COVID-19 Coronavirus Business Impact Broadcast Series

Deploying Capital in the Public Market: Take-Privates and PIPEs

MAY 8, 2020

On May 8, 2020, Dechert's Private Equity group presented "Deploying Capital in the Public Market: Take-Privates and PIPEs," an episode of the firm's COVID-19 Coronavirus Business Impact Broadcast Series. The episode was hosted by Shannon Footer (moderator), an M&A associate in the firm's New York office, Stephen Leitzell, an M&A partner in the firm's Philadelphia office and Marty Nussbaum, an M&A partner in the firm's New York office.

The presenters gave a high-level overview of the ways in which private equity firms can invest in the public market in light of depressed public company valuations, and some of the considerations that go into evaluating such investment opportunities.

HIGHLIGHTS FROM THE EPISODE

Opportunities and Options for Investing in the Public Market

Depressed public-company valuations and liquidity issues, particularly among smaller-cap companies, have created opportunities for investment that may not have been available before the crisis. When private equity firms consider investments in the public market, a threshold issue is whether debt financing will be available or have attractive terms. Without debt financing, a private equity sponsor might instead consider minority investments, either by negotiated PIPE transactions with the target company or through open-market purchases as an adjunct to activist activities. However, activist investment has itself slowed in recent months as activists seem to be monitoring the situation while dozens of issuers have adopted poison pills.

Considerations in a Take-Private

PE firms need to be sensitive to the scrutiny that a public target's board will be under with respect to compliance with its fiduciary duties. Public companies may be particularly attuned to market checks, either prior to signing a definitive agreement or between signing and closing through a "go shop" provision. Even where there has been some awareness in the market that the company could be sold, the definitive agreement will need to include a fiduciary out to accept a post-signing superior offer. Additionally, since public companies have ongoing disclosure obligations, PE investors need to be sensitive to how offers are communicated, particularly if in writing. Disclosure is also key when considering that if a deal is signed, the background section in the proxy statement or tender offer documents will disclose all communications between the target and the investor.

Why Are PIPE Deals Attractive?

From the private equity investor's perspective, a PIPE deal can be a first step toward a later full buyout when debt financing becomes available. There is also less reputational risk compared to a buyout, where a PE shop could be seen as taking advantage of the pandemic by buying a company with a depressed valuation, and instead is assisting a company struggling with liquidity. From the issuer's perspective, since many public companies are finding it challenging to access the capital markets during the pandemic, PIPEs can provide them with direct access to capital that might not otherwise be available. Issuers can also benefit from a "halo effect" of bringing in new equity investors with strong reputations, which signals that the company represents a sound investment opportunity, even in the current market.