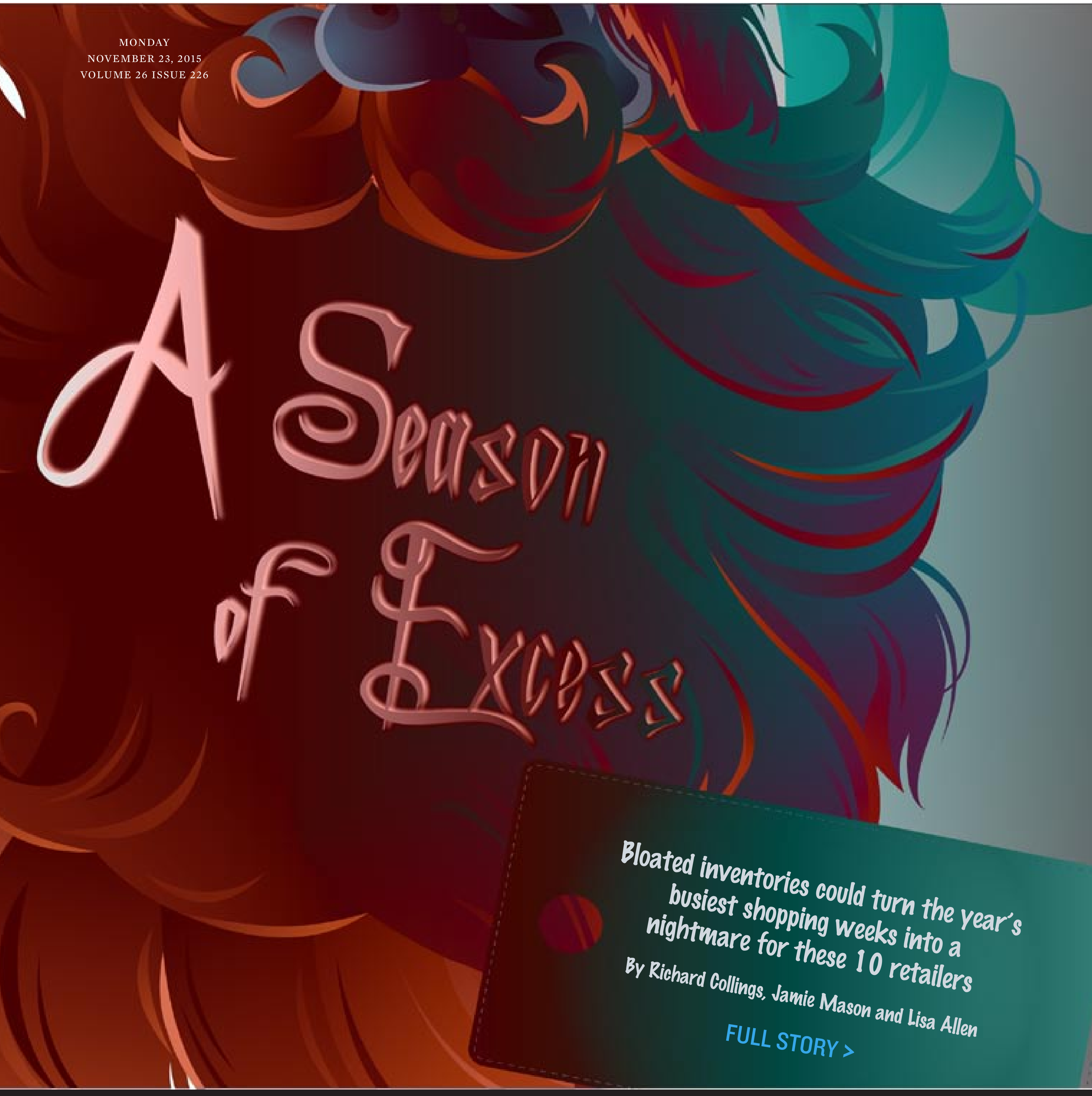
The Daily Deal



# INDEX

## TOP STORY

Unusually warm fall weather, online competition and a consumer still strapped for disposable income could make the busiest weeks of the year nightmarish for retailers with bloated inventories, according to a research firm that has identified the 10 most likely to default *page 4*

## ACTIVISM

A growing number of companies are complaining that lax SEC disclosure rules allow activists to conduct stealth attacks on management by posing as passive investors *page 9*

Large-cap Target of the Week: Danaher *page 10*

Update: Fossil fastens "wearable technology" maker Misfit to itself, and Urban Outfitters reaches for pizza, as the two list members look to small deals to jump-start stalled growth *page 11*

The Watch List: A roster of companies that might soon rank among the top targets *pages 12-13*

## THE CROSSHAIRS

The Deal's weekly rankings of the top 10 most likely activist rargers *pages 14-15*

## PRIVATE EQUITY

Can an investment firm that counts a scallop harvester, a bowhunting and archery accessories provider, a maker of running performance products and a supplier of behavioral services to children among its portfolio companies be said to have a plan? Sure, if the firm's name is Bregal Partners *page 16*

## PRIVATE BRIEFING

E-geneology company Ancestry.com's own history may soon need rewriting, as it has produced such a satisfactory return that its parent, Permira, may find it's about time to exit *page 18*

Exit ramp: Poseidon Containers *page 19*

## CAPITAL CALLS

When Parthenon Capital-backed consumer lender LoanDepot pulled its initial public offering due to market conditions on Nov. 12, it became the 24th PE-backed company to postpone or withdraw an IPO in 2015, the highest total in three years *page 20*

## M&A

Auction news from WorkWell Medical, BNC Bancorp, Viawest and Cypress Energy *page 21*

## RULES OF THE ROAD

EU Competition Commissioner Margrethe Vestager is going after corporate tax dodgers with a vengeance, starting with Starbucks and Fiat Finance and Trade, for sweetheart arrangements with national tax authorities deemed to be illegal government subsidies *page 22*

## SAFE HARBOR

The Chinese government first began encouraging the populace to drink wine made from grapes instead of rice two decades ago, and now the newly wealthy are buying up Bordeaux chateaus at an intoxicating pace *page 24*

## MOVERS & SHAKERS

Personnel changes at Sierra Ventures, Advent International, Simpson Thacher, Gibson Dunn and other firms *page 25*

## FEEDBACK

Tell us what's on your mind *page 26*

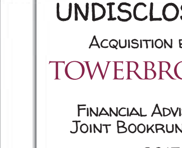
## COMPANY INDEX

*page 27*

## THEDEAL.COM

Links to current content click here

# The capital of tomorrow

| | | | |
|---|---|---|---|
| | | | |
| $5.3 BILLION<br>Take-private by<br>Permira, CPP Investment Board<br>Financial Advisor<br>Joint Bookrunner<br>August 2015 | $650 MILLION<br>Perpetual Convertible Preferred Stock<br>Joint Bookrunner<br>August 2015 | $950 MILLION<br>Senior Secured Credit Facilities<br>Senior Unsecured Notes<br>Joint Bookrunner<br>Joint Lead Arranger<br>July 2015 | $173 MILLION<br>Initial Public Offering<br>Joint Bookrunner<br>July 2015 |
| | | | |
| $341 MILLION<br>Merger with Golden Gaming<br>Financial Advisor<br>July 2015 | UNDISCLOSED<br>Sale by<br>Wasserstein & Co.<br>Financial Advisor<br>July 2015 | $4.1 BILLION<br>Leveraged buyout by<br>LG&P<br>Financial Advisor<br>Joint Bookrunner<br>June 2015 | $1.1 BILLION<br>Senior Secured First Lien Term Loan Financing for<br>The Blackstone Group<br>Lead Left Bookrunner<br>Lead Arranger<br>May 2015 |
| |  | | PETSMART |
| $1.4 BILLION<br>Acquisition by<br>Centerbridge<br>Financial Advisor<br>May 2015 | UNDISCLOSED<br>Acquisition by<br>TOWERBROOK<br>Financial Advisor<br>Joint Bookrunner<br>May 2015 | $15.6 BILLION<br>Project Financing of Freeport LNG's Three Liquefaction Trains<br>Financial Advisor<br>April 2015 | $5.1 BILLION<br>Financing of acquisition by consortium led by BC Partners<br>Joint Bookrunner<br>Joint Lead Arranger<br>March 2015 |

Advisory | Capital Markets | Principal Investing

**macquarie.com/whiteboard**

**Learn more**

# TOP STORY

## A season of excess

**BY RICHARD COLLINGS. JAMIE MASON AND LISA ALLEN**

The holiday shopping season for a large swath of retailers is, unsurprisingly, the most important time of the year when they go into the black as a result of generating most of their cash.

For the most troubled of retailers, how they perform during the Yuletide season can even determine whether or not they can avoid bankruptcy, and how much time they have left to effect a turnaround.

This season, apparel retailers in particular may find themselves under more pressure. That's because shoppers have delayed their seasonal purchases for a myriad of reasons such as unusually warm weather.

While retailers love to blame the weather for why business is soft, it is applicable in some markets, since it has been so warm this fall and no one was buying, said Peter Schaeffer, a principal at **GlassRatner Advisory & Capital Group LLC**. Consumers haven't been shopping for warm clothes this fall, so retailers are "stuffed with goods," he said. Fewer purchases at the start of the season means that retailers sell less goods at full price and end up with excess inventory that has to be heavily discounted.

"Retailers love when it's cold in October. You can make money when it's cold in October. After that you have to mark things down," Schaeffer said, noting that regular priced items usually represent 20% of a retailer's business. That in turn leads to lower margins and less profits.

"I think its going to be a tough Christmas. Consumer sentiment toward shopping isn't robust and the internet has a negative effect on sales," since you don't get incentive shopping and it is a replacement for the shopping done in stores, not in addition, Schaeffer explained. Online shopping also reduces impulse buys, which many retailers have traditionally leaned on to boost sales.

Expect to see more restructuring activity after this holiday season than what occurred in a similar period a year prior, said Greg Segall, chairman and CEO of Philadelphia-based private equity investment firm **Versa Capital Management LLC**.

Segall knows his way around distressed retailers, as Versa Capital's portfolio includes retail banners such as Wet Seal and Avenue, both of which it bought out of bankruptcy protection. Segall said every year there are bankruptcy filings after the holidays, as a lack of sales over time takes its toll, and yet retailers simultaneously are in their best cash position because they have liquidated most of their inventory and haven't paid their vendors yet.

Segall is not alone in his assessment.

"I think that the first half of next year will be very active, as we are seeing indications that business is soft in the numbers that retailers have been reporting," said Schaeffer. He said there are several stores that are on the edge of filing, and if they have a bad Christmas, they are likely doomed.

Raoul Nowitz, managing director at **Solic Capital Advisors LLC**, also believes we'll see more retail bankruptcy filings in the coming months, likely after the holidays. "I don't see it slowing down at all over the next 18 months," he said, adding, "it's been fairly steady, and it might hold to at least last year's clip, potentially a bit more."

Mall-based stores continue to face the same challenges this year that they have over the past few years, particularly apparel banners.

"Mall-based retailers are absolutely affected by the quality of the malls that they are in," Segal said. "It is almost impossible for a retailer to overcome a dead or dying mall and the impact this has on its own revenue, he noted.

Similar to the plethora of malls, the U.S. generally is over-retailed, with more square footage of retail space per capita than any other country. "Many modern retailers are struggling with very large stores, or too many stores and not enough purchasing taking place in those stores. The reality here is that, as a result of the internet competition, there is a clear need to reduce fixed costs," Nowitz said.

"The cost of physical facilities is one of the largest costs in retail. As a consequence it's very hard for the mall-based retailers to compete," he said.

Because of the cost, Nowitz explained, retailers need to shed leases, and while some landlords have been willing to adjust leases, it is difficult to do outside of court. "I would expect to see a lot more of that activity in Chapter 11," he concluded.

Instead of malls, consumers are gravitating to shopping centers that feature their favorite discounters such as **TJX Cos.**'s (TJX) T.J. Maxx and away from the department stores such as **Macy's Inc.** (M), for example, which as an anchor to traditional malls were historically a big draw.

While Macy's, **Nordstrom Inc.** (JWN) and **Wal-Mart Stores Inc.** (WMT) aren't examples of distressed retailers, they are emblematic of the difficult environment that is going on right now, Segall explained, adding that there have been changes in technology, consumer spending habits and economic insecurity.

It's not just that malls have fallen out of favor, or even that more people are shopping online, but that consumers are also gravitating away from clothes to spend their hard-earned dollars on **Apple Inc.**'s (AAPL) latest iPhone or on food, such as grabbing a burger at the upstart chain **Shake Shack Inc.** (SHAK).

People are also spending more on their pets, which in recent years have taken on the role of close family members, and on home improvement with the likes of **Home Depot Inc.** (HD) reporting a same store sales hike of 5.1% for the third quarter ended Nov. 1.

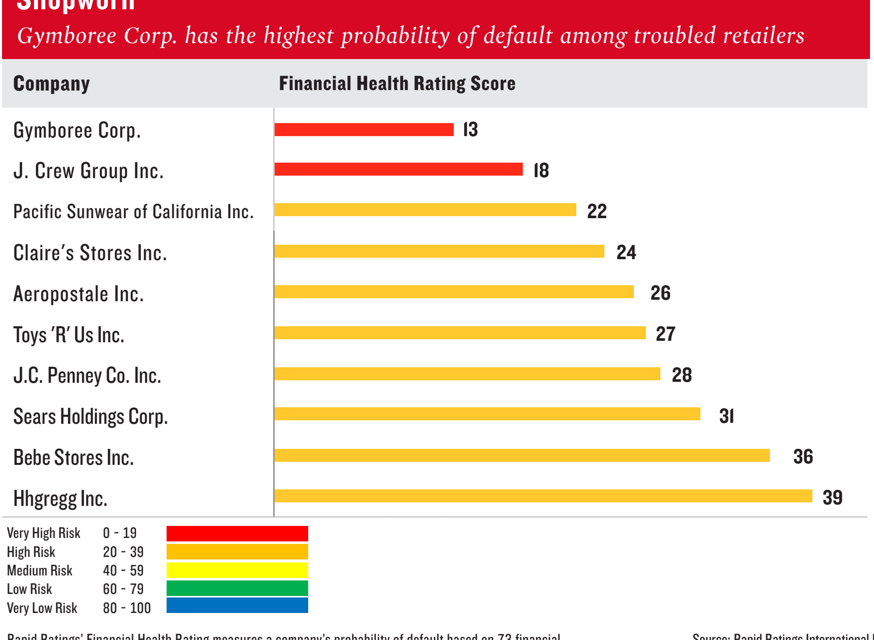
While shoppers spend more on the above categories, that compounds the competitiveness of areas such as apparel.

According to industry sources and credit ratings agencies, a top 10 list of some of the more troubled retailers heading into Black Friday this year include **Gymboree Corp.**, **J. Crew Group Inc.**, **Pacific Sunwear of California Inc.** (PSUN), **Claire's Stores Inc.**, **Aeropostale Inc.** (ARO), **Toys "R" Us Inc.**, **J.C. Penney Co.** (JCP), **Sears Holdings Corp.** (SHLD), **Hhgregg Inc.** (HGG) and **Bebe Stores Inc.** (BEBE).

CONTINUED >

# TOP STORY

< PREVIOUS




According to **Rapid Ratings International**, a provider of quantitative analytics related to companies' financial health, all the above companies have a financial health rating of below 40, which means that they all face at least a high risk probability for default over the next 12 months.

James Gellert, chairman and CEO of Rapid Ratings, said his firm's system analyzes more than 70 financial ratios, focusing on the interrelationships of revenue, liquidity, cost structure efficiency and profitability among other metrics to arrive at a score, which it calls a Financial Health Rating.

Factors such as the introduction of a well-received product, a trend a company has introduced or positive same stores sales growth, if consistent, are not directly included in the algorithm. But the foundations of these, and how well positioned a company is to capitalize on them, are reflected in a company's myriad ratios and performance categories when analyzed against millions of company years in Rapid Ratings' data.

One of the more troubled companies on the list is San Francisco-based children's clothing chain Gymboree.

Industry sources say the children's segment is the most competitive it has ever been as discount department stores such as **Target Corp.** (TGT) and e-commerce player **Zulily** have aggressively made inroads into the space. The amount of competition has also hurt close competitor **Children's Place Inc.** (PLCE), whose stock is trading near its 52-week-low.

Gymboree's balance sheet shows why it is in trouble, with only about $20 million in cash, approximately $1.21 billion in debt and $90 million in adjusted Ebitda generated (Ebitda is usually adjusted for items considered to be noncash or non-recurring) over the last 12 months, all as of Aug. 1, according to data provided by Bloomberg. That's a whopping multiple of debt to Ebitda of about 13.2 times.

Because of its precarious financial position, the retailer's 9.125% senior unsecured notes of nearly $350 million due in 2018 are trading at very distressed levels of 32.15 cents on the dollar as of Nov. 13, showing a lack of confidence in the company's future by bond traders. That's bad news for Gymboree's owner, private equity firm **Bain Capital LLC**, which led a leveraged buyout of the retailer five years ago. Gymboree did not respond to a request for comment.

Another struggling apparel retailer, J. Crew has taken large asset impairment charges over the last year as poor results have made the flagship brand less valuable.

Industry sources say the brand is valuable enough that its PE backers: **Leonard Green & Partners LP** and **TPG** may either inject new capital from their own pockets, swap debt for equity or bring in new investors. J.Crew declined to comment.

Regardless, some action will likely be required, as the company has only about $40 million in cash and approximately $1.55 billion in debt, while generating "adjusted" Ebitda of about $190 million as of Aug. 1, according to data provided by Bloomberg. That's an unhealthy debt to Ebitda multiple of close to 7.9 times.

In the meantime, pay-in-kind or PIK toggle notes, issued by J.Crew's parent holding company, Chinos Intermediate Holdings A Inc., are also trading at a distressed level of 33.5 cents on the dollar as of Nov. 13.

The $500 million of 7.75% senior unsecured PIK toggle notes due 2019 were issued to back a dividend payment to J.Crew's PE owners.

Chinos will make its upcoming May 2 interest payment by again paying in kind instead of with cash, which will increase the size of the PIK toggle notes by more than $20 million, according to an 8-K filed with the Securities and Exchange Commission on Oct. 30, another poor harbinger.

As mall traffic struggles, so do retail chains such as Hoffman Estates, Ill.-based accessories retailer Claire's, which in the past has relied on impulse purchases from the teen demographic. As a result, the accessories chain has been hit hard due to declining mall traffic and a lack of teens browsing their stores, limiting impulse buys. Claire's did not respond to a request for comment.

The retailer, backed by PE firm **Apollo Global Management LLC**, has an unwieldy balance sheet, consisting of approximately $80 million in cash and about $2.5 billion in debt, but only close to $220 million in Ebitda over the last 12 months as of Aug. 1, according to data provided by Bloomberg. That's a debt to Ebitda multiple of 11 times. Claire's $320 million in 7.75% senior unsecured notes due 2020 are also trading at a very distressed level of 31.5 cents on the dollar as of Sept. 24.

Sears, despite its continuous presence on death watch lists over the years, has proven the most difficult to fell as it conducts what industry observers describe as a slow liquidation. The battered department store chain sold most of its remaining assets consisting

CONTINUED >

# TOP STORY

< PREVIOUS

of real estate to a REIT, **Seritage Growth Properties** (SRG) earlier this year, raising $2.7 billion. That cash is buying the Hoffman Estates-based company extra time, but likely only delaying the inevitable. Tellingly, about 53.5% of Sears' floating shares are currently shorted.

As of Aug. 1, Sears had nearly $1.82 billion in cash, but about $3.14 billion in debt, and it has negative Ebitda of close to $740 million over the last 12 months, according to data provided by Bloomberg. It also has pension obligations of almost $2.26 billion.

A Sears spokesman countered the poor assessment, citing credit ratings agency **Moody's Investors Service Inc.** revision in August of the department store operator's outlook to stable, noting the report specifically said "following the conclusion of the REIT transactions and extension of Sears asset-based revolver to 2020 the company has meaningfully improved its liquidity profile."

"Sears Holdings is highly focused on restoring profitability to the company and through the second quarter of this year we delivered four consecutive quarters of year-over-year Ebitda improvement," the spokesman said, as it continues to transform itself to a more "member-centric integrated retailer." The Sears spokesman concluded: "We are confident that we have the financial flexibility to continue to fund our transformation while meeting all of our financial obligations. In the second quarter, we substantially completed the capital structure adjustments we laid out in August 2014, which substantially enhanced our liquidity." He added that Sears also reduced its net debt and unfunded pension obligations by the end of the second quarter by about $1.6 billion.

Like so many of its competitors in the surf space, Anaheim, Calif.-based Pacific Sunwear is also in danger of a wipe-out. Its stock is trading at a fraction of its 52-week-high of over $3 per share, hovering around 30 cents per share just during the past week. As of Aug. 1, the clothing retailer had more than $10 million in cash, about $100 million in debt, but only approximately $4 million in adjusted Ebitda. More importantly, Pacific Sunwear's same store sales are also swiftly declining, down 6% for the quarter ended Aug. 1.

Also hurting sales is increased competition due to attempts at revivals of brands such as Hang Ten and online retailers such as **Swell.com** and the introduction by sports apparel behemoths **Nike Inc.** (NKE) and **Under Armour Inc.** (UA) of their own surf offerings. The company did not respond to a request for comment.

Pacific Sunwear is not the only troubled retailer attempting to appeal to a more youthful demographic. Aeropostale, like Pacific Sunwear, has also seen its stock plummet from its 52-week-high of $4.39 per share, to more recently trade between 60 cents to 70 cents per share. Aeropostale declined to comment.

Holly Etlin, a managing director at turnaround advisory firm **AlixPartners LLP**, notes that the market for teen-aged and younger clothing that Aeropostale caters to is particularly challenged. "There's been a shift in consumer behavior in their core customer away from apparel and toward electronics and experiences," said Etlin. There are very few retailers who are doing well in that space," she said.

Despite an overhaul of the logo and some of the chain's stores, Aeropostale has been unable to effect the turnaround that its competitor **American Eagle Outfitters Inc.** (AEO) has achieved in recent months, although its competition has dwindled as a result of a number of retailers in the category already filing for bankruptcy. As a result, 21.4% of the New York-based teen retailer's floating shares are being shorted.

Aeropostale's balance sheet, which consists of nearly $90 million in cash, as of Aug. 1, but about $140 million in debt, won't be of much help. What is particularly alarming is negative "adjusted" Ebitda of close to $70 million over the last 12 months, according to data provided by Bloomberg.

Other endangered retailers include electronics retailer hhgregg, based in Indianapolis. Although the company has no debt and roughly $30 million in cash as of Sept. 30, according to data provided by Bloomberg, it has negative Ebitda of nearly $4 million.

The company's stock, furthermore, is trading at less than half its 52-week-high of $8.22 per share, sitting at just under $4 per share. And close to 27.3% of the company's floating stock is being sold short.

In response, hhgregg's CEO Dennis May said, "We remain on track to meet or exceed our three key financial objectives for the year, which are focused on driving improvements for comparable store sales, cost savings and positive Ebitda for the fiscal year."

He also said in the e-mailed response that the company is "pleased with the continued traction in our net sales during the second quarter driven by delivering on our fiscal 2016 revenue generation initiatives."

"In addition, we have continued our cost savings efforts and remain on track to meet our plan to save $50 million in fiscal 2016. The steady progress we have made with our transformation plan has positioned our company well as we embark on the holiday season," he concluded.

Wayne, N.J.-based Toys "R" Us, backed by PE firms **KKR & Co. LP** (KKR) and Bain Capital as well as **Vornado Realty Trust**, has had its share of troubles and is preparing to abandon some of its flagship stores, including its Times Square location, just as the holiday season approaches.

The competition is as strong as ever, as discounters such as Wal-Mart and e-commerce juggernaut **Amazon.com Inc.** continue to aggressively target the toy category.

Toys "R" Us must contend with the onslaught with only about $420 million in cash, compared with about $5.28 billion in debt and adjusted Ebitda of nearly $680 million over the last 12 months, all as of Aug. 1, according to data provided by Bloomberg. That makes its debt to Ebitda multiple about 7.1 times, below investment grade.

Bond traders don't seem overly overjoyed at the company's prospects, as its $450 million in 10.375% senior unsecured notes due 2017 are trading at 80 cents on the dollar, indicating distress.

A Toys "R" Us spokeswoman said the company disagreed with the assessment, noting it has hired Dave Brandon, an experienced executive, as its new CEO in July.

The spokeswoman said the decision to close the FAO Schwarz and Toys "R" Us stores was because of continuing rent escalations in midtown Manhattan.

CONTINUED >

# TOP STORY

< PREVIOUS

"These closures provide the opportunity to realize meaningful savings, as the company has incurred annual 4-wall Ebitda losses of approximately $22 million between the two stores," she wrote in an e-mail.

She added that the company's trailing 12-month adjusted Ebitda was $724 million as of the end of the second quarter, excluding the cost savings that will be generated by closing the two stores. She added that Toys "R" Us through the second quarter had liquidity of about $1 billion, noting, "And, while the company had $5.3 billion in debt, over $500 million is related to its revolving credit facilities which are used to support seasonal working capital needs."

"Additionally, over $2.1 billion of debt is at non-recourse property companies. Further to this, we have disclosed that our (trailing twelve month) net leverage has improved by (two times) to 6.7" times as of the end of the second quarter."

The spokeswoman concluded by saying, "The company has no significant debt maturities in 2016 and has a successful track record of refinancing its debt. With regards to bonds, ongoing market volatility has impacted debt prices across the broad universe of high-yield issuers."

Meanwhile, Brisbane, Calif.-based Bebe, a mall-based women's clothing chain associated with the Millenium's first decade and the Kardashians, is also troubled despite no debt, as same store sales for its first quarter ended Oct. 3 declined 4.1%. Bebe needed better news, considering that it has only $50 million cash, roughly, and negative adjusted Ebitda nearing $10 million over the last 12 months, according to data provided by Bloomberg.

Investors are not entirely confident in what some industry observers characterize as a third attempt at a turnaround, with 22% of the company's floating stock shorted. Bebe did not respond to a request for comment.

Last on this list, and perhaps the least endangered, is Plano, Texas-based J.C. Penney. Granted, the department store retailer is doing better relative to its terrible performance in recent years, damage that was largely inflicted on the watch of former CEO Ron Johnson.

But the enormous amount of debt the company took on to fund its turnaround puts it in a precarious position.

As of Oct. 31, J.C. Penney had almost $640 million in cash, and even generated adjusted Ebitda of about $620 million over the last 12 months, but carried nearly $5.28 billion in debt, according to data provided by Bloomberg. That's a debt to Ebitda multiple of almost 7.5 times.

While the company's performance is improving, it remains vulnerable to both a recession, or on the other hand, to a significant rise in interest rates.

The retailer's $400 million in 5.65% senior unsecured notes due 2020 indicate slight distress as they trade at 86.75 cents on the dollar. It should be noted that bond traders have more confidence in the $220 million in 7.95% senior unsecured notes due 2017, as they trade at 102 cents on the dollar. Yet investors are not so keen on the stock, as about 31.8% of the company's floating shares are shorted. J.C. Penney did not respond to a request for comment.

"To keep its momentum, JCP's going to need to show a great holiday season. This market is finicky and JCP's recent stronger stock performance can turn on a dime if they don't show promising holiday sales," said Gellert. A strong holiday season would help J.C. Penney go into 2016 with a reasonably strong valuation, which would help if it needed more capital, Gellert added.

Schaeffer said J.C. Penney is likely to be viable for the time being, but has the potential to file for bankruptcy, as it has not conquered all of its problems, namely, that it is positioned in the middle, between luxury and discount, similarly to Macy's.

Retail, despite a stable economy in recent years, has seen a fairly steady flow of bankruptcy filings, so seeing any of the above banners succumb, particularly Gymboree or Claire's, would not be surprising.

Jay Indyke, a partner at **Cooley LLP**'s and chairman of its corporate restructuring and bankruptcy practice, said that which companies end up filing for bankruptcy may depend on how aggressive its lenders are and what kind of mistakes the company makes. Indyke said midsized retailers are struggling the most.

He cited several bankruptcy filings this year among middle market retailers, including **Cache Inc.**, which filed for Chapter 11 on Feb. 4, and **C. Wonder LLC**, which filed on Jan. 22. **USA Discounters Ltd.** also filed for bankruptcy protection on Aug. 24.

"There is a great effort to work things out, outside of court, but it depends on what the ownership and lenders are looking to get out of the company and what their tolerance is. There are some companies where the owners aren't willing to put in any new money and the lenders aren't willing to extend their debt," he said.

"I am not sure that I am seeing something right now that will change what has been happening," Indyke said, adding that the consumer is buying and there is greater employment so people have more disposable income than they did a few years ago, but not so much as to spend it both via e-commerce and in brick-and-mortar stores.

The year has already seen several retailers go belly up. Los Angeles-based retailer **American Apparel Inc.** and private equity-backed **City Sports Inc.** filed for Chapter 11 on Oct. 5, only a few weeks after surfwear retailer **Quiksilver Inc.** also filed.

**RadioShack Corp.** filed for Chapter 11 on Feb. 5 and sold a large portion of its assets to an affiliate of hedge fund **Standard General LP**. Wet Seal and **Frederick's of Hollywood Inc.** also went through bankruptcy, and Body Central Corp. liquidated through an assignment for the benefit of creditors on Jan. 9.

There has been bankruptcy and restructuring activity among supermarkets, including **Fresh & Easy LLC**, **Haggen Holdings LLC** and G**reat Atlantic & Pacific Tea Co.**

For retailers who do file for bankruptcy, beware. AlixPartners' Etlin believes one of the most significant trends in retail restructuring is the high rate of liquidation in bankruptcy. She attributes that tendency partly to changes in 2005 to the U.S. Bankruptcy code that sped up the restructuring timeline in a way that favors landlords over their tenants. In October, AlixPartners published a survey of resolved bankruptcies from the beginning of 2006 to June 30 among companies with more than $50 million in liabilities, and discovered that 55% of those filings ended in liquidation. In other industries, as few as one in twenty bankrupt companies may liquidate, the report noted. ■

# THE DEAL ECONOMY EVENT

## Predictions & Perspectives for 2016

WATCH THE LIVE VIDEO STREAM

**December 3, 2015**

Presented by



### The Deal Economy Event is Fast Approaching!

Don't wait to reserve your space for our annual forecasting conference. Streaming live on December 3rd watch the deliberations of the most influential investors and senior dealmakers as they discuss the outlook for dealmaking in 2016.

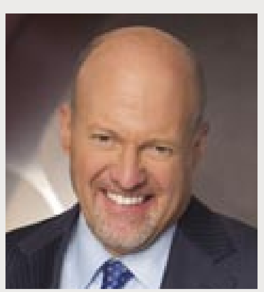
- Chief Justice Leo E. Strine, Jr., **Delaware Supreme Court**
- Bill McNichols, Senior Vice President Corporate Development & Business Alliances, **Starbucks Coffee Company**
- Philip A. Canfield, Managing Director, **GTCR**

**REGISTER HERE**

This Year's Guest Speakers

**Jorge Espinel**
Spotify

**Todd B. Sisitsky**
TPG Capital



**James J. Cramer**
CNBC; TheStreet, Inc.

To learn how your organization can support and participate in this exclusive gathering, please contact **Emily Newman** at **212-321-5565** or by email at **enewman@thedeal.com**.

Underwriters

William Blair

McKinsey&Company

W. P. CAREY

OFFICIAL BROADCAST PARTNER

THE DEAL IS A BUSINESS UNIT OF

# ACTIVISM

## Disclosure tactics enable activists' stealth attacks

*Corporate attorneys have long complained that many insurgents have posed as passive investors*

**BY RONALD OROL IN WASHINGTON**

In February, **H Partners Management LLC** issued a letter to **Tempur Sealy International Inc.** (TPX) raising concerns about "mismanagement" and "value destruction" at the mattress maker.

In the letter, H Partners' Usman Nabi noted that he met with Tempur Sealy's then-board chairman in 2013 to express his concerns and to ask for a board seat.

The letter was attached to a Schedule 13D filing, a required public securities report for funds owning 5% or more of a company and whose managers have some sort of activist intentions.

In it, funds are required to provide a number of details—most importantly, they must fill out a section, titled "Item 4. Purpose of Transaction," with details about why they bought their shares and what sorts of communication they intend to have with the company and others.

However, prior to filing a 13D report on Feb. 10, H Partners had been submitting disclosures on a much less detailed so-called passive Schedule 13G filing that can be used as an alternative for passive investors with more than 5% stakes. Unlike the 13D, it doesn't require the investor to explain why they own the stake.

But H Partners' revelation this year that it had been seeking a board seat at Tempur Sealy in 2013—long before it filed a 13D—has agitated some corporate defense attorneys. They acknowledge that there was nothing illegal about the fund's filing approach. Nevertheless, those lawyers contend that the fund was engaging in the kind of insurgent-type activities that should require earlier reporting in a more detailed 13D filing.

Beyond H Partners, corporate attorneys for years have complained that activist funds and other disgruntled managers have made passive 13G filings when they should be reporting under the 13D regime. The intent, they said, of reporting via 13G is to conduct a stealth attack by providing the least amount of information possible about plans for a targeted company—until the activist is ready to pounce.

The 13D filings impose many more demands on the activist. In addition to providing an explanation about their intentions, 13D filers must update their public disclosures informing companies and other investors every time they increase or decrease their stake by 1%. Alternatively, 13G filers must amend their filings only once a year if there have been any changes to their ownership.

Corporate attorneys also complain that even when activists are submitting 13D filings they often aren't following the letter of the law when it comes to providing the level of detail required in the "purpose of transaction" section.

"I see it as a strategic move on the activist's part," said Sanjay Shirodkar, a former SEC staffer in the division of corporation finance who is now of counsel at **DLA Piper**. "Companies deserve to know if the activist has some serious intentions as soon as the activist knows what their plans are."

According to SEC rules adopted in 1998, funds and individuals can take advantage of the passive 13G short-form regime when they own more than 5% and have no plans to acquire, affect or influence "control" of the company.

However, sources familiar with the SEC tell The Deal that the agency has had a difficult time differentiating between a valid 13G filer, who is simply trying to increase shareholder value, with someone who is engaging with the purpose of seeking strategic options such as a sale of the company. "Because it is so difficult to pinpoint, the commission hasn't offered extensive guidance on this," said a person familiar with the SEC.

Despite the difficulty, the commission has privately asked a number of funds to convert from a 13G to a 13D, often in response to corporate complaints. When it came to the Tempur Sealy insurgency, the SEC followed up H Partners filings with a letter urging

BLOOMBERG

PERSHING SQUARE'S BILL ACKMAN

them to clarify why it had previously chosen to file on a 13G even though they had been "requesting a seat on the board of directors for the company for several years." (Under pressure from H Partners, Tempur Sealy's CEO and two directors stepped down in May. Since then, the stock has risen from about $60 a share to nearly $80.)

But don't expect any fines for violations of the disclosure in the near-term. The person familiar with the SEC acknowledged that the agency to date hasn't brought any cases against funds for failing to convert to a 13D filing—though she didn't rule it out as a possibility.

DLA Piper's Shirodkar said he is surprised to see that the SEC hasn't launched an enforcement action on a failure to convert. He argues that an enforcement action could be employed as part of a broader effort to drive home the message that investors seeking some element of control at a company must file 13Ds. The lack of enforcement

CONTINUED >

# ACTIVISM

< PREVIOUS

actions, he suggests, have emboldened activists to file 13Gs when they should be employing 13Ds.

"You look at the facts and circumstances around what the SEC has been doing and you wonder why there hasn't been more pressure by the SEC to enforce the 13D disclosure regime," Shirodkar said. "Clients ask me if there is anything we can do, and I tell them that there haven't been any enforcement actions in this area so there isn't much we can do."

One example cited by several securities lawyers involved a 13G filed at Family Dollar Stores Inc. in 2011 by billionaire activist Bill Ackman and his **Pershing Square Capital Management**. Ackman, who reported an 8.9% stake, wasn't required to explain his intentions at Family Dollar at the time. Yet five days later he made a presentation at an Ira Sohn conference suggesting that the company was a prime target for a leveraged buyout. Under pressure from activists, Family Dollar was acquired by **Dollar Tree Inc.** (DLTR) in a deal that closed in July.

Securities lawyer critics acknowledge that Ackman's actions fit the technical contours of the 13G rules. But, although it's unclear whether Ackman was among the group pressing Family Dollar, many wonder how an activist who shakes things up at company after company can ever be permitted to file a 13G.

Ethan Klingsberg, partner at **Cleary Gottleib Steen & Hamilton LLP** in New York, said it strikes many observers as absurd when a well-known activist files a 13G because everyone knows the reputation and history of that activist. "In the board room one might say, 'Ackman is my largest shareholder as a 13G filer but we may want to adopt a poison pill because we know historically what his investment can mean,'" he said.

Other lawyers familiar with the rules said it was unclear whether a fund manager must switch to a 13D simply because they have a history of activism in the past. "It is an interesting fact to consider and something I believe the SEC would cite if they brought an action," said James Moloney, a partner at **Gibson, Dunn & Crutcher LLP** in Irvine, Calif. Moloney, an ex-SEC staffer, worked on 13G rules in the agency's M&A office.

Activist fund **Starboard Value LP**, according to a securities lawyer, always files 13Ds when the fund crosses the 5% ownership threshold. That may be, in part, because it would be hard to believe Starboard's Jeff Smith would ever be considered a passive investor. According to FactSet, Starboard and its predecessor, Ramius LLC's activist fund, have engaged in 59 proxy fights and 122 insurgency campaigns since 1994.

However, others think there are ways today to differentiate between 13G and 13D filings. Andrew Freedman, partner at **Olshan Frome Wolosky LLP**, said he believes a fund crosses from a 13G to a 13D when it delivers a message in the manner of a threat that may involve a potential director-election proxy fight or other type of change of control effort down the road.

"A 13G filer can have discussions with the board and make suggestions to outline their views about how the company can maximize shareholder value including suggestions regarding board representation without crossing the line," he said. "Where we believe you draw the line is when those suggestions rise to the level of threats like, 'We recommend you think about including us for a board seat, and should you not, we think we can win a proxy contest.'"

H Partners, he argued, was fully within its right to make 13G filings in 2013 because at that time they were just suggesting that Tempur Sealy consider them for a board seat. "They had no intention of running a proxy contest at that time," he said.

CONTINUED >

## Large Cap Target of the Week: Danaher

*Loeb may push the $66 billion acquisition machine to do more than split*

Activist investor **Third Point LLC** revealed that it has quietly taken a $191 million stake last quarter in **Danaher Corp.** (DHR), a $66 billion market capitalization company in the process of splitting itself into two. Analysts expect both companies, once they are independent, to focus on making acquisitions before they contemplate capital distribution initiatives. That is unless Third Point's founder, Dan Loeb, decides to launch a campaign pushing for an alternative route. Loeb could press for stock buybacks, a major dividend hike or to try to further dismantle at least one of the post-spin companies. Its life sciences operations will also contain diagnostic and dental segments, and those could be split further under pressure from an insurgent, analysts said.

**Danaher by the numbers**

| | DHR | Peer average |
|---|---|---|
| Market cap | $66.70 | $20.50 |
| ROIC | 7.80% | 7.70% |
| Sales (per share) | 8.90 | 0.34 |
| Est. P/E | 22.60 | 24.2 |

Source: Bloomberg

Separately, another activist, Tom Sandell, settled with **Viavi Solutions Inc.** (VIAV) in October in a deal that called for the company, formerly known as JDS Uniphase, to hire an investment bank and conduct a strategic review. Sandell, according to sources, thinks Danaher could be interested in buying Viavi or its test and measurements business. "I would be surprised if [Danaher] didn't look at it," said Brian Drab, analyst at **William Blair & Co.** Barring a Loeb campaign, expect more acquisitions to come for both Danaher units. "Danaher does M&A in my view better than any other industrial company," Drab said. "They make acquisitions and improve the margins of those units and that is the primary use of their capital and it has been for decades." ■ *—Ronald Orol*

# ACTIVISM

< PREVIOUS

Nevertheless, some observers believe it is high time the SEC issued some guidance explaining what they think is proper when it comes to shifting from a 13G to a 13D. Such a move would update rules the SEC issued in 1998 that changed the passive-activist reporting regime. "It would help to get some clarity on what is the definition of control and when does a fund that is suggesting a company consider its strategic alternatives shift to have a control intent," Shirodkar said.

He contends that the investment landscape has dramatically transformed since 1998, particularly when it comes to passive institutional money managers, and that shift requires updated rules. "We think about long-term holders as passive but we are seeing some of these formerly passive institutional investors such as CalSTRS pairing up with activist hedge funds at times," he said.

Some contend that the SEC may be taking a closer look at the 13G regime in light of a spike in recent years of traditionally passive hedge funds that have demonstrated a willingness to be more actively involved at companies as activist investing becomes more widely embraced as a credible investment style. These investors, one lawyer noted, may need to become more attuned to the 13G/D filing system.

Beyond 13Gs, activists that do file 13Ds may not be providing as much information as companies and the SEC would like. A person familiar with the SEC noted that the agency is "very concerned" about boilerplate Item 4 disclosure.

In December 2014, Starboard Value simultaneously filed two 13D filings at **Staples Inc.** (SPLS) and **Office Depot Inc.** (ODP), respectively, suggesting in both reports that it may take a variety of actions, which could include making recommendations about a "potential business combinations." For most observers familiar with Starboard it was clear the insurgent manager wanted to see Staples combine with Office Depot. Under pressure from Starboard, Staples in February agreed to buy Office Depot for $6.3 billion. But some wonder why Starboard wasn't required to be more specific about their intentions back in December.

The Purpose of Transaction section must be updated when there is a material change in a fund's plans. However, an adviser to activists argued that—except for requiring a filing when the insurgent's investment increases or decreases by 1%—the regulations are vague about what constitutes a material change.

An activist who has previously disclosed that he may launch a proxy fight must update his filings immediately if the effort converts to a fully-fledged director-election battle, Klingsberg adds. "They can't hide behind 'constructivist' labels and meaningless boilerplate disclosure if their real plan is different and involves replacing directors or forcing a sale of the company," Klingsberg said.

Nevertheless, Olshan's Freedman defended the boilerplate nature that often characterizes initial schedule 13D filings. He argued that, in many cases, insurgent investors at that point haven't completed their due diligence and are still developing their plans and proposals. Once those are crafted, he added, they often come in the form of a letter to targeted companies that insurgents immediately attached to 13D filings.

Some, however, believe the SEC should consider a more aggressive approach to encourage useful Item 4 reporting. As an analogy, Shirodkar pointed out that many corporations were comfortable providing "boilerplate" submissions in their Management Discussion and Analysis sections of quarterly and annual reports until the SEC took some enforcement actions in the 1990s against a few corporations for failing to provide adequate disclosure. "It may take the same kind of enforcement actions to improve Item 4," Shirodkar said.

Nevertheless, he added that to conduct an effective enforcement action in this area the SEC would have to prove that the activists have specific intentions well beyond the generic boilerplate information provided in Item 4 and that would be extremely difficult for the regulators.

"The SEC would need to issue subpoenas and get e-mails and presentations and see that the activist had conversations about specific material intentions that they had not disclosed in the filings," Shirodkar said.

Until the SEC is willing to make that effort, expect more boilerplate and 13Gs to come. ■

## Seeing growth in small deals

Shares of Watch List member **Fossil Group Inc.** (FOSL) gave up about 30% with its earnings report and announcement of a $260 million acquisition of "wearable technology" company **Misfit Inc.** on Nov. 12. A strong dollar negatively impacted net sales by $55.7 million and reduced earnings per share by $0.40.

Third-quarter sales decreased 8% compared with the third quarter of fiscal 2014. Worldwide sales decreased 14%, or $123.2 million, because of a decline in the Fossil's multibrand licensed watch portfolio. The watch company's profit margin is trailing the industry average as is its growth rate. Fossil shares dropped from roughly $51 to $36 following the announcement of the Misfit transaction, which is expected to close by the end of the year. Fossil said the deal will expand its offering in traditional timepieces and fashionable connected accessories and provide a scalable cloud and app platform, and battery technology.

**Urban Outfitters Inc.** had a 1% increase in net sales for its banners for the third quarter of fiscal 2016, with increases of 3% at Free People and 1% at Urban Outfitters, while the Anthropologie Group was flat. But never mind, because they bought a pizza business. The retailer announced a deal for the Vetri Family group of casual restaurants including Pizzeria Vetri in the Philadelphia market. The retailer's shares dropped about 15% on the minor purchase, about $20 million, but have recovered. The company said that it was motivated by the increasing spending on casual dining and the opportunity to expand the Pizzeria Vetri concept. In fairness, there could be synergies. Urban Outfitters has sold T-shirts showing a picture of a slice. ■ —*The Deal Staff*

## ACTIVISM

# The Watch List

*A roster of companies that might soon rank among the top 10 potential activist targets*

**BY THE DEAL STAFF**

**Approach Resources Inc.** (AREX)—On Nov. 4 the Fort Worth-based company posted a third-quarter loss of 14 cents per share, beating analysts' projections by a penny, and saw production rise 9% quarter-over-quarter and 17% year-over-year. The company remains a levered play on commodity improvement.

**Astec Industries Inc.** (ASTE)—Road aggregates supplier based in Chattanooga, Tenn., has been hurt by low oil prices, curtailed mining and a strong dollar. Net sales for third-quarter 2015 were $211 million compared to $220 million for third-quarter 2014, a 4% decrease. Earnings for third-quarter 2015 were $0.10 per share compared to $0.08 per share in third-quarter 2014, an increase of 25%.

**Atwood Oceanics Inc.** (ATW)—Only two of the company's 13 rigs are contracted into 2017, which worries some analysts. Atwood cut its dividend by 70%, to 7.5 cents per share from 25 cents per share, or an annual yield of 2% versus a previous 7%, saving around $45 million in annual cash flow.

**Bravo Brio Restaurant Group Inc.** (BBRG)—The Columbus, Ohio-based restaurant chain said Nov. 5 that CEO Saed Mohseni is resigning and will be replaced by president and COO Brian O'Mally. The company also said that revenue was up year-over-year. The $150 million market capitalization chain announced a $15 million share buyback.

**Caleres Inc.** (CAL)—The Clayton, Mo.-based footwear retailer reported second-quarter results on Aug. 27. Net sales were virtually flat year-over-year at close to $640 million. Net earnings were $16.8 million, including a $5.3 million after-tax expense related to debt elimination, compared to $18.1 million for the same period a year prior.

**Campbell Soup Co.** (CPB)—Packaged foods conglomerate based in South Plainfield, N.J., on Sept. 28 changed its director voting standard to majority, except in a contested election, where a plurality is still needed and added a standard director resignation clause for a director not getting a majority vote.

**Comerica Inc.** (CMA)—The Dallas-based regional bank on Oct. 16 reported a beat on earnings and a miss on revenue. While net revenue and net interest income were up year-over-year, net interest margin fell.

**Contango Oil & Gas Co.** (MCF)—Oil and gas explorer based in Houston on Nov. 3 lost $185.7 million, or $9.79 per share, in the third quarter, versus net income of $3.7 million, or 19 cents per share, in the same period last year. Its sales were $29 million, versus $67.5 million in the third quarter of last year. Production came in at the low end of analysts' estimates. Seaport Global Securities analyst Mike Kelly said that Contango's cost-cutting campaign should begin paying modest dividends going forward, and management's focus remains on keeping debt levels flat next year in the face of a challenging commodity environment.

**Cornerstone OnDemand Inc.** (CSDO)—Santa Monica, Calif.-based cloud software developer on Nov. 5 reported that revenue and earnings missed Wall Street's expectations.

**CSX Corp.** (CSX)—Rail operator will close a yard in Tennessee that services coalfields as coal volume continue declining. Third-quarter EPS were 52 cents, compared to 51 cents the prior year, on a 9% revenue decline coming from a 3% decline in volume and lower fuel recovery.

**Cubic Corp.** (CUB)—San Diego-based government technology provider on Aug. 6 said adjusted third-quarter Ebitda was $18.9 million, or 5.4% of sales, compared to $26.7 million, or 7.9% of sales, while net income was $8.8 million, or $0.33 EPS, vs. $12.2 million, or $0.45 EPS.

**Dawson Geophysical Co.** (DWSN)—The oil services company on Nov. 5 reported a third-quarter loss of 13 cents per share, or $2.9 million, on relatively flat sales of $62.5 million. CEO Steve Jumper said on a conference call with analysts that there's "a glimmer of hope" for the second half of next year and that the company continues to cut costs at the organization.

**Demand Media Inc.** (DMD)—On Aug. 6, Santa Monica, Calif.-based Demand Media reported third-quarter revenue of $29.8 million and adjusted Ebitda of -$2.8 million, compared to $43.1 million in revenue and $10.5 million in adjusted Ebitda the same time a year before.

**Denbury Resources Inc.** (DNR)—On Nov. 5, Denbury reported a third-quarter loss of $6.41 per share driven by impairments. It repurchasing 4.4 million shares in the quarter for $12 million, and has $210 million remaining on its share repurchase authorization.

**Five Star Quality Care Inc.** (FVE)—Newton, Mass.-based operator of senior living communities on Aug. 10 said Ebitda, for the second quarter of 2015 was $5.9 million as compared to $7.7 million for the same period in 2014.

**Genesco Inc.** (GCO)—Footwear retailer on Nov. 3 said its Canadian subsidiary was going to acquire the 37-store Little Burgundy retail footwear chain in Canada from the **Aldo Group Inc.**

**Gulf Island Fabrication Inc.** (GIFI)—Gulf Island reported a net loss of $12.1 million, or 84 cents per share, on sales of

CONTINUED >

# ACTIVISM

< PREVIOUS

$67.5 million for its third quarter, versus net income of $7.6 million, or 52 cents per share, on sales of $118 million in the same period last year. Some observers think that the company will have to lay off employees next year as its backlog dwindles and may ultimately have to restructure.

**ITT Corp.** (ITT)—Industrial components maker based in White Plains, N.Y., on Oct. 30 said quarterly revenue declined 8%, citing unfavorable exchange rates. ITT on Aug. 31 said it was acquiring components maker Wolverine Automotive Holdings for $300 million to increase its exposure in the automotive industry.

**Jacobs Engineering Group Inc.** (JEC)—Engineering and construction company on Oct. 8 said it would have a new leadership structure organized around its four business lines: petroleum and chemicals, buildings and infrastructure, aerospace and technology and industrial. The industrial unit includes a life sciences unit.

**Jive Software Inc.** (JIVE)—On Nov. 9, Palo Alto, Calif.-based Jive said it lost 3 cents per share in the third quarter, half of expectations for a loss of 6 cents per share. The company also gave favorable guidance for the fourth quarter.

**Kirkland's Inc.** (KIRK)—Home decor retailer reported results for the third quarter ended Oct. 31, saying net sales increased 10.3%, while comparable store sales were up 1.8%, including e-commerce, compared to a hike a year ago of 6.3%. The company's stock is hovering near its 52-week low.

**Micron Technology Inc.** (MU)—If Micron continues to sink, pressure for a sale could mount. Micron reportedly was considering a bid for SanDisk—it lost out to Western Digital on that deal.

**Modine Manufacturing Co.** (MOD)—Thermal management systems components maker based in Racine, Wis., on July 31 announced quarterly results saying sales and earnings were down, in line with its expectations.

**National Oilwell Varco Inc.** (NOV)—On Oct. 28, Houston-based National Oilwell Varco reported earnings per share of 61 cents in the third quarter, above what analysts had expected. The company also reported that sales declined over the second quarter by 15% to $3.3 billion, below Wall Street's projections. The company intimated to analysts that it was more interested in M&A than share buybacks.
**Owens & Minor Inc.** (OMI)—Medical supplies distributor said Oct. 27 revenue was up, as was operating earnings.

**Sagent Pharmaceuticals Inc.** (SGNT)—Pharmaceutical company on Nov. 3 reported a beat on revenue and a slight miss on earnings. The company has been evaluating strategic alternatives to optimize the value of SCP, Sagent China Pharmaceuticals.

**ScanSource Inc.** (SCSC)—Operating income was $25 million compared to $40.4 million the year before, though that included a $15.5 million legal recovery.

**Syngenta AG** (SYT)—Bloomberg, citing people familiar with the situation, reported Nov. 12 that China National Chemical Corp. is in talks about a potential acquisition of the Basel, Switzerland, agriculture company. That follows a Wall Street Journal report on Nov. 5 that the company is in talks with DuPont about a possible combination with the chemicals company's agricultural business.

**Synopsys Inc.** (SNPS)—Chip design software maker based in Ossining, N.Y., on Aug. 27 authorized its second accelerated share repurchase program of the year for $100 million; an earlier one was for $180 million. On Oct. 12, CEO Mike Mack said he was leaving at the end of the month, a move seen as being in response to disgruntled investors.

**Titan International Inc.** (TWI)—The tire maker on Nov. 6 said its financial statements from 2013 up to and including June 2015 could not be relied on due to errors in the way it accounted for its stake in Russian tire maker Voltyre-Prom. The company also reported third-quarter 2015 results that were worse than forecast. A strong dollar also hurt performance, driving shares down 35% in early November.

**Urban Outfitters Inc.** (URBN)—Urban Outfitters said results for its third quarter ended Oct. 31 included net sales that were up slightly to about $825 million from approximately $814 million for the same period a year prior. Net income was also up slightly to close to $52 million compared about $47 million a year ago. Same store sales increased 1%, while wholesale sales were down 5%.

**Weatherford International plc** (WFT)—On Oct. 27, **Moody's Investors Service Inc.** downgraded Weatherford to below investment grade due to a challenging outlook that will result in weaker credit metrics.

**Whole Foods Market Inc.** (WFM)—The grocery store chain reported an earnings miss Nov. 4, reporting that profits were $56 million, or $0.16 per share, as compared to $128 million, or $.35 per share year-over-year. The company announced a $1 billion share repurchase program and declared a 4% increase in the quarterly dividend to $0.135 per share.

**Zions Bancorp.** (ZION)—Zions, a regional Salt Lake City bank, issued earnings Oct. 19. EPS missed estimates by $0.01. In March the bank expanded its board to 13, a move that could dilute the influence of any activist seeking to install a minority slate. On Nov. 4, Zions added a new role of chief technology strategist as part of a project to replace the company's loan servicing and deposit systems. ■

## HOW TO USE THE DAILY DEAL DIGITAL

This version of The Daily Deal is based on eMprint. Readers can move around the publication using the navigation bar at the bottom of the screen. The index lists every article and feature in the current edition and serves as a map for the entire publication. ■

# THE CROSSHAIRS

## TOP 10 POTENTIAL ACTIVIST TARGETS

| THIS WEEK | LAST WEEK |
|---|---|
| -32% | - |

### Ascena Retail Group Inc. (ASNA)

On Nov. 2, Katie Bayne, a brand manager at Coca-Cola Co. was appointed to the board. On Oct. 8, Golden Gate Capital filed a 13D for its 9% stake, most of which it acquired from the Ann takeover.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 14.0 | -11.4 | 19.1 | 7.1 | $2.1B | $22.10 | 23% |

| THIS WEEK | LAST WEEK |
|---|---|
| 2 | - |

### Coach Inc. (COH)

On Oct. 14, Coach said it hired two senior executives to improve its brand communications.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 16.0 | 13.0 | 26.3 | 0.9 | $8.3B | $10.15 | -32% |

| THIS WEEK | LAST WEEK |
|---|---|
| 3 | 4 |

### Deckers Outdoor Corp. (DECK)

Deckers' shareholders approved the appointment of its board and executive compensation at its annual meeting held Sept. 10.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 9.7 | 12.9 | 4.0 | 2.4 | $1.6B | $7.40 | -585% |

| THIS WEEK | LAST WEEK |
|---|---|
| 4 | 6 |

### Bed Bath & Beyond Inc. (BBBY)

Profit margins have declined and anlysts have cautioned that discount coupons continue to pressure gross margins.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 10.3 | 22.3 | 35.4 | 2.8 | $8.9B | $5.54 | -13% |

| THIS WEEK | LAST WEEK |
|---|---|
| 5 | - |

### Kohl's Corp. (KSS)

Kohl's said that same store sales at the retailer were up 1% for the quarter ended Oct. 31, while overall sales were up 1.2% to more than $4.4 billion. Net income, however, was down 15%, dropping to $120 million from about $140 million.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 10.8 | 10.0 | 44.3 | 0.6 | $9.0B | $5.28 | 22% |

CONTINUED >

**60DMA:** 60-day moving average **UPI:** Underperformance Index: (Percentage by which the company underperformed its peers) **ROIC:** Return on invested capital **P/E:** Forward Price/Earnings ratio **D/C:** Debt to capital ratio **MC:** Market capitalization **I%:** Percentage of insider shares outstanding

# THE CROSSHAIRS

< PREVIOUS

| THIS WEEK | LAST WEEK |
|---|---|

**6** | **5**

## Michael Kors Holdings Ltd. (KORS)

Michael Kors comparable store sales have been down and net income declining. Greenlight Capital has reported a stake on its 13F filing.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 9.5 | 40.0 | 0.0 | 3.6 | $7.6B | $5.26 | -316% |

**7** | **7**

## Pier 1 Imports Inc. (PIR)

On June 18, the retailer reported earnings: sales were up 3.1%, but revenue slightly missed analyst forecasts. Home furnishings retailer reported second quarter results Sept. 25 that missed analyst estimates. It also lowered its FY2016 outlook.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 10.8 | 13.0 | 38.0 | 4.5 | $553M | $4.84 | -125% |

**8** | **2**

## Fossil Inc. (FOSL)

Fossil announced on Nov. 12 a net sales decrease of 14% due to a decline in sales of its licensed watch brands, as well as due to currency issues. Net income was also roughly half of what it was year over year, at nearly $58 million compared to almost $104 million.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 8.1 | 17.5 | 39.0 | 14.1 | $1.7B | $4.46 | -1219% |

**9** | **-**

## Kirkland's Inc. (KIRK)

Kirkland's reported results for the third quarter ended Oct. 31, saying net sales increased 10.3%, while comparable store sales were up 1.8%, including e-commerce, compared to a hike a year ago of 6.3%. The company's stock is hovering near its 52-week-low.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 12.2 | 13.1 | 0.0 | 10.3 | $229M | $3.76 | -1% |

**10** | **-**

## Stage Stores Inc. (SSI)

Stage Stores said comparable store sales were down 3.5% for the third quarter ended Oct. 31. The company reported a net loss of $9 million. Sales were also down by 3.5% to about $350 million.

| P/E | ROIC | D/C | I % | MC | 60DMA | UPI |
|---|---|---|---|---|---|---|
| 8.0 | 4.8 | 9.1 | 3.4 | $203M | $2.94 | -124% |

**60DMA:** 60-day moving average **UPI:** Underperformance Index: (Percentage by which the company underperformed its peers) **ROIC:** Return on invested capital **P/E:** Forward Price/Earnings ratio **D/C:** Debt to capital ratio **MC:** Market capitalization **I%:** Percentage of insider shares outstanding

# PRIVATE EQUITY

MORE AT THE DEAL | RIPE PE CANDIDATES BY INDUSTRY | PE AUCTION BIDDER LISTINGS | PE AUCTIONS | LATEST SELLERS•ASSETS

## Bregal plumbs the depths of subsectors for ideas

*Finding niche deals such as one for a scallop harvester defines the PE firm's anti-generalist strategy*

**BY SARAH PRINGLE**

You wouldn't think that a private equity firm that counts a scallop harvester, a bowhunting and archery accessories provider, a maker of running performance products and a supplier of behavioral services to children among its portfolio companies as having a plan, but that's exactly what **Bregal Partners LP** has.

BREGAL'S BERGMANN AND PEREKSLIS

"When we left to start Bregal almost four years ago now, we left with the view that the fundamental view of private equity had changed," said Robert Bergmann, who, along with Scott Perekslis, decamped from New York financial sponsor **Centre Partners Management LLC** to found their own firm. "It's increasingly difficult to be a generalist."

That mindset is largely why at any given time, Bregal has about seven to 10 very narrow industry subsectors that it's highly engaged in, Bergmann said. The firm typically spends six to 12 months developing the "ideation" around these very tapered sectors, frequently throwing out ideas that prove invalid—usually after determining there's a lack of targets in the subsector, he said.

By the time Bregal is in a position to execute, it has the benefit of speed after having spent so much time getting to know the industry.

"They'll find really niche sectors that they want to play in and then they'll be really aggressive about it," said **Harris Williams & Co.** director Ryan Budlong, who advised the firm on the November 2014 creation of its bowhunting and archery accessories platform, Arcus Hunting LLC, and its subsequent add-on deals.

Now Bergmann and Perekslis have added a third managing partner, Charles R. Yoon, to the mix. On Sept. 21, Yoon joined Bregal after helming the consumer-retail team as a partner in the Boston office of **Monitor Clipper Partners LLC**, where he'd been for a decade.

In connection with Yoon's appointment, Bregal's investors—a sixth-generation family foundation known as **Cofra Holding AG**—boosted its commitment to its existing fund by $100 million, to $600 million from $500 million.

Yoon, having known Bergmann and Perekslis for more than 15 years, is very much on the same page with them.

"There's a lot of people chasing deals," he said. "We'd rather spend our time focusing on these specific subsectors."

Bregal's tendency to find deals through research instead of having them brought to the firm has allowed it to be active at a time when deploying capital from PE has been challenging, Bergmann explained.

"Bregal has a willingness to move extremely quickly and do so with a lot of certainty, which is huge in today's market where sellers have a fair amount of leverage," asserted a person familiar with the company who requested anonymity.

For instance, from the time Bregal had its first meeting with the company then known as Shock Doctor Sports through the time it began its due diligence, it took only about 17 days for a deal to get done, Bergmann said.

Tony Armand, the CEO of the company that has since been rebranded as United Sports Brand, described the Shock Doctor sale process as a competitive one that included somewhere between 30 and 40 offers. Despite the significant interest, however, Bregal stood out on a couple fronts, he said.

"They clearly had done their homework in advance," he said. "When we came to the market, they were really well-versed in some of the macro trends. That allowed them to be far more nimble."

Bergmann and Perekslis' strategy and level of involvement also played a role, Armand said, explaining that Bregal came to the table with a vision for the next three to five years that included a very specific game plan around growth through acquisition.

When Bregal bought Shock Doctor Sports in March 2014 for an undisclosed price, it was generating in the midteens of Ebitda, Bergmann said. Only about 18 months later, the company is tracking a level of about $40

CONTINUED >

# PRIVATE EQUITY

< PREVIOUS

million in annual Ebitda, he said.

Helping fuel its rapid growth was Shock Doctor's acquisition of McDavid Inc. on April 22 for an undisclosed price, which Bergmann said he knew was going to come available at some point when it bought Shock Doctor only about a year earlier. United Sports on Oct. 26 announced another acquisition, buying Nathan Sports, a maker of running performance products.

As in the case of United Sports—which in less than two years has transformed from a company concentrated on mouthguards for athletes to a global entity offering all types of protective and performance gear for athletic purposes—an important element to Bregal's growth-oriented strategy is M&A. The firm identifies a strong list of potential add-on targets by the time it makes its first platform investment, Bergmann said, allowing its platform investments to double or triple in size, often within just months.

All seven of Bregal's investments have at least two add-on deals, while some have north of seven.

"What we're doing is buying down the multiple," Bergmann said. "This becomes an essential part of the strategy."

Besides United Sports, the firm's portfolio includes a range of niche subsectors that fall into the broader consumer, food and retail, energy services and healthcare industries. There's **American Seafoods Group LLC**, one of the largest seafood companies in the U.S; **Arcus Hunting**, a platform that encompasses various bowhunting and archery brands; **Aqua Terra Water Management LP**, which offers water management services for saltwater disposal facilities; **Blue Harvest Fisheries LLC**, a scallop harvester; **Omniforce LLC**, a producer of athletic events across five countries; and **U.S. Community Behavioral**, a provider of behavioral services to adults and children.

It's no wonder Bregal's quest for a company that it's targeted might take as long as 12 to 36 months. That's also why, unlike in the case of United Sports, most of Bregal's investments are proprietary and don't attract as much buyer interest.

"Some things don't pop up," Bergmann said. "So we need to develop the opportunity." One example is Blue Harvest. Bergmann said it took about three years of meetings with many companies before Bregal finally found a scallop harvesting company it believed in.

It was on April 27 that Bregal announced the formation of Blue Harvest in connection with its purchase of eight Virginia-based scallop vessels and related assets from Peabody Corp. Taking the helm of Blue Harvest as its CEO was Jeff Davis, the former CEO of American Seafoods, which coincidentally joined Bregal's portfolio of investments in August. Davis was American Seafoods' chief executive from 2000 to 2005.

"I've known Scott since 1998," American Seafood's CEO Bernt Bodal said in a phone interview, pointing to the Bregal managing director's significant knowledge of the seafood industry. "When we were looking [for a partner], it was a very natural choice. We had gotten to know him personally and he's a very good partner to work with."

Seattle-based American Seafoods completed its recapitalization on Aug. 20 backed by Bregal and Clackamas, Ore.-based seafood producer **Pacific Seafood Group**.

As Bodal noted, the American Seafoods deal wasn't Bregal's first encounter with the fish harvester. Perekslis, then at Centre Partners, assisted Bodal when he bought the company from Norwegian conglomerate **Aker ASA**, which runs a fishing business, in 2000. Perseklis is also a former board director at American Shipping.

Like Bodal, the Bregal partners have often backed or worked with its executives more than once.

United Sport's Armand had worked with Bergmann and Perekslis years earlier when he served as CEO of recreational and sporting goods company Bravo Sports, then a portfolio company of a Centre Partners.

Blue Harvest's Davis also had known the Bregal founders for more than 15 years, while AquaTerra's Mark Harris, installed after the investment, also had worked with Bergmann perviously.

"They're more like business executives than finance executives and that seems to play well with managers and founders," said Harris Williams' Budlong.

The unnamed source, describing Bergmann and Perekslis as both "wickedly smart" and "seemingly inexhaustible," added that, in addition to the duo's ability to digest information very quickly, they also form significant and lasting relationships that prove beneficial.

What's also helped is the Bregal Investments connection. Bregal Partners is part of a family of Bregal Investments private equity funds and investment vehicles. Bregal Investments itself is part of Cofra Holding. Since 2002, Bregal Investments has put more than $10.5 billion to work.

While that's a heady amount, Bregal's typical investment range is $25 million to $150 million in companies with Ebitda ranging from $10 million to $75 million and above. But the family foundation has provided Bregal with a lot of flexibility in terms of its strategy and investment size, both Bergmann and Yoon explained.

"The LP allows us to fight in a great weight [class]," Bergmann said. "Bregal can upsize and play substantially larger."

Added Yoon: "This gives us the ability to go small or big."

Typically, the maximum check would be only about $90 million or so for a $600 million fund the size of Bregal's, whereas in the past Bregal has committed an equity check of about $150 million due to the backstop of the family foundation, Bergmann said. If the firm needs to commit $200 million or so, Bergmann said he expects they could find a way to do that.

"As a family foundation, the focus tends to be on value creation and not necessarily a quick flip," Bergmann said, explaining that this allows Bregal to be a bit a more creative and long-term in its thinking.

The next subsector on Bregal's agenda may be the optical niche within the consumer space, Yoon hinted. He said he has done a ton of work in branded performance apparel and dermatology, among other things.

Bergmann asserted that the firm also isn't done in the consumer-focused healthcare and seafood categories where it has found some other narrow subsectors. A couple letter of intents for deals are already signed, he noted.

"We're seeing a lot of opportunity to invest in things that are not part of the normal auction flow," Bergmann said.

It's a boast few PE mavens can make these days. ■

# PRIVATE BRIEFING

## Ancestry.com's history may be ready for a rewrite

*Sector's growth suggests that the time for a sale may be approaching*

**BY JONATHAN BRAUDE**

Ultimately, we're all descended from Adam and Eve.

Or, if you think Adam and Eve might just be mythical, then from some other "most recent common ancestor," the official term used by genealogists to identify the person from 2,000 B.C., or thereabouts, who was the progenitor or progenitrix of everyone alive in the world today.

But for most of us, the keys to our identity can be found by checking out more recent ancestors. And that is what explains the popularity of sites such as Ancestry.com and its network of national subsites in Australia, Canada, the U.K and Ireland, France, Germany, Italy, Sweden and, now, Mexico.

Such fast-growing e-genealogy businesses attract millions of family historians, both amateur and serious, and that makes them worth serious money. Ancestry.com is the leading provider of family history globally and has a burgeoning business in personal DNA testing. It's the biggest collector of subscriptions from avid family historians, too.

Hence Ancestry.com Inc.'s December 2012 acquisition by a consortium led by British private equity shop **Permira**, which took it private for a cool $1.6 billion at $32 a share.

"Since we took it private, the company has grown very healthily and consistently in double-digit percentages on the top line and Ebitda and capital growth well in advance of that," said Brian Ruder, head of Permira's Menlo Park, Calif., office, who led the transaction and now sits on the Ancestry.com board.

One has to wonder if it's time for Ancestry.com to undergo its own genealogical change.

Ruder declined to comment on how long Permira would hold the business, or to discuss rumors of a sale process. But like any financial sponsor, Permira could be ready to take the opportunity to flip the company at the right price. It has already made nearly all of its investment back through a series of multimillion-dollar dividends, so any further increase in value would be profit.

Certainly, with its financial results humming, Ancestry.com's value is similarly on the rise. In October, the company reported financial results for the three months to Sept. 30. These included total revenues of $171.5 million, compared with $154.7 million in the same quarter of 2014. Full-year 2014 revenues were $619.5 million. Adjusted Ebitda for the quarter was $67.4 million, and the company generated a net loss of $0.6 million.

The consortium that acquired Ancestry.com included Permira's co-investing limited partners, who together own the majority of the company. But Ancestry.com's management and its previous investor, Menlo Park PE firm **Spectrum Equity Investors LP**, also reinvested.

Spectrum had already made a big return on its investment, staying on the shareholder register even after taking the company to its initial public offering in 2009 at just $13.50 a share.

Ancestry.com's continuing earning potential led to a so-called appraisal claim by **Merion Capital LP** and **Ancora Merger Arbitrage Fund LP** in the Delaware Court of Chancery, seeking higher a price for their shares than the Permira offer in 2012. (Delaware Vice Chancellor Sam Glassock III ruled in January this year that the price had been fair value, after all).

And under Permira's tutelage, Ancestry.com has continued to develop rapidly, without the constraints of public ownership.

It has made what Ruder called a "very interesting deal for content" with the Mormon Church. The Church of Jesus Christ of the Latter-day Saints has collected a vast store of genealogical records, for use in its controversial habit of converting ancestors and relatives of its members after death.

Ancestry.com has also accelerated the expansion of the business into new countries, upgraded its technology to develop a unified mobile and web-based platform, and perhaps, most importantly, also developed its DNA testing program, which Ruder said had been "really quite nascent" when Permira first invested.

Using cheek cells carried in customers' saliva, Ancestry.com can discover their ethnic background and attributes, and also provide what Ruder described as "an ancestry health experience, that opens up a much larger market than the genealogy market."

However, Ruder was careful to stress that the company had built up a "gold-plated privacy program" around the DNA business, to ensure that clients' personal information was protected.

Those projects were all management-driven, but received enthusiastic backing from Permira. "The company's really thrilled with being private," Ruder said. "It's enabled [the management team] to be

CONTINUED >

< PREVIOUS

nimbler, faster on some of their projects, without having to worry about what it might mean for the next quarter."

Requests for interviews with Ancestry.com CEO Tim Sullivan, CFO Howard Hochhauser or any of the company's senior management to discuss the company's three years as a portfolio company of Permira were turned down on the grounds that their schedules were too hectic over the next several weeks.

An Ancestry spokeswoman did offer the response that Permira had been "a strong and supportive sponsor of Ancestry."

As recently as August, **Ancestry.com LLC**, as the Provo, Utah-based business is now known, refinanced its debt, taking out new credit facilities consisting of a $735 million term loan facility and an $80 million revolving credit facility. It used part of that sum to pay a cash dividend of $215 million to its shareholders.

Net long-term debt was $989.9 million at the end of September. On top of that is $390.2 million in senior unsecured pay-in-kind notes payable to the shareholders' holding company for the business, Ancestry.com Holdings LLC.

In May, Permira was reported to have hired unnamed bankers to run an auction for the company that Reuters said at the time could value the business at between $2.5 billion and $3 billion, including debt.

A sale need not be imminent, however. Another source said separately that while Permira had been approached back in the spring, it was "not looking at anything at the moment." The feeling was, this person said, that Ancestry.com was a young investment and there was no hurry for the private equity firm to look for an exit.

That is not to say, that if a bidder approaches, Permira won't look at the matter again. With more than 2 million subscribers across all its sites, all prepared to pay good money to research their roots, find out where their ancestors hailed from or simply update their family trees, another private equity firm might consider an offer at any time.

A human generation is generally measured as 30 years. But in private equity, even three years can seem a long time. ■

# Exit ramp: Poseidon Containers

*Shipping company's hope for a 2016 IPO may be off course*

The CEO of **Kelso & Co. LP**-backed **Poseidon Containers Holdings Corp.** hardly sounds discouraged about having to abandon an initial public offering in August.

"We will come back to the market when market conditions improve," said George Giouroukos, who helms the owner and operator of container ships. "It will probably be in the second half of 2016."

Unfortunately, even then may not may be such a great time to go public.

Athens-based Poseidon filed its F-1 with the Securities and Exchange Commission on June 15. On July 21, it set the range for its IPO at $14 to $16. Poseidon planned to offer 15.38 million shares, which would have raised $230.7 million at the midpoint, and another $34.61 million if underwriters fully exercised their option to buy up to an additional 2.31 million shares.

But on Aug. 13, Poseidon pulled the offering. Demand wasn't the problem. A source familiar with the situation said it was a fully subscribed book. But this person said Poseidon pulled the deal at the 11th hour because it was likely that secondary trading wasn't going to go so well amid fears of an economic slowdown as China devalued its currency on the heels of the release of disappointing export and producer price data.

Poseidon started business operations in December 2010 through its predecessor, Poseidon Containers Group, which comprised subsidiaries of Poseidon Containers Holdings LLC. PCH was founded by Giouroukos, Kelso and **Maas Capital Investments BV.** A Maas Capital representative declined to comment.. Kelso offiicals weren't available for comment.

Poseidon charters its vessels to **A.P. Moller-Maersk A/S**, **CMA CGM SA**, **Cosco Container Lines Co.**, **United Arab Shipping Co** and **Zim Integrated Shipping Services Ltd.**, and others, according to Poseidon's F-1 filing. Poseidon's fleet of 19 containerships includes five Handymax vessels, two Panamax vessels and 12 Post-Panamax vessels.

Poseidon was going to try to go public even without a strong financial story. In the first three months of 2015, Poseidon posted a net loss of $1.76 million and adjusted Ebitda of $9.64 million on operating revenue of $22.04 million, compared with net income of $5.81 million and adjusted Ebitda of $16.19 million on operating revenue of $29.91 million in the same period a year ago. More recent financial data isn't available since Poseidon pulled the IPO in August.

Foster Finley, a managing director at advisory firm **AlixPartners LLP**, said the maritime sector "is suffering through basically its weakest time since the industrialization of maritime shipping."

"The demand for container shipping hasn't kept pace with the increase in capacity," said Henry Pringle, a vice president at AlixPartners.

Rahul Kapoor, director at **Drewry Maritime Equity Research**, said the container shipping market "has been very poor this year." Nor does it look like it's going to get better anytime soon, if the actions of the largest container shipping company in the world is any indication. **Maersk Inc.** on Nov. 9 reported a 61% decline in third-quarter profit year-over-year because of low freight rates. Maersk expects the container shipping market to remain weak. Maersk, whose land-based staff totals 23,000 globally, said it plans to reduce headcount by 4,000 by 2017.

With such choppy waters ahead, Poseidon may not be able to chart a course to an IPO as it had hoped. ■

*— Armie Margaret Lee*

# CAPITAL CALLS

# Behind the resurgence of pulled initial offerings

*Most PE-backed companies that have postponed or withdrawn offers remain in their parents' hands*

BY ARMIE MARGARET LEE

When **Parthenon Capital Partners LP**-backed consumer lender **LoanDepot Inc.** pulled its initial public offering due to market conditions on Nov. 12, it became the latest in a series of PE-backed companies to either hit the pause button or nix plans to go public.

AP

There have been 24 IPO postponements and withdrawals by financial sponsor-backed companies this year through Nov. 17, according to data from Dealogic. That's the highest total since 2012, when the full-year tally was 34. Full-year totals for 2014 and 2013 were 20 and 16, respectively.

"There's a lot of uncertainty in the equity markets right now," said Jeremy Swan, private equity and venture capital industry practice leader at accounting firm **CohnReznick LLP**. "A lot of IPOs are getting priced at the low end of the range, or in some cases, below.

"The IPO market from my perspective is not as strong as it was last year. Overall, you haven't had a ton of blockbuster IPOs to really heat up the market," Swan added.

In some cases, companies did not proceed with going public because they were sold. In August, for instance, financial software maker **SunGard**, which is owned by a consortium of seven PE firms, pulled its IPO days after its $9.1 billion sale to **Fidelity National Information Services Inc.** (FIS) was announced.

Other examples include **TPG Capital LP**-backed Par Pharmaceutical Holdings Inc., a maker and distributor of generic and branded drugs that pulled the plug on its IPO in September due to its $8.05 billion sale to **Endo International plc** (ENDP), and **Blackstone Group LP** (BX)-backed nonwoven manufacturer Avintiv Inc., which withdrew its IPO in October when its $2.45 billion sale to **Berry Plastics Group Inc.** (BERY) was completed.

More recently, **Interactive Data Corp.**, a pricing and data services company owned by **Silver Lake Partners** and Warburg Pincus LLC, on Nov. 4 withdrew its IPO after its PE backers agreed to sell the company in October to **Intercontinental Exchange Inc.** (ICE) in a $5.2 billion cash-and-stock deal.

An S-1 filing will sometimes bring potential bidders forward even if the company is not pursuing a parallel sale track alongside the IPO, noted Jennifer Perkins, partner and global chair of **Latham & Watkins LLP**'s private equity practice, speaking in general.

Other companies cited market conditions for postponing or withdrawing their IPO. The roster of firms include **Cerberus Capital Management LP**-backed supermarket giant **Albertsons Cos.**; **NEP Group Inc.**, a mobile teleproduction services company backed by **Crestview Partners LP**; **Philadelphia Energy Solutions Inc.**, an oil refining and logistics company owned by **Carlyle Group LP** (CG) and **Energy Transfer Partners LP** (ETP); and **Poseidon Containers Holdings Corp.**, a **Kelso & Co. LP**-backed owner and operator of container ships.

"If a company has gone so far as to start its IPO roadshow, the expectation is that it will ultimately go public," said Patrick Shannon, partner and global co-chair of Latham & Watkins' capital markets practice, speaking in general and not about any specific firm. That said, "it's very easy to imagine a situation where the IPO continues to be delayed and a suitor comes along and says 'Let me buy you.'"

A lawyer who works with PE firms and declined to be named for this article, said that when IPOs are pulled, what he's seen more than anything else are financial sponsors holding on to their portfolio companies. Rather than going out and trying to sell the company soon after the IPO withdrawal, it's more likely that PE firms do a dividend recap, the lawyer said.

CohnReznick's Swan noted a shift in the way pulled IPOs are perceived. He said that over the years, there's less of a stigma associated with pulling a deal. "Today, the market is much more volatile than it has been," he said, adding that if a company withdraws and comes back later, "it's less of a negative reflection on the business."

Among the companies that withdrew their IPOs then went on to take another stab at going public is **Dave & Buster's Entertainment Inc.** (PLAY). The **Oak Hill Capital Management LLC**-backed dining and arcade chain withdrew its filing in 2012 because of market conditions. Last year, the company returned to the IPO path, filing confidentially for an IPO in June 2014 and making its S-1 filing three months later. After a month, Dave & Buster's went public, raising $94 million.

"The IPO window can open very quickly and it can close very quickly," said Swan.

As the end of the year approaches, people are thinking more about 2016, Shannon said, adding that people are "cautiously optimistic" when it comes to IPOs.

"My sense is there's still a lot of enthusiasm in the IPO market. I've heard talk of org meetings for March," Perkins said. ■

# WorkWell examines consolidation possibilities

EDITED BY SARAH PRINGLE

## WORKWELL MEDICAL GROUP

After landing an undisclosed investment from a California private equity firm, **WorkWell Medical Group LLC** plans to use the funds to expand organically and inorganically through acquisitions.

The company will grow "through the development of new clinics (organic growth) to expand their reach and better serve clients that have operations throughout the state ... as well as through the selective acquisition of high-quality clinics that would bring WorkWell in to new geographies and different employers and industries," said Luke Mitchell, managing partner of **Edgemont Capital Partners LP**, which advised WorkWell on its recent deal with **Salt Creek Capital**. In terms of acquisitions, Mitchell said WorkWell would target acquisitions in states with favorable reimbursement and other regulatory conditions for occupational medicine.

He said some states, such as California and Florida, allow patients to choose the doctors they visit for work-related medical issues, while others are more stringent and put the onus on the employer. "Florida has become pretty attractive, as well as the Rust Belt and the upper-Midwest," Mitchell said. The presence of the "agriculture, petroleum, energy and/or manufacturing industries, as well as government and state agencies are also big drivers in finding new markets for expansion."
*—Michael D. Brown*

...captured

As anticipated by The Deal early this year, **FactSet Research Systems Inc.** (FDS) has continued to turn the M&A dial to keep pace with competitors. The Norwalk, Conn.-based financial data and analytics provider announced on Sept. 22 a $265 million deal for Portware LLC. Its purchase of the automated trading technology provider appears to be a move to gain share from rivals **Bloomberg LP** and **Thomson Reuters Corp.** (TRI), sources said at the time. When FactSet snagged Code Red Inc. in February for an undisclosed price, The Deal wrote that the former had a strong balance sheet and financial capability to pursue something larger. ■ *—S.P.*

## BNC BANCORP

A recent deal by **BNC Bancorp** (BNCN), the High Point, N.C.-based bank holding company, is a precursor of more M&A coming through the vault. The company on Nov. 16 agreed to buy neighboring bank **High Point Bank Corp.** in a 30% cash and 70% stock deal valued at $141.3 million. In regards to future M&A, BNC president and CEO Rick Callicutt said in a phone interview that the bank will take a small break as it still has not closed its August acquisition of **Southcoast Financial Corp.** for $95.5 million, but will potentially look to acquisitions of insurance agencies down the road. The bank is not interested in entering new markets and believes it will be able to grow book value in the company by 30% over the next two years organically, he said. The bank has made 13 acquisitions since 2010. **Hovde Group Inc.** analyst Kevin Fitzsimmons said its latest deal is a good one as it is a low-risk transaction in their front yard. Dealmaking is part of BNC's DNA, Fitzsimmons said, adding that the bank is likely to continue pursuing smaller in-market deals after taking a short pause to close the two pending deals. Regulators like the bank and have given it the green light to do deals at this pace, he said. It's more likely that sellers are knocking on BNC's door, rather than vice-versa, he added.
*—Jennifer Tekneci*

## VIAWEST INC.

IT infrastructure provider **ViaWest Inc.** plans to keep building its M&A platform following its latest purchase. Denver-based ViaWest announced Nov. 16 an agreement to acquire hosted services company **INetU Inc.** for $162.5 million from **BV Investment Partners**, through which the latter earned a greater than 2.5 times return on investment, The Deal has learned. ViaWest chief technology officer Jason Carolan said via phone that the company will continue to be acquisitive. "We've done about 20 acquisitions as a company. We're pretty good at it," he said, adding that ViaWest has traditionally looked at colocation assets and will continue to do so opportunistically. Colocation refers to the renting of data centers, which are facilities with equipment for collecting and processing data. Meanwhile, ViaWest itself was acquired by **Shaw Communications Inc.** (SJR) for $1.2 billion last year. It was formerly backed by **Oak Hill Capital Partners LP**. INetU is the company's second acquisition since it joined Shaw.
*—Jaewon Kang*

## CYPRESS ENERGY PARTNERS

Despite disappointing quarterly results, oil services company **Cypress Energy Partners LP** (CELP) intends to continue its pursuit of M&A. "Our team continues to focus on acquisitions and organic growth opportunities with our customer relationships in the inspection industry to cross-sell our new hydrostatic testing services from our recent acquisition," CEO Pete Boylan said during a recent earnings call. "We also continue to see an increase in water and environmental services opportunities." Boylan went on to say that while the challenging environment is impacting most industry players, the company is able to pursue M&A because of its strong balance sheet and credit facility. The company's last acquisition came on May 6, when it paid $11.2 million in cash for a 51% stake in Brown Integrity LLC, a hydrostatic testing company. *—Laura Berman*

# EU's Vestager takes on corporate tax avoidance

*Deals with national governments won't shield companies from paying their 'fair share,' she warns*

BY RENEE CORDES IN BRUSSELS

The tax woman cometh. EU Competition Commissioner Margrethe Vestager is going after corporate tax dodgers with a vengeance, starting with **Starbucks Corp.** (SBUX) and **Fiat Finance and Trade LTD SA** for sweetheart arrangements with national tax authorities deemed to be illegal government subsidies. The decisions, announced Oct. 21, offer a taste—and it's not gingerbread latte—of what's ahead for **Apple Inc.** (AAPL) and **Amazon.com Inc.** (AMZN), and maybe dozens more that have worked out tax arrangements with national governments.

COMPETITION COMMISSIONER MARGRETHE VESTAGER

"I hope that, with today's decisions, this message will be heard by member state governments and companies alike," Vestager said. "All companies, big or small, multinational or not, should pay their fair share of tax."

As competition experts wait for the full decisions to be published, some question whether the EU's antitrust chief should be using her competition enforcement powers to influence national tax policy.

"She's shown many times that she won't shy away from going after big multinational companies, and that she won't shy away from using European tools at her disposal to help the internal market," said Natura Gracia, a London-based partner with **Linklaters LLP**. "I'm not saying that she's misusing state aid tools in the taxation rulings cases, only that their use is a bit borderline, and that she is clearly showing she will take her own views of how to use them."

The cases come about a year after the "LuxLeaks" revelations about hundreds of tax-shelter deals between Luxembourg and multinational companies during Jean-Claude Juncker's time as prime minister. As European Commission president, he's made the fight against tax evasion and avoidance a priority.

It also continues to be a sensitive issue in Washington, where the U.S. Treasury is seeking to tighten rules on tax inversion deals for merging companies.

Back in Brussels, the EC unveiled a corporate taxation "action plan" wish list of reforms in June, including plans to relaunch a proposed common tax base for the 28-nation EU, up for public consultation through early next year. The EU also supports efforts to tackle tax avoidance on a global level, like the OECD's Base Erosion Profit Sharing project, endorsed last month by G20 finance chiefs. While Frenchman Pierre Moscovici is in charge of EU taxation policy, his Danish colleague, Vestager, is doing the competition grunt work. EU legislators have also weighed in, through a special committee that spent five hours Nov. 16 publicly grilling companies, including **Facebook Inc.** (FB), **Walt Disney Co.** (DIS), **HSBC Bank plc** and eight others about their tax practices in Europe. All denied wrongdoing and said they were for greater transparency. Their testimony and written responses will feed into a report that Vestager and her team of case handlers are sure to read with interest.

Fiat declined an invitation to appear, and Starbucks was not on the list. If they don't get their decisions overturned, each may have to pay as much as €30 million ($32 million) in back taxes.

In the Starbucks case, watchdogs took issue with a high royalty paid by a Netherlands-based, Starbucks-owned coffee-roasting unit to a U.K. subsidiary, as per a 2008 arrangement with Dutch authorities. They also pointed to an inflated price for "green" coffee beans paid from one Starbucks unit to another which "unduly reduced" the tax base of the Dutch roasting unit. The facts of the case are still somewhat unclear.

"There might be a very good reason why Starbucks should pay a substantial royalty for coffee roasting to another member of the Starbucks group and independent roasters do not, and this is what the commission needs to explain in its final decision," said Sjoerd

CONTINUED >

# CAPITAL CALLS

< PREVIOUS

Douma, a professor of international and EU tax law at Leiden University in the Netherlands who also heads the Dutch branch of PwC's EU Direct Tax Group.

The Fiat case centers on a tax-break ruling issued by Luxembourg in 2012, which the regulator said was based on an "extremely complex and artificial methodology" to calculate taxable profits that allowed the company to pay tax only on its underestimated profits.

The EC's analysis showed that taxable profits in Luxembourg would have been 20 times higher had the amounts been calculated using market conditions.

Vestager, who inherited both probes from her predecessor Joaquín Almunia, has said while comfort letters issued by tax authorities are legal as such, that does not hold true when they give companies unfair advantages and have no economic justification. In both probes, the EC used new information request powers granted by EU governments in July 2013.

Both companies dispute the findings and are planning appeals, which are also expected from the Dutch and Luxembourg governments.

Starbucks said in a statement that it "shares the concerns expressed by the Netherlands government that there are significant errors in the decision, and we plan to appeal since we followed the Dutch and OECD rules available to everyone." It also said it has paid an average global effective tax rate of roughly 33%, "well above the 18.5% average rate paid by other large U.S. firms."

Fiat has said that it "fundamentally disagrees" with the decision and "that we did not receive any state aid from Luxembourg and we are confident that the matter will be resolved in our favor in due course."

Experts predict the EC will take a similar line in future decisions. Next up are Amazon's taxes in Luxembourg and Apple's tax-break arrangement in Ireland (now phasing out its controversial "Double Irish" perk over a four-year period). There's also an in-depth probe into a Belgian tax scheme opened in February.

"The first two cases will set a precedent going forward," said Fiona Beattie of **King & Wood Mallesons** in London. "You can see some of the wider rhetoric about the single market and the desire to ensure, particularly in a recession, that larger companies aren't exploiting their rights of freedom of establishment in an inappropriate manner. The political debate is very important."

On a wider scale, the EC has been looking at tax-ruling practices of various EU governments since June 2013, extended to all member states in December 2014. This past October, EU finance chiefs gave their unanimous backing to the automatic exchange of information on cross-border tax rulings, welcomed by the EC as a "major step forward" in its fight against aggressive tax planning.

With more EC tax-ruling decisions expected soon, experts advise multinationals to make sure all their arrangements are above board, even ones already in place. Don't just assume that because you get a ruling from [national] tax authorities that you are safe," cautioned Linklaters' Gracia. "All companies should be extra careful when thinking about complex tax structures involving EU member states." ■

CHRIS KWIERAGA

# SAFE HARBOR

# Wine and the Bordelais experience in China

*Crash of the Bordeaux craze taught France a harsh lesson in selling to the Chinese market*

**BY DAVID MARCUS**

China is both irresistible and maddening to Western businesses. As massive as the market is and as much as it's grown in the last generation, its culture and government remain opaque to even the most sophisticated companies. Suzanne Mustacich offers a fascinating case study of the challenges of doing business in China in her new book, "Thirsty Dragon: China's Lust for Bordeaux and the Threat to the World's Best Wines." Mustacich, an American who lives in Bordeaux and reports on its wine trade for Wine Spectator, depicts both the frenetic unpredictability of life in China and the befuddlement of the Bordelais as their clubby world is overrun by people whose language they do not speak and whose motivations the do not understand.

Bordeaux, a city of 240,000 in southern France, is the center of one of Europe's most commercially sophisticated wine regions. Since the 17th century, the city has attracted wave after wave of immigrants who have established themselves as merchants exporting wine all over Europe and to the U.K. and the U.S.

By European standards, there's an immense amount of wine for them to sell, and at the high end it's ranked by a classification system established in 1855 that helps wealthy customers navigate the often-confusing world of high-end wine. As Mustacich writes, "The classification had history, allure and a precise ranking of status. It was a gift-giver's dream."

For most of the 20th century, China was not an important market for Bordeaux. Very few Chinese could afford even cheap wine, for which even fewer of them had any affinity. But in 1996, Li Peng, then the Communist Premier, criticized the effects of baijiu on Chinese culture and extolled the health benefits of red wine. The unspoken motivation for his comments may have been to reduce the distillation of rice into baijiu, a high-alcohol spirit, so that more of the grain could be used to feed China's massive population, but it also had the effect of increasing demand for foreign wine, since Chinese wine was all but impotable.

Foreign wine meant French wine, and French wine meant Bordeaux. China's growing upper class came to see wine as one more Western luxury good, like Hermes handbags or Gucci shoes. Wine became part of China's gift-giving business culture. Chateau Lafite Rothschild, one of the five first-growth wines at the top of the 1855 Bordeaux classification, became particularly popular in China, perhaps because the name is easy to pronounce in Mandarin.

Bordeaux's increasing popularity in China impinged on the French consciousness only slowly. The early 2000s were a time of popularity throughout the developed world, and wealthy consumers from the U.S. and Russia helped drive up prices for high-end wine. That ended abruptly with the financial crisis of 2008, and wealthy Chinese were poised to fill the void.

They did so aggressively. Prices of the first growths continued to soar, driven by Chinese demand. Chinese individuals of unimaginable wealth and unclear background started buying up estates in Bordeaux, many of whose 8,000 or so producers struggled to make wine without losing money. Chinese companies entered the wine trade aggressively and tried to eliminate the byzantine system of merchants who since the 1600s have helped move wine from producer to ultimate consumers.

In China, aspiring merchants faked French labels with abandon, a practice the French were far too slow to recognize and attempt to stop. Mustacich details those half-hearted efforts in one of the book's best chapters, where she follows investigator Nick Bartman as he explores the illegal underbelly of the Chinese economy.

The bubble ended as abruptly as it began. In March 2012, Chinese Premier Wen Jiabao promised to clamp down on foreign travel, cars and banquets. Within weeks, Chinese started walking away from their orders for first growths and other high-end Bordeaux, behavior that angered and confused the Bordelais.

Jiabao's anti-corruption campaign has yet to abate, and the Chinese frenzy for Bordeaux has yet to resume. The region's wine exports to China fell by 26% last year to $300 million.

But rich Chinese continue to buy property in Bordeaux just as they purchase real estate in the U.S. and Canada, and the Chinese government still wants to become a major wine producer, in part to stabilize the soil in the large desert regions where it plans on planting vineyards.

The scale of Chinese ambition is staggering; the government wants to build 1,000 massive estates that will attract tourists, not to mention allow the politically connected to add to their fortunes by contracting to build and manage the properties. The government wants foreign money and expertise to aid in this development, and large French producers have warily heeded the call, unable to pass up the chance to enter a market with 1.3 billion people.

But Mustacich's excellent narrative shows how little the French have understood that market, recent history that clouds their future prospects in China. ■

# MOVERS & SHAKERS

COMPILED BY BAZ HIRALAL

**Sierra Ventures** named **Jim Doehrman** as its first operating partner. Most recently chief financial officer of Xtime, he helped prepare the vehicle service and repair software company for an initial public offering and led its sale a year ago to **Cox Automotive** for $325 million.

Before that, as CFO, he led Gracenote through a growth phase leading to the $265 million sale to **Sony Corp.**

Doehrman was also CFO of Octane Software Inc. to **Epiphany Inc.**, which was sold for $3.2 billion; and led the IPO of **IDG Books**, the publisher of the iconic "For Dummies" books.

**Advent International** added **Andrew Cosslett** as an operating partner, focusing on the leisure sector.

Cosslett is chairman of **Fitness First Group**, and was CEO from 2012 until July.

He is also chairman of England Rugby 2015, the organizing committee for Rugby World Cup 2015 and is an independent director of the Rugby Football Union.

Cosslett began his career at **Unilever plc** before holding management positions at **Cadbury Schweppes plc**, including as regional president for Europe, the Middle East & Africa and CEO of Asia Pacific.

Between 2005 and 2011, Cosslett was CEO of **InterContinental Hotels Group plc**.

During that time he was also chairman of Duchy Originals Ltd. between 2005 and 2008.

**Simpson Thacher & Bartlett LLP** elected nine partners, effective Jan. 1.

In New York: **David Azarkh**, capital markets, securities and corporate governance; litigator **Susannah Geltman**; **Brian Gluck**, banking, credit and acquisition finance; **Jonathan Lindabury**, derivatives; **Sebastian Tiller**, mergers and acquisitions and corporate governance; and **Jessica Tuchinsky**, banking and credit.

The London partners will be **Carol Daniel**, U.S. capital markets transactions; **Wheatly MacNamara**, real estate; **Seema Shah**, private funds.

**Gibson, Dunn & Crutcher LLP** is naming eight partners for New Year: **Daniel Angel**, intellectual property transactions and strategic sourcing; **Douglas M. Champion**, real estate/land use; **Daniel P. Chung**, litigation/white collar; **Gabrielle Levin**, securities and labor and employment litigation; **John D. W. Partridge**, litigation, FDA and healthcare and white collar matters; **Heather L. Richardson**, healthcare litigation; **Benyamin S. Ross**, mergers and acquisitions; and **Robert Vincent**, intellectual property.

On Jan. 1, six **Sullivan & Cromwell LLP** attorneys will become partners: **Ari B. Blaut**, leveraged finance and acquisition finance; **Heather L. Coleman**, executive compensation, corporate governance and securities; **Scott B. Crofton**, mergers and acquisitions; **Joseph A. Hearn**, transactional, regulatory and compensation-related matters for financial institutions; **Kathleen S. McArthur**, complex commercial litigation, regulatory enforcement proceedings and internal investigations; and **Matthew J. Porpora**, securities, antitrust, banking, commodities and other complex commercial litigation, as well as in regulatory and criminal investigations.

**Latham & Watkins LLP** named a dozen partners: **Shagufa R. Hossain** and **Leakhena Mom**, representing private equity firms, investment banks and public and private companies in financing and other transactions; **Robbie McLaren**, mergers and acquisitions and PE deals, as well as reorganizations and general corporate matters; **Farah O'Brien** and **Giovanni B. Sandicchi**, M&A, joint ventures and other corporate transactions; **Chad G. Rolston**, M&A; **Adrian Chiodo**, cross-border leveraged finance and public-to-private transactions; **Douglas H. Burnaford**, investment management, structured finance and leveraged financings; **Jesse K. Sheff**, counseling arrangers and traditional and non-traditional financing sources with acquisition and other leveraged financings; **Helena Potts**, complex international cross-border restructurings; **Adam J. Goldberg**, corporate and cross-border restructurings and chapter 11 reorganizations; and **Rachel K. Bates**, complex real estate transactions, with focus on hospitality and private equity matters.

**King & Spalding LLP** named 24 partners: **Sajid Ahmed**, **Amy Frey** and **Elizabeth Silbert**, international arbitration; **Brian Bohnenkamp**, FDA and life sciences; **Susan Clare**, **Meredith Redwine** and **Elizabeth Taber**, tort and environmental litigation; **Kevin Clark**, **Shelby Guilbert**, **Kristen Lynn**, **Emmett Murphy** and **Benjamin Pollock**, business litigation; **Archie Fallon**, global transactions; **Justin King**, **Robert Leclerc** and **Carrie Ratliff**, corporate; **Antonio Lewis**, intellectual property; **Christopher McCoy**, **Dave Powell** and **Sven Wortberg**, capital transactions and real estate; **Simon Rahimzada**, **Moustafa Said** and **James Stull**, Middle East and Islamic finance; and **Michael Urschel**, finance.

**Proskauer Rose LLP** announced nine new partners: **Scott Bowman**, tax and estate planning; **Guy Brenner**, complex litigation matters; **Michael Ellis**, public and private mergers and acquisitions and securities; **Ali Fawaz**, executive compensation and employee benefits; **Robin Feiner**, initial public offerings, follow-ons and block trades; **Stephen Gruberg**, debt capital markets; **Russell Hirschhorn**, complex ERISA litigation; **Vincenzo Lucibello**, financing transactions; and **Catherine Sear**, tax aspects of private investment fund structuring. ■

# FEEDBACK

## CONTACT THE DAILY DEAL

Let us know what you think of our coverage or just share your views on the news of the day. Tell us about problems with links or take issue with something you read here. Just type your comments in the box below and send them directly to The Daily Deal editors.

### COMMENT

### NAME (optional)

### COMPANY/FIRM (optional)

SUBMIT CLEAR

Your comments will be sent via your e-mail program to The Daily Deal. If you click "submit" while you are offline, the text will be stored in your own outbox until you reconnect to the Internet and activate your e-mail application. Thank you for your interest.

To submit items for Movers & shakers, contact Baz Hiralal: bhiralal@thedeal.com

FOUNDING CHAIRMAN: Bruce Wasserstein

The Daily Deal (ISSN 1545-830X) is published Monday through Friday by The Deal © 2015.
The Copyright Act of 1976 prohibits the reproduction by photocopy machine or any other means of any portion of this publication except with the permission of the publisher. The Daily Deal is a trademark of The Deal.

*CUSTOMER SERVICE INFORMATION*
Subscriptions: 1-888-257-6082
Advertising & Reprints: 1-212-321-5565
Customer service: 1-888-667-3325, 1-212-313-9200
or customerservice@thedeal.com

*ABOUT THE DEAL*
For more information about The Deal's products and services, please visit us online at www.thedeal.com and click "About Us".

*IMPORTANT NOTICE ABOUT YOUR SUBSCRIPTION*

As stated in our terms and conditions policy, you are granted a nonexclusive, nontransferable, limited license to access and use The Daily Deal. Each license ordered includes:
(a) the right to electronically display materials to no more than one person at a time;
(b) the right to obtain a single printout of materials downloaded.

Visit http://www.thedeal.com/terms.html for more information.

# COMPANY INDEX


Advent International . . . 25
Aeropostale Inc. . . . 4
Aker ASA . . . 17
Albertsons Cos . . . 20
Aldo Group Inc. . . . 12
AlixPartners LLP . . . 6, 19
Amazon.com Inc. . . . 6, 22
American Apparel Inc. . . . 7
American Eagle Outfitters Inc. . . . 6
American Seafoods Group LLC . . . 17
Ancestry.com LLC . . . 19
Ancora Merger Arbitrage Fund LP . . . 18
Apollo Global Management LLC . . . 5
Apple Inc. . . . 4, 22
A.P. Moller-Maersk A/S . . . 19
Approach Resources Inc. . . . 12
Aqua Terra Water Management LP . . . 17
Arcus Hunting . . . 17
Astec Industries Inc. . . . 12
Atwood Oceanics Inc. . . . 12
Bain Capital LLC . . . 5
Bebe Stores Inc. . . . 5
Berry Plastics Group Inc. . . . 20
Blackstone Group LP . . . 20
Bloomberg LP . . . 21
Blue Harvest Fisheries LLC . . . 17
BNC Bancorp . . . 21
Bravo Brio Restaurant Group Inc. . . . 12
Bregal Partners LP . . . 16
BV Investment Partners . . . 21
C. Wonder LLC . . . 7
Cache Inc. . . . 7
Cadbury Schweppes plc . . . 25
Caleres Inc. . . . 12
Campbell Soup Co. . . . 12
Carlyle Group LP . . . 20
Centre Partners Management LLC . . . 16
Cerberus Capital Management LP . . . 20
Children's Place Inc. . . . 5
City Sports Inc. . . . 7
Claire's Stores Inc. . . . 4
Cleary Gottlieb Steen & Hamilton . . . 10
CMA CGM SA . . . 19
Cofra Holding AG . . . 16
CohnReznick LLP . . . 20
Comerica Inc. . . . 12
Contango Oil & Gas Co. . . . 12
Cooley LLP . . . 7
Cornerstone OnDemand Inc. . . . 12
Cosco Container Lines Co. . . . 19
Cox Automotive . . . 25
Crestview Partners LP . . . 20
CSX Corp. . . . 12
Cubic Corp. . . . 12
Cypress Energy Partners LP . . . 21
Danaher Corp. . . . 10
Dave & Buster's Entertainment Inc. . . . 20
Dawson Geophysical Co. . . . 12
Demand Media Inc. . . . 12
Denbury Resources Inc. . . . 12
DLA Piper . . . 9
Dollar Tree Inc. . . . 10
Drewry Maritime Equity Research . . . 19
Edgemont Capital Partners LP . . . 21
Endo International plc . . . 20
Energy Transfer Partners LP . . . 20
Epiphany Inc. . . . 25
Facebook Inc. . . . 22
FactSet Research Systems Inc. . . . 21
Fiat Finance and Trade LTD SA . . . 22
Fidelity National Information Services Inc. . . . 20
Fitness First Group . . . 25
Five Star Quality Care Inc. . . . 12
Fossil Group Inc. . . . 11
Frederick's of Hollywood Inc. . . . 7
Fresh & Easy LLC . . . 7
Genesco Inc. . . . 12
Gibson, Dunn & Crutcher LLP . . . 10, 25
GlassRatner Advisory & Capital Group LLC . . . 4
Great Atlantic & Pacific Tea Co. . . . 7
Gulf Island Fabrication Inc. . . . 12
Gymboree Corp. . . . 4
HHgregg Inc. . . . 5
H Partners Management LLC . . . 9
Haggen Holdings LLC . . . 7
Harris Williams & Co. . . . 16
High Point Bank Corp. . . . 21
Home Depot Inc. . . . 4
Hovde Group Inc. . . . 21
HSBC Bank plc . . . 22
IDG Books . . . 25
INetU Inc. . . . 21
Interactive Data Corp. . . . 20
Intercontinental Exchange Inc. . . . 20
InterContinental Hotels Group plc . . . 25
ITT Corp. . . . 13
J. Crew Group Inc. . . . 4
J.C. Penney Co. . . . 4
Jacobs Engineering Group Inc. . . . 13
Jive Software Inc. . . . 13
Kelso & Co. LP . . . 19, 20
King & Spalding LLP . . . 25
King & Wood Mallesons . . . 23
Kirkland's Inc. . . . 13
KKR & Co. LP . . . 6
Latham & Watkins LLP . . . 20, 25
Leonard Green & Partners LP . . . 5
Linklaters LLP . . . 22
LoanDepot Inc. . . . 20
Maas Capital Investments BV . . . 19
Macy's Inc. . . . 4
Maersk Inc. . . . 19
Merion Capital LP . . . 18
Micron Technology Inc. . . . 13
Misfit Inc. . . . 11
Modine Manufacturing Co. . . . 13
Monitor Clipper Partners LLC . . . 16
Moody's Investors Service Inc. . . . 6, 13
National Oilwell Varco Inc. . . . 13
NEP Group Inc. . . . 20
Nike Inc. . . . 6
Nordstrom Inc. . . . 4
Oak Hill Capital Partners LP . . . 20, 21
Office Depot Inc. . . . 11
Olshan Frome Wolosky LLP . . . 10
Omniforce LLC . . . 17
Owens & Minor Inc. . . . 13
Pacific Seafood Group . . . 17
Pacific Sunwear of California Inc. . . . 4
Parthenon Capital Partners LP . . . 20
Permira . . . 18
Pershing Square Capital Management . . . 10
Philadelphia Energy Solutions Inc. . . . 20
Poseidon Containers Holdings . . . 19, 20
Proskauer Rose LLP . . . 25
Quiksilver Inc. . . . 7
RadioShack Corp. . . . 7
Rapid Ratings International . . . 5
Sagent Pharmaceuticals Inc. . . . 13
Salt Creek Capital . . . 21
ScanSource Inc. . . . 13
Sears Holdings Corp. . . . 4
Seritage Growth Properties . . . 5
Shake Shack Inc. . . . 4
Shaw Communications Inc. . . . 21
Sierra Ventures . . . 25
Silver Lake Partners . . . 20
Simpson Thacher & Bartlett LLP . . . 25
Solic Capital Advisors LLC . . . 4
Sony Corp. . . . 25
Southcoast Financial Corp. . . . 21
Spectrum Equity Investors LP . . . 18
Standard General LP . . . 7
Staples Inc. . . . 11
Starboard Value LP . . . 10
Starbucks Corp. . . . 22
Sullivan & Cromwell LLP . . . 25
SunGard . . . 20
Swell.com . . . 6
Target Corp. . . . 5
Tempur Sealy International Inc. . . . 9
Third Point LLC . . . 10
Thomson Reuters Corp. . . . 21
Titan International Inc. . . . 13
TJX Cos. . . . 4
Toys "R" Us Inc. . . . 4
TPG Capital LP . . . 5, 20
U.S. Community Behavioral . . . 17
Under Armour Inc. . . . 6
Unilever plc . . . 25
United Arab Shipping Co. . . . 19
Urban Outfitters Inc. . . . 11, 13
USA Discounters Ltd. . . . 7
Versa Capital Management LLC . . . 4
Viavi Solutions Inc. . . . 10
ViaWest Inc. . . . 21
Vornado Realty Trust . . . 6
Wal-Mart Stores Inc. . . . 4
Walt Disney Co. . . . 22
Weatherford International plc . . . 13
Whole Foods Market Inc. . . . 13
William Blair & Co. . . . 10
WorkWell Medical Group LLC . . . 21
Zim Integrated Shipping Services Ltd. . . . 19
Zions Bancorp . . . 13
Zulily . . . 5