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Dealmaker of the Week: Cleary Gottlieb Steen & Hamilton's Matthew Salerno

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DEALMAKER:

Matthew Salerno, 37, corporate and M&A partner in the New York office of Cleary Gottlieb Steen & Hamilton.

THE CLIENT:

Medtronic Inc., one of the world's largest medical device makers, with $17 billion in revenue for fiscal 2014.

THE DEAL:

The Minneapolis-based company announced on June 15 that it had agreed to purchase Dublin-based Covidien in a $42.9 billion cash and stock deal.

THE DETAILS:

The agreement calls for Medtronic to pay $35.19 in cash and 0.956 of a Medtronic share for each Covidien share—a 29 percent premium over the Irish medical device maker's closing price on June 13, the last trading day before the deal's announcement. Upon its completion, Covidien shareholders will hold 30 percent of the combined company.

Medtronic plans to keep its headquarters in Minneapolis, but it will reincorporate in Ireland.

Salerno was joined by fellow M&A partner Victor Lewkow, antitrust partners George Cary and Enrique González-Díaz, employment partner Arthur Kohn and counsel Caroline Hayday, finance partners Laurent Alpert and Meme Peponis, and tax partners Jason Factor and Yaron Reich. Associates Elaine Ewing, Corey Goodman, Matthew Mao, Neil Markel and Ruchit Patel were also involved in the deal.

Medtronic also sought legal counsel from Irish firm A&L Goodbody, while Covidien turned to Wachtell, Lipton, Rosen & Katz and Irish firm Arthur Cox for advice.

THE BIG PICTURE:

Medtronic on Monday touted the advantages of a Covidien acquisition in an investor presentation, in which it said it expects to expand its global access and grow its product offerings. The combined company would increase Medtronic's reach to 150 countries from 140 countries and nearly double its 2014 emerging market revenue to $3.7 billion from $2.1 billion.

"Fundamentally, this deal is about putting together two companies that are complementary in nature, with a focus on their future capabilities and their ability to introduce new therapies," Salerno says.

Omar Ishrak, chairman and CEO of Medtronic, told analysts in a conference call that the deal would break the company's dependence on heart pacemakers and defibrillators, allowing it to sell broader health care solutions.

Questions have been raised as to whether Medtronic entered the deal with Covidien as a way to lower its tax obligations—a move that has been happening with increased frequency in the U.S. pharmaceutical industry, where companies have looked to reincorporate in countries with lower taxes like Ireland in what's known as a corporate inversion.

Back in April, Pfizer Inc. sought to acquire AstraZeneca in a deal that would have allowed the New York-based pharmaceutical giant to relocate to the United Kingdom, where the tax rate is lower than the United States. The bid was ultimately dropped when AstraZeneca's board rejected Pfizer's $119 billion offer on May 26.

While Ishrak denied to The New York Times that the inversion resulting from the Covidien acquisition would lower Medtronic's effective tax rate, it appears the company would gain access to $14 billion in cash that it currently holds abroad in order to avoid paying U.S. corporate taxes.

Salerno points out that Medtronic could pay a heavy price if it tried to keep the combined company in the U.S., which could result in 75 percent to 100 percent of Covidien's cash being "trapped abroad" due to the threat of taxation—a prospect that he says could alter the economics of the deal.

The Covidien transaction is contingent on there being no legislative changes or Internal Revenue Service interpretation that would "cause New Medtronic to be treated as a United States domestic corporation for United States federal income tax purposes"—a condition that Salerno says is not unique to this deal.

Despite all the attention on the tax aspect of the Covidien acquisition, Salerno stresses it was not the primary motivator for Medtronic, and anticipates that people will come to understand this.

"Unlike some of the other inversions that have been talked about by politicians and in the media, this one was focused primarily on strategic and not tax benefits," he said.

THE BACKSTORY:

Medtronic has turned to Cleary in the past, with Salerno advising on three of the company's other acquisitions in the last seven years.

Salerno, who joined Cleary in 2001, was the lead associate in Medtronic's $3.9 billion acquisition of spinal implant manufacturer Kyphon in 2007—the medical device maker's largest acquisition of a publicly traded company before Covidien.

After making partner in 2010, Salerno worked on two other Medtronic deals that year, including its $800 million acquisition of Ardian and a $500 million acquisition of Invatec and two related companies—Fogazzi and Krauth Cardio-Vascular.

Salerno was previously named Dealmaker of the Week by The Am Law Daily in 2012 after advising Dollar Thrifty Automotive Group in its sale to Hertz Global Holdings for $2.3 billion.

ON CLOSING:

The Cleary team started working with Medtronic on the Covidien deal in April, shortly after the CEOs of both companies met to start negotiations.

"When you get a call for a transaction of this size, we are obviously excited," Salerno says. "We do this type of work because we enjoy large transformative transactions."

The excitement, however, quickly turned into intensity as his firm faced many of the complications surrounding an international merger.

Salerno, who is no stranger to complex cross-border mergers and acquisitions, characterized the deal as a very large and complicated deal.

"You have an Irish and a U.S. company. You have two companies moving as quickly as public companies do."

The deal is expected to close in the last quarter of 2014 or in early 2015. It still requires approval by U.S. and European regulators as well as by shareholders at both companies.