The Deal

# A big-time rebound

BY DAVID MARCUS

The U.S. M&A market turned in its best year of the millennium in 2014. Intra-U.S. activity by dollar volume was up 38%, to $1.29 trillion, the most stretching back to at least 2000. There was record activity in healthcare and oil and gas, while technology M&A had its best year since 2000, when Nasdaq started to plummet. Things even perked up in Europe, where companies were at their most active at home and in the U.S. since 2008. Those who by inclination or professional duty find themselves focused on Delaware law had more to read, think about and debate than they have in a generation. There were pockets of relative inactivity, with commercial banking almost nonexistent and retail M&A still sluggish, but most dealmakers had little time to lament those gaps.

The biggest story of 2014 was healthcare M&A. The $305 billion of U.S. activity in the sector last year was a 62% increase over 2013, itself a terrific year.

That number, like all deal and dollar volume figures in this article, includes only deals worth $100 million or more; the figures come from Dealogic.

The sector featured the most closely watched situation of the year, the battle for **Allergan Inc.** (AGN), which fended off a hostile bid from **Valeant Pharmaceuticals Inc.** (VRX) and **Pershing Square Capital Management LP** by agreeing to sell to **Actavis plc** (ACT) for $66 billion. Pershing may have been the biggest winner as it made $2.6 billion on its investment in Allergan stock.

The most important trend of the year was also centered on pharma, which saw a disproportionate number of so-called inversion transactions, where a U.S. company reincorporates overseas by combining with a foreign entity. By one count, 12 of the 19 inversion deals announced last year came in the healthcare sector. The strong cadre of European pharma companies provided a robust pool of potential partners for U.S. companies that wanted to migrate to more tax-favorable jurisdictions, such as Ireland or the U.K. That was a contributing factor in such deals as **Medtronic Inc.**'s (MDT) $42.9 billion tie-up with Covidien plc (COV), in which the surviving company will be incorporated outside the U.S.

The structure generated enough political controversy that **Walgreen Co.** backed away from structuring its $18 billion purchase of **Alliance Boots GmbH** (WAG) as an inversion, and **AbbVie Inc.** (ABBV) called off its $54.7 billion combination with **Shire plc** (SHPG). In September, the Treasury Department took what it characterized as the "first steps to reduce the tax benefits" of such deals with a notice that seemed modest in scope but has quelled the rising tide of inversions. That's an odd result, since the Republicans took control of Congress in the midterm elections, ensuring two more years of gridlock in Washington and making the prospects for significant tax reform remote. It seems unlikely that inversions will disappear completely, since many acquisitive pharma companies, Actavis among them, are incorporated overseas.

**A REDUCTION** in inversions seems unlikely to cool the level of activity in pharma, though that activity may not continue to dominate the business news. Lawyers who focus on healthcare said they remain as busy as they were last year, but 2014 was in fact an average year in the sector when judged by deal volume.

There were 122 U.S. deals of $100 million or more last year, only five more than in each of the two previous years and just 6% more than the annual average over the past decade. Pharma companies have an immense need for new products that has driven M&A activity for the past decade, a

### TOP DELAWARE LAW FIRMS

| Rank | Firm | Target / seller | Acquirer / bidder | Special | Total deals |
|---|---|---|---|---|---|
| 1 | Richards, Layton & Finger PA | 39 | 28 | 1 | 68 |
| 2 | Morris Nichols Arsht & Tunnell LLP | 28 | 18 | 0 | 46 |
| 3 | Potter Anderson & Corroon LLP | 12 | 13 | 0 | 25 |
| 4 | Young Conaway Stargatt & Taylor LLP | 6 | 2 | 0 | 8 |
| 5 | Pachulski Stang Ziehl & Jones LLP | 1 | 0 | 0 | 1 |

### TOP PROXY SOLICITORS/INFORMATION AGENTS

| Rank | Firm | Target / seller | Acquirer / bidder | Total deals |
|---|---|---|---|---|
| 1 | Georgeson Inc. | 29 | 25 | 54 |
| | MacKenzie Partners Inc. | 33 | 21 | 54 |
| 2 | Innisfree M&A Inc. | 30 | 22 | 52 |
| 3 | D.F. King & Co. | 19 | 17 | 36 |
| 4 | Okapi Partners LLC | 12 | 6 | 18 |
| 5 | Morrow & Co. LLC | 4 | 7 | 11 |

### TOP PUBLIC RELATIONS FIRMS

| Rank | Firm | Target / seller | Acquirer / bidder | Total deals |
|---|---|---|---|---|
| 1 | Joele Frank, Wilkinson Brimmer Katcher | 58 | 43 | 101 |
| 2 | Sard Verbinnen & Co. | 54 | 30 | 84 |
| 3 | Brunswick Group LLP | 15 | 23 | 38 |
| 4 | Abernathy MacGregor Group Inc. | 16 | 19 | 35 |
| 5 | Kekst and Co. | 17 | 17 | 34 |

CONTINUED >

# M&A LEAGUE TABLES

< PREVIOUS

**TOP LAW FIRMS REPRESENTING INVENTMENT ADVISERS**

| Rank | Law firm | Client | Total deals |
|---|---|---|---|
| 1 | White & Case LLP | | 47 |
| | | Citigroup Inc. | 11 |
| | | Bank of America Merrill Lynch | 8 |
| 2 | Sullivan & Cromwell LLP | | 23 |
| | | Goldman, Sachs & Co. | 13 |
| 3 | Manatt, Phelps & Phillips LLP | | 21 |
| | | Keefe, Bruyette & Woods Inc. | 17 |
| | | Houlihan Lokey Inc. | 4 |
| 4 | Davis Polk & Wardwell LLP | | 20 |
| | | Greenhill & Co. | 4 |
| | | JPMorgan Securities LLC | 4 |
| | | Lazard Ltd. | 4 |
| 5 | Gibson, Dunn & Crutcher LLP | | 19 |
| | | Lazard Ltd. | 4 |
| | | UBS Investment Bank | 4 |
| 6 | Fried, Frank, Harris, Shriver & Jacobson LLP | | 18 |
| | | Deutsche Bank AG | 9 |
| | | Goldman, Sachs & Co. | 4 |
| 7 | Greenberg Traurig LLP | | 17 |
| | | Barclays Capital | 3 |
| | | Jefferies LLC | 3 |
| 8 | Cravath, Swaine & Moore LLP | | 14 |
| | | Goldman, Sachs & Co. | 4 |
| 9 | Skadden, Arps, Slate, Meagher & Flom LLP | | 13 |
| | | Lazard Ltd. | 3 |
| 10 | Alston & Bird LLP | | 12 |
| | | Credit Suisse Group | 4 |
| | | Wells Fargo Securities LLC | 3 |
| 11 | Cleary Gottlieb Steen & Hamilton LLP | | 10 |
| | | Goldman, Sachs & Co. | 5 |
| | | Citigroup Inc. | 4 |
| | Kirkland & Ellis LLP | | 10 |
| | | Bank of America Merrill Lynch | 2 |
| | Lazard Ltd. | Lazard Ltd. | 2 |

trend that seems unlikely to change given aging populations in the U.S., Europe and Japan; the massive government spending on providing those populations with healthcare; and the difficulty larger pharma companies have in developing new drugs.

The situation is very different in oil and gas M&A, where 2014 saw more deal and dollar value than any year since at least 2000. And that frenzy came after record or near-record years in 2010, 2011 and 2012, as the revolution in shale reshaped the industry, and a sustained period of low interest rates drove investor demand for master limited partnerships, structures that need to buy a steady stream of assets.

But the stunning decline in oil prices to less than $50 a barrel from over $100 in June could freeze M&A as companies struggle to survive.

The effect of the collapse wasn't felt last year; even in December, oil and gas M&A volume held up reasonably well. No one expects that to persist if oil prices remain depressed, and the viability of shale oil production is thrown into question. The entire industry is vulnerable to a period of significant retrenchment, as are the lawyers and bankers who specialize in the field.

Things are sunnier in Silicon Valley, where change seems invigorating rather than terrifying. The sector enjoyed its best year of M&A since 2000 in both deal and dollar value even though only one of the 20 largest U.S. deals of the year was a tech transaction: **Facebook Inc.**'s (FB) $19 billion purchase of WhatsApp Inc. Its size notwithstanding, the WhatsApp deal was typical in other respects, as a Silicon Valley power with billions of dollars in cash used some of it—$4 billion in this case, with the rest in stock—to buy a small, privately held company with an exciting technology.

That pattern was repeated over and over by companies such as Facebook, **Google Inc.**, (GOOGL) **Apple Inc.** (AAPL) and, in less sexy precincts of the tech sector, by **Cisco Systems Inc.** (CSCO) and **Oracle Corp.** (ORCL) among others.

The Valley's recent history suggests the rationale for buying companies like WhatsApp. Facebook itself turned down a $1 billion offer from **Yahoo! Inc.** (YHOO) in 2006; imagine if Yahoo had offered $2 billion for Facebook, which is now worth 100 times that. Of course, that dreamy scenario supposes that Yahoo would have done a good job of nurturing Facebook—an outcome that is far from inevitable, and the challenge that faces all acquirors, especially those that make millionaires out of all of a target's employees. It's a hard problem, and the failure to solve it could cool the current wave of tech M&A.

Private equity had a transaction-intensive year in 2014, but one not concentrated in M&A. Cheap debt offered copious opportunities for refinancing while the strong equity markets encouraged many PE shops to take portfolio companies public. Those markets also meant few public company buyouts, though the latter part of the year saw **BC Partners Inc.** lead a group of investors that agreed to pay $8.7 billion for **PetSmart Inc.** (PETM); **Thoma Bravo LLC** and Teachers' Private Capital agree to buy **Riverbed Technology Inc.** (RVBD) for $3.6 billion; and **Vista Equity Partners LLC** bought **Tibco Software Inc.** for $4.3 billion. Activists fomented all three deals, another illustration of the symbiotic relationship between the agitators and the PE shops.

The simplest theory for the relative dearth of public company buyouts was also the most persuasive: PE shops simply found the public markets too expensive. As in the late 1990s, strategic acquirers were able to outbid PE shops, which at least this time around were able to rely on a robust secondary buyout market for new properties. ■

# M&A LEAGUE TABLES

## TOP LAW FIRMS

| Rank | Firm | Target / seller | Acquirer / bidder | Special | Total deals |
|---|---|---|---|---|---|
| 1 | Skadden, Arps, Slate, Meagher & Flom LLP | 40 | 45 | 6 | 91 |
| 2 | Kirkland & Ellis LLP | 36 | 45 | 3 | 84 |
| 3 | Latham & Watkins LLP | 42 | 34 | 2 | 78 |
| 4 | Simpson Thacher & Bartlett LLP | 31 | 27 | 0 | 58 |
| 5 | Weil, Gotshal & Manges LLP | 19 | 30 | 6 | 55 |
| 6 | Jones Day | 15 | 24 | 15 | 54 |
| 7 | Wachtell, Lipton, Rosen & Katz | 20 | 30 | 0 | 50 |
| 8 | Sullivan & Cromwell LLP | 12 | 23 | 1 | 36 |
| 9 | Gibson, Dunn & Crutcher LLP | 13 | 18 | 1 | 32 |
| 10 | Cleary Gottlieb Steen & Hamilton LLP | 9 | 22 | 0 | 31 |
| 11 | Paul, Weiss, Rifkind, Wharton & Garrison LLP | 16 | 13 | 0 | 29 |
| | Willkie Farr & Gallagher LLP | 16 | 13 | 0 | 29 |
| 12 | Cravath, Swaine & Moore LLP | 12 | 16 | 0 | 28 |
| 13 | Davis Polk & Wardwell LLP | 13 | 14 | 0 | 27 |
| 14 | Sidley Austin LLP | 11 | 15 | 0 | 26 |
| 15 | Cooley LLP | 21 | 4 | 0 | 25 |
| | Shearman & Sterling LLP | 14 | 8 | 3 | 25 |
| 16 | Morgan, Lewis & Bockius LLP | 9 | 12 | 3 | 24 |
| | Ropes & Gray LLP | 18 | 6 | 0 | 24 |
| | Wilson Sonsini Goodrich & Rosati PC | 13 | 11 | 0 | 24 |
| 17 | Vinson & Elkins LLP | 13 | 9 | 0 | 22 |
| 18 | White & Case LLP | 11 | 10 | 0 | 21 |
| 19 | Debevoise & Plimpton LLP | 6 | 11 | 2 | 19 |
| | Goodwin Procter LLP | 11 | 8 | 0 | 19 |
| 20 | Fenwick & West LLP | 10 | 7 | 1 | 18 |
| | Fried, Frank, Harris, Shriver & Jacobson LLP | 5 | 12 | 1 | 18 |
| | Hogan Lovells | 7 | 8 | 3 | 18 |
| 21 | Baker Botts LLP | 10 | 4 | 2 | 16 |
| | Covington & Burling LLP | 6 | 8 | 2 | 16 |
| | Dechert LLP | 6 | 8 | 2 | 16 |
| 22 | Bracewell & Giuliani LLP | 5 | 8 | 0 | 13 |
| | Greenberg Traurig LLP | 5 | 8 | 0 | 13 |
| | K&L Gates LLP | 5 | 8 | 0 | 13 |
| | Morrison & Foerster LLP | 7 | 6 | 0 | 13 |
| | Stikeman Elliott LLP | 3 | 8 | 2 | 13 |
| | Winston & Strawn LLP | 9 | 4 | 0 | 13 |

## TOP INVESTMENT ADVISERS

| Rank | Firm | Target / seller | Acquirer / bidder | Total deals |
|---|---|---|---|---|
| 1 | Goldman, Sachs & Co. | 79 | 45 | 124 |
| 2 | Barclays Capital | 38 | 60 | 98 |
| 3 | JPMorgan Chase & Co. | 47 | 50 | 97 |
| 4 | Morgan Stanley | 53 | 30 | 83 |
| 5 | Bank of America Merrill Lynch | 40 | 42 | 82 |
| 6 | Citigroup Inc. | 32 | 36 | 68 |
| 7 | Deutsche Bank AG | 30 | 33 | 63 |
| 8 | Lazard Ltd. | 27 | 31 | 58 |
| 9 | Credit Suisse Group | 14 | 41 | 55 |
| 10 | Jefferies LLC | 32 | 17 | 49 |
| 11 | Evercore Partners Inc. | 22 | 16 | 38 |
| | RBC Capital Markets | 20 | 18 | 38 |
| 12 | UBS Investment Bank | 13 | 19 | 32 |
| 13 | Centerview Partners LLC | 17 | 14 | 31 |
| 14 | Houlihan Lokey Inc. | 21 | 8 | 29 |
| 15 | Sandler O'Neill & Partners LP | 18 | 10 | 28 |
| 16 | Keefe, Bruyette & Woods Inc. | 15 | 12 | 27 |
| 17 | Moelis & Co. LLC | 18 | 7 | 25 |
| 18 | Wells Fargo Securities LLC | 9 | 14 | 23 |
| 19 | Robert W. Baird & Co. | 10 | 10 | 20 |
| | Rothschild | 9 | 11 | 20 |
| 20 | Stifel, Nicolaus & Co. | 13 | 5 | 18 |
| 21 | Raymond James & Associates Inc. | 11 | 6 | 17 |
| 22 | Greenhill & Co. | 7 | 7 | 14 |
| 23 | Perella Weinberg Partners LP | 7 | 6 | 13 |
| | William Blair & Co. LLC | 12 | 1 | 13 |
| 24 | Harris Williams & Co. | 11 | 0 | 11 |
| | Macquarie Capital | 3 | 8 | 11 |
| | Qatalyst Partners | 10 | 1 | 11 |
| 25 | Deloitte | 6 | 4 | 10 |
| | Guggenheim Partners LLC | 4 | 6 | 10 |