The Daily Deal

WEDNESDAY
MAY 11, 2011
VOLUME 22 ISSUE 91

For its most expensive acquisition, Microsoft wagers $8.5B on Skype

BY OLAF DE SENERPONT DOMIS

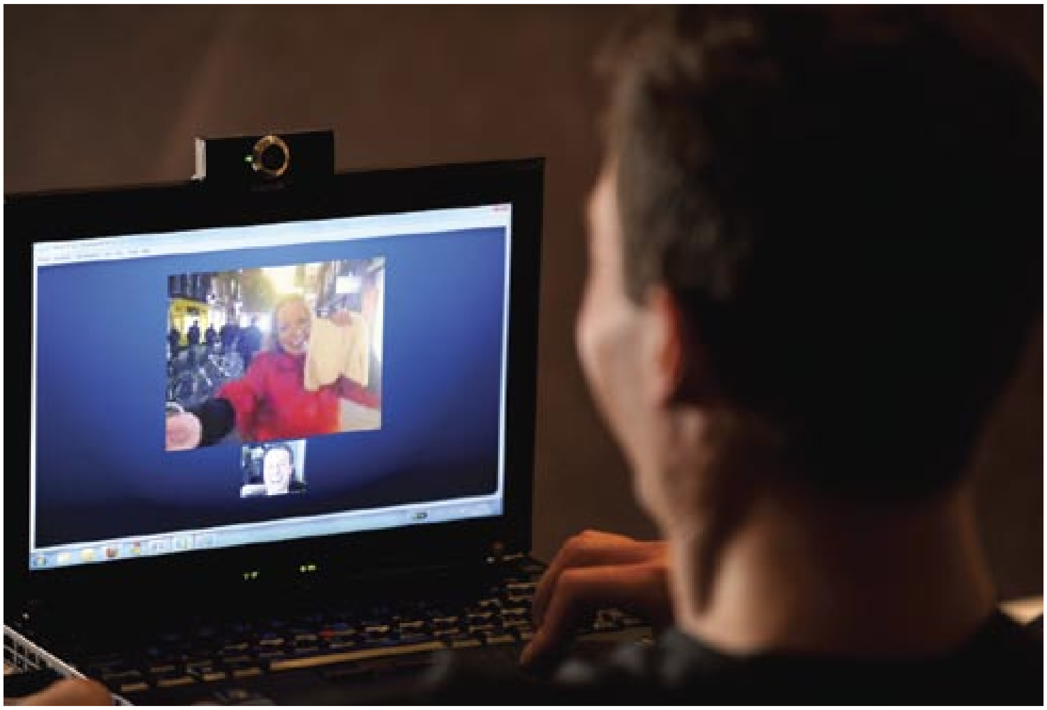
Hoping to succeed where previous Skype owner eBay failed, Microsoft's $8.5 billion agreement to buy the Internet calling company represents a risky move to boost the software giant's position as a Web communications powerhouse.

Certainly, Skype's voice-over-Internet-protocol calling and video-conferencing services have become so well known that the company's name has become a verb, as Microsoft CEO Steve Ballmer noted during a webcast news conference on the transaction. But to successfully integrate the acquired company's communications offerings across Microsoft's products, including its Office suite, Xbox entertainment consoles, mobile phone software and enterprise communications tools, will take a high-degree of execution.

One area where observers were particularly skeptical was the ability of Microsoft to transform Skype into a tool used by enterprises by somehow combining it with its relatively new Lync product, which offers businesses a range of capabilities, such as instant messaging and audio and video Web conferencing.

"Skype, while having some nice communications features, is still a consumer-grade solution," Analysys Mason analyst Steve Hilton wrote Tuesday. "Enterprises don't want low-quality communications services when dealing with customers." ■

FULL STORY >



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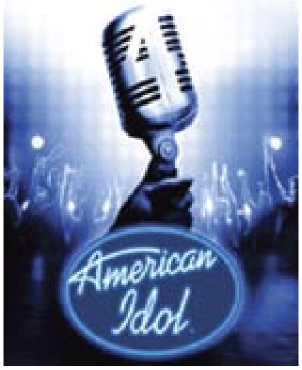

'AMERICAN IDOL' OWNER CKX SOLD TO APOLLO GLOBAL

Taina Rosa writes that Robert F.X. Sillerman, the founder and former CEO of the target, is supporting the deal. He holds a 20.3% stake in the company but it is unclear if he intends to sell his entire stake or rejoin the company's management team or board. Sillerman was one of several suitors angling to acquire control of the commercial entertainment management company. In August he announced he would seek a majority interest in CKX, which immediately adopted a poison pill. A source says financing was a problem for Sillerman.
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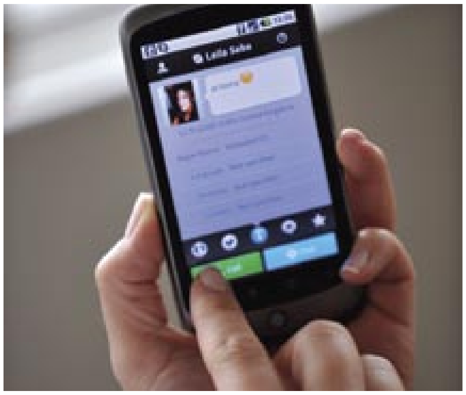

THE DEAL PIPELINE

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Top acquisitions by Microsoft, past 5 years

Target: aQuantive Inc.
Industry: Online advertising
Deal value: $6 billion
Announced: May 18, 2007

Target: Fast Search & Transfer ASA (Web search unit)
Industry: Enterprise searching
Deal value: $1.2 billion
Announced: Jan. 8, 2008

Target: Tellme Networks Inc.
Industry: Speech recognition
Deal value: $800 million
Announced: March 14, 2007

Target: Greenfield Online Inc.
Industry: Internet surveying
Deal value: $486 million
Announced: Aug. 26, 2008

Target: Facebook Inc. (1.60%)
Industry: Social networking
Deal value: $240 million
Announced: Oct. 24, 2007

Source: The Deal Pipeline

Exclusive Video

Next exchange target? Look to Asia, South America

Richard Torrenzano, who was previously a member of the Big Board, predicts that a technology company or a European exchange such as the LSE might make a competing bid for NYSE Euronext.

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- *Ratech Machine Inc. - 05/06/2011*
- *Parlay Entertainment Inc. - 05/06/2011*

MOST RECENT BANKRUPTCY
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- *Parlay Entertainment Inc. - Filing - 05/06/2011*

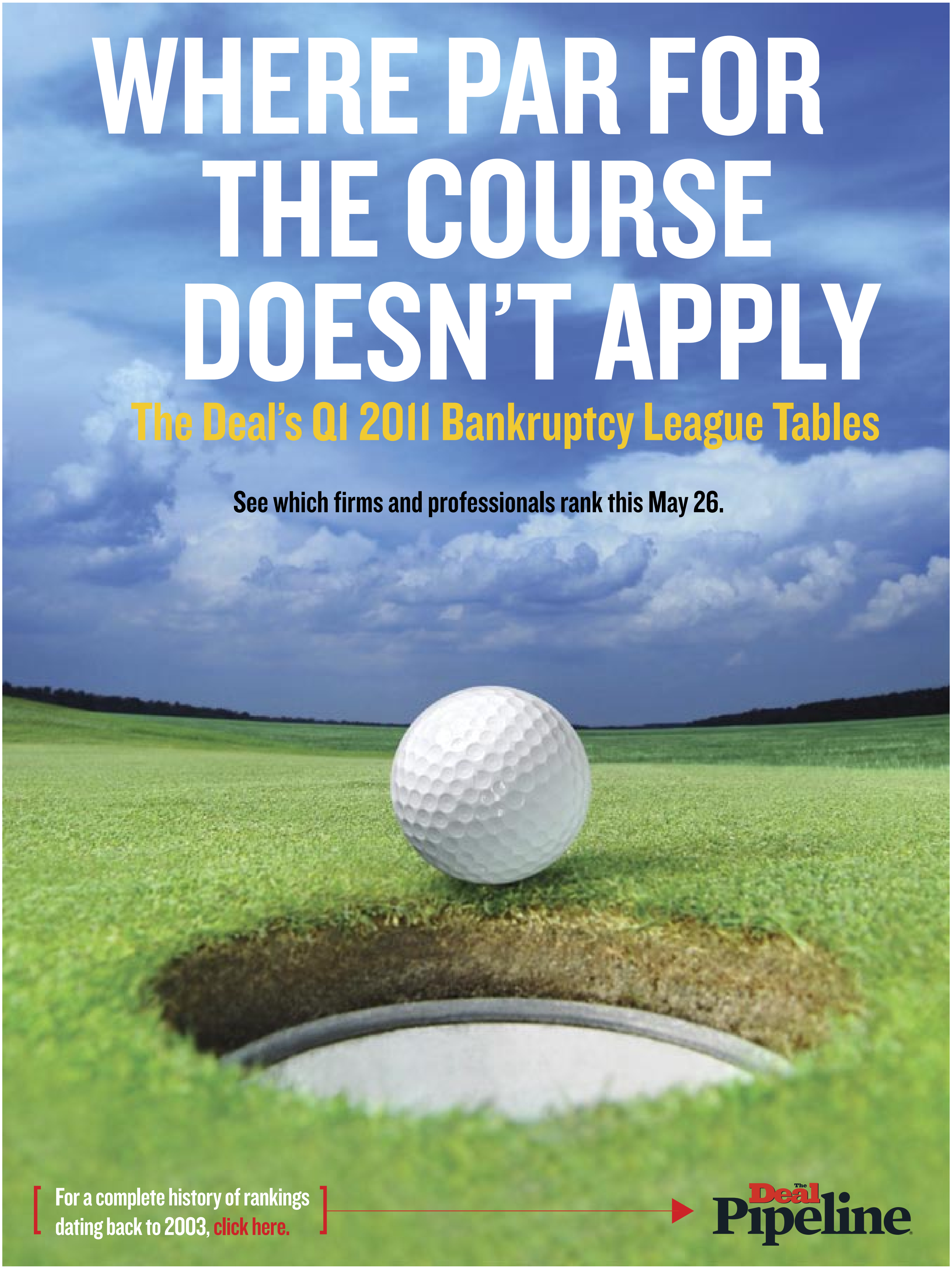
MOST RECENT FINANCINGS
- *4energy Ltd. - VC - 05/10/2011*
- *JiWire Inc. - VC - 05/09/2011*
- *Parlay Entertainment Inc. - DIP - 05/06/2011*

MOST RECENT M&A
- *Skype Technologies SA - 05/10/2011*
- *Dollar Thrifty Automotive Group Inc. - 05/09/2011*
- *Millennium New Jersey Holdco LLC - 05/09/2011*

Ahead of the news

An executive summary of events impacting the markets tomorrow

Metadigm acquires Power Engineering amid expansion push *Click here*


WHERE PAR FOR THE COURSE DOESN'T APPLY
The Deal's QI 2011 Bankruptcy League Tables
See which firms and professionals rank this May 26.
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The Deal Pipeline

TOP STORY

Microsoft aims high with Skype purchase

Software giant's priciest deal holds promise, risks

BY OLAF DE SENERPONT DOMIS

Hoping to succeed where previous owner **eBay Inc.** failed, **Microsoft Corp.**'s $8.5 billion agreement to buy Internet calling company **Skype Global sarl** represents a risky move to boost the software giant's position as a Web communications powerhouse.

The deal was greeted with some skepticism by investors, who drove Microsoft shares down 2.2% in morning trading Tuesday. The stock recovered somewhat to close at $25.67, a 16 cent, or 0.62%, loss.

Certainly the price paid by Redmond, Wash.-based Microsoft was on investors' minds. The deal values privately held Skype at about 9.9 times 2010 revenue, a valuation that is "on the high side," as **Evercore Partners Inc.** analyst Kirk Materne wrote in a research note. But the risk that Microsoft might fail to wring value out of Skype by weaving the technology into its own offerings, as eBay intended to do when it bought the company six years ago, also generated some skepticism.

In a webcast press conference in San Francisco, Microsoft CEO Steve Ballmer pitched the deal as one that will create a communications powerhouse.

"Anytime people around the planet talk about communication, they talk about Skype," Ballmer said. "At Microsoft we see enormous opportunities to bring together what people want in data, voice, video and IM, all on a single screen. Microsoft and Skype together will define this future and what it really looks like."

Certainly, Skype's voice-over-Internet-protocol calling and video-conferencing services have become so well known that the company's name has become a verb, as Ballmer noted during his talk. But to successfully integrate the acquired company's communications offerings across Microsoft's products, including its Office suite, Xbox entertainment consoles, mobile phone software and enterprise communications tools will take a high degree of execution.

DEAL MEMO

MICROSOFT • SKYPE

Acquirer
Microsoft Corp.

Corporate dealmakers
Peter Klein (CFO); Marc Brown (man. dir., corporate development)

Investment bank
None

Law firms
Simpson Thacher & Bartlett LLP
Alan Klein, Charles Cogut, Anthony Vernace, Jonathan Strom, Andrew Sparks, Michael Sullivan, Gary Mandel, Jonathan Goldstein, Danny Salinas, Gregory Grogan, Jennifer Pepin, David Cheng, Lori Lesser, Marcela Robledo, Mindy Jeng, J. Scott Dyer, Adeeb Fadil, Elisa Alcabes, Arun Goel
Covington & Burling LLP
Evan Cox, Bruce Deming, Yaron Dori, Miranda Cole, Daniel Cooper, Henriette Tielemans, Lars Kjølbye, Michael Markman

Corporate counsel
Brad Smith (Sr vp/gen. counsel); Keith Dolliver (M&A/assoc. counsel)

Target
Skype Global Sarl

Investment banks
Goldman Sachs Group Inc.
Sam Britton, Nick Giovanni
J.P. Morgan Chase & Co.

Law firm
Sullivan & Cromwell LLP
Richard Morrissey, Alison Ressler, Sarah Payne, Nader Mousavi, Steven Holley, Andrew Solomon, Eric Wang, Matthew Friestedt, Michael Katz

Corporate counsel
Neal Goldman (gen. counsel)

Sellers
Niklas Zennström, Janus Friis (founders), Joltid Ltd., Silver Lake

Law firm
Skadden, Arps, Slate, Meagher & Flom LLP
Michael Gisser, Rick Madden, Lance Etcheverry, Joseph Yaffe, Michael Beinus

Deal value $8.5 billion

The Deal Pipeline
http://pipeline.thedeal.com/

One area where observers were particularly skeptical was the ability of Microsoft to transform Skype into a tool used by enterprises by somehow combining it with its relatively new Lync product, which offers businesses a range of capabilities, such as instant messaging and audio and video Web conferencing.

"Skype, while having some nice communications features, is still a consumer-grade solution," **Analysys Mason Ltd.** analyst Steve Hilton wrote Tuesday. "Enterprises don't want low-quality communications services when dealing with customers."

Yet others were more sanguine about the deal's prospects.

"The Skype deal provides Microsoft with a key Internet communications business that can be used to help enhance the real-time communications capabilities of other Microsoft properties," Materne wrote. "We believe the strategic fit with existing Microsoft products and the pace of growth within Skype helps justify the price."

Indeed, if it closes, the transaction will be the most expensive one Microsoft has undertaken. In 2007, it paid $6 billion for online advertising company aQuantive Inc.

CONTINUED >

TOP STORY

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That said, the deal was not particularly complicated for Microsoft to hash out, according to a person familiar with the negotiations, so the software giant decided that hiring an outside financial adviser would be unnecessary. Microsoft has close relationships with **Silver Lake**, which simplified the discussions, and the buyer was "dealing with a small set of owners, and Silver Lake was in control of things, so it was just better to have very direct conversations, and bankers were not needed as intermediaries," said the person, who asked not to named. "Skype is a private company, it's an all-cash deal, so there weren't any particular legal or tender offer dynamics to worry about."

The transaction grew out of talks during the first quarter over potential partnerships that Skype was holding with several companies, including Microsoft, "to buttress their story" as the company prepared to go public, the source said.

Microsoft last month began internal discussions that led to the decision to pursue Skype as an acquisition. By mid-April, the company came up with a potential valuation for the target and entered discussions with Silver Lake, the person said. Though several other companies had shown interest in Skype earlier, there were no competing bids for the target, the person said.

The significant price tag represents a handsome return on investment for Silver Lake and the consortium of investors it led. The private equity firm and its co-investors will more than triple their money in less than 18 months of ownership, a representative for the group said. The consortium acquired 70% of Skype two years ago for $1.9 billion from eBay, the largest equity check Silver Lake has ever written.

EBay acquired the company from founders Niklas Zennström and Janus Friis for $2.6 billion in 2005 in part as an attempt to connect buyers and sellers in its online auction marketplace, but that concept never came to fruition.

Egon Durban, the Silver Lake managing director who led the Skype investor consortium, said the Microsoft acquisition offers a better fit than the business did with eBay.

"We transformed the company in a pretty fundamental way, and Microsoft offers an incredibly compelling fit for Skype," Durban said in an interview. "Microsoft's properties and the assets they own, like Office, Xbox and the unified communications suite, make this much more strategic in nature."

Skype, based in Luxembourg, will become a new business division within Microsoft, which will be led by Skype CEO Tony Bates.

Last year Skype recorded a $7 million loss on sales of $860 million. It has 170 million connected users and facilitated more than 207 billion minutes of voice and video conversations in 2010. ■

—Mary Kathleen Flynn and Andrew Bulkeley contributed to this report.

REGULATION

Hertz may have to shed more than Advantage

FTC frets over potential entry into midpriced sector

BY BILL MCCONNELL IN WASHINGTON

Hertz Global Holdings Inc.'s offer to divest its low-cost Advantage rental car brand probably won't be enough to win Federal Trade Commission approval for its new $2.24 billion bid to acquire **Dollar Thrifty Automotive Group Inc.**

With **Avis Budget Group Inc.**'s rival bid apparently mired in its FTC review, Hertz on Monday revived its battle to capture Dollar Thrifty with sweeteners for both Dollar Thrifty shareholders and the FTC. According to antitrust sources, regulators are worried that by taking over midtier brand Dollar Thrifty, the expected transformation of Advantage into a midpriced competitor will be lost. Hertz, with its flagship brand geared to business and higher-end vacation travelers, has wanted to enter the midpriced sector of the market. Before the company made a move for Dollar Thrifty, Advantage was destined to be its vehicle for such a move.

Antitrust sources said Park Ridge, N.J.-based Hertz's offer to divest Advantage will only partially satisfy the FTC's concerns, in part because there's no guarantee that whoever acquires Advantage will build it into a midtier competitor. Although the FTC is expected to demand more than the Advantage sale, Hertz and the FTC are said to remain far from agreement on what that additional step should be.

The offer to divest Advantage is, like the new offer, a big move for Hertz, which last year had originally argued it should not have to shed any brands to complete the Dollar Thrifty takeover. Hertz apparently was willing to go to court if the FTC had challenged the deal. However, the emergence of Avis as a rival bidder forced Hertz to give up any thought of waging a costly and lengthy court fight against the government if it wanted to convince Dollar Thrifty shareholders that its offer rather than Avis' was the best route.

Eight months after shareholders of Tulsa, Okla.-based Dollar Thrifty rejected a lower Hertz bid, the spurned suitor Monday returned to the fray with an offer to pay $57.60 in cash and 0.8546 shares of its stock for Dollar for total consideration of $72 per share. The revised bid is considerably higher than the $50.99 per share bid that Dollar Thrifty shareholders spurned in September. Avis offered to win Dollar Thrifty with its own $1.67 billion cash-and-stock offer. But the Avis proposal has been held up by antitrust regulators.

"Avis Budget has been unable to produce a viable antitrust remedy, despite an entire year of discussions with the FTC with no end in sight," Hertz chairman and CEO Mark P. Frissora said Monday. "In contrast, we are confident we can deliver a compelling proposal to the FTC centered around the divestiture of our Advantage brand, and are committed to working proactively to move through this process as quickly as possible."

For Avis' part, one antitrust expert said that company "clearly has not gotten to the goal line" with the FTC and was "too optimistic" that the commission would accept its argument that its franchise structure allows owners pricing independence and therefore Avis itself would not obtain pricing power by acquiring Dollar Thrifty. ■

THE DAILY DEALS

May 10, 2011 4:00 p.m.

TARGET	ACQUIRER	SPREAD $	SPREAD with dividends	SPREAD %	CHANGE F/ PREVIOUS DAY	5 days ago	10 days ago	Annualized return	Est. close
American Medical Systems Holdings	Endo Pharmaceuticals Holdings Inc.	0.13	0.13	0.44	0.13	0.53	0.55	4.4	6/15
Atheros Communications Inc.	Qualcomm Inc.	0.16	0.16	0.36	0.03	0.20	0.22	6.2	5/31
Beckman Coulter Inc.	Danaher Corp.	0.47	0.47	0.57	0.03	0.59	0.47	5.7	6/15
Bronco Drilling Co.	Chesapeake Energy Corp.	0.01	0.01	0.09	0.01	0.03	-0.01	0.7	6/30
Bucyrus International Inc.	Caterpillar Inc.	0.67	0.67	0.73	0.00	0.55	0.59	5.2	6/30
Center Financial Corp.	Nara Bancorp Inc.	0.14	0.14	1.99	0.07	0.21	0.12	11.0	7/15
Cephalon Inc.	Teva Pharmaceuticals Industries Ltd.	1.69	1.69	2.12	0.11	1.51	5.11	6.8	9/1
Chemspec International Ltd.	Jianhua Yang	0.52	0.52	6.95	-0.02	0.53	0.52	N/A	N/A
Consolidated Thompson Iron Mine	Cliffs Natural Resources Inc.	C$0.01	C$0.01	0.06	C$0.00	C$0.13	C$0.08	0.3	7/31
Constellation Energy Group Inc.	Exelon Corp.	C$3.49	C$3.00	8.20	C$0.15	C$3.78	C$6.40	11.2	1/31/12
CNA Surety Corp.	CNA Financial Group Corp.	0.08	0.08	0.30	-0.01	0.06	0.09	N/A	N/A
Danvers Bancorp Inc.	People's United Financial Inc.	-0.01	-0.01	-0.03	0.02	22.72	22.66	-0.2	6/30
Dionex Corp.	Thermo Fisher Scientific Inc.	0.05	0.05	0.04	0.10	0.22	0.40	5.1	5/13
Dollar Thrifty Automotive Group Inc.	Avis Budget Group Inc.	-23.45	-23.45	-28.72	2.06	-11.33	-9.24	N/A	N/A
Dollar Thrifty Automotive Group Inc.	Hertz Global Holdings inc.	-9.88	-9.88	-12.10	2.47	3.22	4.65	N/A	N/A
DPL Inc.	AES Corp.	-0.38	-0.05	-0.16	0.04	-0.26	-0.25	-0.2	12/31
Drugstore.com Inc.	Walgreen Co.	0.02	0.02	0.53	0.00	0.03	0.02	3.8	6/30
Duncan Energy Partners LP	Enterprise Products Partners LP	0.53	0.53	1.28	-0.11	0.57	3.00	N/A	N/A
Emergency Medical Services Corp.	Clayton, Dubilier & Rice LLC	0.17	0.17	0.27	0.02	0.18	0.21	1.9	6/30
Epicor Software Corp.	Apax Partners LLP	0.00	0.00	0.00	-0.01	0.02	0.01	0.0	5/31
Equinox Minerals Ltd.	Barrick Gold Corp.	0.05	0.05	0.62	0.01	0.05	0.04	N/A	N/A
Exco Resources Inc.	Douglas Miller	0.07	0.07	0.34	0.03	-0.40	-0.24	N/A	N/A
Frontier Oil Corp.	Holly Corp.	-0.12	-0.12	-0.40	0.10	0.06	0.02	-2.8	7/1
Fushi Copperweld Inc.	Li Fu, Abax Global Capital Ltd.	3.22	3.22	41.39	-0.30	2.54	2.40	N/A	N/A
Global Crossing Ltd.	Level 3 Communications Inc.	1.49	1.49	5.64	-0.54	1.50	1.60	10.1	11/30
Graham Packaging Co.	Silgan Holdings Inc.	0.24	0.24	1.06	-0.01	0.18	0.23	3.4	9/1
GSI Commerce Inc.	eBay Inc.	0.14	0.14	0.48	-0.06	0.00	-0.51	2.7	7/15
Harbin Electric Inc.	Tianfu Yang, Baring PEAG Ltd.	6.04	6.04	33.63	0.23	5.25	5.38	N/A	N/A
Hughes Communications Inc.	EchoStar Corp.	0.82	0.82	1.37	0.04	0.89	0.99	N/A	N/A
Hypercom Corp.	VeriFone Systems Inc.	0.55	0.55	4.88	0.01	0.62	0.62	27.0	7/15
Inspire Pharmaceuticals Inc.	Merck & Co.	0.02	0.02	0.40	-0.01	0.01	0.02	2.8	7/1
Lions Gate Entertainment Corp.	Carl Icahn	1.22	1.22	19.43	-0.02	1.22	1.10	N/A	N/A
L-1 Identity Solutions Inc.	Safran SA	0.99	0.99	8.99	-0.06	0.26	0.48	91.2	6/15

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N/A = not available

Spreads, including deals with collars that are not yet in the pricing period, are calculated using stock figures available at market close. The final terms for deals with collars may be different. When estimations for pricing periods are not available, the spread is determined by the acquirer's share price at the market close. The close date is estimated. Spreads do not include dividend payments that have not been announced.

THE DAILY DEALS

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TARGET	ACQUIRER	SPREAD $	SPREAD with dividends	SPREAD %	CHANGE F/ PREVIOUS DAY	5 days ago	10 days ago	Annualized return	Est. close
Lubrizol Corp.	Berkshire Hathaway Inc.	0.79	0.79	0.59	0.03	0.28	0.41	2.6	7/31
Marshall & Ilsley Corp.	BMO Financial Group	0.06	0.06	0.77	0.01	0.03	0.13	4.2	7/15
Massey Energy Co.	Alpha Natural Resources Inc.	1.20	1.20	1.92	-0.06	1.31	1.36	13.5	7/1
Mentor Graphics Corp.	Icahn Enterprises LP	2.57	2.57	17.81	0.04	2.74	2.07	N/A	N/A
National Semiconductor Corp.	Texas Instruments Inc.	0.64	0.64	2.63	0.05	0.82	0.79	5.5	11/1
Nationwide Health Properties Inc.	Ventas Inc.	0.16	0.16	0.38	0.03	0.17	0.25	1.7	7/31
NYSE Euronext	Nasdaq OMX-IntercontinentalExchange	1.39	1.69	4.09	0.43	-14.86	-13.95	N/A	N/A
Nicor Inc.	AGL Resources Inc.	0.74	0.74	1.32	0.10	0.58	0.92	3.4	9/30
99 Cents Only Stores	Leonard Green & Partners LP	-1.39	-1.39	-6.79	0.12	-1.02	-0.91	N/A	N/A
Nstar	Northeast Utilities Service Co.	0.35	-0.01	-0.02	-0.07	0.46	0.65	-0.2	6/30
OptionsXpress Holdings Inc.	Charles Schwab & Co.	0.14	0.14	0.73	-0.01	0.25	0.25	5.2	6/30
Pennichuck Corp.	City of Nashua	0.50	0.68	2.40	0.00	0.50	0.72	4.3	11/30
Pre-Paid Legal Services Inc.	MidOcean Partners	0.55	0.55	0.83	0.09	0.56	0.53	3.7	7/31
Pride International Inc.	Ensco plc	0.20	0.20	0.48	-0.01	0.23	0.20	8.4	5/31
Progress Energy Inc.	Duke Energy Corp.	2.02	1.38	2.89	-0.02	1.48	1.46	5.2	11/30
ProLogis	AMB Property Corp.	-0.04	0.08	0.47	0.03	-0.02	-0.13	7.1	6/3
Ralcorp Holdings Inc.	ConAgra Foods Inc.	-4.15	-4.15	-4.60	0.05	2.67	16.28	N/A	N/A
RehabCare Group Inc.	Kindred Healthcare Inc.	0.13	0.13	0.34	0.02	0.21	0.22	2.4	6/30
Retail Ventures Inc.	DSW Inc.	0.08	0.08	0.44	-0.01	0.06	0.06	7.3	6/1
Rural/Metro Corp.	Warburg Pincus	0.17	0.17	1.00	0.02	0.23	0.19	7.1	6/30
Savvis Inc.	CenturyLink Inc.	0.78	0.78	1.99	-0.08	0.56	3.78	4.1	11/1
Smurfit-Stone Container Corp.	RockTenn Co.	0.18	0.18	0.46	-0.07	0.05	0.13	8.0	5/31
Spectrum Control Inc.	API Technologies Corp.	0.04	0.04	0.20	0.02	0.13	0.22	0.9	7/31
SRA International	Providence Equity Partners LLC	0.36	0.36	1.17	0.06	0.49	0.31	4.4	8/15
Sterling Bancshares Inc.	Comerica Inc.	0.07	0.04	0.49	0.02	0.08	0.05	8.2	6/1
Talecris Biotherapeutics Holdings	Grifols SA	3.87	3.87	14.01	0.01	-0.16	-0.34	1023.0	5/15
Tenet Healthcare Corp.	Community Health Systems Inc.	0.64	0.64	9.68	0.09	0.67	0.35	N/A	N/A
Varian Semiconductor Equipment	Applied Materials Inc.	C$1.75	C$1.75	2.86	C$0.15	C$22.45	C$16.40	7.3	9/30
Vector Aerospace Corp.	EADS NV	C$0.08	C$0.08	0.62	C$0.01	C$0.13	C$0.11	2.8	7/31
Verigy Ltd.	Advantest Corp.	0.43	0.43	2.95	0.00	0.54	0.57	13.0	8/1
Whitney Holding Corp.	Hancock Holding Co.	0.09	0.09	0.69	0.05	0.07	0.08	11.4	6/1
Wilmington Trust Corp.	M&T Bank Corp.	0.02	0.02	0.47	-0.01	0.05	0.05	8.1	5/31
Zoran Corp.	CSR plc	3.31	3.31	38.85	0.00	0.00	0.00	644.6	6/1

N/A = not available

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SENSE OF THE MARKETS

BSkyB delay is no dealbreaker

BY LAURA BOARD IN LONDON

News Corp. has little to lose and much to gain from the U.K. government's delay in issuing final clearance for its buyout of the remaining 61% of **British Sky Broadcasting plc**.

Culture Secretary Jeremy Hunt had been expected to deliver his verdict around the end of April after signalling his willingness to clear the proposal in early March. But after days of silence, it has become apparent that media regulator Ofcom, working with Hunt, is determined to pin down the details of News Corp.'s concession to spin off Sky News.

The documents published on March 3 left many unanswered questions surrounding the influential news channel's long-term future after BSkyB spins it off to its shareholders, with News Corp. receiving a pro-rata 39% stake. Under the plan, a standalone Sky News would be led by a majority of independent directors, with output overseen by an independent editorial committee. News Corp. would be unable to increase its Sky News stake without government permission for 10 years or, theoretically, to meddle in editorial issues.

News Corp.-BSkyB, meanwhile, would provide money-losing Sky News with facilities and services and for 10 years would pay an undisclosed fee to carry the channel. Whether Sky News could thrive as an independently listed entity under such an arrangement remains doubtful. What becomes of the business after 10 years is even more unclear.

Hunt sustained criticism for buying into the proposal at the time, and the extended scrutiny is useful in fending off allegations that Hunt and his Conservative Party are and always will be natural allies of News Corp. chief Rupert Murdoch.

For News Corp. the state's demand that the Sky News arrangements are watertight will likely quieten, if not silence, the takeover's numerous critics and help ensure that future News Corp. deals in the U.K. aren't marred by flawed remedies for past transactions.

The ultimate prize—that regulatory uncertainty will push down the agreed price for BSkyB—will probably elude News Corp., however. Price expectations have converged at around 850 pence per share, which values the whole of BSkyB at £14.9 billion ($24.4 billion). That price is 150 pence per share more than what News Corp. wanted to pay last year and 50 pence above the price inde-

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MOVERS & SHAKERS

COMPILED BY BAZ HIRALAL

Vikram Malik will join **Deutsche Bank AG** as vice chairman and global head of medical technology investment banking. Also, **Keith Anderson** joins the bank to focus on the contract research organization and healthcare information technology sectors. Based in New York, they will report to **Pete Meyers** and **Michael Cohen**, co-heads of global healthcare investment banking.

Malik spent 11 years at **Bank of America Corp.**, where he was a managing director, responsible for the medical technology practice. Anderson will arrive from **Barclays Capital**.

Robert W. Baird & Co. tapped **Steven Goldberg** as a managing director and head of real estate investment banking, based in McLean, Va. Goldberg was most recently group head of real estate investment banking at **FBR Capital Markets**. He will provide equity origination and advisory services to institutional real estate clients, focusing on the lodging industry.

Berenson & Co. hired **Gene Lockhart** as a senior adviser, focusing on financial services. He has been president and CEO of **MasterCard International**, president of the global retail bank at **Bank of America Corp.** and CEO of Midland Bank plc. He was also president of **AT&T Inc.**'s consumer services. Lockhart remains a venture partner at **Oak Investment Partners** and an operating partner and chairman of financial institutions with **Diamond Castle Holdings LLC**.

BNY Mellon Asset Management named **Rumi Masih** as a senior investment strategist in the investment strategy and solutions group, based in New York. Masih comes in from **J.P. Morgan Asset Management**, where he was a managing director and global head of the strategic investment advisory group. He also worked at **Goldman Sachs Asset Management**.

Winston & Strawn LLP said **Richard Falek** joined its New York office as a partner. He focuses on antitrust and trade regulation issues, particularly mergers and acquisitions requiring Hart-Scott-Rodino Act filings, as well as state and foreign filings and approvals. Falek comes in from **Gibson, Dunn & Crutcher LLP**, where he was a member of the antitrust and litigation departments.

In Moscow, **King & Spalding LLP** made five hires.

Joining the firm as partners from **Hogan Lovells** are **Sergey Komolov**, who was deputy managing partner and co-head of the corporate practice in Moscow, and transactions partners **Olga Kozyr** and **Alla Naglis**. Joining as a partner from **White & Case LLP** is **Jennifer Josefson**, who headed the CEE/CIS oil and gas practice of her previous firm. **Iliya Zotkin** joins from Hogan Lovells as counsel.

Komolov will be the resident office managing partner in Moscow. In addition, **Gary Pegg** and **Mark Thompson**, the London-based mergers and acquisitions and private equity partner who oversaw the firm's plans for the Moscow office, will together lead the London-based portion of the Russia practice. Pegg is King & Spalding's co-managing partner in London and a former partner at Hogan Lovells.

Kasowitz, Benson, Torres & Friedman LLP announced that six litigators joined the firm's intellectual property group. Joining in Atlanta are partners **John North** and **Jeffrey Toney**, special counsel **Laura Fritts** and **Jonathan Waldrop**, and associate **Darcy Jones**. Partner **Jack Minnear** will work from New York. All were formerly with **Sutherland Asbill & Brennan LLP**.

In New York, **Wilson Sonsini Goodrich & Rosati PC** brought in intellectual property litigator **Jeffrey Hovden** as a partner from **Katten Muchin Rosenman LLP**. He focuses on pharmaceuticals.

Matthew Miner joined **White & Case LLP**'s white-collar practice as a partner in Washington. Miner joins the firm from the U.S. Senate, where he was minority staff director for the Senate Judiciary Committee, where he was also counsel on the permanent subcommittee on investigations.

Shane Albright joined **Hogan Lovells US LLP**'s life-science practice in the San Francisco and Silicon Valley offices from **Cooley LLP**.

Seyfarth Shaw LLP said labor and employment attorney **Wanda Holloway** joined the firm as a partner in its Houston office. She was with **Littler Mendelson PC**.

Dechert LLP took on **Jill Ross** for its antitrust/competition practice as counsel in New York. She was counsel at **Skadden, Arps, Slate, Meagher & Flom LLP**.

Miller & Chevalier Chartered announced that **Eva McComas** joined its employee benefits practice as counsel in Palo Alto, Calif. She comes to the firm from **Towers Watson**, a benefits consulting firm, where she was a senior consultant. ■

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pendent directors set as their minimum in June.

News Corp. executives on announcing first-quarter results May 4 plainly failed in their mission to talk down BSkyB shares. Investors in the Ilsworth, England, company are damned if they'll let a three-week delay deter them from squeezing as much as possible from the New York media giant. ■

BRIEFLY NOTED

EDITED BY THE DAILY DEAL STAFF

POSITIVEID PAYS UP TO $8.2M FOR MICROFLUIDIC SYSTEMS

Delray Beach, Fla.-based patient monitoring and diagnostics systems maker **PositiveID Corp.** said Tuesday that it acquired Fremont, Calif., biological sample testing device manufacturer **MicroFluidic Systems Inc.** for a total of $8.2 million. Under terms of the deal, the buyer will pay $1.2 million up front, $950,000 of which will be paid in PositiveID common stock. The remaining purchase price is based on the target hitting certain revenue and earnings targets through 2014. The earnout structure is based on submitted or in-process bids for $29 million in government contracts, the buyer said. MicroFluidic, founded in 2001, to date has won $45 million in government contracts, mostly through the Department of Homeland Security, as well as 12 U.S. patents. PositiveID has a market capitalization of about $14.7 million. —Thomas Zadvydas

JAPAN'S SOFTBANK LEADS $138M VC ROUND FOR GILT

New York-based online shopping retailer **Gilt Groupe Inc.** said Monday it raised $138 million from new and current investors, led by Japan's **Softbank Corp.**, and **Goldman Sachs Group Inc.** Other investors include **New Enterprise Associates**, **Draper Fisher Jurvetson Growth Fund**, **Pinnacle Ventures**, **TriplePoint Capital LLC** and **Eastward Capital Partners LLC**. Softbank invested $62.5 million into Gilt and also bought 50% of its affiliate Gilt Group Japan. The other firms invested a total of $75.5 million. Gilt plans to use the investment for acquisitions, as well as the development of existing and new products. Gilt has secured more than $240 million in financing since establishing operations in 2007. —T.Z. and David Holley

GOLDMAN SACHS CLOSES APPLE AMERICAN DEAL

Weston Presidio Capital said Tuesday it completed the sale of **Apple American Group LLC**, the largest franchisee of Applebee's Neighborhood Grill and Bar restaurants, to Goldman Sachs Capital Partners, the private equity arm of **Goldman Sachs Group Inc.** Terms were not disclosed, but a source previously said the deal was valued at $400 million to $500 million. The Independence, Ohio-based target operates 270 Applebee's restaurants and has about $700 million in annual sales. ■ —Demitri Diakantonis

PRIVATE EQUITY

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Apollo turns a spotlight on CKx

Purchase price for 'American Idol' rights owner equates to 8 times Ebitda, a source said

BY TAINA ROSA

Apollo Global Management LLC has agreed to acquire **CKx Inc.**, the owner of popular TV shows "American Idol" and "So You Think You Can Dance" for $5.50 per share, or about $510 million.

The New York company said the price represents a premium of about 25% over the Monday, May 9, closing price. CKx has no debt, according to regulatory disclosures. CKx shares gained 22.7% to close at $5.46 on Tuesday, bringing its market capitalization to about $508.5 million. Its stock had gyrated downward since mid-2009, hitting a low of $3.06 in January 2011, but it recovered some ground toward the end of the first quarter.

The purchase price equates to a multiple of about 8 times Ebitda, a source with knowledge of the deal said.

Apollo said it will use cash and financing from **Goldman Sachs Bank USA** in the take-private. Terms of the financing have not yet been fully determined. A source said Apollo will likely have a 50-50 debt and equity breakdown. An Apollo spokeswoman could not confirm this.

The same source said CKx agreed to the offer because it believes Apollo can provide sufficient access to capital needed to grow the business.

A second source said that after about two years of nonstop talks to sell the company, its board decided to end negotiations in October, as none of the offers received progressed due to a lack of committed financing.

"But after it was leaked to the press in March that Gores Group had made an unsolicited offer, the board decided to take a second look at a sale," the second source said. **Gores Group LLC** would not comment, but a third source confirmed it did make an offer for CKx although he did not disclose details.

Robert F.X. Sillerman, the founder and

former CEO of CKx, is supporting the deal. He holds a 20.3% stake in the company. It is unclear if he intends to sell his entire stake or rejoin the company's management team or board.

Sillerman was one of several suitors angling to acquire control of the commercial entertainment management company. In August he announced he would seek a majority interest in the company, which immediately adopted a poison pill shareholder rights plan.

The first source said Sillerman was never able to obtain committed financing for the acquisition.

The same source added that "Idol" creator Simon Fuller, who had teamed up with **Barclays Capital** last year to bid for CKx, was also unsuccessful in his acquisition attempt. "Again, certainty of financing was the problem," he said.

Last year **J.P. Morgan Chase & Co.**'s One Equity Partners LLC had also considered a buyout of CKx, reportedly offering $6 per share.

In addition to owning the proprietary rights to the TV shows, CKx holds the rights to the name, image and likeness of Elvis Presley and Muhammad Ali, as well as certain other related intellectual property. It also provides company talent management and produces motion pictures and television programming.

Revenue for the full year 2010 was $273.7 million, down $54.6 million from the previous year, according to the company's fi-

DEAL MEMO

APOLLO GLOBAL • CKX

Acquirer
Apollo Global Management LLC

Investment banks
AGM Partners LLC
Evolution Media Capital
Goldman, Sachs & Co.
Milton Berlinski, Todd Haskins, Matthew Defusco

Law firms
Paul, Weiss, Rifkind, Wharton & Garrison LLP
James Schwab, Neil Goldman
O'Melveny & Myers LLP (financing)
Gregory Ezring, Monica Thurmond, Rachel Springer

Target
CKx Inc.

Investment bank
Gleacher & Co.
Eric Gleacher, Joseph Donohue, William Cooling, Jeremy Parker

Law firm
Wachtell, Lipton, Rosen & Katz
David Shapiro, Alison Zieske, Lisa Schwartz, Michael Segal, Christina Cheng, Joshua Holmes

Deal value $510 million
Deal type Cash

The Deal Pipeline
http://pipeline.thedeal.com/

CONTINUED >

PRIVATE EQUITY

Warburg plots sale of 16% InterMune stake

Stock divestiture may happen before September commercialization of lauded drug in EU

BY DAVID HOLLEY

New York private equity firm **Warburg Pincus**, a 16.07% stakeholder in **InterMune Inc.**, told the Brisbane, Calif.-based biotech company it is considering the sale of some or all of its holdings as early as the second quarter, according to a document filed Tuesday with the U.S. Securities and Exchange Commission.

If Warburg did sell its 9.5 million shares that early, it could miss out on what some analysts are expecting to be a windfall of revenue in the third quarter—something that would likely hike InterMune's stock—when InterMune launches pirfenidone, a treatment for fatal lung disease idiopathic pulmonary fibrosis that will be sold commercially as Esbriet, in the European Union.

News of Warburg's potential stock sale sent Intermune shares sharply lower; they ended the day down 8.7% at $39.46. The stock, which had traded above $50 in April, began a free fall last week after the Food and Drug Administration requested additional Phase 3 clinical trial data related to the efficacy of Esbriet.

Still, because of the sales potential of Esbriet, **Robert W. Baird & Co.** analyst Tom Russo has a $56 price target on InterMune.

"Launches/pre-launch activities for Europe are tracking well, and we remain believers in Esbriet commercially," Russo said in a note.

Biren Amin, an analyst at **WJB Capital Group Inc.**, expects InterMune to rebound upon the release of Esbriet in September.

"If you're a holder, buyer of shares, it's not about the U.S. trial," Amin said. "It's about the robustness of the European launch."

Warburg declined to comment beyond its SEC filing. It first invested in 1998 and participated in stock offerings as recently as 2010, according to InterMune.

"Investment partnerships at private equity firms usually have a fixed-life of 10 years, which may be subject to extension," InterMune said in a statement. "We understand that the Warburg investment partnership that holds [InterMune] shares is past its fixed-life. Accordingly, Warburg has recently advised us that they are actively considering a sale or other disposition of all or a significant portion of its capital stock holdings in InterMune, as early as during the second quarter of 2011."

Rumors of a sale of InterMune had briefly circulated in late April, but the company has attempted to put those to rest. It said in an April 28 news release that it is not in any discussions regarding a sale.

InterMune is an attractive target mostly because of its success with Esbriet and its $20 million in 2010 product revenue from its other commercialized product in the U.S., actimmune, used to treat chronic granulomatous disease; severe, malignant osteopetrosis; and some off-label indications.

The company's only other pipeline products are two hepatitis C inhibitors in preclinical trials.

InterMune's stock first started spiking in December when EU authorities began the regulatory approval process for Esbriet. The stock jumped from a $14.27 close on Dec. 16 to a $34.89 close Dec. 17, when Esbriet received EU backing. ■

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nancial statements. For the quarter ended March 31, it posted net income of $7.6 million, compared with a loss of $4.6 million in the prior-year period.

The company's 2010 operating results "were significantly impacted by the restructuring program we commenced in early 2010," according to filings. The restructuring program resulted in the sale or closure of numerous projects and businesses within subsidiary 19 Entertainment.

The company declined to comment.

Gleacher & Co.'s Eric Gleacher, Joe Donohue, Bill Cooling and Jeremy Parker acted as CKx's financial advisers. **Wachtell, Lipton, Rosen & Katz** corporate partner David E. Shapiro and associates Alison M. Zieske and Lisa B. Schwartz acted as legal advisers to the company. The firm's executive compensation and benefits partner Michael J. Segal and associate Christina Cheng, as well as tax partner Joshua M. Holmes, also advised CKx.

AGM Partners LLC acted as lead financial adviser to Apollo. Other financial advisers to Apollo include **Goldman, Sachs & Co.**'s Milton Berlinski, Todd Haskins and Matthew Defusco and **Evolution Media Capital**. Legal advisers to Apollo include **Paul, Weiss, Rifkind, Wharton & Garrison LLP** corporate partners James H. Schwab and Neil Goldman, and Greg Ezring, Monica Thurmond and Rachel Springer of **O'Melveny & Myers LLP**. ■

PRIVATE EQUITY

Serco in talks to buy Blackstone's Intelenet

BY JONATHAN BRAUDE IN LONDON

British services company **Serco Group plc** is in talks to buy Indian business process outsourcing company **Intelenet Global Services Pvt. Ltd.** from New York private equity firm **Blackstone Group LP** for an enterprise value of about $600 million, according to a person familiar with the situation.

The discussions follow an approach from Serco, and may or may not lead to an agreement, the person said, but they have reached a fairly advanced stage and are not linked to any auction process being run by Blackstone.

Serco spokesman Marcus De Ville declined to comment Tuesday, but India's Economic Times pointed out that the company has been looking for additional acquisitions in the country since it first acquired another Indian BPO business, InfoVision Group, in December 2009.

Serco of Hook, England, bought InfoVision for an enterprise value of about $44 million, so an acquisition of Intelenet would represent a dramatic expansion of its presence.

Serco is a major player in outsourced government services in Britain, running prisons, transport systems and other contract businesses. However, with the public sector both cutting back and attempting to foster greater competition between suppliers, Serco has been strengthening its private sector offerings and looking to expand overseas.

The Economic Times first reported the talks with Blackstone on Monday. The newspaper said Intelenet's management might sell all or part of its stake alongside the private equity firm, suggesting Gurgaon-based Intelenet could be valued at around 10 billion Indian rupees ($233 million). However, the person familiar with the situation said the real value was likely to be around $600 million.

Blackstone bought 66% of Intelenet in 2007 in a $260 million transaction and has since backed the company's rapid global expansion.

Intelenet provides call center management, transaction processing, accountancy services, and IT and process consulting to a wide range of companies in sectors ranging from financial services and insurance to retail, telecommunications, and hotel and transport bookings. According to its website, the company has grown from 25 employees at a single site to more than 32,000 employees across 35 centers in India and overseas in just 7 years, to become the second-largest employer in BPO in India. ■

Astorg acquires Saverglass in secondary buyout deal

BY JONATHAN BRAUDE

Paris investors **Nixen Partners SAS** and the private equity arm of French bank **Crédit Agricole SA** announced Tuesday an agreement to sell glass bottle maker **Saverglass SAS** to **Astorg Partners** in a secondary buyout.

The price of the deal was not officially disclosed, but the company boasts annual sales of €280 million ($373 million), and various reports have put the value at between €300 and €350 million.

Founded in 1897, Saverglass designs and produces luxury bottles, carafes and flasks for premium spirits and fine wines, ranking as the world leader in high-end glass bottles for the drinks industry. Based in Feuquières, France, the company turns out 300,000 metric tons of glass a year at three basic glass production factories and two finishing plants.

Nixen has owned 60% of the company, and Crédit Agricole Private Equity 20%, since they bought the business in November 2006 at the head of a buyout consortium that included **Euromezzanine Conseil SAS** and the founding Desjonquères family. The original deal provided expansion capital for company president Loïc Quentin de Gromard to invest in new facilities.

In 2008, the company opened a fifth furnace at its Arques plant, boosting capacity by 40% and involving an investment of €80 million. The company's workforce has grown from 1,600 to 2,000 in the five years since the buyout.

Astorg declined to comment, ahead of its own announcement scheduled for Wednesday. However, in a statement, the sellers said both sides had agreed to finance a bonus for the entire workforce.

The deal is still subject to regulatory approval and is due to close by the end of June.

Nixen's Jean-Paul Bernardini and Crédit Agricole Private Equity's Eric Pencréac'h are advised by Laurent Baril and Vincent Berry of **Rothschild** and Jérôme Jouhanneaud and Isabelle Meyrier of law firm **SJ Berwin LLP**. ■

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M&A

DuPont may target Danisco biotech unit if bid fails

BY RENEE CORDES

DuPont Co. remains confident it will prevail in its $6.4 billion pursuit of Danish enzymes and food ingredients maker **Danisco A/S**, but it is leaving the door open to "other strategic opportunities."

The message, delivered Tuesday, came after **Elliott Associates LP** became Danisco's largest shareholder after upping its stake to 10.02%. The New York-based hedge fund has opposed the deal from the start, seemingly unswayed by DuPont's decision to raise its offer by 5%.

"In the unlikely event that the current offer does not close," CEO Kullman said in Tuesday's statement, "we would then move on to aggressively pursue other strategic opportunities that we've been exploring."

Some analysts speculate that if DuPont's Danisco bid comes up short, the suitor could return with an attractive offer for Genencor, the Palo Alto, Calif.-based company that Danisco acquired in 2005 for $419 million and turned into its biotechnology division. The unit, which ranks as the world's second-largest maker of industrial enzymes, accounts for nearly one-third of Danisco's total sales.

"It's the asset that DuPont has its eye on, for which it could afford to pay a very nice price," said Frans Høyer, an analyst with **ABG Sundal Collier** in Copenhagen.

After failing to win enough backing for its initial 665 Danish kroner ($128) a share bid for Danisco, launched Jan. 10, DuPont on April 29 raised its proposal to Dkr700 a share in an offer due to expire Friday at 5 p.m. Eastern Daylight Time. DuPont also exercised its right to lower the minimum number of shares required to be tendered from 90% to 80%.

"All major Danish institutional investors have expressed support for our revised offer and we remain confident that the tender will be completed successfully," DuPont CEO Ellen Kullman said in a statement on Tuesday.

"As the deadline approaches," she added, "we want to ensure that there is no confusion in the market regarding our offer or our intentions. These terms represent our best and final offer."

Last week, Wilmington, Del.-based DuPont said in a letter to shareholders that Danish investors **ATP** (Danisco's second-largest shareholder with a 5% stake), **Danske Capital**, **Nordea Investment Management**, **Nykredit Asset Management A/S**, **SEB Asset Management AG** "and others" had all expressed support for the increased offer.

Nevertheless, it remains unclear whether the 5% price increase will be enough to succeed this time around.

"I feel it's a fair offer, but not more than that," said Keld Henriksen, chief portfolio manager at Copenhagen-based **LD Invest A/S**, which represents about a dozen institutional shareholders in Danisco.

Dutch vitamin maker **Royal DSM NV**, once seen as a possible rival suitor for Danisco, said earlier this week that it had sold its 4.95% share to DuPont at the increased Dkr700 price.

Danisco shares were little changed Tuesday at Dkr694, hovering below the latest offer price, and translating into a market capitalization of just under Dkr33.1 billion.

"In the unlikely event that the current offer does not close," Kullman said in Tuesday's statement, "we would then move on to aggressively pursue other strategic opportunities that we've been exploring."

Høyer gives DuPont a 60% to 70% probability of reaching the 80% threshold on its revised offer.

"Danish shareholders were right to think that DuPont didn't start out with the best offer," he said, "and DuPont has now given them a bit of a face-saving gesture by offering 5% more." ■

RQB Resort, Goldman agree to mediation

BY AVIVA GAT

Bankrupt **RQB Resort LP** and creditor **Goldman Sachs Mortgage Co.** will look to a Florida judge to resolve their dispute.

Judge Paul M. Glenn of the U.S. Bankruptcy Court for the Middle District of Florida in Jacksonville on May 4 signed an order that said the parties have consented to attending mediation. Judge Laurel M. Isicoff will serve as mediator.

Under the order, the parties will submit statements to the judge, but don't have to file them with the court. The parties must also comply with any other requirements made by Isicoff and must agree to her settlement. Should any party fail to comply, it would be liable for sanctions and fees incurred by the other party in connection to the mediation.

Isicoff will make a ruling within five days following the mediation conference.

The order does not discuss what issues are unresolved between the parties, but the order said the parties requested mediation during an April 22 hearing. Debtor counsel Stephen Busey of **Smith Hulsey & Busey** declined to comment.

RQB operates the Sawgrass Marriott Golf Resort & Spa in Ponte Vedra Beach, Fla., which includes a 348-room hotel, 83 golf villas, three restaurants and a pool and spa.

RQB and Goldman have had several disputes since the hotel operator filed for Chapter 11 on March 1, 2010. Most recently, on April 22, Glenn denied Goldman's mo-

CONTINUED >

IPOs

Stock Spirits shelves auction, plots public debut

BY MIKE SCHOECK

Now that the last bid for **Stock Spirits Group Ltd.** has been withdrawn, food and beverage industry wags believe the British liquor distributor should wait three to six months before pursuing an initial public offering and take a conservative approach if it does so.

A joint bid by Boston private equity firm **Bain Capital LLC** and British spirits giant **Diageo plc** was the only one remaining for the Wooburn Green, England, spirits distributor and has been withdrawn, according to a Diageo official, who went on to say that Bain and Diageo dropped their bid because of the lofty price they felt Stock Spirits' private equity owner, **Oaktree Capital Management LP**, was asking for it, though he declined to disclose what that price was.

New York private equity firm **Apax Partners LLP** withdrew from bidding for Stock Spirits on April 11. At about the same time, talk that luxury-brand investment vehicle **L Capital Management SAS** was putting together a bid for Stock Spirits was dismissed as speculation.

Tom Pirko, president of food and beverage M&A advisory firm **BevMark LLC** in Buellton, Calif., noted that the $1 billion or so that Oaktree had reportedly asked for Stock Spirits was too steep and discouraged other bidders from stepping forward.

"The European market is in such flux [and] people are skittish about the situation," Pirko said, adding that Oaktree should wait three to six months before launching an IPO.

Pirko believes Oaktree, instead of taking a hasty "guns blazing" approach, should retreat about 20% to 25% from its M&A asking price when considering how big it wants to make any IPO filing.

Nicholas Kirk, a managing director of M&A advisory firm **Hickory Group LLC** in New York, agrees with Pirko about holding off on an IPO, noting that the timing isn't good given the current stock performance of European beverage companies.

Both Pirko and Kirk also believe that Stock Spirits, if it does go public, should do so on the London Stock Exchange to minimize regulatory and operational concerns. They also both said investment bank **Credit Suisse Group**, which advised Stock Spirits in its auction effort, is well suited to underwrite a potential Stock Spirits IPO. Kirk added that **UBS** is also a good fit as a potential underwriter on the LSE.

Stock Spirits, which had been shopped since Jan. 15, was formed by Oaktree Capital in 2007 through the marriage of Polish vodka maker Polmos Lublin SA, which it had taken private the previous year, and the spirits business of Germany's Eckes & Stock GmbH.

While Stock Spirits is based in England, it has production facilities in the Czech Republic, Italy, Croatia, Bosnia and Herzegovina, Slovenia, and Slovakia. Stock Spirits produces and distributes Stock 84 brandy, Limoncè lemon liqueur and Czysta de Luxe vodka, among other spirits.

Company representatives from Bain, Oaktree and Stock Spirits didn't return calls seeking comment. ■

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tion for adequate protection or stay relief.

Goldman first moved the court for adequate protection or stay relief on Nov. 24, alleging the value of the debtor's estate had declined by $6.6 million during the course of RQB's bankruptcy. Goldman requested adequate protection payments and said should the debtor fail to provide protection, Goldman should be allowed to foreclose on its collateral.

Also on April 22, Glenn denied a motion by the debtor to compel Goldman to produce documents related to the lender's discussions with **PGA Tour Inc.**, which has a contract with RQB that is contingent on Goldman's consent.

The debtor is permitted by PGA Tour to sell 450 Tournament Players Club, or TPC, Sawgrass golf memberships, but only with Goldman's consent or a termination of the debtor's relationship with the lender. Goldman Sachs has yet to consent to the agreement dated Nov. 6, 2008, but once it does, RQB can sell the memberships, worth $50,000 each.

In the April 4 motion, RQB alleged that Goldman said it has been in "productive discussions" with PGA Tour regarding its conditions for consent, but has refused to include RQB or even inform the debtor what the discussions entailed.

Goldman won the biggest victory in the case thus far on Jan. 6, when Glenn ruled in favor of the lender, valuing the secured portion of its claim at $132 million. The debtor had asked the court to cap the secured portion of the claim at $88.9 million. Goldman's total claim is $195.8 million.

The debtor did ask the court to reconsider the ruling, conceding that the claim at most could be $114 million, but Glenn shot down RQB's request on March 24.

In schedules, the debtor listed $170.4 million in assets and $10.8 million in liabilities.

Cynthia C. Jackson of Smith Hulsey is also debtor counsel. Goldman Sachs' counsel, John B. Hutton III of **Greenberg Traurig LLP**, could not be reached. ■

Sideways

Efforts to bring global competition rules into a manageable order remain a mixed bag

BY BILL MCCONNELL

As dealmakers look for opportunities around the world, local merger review regimes are becoming increasingly important. Investors want predictable processes roughly in sync with practices in the United States and Europe. And for a decade, U.S. regulators have led the push for international convergence of antitrust rules.

The success of those efforts has been mixed, according to a variety of studies, including several conducted by the International Competition Network, an organization of competition regulators from around the globe. The ICN first met in 2001 in the months following the European Union's rejection of **General Electric Co.**'s attempted $42 billion purchase of **Honeywell** Inc. By standards of the antitrust world, that rejection of a deal already approved by U.S. antitrust regulators was the equivalent of a major diplomatic incident.

The first order of business for the ICN was to recommend best practices for effective merger reviews without imposing undue costs and burdens on merging parties. Over the next four years, the ICN laid out 13 recommended but nonbinding practices for judging merger reviews, in hopes that member countries would adopt them through either legislation or rules set by their competition authorities. Members were able to reach consensus on recommended best practices—in that sense there has been a measure of success. But the record on actual implementation of those recommendations is less impressive.

The ICN held a roundtable in Washington on March 29 to consider how to promote better cooperation in merger reviews. Senior officials and staff members of competition authorities around the world focused on how to meld timing of reviews; process information waivers and exchange documents; honor confidentiality and privilege requirements; and coordinate remedies to address concerns caused by mergers.

Currently, 87 of ICN's 114 members have merger control laws, according to a study written by Maria Coppola and Cynthia Lagdameo, both of whom are counsel for international antitrust at the U.S. Federal Trade Commission. They examined implementation of four of the 13 ICN recommendations: whether a government limits merger notification requirements to deals that have a meaningful impact within their borders; whether notification timelines mirror those of other jurisdictions; whether notification requirements are based on "objective, quantifiable criteria" such as the target company's sales or assets; and, finally, whether merger reviews are concluded and the fate of deals decided in a "reasonable period of time."

Those four criteria are considered among the most important because they prevent waste of government and merging parties' resources and help to streamline multijurisdictional reviews. They also happen to be the easiest criteria of the 13 by which to measure a country's adherence to the best practices.

Their findings: Nearly three-quarters of ICN member jurisdictions have merger review regimes that conflict with some aspect of the international recommendations. For instance, only 30 of the 75 jurisdictions examined in the study that have merger notification laws limit mandatory reviews to deals that have a "material" impact within their borders, such as a minimum level of sales or assets. Similarly, only 27 jurisdictions allow mergers to close automatically if there has been no finding of competitive concerns after an initial review period.

There is hope, though. Dealmakers worried about unpredictable merger reviews can take comfort from the fact that nonconformity is mostly limited to developing countries where investor interest is less intense—M&A hot spots such as Albania, Costa Rica, Moldova and Vietnam. Among new powerhouses China, India, Russia and Brazil, only Brazil pops up on some of the Coppola-Lagdameo study's categories for nonconforming rules. And Brazil's wayward practices soon largely will be brought into ICN compliance following the recent enactment of a new merger control regime. Brazil's decision to conform may foreshadow that other developing countries will do likewise once their growth attracts investor interest.

Indeed, Coppola-Lagdameo also found that 80% of ICN jurisdictions either are in compliance with international standards or plan to be in the immediate future. ■

FEEDBACK

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COMMENT

NAME (optional)

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The Daily Deal (ISSN 1545-830X) is published Monday through Friday by The Deal, LLC

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