



By Michael Silverstein, Contributing Writer

Ask several experts in the field of mergers and acquisitions how the takeover business is doing these days and you're likely to get a variety of answers. You might hear that M&As are going along at a brisk pace. Or that this market is not as hot as it once was, but still holding its own. Or that it has run out of steam and gone flat. And depending on which part of this market one is describing, any one of these views might be correct.

The factors that determine whether a merger or acquisition actually comes off and how quickly a deal closes are complex and, like the rest of the overall economy these days, are in a state of flux. The mega-deals based on huge leverage one saw in years past are few and far between today. Iffy financing generally now

keeps many deals of all sizes from being consummated. A weaker U.S. dollar, on the other hand, is attracting foreign takeover bids, while distressed companies needing liquidity have become tempting bargains for industry peers with better access to capital.

Show Me The Money ... Please

When cataloging potential M&A deal breakers, nervous lenders often top the list. What makes the M&A market so different than it was 18 months or even a year ago, says Nicholas San Filippo, a member of the firm at Lowenstein Sandler in Roseland, is not a lack of would-be buyers, but "that you can get very near to closing without knowing if the promised credit will be there. You don't know if the bank will be at the closing, and if so, will be there at the [formerly] agreed upon terms."

Buyers are well aware of this, of course, he continues, "so they know they must be more selective. They don't want to spend considerable time and effort negotiating only to find out that they can't get funding from credit sources. This limits their deal search to where the credit seems most certain."

If banks want to restrict their lending they can do so in many ways, explains Barry S. Sziklay, co-managing member with the Sziklay Borresen Group in West Orange. Loans can come with more strings, more financial covenants and stricter debt-to-equity ratios. The result is that "deals are never done until they are actually signed. The time it takes from when you start to when you close is now longer as well."

And banks aren't the only less dependable lenders, he notes. "Many equity funds have their own financial problems. Their own access to funds has decreased. The liquidity problem in the overall economy has ripple effects on M&A deals."

Allen D. Wilen, officer at the restructuring and transaction practice with Amper, Politziner & Mattia in Edison, sums up current liquidity concerns this way: "Capital is 100 percent less certain than a year ago. I wouldn't want to be a banker today."

How M&A Deals Get Done ... Or Not

The mechanisms by which M&A deals get done depend to a certain extent on the size of the companies involved. With small, privately-owned companies that have a single owner seeking to exit the business, for example, this process might begin with the owner seeing if company employees are willing to do a buyout for a modest upfront payment and a note. Failing this, the firm's biggest customers or suppliers might be contacted, something done very quietly and employing confidentiality agreements so as not to rile ongoing business operations. If multiple owners are involved, they must all be kept fully abreast about the negotiations not only about price, but who will stay in the business

and in what positions after the merger or acquisition comes off.

Having the right financial infrastructure in place is naturally a critical element in getting to closing. "Most of my clients are in the \$10-million to \$100-million range," says Bill Hagaman, who heads the WithumSmith+Brown office in New Brunswick. "Ideally, we would like to see these clients two years before they plan to sell [in order] to make sure their accounts are in good shape, their records audited and their expenses look right. These things can't be turned on a dime. Inadequate books and records ... things that emerge when an outside accounting firm comes in and looks to make sure that everything is correctly stated ... cause a lot of deals to tank."

When it comes to the payment needed to seal a deal, "the type of compensation depends a lot on whether the takeover company is public or private, notes Alan N. Wink, director of Amper, Politziner & Mattia's Private Equity Group and Technology Group in Edison. "If public, stock may be used as currency. Though, given the market these days, this currency has [often] declined in value."

Financial aspects aside, says **Frank T. Cannone**, chair of the Corporate Department at **Gibbons P.C.** in Newark, "whether it's a big company taking over a smaller one, or two private companies merging, the principals must develop a rapport with their counterparts. There's always going to be an impasse [in these deals], and it won't get resolved without this rapport. The principals have to spend time together. They have to make sure they have the same vision about the transaction."

Seeing that company employees are properly taken care of is the kind of thing that may require this sort of shared vision. "You can't get beyond the letter of intent stage if issues like these aren't addressed," says Hagaman. "If you don't trust the other party by then, it won't happen."

Differences in corporate cultures is another thing that can lead to an M&A not closing. Every deal has these possible risks, notes Wilen. "And you have to identify and address them. The worst issues are the ones you don't know about."

America On The Block?

Huge foreign takeovers of American companies have been much in the news in recent months. A striking example was Belgian-owned InBev, which acquired American beer icon Anheuser-Busch for \$52 billion in mid-July. The real M&A action involving foreign companies, however, may well be in the middle market, usually defined as companies in the \$25-\$500 million range. This market "is very robust now for [foreign] buyers seeking to make strategic acquisitions," says Cannone. "These firms have their own lines of credit or their own cash, and their money is very prevalent" in this

market.

Strategic foreign buyers who can come in and integrate with an American takeover target and manage it well have a very big incentive to do so now. "With the U.S. dollar fallen in value," he says, "they know they can get a 35 or 40 percent discount on a takeover price."

Cannone cites several reasons why a law firm like his has been well positioned to play a part in this



Frank T. Cannone, chair of the Corporate Department at Newark-based Gibbons.

end of the M&A market. Gibbons P.C. can get involved in these middle-market deals with foreign buyers because "though most of our 230 lawyers are in Newark, 45 are in New York, and a New York presence is a very significant factor

for foreign investors."

Personal relationships and certain skills of Gibbons P.C. lawyers also give it an edge in this realm. "We have a cross-border transaction group. We have a long-standing program that trains foreign lawyers with our own people." And though actual deals are transacted in English, "many of our lawyers also speak French or German," and are well versed in the needs of foreign businesses.

The fact that foreign buyers are queuing up at the M&A window now isn't at all surprising to many other experts in this field. Notes Sziklay: "A lot of Canadian companies are looking our way and seeing the deals of the century. America is for sale. Everyone wants to be in our market, and they now have opportunities they never had before."

Where The Action Is

Certain industries in New Jersey continue to make M&A headlines. These include consumer product companies that are attractive targets for foreign buyers, as well as hospital and private physician practices that are merging in hopes of improving their collective bottom lines. Where the aim is acquisition, the word heard over and over is "bargain."

"There are a lot of bargain shoppers out there today," says Wilen. "The multiples that sellers could expect a few years ago don't exist anymore ... the emphasis is on

distressed businesses that will sell for a lesser multiple."

Companies in the same industry as their targets are now among the biggest M&A players. "A year or two ago they were being outbid by financial buyers, private equity firms, but not today," says Hagaman. And what are these strategic buyers seeking? "They want to be in a better position when the market picks up," he says. "They're looking for companies with good reputations or good client lists, looking for bargains with companies that may be in need of money ... If you have cash and/or little or no bank debt, you can get the deal done."

Conclusion

A glass half full or half empty is a much over-used phrase when it comes to describing various economic situations. But this description really does seem appropriate when discussing the way mergers and acquisitions are happening (or not happening) today.

It's a good time for foreign buyers taking advantage of a weak dollar and for well financed domestic firms seeking to take a tasty bite out of a distressed competitor. For companies and funds used to big borrowing to finance M&As, however, perhaps the best advice that can be given is this: wait until next year and hope that the lending gates open wide again.

