# WITH EQUITY MARKETS RISING ALONGSIDE CEO CONFIDENCE, M&A IS BACK

By Steve Lipin, Senior Partner and Monika Driscoll, Director Brunswick, New York

**After several quiet years, the market for corporate control is starting to stir. The flurry of deals announced so far in 2011, including AT&T's agreement to acquire T-Mobile USA, ConAgra's proposed bid for Ralcorp, and eBay's acquisition of GSI Commerce, indicate that M&A has returned, and is perhaps headed back to the levels seen before the financial crisis.**

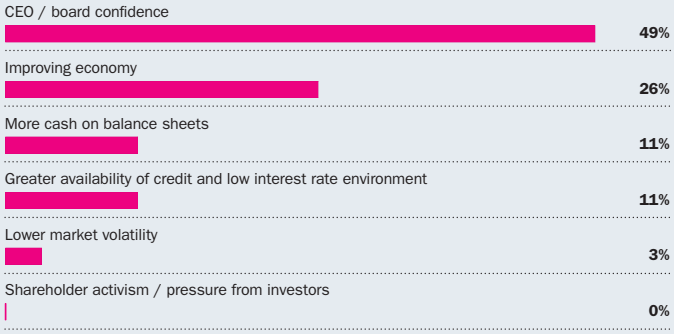
The comeback is affecting deal-making across the board: domestic, cross-border, emerging markets, strategic, private equity, friendly as well as hostile transactions. This was supported by a presentation from Antonio Weiss, Global Head of Investment Banking at Lazard, to the 2011 Tulane Corporate Law Institute this spring, in which he concluded that "factors are in place for a resurgence in M&A." He identified market drivers such as a more stable regulatory environment, unprecedented corporate cash reserves and "private equity firepower," and equity markets that have mostly rebounded from the depths of the financial crisis.

According to Brunswick's 4th Annual M&A Survey, released at the Tulane conference, the foremost reason dealmakers give for increased deal activity is rising board-level confidence, outweighing factors such as cash on the balance sheet or access to credit.

Despite turbulence around the world – Japan's natural disaster, turmoil in the Middle East and sovereign challenges in Europe – confidence in corporate boardrooms is up and there is a hunger to pursue deals which may have been put on the back burner a year or two before. Some 40 leading M&A practitioners participated in the survey and shared their views on current deal trends. The survey identified a number of big trends in M&A, in terms of their location, the type of companies involved, the nature of their financing and the biggest concerns for dealmakers. The following are some of the highlights.

## What is the single greatest factor that you think will drive the rebound in M&A activity for the rest of 2011?

This year, nearly half of those surveyed view the return of CEO and board confidence as the greatest driver supporting more deal activity, an increase from 36 per cent last year. A further 26 per cent pointed to an improving economy as the primary reason for the uptick in sentiment. These factors far outweighed others, such as the availability of cash on company balance sheets (11 per cent) or access to credit (11 per cent).




**The 4th Annual Brunswick Group M&A Survey polled some 40 leading participants in the M&A community, including bankers, lawyers and other advisers, to solicit their views of the current deal landscape, trends, opportunities and expected challenges. Results were released on the eve of the 23rd Tulane University Law School Corporate Law Institute, an annual M&A conference.**

**Greater internationalization.** One of the most visible trends in M&A is the increase both in deals taking place outside the US and deals in which US businesses are the target of foreign buyers. Data from Dealogic based on the location of the target company show the US share of global M&A was down to 32 per cent in 2010, from 39 per cent in 2005, with China's and Latin America's shares rising. One of the largest deals in 2010 was an all-Mexican affair: América Móvil's $21bn acquisition of Telmex. The trend has continued in 2011, illustrated by deals such as Vodafone's sale of its stake in French telecoms company SFR to Vivendi for $11bn, as well as Canadian miner Barrick Gold's $7.8bn bid for Equinox Minerals. Brunswick's survey respondents expect the trend to continue. Whereas 79 per cent saw domestic deals driving US M&A in 2009, only 59 per cent see it as the main driver in 2011. Asian companies are considered by more than half of those polled to be the most likely acquirers, followed by European companies, at 36 per cent.

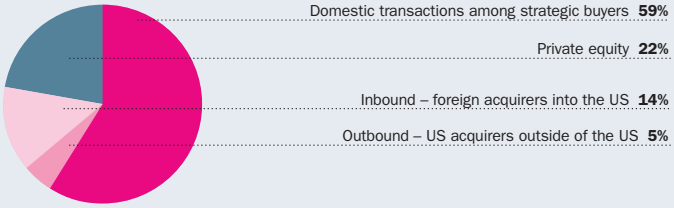
**Concerns of acquirers.** Respondents ranked regulatory or political considerations as the issues of most concern for foreign acquirers in the US. Interestingly, respondents cited cultural differences next. Domestic resistance to foreign bids in recent years, especially to those made by state-controlled companies, has made potential acquirers wary (see *The art of the cross-border deal* on page 21).

**Private equity is back.** Private equity deals are also back in style, as credit markets have bounced back from the 2008-2009 financial crisis. Notable examples come from the consumer sector, with buyouts of J. Crew, Del Monte, Burger King and Gymboree over the past year. More recently, Blackstone Group agreed to acquire the US assets of an Australian property group for $9.4bn, Carlyle Group has announced a number of small transactions and Apax Partners announced it is acquiring both Epicor Software Corporation and Activant Solutions. However, deal values mostly remain well below the $20bn-plus mega-transaction mark seen back in 2007. This could be something to watch for in the second half of 2011 if credit markets continue to be supportive.

**Going hostile.** In another bullish signal, unsolicited bids are trendy again, judging by deals such as the tussle between Deutsche Börse and Nasdaq/ICE for NYSE Euronext. Companies are seemingly unfazed by the recent Delaware ruling that upheld Airgas's poison pill defense against Air Products and Chemicals. Indeed, defense

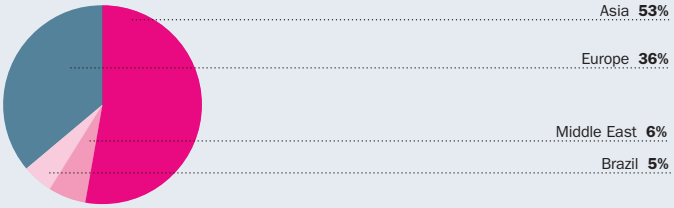
## What type of deals do you expect to drive the M&A market in 2011?

While 59 per cent of those surveyed believe US domestic M&A volume will drive business this year, this percentage has steadily decreased over the past three years (from 79 per cent in 2009). The view that foreign investment in the US will lead deal activity has remained consistent at 14 per cent since 2009. Private equity is expected to be much more active this year, with 22 per cent of respondents citing it as a deal-driving factor, compared to just 8 per cent in 2010 and 5 per cent in 2009.




## Where do you anticipate overseas acquirers for US companies coming from in 2011?

Asia is considered by more than half (53 per cent) to be the region most likely to make acquisitions in the US, followed by Europe (36 per cent).

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mechanisms have declined over the years, with devices such as poison pills considered to be not in the best interests of shareholders. For companies contemplating hostile deals, survey respondents overwhelmingly identified overpaying as the most significant concern.

**COMMUNICATING THE DEAL**

Many of the issues raised by survey respondents can be addressed with the right external and internal communications strategies. For example, clear and consistent messages on the benefits of a transaction can go a long way towards making the right first impression with regulators. Cultural differences cannot be solved overnight, but obstacles can be eliminated more quickly if employees feel that they are a part of a newly combined company as early as possible after the merger agreement is signed.

In fact, much of the success of a transaction hinges on the integration work once the transaction closes. Steven M. Davidoff, writing as "The Deal Professor" in a *New York Times DealBook* column, writes, "Let's face it, buying companies is fun…But then the real work begins; merging different business cultures and integrating company operations. Experts increasingly believe that the outcome of a merger depends in large part on the success of these efforts at integration."

Done right, transactions can enhance or even transform a company's strategic direction and deliver increased shareholder returns. Pitfalls remain however, including overpaying, bad timing, regulatory roadblocks, or simply following the wrong strategy. The best advisers will help to navigate these issues or, if appropriate, prevent a transaction from happening at all.

Transactions thrust a company into the spotlight and are an opportunity for companies to reshape their perception amongst critical audiences. In the current climate, it is vital that companies contemplating a strategic transaction consider the corporate reputation implications before embarking on a new strategic path.

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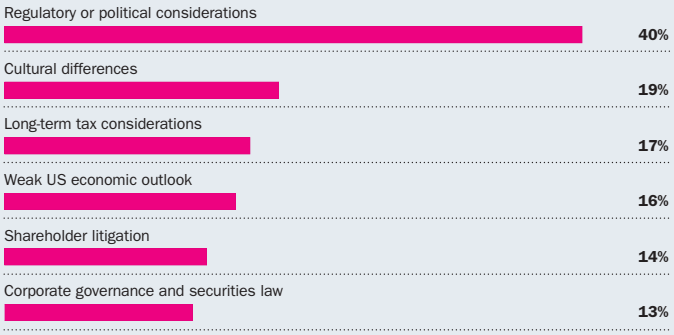
## How would you rank the issues of most concern for overseas acquirers coming to the US?

Forty per cent of respondents ranked regulatory or political environment as the primary concern for foreign acquirers contemplating a US transaction, with 19 per cent citing that cultural differences were a consideration too.




Percentages include first and second rankings; total adds up to more than 100%.

## How would you rank the issues of most concern for companies contemplating hostile deals?

When asked about concerns companies face in considering an unsolicited bid, the majority of advisers continue to rank overpaying (57 per cent) and a staggered board structure* (38 per cent) as the most prominent issues.


*A staggered board of directors (also known as a classified board) is a board that is made up of different classes of directors with staggered election times. When a hostile bidder tries to acquire a company with a staggered board, it is forced to wait at least one year for the next annual meeting of shareholders before it can gain control. Consequently, staggered boards reduce the risk of a takeover since it takes longer to influence and gain control of the board.

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