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Inside This Issue

Feature Article:

§363 Distressed Asset Sales - Stalking Horse Bidders Poised to Benefit in Down Economy

Trends to Act On:

The Buzz on M&A Activity

About Us

The McLean Group is a national, middle market investment bank serving businesses generating up to \$500 million in annual revenue. For more information, visit www.mcleanllc.com.

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Dennis Roberts' book, *Mergers & Acquisitions: An Insider's Guide to The Purchase and Sale of Middle Market Business Interests* is still available at Amazon.com.

Feature Article:

§363 Distressed Asset Sales – Stalking Horse Bidders Poised to Benefit in Down Market

By Brian Sullivan, Managing Director

The current credit crisis is likely to result in a significant increase in bankruptcy filings due to the severe constraints experienced by many middle market businesses seeking to obtain or access credit. It is anticipated that the unwillingness of many secured creditors to endure formal reorganization plans will force many debtors to sell their assets under US Bankruptcy Code §363. Although the provisions of §363 allow for speedy sales of assets, allowing sellers to expedite asset sales to generate cash flow while allowing buyers to acquire business assets free and clear of most liens and claims is not without risk.

A clear understanding of the unique peculiarities of selling or buying distressed assets and the benefits of intelligently negotiating the US Bankruptcy Code §363 process should offer unprecedented opportunities to well informed buyers, creditors, lenders and private equity funds.

The Stalking Horse Buyer

A clear understanding of the unique peculiarities of selling or buying distressed assets and the benefits of intelligently negotiating the US Bankruptcy Code §363 process should offer unprecedented opportunities to well informed buyers, creditors, lenders and private equity funds. Access to the debtor's financial information and an opportunity to develop strategic relationships with the key players in the bankruptcy process provides a decided advantage that is further amplified by the ability to set the minimum bid and control the auction process, subject to Bankruptcy Court approval.

The "stalking horse" typically charges a breakup fee of +/-3% to oversee and manage the process. The breakup fee is designed to compensate the "stalking horse" for its role in jump starting the sales process and, to some degree, forcing the other bidders to pay a portion of the hard costs incurred to facilitate the sale.



It is critical that the “stalking horse” buyer is both knowledgeable and prudent. Uninformed and inexperienced “stalking horse” buyers take on substantial financial and litigation risk if the debtor’s assets are not competitively priced or if the “stalking horse” buyer is perceived to have abused its role in the process. That being said, the coming months will no doubt bring extraordinary opportunities to acquire valuable assets at attractive prices.

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Trends To Act On:

The Buzz on M&A Activity

By Sam Huang, Senior Analyst

There was more talk of doing deals during the first quarter of 2009. With more attractive valuations for strategic buyers, a mid-March equities rally, and some less grisly economic statistics, executives at cash-rich companies appeared increasingly inclined to mull over opportunistic US M&A deals. At the start of the first quarter, public expressions of M&A interest came mainly from executives in the drug, biotech and health services industries, but as the quarter progressed, they were joined by executives from a range of other industries.

As US M&A numbers demonstrated throughout the first quarter of 2009, the economy will have to find firmer footing before many of the larger strategic buyers decide to come off the benches to do deals. First quarter 2009 deal activity continued its decline from the fourth quarter of 2008 to a total of 1,418 announcements, its lowest posting in the past nine quarters. Total first quarter 2009 M&A transaction spending, including offers, enjoyed a bit of a bump to \$154.3 billion, based in large part on the whopping \$105.2 billion impact of Pfizer’s proposed acquisition of Wyeth (for more than \$60 billion) and Merck’s proposed acquisition of Schering-Plough (for \$40-plus billion).

While first quarter 2009 data is hardly encouraging, it was not unexpected given the abundance of caution dominating the market during that time. And if anything, the Fed’s mid-April 2009 announcement that the economy’s contraction was slowing across some of the biggest US regions, and first quarter public comments – by executives at such companies as Watson Pharmaceuticals, Eli Lilly, IBM, BlackRock, 3M, Cisco Systems, Microsoft, Intel, Walgreen, and United Technologies – about potential M&A activity going forward offered hopeful signs heading into 2009’s second quarter and beyond. Whether the economy can find a floor and whether those strategic buyers and others can find sellers willing to reign in their price expectations remains to be seen, but clearly the M&A market could use the jolt in activity that could result.



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About The McLean Group

The McLean Group is a national, middle market investment bank providing mergers & acquisitions (M&A), capital formation, market intelligence, business valuation, litigation support and exit planning services. The McLean Group serves businesses generating up to \$500 million in annual revenues. Headquartered in Northern Virginia's technology, communications and government contracting corridor, the firm is among the largest independent middle market investment banks in the Washington, DC area. The McLean Group is a FINRA Registered Broker/Dealer and Member FINRA/SIPC.

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