

Q3 2012

Market Trends
&
Legal Developments
for Dealmakers

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- Venture Capital
- Private Equity
- Initial Public Offerings
- Mergers & Acquisitions

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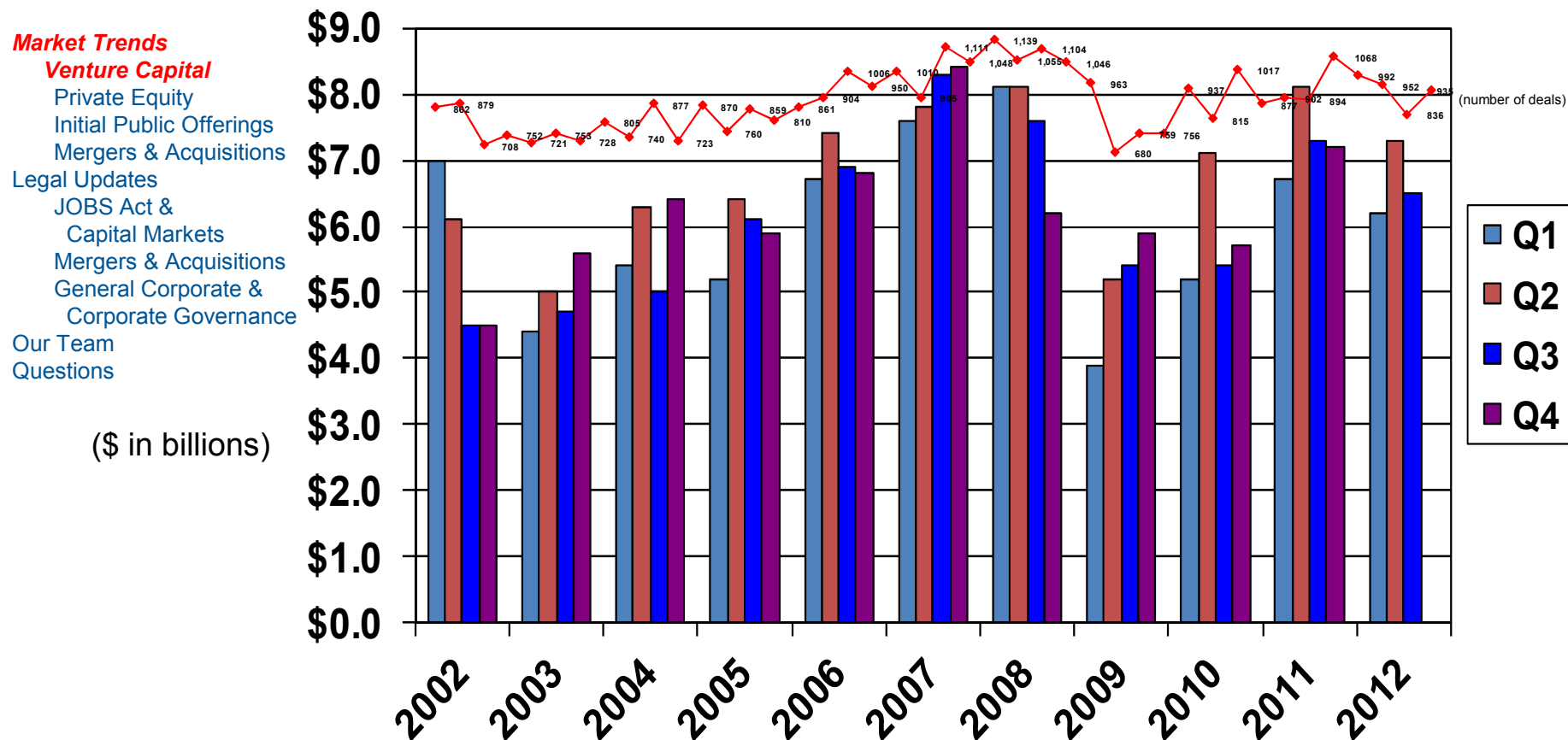
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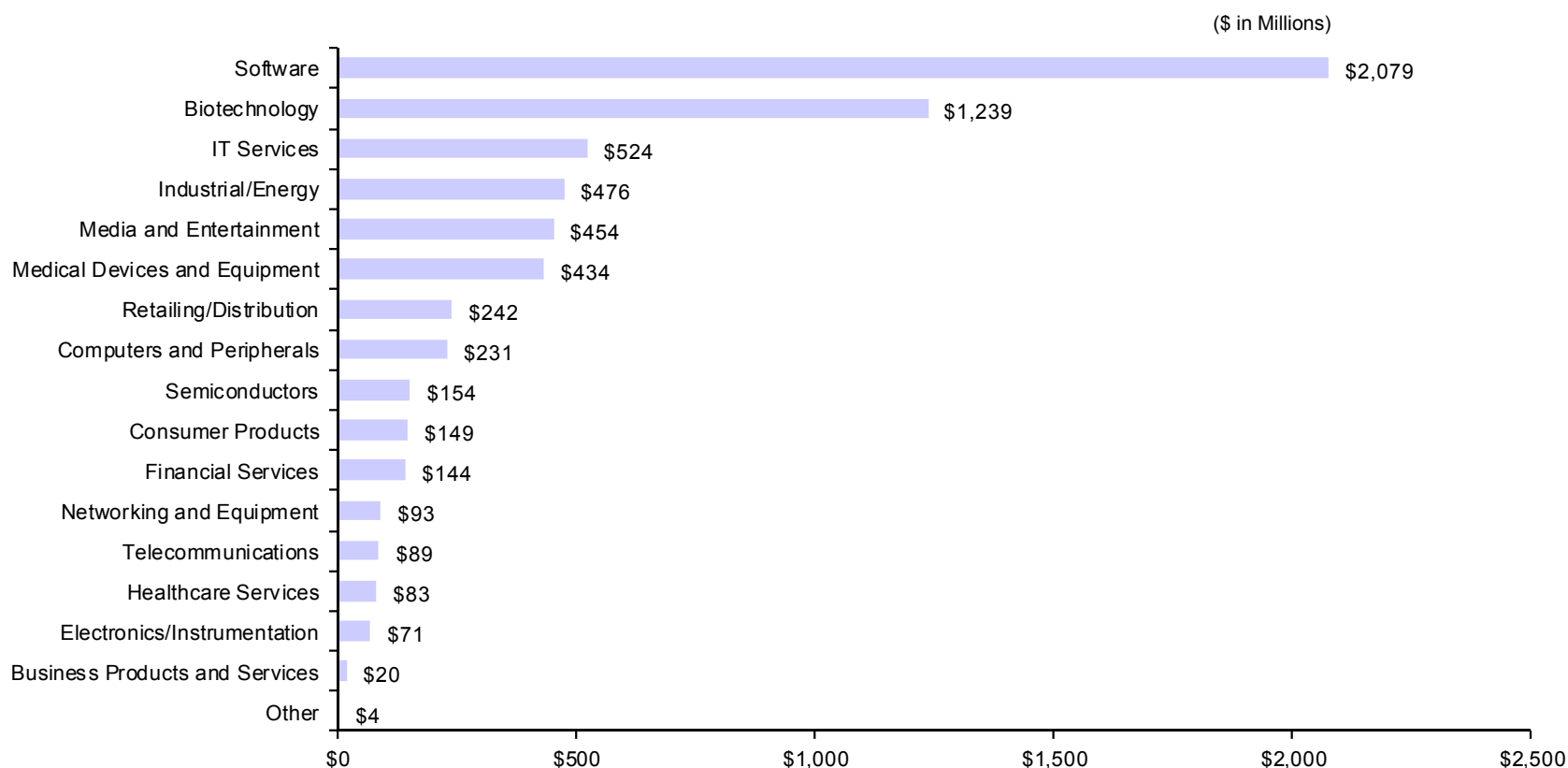
Market Trends - Total Investments



Investments in Q3 2012 totaled \$6.49B in 890 deals, a 12% decrease in dollars and a 5% decrease in deals from Q2 2012, when \$7.3B went into 935 deals

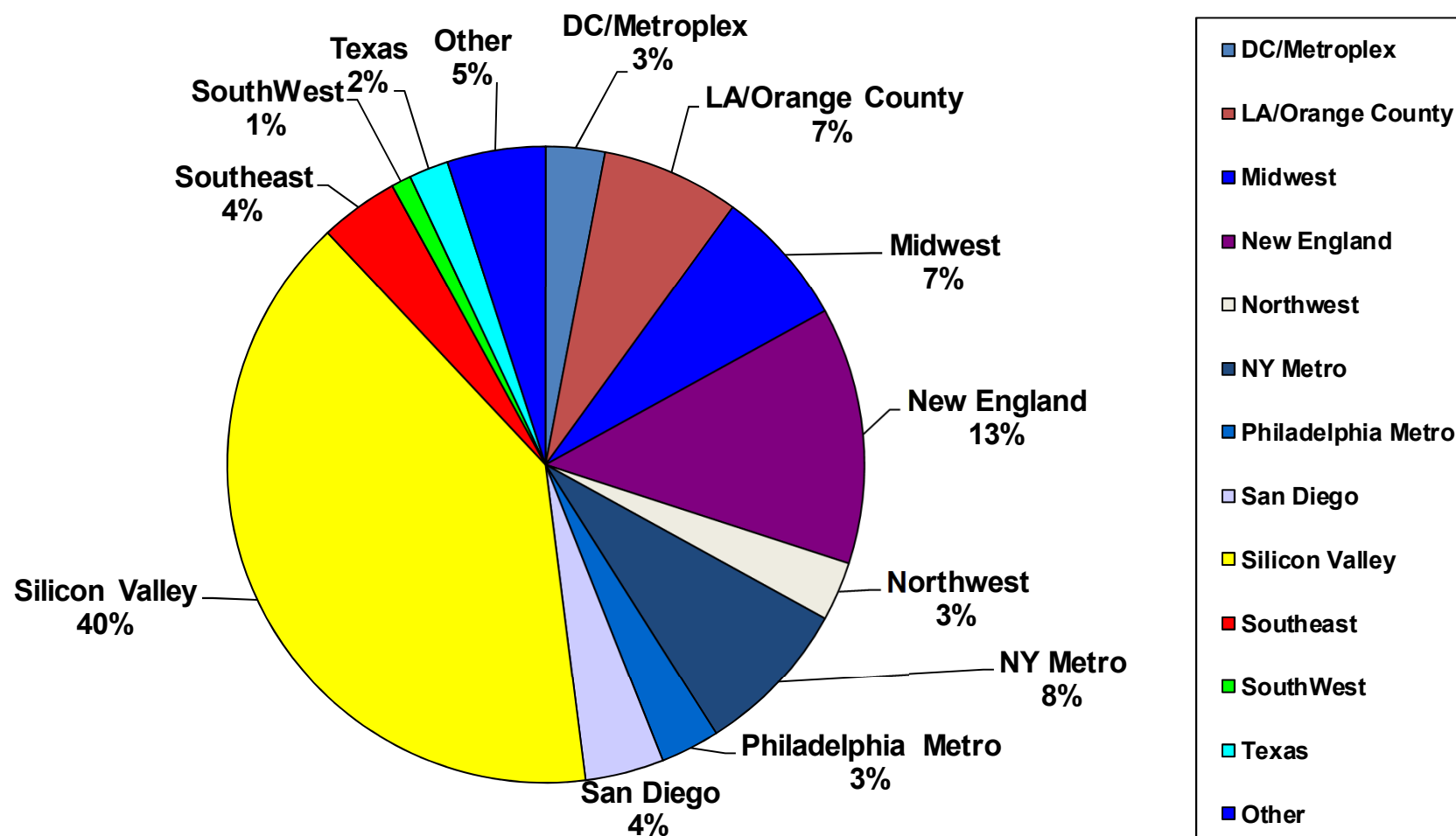
Venture capitalists invested \$0.85B less in Q3 2012 than in Q3 2011, and they invested in 102 fewer deals

Q3 2012 by Industry



Although capital investment into the software sector decreased by 13.2% in Q3 2012 from its level in Q2 2012, it continues to lead with \$2.1B of total investments. Biotech enjoyed a 64% increase in funding over Q2 2012 levels

Q3 2012 by Region



Silicon Valley continues its domination of venture investing, with 40% of total venture capital investments

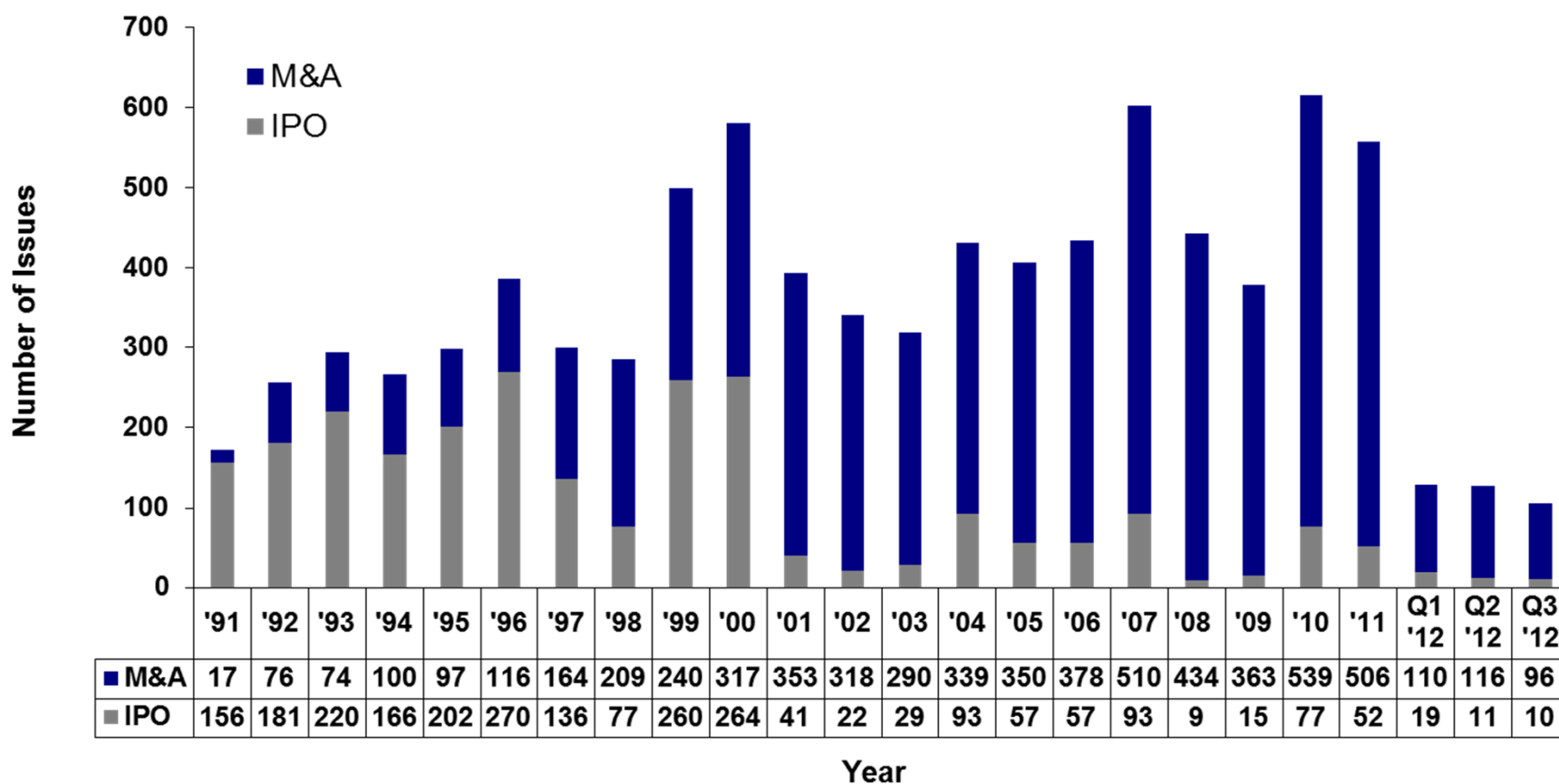
Venture Fundraising

Year/Quarter	Number of Funds	Venture Capital (\$M)
2008	212	24,996.0
2009	163	16,322.7
2010	173	13,569.8
2011	182	18,602.7
2012	139	16,171.2
3Q'10	56	3,688.4
4Q'10	49	3,709.0
1Q'11	48	7,561.0
2Q'11	46	2,652.5
3Q'11	66	2,168.0
4Q'11	51	6,221.2
1Q'12	52	5,217.5
2Q'12	43	5,973.8
3Q'12	53	4,979.9

- 53 U.S. venture capital funds raised \$5.0B in Q3 2012
- This level marks a 17% decrease by dollar commitments and a 23% increase by number of funds compared to Q2 of 2012, which saw 43 funds raise \$6.0B during the period
- Venture capital fundraising for the first nine months of 2012 totaled \$16.2B, a 31% increase by dollar commitments compared to the first nine months of 2011 (\$12.4B) despite an 8% decline by number of funds

The top five venture capital funds accounted for 55% of total fundraising in Q3 2012, compared to 80% during Q2 2012

Venture-Backed Liquidity Events



The number of M&A deals in Q3 2012 decreased relative to the number of M&A deals during Q2 2012, and decreased by 34% from Q3 2011. Uncertainty surrounding the elections as well as how the Administration and Congress will deal with the impending fiscal cliff are wild cards that continue to impact IPOs into Q4 2012

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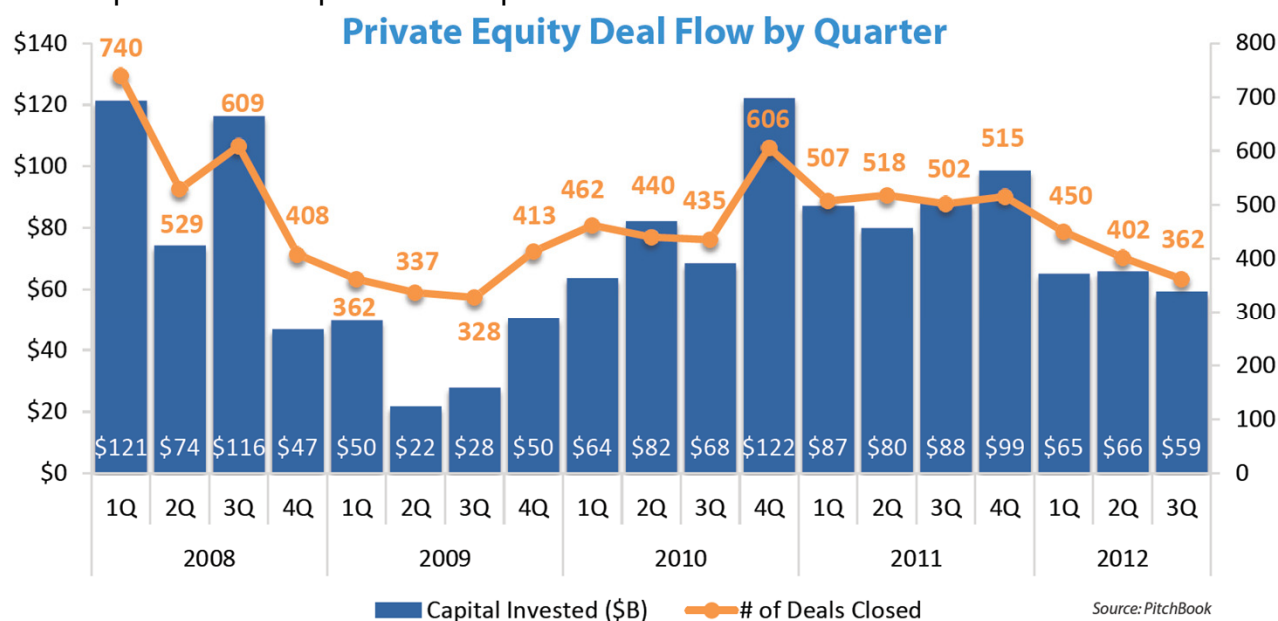
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Total Private Equity Deal Flow

- Q3 2012 capital investment and deal volume dropped in comparison to Q2 2012 and Q3 2011. Q3 2012 capital investment of \$59B is the lowest level for any individual quarter since 2009
- Although deal-making was fairly consistent throughout 2011, levels have slipped during Q1 – Q3 2012 with only 1,214 deals
- From 2009 to 2010, PE firms averaged 25 secondary buyouts per quarter. Since 2011, the average number of secondary buyouts per quarter has jumped to 46.
- More secondary buyouts are expected in the near term as PE firms aim to both harvest their current portfolio companies and put soon-to-expire latent capital to work.



Although capital investment levels dropped in the third quarter of 2012, private equity firms are continuing to complete secondary buyouts transactions

Q3 Transactions by Industry Sector

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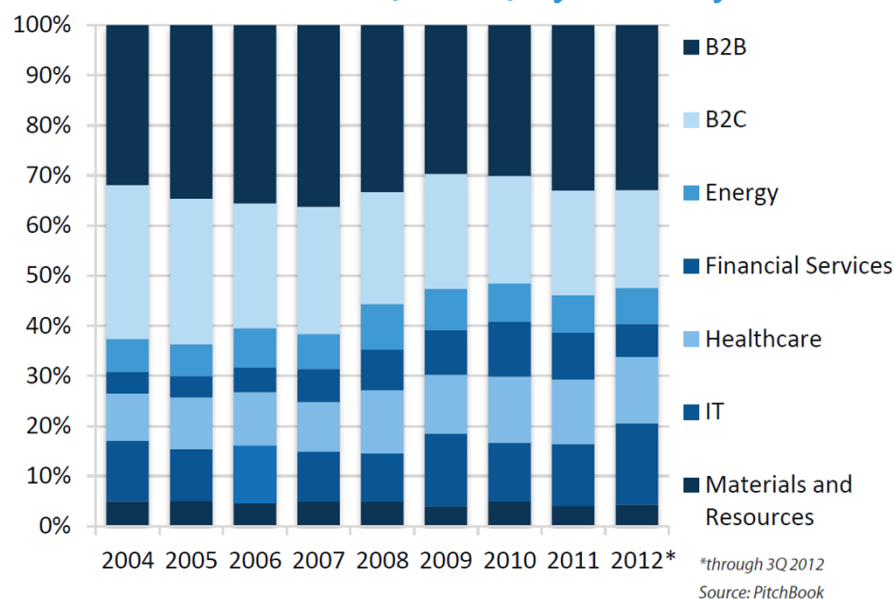
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- The Business Products and Services (B2B) industry led the way with 33% of PE deal flow in Q3 2012
- There has been a considerable uptick in Information Technology (IT) deals. The industry accounted for 18% of deals in Q3 2012, up from 12% in the same period last year. Since 2008, the IT industry has expanded from 10% to 16% so far in 2012
- B2C has been steadily decreasing as a share of PE activity and accounted for just 18% of PE transactions in Q3 2012

Investment (Count) by Industry



The Business Products and Services industries continue to lead investment count by industry, while the IT industry deal flow has been gaining since 2008

Q3 Transactions by Region

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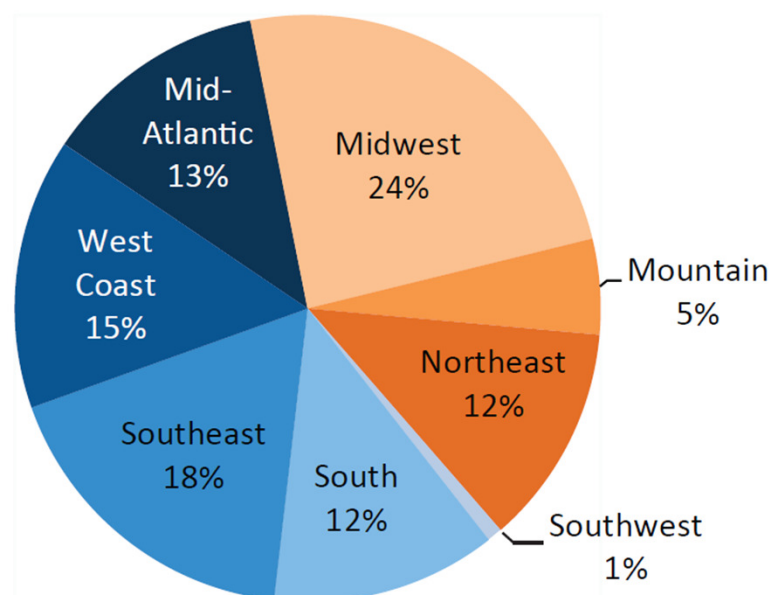
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- Overall, private equity investment activity focused in the Midwest and on the coasts
- Over the last decade, the proportion of deal flow contributed by any region has not fluctuated more than 5%
- Private equity investment grew in New Jersey and Pennsylvania during Q3 2012, and fell in California

Transactions by Region in 3Q 2012

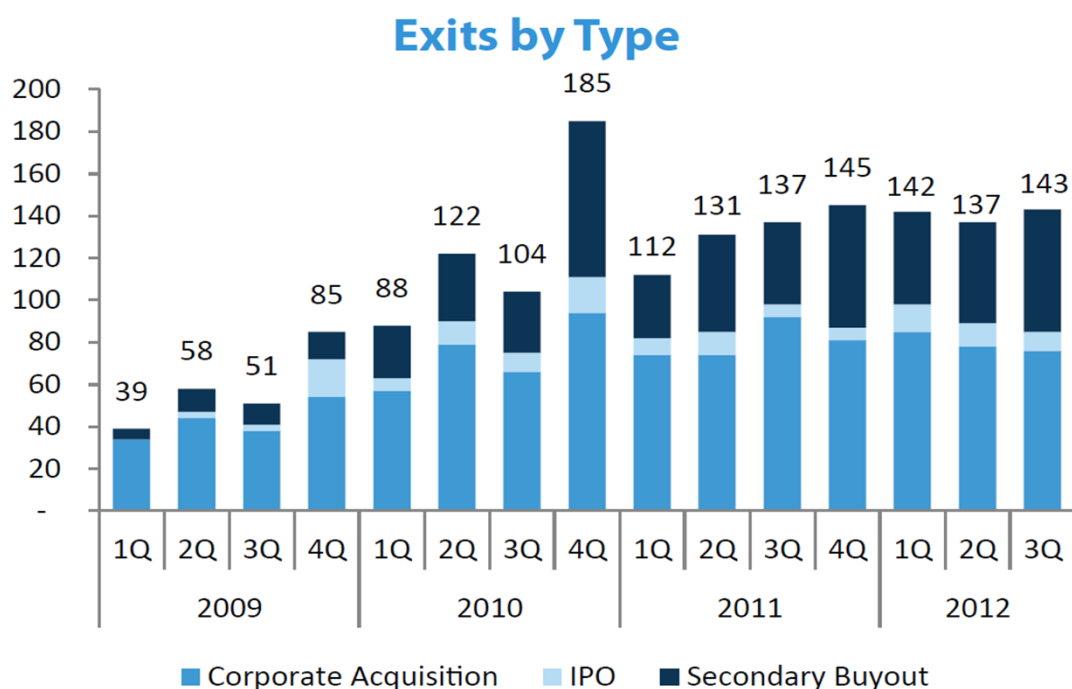


Source: PitchBook

Private equity investment activity within the U.S. remain focused on the coasts and the Midwest

Private Equity Exit Activity

- Since hitting a nadir of 233 exits in 2009, activity has rebounded strongly and is back to pre-recession levels
- The number of quarterly exits has remained remarkably steady for the last six quarters, never breaking outside of the 130 to 145 deal range. PE firms executed 143 exits in Q3 2012, on par with recent activity, but capital exited dropped to \$20B, the lowest total in more than two years



Source: PitchBook

Private equity firms executed 143 exits in Q3 2012, on par with recent activity

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Q3 2012 Exit Trends (Venture-Backed Issuers)

Quarter/Year	Total M&A Deals	M&A Deals with Disclosed Values	*Total Disclosed M&A Value (\$M)	*Average M&A Deal Size (\$M)	**Number of IPO's	Total Offer Amount (\$M)	Average IPO Offer Amount (\$M)
2007	510	208	34,133.7	164.1	93	12,163.4	130.8
2008-1	132	45	5,528.6	122.9	7	625.0	89.3
2008-2	104	28	3,145.2	112.3	0	0.0	0.0
2008-3	116	44	5,434.2	123.5	2	195.9	98.0
2008-4	82	26	2,677.2	103.0	0	0.0	0.0
2008	434	143	16,785.2	117.4	9	820.9	91.2
2009-1	82	21	986.0	47.0	0	0.0	0.0
2009-2	77	14	1,982.4	141.6	8	1,070.4	133.8
2009-3	101	34	2,827.2	83.2	2	522.5	261.3
2009-4	103	47	8,444.7	179.7	5	504.7	100.9
2009	363	116	14,240.3	122.8	15	2,097.6	139.8
2010-1	150	38	5,015.0	132.0	10	1,146.7	114.7
2010-2	110	31	2,715.9	87.6	20	1,663.1	83.2
2010-3	140	42	9,434.3	224.6	17	1,996.0	117.4
2010-4	139	48	6,061.3	126.3	30	3,591.5	119.7
2010	539	159	23,226.5	146.1	77	8,397.3	109.1
2011-1	143	56	6,805.1	121.5	14	1,526.9	109.1
2011-2	94	39	6,432.3	164.9	22	6,059.0	275.4
2011-3	145	45	7,147.7	158.8	5	475.9	95.2
2011-4	124	37	4,799.6	129.7	11	2,803.2	254.8
2011	506	177	25,184.8	142.3	52	10,865.0	208.9
2012-1	110	29	3,678.5	126.8	19	1,682.8	88.6
2012-2	116	29	5,841.2	201.4	11	17,147.1	1558.8
2012-3	96	30	7,599.2	253.3	10	1,088.1	108.8
2012	322	88	17,118.9	194.5	40	19,918.1	497.9

Source: Thomson Reuters & National Venture Capital Association

* Only accounts for deals with disclosed values

** Includes all companies with at least one U.S. VC Investor that trade on U.S. Exchanges, regardless of domicile.

- 10 venture-backed IPOs raised \$1.1B from 10 offerings during Q3 2012, experiencing a slight decline in volume from Q2 of this year, but more than doubling activity seen during Q3 2011
- Total IPO value increased from Q3 2011, while falling well short of the Q2 2012 value due to the record-breaking offering by Facebook in May
- For Q3 of 2012, 96 venture-backed M&A deals were reported, 30 of which had an aggregate deal value of \$7.6B, a 30% increase from Q2 2012

There were 10 venture-backed IPOs that raised a total of \$1.1B in Q3 2012. By number of deals, quarterly volume fell 9% from the Q2 of this year, but more than doubled Q3 2011

Comparison Average IPO Statistics

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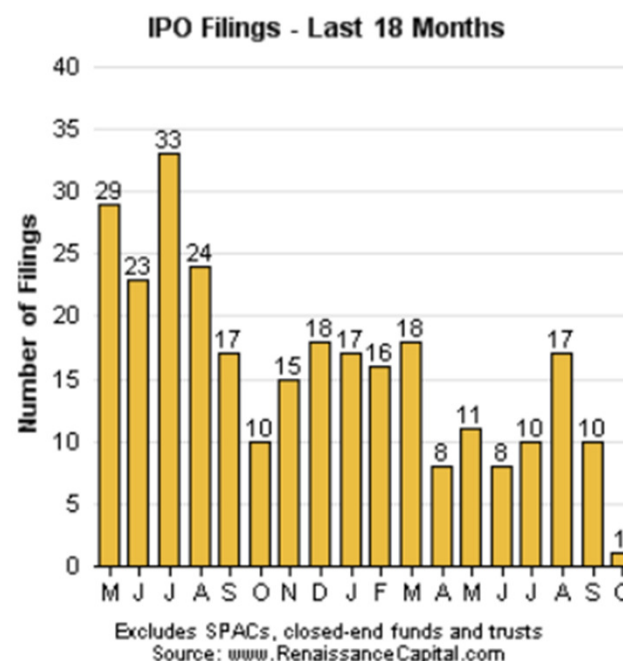
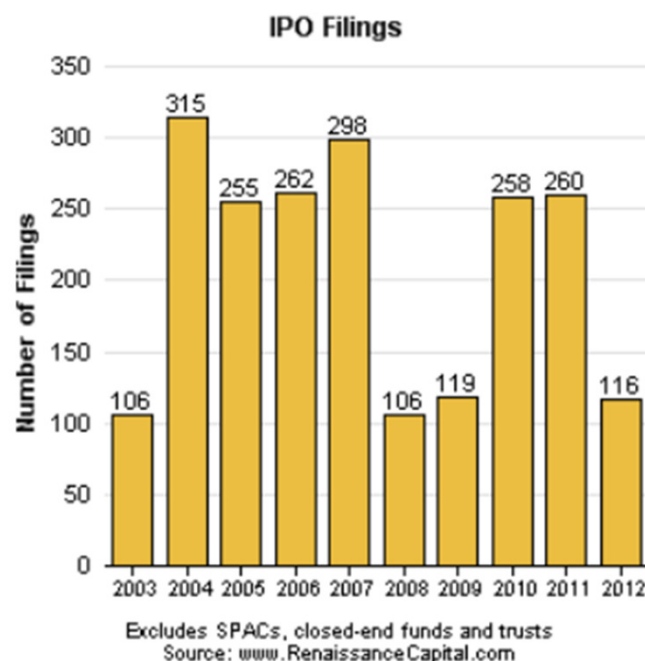
	2009	2010	2011	Q1-Q3 2012
Average Deal Size:	\$479M	\$159.9M	\$247M	\$333M
Underwriting Fees:	4.45%	6.51%	5.54%	3.52%
Issuer Counsel Fees:	\$2M	\$1.7M	\$1.9M	\$1.9M
Auditor Fees:	\$1.41M	\$958K	\$1M	\$1.1M
Printer Fees:	\$400K	\$316K	\$342K	\$379K
Transfer Agent Fees:	\$23K	\$19.6K	\$14.2K	\$13.3K
Listing Fees:	\$150K	\$151K	\$159K	\$164K
Total Fees as % of Offering Size:	8.62%	10.32%	10.30%	10.03%

The US IPO Market Year To Date

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- To date, there have been 116 IPOs filed in the U.S. in 2012 – representing a 40% drop from the same period last year
- 37 IPOs were filed in Q3 2012
- Technology IPOs remain the most popular year-to-date, and comprised 31% of all U.S. IPOs in 2012 with total proceeds of \$19.2B



IPO activity, in terms of number of filings, has experienced a decline over its 2011 pace

The US IPO Market Year To Date

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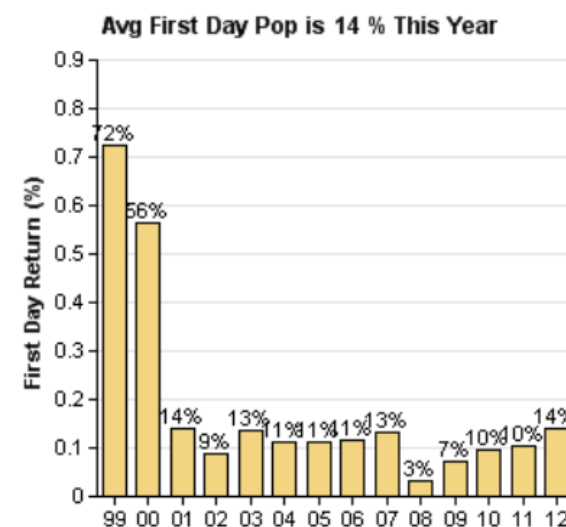
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- Year-to-date IPO returns decreased from 23% in Q2 2012 to 19% in Q3 2012
- YTD 2012 proceeds raised were \$39.6B, a 34.7% increase from YTD 2011
- There have been 37 Technology IPOs, the most in any sector



Source: www.RenaissanceCapital.com



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The average first day pop percentage has steadily improved each year since 2008, and is at 14% for 2012 YTD

Public Market Trading Statistics by Vertical

Industry Segment	Stock Price % Change		LTM Revenue Growth	LTM EBITDA Margin	TEV / Revenue Multiple			TEV / EBITDA Multiple		
	1 Month	12 Month			LTM	2012P	2013P	LTM	2012P	2013P
Bellwethers	3.4%	28.3%	9.8%	32.3%	2.5x	2.5x	2.3x	9.0x	8.0x	7.1x
Data and Information Services	3.8%	38.9%	10.4%	28.3%	2.7x	2.7x	2.5x	9.8x	8.9x	8.2x
Diversified Information Services	3.5%	40.2%	6.7%	28.7%	2.9x	2.7x	2.5x	9.4x	8.9x	8.5x
Lender/Mortgage/Real Estate Data and Processing	4.5%	87.2%	8.8%	18.3%	2.3x	2.2x	2.2x	12.5x	7.8x	7.4x
Market Data and Research	4.2%	17.3%	16.5%	17.0%	1.9x	1.8x	1.7x	11.9x	10.3x	9.3x
Financial Data and Media	3.7%	14.4%	6.9%	37.4%	3.9x	4.2x	3.9x	11.6x	9.8x	9.0x
Financial Technology	0.5%	27.0%	12.5%	26.0%	3.1x	3.0x	2.8x	10.7x	9.9x	8.9x
Financial Software and Solutions	3.0%	22.4%	15.2%	20.2%	3.4x	3.1x	2.9x	16.9x	11.3x	9.6x
Transaction and Payment Processing	(1.1%)	30.3%	10.1%	28.3%	2.5x	2.6x	2.5x	9.6x	9.0x	8.3x
Internet & Digital Media	0.6%	14.2%	26.0%	20.3%	2.2x	2.2x	2.0x	10.1x	8.6x	7.8x
Advertising & Marketing	(3.5%)	3.1%	37.2%	28.9%	4.4x	3.8x	2.9x	13.1x	10.6x	9.7x
Content & Services	(3.0%)	10.1%	30.1%	13.8%	2.1x	1.9x	1.7x	12.3x	9.7x	8.5x
Content Delivery & Management	7.6%	7.9%	15.1%	21.9%	2.2x	1.9x	1.9x	9.8x	7.9x	7.0x
e-Commerce	2.1%	6.5%	28.3%	19.4%	3.1x	2.7x	2.3x	16.5x	11.9x	10.4x
Diversified Media	5.0%	41.3%	4.3%	23.1%	1.9x	1.9x	1.8x	7.9x	7.9x	7.3x
IT and Tech-Enabled Services	5.6%	16.6%	7.4%	16.3%	1.2x	1.3x	1.1x	9.2x	8.0x	6.5x
IT Services	2.9%	14.1%	13.7%	11.4%	0.6x	0.6x	0.6x	5.5x	5.4x	4.7x
Government IT & BPO	2.9%	13.5%	5.5%	10.3%	0.5x	0.5x	0.5x	11.7x	5.1x	5.1x
Onshore BPOs	8.9%	34.0%	(2.3%)	14.5%	0.7x	0.8x	0.8x	4.9x	4.6x	4.3x
Offshore BPOs	7.3%	11.1%	9.4%	18.9%	2.2x	2.0x	1.8x	9.5x	9.7x	9.1x
Software – Application	4.5%	27.7%	14.6%	21.2%	3.4x	3.1x	2.9x	12.6x	10.0x	9.0x
Enterprise Software	3.5%	28.4%	12.4%	27.1%	3.2x	3.1x	2.9x	10.4x	10.0x	8.8x
Product Lifecycle Management/Technical Design	3.7%	33.7%	12.2%	21.2%	2.7x	2.6x	2.4x	12.2x	8.6x	8.2x
Customer Engagement/Call Center Management	2.1%	22.4%	11.3%	16.4%	2.1x	2.0x	1.8x	13.1x	7.7x	7.0x
Human Capital Management	9.5%	94.6%	25.7%	11.5%	8.8x	7.9x	6.4x	77.0x	37.8x	31.2x
Vertically Focused - Public Sector	5.5%	11.5%	12.9%	18.3%	3.6x	3.3x	2.8x	17.4x	13.6x	10.3x
Vertically Focused - Healthcare IT	6.8%	5.6%	23.7%	27.2%	3.2x	3.1x	2.9x	12.8x	10.8x	9.0x
Software – Infrastructure	6.3%	22.5%	13.0%	22.4%	2.7x	2.6x	2.5x	10.8x	9.9x	7.8x
Enterprise IT Management	3.6%	15.3%	8.5%	22.7%	2.7x	2.6x	2.4x	12.0x	11.3x	10.5x
Security	3.2%	23.3%	11.4%	26.5%	4.8x	4.6x	4.2x	8.4x	7.7x	7.2x
Enterprise Storage	15.3%	34.8%	17.4%	17.7%	3.4x	3.2x	2.8x	14.5x	11.8x	10.6x
Software – SaaS	3.7%	39.0%	26.3%	15.6%	5.6x	5.1x	4.5x	21.2x	15.7x	16.0x
Technology Hardware	2.4%	9.2%	(2.7%)	15.6%	1.1x	1.1x	1.0x	6.4x	5.9x	5.4x
Semiconductor Devices	2.7%	0.3%	(3.9%)	15.8%	1.9x	2.0x	1.8x	11.1x	8.2x	6.2x
Semiconductor Equipment	1.3%	10.5%	(11.0%)	20.0%	1.4x	1.3x	1.1x	5.9x	5.9x	5.7x
Electronic Manufacturing	2.0%	21.9%	(2.7%)	5.8%	0.3x	0.3x	0.3x	5.4x	4.8x	4.4x
PCs, Servers, and Computing Components	3.0%	9.5%	4.0%	12.8%	0.7x	0.7x	0.6x	5.8x	5.3x	5.1x
Storage and Networking Components	3.3%	14.1%	5.4%	24.5%	0.9x	1.0x	0.9x	4.4x	4.0x	3.8x
Telecommunications	7.2%	16.8%	8.8%	22.2%	2.0x	1.9x	1.8x	10.0x	8.0x	6.3x
Network Optimization	9.7%	45.3%	17.3%	23.2%	3.4x	3.2x	2.7x	13.9x	9.8x	8.5x
Fiber Optics	(0.7%)	(4.5%)	(2.5%)	6.5%	1.2x	1.1x	1.0x	19.8x	15.0x	13.6x
Telecom/Networking Equipment	8.7%	(8.7%)	0.6%	14.5%	1.0x	1.0x	1.1x	6.5x	6.7x	5.5x
Carriers and Content Providers	5.9%	13.8%	8.8%	26.3%	1.9x	1.8x	1.8x	6.4x	6.2x	5.8x
Infrastructure Services	(0.1%)	52.0%	17.8%	63.1%	13.0x	12.3x	10.7x	20.6x	18.9x	16.1x
Managed Services	15.0%	85.9%	23.3%	41.2%	6.4x	5.9x	4.9x	15.2x	12.8x	10.9x
NASDAQ	4.1%	23.7%								

Note: Public comparables exclude companies with market capitalization below \$500 million.

TMT revenues and market values have been experiencing robust growth in the last 12 months

- Internet and Digital Media has experienced rapid growth, with an increase of 26% in LTM revenue and an increase 20.3% in LTM EBITDA margin
- Internet and Digital Media stock values have also bounced back with a 14.2% increase over the last 12 months
- Software – Application, Software – Infrastructure and Software – SaaS are also strong performers, with LTM revenue growth of 14.6%, 13% and 26.3%, respectively

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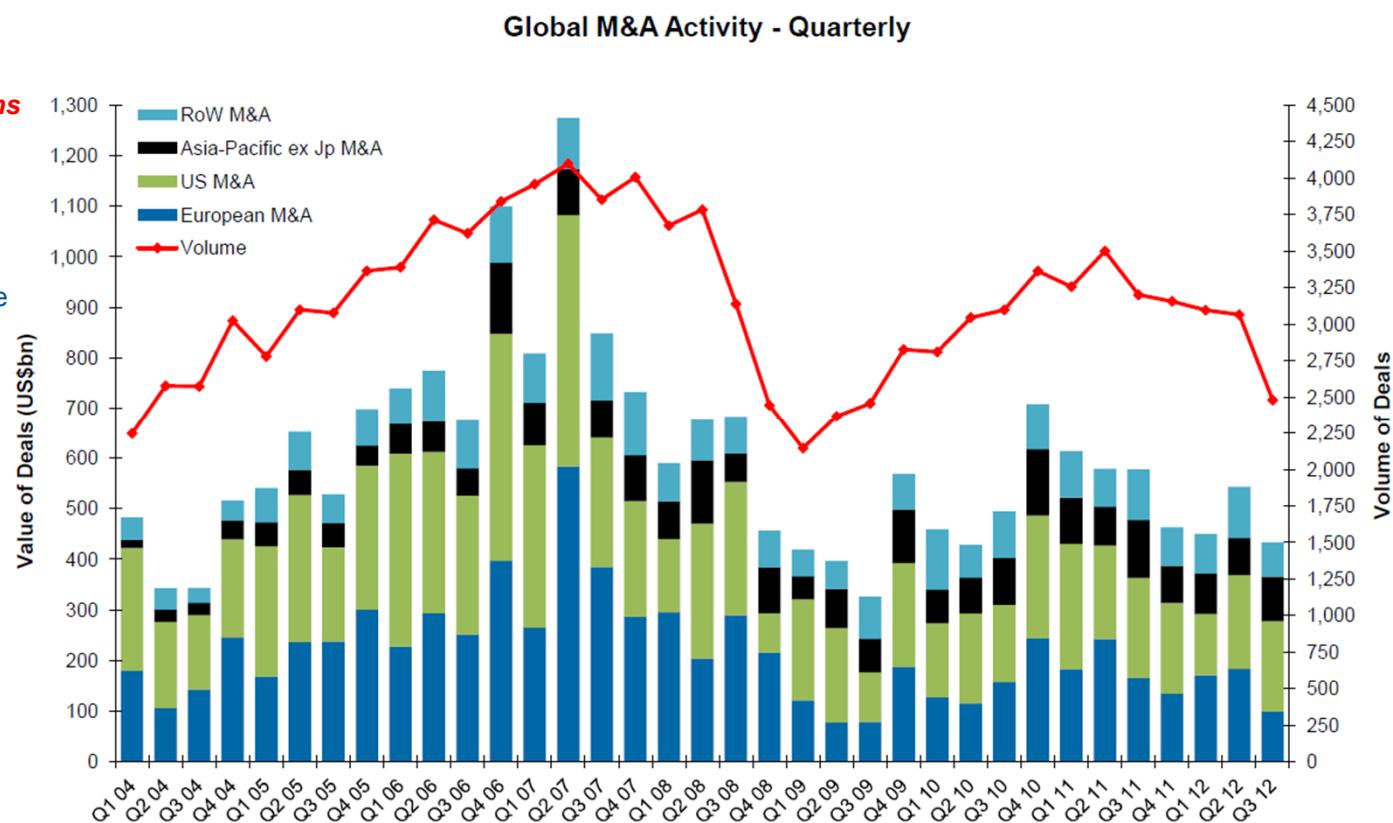
Global M&A Quarterly Trend

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Q3 2012 M&A activity totaled US \$433.5B,
down 20.2% from Q2 2012 (US \$543B) after the Q2 rally

U.S. M&A Sector Breakdown YTD 2012

Sector	Q1-Q3 2012			Q1-Q3 2011			Change	
	Value (US\$bn)	Market share	Deal count	Value (US\$bn)	Market share	Deal count	Value (%)	Deal Count
Energy, Mining & Utilities	115.0	23.8%	215	160.7	25.6%	206	-28.4%	9
Pharma, Medical & Biotech	69.9	14.4%	283	94.6	15.1%	349	-26.2%	-66
Industrials & Chemicals	60.9	12.6%	440	125.5	20.0%	488	-51.5%	-48
Consumer	45.4	9.4%	255	18.8	3.0%	267	142.3%	-12
Technology	45.3	9.4%	388	62.8	10.0%	431	-27.9%	-43
Business Services	32.9	6.8%	300	42.5	6.8%	380	-22.6%	-80
Financial Services	30.5	6.3%	225	37.4	6.0%	296	-18.6%	-71
Real Estate	23.9	4.9%	29	34.5	5.5%	21	-30.7%	8
Leisure	16.6	3.4%	84	10.8	1.7%	86	54.4%	-2
Media	15.0	3.1%	95	12.3	2.0%	86	21.7%	9
Telecommunications	13.6	2.8%	21	16.5	2.6%	26	-17.2%	-5
Transport	6.6	1.4%	54	3.2	0.51%	50	108.3%	4
Defence	5.0	1.0%	18	5.3	0.8%	15	-5.4%	3
Construction	2.6	0.5%	57	3.9	0.6%	72	-32.2%	-15
Agriculture	0.4	0.1%	11	0.1	0.0%	10	360.5%	1
<i>Total</i>	483.6		2,475	628.8		2,783	-23.1%	-308

Technology accounted for \$45.3B and 9.4% of U.S. M&A activity

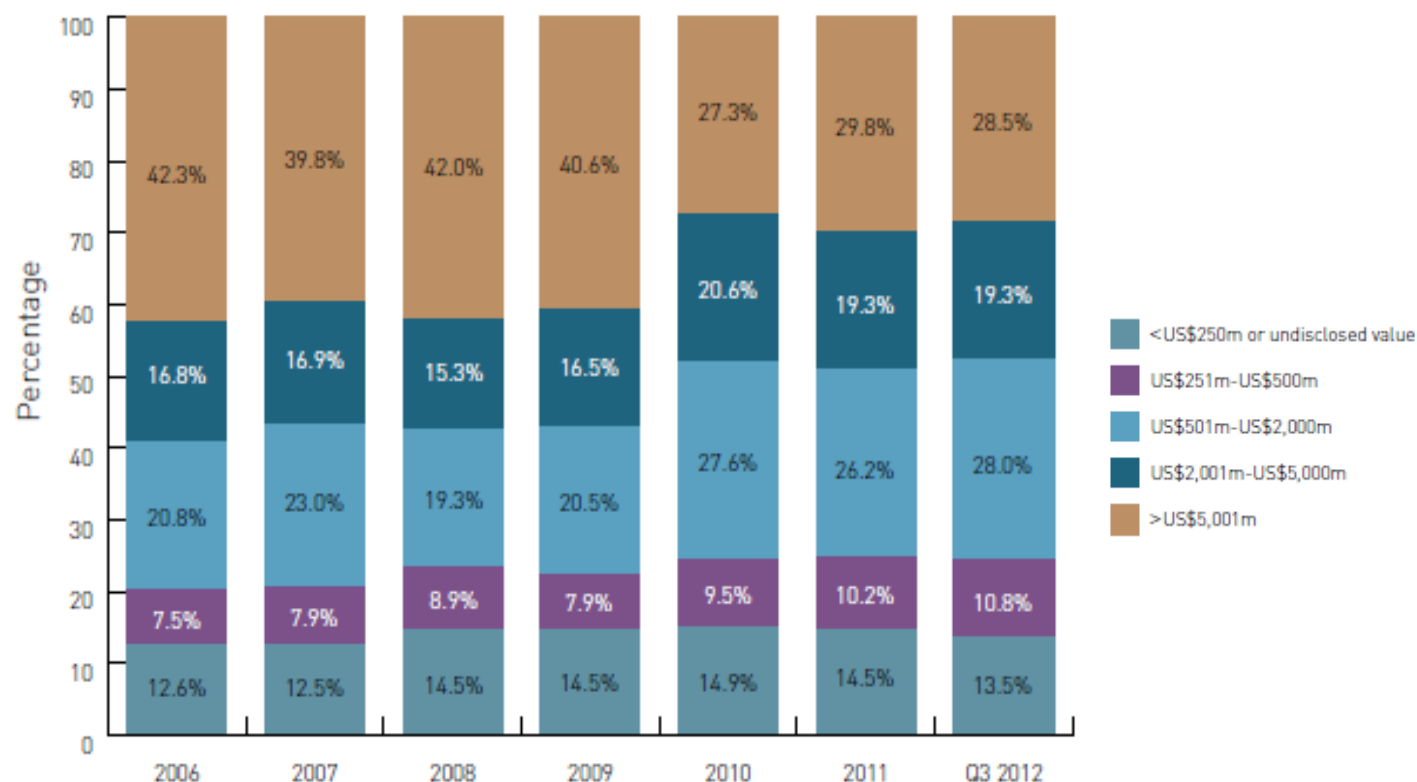
Global M&A Deal Size Breakdown – By Value

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YTD 2012 M&A deal size by value has remained consistent with 2011

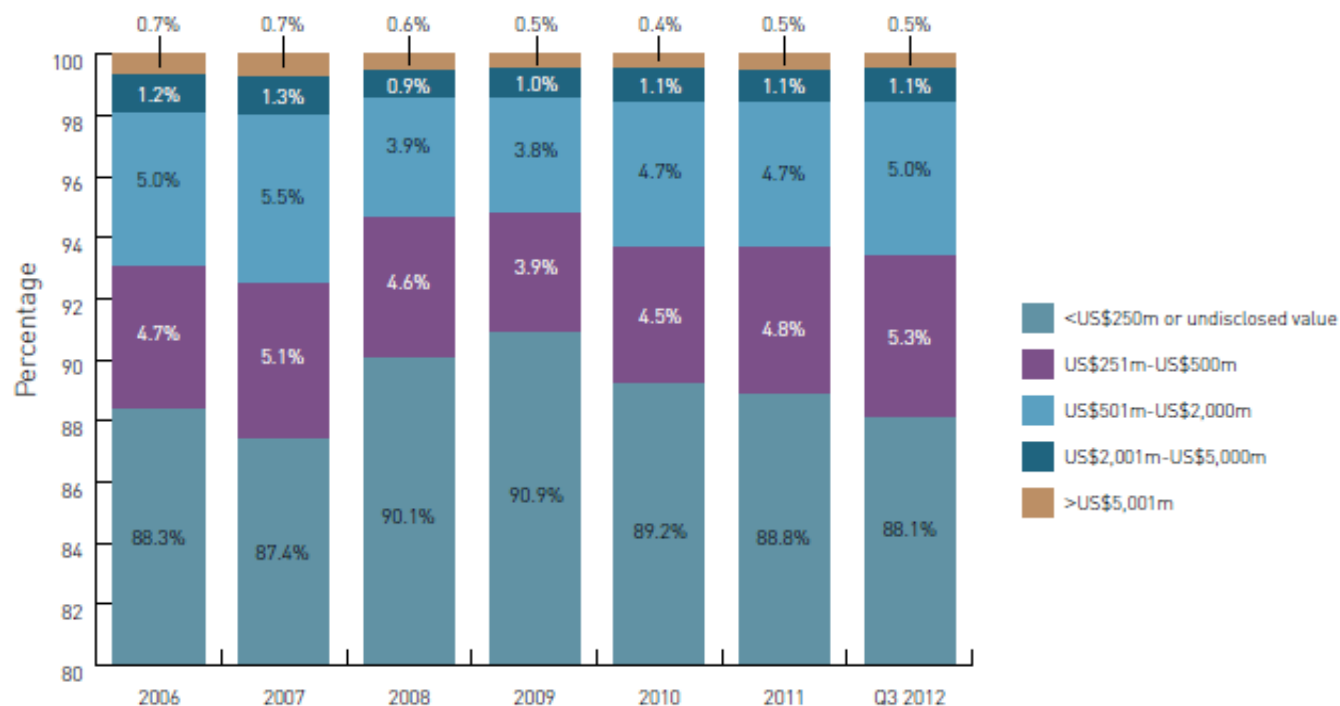
Global M&A Deal Size Breakdown – By Volume

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YTD 2012, M&A deals by volume continue to be concentrated in small-cap stocks

Recent Tech, Media & Telecom M&A












Date Announced	Date Closed	Target	Acquirer	Enterprise Value (\$mm)	LTM Multiples Summary	
					Revenue	EBITDA
09/21/12	Pending	LML Payment Systems Inc.	Digital River Inc.	\$ 71.6	2.1 x	6.3 x
09/14/12	Pending	Evolution Robotics Inc.	iRobot Corporation	74.0	NA	NA
09/13/12	Pending	Distra Pty Ltd.	ACI Worldwide, Inc.	48.8	NA	NA
09/13/12	Pending	Sensage, Inc.	The KEYW Holding Corporation	84.9	7.0 x	NM
09/11/12	Pending	Mediware Information Systems, Inc.	Thoma Bravo, LLC	156.1	2.4 x	11.4 x
09/10/12	Pending	Poole & Associates, Inc.	The KEYW Holding Corporation	125.8	NA	NA
09/06/12	Pending	Financial Consulting & Trading International, Inc.	Seven Bank Ltd.	130.0	3.1 x	NA
08/26/12	09/24/12	About.com, Inc.	IAC Search & Media, Inc.	300.0	2.7 x	NA
08/26/12	Pending	Deltek, Inc.	Thoma Bravo, LLC	1,030.5	3.0 x	18.2 x
08/25/12	Pending	Kenexa Corp.	International Business Machines Corporation	1,307.1	4.1 x	49.0 x
08/24/12	Pending	TMW Systems, Inc.	Trimble Navigation Limited	335.0	3.5 x	NA
08/20/12	Pending	SuperMedia LLC	DexOne Corporation	1,476.6	1.0 x	2.7 x
08/17/12	Pending	Subsidiaries of Achievo Corp.	Beyondsoft Corporation	56.6	NA	NA
08/16/12	09/10/12	Alaska Communications Systems Group Inc.	Fair Isaac Software Holdings Limited	115.0	3.1 x	NA
08/14/12	Pending	Accelerated Payment Technologies, Inc.	Global Payments Inc.	413.0	NA	NA
08/13/12	Pending	Pervasive Software Inc.	Actian Corporation	110.4	2.2 x	30.6 x
08/12/12	Pending	Converse Technology Inc.	Verint Systems Inc.	1,124.8	0.7 x	7.4 x
08/08/12	Pending	Hamilton Safe Co.	Gunnebo AB	65.0	NA	NA
08/07/12	Pending	Servigistics, Inc.	Parametric Technology Corporation	220.0	2.8 x	NA
08/07/12	Pending	Harbin Jiuzhou Electric Co., MVD Business	Rockwell Automation Inc.	83.2	NA	NA
08/01/12	Pending	Nextwave Wireless Inc.	AT&T, Inc.	647.4	NA	NA
08/01/12	08/01/12	Visualization Sciences Group, Inc.	FEI Company	55.1	2.4 x	NA
Median				\$ 127.9	2.7x	11.4x

Note: Includes announced domestic transactions over the last two months where enterprise value is more than \$40 million.

Recent proposed M&A transactions within the TMT sector suggest a robust M&A market for the sector

2012: Large Buyers with Lots of Cash

- While Q3 2012 has seen a decline in the number of M&A deals, aggregate deal value climbed to the highest level Q1 2011 at US \$235.7B
- Traditionally, after the seasonal slowdown in the summer holiday period, M&A activity picks up in Q4 with a particularly strong showing in December

	Latest Cash (in \$Bn)	2012 Annual Prj. Net Income (in \$Bn)	Noteworthy 2009 - 2012 Deals
 Microsoft	63.0	22.9	Skype, Videosurf, Yammer
 CISCO	48.7	7.7	Pure Digital, Starent, Tandberg, CoreOptics, NDS Group, BNI Video, Inlet Technologies
 Google	43.1	11.1	Admeld, ITA, Motorola Mobility, Zagat, DailyDeal, Meebo, Sparrow, Wildfire
 Apple	27.7	44.7	Quattro Wireless, Anobit, C3 Technologies, Chomp, AuthenTec
 ORACLE	15.6	8.1	Sun, GoldenGate, ATG, RightNow, Endeca, Datanomic, Fatwire, Art, Phase Forward, Taleo, Vitruve
 intel	9.2	11.3	Wind River, McAfee, Telmap, Infineon Technologies, ASML Holding
 DELL	11.9	2.9	Perot, 3Par (failed), Compellent, Boomi, AppAssure, Quest
 IBM	10.8	15.5	SPSS, Sterling Commerce, Netezza, Unica, BigFix, DemandTec, Worklight
 hp	9.5	6.4	3Com, Palm, 3Par, ArcSight, Fortify, Autonomy
 EMC ²	5.7	2.8	Data Domain, Greenplum, Archer, Isilon, Pivotal Labs, XtremIO
 EA ELECTRONIC ARTS™	1.4	0.8	PopCap, Playfish
	\$246.6	\$134.2	

Source: SEC filings

Large Silicon Valley companies have healthy cash levels and have made numerous notable recent M&A purchases

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SEC Proposes JOB Act General Solicitation Rules

On August 29, 2012, the SEC proposed rules to enable general solicitation and advertising in private securities offerings under Rule 506 of Regulation D and Rule 144A of the Securities Act, as required by the JOB Act, but further delayed effectiveness.

For more information, please visit our: [Corporate & Securities Law Blog](#)

JOB Act

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SEC Releases Report on Decimalization as Required by JOB Act

On July 20, 2012, the SEC released a study required by Section 106 of the JOB Act examining the effects of decimalization on initial public offerings (IPOs) and liquidity of small and middle capitalization company securities. Decimalization was the shift, in the early 2000s, to US public equity securities being quoted and traded in one cent increments (or tick sizes) instead of larger tick sizes expressed as a fraction. The SEC's report did not recommend relaxation of these rules, which is a set-back for the IPO markets

JOB Act Research Analyst and Underwriter FAQs Released

On August 22, 2012, the SEC's Division of Trading and Markets issued frequently asked questions (FAQs) providing guidance on certain provisions in Title I of the JOB Act as they affect firms and their obligations concerning securities analysts and research reports. Among other things, the FAQs:

- Clarify that the JOB Act does not amend or modify the 2003 Global Research Settlement. Therefore, the firms involved in the settlement cannot take advantage of the provisions of the JOB Act relating to research analysts
- Highlight that many NASDAQ and NYSE rules regarding analysts are not affected by the JOB Act

Continuous Disclosure – Conflict Minerals

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SEC Adopts Conflict Minerals Disclosure Requirements

On August 22, 2012, the SEC announced that it had adopted final rules implementing use of conflict minerals disclosure requirements set out in Section 1502 of the Dodd-Frank Act. Section 1502 added new Section 13(p) to the Exchange Act, which directs the SEC to adopt rules requiring reporting companies to disclose their use in the products they manufacture of conflict minerals that originate from the Democratic Republic of the Congo or an adjoining country

For more information, please visit our: [Corporate & Securities Law Blog](#)

Market Regulation – FINRA Rule

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New FINRA Rule 5123 Regarding Private Placements of Securities Effective on December 3, 2012

On September 5, 2012, FINRA announced that FINRA Rule 5123 becomes effective on December 3, 2012 and applies prospectively to private placements that begin selling efforts on or after that date. As of the effective date, firms must file the required offering documents electronically through the FINRA Firm Gateway. Also effective December 3, 2012, firms must submit filings regarding member firm private offerings as required by FINRA Rule 5122

FINRA Rule 5123 requires, subject to certain exemptions, that each FINRA member that sells an issuer's securities in a private placement must either:

- File with FINRA a copy of any private placement memorandum, term sheet or other offering document the firm used within 15 calendar days of the date of the sale; or
- Indicate that it did not use any offering documents in the placement

Market Regulation - Credit Rating Standardization

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SEC Releases Report on Credit Rating Standardization as Required under Dodd-Frank

On September 7, 2012, the SEC staff published a report to Congress, required under section 939(h) of the Dodd-Frank Act, on the feasibility and desirability of:

- Standardizing credit rating terminology so that all credit rating agencies issue credit ratings using identical terms
- Standardizing the market stress conditions under which ratings are evaluated
- Requiring a quantitative correlation between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress
- Standardizing credit rating terminology across asset classes

The report recommends that the SEC not take any further action at this time with respect to credit rating standardization

NASDAQ Rules

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SEC Approves NASDAQ Rule Change Broadening Exception for Non-Independent Director Committee Service

- On July 19, 2012, the SEC approved a NASDAQ rule change broadening an exception to NASDAQ's board committee independence rules. NASDAQ proposed the rule change on May 17, 2012
- The exception permits a listed company to allow one non-independent director to serve on its audit, compensation or nominations committee for up to two years under exceptional and limited circumstances and with proper disclosure. Under the amended exception, a director is not disqualified from serving as a temporary committee member solely because a family member is a non-executive employee of the company

Listing Standards

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NASDAQ Proposes New Listing Standards Relating to Independence of Compensation Committees

On September 25, 2012, NASDAQ proposed rule changes to comply with the SEC's requirement to have independent compensation committees. Among other things, the proposed rules require a standing compensation committee of at least two members and outline factors that would disqualify board members from serving on the compensation committee

NYSE Proposes New Listing Standards Relating to Independence of Compensation Committees

On September 25, 2012, the NYSE proposed rule changes to Sections 303A.00, 303A.02(a) and 303A.05 of its Listed Company Manual to conform its rules with the SEC's requirements on the independence of compensation committees. The proposed NYSE rules require the board of directors to examine additional considerations in determining compensation committee independence and adopt the SEC's requirements for compensation committee advisors. The proposed rule change requires compliance by the earlier of the listed company's first annual meeting after January 15, 2014 or by October 31, 2014

EDGAR Modifications

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EDGAR-based System for EGCs and Foreign Private Issuers Available October 1st

Important EDGAR modifications became available on October 1, 2012. These modifications will allow certain emerging growth companies and foreign private issuers to submit draft registration statements for nonpublic and confidential review. These issuers can choose to submit their draft registration statements using either the current secure e-mail system or using the new EDGAR system. The SEC also posted instructions on its website on how to prepare electronic submissions of draft registration statements, amendments and correspondence relating to registration statements

IRS Regulations

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Final Tax Regulations Issued on Publicly Traded Debt

On September 12, 2012, the IRS issued final regulations on the definition of “publicly traded” debt, which make several changes to the proposed regulations that were issued in January 2011. The final regulations, like the proposed regulations, significantly expand the definition of publicly traded debt. The determination of whether a debt instrument is publicly traded for tax purposes is significant because restructurings of discounted debt that is publicly traded (unlike non-publicly traded debt) often triggers cancellation of indebtedness income (CODI) for a US issuer or borrower. The final regulations also further expand the definition of “qualified reopening” under Treasury Regulation Section 1.1275-2(k). The final regulations generally apply to debt instruments issued on or after November 11, 2012

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Delaware Supreme Court Issues Opinion Affirming Court of Chancery Ruling in *Martin Marietta*

On July 10, 2012, the Delaware Supreme Court released its opinion in *Martin Marietta Materials, Inc. v. Vulcan Materials Company*. The opinion follows the Court's order affirming the Delaware Court of Chancery's ruling that Martin Marietta had breached two confidentiality agreements when it used confidential information acquired during its merger negotiations with Vulcan Materials to initiate a hostile bid and proxy contest, even though neither confidentiality agreement included an express standstill provision

Damages for Breach of Fiduciary Duty

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Americas Mining Corporation v. Michael Theriault: Delaware Supreme Court Upholds unprecedented Damages Award and Attorney's Fees

- On August 27, 2012, the Delaware Supreme Court in *Americas Mining Corporation v. Michael Theriault* affirmed the decision of the Delaware Court of Chancery awarding damages of over \$2B and \$304M in attorney's fees
- In the lower court case, *In re Southern Peru Copper Corp.*, the Court of Chancery held that the controlling stockholder defendants breached their fiduciary duty of loyalty in a transaction involving the controlling stockholder's subsidiary. Finding that the transaction failed the entire fairness standard of review and that Southern Peru overpaid by over \$1B when it acquired the controlling stockholder's subsidiary, the damages granted in this case remain the largest award handed down by the Court of Chancery to date

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President Signs Expanded Iran Sanctions Bill that Includes Additional Disclosure Requirements

On August 10, 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA) into law. ITRSHRA :

- Expands the types of transactions and other activities with Iran and Syria that are subject to sanctions
- Holds US entities liable for any of these transactions and activities undertaken by their foreign subsidiaries
- Requires companies that file periodic reports under Section 13(a) to disclose additional information about any Iran-related transactions or activities that are sanctionable

General Securities Regulation – Dodd-Frank Terms

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Regulators Define Key Dodd-Frank Terms “Swap” and “Security-based Swap” Triggering Title VII Compliance

- On July 10, 2012, the CFTC and the SEC adopted joint final rules under Title VII of the Dodd-Frank Act defining, among others, the terms “swap” and “security-based swap.” The rules provide clarification regarding whether a particular transaction or instrument is a non-security-based swap (swap) subject to CFTC regulation, a security-based swap (SBS) subject to SEC regulation, or a mixed swap subject to regulation by both agencies. The rules also specify which transactions are neither swaps nor SBS
- The issuance of these final rules will trigger compliance dates for a number of other Dodd-Frank swaps rules previously issued by the CFTC

SEC – Financial Reporting Manual

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SEC's Division of Corporation Finance Updates its Financial Reporting Manual

On July 11, 2012, the SEC's Division of Corporation Finance published an updated version of its *Financial Reporting Manual*. A summary of the revisions appears on page one of the revised manual

The manual has been revised to address issues related to, among other things:

- The age of interim financial statements included in Form 8-K
- The use of pro forma information in the Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)
- The age of financial statements required in Form 8-K for smaller reporting companies
- Periods required for financial statements filed by Canadian issuers on Form 40-F

Delaware Law Update

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Delaware Enacts Amendments to DGCL

On August 1, 2012, House Bill #342 took effect in Delaware, amending the Delaware General Corporation Law. This legislation reflects the state's practice of periodically amending the Delaware Code to keep it current. These amendments, among other things, add new requirements to provide:

- The type of entity either involved in a merger or converting to a Delaware corporation
- The name and address of a corporation's registered agent
- For the reinstatement of a foreign qualification when it has been forfeited for failure to appoint a registered agent

Delaware Enacts Amendments to LLC, Partnership and Limited Partnership Acts

On August 1, 2012, House Bills #338, 339 and 340 took effect in Delaware to amend the sections of the Delaware Code regulating limited liability companies, partnerships, and limited partnerships, respectively, to among other things, add new requirements to provide:

- The type of business entity involved in a merger or consolidation
- The type of entity converting to a Delaware limited liability company, partnership, or limited partnership

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