European Life Sciences Deal Trends

In Europe, life sciences deals increased over the last few years with a strong acceleration in 2021. As a result, the market wonders whether this is just a pick or rather a steady trend which will impact our market in the future as well. Analyzing the reasons of such growth and comparing it with more mature markets such as the U.S. comfort us in thinking that it is just the beginning for continental Europe.

The U.S. life sciences market has been very strong over the past decades and is seen as very mature. The level of venture investments, which are now very much standardized, licensing, M&A and IPOs is very high, both in volume and in number.

For the last ten years or so, the life sciences UK market attracted U.S. investors and an increasing number of growth funds. After a first step of development through venture investments, such companies are now ready for licensing, M&A and IPOs. This is also the trend that we anticipate for the European market even if each country or region still has its own specificities (in particular UK, Germany, France and the Nordic Countries).

Read the **client alert**.

Life Science Companies Participate in Convertible Bond Surge

Life science companies have been among the biggest users of convertible debt financing in the first half of 2020. As highlighted in our recent **Client Insight article**, life science, technology and other traditional high-yield debt issuers were the biggest participants in the record issuance of convertible

bonds. Through June 30, 2020, U.S. companies raised over $64 billion in 114 convertible bond offerings with most of the surge occurring in the second quarter. May 2020 saw a record $20.7 billion of convertible debt issued. The previous record monthly high for convertible issuance was $19.2 billion in May 2001.

The strength of the convertible bond market was due in part to high share price volatility in equity markets and wide credit spreads above comparable U.S. Treasuries in debt markets. These market conditions make convertible debt an attractive source of capital versus equity follow-ons and high-yield debt offerings. One notable life science transaction in the first half of 2020 was BridgeBio Pharma Inc.'s (BBIO) pricing of an upsized $550 million (from $375 million) convertible debt offering that featured a 2.50% coupon. Additionally, BBIO entered into capped call transactions to raise the effective conversion prices of the notes and hedge risk of equity dilution upon conversion. The strength of the convertible debt market enabled BBIO and other life science companies to raise capital at attractive levels. In the first half of 2020, the average coupon rate for all convertible debt offerings was 1.25% with an average conversion premium of 37%.

Given that share price volatility and credit spreads are still at historically high levels, convertible bond offerings are expected to remain a popular source of financing for life science issuers in the second half of 2020.

Think Your Drug is Safe and Effective? Not So, Says the SEC

For life sciences companies who are or are looking to become publicly traded in the U.S., one of the most frequent comments that we see from the SEC as part of their review process is the following:

You make several assertions regarding the safety and efficacy of certain of your product candidates. Safety and efficacy determinations are solely within the authority of the FDA (or applicable foreign regulators). Please revise these statements to remove statements/inferences that your product candidates are safe and/or effective. We will not object to a discussion of whether your product candidates were well-tolerated or discussion of whether trial endpoints were met.

Given the frequency with which verbiage such as "safety data" or "efficacy data" is used among drug developers, investors and even the FDA itself, this position by the SEC often catches companies by surprise. However, the SEC has consistently taken the view that such references are not appropriate in companies' SEC disclosures. Importantly, even oblique references to "safety" or "efficacy" (for instance, forward-looking statements regarding the expected safety profile of a product candidate) will often draw an SEC comment.

Fortunately, there are typically relatively straightforward ways to resolve this comment. For instance, rather than referring to a drug's efficacy, companies can instead refer to whether it met trial endpoints or demonstrated activity. Similarly, in lieu of referring to a drug's safety, companies can refer to its tolerability or its adverse event profile observed to date.

While this topic is typically a point of emphasis in the IPO process, we often find that companies become less vigilant about avoiding "safety" and "efficacy" references in their subsequent Exchange Act periodic reports (not to mention their press releases and investor presentations). However, we frequently see this comment come up in SEC reviews of public company periodic reports, and proactively steering away from references to "safety" and "efficacy" can be a useful way to remove some low-hanging fruit that might otherwise draw an SEC comment.

Capital Markets in the Time of Pandemic – Second Quarter Biotech Update

As we reach the mid-point of 2020, the second quarter was the busiest quarter for biotech equity to date, and we continue to see an active IPO market with issuers pushing to expeditiously get on file and take advantage of the continued investor receptiveness to biotech equity offerings. The ongoing effect of COVID-19 has brought about some interesting trends during the 2020 IPO frenzy. Although many were at first hesitant to launch a road show in light of COVID-19, "early canaries in the coal mine" Zentalis Pharmaceuticals and Keros Therapeutics successfully launched and priced their upsized offerings at the top of the range.

The inability to have the traditional 10-day in-person road show meetings has resulted in truncated four-day virtual road meetings, which was utilized by both Zentalis and Keros and the biotech IPOs that followed. This shortened book building process has shifted priority and significance to testing-the-water meetings, resulting in more robust and fulsome meetings to allow issuers and underwriters to assess market interest. Additionally, with the XBI outperforming the S&P, we've seen more generalist investors shifting their investments to biotech. This increase in demand has, in turn, resulted in larger than usual IPOs pricing, with several issuers raising in excess of $200 million after upsizing their offering and pricing at the top of, or above, their initial offering range. Importantly, the completed IPOs have generally traded well, opening sharply up on the first day of trading, which in turn fuels the pipeline of issuers and demand.

Another interesting development in 2020 is the traditional lack of disclosure regarding insider participation on the cover of S-1s to show support for the IPO, which was the norm in 2019 and previous years. In 2019, banks typically looked to have insiders fully cover the IPO with insider demand before launching the deal and expressly signaled the insider support by having prominent

disclosure on the cover of the S-1. In 2020, we've seen banks move away from this express disclosure and marketing angle in order to signal to new investors that meaningful allocations will be available as the company looks to diversify its inventor base. As we look forward into the back half of the year, July is shaping up to be another busy month with several companies having publicly filed their S-1s to commence the 15-day waiting period before beginning their road shows. The desire for companies to commence their IPO process with organizational meetings and bake-offs continues, and if the market holds, the third quarter, and even the fourth, could continue to the trends we've seen to date.

Read the Insight >>

Qualifying for Immunity Under the U.S. PREP Act During COVID-19

 As part of the U.S. government's response to the COVID-19 pandemic, on March 10, 2020, the Secretary of Health and Human Services ("Secretary") issued a Declaration pursuant to the Public Readiness and Emergency Preparedness Act ("PREP Act"), 42 U.S.C. § 247d-6d. This Declaration activated immunity from personal injury, property damage, and other types of claims for companies and certain professionals who manufacture, distribute, or use "covered countermeasures"— certain drugs and devices, or components thereof, that may be used to treat COVID-19 patients or combat the COVID-19 pandemic.[1] The PREP Act provides broad immunity from liability, but applies only to products and persons that qualify for the immunity under the PREP Act and the limits established in the Secretary's Declaration.

Read the Alert >>

Key Considerations for U.S. Public Company Compensation Committees in Light of COVID-19

 As the COVID-19 pandemic continues to unfold, U.S. public company compensation committees face unique challenges as they focus on retaining and appropriately incentivizing employees while evaluating the impact of the pandemic on the company. This client alert provides a high-level overview of some key issues that compensation committees should be focusing on in this environment.

Read the Alert >>