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Industry Update

Navigating Current Challenges in Biotech M&A

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The biotech mergers and acquisitions market faces significant headwinds in the first half of 2025. These challenges include frozen capital markets, regulatory uncertainty at the Food and Drug Administration (FDA) and Department of Health & Human Services (HHS) (see our prior post [here](#)), and tariffs. Consequently, many public biotech companies are currently undervalued, with a substantial number trading below cash value. These companies face financial constraints, heightened scrutiny over cash runway and shareholder pressure to maximize value. During this challenging time, there are several topics that boards and management teams of biotech companies can consider in order to be well positioned to maximize value when opportunity eventually arises.

Weathering the Storm in the Biotech Sector

Strengthen Pharma Relationships. Currently, many large pharmaceutical companies are adopting a cautious, “wait and see” approach to M&A. To position themselves for a potential market rebound and enhance strategic opportunities, biotechs should continue to engage with pharmaceutical companies to build or strengthen relationships and familiarity. Such dialogue can lead to increased acquisition or partnering opportunities and an understanding of pharma’s level of interest in particular products or assets. Among other things, familiarity with pharma companies can be helpful in M&A situations where it is prudent for a biotech to conduct a market check.

Preserve Cash. Many biotechs are reassessing their current cash runway in light of the economic environment and regulatory turmoil. Discussions regarding cash position, rationalization of resources and restraints to preserve cash should be prioritized as a governance matter at the board level. Extending cash runway will give boards more time to evaluate and decide on the best strategic alternatives and can provide additional leverage in M&A discussions.

Plan for Creative Deal Structures. For some biotechs, there may be opportunity to monetize certain pipeline products or assets while keeping the remaining pipeline, core platform and management team intact. This can allow buyers to acquire desired assets while leaving the seller to continue developing its remaining pipeline. Biotechs can be proactive in assessing interest in their pipeline and moving certain products or assets into subsidiaries that can enable expedited out-licenses and dispositions. Biotechs with drugs that have achieved key FDA milestones can sell these drugs to buyers, while enabling shareholders and management to continue to realize the upside of other pipeline assets.

Moreover, biotechs with larger diverse pipelines may consider organizing numerous subsidiaries in a hub-and-spoke model where administrative, research and development, and other support services are centralized in a hub company serving various spoke companies housing specific products. With this structure, spoke companies and their assets can opportunistically be sold off to pharma companies, with the remaining structure staying intact to progress the balance of the pipeline. The hub-and-spoke model can also create efficiencies and facilitate drug discovery by, among other things, recycling capital and aligning management incentives based on the individual pace of products.

Combination Mergers. As 2025 progresses, we expect to see more consolidation among biotech companies, particularly those trading at negative cash value, as they seek to combine and rationalize pipelines and resources. Combination mergers can also be a viable financing alternative for companies facing financial constraints, in a “combine to survive” strategy. Objectively, there should be more combination mergers in biotech and many discussions stall because of social and governance issues implicated in combining two companies, and as alternatives in this economic environment continue to narrow, we expect more combination merger will get done.

Shareholder Activism. Shareholder activism has become part of the general corporate landscape, and activist investors are expected to continue campaigning for biotechs to cut costs, return cash to shareholders, liquidate and engage in strategic alternatives. While often these campaigns begin privately, many become highly public. Fundamental investors may welcome activists if they do not view the board as acting with urgency on good alternatives. There may be friction as biotechs undertake strategic alternatives that do not align with activists’ desire to return cash to shareholders. Additionally, in today’s environment, biotechs that announce a potential strategic transaction must anticipate and manage “deal activism.” Biotech boards and management teams should be prepared to respond to activist shareholders and consider whether to engage with major shareholders in advance of announcing a strategic transaction, in order to communicate rationale and gain support.

Biotechs Confronting Significant Setbacks and Exploring Strategic Alternatives

For public biotechs that suffer failures in clinical trials of lead programs, unsuccessful commercial launches or other significant setbacks, boards and management teams should evaluate ways for their shareholders to recoup some of their lost value, which often includes reviewing multiple strategic alternatives (including those described below) in parallel as comparators to each other. Importantly, these alternatives can take months to move from planning to closing, and maximization of net cash at closing is key. Demurring on strategic alternatives or rationalization actions while cash is depleting will detract from the attractiveness of any strategic alternative and reduce leverage in M&A discussions.

Reverse Mergers. A biotech reverse merger is a transaction in which a private biotech merges with a public biotech to gain access to the public markets, and the private biotech investors become the majority shareholders of the continuing public biotech. This can provide an opportunity for the legacy public shareholders to realize value from the private company’s strategy and assets. For private biotechs, reverse mergers remain an attractive alternative to traditional IPOs, providing valuation certainty and investor commitments up front, as opposed to the conclusion of an IPO registration and marketing process. Careful planning and guidance are key for successful reverse mergers, particularly as the SEC has expanded its interpretations of “shell company” and related rules, which has introduced new complexities and considerations for reverse mergers. Depending on circumstances, reverse mergers can also include a concurrent PIPE financing to fund the continuing public company, return cash to legacy public shareholders through a cash dividend, and provide the potential for legacy public shareholders to recoup further value from legacy assets or products following the closing through a contingent value right (CVR).

Financial Buyer Transactions. Biotechs that have suffered a significant setback may be interested in discontinuing operations and providing their shareholders with liquidity quickly. It may be possible to reach an agreement with a biotech-focused financial investor interested in acquiring the company for its cash and taking on the responsibility of winding down or otherwise assuming or disposing of the assets and liabilities. These transactions involve a cash tender offer at a discount to net cash value and can get cash in the hands of shareholders in as little as 45 days. Speed and cash certainty make this alternative attractive if there is a willing buyer. CVRs can also be used in these transactions for public shareholders to potentially recoup additional value from legacy assets or settlement of liabilities following the closing.

Dissolution and Liquidation. In certain situations, following review of available strategic alternatives, biotech boards may consider recommending that shareholders approve a dissolution and liquidation of the company, resulting in the distribution of available cash to shareholders. A dissolution requires several steps and approvals, which can be a lengthy process. While a portion of the company's net cash can be distributed to its shareholders roughly six to 12 months following the board's adoption of a plan of dissolution, a final cash distribution can be made only upon the conclusion of the dissolution process, which can last three years or more. Conducting a hypothetical liquidation analysis (the estimated proceeds the shareholders could get out of a disposal of the company's cash and assets, after discharging its liabilities) can assist boards in making informed decisions regarding the potential recovery for shareholders in a liquidation compared to other strategic alternatives. Although a liquidation may be viewed as a last resort or least preferable alternative, evaluating a hypothetical liquidation and being informed of the timing requirements and cash return amounts can be helpful in evaluating against other available strategic alternatives and explaining a board's rationale to shareholders.

Paul Hastings Life Sciences and M&A attorneys are here to help companies and investors assess how the current economic and regulatory environment can have a profound impact on the biotech industry, including on M&A activity. Please feel free to contact us.



If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings lawyer:

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