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3 Questions Shaping 2017 JPMorgan Health Care Conference

By **Tom Zanki**

Law360, New York (January 6, 2017, 8:34 PM EST) -- JPMorgan's annual health care conference — a giant shindig that connects biotech executives with bankers, lawyers and investors eager to jump-start deals — launches Monday in San Francisco under decidedly different conditions from last year, most notably a new presidential administration.

Equity markets surged into the new year with more momentum in contrast with a gloomy start that defined much of 2016. Whether any of these underlying factors translate into a busier pipeline for capital markets and deals lawyers this year is uncertain, but those attending the annual conference hope to renew and forge contacts that will pay dividends down the road.

"It's definitely a place where seeds get planted for the transactions that happen throughout the year," said Goodwin Procter LLP partner Mitchell Bloom, who has attended the conference for some 20 years. "There's no doubt about it."

Here are three key questions that will be top-of-mind at this year's five-day event — chock full of company presentations to cocktail receptions and spinoff conferences — which runs Monday to Friday at the Westin St. Francis hotel in San Francisco's Union Square.

Will Deal-Making Benefit From a Trump Bump?

Equity markets greeted the election of politically unorthodox Republican candidate Donald Trump with a rally immediately after Nov. 8, led by health care stocks and other industries perceived as benefiting from less regulation. Several already-public biotechs, eager to return to capital markets for fresh financing, launched follow-on offerings in the weeks following the election.

Now that a new year is here and a new administration is arriving, several capital markets attorneys see the deal-making climate as generally favorable but add a few caveats. For one, while many health care investors were relieved at the loss of Democrat Hillary Clinton, who favored more regulation of drug prices, Trump's policy positions remain unpredictable, attorneys note.

In fact, Trump's early December comments to Time magazine that he would "bring down drug prices" hammered health care and biotech stocks, reversing their post-election momentum. Plus, uncertainty remains how and if Trump and the Republican Congress will repeal or replace parts of Obamacare, which has increased customers for drug companies through wider health coverage.

Bloom characterized the climate as “neutral to positive” and said he expects biotech issuers to favor the change in administration in the long run, given Trump’s generally deregulatory stance. But the real estate mogul’s tendency to make waves through social media could rattle markets from time to time.

“He is using a new form of communication that we haven’t really seen before with his tweets,” Bloom said. “On any given day, he could come out with a tweet about pricing or the industry. So it’s very unpredictable."

That said, many deal makers expect political distractions to give way to market fundamentals. Covington & Burling LLP partner Eric Blanchard is going into this year’s conference cautiously optimistic that better times are ahead.

“I think the real question is: Are people going to buy this year?” Blanchard said. “Is there going to be investor demand?”

Will Equity Capital Markets Rebound in 2017?

Equity capital markets slumped last year amid political uncertainty and skeptical public investors reluctant to match the lofty private valuations of certain companies. Only 105 initial public offerings were priced, the lowest annual output since 2009 at the end of the financial crisis.

The health care sector, which includes biotech, a capital-hungry segment that generates a disproportionately high number of offerings, was not immune to last year’s downturn. Health care produced 42 IPOs in 2016 — still the most of any single industry — but that represented a 46 percent drop from the prior year’s total of 78 initial offerings, according to researcher Renaissance Capital.

A pessimistic mood after last year’s JPMorgan conference set the tone for 2016. Several biotechs priced follow-on offerings heading into the conference only to get hammered by the market that was tanking at the time. Plus, January 2016 produced no IPOs, and the first quarter of last year generated only eight offerings, marking a dreadful start to an overall soft year.

“To a certain extent, the only place you can go is up,” Dechert LLP partner David Rosenthal said, adding that he is seeing a lot of pent-up “interest in the pipeline for companies to go public.”

Attorneys say a sizable number of companies have filed IPO plans confidentially, a benefit allowed for smaller issuers under the Jumpstart Our Business Startups Act, so long as those companies make their plans public 15 days before launching a marketing process known as a roadshow.

No companies have filed publicly yet in 2017, though three biotechs submitted IPOs in the last week of December: Braeburn Pharmaceuticals, advised by Goodwin Procter, filed a $150 million offering; ObsEva SA, advised by Cooley LLP, filed an $86 million offering; and Jounce Therapeutics, also advised by Goodwin Procter, filed a $75 million offering.

Deal makers will watch how IPOs do in the weeks after JPMorgan for signs about 2017. But a huge rush immediately after the conference is unlikely because of a looming mid-February deadline that will require companies to update their financial statements to include fourth-quarter and year-end results before proceeding with an IPO, possibly putting off deals until March or April.

Additionally, biotechs that are already public are expected to pursue follow-on offerings this year, attorneys say. At least two priced deals in the first week of January, including a $120 million offering by Loxo Oncology Inc., advised by Fenwick & West LLP, and a $65 million offering from Mirati Therapeutics, advised by Cooley.

Rosenthal noted that many companies that went public during 2014 and 2015 — more robust years for the IPO market — but stood pat last year will likely need fresh funding this year. Young biotechs frequently return to capital markets to raise money to develop costly drugs that can take many years to get approved.

“Now it’s time to fill up the coffers again to keep their programs running,” Rosenthal said.

Will M&A Still Be a Hot Ticket?

If capital markets remain volatile, private companies can opt to be acquired instead. An acquisition provides a cleaner and more certain exit for the target company’s investors, an appealing option that several IPO candidates seized last year when public markets were shaky.

Cancer-focused startup Stemcentrx, which was reportedly mulling an IPO, was acquired in April by pharmaceutical giant AbbVie Inc. in a deal that could surpass $10 billion if certain milestones are met. The deal gave Abbvie access to new drugs in development while providing a big payday for Stemcentrx shareholders.

Attorneys expect M&A markets — which have been fairly robust for several years and tend to be more durable than capital markets, though acquisition activity slowed slightly in 2016 — to continue to offer a viable alternative to the public markets. The JPMorgan conference could spark a buzz in M&A activity, though Bloom is not expecting anything earth-shattering.

“I think there are going to be a lot of meat-and-potatoes types of deals,” Bloom said. “Really good deals but not necessarily blockbusters."

If the 2017 IPO market remains weak, that will favor acquirers, which can scoop up companies at perceived discounts. But an IPO rebound would increase leverage for the target companies, which can then command higher acquisition prices or go public instead.

Either way, attorneys say the health of capital markets and M&A markets usually go hand in hand.

“By and large, if there is a good IPO market, it will absolutely feed an uptick in M&A activity as people get to valuations they feel are appropriate for their company,” Blanchard said.

--Editing by Christine Chun and Aaron Pelc.
