of relieving consensual tender offers from litigation threats under the Best Price Rule with respect to compensation, severance and other employee benefit arrangements, by far the most insidious and far reaching area of uncertainty under the old regime. As a result, the tender offer will once again become a practical and, we predict, widely used M&A structure.

Strategic Value of the Revitalized Tender Offer

- Conventional wisdom associates the tender offer with a hostile bid. While true, the Best Price Rule imbroglio has not had a significant effect on the utility of tender offers in a hostile context because differential consideration to shareholders and/or special compensation arrangements for management do not ordinarily factor into hostile bids. Reform of the Best Price Rule has been essentially irrelevant to hostile deal making.
- The situation is starkly different for consensual deal making where compensation arrangements figure so prominently in deal dynamics. The Best Price Rule is explicitly being amended to make clear that, so long as certain well defined criteria are satisfied, compensation arrangements do not implicate the Best Price Rule. The result will be revitalization of the tender offer as a viable structure for friendly acquisitions of public companies.
- One consequence of the Rule's revision will be the first meaningful opportunity to test the practicality of the SEC's regulatory reform in Regulation M-A permitting exchange offers to be commenced on the day of filing of the initial registration statement, rather than having to wait weeks until the registration statement actually becomes effective. If the SEC, in fact, is able to and does process early commencement filings within the normal 20-30 business day time frame of cash tender offers, its regulatory reform will permit exchange offers to compete in time with cash tender offers. This will obviously increase the utility of the exchange offer and make it a viable alternative to cash offers for corporate acquirers in many situations.
- Particularly if exchange offers become as functional as cash tender offers, we expect the tender offer to become the structure of choice for corporate acquirers. In almost all cases, the tender offer format would reduce the deal's vulnerability to a topping bid and the target would deliver consideration to its shareholders with greater speed and less risk of intervening events, particularly material adverse changes. To be sure, use of the tender offer by corporate buyers would be limited to situations without significant regulatory hurdles that would

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Private Equity Deal Highlights

Our comprehensive experience in all aspects of private equity investment enables us to service the full array of legal needs of fund sponsors and investors alike, from fund formation to investment acquisition, structuring, financing and disposition. The following is a selection of US deals.

Apollo Management LP

Acquisition by Apollo Management LP of International Paper Co.'s coated-paper business to CMP Holdings LLC

2006

$1,400,000,000

Energy Capital Partners

Acquisition by Energy Capital Partners of Northeast Utilities' competitive generation business in Connecticut and Massachusetts

2006

$1,340,000,000

Harrah's Entertainment, Inc.

Unsolicited leveraged buyout offer by Apollo Management and Texas Pacific Group to acquire Harrah's Entertainment, Inc.

Pending

$27,800,000,000

Highbridge Capital Management, LLC / JP Morgan

Joint Venture between Highbridge Capital and JPMorgan Chase with Louis Dreyfus

2007

$1,000,000,000

Kohlberg Kravis Roberts & Co.

Acquisition by Kohlberg Kravis Robert & Co. of Biomet, Inc.

Pending

$10,900,000,000

Kohlberg Kravis Roberts & Co./ Silver Lake Partners

Acquisition by Kohlberg Kravis Roberts & Co. and Silver Lake Partners of Agilent Technologies, Inc.'s Semi-conductor Products Group

2006

$2,660,000,000

Leonard Green & Partners, L.P.

Acquisition by Leonard Green & Partners of David's Bridal

2007

$750,000,000

Leonard Green & Partners, L.P.

Acquisition by Leonard Green & Partners of Brickman Group

2007

Not Public

LS Power Equity Partners, L.P.

Acquisition by LS Power Equity Partners of six US natural gas-fired plants from Mirant Corporation

2007

$1,407,000,000

Macquarie Bank Limited

Acquisition by a consortium led by Macquarie Bank of Spirit Finance Corporation

Pending

$3,500,000,000

Maguire Properties, Inc.

Acquisition by Maguire Properties, Inc., of Equity Office Properties assets in Orange County and Downtown Los Angeles, from The Blackstone Group

2007

$2,875,000,000

One Equity Partners Westcom Holdings

Sale of Westcom Holdings by One Equity Partners to IPC Systems, Inc. and Silver Lake Partners

Pending

Not Public

Odyssey Investment Partners LLC Neff Corp.

Acquisition by Lightyear Capital of Neff Corp., a portfolio company of Odyssey Investment Partners

Pending

$415,000,000

Sabre Holdings Corporation

Acquisition of Sabre Holdings Corp. by Silver Lake Partners and Texas Pacific Group

2007

$5,400,000,000

Silver Lake Partners

Acquisition by Silver Lake Partners of Serena Software, Inc.

2006

$1,200,000,000

The Carlyle Group

Acquisition by The Carlyle Group, and other investors, of Kinder Morgan Inc.

2006

$22,000,000,000

The Carlyle Group

Sale by The Carlyle Group of Rexnord Corporation to Apollo Management LP

2006

$1,830,000,000

The Carlyle Group

Acquisition by The Carlyle Group and Providence Equity Partners Inc. of Open Solutions Inc.

2007

$1,300,000,000

The Carlyle Group /Riverstone Global Energy and Power Fund, L.P.

Acquisition by Carlyle Riverstone Global Energy and Power Fund III, L.P. of Titan Specialties, Ltd.

Pending

$265,000,000

The Yucaipa Companies LLC

Representation of The Yucaipa Companies LLC as plan sponsor in connection with the acquisition of Aloha Airlines through a plan of reorganization

2006

Not Public

VNU Acquisition Consortium

Acquisition by a consortium of six private equity firms including AlpInvest Partners N.A., The Blackstone Group L.P., The Carlyle Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Co. and Thomas H. Lee Partners, L.P. of VNU NV

2006

$12,000,000,000

Welsh Carson Anderson & Stowe

Acquisition by Welsh Carson Anderson & Stowe of a majority interest in Axesa Servicios de Informacion (formerly known as Verizon Information Services - Puerto Rico) from Verizon Information Services, Inc.

2006

Not Public

undermine the otherwise short time frame of the tender offer structure. But many deals would not be subject to such delaying factors. As a consequence, the once familiar two-step acquisition structure of a merger agreement providing for a first step tender offer followed by a close-out merger (short-form or long-form) would again become common in corporate acquisitions of public company targets.

- We don't expect the shift to tender offers to be limited to corporate acquirers. The world of M&A has changed radically since the late 1990s when the litigation risk attendant to the Best Price Rule effectively ended the use of the tender offer in friendly deals. In the former heyday of the consensual tender offer, private equity players rarely utilized the structure, and the deal form was largely the playground of corporate buyers. Since then we have witnessed the rise of private equity sponsors as leading buyers of public companies of increasingly large size. This change in the dynamic of the M&A marketplace signals a corresponding change in the use of the consensual tender offer structure.
- It is safe to predict that, following a brief digestion period for the new Rule, there will be a public company auction involving a number of corporate and private equity bidders where someone (be it the target or a corporate bidder) will suggest use of the consensual tender structure to gain a significant tactical advantage in the bidding process by offering a faster and less risky path to closing. The analysis is simple: assuming no regulatory delays, a bidder offering to close in 30-40 days through a first step tender offer followed by the certainty of a back-end merger will have a significant advantage over a bidder with the 90-120 day closing schedule of the one-step merger—an advantage that might be sufficient to warrant choosing a slightly lower bid and that would certainly prevail in the case of identically priced bids.
- The timing advantage of the tender offer structure for private equity bidders would not be limited to a defensive stance in those auctions where a strategic bidder offered to use a tender offer. There will be many situations where private equity bidders would not have antitrust or other regulatory issues and could use the tender offer structure to reinforce their timing and certainty advantages over rival corporate bidders that have antitrust or other regulatory issues.
- Nor would the desirability of the tender offer structure be limited only to those deals where corporate buyers were competing for the target. In auctions strictly among financial buyers, the ability and willingness of one private equity sponsor to offer the superior execution of the tender offer structure will inevitably drive all other competing bidders to the same structure.
- Indeed, if our crystal ball has any clarity, it should not be long before the tender offer structure becomes a ubiquitous feature of consensual deal making by both corporate and private equity buyers, so long as there are not regulatory issues that would diffuse the execution speed of the structure for all of the bidders.

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Financing Issues and Answers

The possible opaqueness in our crystal ball involves financing issues for cash bids. Skeptics will be quick to point out that companies without large balance sheets and, more importantly, private equity buyers will not be able to finance cash tender offers in the same manner as one-step mergers because they will not have access to the target's balance sheet to support the tender offer financing. And, they will remind us, the target's stock is of limited usefulness as security, because the Margin Rules restrict borrowings secured by public company stock to 50 percent of its market value. But just as the LBO market has evolved since the 1990s, leveraged finance has evolved with the result that today a number of financing structures are available for use in a tender offer, even those of the $20 billion-plus size of some of the recent block-buster LBOs, such as HCA.

- The most obvious financing structure for a private equity buyer is an unsecured bridge loan for up to the entire debt financed portion of the purchase price of the target company. Conventional thinking has been that a bridge loan supporting a tender offer is too risky to be available, particularly in large size, and/or too expensive to be practical. However, if the underlying merger agreement provides for a minimum 50 percent tender as a closing condition for the tender offer and a no-out obligation by the bidder to

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Deal Talk with Dennis Lamont and Joshua Tinkelman

By David S. Allinson

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Dennis Lamont is a partner in Latham's New York office, where he is a member of the Corporate Finance practice group and co-chair of the Private Equity Finance practice. His practice focuses on corporate finance and general securities and corporate matters.

Joshua Tinkelman is an associate in Latham's New York office. He works with the firm's Finance and Corporate departments, and has experience with high yield offerings, traditional bank financings, mezzanine finance, acquisition financing commitments, bridge lending, second-lien financings, traditional private placements, convertible debt and recapitalizations.

Question: Dennis and Josh, you have done many IPOs, both for issuers and underwriters, and have done capital markets work for many private equity portfolio companies. How valuable is a dual track sale process—simultaneous M&A auction and IPO? Do bidders really view a potential IPO as a viable alternative for the private equity seller or is it a weak stalking horse?

Answer: An IPO can certainly be a viable alternative to a sales process. Public equity markets can offer pricing that is attractive, and as a result of recent changes in the securities laws, going public can provide future exit opportunities that are quick, easy and predictably priced. All that said, in several ways, an IPO can be less attractive to a potential sale. It requires a significant investment of time and money. It does not typically give the sponsor an immediate exit with respect to all of its equity (as a company sale would). And, the value of the sponsor's investment post-IPO will be dependant on the future trading performance of the company. There are certainly trade-offs.

Question: What should a portfolio company do to ensure the IPO option is real? What are the costs to the portfolio company in respect of management time and attention?

Answer: First and foremost, the portfolio company will need to prepare and make a credible filing with the SEC. This is no small undertaking. It requires a lot of work by management, as well as the company's outside auditors and counsel. It is also not a process that ends after the first filing. To remain credible, the company will need to respond promptly to SEC comments and work diligently towards having its registration statement declared effective.

Before deciding to pursue an IPO, the sponsor and portfolio company should understand exactly what will need to be disclosed in its SEC filings. Filing a credible registration statement may involve making unpleasant disclosures about that company, and those disclosures will need to be coordinated with any concurrent sales process.

In addition, to keep an IPO as a credible alternative, a portfolio company will need to start preparing in earnest for life as a public reporting company. This is also not a small undertaking. The company will need to assess its internal controls (often spending a good deal of time and money beefing them up). The company will also want to reassess all employment agreements and option plans to ensure they will continue to work as desired after the company goes public. Further, unless the sponsor continues to hold at least a majority of

. . . the value of the sponsor's investment post-IPO will be dependant on the future trading performance of the company.

the outstanding stock of its public portfolio company, the board composition will need to be changed so that a majority of its members are independent, which will result in the sponsor losing control of its portfolio company. Regardless of the level of the sponsor's ownership of a public portfolio company, the audit committee will need to be comprised of independent directors.

Question: Describe the typical portfolio company IPO? What is the downside to a primary offering? Are portfolio companies successful with secondary offerings where the sponsors sell shares in the IPO?

Answer: An IPO is an enterprise transforming event. As mentioned above, a significant amount of change is part and parcel of becoming a public reporting company. For a financial sponsor, however, these changes may not always be desirable. Costs at a public portfolio company generally increase as more staff is added to handle the day-to-day requirements of being public. Related party transactions with the sponsor and its affiliates become publicly disclosed. Further, sponsors are usually not able to make a complete exit with respect to their equity in the initial public offering, and are typically subject to lockup agreements that prohibit them from exiting the company for a specified period of time after the initial public offering.

One significant benefit from an IPO, however, is that the offering will have created a public market for the portfolio company's equity, which a sponsor can use to sell shares. Although the market might like seeing a sponsor keep some "skin in the game," the new securities laws provide a sponsor with a streamlined ability to sell its equity in an underwritten offering or overnight block trade (particularly when the portfolio company is eligible to use the SEC's Form S-3 for such sales). There have been several successful secondary offerings in which the sponsor was able to use the existence of the public market to exit from its investment.

Question: What is the downside to having a publicly filed registration statement during a M&A sale process or generally?

Answer:. Each filing with the SEC needs to be accurate and complete when made. This could mean publicly airing dirty laundry before you might otherwise want to have it disclosed to potential buyers in a sales process. In addition to responding to the requirements of the SEC's forms, which will require management's honest assessment of trends in the company's business or industry, the company will need to respond to specific questions and comments from the SEC. These comment letters (as well as the company's responses) are publicly available, so even if a portfolio company is successful in avoiding embarrassing disclosure that a SEC comment seems to ask for, the world will see the SEC ask the question, as well as the portfolio company's response. In addition, a portfolio company may have to respond to unwanted accounting components that require the company to revise or re-state its financial statements, which not only can have a major impact on the timing of an IPO, but also a negative impact on a sale process.

Question: Earlier you mentioned that a sponsor can lose control of its portfolio company following an IPO. Can you elaborate?

Answer: In order to comply with the listing requirements of most securities exchanges, the board composition of a public company will often need to be changed so that a majority of its members are "independent." An exception to this rule is available if more than 50 percent of the voting power of the company is held by a single entity or affiliated group. (Note that the requirement that a majority of the voting power be retained will hamstring the sponsors ability to use the public equity markets as part of an exit strategy.) In addition, the existence of a public market for a company's equity and the ongoing reporting requirements to which a public company is subject will often cause sponsors to be very wary of the types of transactions they have with their portfolio companies after an IPO.

Option Backdating—Even Private Companies Should Review Option Grant Practices

By Bradd L. Williamson and Huy Luu

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Approximately 140 companies are currently under investigation regarding option backdating and other option timing issues. To date, the focus of these investigations has been on public companies. Indeed, a primary impetus for recent investigations was the publication of academic studies that compared the exercise price of options granted by certain public companies (as disclosed in periodic filings) to the published closing price of the company's stock over time.

However, due in part to the extraordinary publicity surrounding option backdating issues, it is becoming increasingly common during the due diligence process for purchasers to scrutinize the option grant practices of private (as well as public) targets.

In addition, in the event of an initial public offering, option grant practices may be reviewed by the Securities and Exchange Commission, underwriters or investors. Accordingly, private equity sponsors may wish to review the option grant practices at their portfolio companies to confirm that such practices comply with applicable law and otherwise minimize the risk that option timing issues could complicate a potential exit transaction.

Option Backdating in General

The term option backdating refers to the practice of making an option granted on one date effective as of an earlier date when the fair market value of a company's stock was lower (and using this lower fair market value to set the exercise price of the option) in order to give the optionee the benefit of the lower exercise price. The result, in effect, is the grant by the company of a discounted stock option (i.e., an option with an exercise price that is less than the fair market value of the underlying stock on the date of grant).

Although granting discounted options is not illegal per se, the granting of discounted options may have consequences to both the company and the optionee. Some of the issues related to backdated options apply only to public companies. For example, the potential loss of deduction under the million dollar deduction limitation of Section 162(m) of the Internal Revenue Code applies only to companies with publicly traded equity securities. In addition, potential liability related to inaccurate or inadequate disclosure of backdated options in a company's federal securities law filings will often not apply to private companies (although companies with public debt, but no public equity, must comply with applicable securities laws and indenture requirements).

However, other potential backdating issues apply to both public and private companies. For example, from a tax perspective, options intended to be incentive stock options (ISOs) of a public or private company must have an exercise price that is at least equal to fair market value at the date of grant. Furthermore, the regulations under Section 409A of the Internal Revenue Code provide that options granted by either a public or a private company that have an exercise price that is less than fair market value at the date of grant will be considered deferred compensation that could subject the option-holder to significant tax penalties. Finally, option backdating may have financial accounting consequences for both public and private companies. Under Accounting Principles Bulletin No. 25 (APB 25) (the stock option accounting rules that applied to private companies prior to the 2006 fiscal year), a non-discounted option to purchase a fixed number of shares generally did not result in any compensation charge against earnings at all. By contrast, a discounted option resulted in a charge against earnings recognized over the vesting period. Under Financial Accounting Statement No. 123R (FAS 123R) (the currently applicable stock option accounting rules), a company is required to recognize the grant date fair value of an option over the vesting period as a compensation charge against earnings. A discounted option will increase the fair value of the option and thus the amount of the charge against earnings. Thus, under both APB 25 and FAS 123R, discounted options may result in a greater compensation charge against earnings than non-discounted options. If a company's financial statements do not correctly reflect the discounted status of backdated options, and this results in a material error in the company's financial statements, then the company may be required to restate its financials.

Option Grant Practices

Private equity portfolio companies should take care to establish and document appropriate option grant practices that are consistent with the relevant option plan documents and which comply with applicable law. Although each portfolio company must establish option grant practices that are suited to it from a business and administrative standpoint, portfolio companies may wish to consider the following when establishing and administering their stock option programs:

- **Make Grants at Compensation Committee Meetings**. Options are most commonly granted by the Compensation Committee of the Board of Directors (Board), which typically consists of two or more members of the Board who are affiliated with the fund sponsor. This structure makes it relatively easy to convene the Compensation Committee in order to make option grants or take other appropriate action. Such a meeting may generally occur in person or by telephone. When the Compensation Committee meets to approve option grants, it should review and approve the list of optionees and the material terms of each option grant (such as the number of shares and exercise price). The company should promptly prepare minutes reflecting the Compensation Committee's approval of option grants and the material terms thereof. The minutes should clearly reflect the date on which the Compensation Committee met and the effective date of the option grants should be on or after the date of such meeting.
- **Avoid Unanimous Written Consents**. If possible, a company should avoid the use of unanimous written consents (UWCs) of the Board or Compensation Committee to make option grants. Although state law varies and is not always entirely clear, it is possible that in some states, including Delaware, an action of the Board or Compensation Committee taken via UWC will not be effective until the last signed consent is obtained and delivered to the company. Because Board and Compensation Committee members are busy and may not be able to immediately return a UWC, it is preferable to make grants at an actual meeting. If UWCs are utilized, it is prudent to provide that the option grant will not occur until the date the last consent is received by the corporate secretary, rather than an earlier date specified in the resolutions.
- **Avoid Delegation of Option Grant Authority**. If possible, a company should avoid delegating authority to make option grants to an officer of the portfolio company or a single-member subcommittee of the Compensation Committee. Although such delegation may be permissible under the laws of many states, including Delaware, and private companies are not subject to limitations that may apply to public companies under Section 162(m) of the Internal Revenue Code or Section 16 of the Securities Exchange Act regarding the composition of the Compensation Committee, one person subcommittees (whether consisting of an officer of the company or a director) are inherently problematic. The problem is primarily one of documentation; where only one person is approving an option grant, great care must be taken to document when the person actually approved the grant and the terms of the approved

option grant. These issues can be avoided by having the Compensation Committee (rather than a subcommittee) make option grants.

- **Establish Regular Option Grant Schedule**. In order to maintain control over the option grant process, and to avoid the appearance of making option grants at times which may improperly benefit optionees, to the extent possible, a company may wish to award options on a regular schedule. Since most options tend to be granted at closing of the initial purchase, this may not be difficult for many portfolio companies. To the extent, for example, that a company wishes to make grants to new hires following the closing, it may make sense to do so at a quarterly Compensation Committee meeting, rather than on a one-off basis when the employee is hired. This process may be especially well-suited for private companies that generally need not be as concerned about short-term stock price fluctuations as public companies.
- **Determination of Fair Market Value**. Options that have an exercise price that is less than fair market value as of the date of grant cannot qualify as ISOs and may subject the optionee to an additional 20 percent tax and other penalties under Section 409A of the Internal Revenue Code. Under the recently released final Section 409A regulations, for purposes of establishing the exercise price of an option, fair market value must be determined by the reasonable application of a reasonable valuation method. Although no single valuation method is required, the final Section 409A regulations provide that certain methods, such as a qualifying appraisal, will be presumed to be reasonable. Accordingly, portfolio companies will wish to take care when determining fair market value and establishing the exercise price of stock options.

In order to reduce the risk that option timing issues could complicate a potential exit transaction (and to avoid potential adverse tax consequences to optionees), private equity sponsors may wish to review the option grant practices at their portfolio companies to confirm that such practices comply with applicable law and best practices. ■

close the back-end merger (subject only to injunction or other legal prohibition), the risk of the bridge facility will largely be confined to timing of the closing of the second step merger at which point the assets of the target become available to support the permanent financing. This risk occurs only if the tender offer acceptances fall short of the required percentage ownership to enable a short-form merger. It is rare, perhaps unheard of, in today's equity market for a seller supported tender offer to fall short of the 90 percent ownership level required by Delaware and most other states for a short-form merger. Moreover, the timing risk can be virtually eliminated if the tender offer provides for a "subsequent offering period" following the initial tender offer closing during which tenders are no longer subject to withdrawal rights and the target grants the bidder a so-called "top up" option to acquire sufficient additional shares from the target at the deal price to reach the short-form percentage requirement.

- Those with an especially long memory or a working knowledge of the Margin Rules might raise the issue whether such an unsecured loan nonetheless runs afoul of the applicability of the Margin Rules to loans indirectly, as well as directly, secured by public company stock. At least in the case of the special purpose acquisition vehicles uniformly used in LBOs, a borrowing by a vehicle owning no assets other than stock being purchased in the tender offer could run afoul of the indirect security doctrine, even if the stock held by the vehicle were not formally pledged to support the loan. This was a burning issue in the 1980s when tender offer structures were first used by special purpose entities to acquire public companies. However, the Federal Reserve Board addressed this problem by issuing an interpretation to the effect that it would not deem a tender offer financing loan as indirectly secured by the stock of the target company if the bidder had entered into a merger agreement with the target prior to making the tender offer, the bidder acquired at least 50 percent of the target's stock in the tender offer and the bidder neither pledged the stock nor agreed to a negative pledge covenant.
- In short, the two-step merger agreement format dove-tails with the Margin Rule interpretation and makes bridge loans feasible, so long as lenders are willing to accept the risk of a delayed merger and the absence of a negative pledge clause.
- There are a number of considerations that should offset concerns about the pricing of an unsecured tender offer bridge facility:
  - As noted above, it is rare, if not unheard of, for a consensual tender offer supported by the bidder (and by hypothesis not topped in the market) to fail to receive sufficient tenders to permit a short-form merger.
  - The presence of a "subsequent offering period" and a "top up" option in the deal will further reduce the practical risks of failing to achieve the ownership requirement for a short-form merger.
  - The time delay implicit in failing to achieve the short-form merger percentage is on the order of magnitude of 45-60 days that would be required to achieve a long-form merger.
  - Finally, at least in today's leveraged loan market, private equity sponsors have significant leverage with lenders in deals small and large, making it unlikely that lenders would charge outsized fees for an unsecured bridge facility.

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- It is also important to note that there are other financing structures that are available which would eliminate the need for an unsecured third party bridge facility.
- A second potential financing structure is a bridge loan secured by the tendered shares acquired by the bidder up to a limit of 50 percent of their market value. The private equity buyer would contribute equity to fund the remaining portion of the tender offer consideration. Again the bridge loan, as well as a portion of the equity contributed by the sponsor, would be refinanced upon consummation of the second step merger with permanent financing at the target. This structure was recently used by Carlyle in its tender offer for ElkCorp. While this structure might result in additional costs related to documentation and the need to overfund the

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loan to pay interest, the cost (and interest rate) of the secured bridge loan should be less than an unsecured bridge loan, since the sponsor would be assuming the risk of a "hung" bridge.

- A third financing solution would be to have the target finance the tender offer by incurring the indebtedness directly, with the bidder contributing equity received from the private equity sponsor and any debt financing incurred by the bidder at the holding company level. Such a structure would avoid some or all of the financing issues inherent in a bridge loan financing structure, since the debt would be incurred by the obligor that is ultimately intended to repay the credit facility, thereby eliminating the risk of a "hung" bridge and minimizing documentation and related costs. The negatives of this solution are that the target (and its management team) will need to become heavily involved in the financing process and the target may be unable to complete the financing on an accelerated tender offer timetable. In addition, the target board of directors may be unwilling to assist the bidder in the financing, because of the risks the board would face (together with personal liability) if the target becomes insolvent as result of the financing.
- The most efficient method by which to implement this target financing structure is for the target to lend the proceeds of a permanent debt LBO financing it incurs to the bidder in exchange for an unsecured note to be canceled upon consummation of the second-step merger. The bidder would then make a conventional cash tender offer for 100 percent of the target's stock that is funded by the loan from the target and equity contributed by the sponsor. This variation of the target financing structure avoids the major detriments of the other two potential alternative target financing structures described below.
- In the first alternative, the target can engage in a simultaneous self-tender offer, alongside and complementary with the third party tender offer by the private equity sponsor. The dual tender offer structure has been successfully used on several occasions, most notably in the Cox Enterprise going private tender offer for Cox Communications. The two tender offers are made jointly, with each party obligating itself to acquire an agreed number of shares under the same terms and conditions. From the standpoint of tendering shareholders the identity of the buying entity is immaterial. While there are inter-company mechanics necessary to assure the appropriate end results in terms of allocating tenders, they are nothing more than mechanics. There is one large negative to the dual tender structure: the math of getting to the short-form merger percentage is adversely affected by the fact that most of the shares are being acquired by the target and will not count toward the ownership requirement of the buyer. A "subsequent offering period" and a "top up" option in favor of the bidder should reduce but not eliminate this problem.
- In the second alternative, the target can pay an extraordinary dividend to its stockholders that is financed by permanent credit facilities at the target, while the bidder tenders for 100 percent of the target stock at a reduced "stub" value equal to the sponsor's equity contribution. Both the dividend and the tender offer would be consummated simultaneously. The biggest problem with this structure is that a significant portion of the consideration to the stockholders is paid in the form of an extraordinary dividend. Typically a stockholder that is asserting appraisal rights forgoes receipt of the consideration in the tender and merger and would rely on a court determination to receive fair value for its shares, which may be higher or lower than the merger consideration. Such a court determination typically occurs many months or years after the transaction closes. The stockholder would be taking a risk on the outcome of the case while funding the legal and other expenses required for the appraisal proceeding. In this structure, a stockholder would be incentivized to engage in an appraisal action, since it would have received most of its consideration in the form of the dividend. The bidder is in effect subsidizing the stockholder's appraisal rights action.

Conclusion

The SEC's reform of its Best Price Rule, while not as complete as many observers had urged or hoped for, seems adequate to reinvigorate the tender offer as a major structural device for public company acquisitions. This, in turn, will force private equity buyers to consider the tender offer as an acquisition structure, perhaps a preferred acquisition structure, because it will enhance the competitiveness of the private equity buyer in comparison to a strategic buyer burdened by any sort of regulatory delay.

The strategic and tactical advantages of the tender offer will require private equity buyers to deal with financing issues not present in the traditional one-step merger context. Although at first sight challenging, we believe that the financing issues are solvable without undue cost and there are effective precedents pointing the way. As a result, we expect that private equity sponsors will soon come to grips with and ultimately embrace the two-step tender offer structure. ■

Awards & Rankings

Latham Awarded 'Law Firm of the Decade'

Latham & Watkins was recently awarded the highly coveted title 'Law Firm of the Decade' at the prestigious *Legal Business* 2007 Awards.

The judges for the 'Law Firm of the Decade award' said about Latham: "After conquering New York in the first part of the 1990's, Latham turned its attention to Europe and Asia in the second half with staggering success. Now considered one of the top 15 law firms in London, the firm is unique in being able to conquer both New York and London despite hailing from neither. Now arguably the only global firm that can honestly say it has no headquarters, the firm has followed its global financial institutional clients around the world with an aggressive expansion plan. Despite its rapid growth, the firm is considered to be one of the most collegiate and diverse firms around."

The special award was presented in celebration of the 10th anniversary of the *Legal Business* Awards to the law firm that has best reacted to the immense challenges posed by the legal industry globally over the last 10 years and which has demonstrated clear evidence of financial and strategic success during the period.

Latham Named Most Admired Firm by The American Lawyer

In the December 2006 issue of *The American Lawyer*, Latham & Watkins is identified as *The AmLaw 200*'s most admired firm. The article resulted from the magazine's Firm Leaders Survey, in which Latham & Watkins is named more than three times as often as any other firm for its management style. The article charts the rise of Latham from its Los Angeles roots to one of the leading global firms today, and it discusses Latham's approach to management, successful practice growth and expansion, and collegial culture.

Latham Emerges as Prominent Player in the Italian Corporate Market

In a recent survey carried out by Italy's premier legal publication, *Top Legal*, Latham & Watkins emerged as one of the leading firms in the Italian Corporate/M&A and IPO market. Advising on the widely watched Banca Intesa/Sanpaolo IMI deal, which will create the largest Italian bank, among other significant M&A mandates, Latham ranked fourth by deal value for M&A. The team placed fifth in the IPO category, based on number of deals, including the high profile IPO of Piaggio—leader of the European scooter market. The team, led by Michael Immordino in our Milan office, is praised by clients in the survey for its high-profile international track record, client representation and style of doing business.

New Office Openings

Latham & Watkins Continues European Expansion with Launch of Spanish Offices

Latham & Watkins is pleased to announce the opening of two offices in Spain, in a move that strengthens its practice in Europe and globally. Led by highly-respected M&A partner, **José Luis Blanco**, the firm's Spanish practice's principal office is located in Madrid and is supported by an additional office in Barcelona.

José Luis joined Latham from Cuatrecasas on January 1, 2007, as the Office Managing Partner for Spain. Latham's practice focus in Spain will be largely on M&A and private equity transactions, complemented by acquisition finance and competition law.

Possessing a formidable transactional reputation in the Spanish market, José Luis represents strategic buyers and private equity clients. In 2006, he represented the Yell Group, the British Yellow Pages company, in its multi-billion Euro acquisition of Telefónica Publicidad e Información, the Spanish Yellow Pages provider. He also regularly represents Repsol, the largest Spanish oil and gas company. On the private

Continued on Page 14

equity side, he has represented The Carlyle Group in both acquisitions and dispositions in Spain, as well as consortium acquisitions involving multiple global private equity firms.

The opening of the two Spanish offices takes Latham to 10 offices in Europe, with more than 380 attorneys in the region.

José Luis was educated at the University Autónoma of Barcelona, where he received his J.D. in 1984, and Yale Law School, where he received his LL.M in 1986. He joined Garrigues in its Barcelona office in 1986, becoming a partner in 1996. In 1998, he moved to Cuatrecasas, where he was appointed global head of M&A in 2005.

Upcoming Events

Latham and Dow Jones will co-sponsor a complimentary 60-minute Web seminar "Going Private: What It Involves & What You Need To Know"

For many public companies, there is much to be gained by going private through a private equity acquisition, not least of which is avoiding the cost and scrutiny of Sarbanes-Oxley.

For a primer on the right way to go private, Dow Jones has invited leading transactional lawyers from Latham & Watkins to lead a complimentary 60-minute Web seminar on the many issues—from who should spearhead the deal to how to communicate with shareholders and board members—involved with taking a company private.

The program will explore the intricate and important issues and implications of the most prevalent form of LBO in the US today—the acquisition of a public company by private equity sponsors.

Wednesday, May 16, 2007 | Noon to 1 p.m. EDT

Latham will be sponsoring a complimentary General Counsel Forum seminar "Giving Good Guidance—What Every Public Company Should Know"

Latham & Watkins is pleased to present a General Counsel Forum on issues that are critical to every public company—when and how to provide earnings guidance. It will explore the legal framework as well as provide practical guidelines. This seminar will be interactive and should be of interest to directors, CEOs, CFOs, general counsels and investor relations personnel and will discuss:

- Liability Provisions
- SEC Safe Harbors
- Duty to Update
- Regulation FD
- Helpful Guidelines
- Special Considerations
- Good Guidance Rules

MCLE Credit: Latham & Watkins certifies that this activity has been approved for MCLE credit by the State Bars of California and New York in the amount of one hour of CLE Credit.

Week of May 22 in Latham's US offices.

Latham will co-sponsor, along with the Wall Street Journal, the 1st Annual Deal & Dealmakers Event titled "Private Markets, Public Markets, and the Future of Finance"

In one day, in one room, the most noteworthy and respected bankers, private equity professionals, hedge fund managers and corporate leaders will debate the most important topics affecting the world of finance today.

June 27, 2007—New York, NY

For additional information regarding these events, please contact Amy Wolf at amy.wolf@lw.com or 212.906.1324.

Russia

New Russian Competition Law

The new Federal Law of the Russian Federation "On Competition Protection" entered into force on October 26, 2006 and replaces existing legislation in its entirety. The impact of this new competition legislation is critical to the undertaking and timing of M&A deals in Russia. The new legislation brings previously disparate pieces of law together within one set of rules and is generally viewed as an improvement on the old regime. Some key changes are as follows:

- Share purchasers now need to obtain prior consent of the Federal Antimonopoly Service (FAS) in each case where shareholdings in joint stock companies, following a purchase, would exceed 25 percent, 50 percent or 75 percent of any relevant company's voting capital, or 33 percent, 50 percent and 66 percent in the case of limited liability companies, and the value thresholds are met.
- New value thresholds have been established. Where (i) total aggregate value of assets of the combined entities exceeds three billion Rubles (approximately $110 million), or (ii) combined aggregate gross revenue of such entities for the preceding year exceeds six billion Rubles and the value of assets of the target entity exceeds 150 million Rubles, or (iii) one of the merging companies appears on the register of entities having a market share in excess of 35 percent, the merger will be subject to FAS consent.
- FAS can now extend the preliminary 30-day period for approval by up to a further 60 additional days. This is an increase on the previous potential overall 45-day period and should be factored into deal timetables accordingly.

United Kingdom

FSA Consultation on the Future Regulation of Private Equity

On November 6, 2006, the UK Financial Services Authority (FSA) published a discussion paper on Private Equity "Risk and Regulatory Engagement" informing stakeholders on the FSA's actions (both current and further envisaged) to mitigate risk and promote a proportionate regulatory environmental for the private equity industry.

The FSA's paper identifies the following industry "risks":

- **Market abuse**: The FSA will continue to monitor industry compliance with the Code of Market Conduct.
- **Conflicts of interest**: Material conflicts of interest may arise between funds, fund managers and investee companies.
- **Excessive leverage**: Increased debt/EBITDA ratios on leveraged transactions.
- **Unclear ownership of economic risk**: Difficulty of identifying the ultimate ownership of economic risk due to sub-participation and derivative credit.
- **Market access constraints**: In December 2006, the FSA will publish a further consultation paper addressing the perceived barriers to the listing of funds on the UK market.
- **Market opacity**: The FSA does not currently intend to impose any form of transparency requirements on the industry.
- **Reduction in overall capital market efficiency**: The FSA will continue its ongoing review of the listing regime to seek to ensure that there are no regulatory requirements which unduly influence firms to be either private or publicly owned.

The FSA's paper is available at: http://www.fsa.gov.uk/pubs/discussion/dp06_06.pdf and the deadline for comments on the paper is March 6, 2007. ■

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Acting in Concert

By Christian Edye, Dirk Kocher and Kirsten Singleton

The concept of "acting in concert" is an increasingly important one for private equity houses whose portfolio companies are involved in takeovers and other corporate activities throughout Europe. In this edition of *SmartCapital*, we take a closer look at some recent developments relating to the definition and application of the "acting in concert" concept in the United Kingdom and Germany.

United Kingdom

Acting in Concert Under the UK Takeover Code

"Acting in concert" is an important concept in UK public takeovers, particularly where the offeror company is part of a private equity house portfolio. Certain actions and shareholdings of other portfolio companies may be attributed to the offeror and impact its duties and obligations under the Takeover Code (the "Code"). The Code also obliges offerors to include information about their concert parties in key offer documents and the process of gathering the requisite information from a large number of potential concert parties can be cumbersome and time-consuming.

The concept of "acting in concert" is well established under the Code, however, recent changes to the definition of this term—removing the "active co-operation between the parties" requirement—means that parties can be deemed to be acting in concert even though, at the time, they are not actively working together. This has potentially far-reaching consequences in terms of the amount of information that a portfolio company making an offer will need to obtain and disclose about other entities within the same group.

The Code definition of "acting in concert" contains several presumptions, including:

> "the following persons will be presumed to be … acting in concert…: (1) a company, its parent, subsidiaries and fellow subsidiaries and their associated companies, and companies of which such companies are associated companies, all with each other …"

The test for "associated" for these purposes is ownership or control of 20 percent of the equity of a company. The impact is that all companies more than 20 percent owned by the same ultimate shareholder as an offeror will be presumed to be "acting in concert" with it. The test is not limited to an immediate holding company—one has to keep looking up the chain of control until the level of ownership falls below 50 percent or until the ultimate shareholder is reached. Once the ultimate shareholder is reached, the test also works to reach back down and catch all entities that are 20 percent or more owned or controlled by them, meaning that, for example, where the ultimate shareholder of an offeror is an entity which holds interests in several separate and independent groups these groups may all be presumed to be "acting in concert" with the offeror for the purposes of the Code. Information about the holdings and dealings in target shares by all concert parties, or a statement that no such holdings or dealings exist, will need to be included in the offer announcement and offer document and such dealings may impact the price to be offered for target shares.

The presumption of "acting in concert" relating to companies that are between 20 percent and 50 percent owned can be rebutted "up front," removing them from consideration. To do this, a submission must be made to the Panel listing all such companies and confirming that in respect of each company on the list the shareholder does not:

- hold a majority of the voting rights;
- have control of a majority of the voting rights pursuant to an agreement with other shareholders;
- have the right to appoint or remove a majority of the members of the board; and
- have the power to exercise, or actually exercises, dominant influence or control.

Once the Panel has received this submission, they will generally rule that those companies will not be classed as "acting in concert" with the offeror.

With respect to companies that are 50 percent or more owned, the presumption cannot be rebutted "up front." In order to comply with its Code obligations, the offeror will need to ensure that each such company is sent:

- a letter requesting details of any holdings or dealings in target shares by the recipient during the previous year, including dates and prices; and
- a stop notice requiring the recipient to refrain from dealing in target shares for the duration of the offer period (to avoid dealings occurring that would need to be disclosed and prevent dealings occurring above the offer price which could force the offeror to raise its offer).

The Code requires details of concert party holding and dealings to be included in the initial offer announcement as well as the offer document. The obligation to disclose details about concert parties in this announcement could be incompatible with the secrecy obligations under the Code which require information about the offer, pre-announcement, to be shared with the minimum number of people possible. It would not be easy for an offeror to contact all of its presumed concert parties to inquire as to holdings and dealings whilst respecting the strict secrecy obligations.

Under Rule 7.2 of the Code, discretionary fund managers and principal traders will not be presumed to be acting in concert with an offeror "until its identity as an offeror or potential offeror is publicly announced" or until they have actual knowledge of the proposed offer. This concept can be extended to apply to presumed concert parties prior to an initial announcement, meaning, where secrecy is strictly observed, no details relating to presumed concert parties are required for the initial announcement (unless they have actual knowledge of the proposed offer). Once the announcement is made and the existence of the offer is public, the presumptions come into play and the procedures outlined above will need to be followed.

The impact is that all companies more than 20 percent owned by the same ultimate shareholder as an offeror will be presumed to be "acting in concert" . . .

The timetable on a public offer is frequently tight, with offerors wishing to move through the process as quickly as possible, for example, to lessen the chances of a competing bid being launched. Offerors that are part of a large portfolio of companies may find the process for complying with the concert party disclosure obligations unwieldy and time consuming. Instigating an internal process whereby portfolio companies keep up to date lists of all companies in which they hold more than 20 percent, together with clear records of all share dealings, will be extremely advantageous allowing an offeror to "hit the ground running" when launching an offer.

Germany

New Court Ruling on Acting in Concert in Germany: More Clarity for Agreements Between Investors

The concept of "acting in concert" is highly important for various reasons under German capital markets laws: shares held by shareholders that are "acting in concert" are attributed to each other for purposes of notifications of voting rights, for passing the 30 percent threshold requiring a mandatory tender offer for a listed company and in the context of minimum takeover prices. It is established under German law that the mere parallel acquisition or sale of shares by two or more investors does not constitute "acting in concert," however, the exercise of voting rights based on a pooling agreement between the investors does constitute "acting in concert." A recent decision of the German Federal Supreme Court (*Bundesgerichtshof*) on September 18, 2006 dealt with another scenario: do shareholders "act in concert" if they jointly determine the members and, in particular, the chairman of the supervisory board of the Company?

The Decision of the Court

The decision concerned a case where three shareholders of a listed company (each holding approximately 17 percent) had agreed that their respective representatives on the supervisory board of the company should elect a certain person as chairman of the supervisory board. Another shareholder brought a lawsuit against them claiming that this arrangement constituted "acting in concert" so that the shareholdings of the three shareholders had to be attributed to each other resulting in a duty to make a mandatory tender offer as the three shareholders had jointly crossed the 30 percent control threshold.

The Federal Court of Justice held that there was no "acting in concert" for two reasons:

- **"Acting in Concert" Applies only to the General Meeting**
  The court decided that "acting in concert" requires a coordination of voting rights in the general meeting of the company. Coordination in the supervisory board does not suffice. The court emphasized the independence of the supervisory board members in line with modern ideas of corporate governance.
- **Exception for Individual Cases**
  German capital markets laws provide for an exception from the "acting in concert" principle if the joint action is limited to a "single case." However, it is debated how such a single case is defined. Some scholars and courts make reference to the formal number of votes that are taken. According to another theory, even a single vote may not qualify as a "single case" if either the vote has a lasting effect on the company (*e.g.* during the term of office of a member of the supervisory board) or if the coordination of voting rights is based on a master plan for the business of the company. The court now held that the question of a lasting effect on the company could not be decisive. It expressed certain sympathies for just looking at the formal number of votes but ultimately left open whether the existence of a master plan concerning the business of the company among the shareholders acting jointly could be the decisive criterion since no such plan existed in the case before the court.

Practical Implications

No Risk in Supervisory Board

Investors and their representatives on the supervisory board of German listed companies no longer need to worry that a cooperation at the supervisory board level triggers the consequences of acting in concert. This is of particular importance since the supervisory board is the only body to control and influence the management of a German company. Furthermore, in the event of companies with more than 2,000 employees, under German law the workforce is entitled to half of all of the seats on the supervisory board. In these cases, the casting vote of the chairman of the supervisory board (who is a shareholder representative) is decisive, which makes it very important to be able to agree on who will be elected as chairman.

. . . as long as the Federal Court of Justice has not finally adopted the theory of formal determination of "single cases," investors will always have to investigate whether a concrete master plan concerning the business of the company is behind their coordination in order to be sure that there is no "acting in concert" relation.

Remaining Uncertainties

However, as soon as shareholders coordinate their voting rights in the general meeting, a significant degree of uncertainty remains: as long as the Federal Court of Justice has not finally adopted the theory of formal determination of "single cases," investors will always have to investigate whether a concrete master plan concerning the business of the company is behind their coordination in order to be sure that there is no "acting in concert" relation.

This applies to the election of the members of the supervisory board who (unlike the chairman) are elected by the general meeting, but also to certain restructurings, capital increases and decreases, squeeze-outs, de-listings and other important matters. Investors and shareholders should, therefore, always carefully review any coordination concerning the exercise of their voting rights in the general meeting of a German-listed company.

For further information, please contact Christian Edye at christian.edye@lw.com, Dirk Kocher at dirk.kocher@lw.com or Kirsten Singleton at kirsten.singleton@lw.com. ■

Recent
European Deals

Our comprehensive experience in all aspects of private equity investment enables Latham to serve the full array of legal needs of fund sponsors and investors alike, from fund formation to investment acquisition, structuring, financing and disposition.

The following is a selection of recent European deals.

ACIS

Representation of The Carlyle Group in its acquisition of ACIS, the UK's largest supplier of Real Time Passenger Information systems (RTPI), from Inflexion Private Equity.

Undisclosed

ALNO

Representation of funds advised by GermanCapital in their acquisition of shares in ALNO, a leading German kitchen maker, by means of privately negotiated transactions and a public tender offer.

€50,000,000

Autostrade S.p.A

Representation of Autostrade S.p.A, the largest concessionaire in Europe for the construction and management of toll motorways and connected traffic services, in its merger with Abertis Infraestructuras SA.

€23,000,000,000

Banca Intesa S.p.A

Representation of Banca Intesa S.p.A in its merger with Sanpaolo IMI S.p.A to create Italy's largest bank.

€29,600,000,000

Dia Real GmbH

Representation of Nasdaq-listed Matria Healthcare, Inc. on its sale of Dia Real GmbH to a subsidiary of OPG Groep N.V., a corporation listed in the Netherlands specializing in the retail and distribution of pharmaceuticals and medical supplies.

$33,000,000

Industry Focus

Latham is one of the few full-service law firms capable of delivering seamless representation at a global level with 1,900 attorneys in 24 offices around the world. Our attorneys work collaboratively across legal disciplines and geographic boundaries and specialize in a multitude of industries. For more information on our industry expertise, please contact Meloudy Sadat at +1-212-906-1200.

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