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"As companies have increased confidence in their own financial strength, they are being more aggressive in pursuing acquisition activity, welcomed or not."

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Henry Nassau shared his insights with Global M&A Network about the underlying themes driving European/North American deals, the slight dip in multiples being paid for certain transactions, the change in takeover defense strategies in unsolicited bids, the potential for lowered level of lending in Europe along with his forecast that natural resources, healthcare services and technology sectors will continue to consolidate and attract private equity buyers for the year ahead.

Q: What are the underlying themes driving cross-border transactions between Europe and the North American markets in today's economic environment?

Mr. Nassau: What is driving the increase in deal flow is increased cash balances by strategic acquirers around the globe together with greater economic growth in large parts of the world outside of the U.S. This is requiring businesses desiring growth to look to acquire entities in the faster growing parts of the world.

The impact of deficits in all parts of the world on acquisition is largely being reflected in concerns over increasing interest rates and inflation. To date that has not slowed down acquisition activity.

Q: How would you characterize recent cross-border deal structures for multinationals corporations with cash? From a legal perspective, what are the primary risks in cross-border deals involving several jurisdictions?

Mr. Nassau: The greatest structuring challenge has been focused on optimization of taxes. Strategics are traditionally more sensitive to pursuing jurisdictions with the lowest marginal tax rates.

The greatest risks facing all cross-border acquisitions focus on the potential unknown change in governmental policies. These risks are exacerbated in acquisitions using leveraged structures most commonly adopted by private equity funds.

Q: What types of buyers are dominating the global M&A marketplace? What global sectors do you see most active for the year ahead, and why?

Mr. Nassau: The last year has seen increased activity by strategic acquirers. We think this activity will continue as companies become more confident in the continued recovery of the world economy. The sectors we believe will see the greatest activities will be natural resources, healthcare services and technology.

Q: What are the chief drivers of merger and acquisitions activity in the Central Eastern Europe and Russia given Dechert's robust practice in these regions?

Mr. Nassau: The increased activity is a direct result of greater confidence in the predictability of governmental and judicial policies in the former CIS countries. An example would be PepsiCo's recent $3.8 billion acquisition of 66% of Wimm-Bill-Dann Foods, a transaction on which we advised and which makes PepsiCo the largest food and beverage business in Russia.

Q: How has mid-market buyout deal structures changed since the credit crisis? Also, in your opinion, has the Dodd-Frank legislation impacted the way deals are negotiated and structured?

Mr. Nassau: There has been a slight decrease in EBITDA multiples paid for transactions. The primary difference is all buyers are using less leverage and more equity than they did prior to the crisis. While all private equity funds are concerned about the implications of Dodd-Frank, it has not had a material impact on how transactions are being structured.

Q: Looking beyond 2011, what are the most common LBO themes in Europe versus the USA and why? In your observation, what sectors are attracting private equity investors?

Mr. Nassau: There is a concern that the European banks have not fully digested their losses resulting from the financial crisis. This may lead to lower levels of lending in Europe versus the U.S. We are seeing increased confidence in the U.S. that the residential building cycle is about to reverse and accordingly, we are seeing more activity in the building material space. Healthcare and technology remain attractive sectors in both the U.S. and Europe.

Q: There has been a noticeable increase in unsolicited bids lately. How are the tactics of unsolicited takeovers different today, including the obligation of the Board in exercising their duties?

Mr. Nassau: As companies have increased confidence in their own financial strength, they are being more aggressive in pursuing acquisition activity, welcomed or not. We have seen more successful defenses of targets pursuing a "just say no" strategy than we did before the crisis.

Nevertheless, all targets must ultimately show a compelling vision of why they can remain independent or must pursue their own acquisition strategy or be sold. Boards' duties have not changed pre or post crisis, that is protecting the shareholders interests remains paramount.

Q: What are recent developments in purchase agreements and protecting deal execution in the USA?

Mr. Nassau: We are seeing increased use of "locked" deals with strong shareholder support, meaning the seller has few outs. While these often have some form of "go shop" provisions, we have not seen those provisions lead to increased deal completion risks.

Q: With the passage of the Healthcare Reform bill, there have been a record number of deals in this sector. What are the chief concerns in executing deals in healthcare sector today? Do you anticipate further consolidation?

Mr. Nassau: We have been very active in this sector. A large part of this activity is because of the increased growth of healthcare combined with an attractive yield being made available by entities using tax efficient REIT structures. While there has been enormous activity in this area, it has touched only a small percentage of the industry. We expect to see continued activity in the senior housing REIT area.

Q: What are the obstacles faced by foreign buyers in acquiring U.S companies? From a legal perspective, how would you advise foreign buyers?

Mr. Nassau: There are complexities being seen in the financing markets as a direct result of any business touching on OFAC sanctioned countries. We counsel overseas buyers with business activities in those countries to seek very careful advice and regulatory consultation before proceeding.

Q: What differentiates Dechert from other full-service global law firms as it relates to its M&A and private equity practices?

Mr. Nassau: We have a much higher percentage of our corporate attorneys outside of the U.S. than most of the AmLaw (American Lawyer) 100 law firms. This combined with our historic sensitivity and understanding of the financial aspects and risks of a transaction compared to most law firms distinguishes our practice.

Q: In closing, what book are you reading?

Mr. Nassau: I'm reading *Too Big To Fail* by Andrew Ross Sorkin. In my opinion, we will spend a long time debating the relative treatment of Bear Stearns and Lehman Brothers and whether that exacerbated the recent financial crisis.