NATIONAL DIRECTORS INSTITUTE | NDI Executive Exchange

Evaluating Acquisitions in the Boardroom

November 10, 2016

FOLEY

FOLEY & LARDNER LLP

Panelists

- **Steve Vazquez**
  Foley & Lardner LLP
- **Scott Sonnenblick**
  Linklaters
- **Paul McNicholl**
  Linklaters
- **Jeffrey Bradford**
  Grant Thornton LLP
- **Margaret C. (Peggy) Kelsey**
  Modine Manufacturing Company
- **Frank Jaehnert**
  Brady Corporation
- **Brent Smith**
  William Blair

Agenda for Panel Discussion

- Current M&A Trends
  - Market Overview
  - Structure Trends - "Locked Box" (i.e. fixed price based on signing balance sheet with no closing or post-closing adjustments) deals
  - Process Trends - Recent Post-Trados Delaware Board fiduciary duty cases regarding Board Process
  - Risk evaluation and mitigation
    - Representation and warranty insurance
    - Integration issues (including use of integration advisor)
    - Managing, monitoring and reporting on success of deal and achieving value proposition that supported deal

- Board's role in developing and evaluating an acquisition strategy
  - Governance procedures and controls for M&A
  - Establishing criteria for deals that can be completed without Board involvement
  - Use of third party advisors and the Board's role in vetting and managing potential conflicts of interest

Current M&A Market Overview (Prepared by William Blair & Company)

William Blair

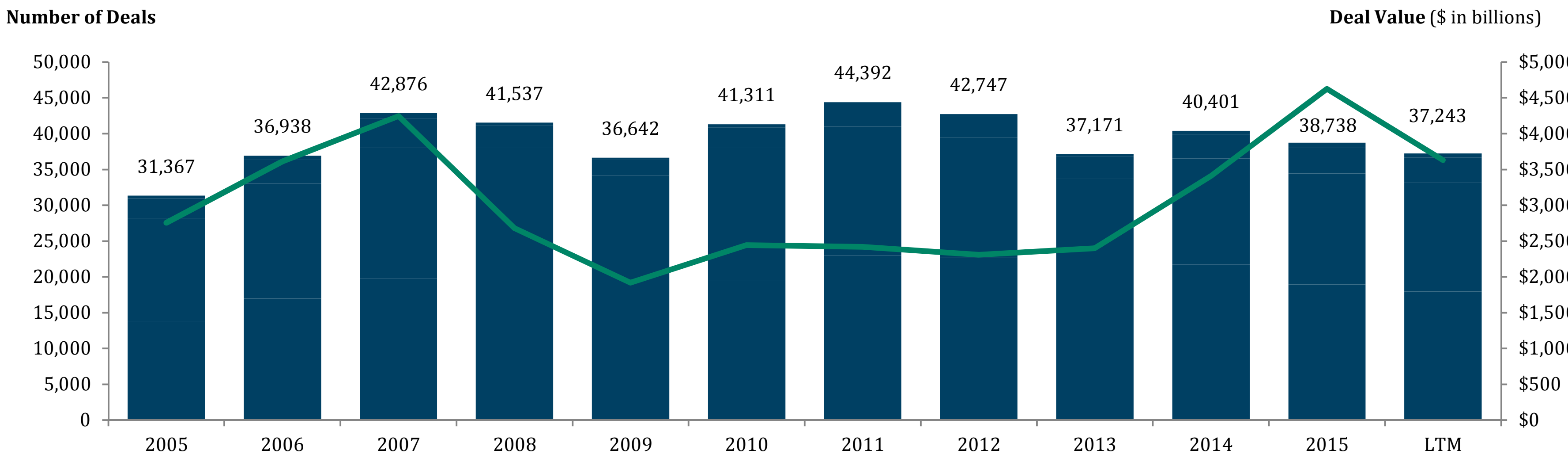
November 2016

Current M&A Market Overview

Brent Smith
Head of Consumer & Retail Mergers & Acquisitions
William Blair & Company

Global Mergers & Acquisitions Activity

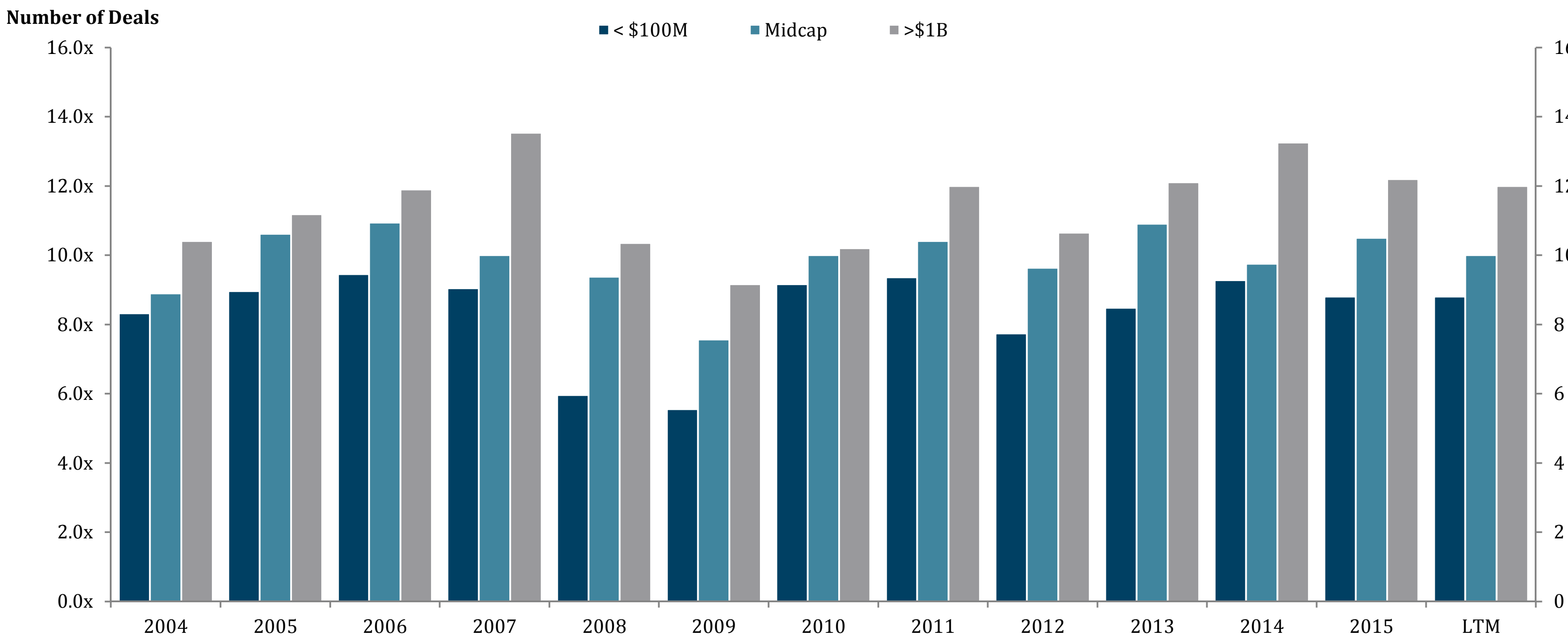
- Sustained growth in global M&A from 2003-2008 (mid-year)
- The global economic crisis had a meaningful impact on M&A activity
  - Deal volumes plummeted beginning in H2 2008
- Since 2009, gradual increase in activity has occurred as economies slowly rebounded
- Third Quarter 2016 saw number of deals down 16% and deal value down by 21%



Deal Value	**$2,757.6**	**$3,611.8**	**$4,246.7**	**$2,682.5**	**$1,919.3**	**$2,444.2**	**$2,418.8**	**$2,308.5**	**$2,401.0**	**$3,406.0**	**$4,626.0**	**$3,630.4**

Note: Year-to-date as of September 30, 2016.
Sources: Dealogic and William Blair's Mergers and Acquisitions market analysis.

EV / EBITDA Valuation Multiples



< $100M	8.3x	9.0x	9.5x	9.0x	6.0x	5.5x	9.2x	9.4x	7.7x	8.5x	9.3x	8.8x	8.8x
Mid-Cap	8.9x	10.6x	10.9x	10.0x	9.4x	7.6x	10.0x	10.4x	9.6x	10.9x	9.8x	10.5x	10.0x
>$1B	10.4x	11.2x	11.9x	13.5x	10.4x	9.2x	10.2x	12.0x	10.6x	12.1x	13.3x	12.2x	12.0x

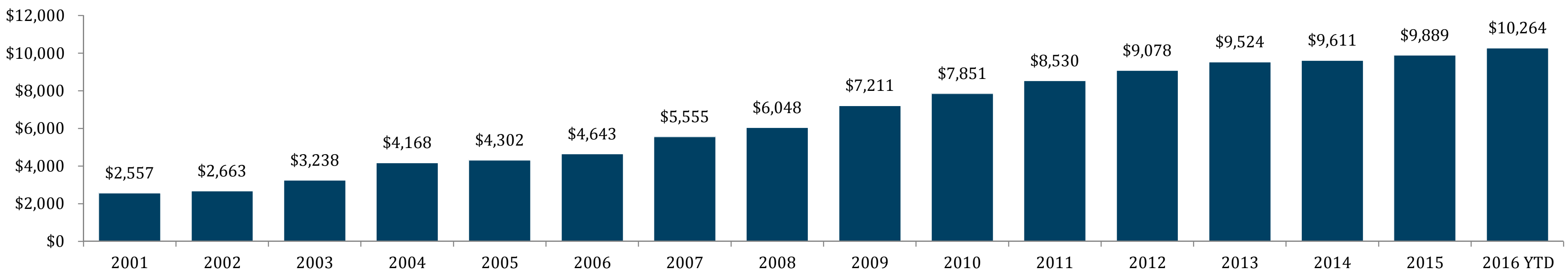
Note: Mid-cap defined as transactions with values between $100 million and $1 billion.
Source: Dealogic and William Blair's Mergers and Acquisitions market analysis.

The Balance Sheet Effect in the United States

- Strategic buyers have continued to be conservative since the economic downturn, “hoarding cash”
- Today, corporations have exceptionally strong balance sheets

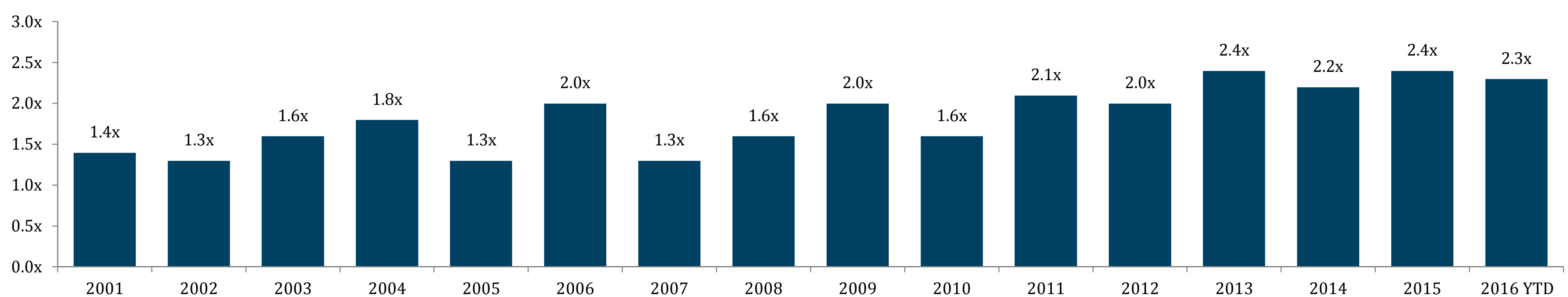
Large Arsenal of Excess Cash[(1)]

($ in billions)



Improving Net Debt Ratios[(2)]

(Weighted Average Net Debt / EBITDA multiples)



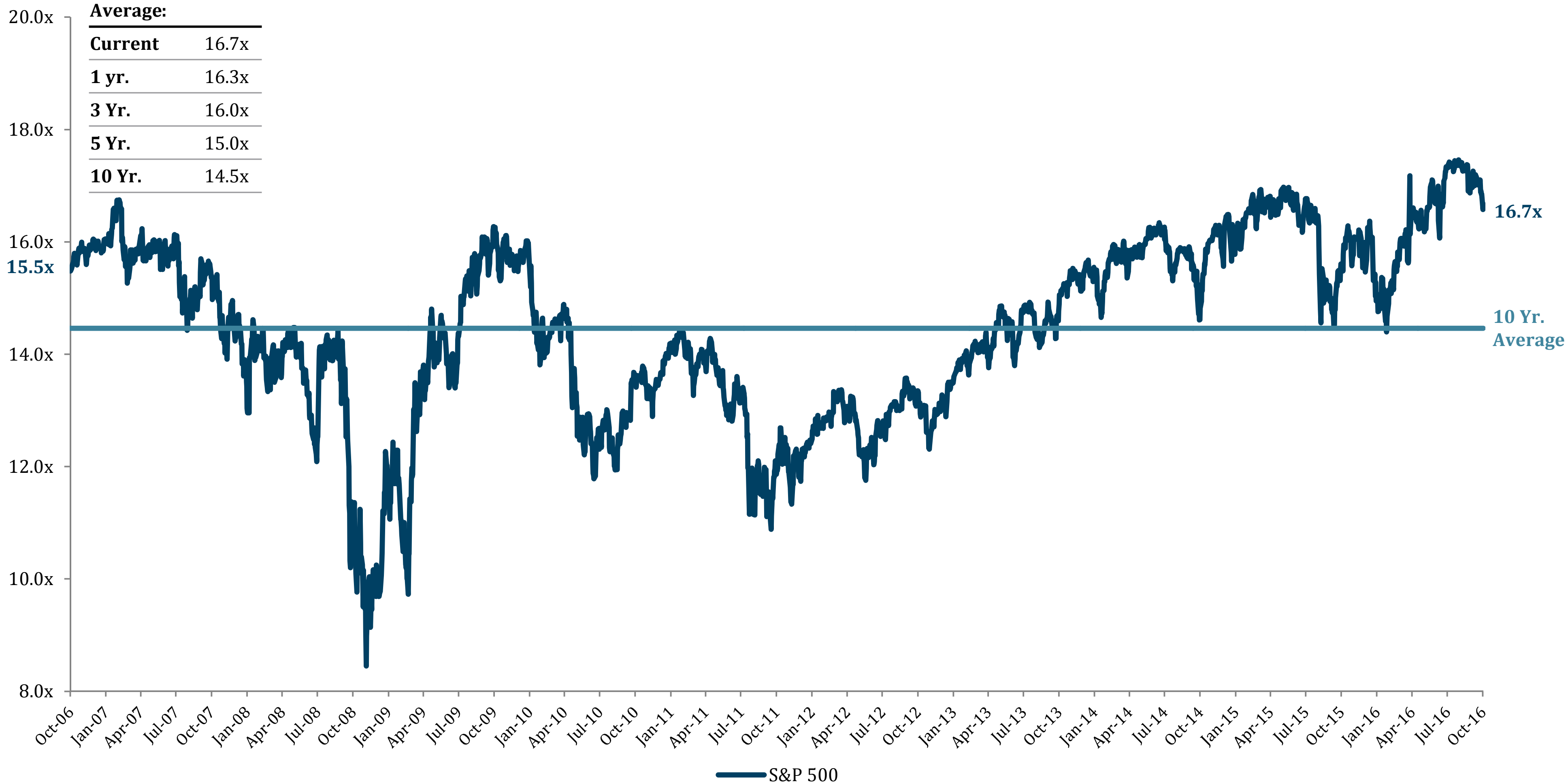
(1) Limited to Cash and Cash Equivalents of companies on all U.S. exchanges.
(2) Calculated as weighted average net debt / EBITDA.
Note: Year-to-date as of September 30, 2016.
Sources: Capital IQ, FactSet Research Systems, and William Blair’s Mergers and Acquisitions market analysis.

Public Equity Markets Are Robust – Provides Currency for Deals & Confidence

Past Ten Years

Historical NTM P/E[(1)] Multiples – S&P 500

Average:	
Current	16.7x
1 yr.	16.3x
3 Yr.	16.0x
5 Yr.	15.0x
10 Yr.	14.5x

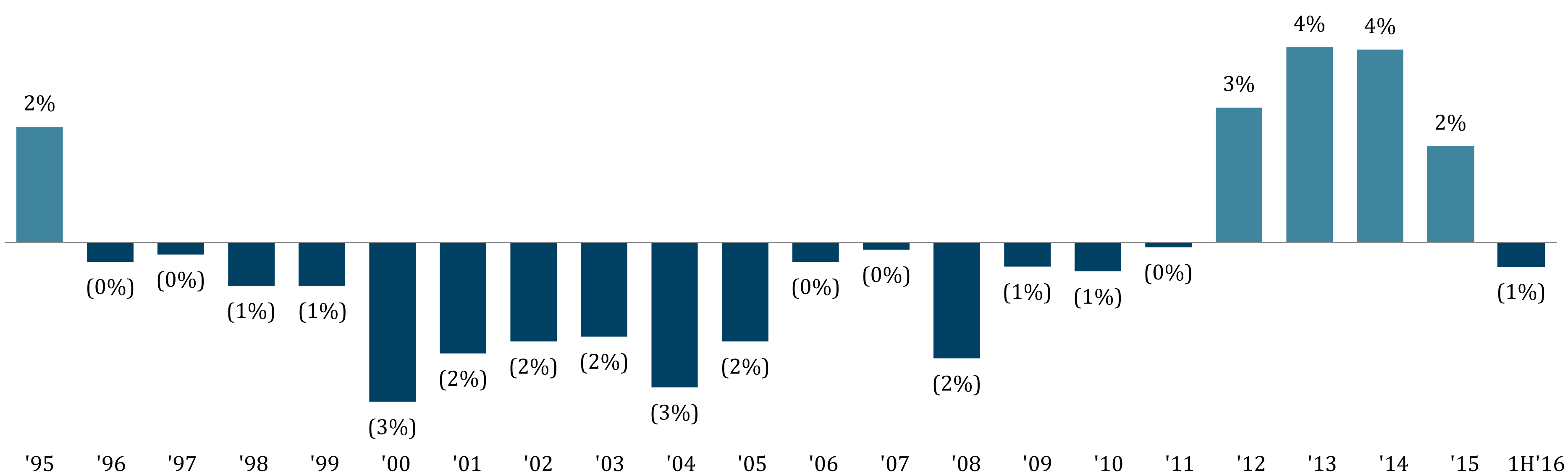


Source: FactSet Research Systems as of October 18, 2016.
(1) NTM: Next Twelve Months as of most recent reported filings.

Public Markets Have Rewarded Acquirers Recently

- In the past four years, public strategic acquirers' stock prices have risen following an acquisition, the first time since 1995
- After four years of the public markets rewarding strategic buyers for deals, the trend reversed in 1H 2016

Average Share Price Change of Strategic Acquirers(1)

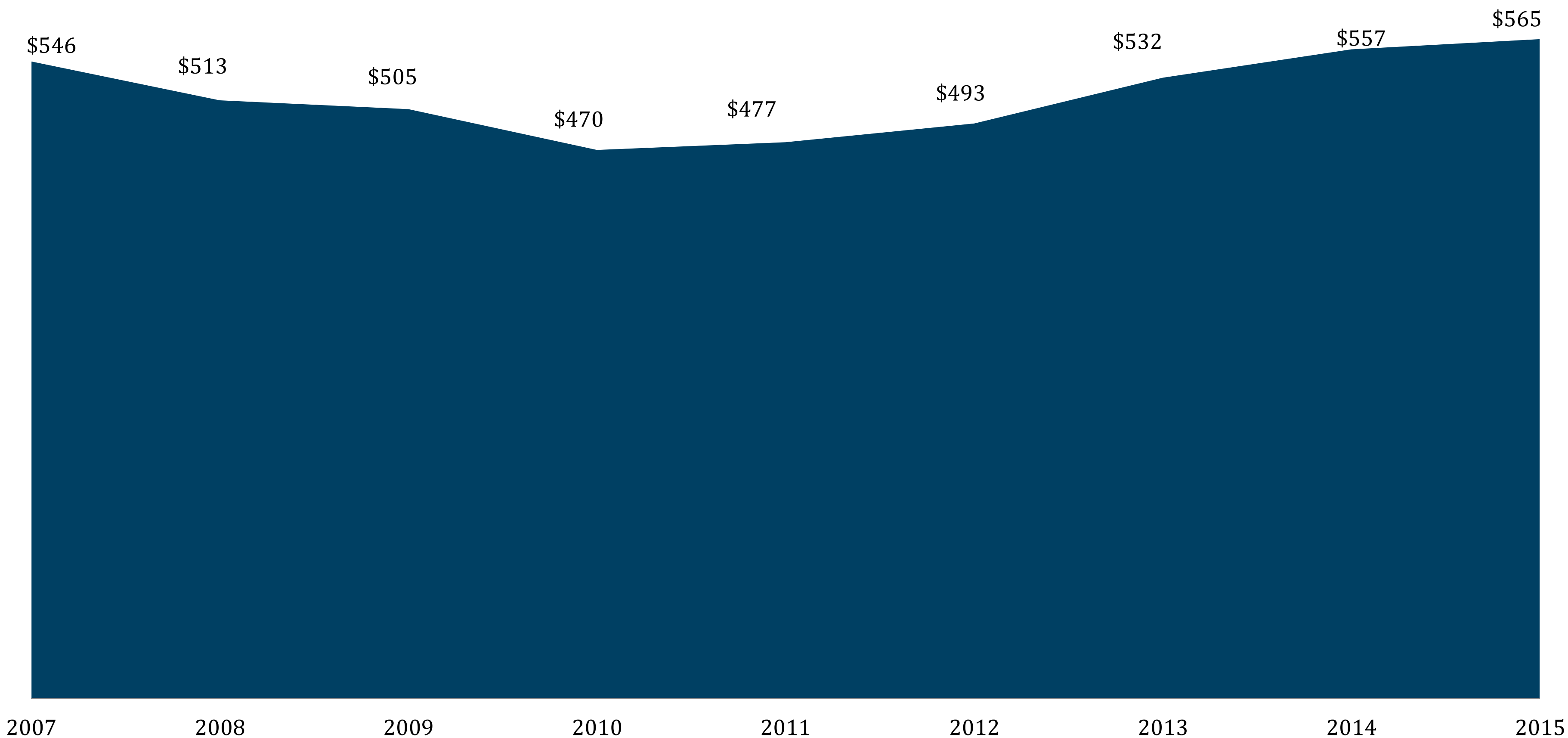


Source: Dealogic and William Blair's Mergers and Acquisitions market analysis.
(1) Represents acquirers' share price change between the trading days immediately preceding and immediately following announcement per "Takeovers Put Fuel in Stocks' Empty Tank": WSJ published May 5, 2014. Analysis updated as of 9/30/16.

Significant Private Equity Dry Powder

U.S. PE Capital Overhang

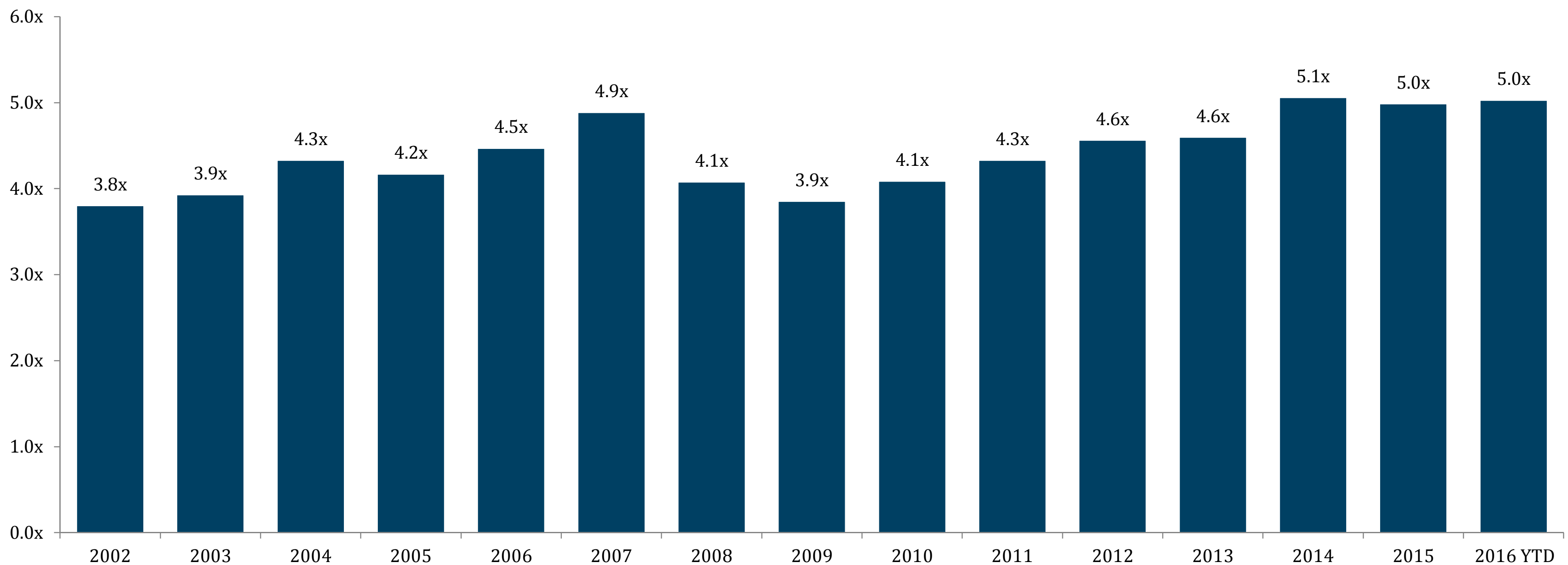
($ in billions)



Source: Pitchbook (through 3/31/16).

U.S. Debt / EBITDA Leverage Multiples

- Within the United States, leverage multiples as measured by Debt-to-EBITDA remain at some of the highest levels since 2002

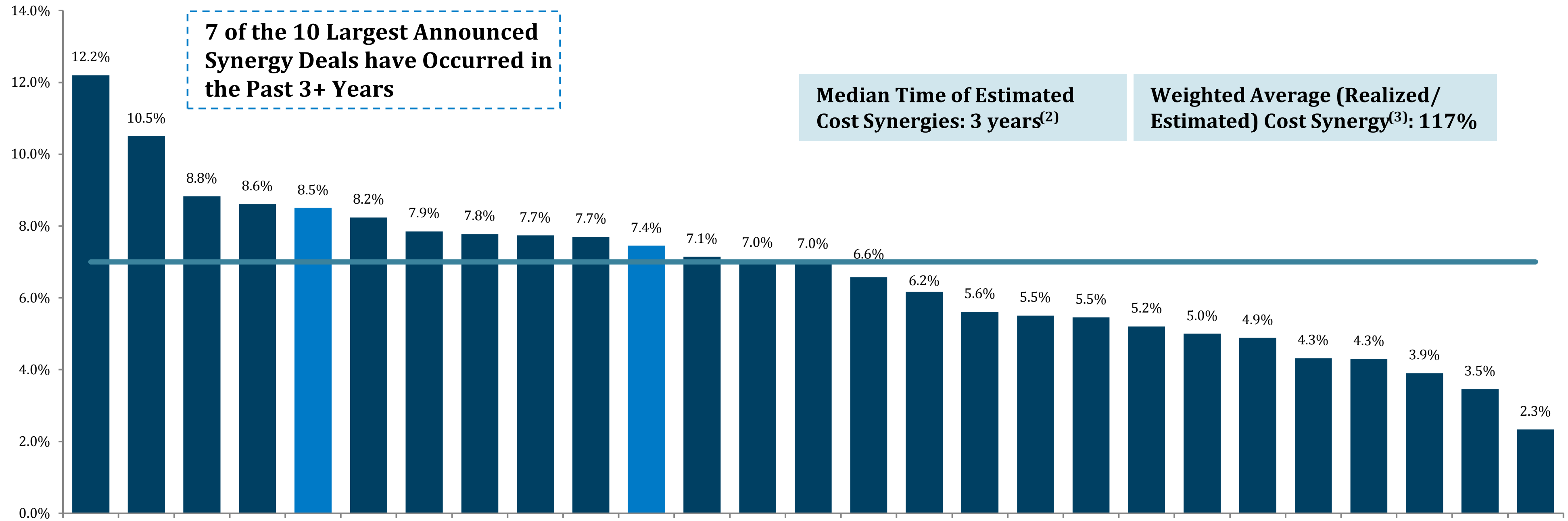


Source: S&P CapitalIQ LCD.

Cost Synergies in Select Food & Beverage Transactions

Announced Cost Synergies as % of Target LTM Sales

Food Median[(1)]: 6.6%
Total Median: 7.0%



Target	Hillshire Brands	Heinz	Big Heart Pet Brands	Bestfoods	SABMiller	Kraft	Quaker Oats	Cadbury	Diamond Foods	Whitewave	Foster's Group	Danone Biscuit	Kraft Foods	The Pillsbury Company	MOM Brands	Keebler	Nabisco	RHM PLC	Int'l Multifoods	Ralcorp Holdings	Folgers Coffee	Birds Eye Foods	Weston Foods	Pringles	Ralcorp Holdings	Canada Bread Company	Sara Lee Refrig. Dough
Acquirer	Tyson Foods	3G	JM Smucker	Unilever	Anheuser-Busch	Heinz	Pepsi	Mondelez	Snyder's-Lance	Danone	SAB Miller	Kraft	Nestle	General Mills	Post Holdings	Kellogg	Philip Morris	Premier Foods	JM Smucker	ConAgra Foods	JM Smucker	Pinnacle Foods Group	Grupo Bimbo	Kellogg's	Treehouse Foods	Grupo Bimbo	Ralcorp
Effective Date	May-14	Jun-13	Feb-15	Jun-00	Nov-15	Mar-15	Dec-00	Dec-09	Oct-15	Jul-16	Jun-11	Jan-10	Jan-10	Jul-00	Jan-15	Oct-00	Jun-00	Dec-06	Mar-04	Nov-12	Jun-08	Nov-09	Dec-08	Feb-12	Nov-15	Feb-14	Aug-11

Food Beverage

Source: SEC filings, management presentations, analyst reports and press releases.
(1) Does not include beverage transaction synergies.
(2) As of transaction close date, includes 16 data points based on available data.
(3) Weighted average cost synergy calculated as (sum of realized cost synergies/sum of estimated cost synergies); includes 13 data points based on available data.

Notable Trends in M&A

- "EU Style" Deals are Becoming More Common
  - Vendor Due Diligence Packages
  - Reps & Warranty Insurance/Public style contracts
  - Lock-Box Mechanism to handle working capital, cash, debt, etc.
- Due Diligence has grown even more intensive
- Quality of Earnings on most deals
- Rep & Warranty Insurance
  - Savvy sponsors used R&W Insurance to differentiate their bids
  - Now commonplace, such that Strategics need to adopt in order to compete
  - Buyers are paying the premium
  - Minimized exposure for sellers

Additional Board Considerations

PRE-ACQUISITION

-DISCUSSIONS AND DEVELOPMENT OF ACQUISITION STRATEGY

ACQUISITION

-EVALUATE PROPOSALS & INTEGRATION STRATEGY

POST-ACQUISITION

-EVALUATE COMPLETED ACQUISITION & IMPROVE PLANNING

Discussions and Development of Acquisition Strategy

- Board involvement in the acquisition process should begin before any specific acquisition is proposed
- In pre-acquisition discussions, the Board and management should discuss the company's acquisition strategy, including acceptable transaction and risk metrics, potential acquisition targets and opportunities, risks associated with certain types of acquisition targets, and potential funding sources
  - The Board should make its expectations regarding the acquisition process clear (*e.g.*, when the Board expects its involvement to begin and the type and level of information that the Board expects to receive)
- The company's acquisition strategy may include the engagement of a buy-side financial adviser, or parameters for determining if and when the company will engage a financial adviser
  - Prior to engaging a financial adviser, the Board must consider any actual or potential conflicts of interest
  - The Board should be directly involved in establishing the terms of the engagement

Discussions and Development of Acquisition Strategy

- By having an acquisition strategy in place and by proposing acquisitions that are part of that acquisition strategy, it will be easier for management to get the Board "up to speed" when an acquisition opportunity arises

- Pre-acquisition discussions will provide the Board and management with a common framework for evaluating proposed acquisitions

- Management should periodically update the Board regarding transaction metrics in the industry so that when a "good deal" comes along, the Board is aware of recent transaction metrics and can make an informed decision more quickly
  - This practice is also beneficial in the event that management proposes a transaction that is not completely in line with all aspects of the company's acquisition strategy

Evaluating Proposed Acquisitions

- When evaluating a proposed acquisition, the Board must be mindful of, and act in accordance with, its fiduciary duties:
  - Duty of Care – Requires directors to inform themselves of relevant and available facts and, so informed, to act with due care
  - Duty of Loyalty – Requires directors to put the best interests of the company and its shareholders over those of the directors
  - Business Judgment Rule – Protects Board from judicial scrutiny so long as Board decisions are made in *good faith* by disinterested directors exercising their duty of care

- The Board must:
  - Ask the "tough questions"
  - Maintain the appropriate level of skepticism
  - Help to identify, evaluate and address the key risks
  - Determine whether the company should move forward with a proposed acquisition

Evaluating Proposed Acquisitions

- Among other transaction-specific issues, the Board should consider the following:
  - How does the proposed acquisition fit into, support and/or advance the company's acquisition strategy?
  - What benefits will the company realize from the proposed acquisition?
  - Is the proposed acquisition the best use of the company's resources?
  - What assumptions are being used by management and/or the company's financial adviser in evaluating and/or valuing the proposed acquisition? Are those assumptions realistic?
  - What projections are being used by management and/or the company's financial adviser in valuing the proposed acquisition? What is the basis for those projections?
  - What are the risks associated with the proposed acquisition? How can those risks be mitigated / addressed? Consider business risks, as well as legal / litigation risks related to process, structure and transaction terms.
  - What are the benefits to be received by the company from the proposed acquisition, and will the proposed acquisition increase shareholder value?
  - Is the structure of the proposed acquisition the best structure for the company? Would another structure be more beneficial to the company?
  - What synergies can be achieved through the proposed acquisition? How will those synergies be achieved? When will those synergies be achieved?
  - Would it be appropriate to use data analytics and/or social media analysis in evaluating the acquisition target?

Evaluating Proposed Acquisitions

- Board action to evaluate and/or approve a material acquisition should be taken at an *in-person meeting of the Board*, and the meeting agenda and materials should be provided to the Board sufficiently in advance of the meeting

- Among other things, directors should consider and/or review the following when meeting to take action on a material acquisition:
  - Fiduciary duties
  - Summary of material contract terms and copy of purchase agreement
  - Negotiations to date and material open issues
  - Extent and nature of business and legal due diligence review and any material due diligence findings
  - Valuation of the business being acquired
  - Fairness opinion of financial adviser, if applicable
  - Management recommendation
  - Director indemnification and D&O insurance coverage and limitations

Evaluating Proposed Integration Strategy

- Because the success or failure of an acquisition often relates to the company's ability to integrate the acquired business, the Board's evaluation of an acquisition should focus heavily on management's proposed strategy for integrating the acquired business

- In considering the proposed integration strategy, the Board should consider the following issues:
  - Who is responsible for the implementation of the integration strategy? Will a specific team be formed for this purpose? (It is important that someone has a vested interest in ensuring that the integration is successful.)
  - Will key employees of the acquisition target be retained to assist with the integration process? Have steps been taken to retain such key employees? Have those steps been successful?
  - What business issues must be addressed in integrating the acquisition target? How will those business issues be addressed?
  - How long is the integration process expected to take? What is the proposed timeline?

Evaluating Completed Acquisitions

- The company's acquisition strategy should include a process for measuring / evaluating the success of each acquisition
  - This process should focus on whether certain key metrics have been met
- If an acquisition fails, it is often a result of internal factors, such as lack of cohesion, conflicts, and failure to integrate the acquired business
- In most cases, if an acquired business is well integrated with/into the existing business of the acquiring company, the acquisition will be considered successful

Breakout Session II (10:20 a.m. – 11:20 a.m.) **Evaluating Acquisitions in the Boardroom**

Steve Vazquez, Partner, Foley & Lardner LLP **| Scott Sonnenblick,** Partner, Linklaters **| Paul McNicholl,** Partner, Linklaters **| Jeff Bradford**, Partner, Transaction Services, Grant Thornton LLP **| Margaret C. (Peggy) Kelsey**, Vice President, Legal and Corporate Communications, General Counsel & Secretary, Modine Manufacturing Company **| Frank Jaehnert**, President & CEO, Brady Corporation (retired), Board Member **| Brent Smith**, Managing Director, Head of Consumer & Retail M&A, William Blair

1. Current M&A Trends (10:20am—11:00am)
   a. Market Overview (Brent to start)
   b. Structure Trends - "Locked Box" (i.e. fixed price based on signing balance sheet with no closing or post-closing adjustments) deals (Peggy to start)
   c. Process Trends - Recent Post-Trados Delaware Board fiduciary duty cases regarding Board Process (Steve to start)
   d. Risk evaluation and mitigation (Jeff to start)
      i. Representation and warranty insurance
      ii. Integration issues (including use of integration advisor)
      iii. Managing, monitoring and reporting on success of deal and achieving value proposition that supported deal

2. Board's role in developing and evaluating an acquisition strategy (11:00am—11:20am)
   a. Governance procedures and controls for M&A (Frank to start)
   b. Establishing criteria for deals that can be completed without Board involvement (Paul or Scott to start)
   c. Use of third party advisors and the Board's role in vetting and managing potential conflicts of interest (Brent to start)