

THE TALENT

Dealmakers of the Week: Skadden's Howard Ellin and Lou Kling

Posted by Tom Huddleston Jr.



DEALMAKERS

Howard Ellin, global cohead of M&A at Skadden, Arps, Slate, Meagher & Flom, and M&A partner Lou Kling.

THE DEAL

Express Scripts, Inc., agrees to acquire rival pharmacy-benefits manager Medco Health Solutions, Inc., in a \$29.1 billion deal, which was announced on Thursday.

THE CLIENT

Express Scripts, a St. Louis-based company that manages the prescription benefits (PBM) plans companies offer their employees.

THE DETAILS

Under the terms of the agreement, Express Scripts will pay about \$71.36 for each share of Franklin Lakes, NJ-based Medco in cash and stock, with Medco shareholders receiving \$28.80 in cash and 0.81 Express Scripts shares for each Medco share they own. The two companies had a combined revenue of more than \$110 billion in 2010.

The deal is expected to close in the first half of 2012, pending shareholder and regulatory approval.

THE BIG PICTURE

The deal—one of the largest this year—comes at a time when the M&A market has been seen as slowing down and is the second megadeal in the past week. It comes on the heels of last Friday's announcement that BHP Billiton will pay \$12.1 billion for oil and gas company Petrohawk Energy.

Because it combines two of the largest companies in the pharmacy-benefits market, the deal is expected to draw regulatory scrutiny. *The Wall Street Journal* notes that the

one concern of regulators analyzing the deal will be its effect on health care insurance and drug costs, both for consumers and companies. Nonetheless, Express Scripts CEO George Paz expressed confidence that the deal would ultimately be approved.

THE BACKSTORY

Express Scripts first turned to Ellin and Kling in 2006, when the company entered the bidding for Caremark Rx. The two partners helped put together a \$26 billion hostile offer for Caremark, but Express Scripts eventually lost out to CVS in the bidding. In 2009, the firm led the way on Express Scripts's \$4.7 billion acquisition of Net Rx from WellPoint Inc.

Aside from those large matters, the two attorneys have handled a variety of lower-profile transactions for Express Scripts over the past few years. "We've worked on a number of smaller deals that probably fall below the radar screen, where they [have] sought to acquire other related PBM-type businesses in the \$550 [million] to \$1 billion range," Ellin says.

ON CLOSING

One complicated aspect of the deal, according to Ellin, is the "double dummy" holding company structure being used for the newly merged entity. In such a structure, he says, "each of the two existing companies will end up as wholly-owned sister companies underneath the new parent, which will then be the publicly traded company."

That entity, called Express Scripts Holding Company, will be divvied up upon completion of the deal, with Express Scripts shareholders owning roughly 59 percent of the company and Medco shareholders owning the remainder.