

MedCity News

M&A: The Last Refuge for Biotechs Seeking Funding

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Mar 4, 2016

These are tough times in the biotech and pharmaceutical industries: Funding is drying up, investors are fleeing the space, the IPO door is pretty firmly shut, valuations are dropping, activists are lurking and the headlines are anything but kind. But when the going gets tough, the tough consider strategic alternatives.

Stuart Falber and Belinda Juran, the heads of WilmerHale's life sciences practice, which ranked second in Lake Whillans' recent Life Sciences Law Firm Index, have been thinking a lot about those strategic alternatives lately. Here are some of their thoughts on the market difficulties driving M&A activity, the general environment for life sciences companies and key trends they see emerging.

There's been a lot of M&A activity in the space in recent years. Do you expect this to continue, or even accelerate?



Stuart Falber: They're going to increase. With the markets being shut, or slowing down, we're back to where we were a few years ago: Companies are going to be looking for alternatives, because they may not be able to get the funding; whereas in the past couple of years, they might have said, "we don't need to do that: We're going to go public, we're going to commercialize the product ourselves."

Belinda Juran: Particularly for private companies for whom the possibility of an IPO really was a potential exit for their investors in the last couple of years, if investors aren't willing to put in the money to make them commercial, and most of these companies aren't built to be independent commercial companies. I think they will look at M&A as the alternative exit.

Are there any other factors driving M&A in the space? Inversions, perhaps?

Falber: I think that's been tight already for the last year-plus, and I think it's just going to get tighter in terms of folks wanting to do that. And as the political season moves on, given the currently leaders, tighten would be the safe bet.

IPO activity has also been hot. What is the outlook for going public in 2016 and beyond?

Falber: I think there's been four IPOs in 2016, all life sciences, but only four. Each had significant insider participation in the offering. In terms of follow-on offerings, there were a host of them that took place the first week of January, and not a single one has occurred since then. The hope is that it will become less tight, but it's not going to return any time soon to last year or the year before. There's just nothing to suggest that.

Juran: There are already some hints there are some companies who are looking to do reverse mergers as their way of going public.



What trends are you seeing in the healthcare and biotech space?

Juran: I do see more companies focused on the microbiome and ways in which therapeutic drugs that are based on bacteria that are found in the human gut, are developed and commercialized. Last year, I worked on deal for Vedanta Biosciences on a microbiome-based product, one of the first deals moving a potential product forward in that space. That's a trend that is taking off.

At sort of the other end, biosimilars are moving along. For many clients, there's sort of a lot of steady-state work going on: That is, companies are kind of focusing on their operations. Those who might have otherwise been focused on doing IPOs and other things are continuing to move their business forward to get ready for the next potential inflection point.

Falber: It's not new, but it's probably continuing and increasing as a trend is the focus on precision medicine. We spend a lot of time on companion diagnostics and regulatory issues and the legal issues associated with those agreements.

How is the regulatory environment affecting the space?

Falber: Actually, folks have been pretty positive in terms of the communications they've been having with the FDA. My recent experience has been a good one.

So you don't see much of a practical fallout from matters Martin Shkreli or Bill Ackman?

Falber: Those are pricing issues rather than development issues. For sure, that's a continuing concern. During this political season, you hear it all the time. And ultimately, that's a concern that affects the IPO market. Oil and China and Martin Shkreli, it's that combo.

Is the increasing presence of activists in the space a concern of clients?

Falber: Particularly as the valuations have gone down over the last six months, that becomes a bigger concern for folks.

What are you telling them about the activist threat?

Falber: Boards and management of companies need work together to challenge their model and their business strategy. They need to be able to sit down with the activist and say, "Here's our plan and let's show you why it is well thought-out. Yes, the stock price is not a happiness for anybody, but we've got to look at the longer-term picture."