



# 2022 ANNUAL M&A / PE REVIEW AND 2023 FORECAST

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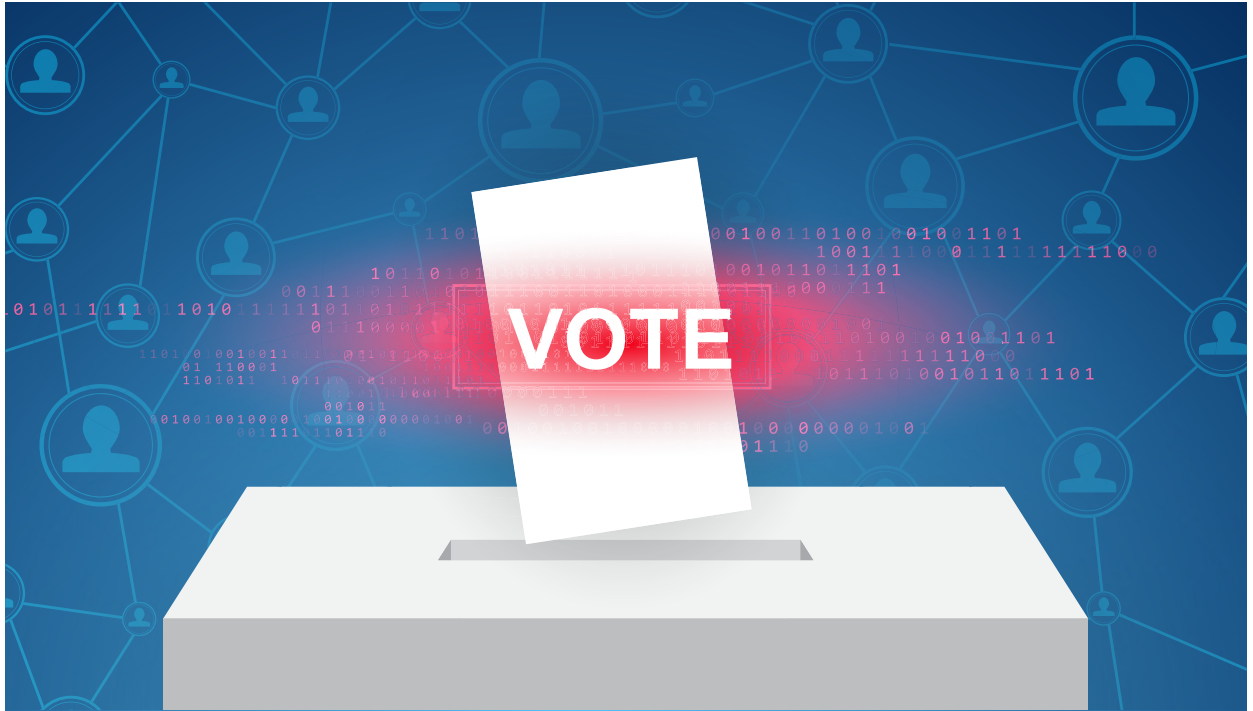
# INTRODUCTION



After a record-breaking 2021, deal activity in 2022 dropped by 37%, its largest year-over-year decline since 2001. Facing all the 2022 headwinds, including a difficult and uncertain financing market, the Ukraine war, inflation, the continuing effects of the COVID-19 pandemic, supply chain issues, and unfriendly regulators, in many ways the M&A market held up better than expected.

This update highlights many of the challenges experienced in 2022 that continue to unfold in 2023, ranging from the new universal proxy card rules to heightened antitrust scrutiny, expanding FDI regimes across the globe, and the hotly disputed question of whether non-majority stockholders are controllers.

Against this backdrop, clients once again turned to Jones Day for some of their most significant and complex transactions, whether carve-outs, spin-offs, joint ventures, public company acquisitions, or cross-border transactions. The pages that follow spotlight just a few of the Firm's 2022 engagements across a range of sectors.



# CORPORATE GOVERNANCE DEVELOPMENTS TO WATCH IN 2023

ESG issues remained a focal point in 2022, as SEC initiatives and shareholder advocacy shaped disclosures on environmental, social, and governance issues. Delaware law developments are expected to spur many companies to put charter amendments on their 2023 annual meeting ballots, and the SEC’s finally adopted universal proxy card rules will shape contested elections in 2023 and beyond.

## 2022 Proxy Season

As in 2021, ESG took center stage in the 2022 proxy season. Social and political shareholder proposals remained at the forefront, with a significant uptick in proposals relating to civil rights, human rights, and racial equity. The number of climate-related and other environmental proposals also rose significantly, and many of these proposals, including those relating to emissions targets, were more prescriptive in nature. While the number of successful proposals on these topics did not increase dramatically in 2022, we expect ESG proposals again to make a strong showing in the 2023 season.

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### **SEC Rulemaking Initiatives**

The SEC is expected to advance several of its governance-related rulemaking initiatives in 2023, including those on human capital management, climate-related disclosures, and board diversity. Each of these may have a major impact on the governance disclosure landscape in years to come. In 2022, the SEC also called for enhanced governance disclosures outside of its formal rulemaking process, issuing several comment letters asking companies to enhance their narratives relating to board leadership and risk oversight, including the role of the lead director.

### **Universal Proxy Cards and Advance Notice Provisions**

In 2023, the number of proxy contests may rise as a result of the effectiveness of Exchange Act Rule 14a-19, the SEC's "universal proxy card" rules for contested director elections. In light of this, many companies have adopted or are considering adopting bylaw updates to address the universal proxy card rules directly and to ensure that advance notice provisions reflect current market practice. Such updates are not without peril, however; some companies have drawn shareholder proposals (and in some cases, litigation) seeking to restrict expansions to advance notice provisions. Companies would be well served to evaluate their current bylaws holistically and advance notice provisions, as such changes are best adopted on a "clear day," but to be wary of implementing aggressive changes that may invite litigation or negative attention from investors.

### **Officer Exculpation Under Delaware Law**

In August 2022, DGCL Section 102(b)(7) was amended to permit a corporate charter to eliminate or limit the personal liability of certain officers for breaches of the duty of care, which historically applied only to corporate directors. Although the exculpation provided to directors and officers under the amended statute is not identical—the liability of officers for derivative claims may not be limited—these amendments will substantially close the gap between the treatment of directors and officers in M&A-related litigation. Of course, charter amendments require shareholder approval, and we expect that many companies will ask shareholders to approve officer exculpation provisions the next time they are amending their charters.



# NAVIGATING HEIGHTENED ANTITRUST SCRUTINY IN M&A/PE TRANSACTIONS

Antitrust scrutiny remained high during 2022 as competition officials globally continued to advocate for more aggressive enforcement. U.S. enforcers adopted a more expansive view of competitive harm, accounting for transaction effects on workers, and expressed greater skepticism of remedies to address competitive concerns. Authorities in Europe and Asia also remained active. Despite the tough talk from enforcers and shifting focus, the number of significant merger investigations in 2022 did not deviate materially from historic totals.

**Most transactions closed with no or limited agency review.**

For deals facing a close antitrust review, merging parties were more likely to confront a long (10+ month) merger investigation and greater risk that their transaction would be challenged in court or blocked. Those dynamics increase the importance for buyers and sellers to negotiate transaction terms that fully account for potential antitrust risk, including an extended investigation, demand for remedies, and government efforts to prevent closing. The following highlights significant developments in the United States, Europe, and Asia Pacific:

### United States

- New Hart-Scott-Rodino merger notification **filing fees** will increase for large transactions (e.g., \$2.25 million for deals valued at \$5 billion or more—a 704% increase, compared to \$280,000) and decreases fees for small transactions (\$30,000 for deals between \$101 million–\$161.5 million, down from \$45,000). The new fee structure went into effect on February 27, 2023.
- Heightened scrutiny on:
  - Large companies acquiring new or “**nascent competitors**.”
  - **Vertical transactions** (companies at different levels of the supply chain).
  - **Serial acquisitions** in the same industry, particularly involving private equity.
  - Effects in **labor markets** and broad non-compete, non-solicit, or no-poach agreements.
- The agencies are likely to be most aggressive in the **technology, health care, pharma, agriculture,** and **consumer products** sectors.
- **Settlements** designed to address antitrust concerns and allow antitrust clearance for the main transaction remain possible but challenging. Enforcers continue to require both the asset package and proposed buyer(s) to replace competition purportedly lost by the original transaction as early as possible to maximize agency vetting.
  - All FTC orders settling merger investigations now include a “**prior approval**” clause that grants the agency the unilateral authority to approve or deny certain future transactions for a minimum of 10 years. Although prior approval may affect a small number of transactions, it could have outsized consequences for the M&A strategies of companies subject to it.
  - Negotiating **remedies at DOJ** remains especially challenging. The DOJ continued to adopt a preference to seek injunctions to block transactions outright rather than accept a remedy.
  - DOJ and FTC have expressed interest in “**fix-it-first**” remedies in which the parties offer an upfront structural remedy to an otherwise problematic transaction.

The agencies are likely to be most aggressive in the sectors below.



## Europe

- The European Commission's **referral policy** encourages EU Member States to refer competitively significant transactions to the Commission. The new policy addresses concern that certain transactions—notably, “killer acquisitions” by dominant firms—evaded merger notification because one or both of the transacting parties (typically a small, high-value target) did not meet EU or any Member State filing thresholds.
- The EU **Foreign Subsidies Regulation** (“FSR”) requires pre-notification of certain large M&A transactions and public bids involving companies that receive subsidies from governments outside the European Union. Notifications will become mandatory as of October 12, 2023, and the FSR empowers the European Commission to commence investigations as early as July 12, 2023.
- The **UK Competition and Markets Authority** has continued to take an expansive view of its jurisdiction, and to investigate deals where the parties have only a limited presence or low revenues in the United Kingdom. This makes it more important than ever for deal parties to consider carefully up-front whether to submit a voluntary filing in order to avoid the risk of the transaction being called in for investigation at a late stage.

## Asia Pacific

- Enforcers in Asia Pacific, including in China, South Korea, and Australia, remain important in many cross-border transactions. China, in particular, is a principal regulatory obstacle for many deals, especially in **sensitive industries** such as semiconductors, advanced manufacturing, health care, and agriculture.
- Recent amendments to China's Anti-Monopoly Law allow the State Administration for Market Regulation (“SAMR”) to **“stop the clock”** at any point during a merger review due to new facts or circumstances, missing information, or when considering remedies. Depending on the case, merging parties may benefit (e.g., potentially avoid the need to withdraw a filing in complex deals involving remedies) or be burdened (e.g., less certainty over timing) by this change.
- SAMR significantly **increased penalties for non-reporting/gun-jumping**, potentially as high as for cartel violations—up to 10% of annual revenue, plus multipliers for “serious cases.”
- SAMR continued to focus on foreclosure effects in vertical and multi-product (conglomerate) deals. SAMR also embraced behavioral, hold-separate **remedies**, and other China-specific conditions, such as requiring continued supply of products and sponsoring new entry, often without any automatic sunset provision.
- The **Australian Competition and Consumer Commission** continues to advocate for changes to the Australian merger regime, commenting that it considers that the current informal regime is “not fit for purpose,” particularly for complex cross-border transactions. Merger notification is voluntary in Australia, but if the government introduces a formal suspensory regime, the number of notifications likely will increase significantly.





## THE EXPANSION OF FDI REGIMES AND THE IMPLICATIONS ON TRANSACTIONS WORLDWIDE

Similar to the scrutiny leveled by global antitrust authorities, regulators policing foreign direct investment in M&A transactions continued to flex their muscles throughout 2022. Regulators have seen the scope of their review as well as their enforcement powers expand over the past few years in a trend we expect to see continue in 2023 and years to come.

Buyers and sellers should ensure that they factor in potential FDI risk, including an extended investigation and government efforts to prevent closing, when negotiating deal terms. The following highlights significant developments in Australia, China, Europe, and the United States:



### Australia

Australia has increased its scrutiny of proposed foreign investment in certain critical areas, including defense, intelligence, and critical infrastructure. At the same time, Australia’s Foreign Investment Review Board (“FIRB”) has stressed that Australia welcomes and needs foreign investment. Other recent developments include the doubling of application fees and the FIRB’s introduction of quarterly reports on foreign investment. The FIRB noted \$48.6 billion of inbound commercial FDI in that quarter, with the top five source countries being the United States, Canada, Singapore, China, and Thailand. The FIRB is increasingly imposing conditions on approvals, particularly in relation to tax, data management, and storage. Foreign investors should expect the FIRB to continue to focus on imposing conditions of this kind and for the FIRB and Treasury to audit compliance with these conditions.



### China

In 2022, China continued to scrutinize global transactions actively in accordance with its Measures on Security Review of Foreign Investment (“FISR”). Although the National Development and Reform Commission (“NDRC”), China’s FDI regulator, does not disclose enforcement details, parties regularly receive inquiries from NDRC, especially when other market stakeholders file complaints with the agency. Compared with other regulatory procedures, FISR is characterized by broader jurisdiction, greater regulator discretion, and less visibility and predictability. Parties should consider conducting a preliminary FISR assessment in the early stage of a transaction to understand the potential impact to the closing.





### European Union

The complexity of the investment control landscape in Europe increased significantly and is expected to further increase in 2023. For instance, Germany made headlines by struggling to find a coherent policy on how to deal with Chinese investments. New FDI control regimes are expected to become effective (some with retrospective effect) in Belgium, Ireland, the Netherlands, the Slovak Republic, and Sweden. Other jurisdictions (France, Poland, and Spain) extended the validity of temporary rules applying to foreign investments. Further, Russia’s attack on Ukraine is likely to trigger new rules allowing for greater scrutiny.



### United Kingdom

With the introduction of the National Security and Investment regime (“NSI Regime”) on January 4, 2022, the United Kingdom moved from having one of the least interventionist investment control regimes among peer economies to one of the most active. In the first year of operation, the UK government has extensively deployed its new powers, reviewing hundreds of mandatory notifications, calling in dozens of deals for detailed national security assessments, imposing conditions on nine transactions, and prohibiting three of them. It is also important to note that the NSI Regime is not limited to transactions involving foreign entities or direct investments. The coverage of the NSI Regime is broader than transactions that might ordinarily be considered “investments” because it can require notifications for license agreements, financing arrangements, and insolvency proceedings, among other types of business activities.



### United States

CFIUS analysis and risk mitigation remain key factors in cross-border deals. In September 2022, in what has been touted as the first official presidential guidance to CFIUS since its inception, President Biden issued an Executive Order (the “EO”) “elaborating and expanding” upon the factors CFIUS must consider as part of its national security review process. Although the EO did not change the formal CFIUS process or CFIUS’s legal jurisdiction, it directs CFIUS to consider certain specific criteria, including supply chain resilience, protecting Americans’ sensitive data, and maintaining America’s technological leadership. In November 2022, CFIUS released its first-ever enforcement and penalty guidelines (the “Guidelines”)—putting industry on notice and inviting self-disclosures. The Guidelines provide valuable insight into CFIUS’s expectations and enforcement priorities as it administers its newly expanded authorities. Notably, the Guidelines “strongly encourage” parties to self-disclose identified violations in writing to CFIUS, which may be considered as a mitigating factor when evaluating whether to institute a penalty.



# DELAWARE DECISIONS THAT ARE LIKELY TO IMPACT DEALMAKERS IN 2023 AND BEYOND

Delaware courts were busy once again in 2022, issuing decisions that likely will impact dealmakers in 2023 and beyond. Likewise, amendments to the Delaware General Corporation Law (“DGCL”) will affect stockholder challenges to transactions going forward.

## **Extension of 102(b)(7) Exculpation to Officers**

Virtually all Delaware corporations have adopted DGCL Section 102(b)(7) exculpation provisions in their charters, which eliminate (or limit) directors’ personal liability to the corporation or its stockholders for breaches of the duty of care. Until now, such exculpatory protection was available only to directors, but not officers—although directors and officers alike owe fiduciary duties. Based on a recent amendment to the DGCL, corporations can now exculpate certain officers for breaches of the duty of care. Unlike directors, however, such exculpation does not extend to claims brought by or in the right of the corporation, such as shareholder derivative claims.

The importance of adopting an exculpation provision for officers is most evident in the M&A class action context. It effectively will close the loophole that allowed stockholders to pursue claims against officers for breaches of the duty of care (such as for alleged disclosure violations in proxy statements) even though the same claims against directors would not survive a motion to dismiss. DGCL Section 102(b)(7) provisions for officers will thus minimize the expense and distraction of M&A litigation.

The DGCL amendment does not automatically apply. Instead, corporations must amend their certificate of incorporation, which requires stockholder approval. Thus far, ISS in particular has been supportive of proposals to amend certificates to extend exculpatory protection to officers, and we expect spring proxy season to include many officer exculpation proposals.

### **Continued Doubt as to Non-Majority Stockholders as Controllers**

Particularly against the backdrop of *Corwin* and *MFW*, whether a non-majority stockholder is a controlling stockholder is a critical and often hotly disputed issue. That is because, when stockholders challenge a deal, the presence of a controlling stockholder can radically impact how fiduciary conduct is evaluated and the outcome of that judicial review at the early stages.

The long-running litigation stemming from Tesla's acquisition of SolarCity underscores how uncertain controller status can result in significant expense, even if the purported controller was ultimately vindicated after trial. There, the Court of Chancery denied a motion to dismiss and a motion for summary judgment on the issue of whether Elon Musk—despite owning only 22% of Tesla's common stock—was Tesla's controlling shareholder.

Eventually, the case went to trial. In its post-trial opinion, the court acknowledged, but did not resolve, the debate as to whether “managerial supremacy” or stock ownership and voting power is the proper focus of the controlling stockholder inquiry—and noted the need for guidance from the Delaware Supreme Court. Ultimately, the court found a basis to apply entire fairness, either because Musk was a controller or because of board conflicts, and concluded that the transaction was entirely fair.

What can be learned from *Tesla*? That controlling stockholder law remains “in flux,” that the inquiry continues to be fact-intensive (which means it may be less susceptible to resolution at the motion-to-dismiss stage), and that stockholders well below the 50% ownership mark may find themselves in a years-long dispute about their status as a controller. To avoid the distraction and expense of such litigation (even if ultimately successful, as in *Tesla*), boards and non-majority transacting stockholders should carefully consider whether to employ the available procedural protections for controlling stockholder transactions.



## A LOOK AHEAD: ACTIVISM IN 2023

The following outlines a few emerging trends that we think will shape the activism landscape in 2023.

### **Universal Proxy Cards**

The SEC's new rule requiring universal proxy cards took effect and will apply to all shareholder meetings involving contested director elections held after August 31, 2022.

Practically speaking, this makes individual directors individually vulnerable in a proxy contest, and it is now critical that each company director/nominee is attractive to shareholders in his or her own way. This is because, assuming the minimal requirements of the new rule are met, company shareholders will be able to select each director nominee for their preferred director slate from all director nominees put forth by the company and any nominating shareholders—an à la carte approach. This differs from the prior regime, whereby company shareholders were required to pick the entire slate of nominees put forth by either the company or a nominating shareholder (including, in a short-slate context, those company nominees selected by the nominating shareholder to complete their slate)—a fixed-menu approach.



If the focus on ESG recedes, it is likely that the “traditional” activism focus on returning money to shareholders will rise in importance.

### Unstable Market Conditions Favor Activism

If markets remain volatile through 2023, as many expect, activism will likely increase, as struggling companies are a traditional target for activists. During volatile market conditions, activists tend to focus less on M&A activity and instead demand returns of excess cash reserves, divestitures/spin-offs, and cost-cutting.

Because so many companies responded to the COVID-19 pandemic by stockpiling cash reserves and/or taking advantage of the previous low-rate environment to increase liquidity, activist demands for dividends and share buybacks will be particularly forceful.

### The Trouble with ESG

ESG is not disappearing, but it faces increasing criticism. This criticism ranges from the foundational—ESG investments have financially underperformed (relative to other investment strategies and comparable indices) and investors have begun to doubt claims that “sustainable” investments may be more profitable—to the practical—just what is meant by “sustainable,” given that there is no single agreed-upon metric for determining whether an investment is sustainable or not, and different metrics yield different results.

If the focus on ESG recedes, it is likely that the “traditional” activism focus on returning money to shareholders will rise in importance.

Companies that overpromised on ESG-related initiatives in previously issued filings and sustainability reports may be vulnerable if they are unable to demonstrate clear progress (even by the company’s own metrics), however.

# RUSSIAN EXITS IN 2022 AND OUTLOOK FOR 2023

The Russian M&A market was defined by geopolitical, economic, trade, and other regulatory uncertainty in 2022, predominantly as a result of the Russia–Ukraine War. These factors created a number of issues for corporations globally. First was to ensure the safety and well-being of employees in the region. Then to consider whether to exit or maintain operations in the Russian Federation, how to address supply chain disruption, and other longer-term business continuity issues. All of this occurred in the context of navigating the rapidly imposed and expanding sanctions on the region, and increasing political pressure on corporations to take a stance.



Normal M&A rules were turned upside down and, for many, valuation became secondary to a clean break.

Jones Day had the privilege of helping clients navigate these challenges in 2022 as, in a year defined by uncertainty, clients turned to Jones Day to assist them with some of the most high-profile and complex transactions. Our representations included myriad transaction structures ranging from management buy-outs to the largest, most complex and iconic exit of a Western company from the Russian market.

Normal M&A rules were turned upside down and, for many, valuation became secondary to a clean break. Reputational risks were also brought to the forefront of many transactions. Other, more logistical issues also caused headaches for many corporations, particularly given the limited ability of parties to be able to deliver original corporate authorizations and other documents into the Russian Federation for notarization in a timely manner in light of travel restrictions and the limited courier services operating in the region.

While we expect transactions of this nature to continue throughout 2023, we note that the ever-changing regulatory landscape and increased political scrutiny of these transactions—both within the Russian Federation and elsewhere—are making it increasingly difficult for corporations to navigate an exit and, in particular, realize any value for their assets.



# 2022 DEALS BY THE NUMBERS

TOTAL NUMBER  
OF TRANSACTIONS  
INVOLVING JONES DAY\*



## DEAL COUNT BY VALUE



> \$1 BILLION



> \$100 MILLION  
< \$999 MILLION

## CROSS-BORDER DEAL COUNT



MULTIJURISDICTIONAL  
DEALS



COUNTRIES

\* Transactions closed in 2022.

## KEY SECTORS



CHEMICALS



CONSUMER  
PRODUCTS  
AND RETAIL



ENERGY  
AND UTILITIES



FINANCIALS



INDUSTRIALS



LIFE SCIENCES  
AND  
HEALTH CARE



REAL ESTATE



TECHNOLOGY



## HIGHLIGHTED 2022 CLIENT REPRESENTATIONS

# INDUSTRIALS



Jones Day advised **Avient Corporation**, a leading provider of specialized and sustainable material solutions, in the \$1.485 billion acquisition and financing of Koninklijke DSM N.V.'s protective materials business, a leading specialty engineered materials business built around the invention of Dyneema®, the world's strongest fiber.

Jones Day also advised **Avient** in the \$950 million sale of its Distribution business to an affiliate of H.I.G. Capital.



Jones Day advised **Berry Global Inc.** in the disposal of its plastic rotational molding business to Rotovia B.V., a special purpose vehicle indirectly owned by Icelandic PE funds, Freyja and Sia IV, and the current management of the business. The roto-molding business operates from 14 locations across 10 countries in Europe and Canada, employing around 800 people.



Jones Day advised **Plastic Omnium** in the acquisition of the Automotive Lighting Systems business of ams OSRAM Group in a highly complex international carve-out transaction.



Jones Day advised **The Riverside Company** in the sale of Abracon, a Texas-based global provider of passive and electromechanical timing, synchronization, power, connectivity, and radio frequency solutions, to Genstar Capital.



Jones Day advised **Roper Technologies, Inc.** on the sale of a majority stake in its industrial businesses, including its entire Process Technologies segment and the industrial businesses within its Measurement & Analytical Solutions segment, to an affiliate of Clayton Dubilier & Rice, LLC, for \$2.6 billion in cash. Roper retained a 49% minority interest in a new stand-alone entity.



Jones Day represented the **Sonepar Group**—a Paris-headquartered global leader in B2B distribution of electrical products, solutions, and related services—in the sale of Sonepar's subsidiary business, Vallen Distribution, to Nautic Partners. Vallen is a leading North American provider of MRO industrial supplies, providing integrated supply solutions, vendor-managed inventory, and safety services.

# TECHNOLOGY



Jones Day advised **Ansys, Inc.** in the acquisition of OnScale, Inc., a cloud simulation provider.

Jones Day is also representing **Ansys, Inc.** in the acquisition of the DYNAmore business, a Stuttgart, Germany-headquartered company that has historically distributed Ansys’s LS-DYNA crash test simulation software to virtually all major European car manufacturers.



Jones Day advised **Databank**, a DigitalBridge company, in the \$670 million acquisition of four existing data centers in the Houston, Texas metro area from CyrusOne.



Jones Day advised **FleetCor Technologies, Inc.** in the acquisition of Plugsurfing, a leading European electric vehicle software and network provider.



Jones Day advised **IBM** in the acquisition of Envizi, a leading data and analytics software provider for environmental performance management.



Jones Day advised **Nordson Corporation** in the acquisition of CyberOptics Corporation, a leading global developer and manufacturer of high-precision 3D optical sensing technology solutions.



Jones Day advised **Sensata Technologies**, a leading industrial technology company and provider of sensor-rich solutions and insights for customers, in the \$580 million acquisition of Dynapower Company, LLC from Pfingsten Partners. Dynapower is a leading provider of energy storage and power conversion systems.



Jones Day advised **Verizon** in the sale of the former Yahoo small business essentials portfolio to Infinite Computer Solutions.

# LIFE SCIENCES AND HEALTH CARE



Jones Day advised **ARCHIMED**, a leading transatlantic private equity health care specialist, on its acquisition of PlasmidFactory, a globally renowned high-quality producer of plasmid DNA with strong research capabilities. Plasmid DNA is a key input for mRNA vaccines, gene therapy, and cell therapy.



Jones Day advised **Cardinal Health, Inc.** in connection with its strategic partnership with Ember Technologies. The agreement governs a collaboration between the parties to offer the world's first self-refrigerated, cloud-based shipping box.



Jones Day advised **EssilorLuxottica** in the formation of its joint venture, SightGlass Vision, with CooperCompanies for the commercialization of novel spectacle lens technologies to expand the myopia management category. EssilorLuxottica is a global leader in the design, manufacture, and distribution of ophthalmic lenses, frames, and sunglasses.

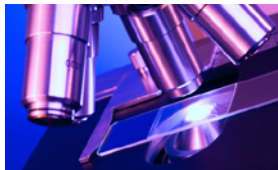


Jones Day advised **Eurobio Scientific SA** in the acquisition and financing of the Dutch company Genome Diagnostics BV ("GenDx") from its founder and its shareholders for €135 million (net of adjusted cash). Specialized in molecular transplant diagnostics, GenDx develops and offers a comprehensive line of reagents and services, analysis software, and education.



Jones Day advised **J. M. Huber Corporation** in the acquisition of Biolchim Group, a leading producer and distributor of specialty plant nutrition and biostimulants, from private equity firms NB Renaissance and Chequers Capital and the Biolchim Group management team.

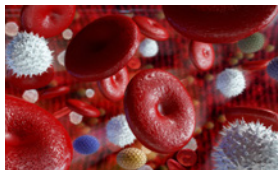
# LIFE SCIENCES AND HEALTH CARE cont.



Jones Day is advising **Labcorp** in connection with the planned spin-off of its Clinical Development business to its shareholders through a tax-free transaction. This transaction, if completed, would result in two independent, publicly traded companies: Labcorp, a global laboratory business comprising the company’s routine and esoteric labs, central labs, and early development research labs; and The Clinical Development Business, a global Contract Research Organization providing Phase I-IV clinical trial management, market access, and technology solutions to pharmaceutical and biotechnology organizations.



Jones Day advised **Meridian Bioscience, Inc.** in its \$1.53 billion all-cash acquisition by SD Biosensor and SJL Partners.



Jones Day advised **The Riverside Company** in connection with the acquisition and financing by portfolio company Red Nucleus of Jupiter Life Science Consulting, a leading provider of commercial and market access strategies for global pharma, biotech, and medical device companies with its primary focus in rare disease, hematology/oncology, metabolic, and neurology therapeutic areas.



Jones Day advised **Sanofi** in the carve-out creating EUROAPI, a leading European company dedicated to the development, production, and marketing of active pharmaceutical ingredients, and the listing of this entity on Euronext Paris and the placement of 12% to the French State.



Jones Day also advised **Sanofi** in the sale of a portfolio made up of eight anti-infectives to ADVANZ PHARMA Corp. Limited, a UK-headquartered global pharmaceutical company, and in the sale of the Japanese encephalitis vaccine IMOJEV® to SUBSTIPHARM, a privately held pharmaceutical group.

# FINTECH



Jones Day advised **ACI Worldwide, Inc.** in the \$100 million divestiture of its corporate online banking solutions to One Equity Partners. ACI is a software company that powers electronic payments for financial institutions, retailers, and processors around the world.



Jones Day represented **Bessemer Venture Partners** as lead investor in the Series B financing round of Upvest, a company that provides cloud-based banking-as-a-service (BaaS) by offering their ready-to-go APIs to fintechs to offer their end customers investment products including everything from ETFs and stocks to crypto assets.



Jones Day advised **Cohort Go** in its sale to Nasdaq-listed Flywire Inc., a global payments enablement and software company. Headquartered in Australia, Cohort Go provides international students with the ability to make cross-border tuition payments through international agents.



Jones Day advised **Deutsche Börse AG** on its investment in AirCarbon Exchange, a global carbon exchange using distributed ledger technology on a traditional trading architecture. It leverages blockchain architecture to create securitized carbon credits.



Jones Day advised **FleetCor Technologies, Inc.** in the acquisition of Global Reach Group, a UK-based cross-border payments provider. The FleetCor portfolio of brands automate, secure, digitize, and manage payment transactions on behalf of businesses across more than 100 countries in North America, Latin America, Europe, and Asia Pacific.



Jones Day advised **NerdWallet, Inc.**, a platform that provides financial guidance to consumers and small- and mid-sized businesses, in its acquisition of On the Barrelhead, Inc. for total consideration of \$120 million, consisting of approximately \$70 million in cash and \$50 million in NerdWallet Class A common stock.



Jones Day represented **Web Financial Group, S.A.** in the sale of all its technology business to Allfunds, one of the world's leading B2B wealthtech platforms for the fund industry.

# ENERGY AND UTILITIES



Jones Day advised **ABB Ltd.** in the acquisition of a controlling interest in InCharge Energy from existing shareholders. ABB had previously invested a 10% stake in InCharge Energy.



Jones Day advised **CNX Resources Corporation** in connection with its investment in Newlight Technologies as well as its entry into a 15-year commercial agreement to capture and utilize methane emissions for the production of Aircarbon®, a naturally-occurring molecule also known as PHB that replaces plastic but is carbon-negative and biologically degrades in natural environments.



Jones Day advised **Macquarie Asset Management**, via Macquarie Green Investment Group Renewable Energy Fund 2, in its acquisition of 50% of the shares in Island Green Power Limited, a UK-based renewable energy developer focused primarily on the development of utility-scale solar plants. Concurrently with the main transaction, Jones Day also represented Macquarie in connection with the acquisition of a ready-to-build 65 MW solar project located in Suffolk, UK.



Jones Day advised **Marathon Petroleum Corp.** in the formation of a joint venture with Neste to convert Marathon's idled refinery in Martinez, California into a 730 million gallons-per-year renewable fuels facility. The multi-year project will be structured as a 50/50 joint venture, with Neste expected to contribute a total of \$1 billion, inclusive of half of the total projected project development costs through the completion of the project. Marathon will continue to manage project execution and operate the facility once construction is complete.



Jones Day advised **PAG Holdings Ltd.** in the \$575 million acquisition of a portfolio of 293 megawatts (MW) DC utility-scale solar project development business and solar operations and maintenance business managing approximately 665 MWDC in Japan from wholly owned indirect subsidiaries of First Solar, Inc.



Jones Day advised **TotalEnergies** in the strategic alliance and investment agreement with Omaha Beach Investment Corp., Sunix Petroleum, S.R.L., and Tropigas Dominicana, S.R.L. in the Dominican Republic.



# CONSUMER PRODUCTS AND RETAIL



Jones Day advised **BAT Group** in its investment in Charlotte's Web Holdings, Inc., the market leader in hemp-derived cannabidiol, or CBD, wellness products.



Jones Day advised **EagleTree Capital** in the acquisition and financing of MacKenzie-Childs, the artisan-driven American heritage home decor brand, from Castanea Partners.



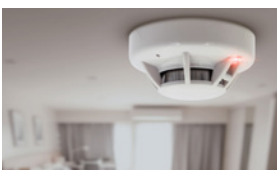
Jones Day advised **General Mills** in the acquisition of TNT Crust Intermediate Holdings LLC from private equity firm Peak Rock Capital. As part of the acquisition, General Mills also acquired two manufacturing facilities in Green Bay, Wisconsin, and St. Charles, Missouri.



Jones Day advised **Lamb Weston Holdings, Inc.** in the €700 million acquisition of the remaining equity interests in Lamb-Weston/Meijer v.o.f., its European joint venture with Meijer Frozen Foods B.V. Upon completion of the transaction, Lamb Weston will own 100% of Lamb-Weston/Meijer v.o.f., formerly operated as a 50/50 joint venture between a wholly owned subsidiary of Lamb Weston and Meijer Frozen Foods.



Jones Day advised **Monster Beverage Corporation** in the \$330 million acquisition of CANarchy Craft Brewery Collective LLC, a craft beer and hard seltzer company.



Jones Day advised **Newell Brands Inc.** in the \$593 million sale of the Connected Home & Security business to Resideo Technologies, Inc. Newell Brands is a leading global consumer goods company with a strong portfolio of well-known brands, including Rubbermaid, FoodSaver, Calphalon, Sistema, Sharpie, Paper Mate, Dymo, EXPO, Elmer's, Yankee Candle, Graco, NUK, Rubbermaid Commercial Products, Spontex, Coleman, Campingaz, Contigo, Oster, Sunbeam, and Mr. Coffee.



Jones Day advised **The Procter & Gamble Company** in its acquisition of TULA Life, Inc. from L Catterton Partners and L Catterton Europe SAS. TULA provides an assortment of skin and wellness products, including cleansers, moisturizers, serums, masks, eye treatment, and supplements.

# M&A/PE

## 2022 ADDITIONAL CLIENT REPRESENTATIONS

<p><b>The Aaron's Company, Inc.</b></p> <p><b>\$230 million</b></p> <p>Acquisition of BrandsMart U.S.A.</p>	<p><b>American Industrial Partners Capital Fund VI LP</b></p> <p><b>\$2 billion</b></p> <p>Stock-for-stock merger with Vectrus, Inc.</p>	<p><b>Arsenal Capital Partners</b></p> <p>Acquisition of ATP Group from Bregal Unternehmerrkapital</p>
<p><b>Bpifrance (Large Venture)</b></p> <p><b>\$355 million</b></p> <p>Series D round of financing of Exotec, becoming the first French industrial unicorn</p>	<p><b>Centre Lane Partners, LLC</b></p> <p>Majority investment from Northlane Capital Partners in Infobase</p>	<p><b>Deezer S.A.</b></p> <p><b>€1.05 billion</b></p> <p>Merger with and into I2PO S.A., a French SPAC, and related PIPE financing</p>
<p><b>EagleTree Capital</b></p> <p>Acquisition and financing of Andronaco Industries</p>	<p><b>FirstEnergy Corp.</b></p> <p><b>\$2.4 billion</b></p> <p>Sale of minority stake in FirstEnergy Transmission to Brookfield Super-Core Infrastructure Partners</p>	<p><b>Flowers Foods, Inc.</b></p> <p>Acquisition of Papa Pita Bakery</p>
<p><b>GoEngineer, Inc.</b></p> <p>Recapitalization with Court Square Capital Partners</p>	<p><b>Greystar Real Estate Partners, LLC</b></p> <p>Joint venture with sovereign wealth fund to acquire Student Roost from one of Brookfield's real estate private funds</p>	<p><b>Hornblower Group, Inc.</b></p> <p>Acquisition of Journey Beyond</p>

<p><b>J.F. Lehman &amp; Company and Hill City Capital</b></p> <p><b>\$5.2 billion</b></p> <p>All-cash acquisition of Atlas Air Worldwide, in consortium with Apollo</p>	<p><b>Koch Equity Development LLC</b></p> <p>Getty Images' business combination agreement with SPAC CC Neuberger Principal Holdings II</p>	<p><b>Marubeni Corporation</b></p> <p><b>\$1.1 billion</b></p> <p>Sale of global grain business of Gavilon Agriculture Investment</p>
<p><b>Nutrien Ltd.</b></p> <p>Acquisition of Casa do Adubo S.A.</p>	<p><b>Orange, S.A.</b></p> <p><b>€18.6 billion</b></p> <p>Combination of Orange Spain and Masmovil</p>	<p><b>Parker Hannifin Corporation</b></p> <p><b>\$440 million</b></p> <p>Divestiture of Aircraft Wheel and Brake Division</p>
<p><b>Polaris Inc.</b></p> <p>Sale of Transamerican Auto Parts business</p>	<p><b>Signature Aviation Limited</b></p> <p>Acquisition of TAC Air business of The Arnold Companies</p>	<p><b>Sonepar SAS</b></p> <p>Acquisition of NEDCO Supply</p>
<p><b>Stonepeak</b></p> <p>Formation of a Pan-Asia logistics real estate platform in partnership with Equalbase</p>	<p><b>Sun Communities, Inc.</b></p> <p><b>\$1.3 billion</b></p> <p>Acquisition of Park Holidays UK</p>	<p><b>The Timken Company</b></p> <p><b>\$305 million</b></p> <p>Acquisition of GGB Bearing Technology</p>

## LAWYER CONTACTS

For further information regarding our transactional practices, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form at [www.jonesday.com/contactus](http://www.jonesday.com/contactus).



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