

M&A TRENDS:

WHAT'S DRIVING TODAY'S DEALS

>>> U.S. deal value increased 28 percent to more than \$2 trillion in 2018—its highest point in three years, according to PwC's quarterly Deals Industry Insights.

Year-end surveys of U.S. corporate dealmakers and private equity firms predicted more and bigger M&A deals in 2019. Are current global political tensions, trade wars and volatile markets changing the trajectory?



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BILL DORAN is a partner at **Benesch Law**, an AmLaw 200 business law firm with nine offices in the U.S. and China. For over 25 years he has helped clients successfully complete a variety of public and private transactions, including many with cross-border elements. He specializes in mergers and acquisitions, general corporate and commercial transactions, private equity, and debt and equity finance. His industry experience includes advertising and digital media, wealth management and financial services, technology consulting, business services, direct marketing, manufacturing, distribution, food, health care services, medical devices, retail and transportation.

>>What types of M&A clients does your firm typically represent?

Bill Doran: We advise firms commonly referred to as "strategic"—including private and public businesses—as well as those referred to as "financial," such as private equity funds and independent sponsors. Our private equity practice has traditionally been a part of our firm's M&A work, and we've experienced recent growth in that area. Our practice is squarely in the middle market, with our typical M&A transactions ranging between \$10 million and \$500 million.

How do you help clients add value when buying or selling a business?

Doran: One of the most important ways we add value is by keeping the deal moving at the desired pace while avoiding surprises. Buying or selling a going business concern is never entirely straightforward because each business has a unique ownership profile and set of facts. It helps to follow the "three Ps." We strive to bring a good *plan* to each transaction, use our experience to *predict* issues and negotiation points, and remain *proactive* to stay ahead of small matters so they do not become big matters that might impede the deal. We also help with deal structuring to enhance value. And we provide thoughtful negotiation to improve deal terms and rigorous legal due diligence to identify and properly allocate risks and benefits.

How would you describe the level of 2019 M&A activity thus far?

Doran: M&A activity has been steady and very active this year. At the same time, many deals have had a somewhat deliberate pace and tone. Buyers are definitely doing their homework, looking for businesses with "good bones" that will perform well in the inevitable softening business cycle to come.

What external and market forces do you currently see impacting the M&A landscape?

Doran: On the positive side, there's a large amount of undeployed investment capital, innovation, strong employment and consumer demand. On the negative side are international trade issues and the age of the current business cycle.

What sectors or industries are particularly active with respect to M&A?

Doran: We're seeing activity in transportation and logistics, healthcare, financial services and financial technology. Even the nascent cannabis industry is experiencing rising M&A activity, as a precursor to the consolidation wave that has already begun and will only accelerate following broader legalization.

What concerns are you hearing from your clients who are undergoing or contemplating an M&A transaction?

Doran: Two versions of the same song. Buyers are building downturn resilience into their

operating assumptions, pricing models and due diligence. At the same time, many sellers who have been waiting on the sidelines are now approaching—or asking whether they should approach—the market for fear of missing an opportunity.

What trends are unique to middle market M&A?

Doran: One big trend has been the rapid adoption of representation and warranty insurance. The efficient market for this product has made it cost-effective and available for an increasing number of M&A deals. This is streamlining the negotiation and documentation process, and provides buyers and sellers with greater certainty.

How is artificial intelligence aiding the due diligence process?

Doran: AI has begun to influence the legal due diligence process by streamlining the workflow—and work time—involved in document analysis and contract review. The full effect is likely still a few years off, but as the systems proliferate and user confidence continues to grow, it will play an increasingly bigger role. This will allow human M&A advisors to provide faster, more thoughtful and ultimately more valuable conclusions and advice to clients.

How can pre-acquisition planning by target companies streamline the sale process and maximize the sale price?

Doran: This gets back to the "three Ps" I mentioned previously—have a plan, predict and be proactive. A company that's planning to sell needs to organize its documents and affairs so that it can present a crisp and credible picture to potential buyers, and inform the chosen buyer with confidence and consistency all the way to closing. In preparing to sell, a company should develop a list of what it would ask for if it were the buyer, including financial information, key customers, key employees, ownership and succession planning, technology and data security, facilities and assets, contingent liabilities and litigation, contracts, leases and documents, regulation and permits, and tax statements. By engaging in this type of self-audit, the seller can better prepare for the buyer's review, which will be even more exacting. Also, sellers need to develop their external and internal sale team, line up an investment banker or sell-side financial advisor, and make sure that their accountants and attorneys have relevant deal experience. It's critical to make sure that the internal team is prepared and aligned with the vision for selling the company.

As we approach year end, what's the outlook for M&A?

Doran: I think that the M&A activity will remain steady and likely accelerate slightly into and through the fourth quarter, as more businesses that have been considering a sale enter the market.