

M&A Techniques in a Complex Environment

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While the headlines in 2015 focused on the “megadeal” transactions over \$5 billion (there were at least 137 such deals in 2015, according to Thomson Reuters), many transactions involving cross-border activities required dealmakers to address a variety of corporate, tax and regulatory issues. In a number of industries, especially the technology sector, a range of interesting techniques were utilized to address business and legal issues and to position companies to achieve business objectives:

- **Splits/Spins.** A number of companies effected the separation of units (including eBay/PayPal and HP/HP Enterprise) by a split-up or spin-off. In the recently announced merger of DuPont and Dow Chemical, the companies stated they intend to subsequently pursue a separation of Dow/DuPont into three independent, publicly traded companies through tax-free spin-offs.
- **Contingent Value Rights.** In the pharmaceutical industry and elsewhere, contingent value rights — which provide shareholders of an acquired company with additional consideration upon the occurrence of a specified event — continue to be considered in various transactions. However, valuation discounts of such instruments and legal complexities (sometimes including litigation) often result in the decision not to utilize such instruments in a transaction.
- **Joint Ventures/Collaborations/“Virtual Mergers.”** Companies will use various structures to effectively combine business units without a merger. Google and Johnson & Johnson formed a collaboration to develop robots for surgical operations. Cisco and Ericsson announced a “broad strategic partnership” in the networking area.
- **Tracking Stock.** The EMC/Dell transaction will involve the creation of a tracking stock for EMC’s interest in virtualization company VMware. A tracking stock permits investors to hold a security whose economics mirror the performance of a specific business unit.
- **Strategic Investments.** GM announced an investment in Lyft, and Microsoft made a significant investment in Uber.
- **White Squire.** Cerberus made a “white squire” investment in Avon.
- **Asset Transfers/Swaps.** In the pharmaceutical space, a number of companies sold or exchanged asset portfolios of products or patents/intellectual property. Such transactions included those involving Sanofi/Boehringer, GSK/Bristol-Myers and AstraZeneca/Takeda.