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Dealmaker of the Week: Frank Aquila of Sullivan & Cromwell

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DEALMAKER

Frank Aquila, 56, cohead of Sullivan & Cromwell's general practice group.

THE CLIENT

Thousand Oaks, California–based Amgen, the world's largest biotechnology company.

THE DEAL

Amgen is paying $10.4 billion to acquire South San Francisco, California–based Onyx Pharmaceuticals.

THE DETAILS

In a deal announced Sunday, Amgen agreed to pay $125 in cash for each share of Onyx—a premium of nearly 7 percent over Onyx's August 23 closing price. The purchase price also represents an almost 44 percent premium over the target's share price before Amgen made an earlier, unsolicited bid for Onyx in June.

The deal is expected to close in the fourth quarter, pending regulatory approval. Goodwin Procter is advising Onyx on the transaction.

THE BIG PICTURE

Onyx rebuffed Amgen's initial $120 per share offer at the end of June before opening up a sales process that attracted interest from rivals such as AstraZeneca, Pfizer, and Novartis. Despite analysts' predictions that the Onyx auction would fetch as much as $130 apiece for each of the company's shares, Amgen was able to eventually reach an agreement valuing Onyx below those predictions and only $5 per share higher than its original offer.

Amgen is bolstering its oncology portfolio with the acquisition of Onyx, adding to its own offerings in that area a variety of anticancer drugs that includes treatments for breast, colon, kidney, and liver cancers. Onyx's lead product is Kyprolis, a treatment used for the bone marrow cancer known as multiple myeloma that Onyx acquired as part of a 2009 deal to buy drug company Proteolix. *The New York Times* reports that Kyprolis, which was approved by U.S. regulators last year, had $125 million in sales in the first half of 2013 and could eventually generate annual sales approaching $2 billion if European regulators follow suit.

The deal is the second-largest in Amgen's history—behind its $16 billion purchase of Immunex in 2001—and the latest in a string of acquisitions orchestrated by CEO Robert Bradway, a former investment banker who has shown a penchant for dealmaking since joining the company in 2006. Amgen isn't the only dealmaking-inclined player these days in the health care industry—sector that has been actively consolidating lately even as the overall M&A market has slowed. The Onyx deal comes in the wake of such other major transactions as Pfizer's $13 billion sale of its remaining stock in animal health company Zoetis Inc. in June and Actavis's $8.5 billion purchase of Irish generic drug maker Warner Chilcott in May.

In an interview conducted via email, Aquila said he fully expects deal activity to continue at its current pace in the health care sector for the foreseeable future and to improve in other areas in 2014.

THE BACKSTORY

Aquila has served as Amgen's regular outside counsel for years, advising the company on all of its acquisitions going back to 2005. That year, he worked with Amgen for the first time on its $2.2 billion purchase of drug company Abgenix. In the years since, Aquila has advised on acquisitions ranging from last year's $1.16 billion purchase of anticancer drug developer Micromet to the 2011 deal that saw Amgen acquire BioVex Group for up to $1 billion.

Aquila says he began working with Amgen after general counsel David Scott joined the company in 2004 following stints with Medtronic and United Distillers & Vintners. "Dave and I have worked together on a variety of deals at a number of different companies for over 20 years," Aquila said.

ON CLOSING

When Onyx spurned Amgen's initial offer and put itself up for sale, several industry rivals were reportedly interested in the company and its anticancer drugs. Despite the influx of competition, Aquila says that confidence was still high that Amgen could pull off the deal: "We always knew that the combination of Onyx and Amgen was a great fit, so I always felt the deal would ultimately come together."

As for the deal itself, Aquila says this transaction stands out as one of the first to use a new wrinkle in Delaware General Corporation Law (both companies are incorporated in the Blue Hen State) that was recently enacted and is applicable to merger agreements signed on or after August 1.

The amendment, Section 251(h), allows companies to sidestep the need for shareholder approval of a tender offer in certain circumstances when consummating two-step public mergers. (Some lawyers have predicted the new rule could increase the use of the two-step acquisition structure.) "It provides that no shareholder vote is required to approve the merger if the acquiror obtains at least the required vote (in this case a majority) of the each class or series of stock of the acquired company that otherwise would have been required to approve the merger," Aquila explains. "This greatly simplifies the process and eliminates the risk that you do not get to the 90 percent of the stock in the tender offer that would normally be required for a short form merger."