[Key Takeaways from Goodwin + KPMG @ JPMorgan Symposium: Europe Unleashed]

On Wednesday, January 15, 2020, during the J.P. Morgan Healthcare conference, Goodwin and KPMG held their initial all-day Symposium at the St. Regis hotel in San Francisco. The Symposium was composed of five separate "bursts" entitled (i) New Frontiers in Digital Diagnostics and MedTech, (ii) Europe Unleashed, (iii) Knowing the Best IPO Strategy, (iv) Trends in Biopharma and (v) Mergers and Acquisitions. Stéphane Bancel, the Chief Executive Officer of Moderna Therapeutics, provided the keynote address.

Burst Two consisted of two parts. The first was a panel entitled "*The Evolving Landscape for Growth-Stage Venture Funding in Europe*." This panel was moderated by **Sophie McGrath** from Goodwin, and consisted of Francesco De Ruberti from Medicxi and Dirk Kersten from Forbion. In this panel, participants provided their insights regarding the status of growth-stage venture financing in Europe and provided some comparisons between growth-stage investing in Europe versus in the United States.

The second part of Burst Two was a panel entitled "*Maximizing Returns through Structured M&As.*" This panel was moderated by **Graham Defries** from Goodwin and consisted of Erik van den Berg from AM-Pharma, Geert-Jan Mulder from Forbion, Maarten de Jong from Moelis & Company and Andy Stephenson from KPMG. In this panel, participants provided their advice and perspectives regarding structured M&A deals, such as option to acquire deals.

Key takeaways from Burst Two were as follows:

1. ***Different investors have differing views of what constitutes the growth equity phase, therefore, it is important for companies to understand the requirements of different investors to determine which investors are the best fit.*** Panelists noted that companies should be aware that different funds have differing perspectives regarding what constitutes a growth-stage company for purposes of growth-stage investing. For example, one of the panelists noted that his fund considered a growth-stage company as one that is receiving its first private financing round before a major event, such as a pharma partnership or a liquidity transaction. The other panelist noted that his fund considered a company with an asset in Phase 2b/3 development as a growth-stage company. Companies should understand these differences so that they are able to properly target investors.
2. ***Syndication of financing rounds is essential for growth stage biotech companies given their high capital requirements.*** Panelists noted that European investors must develop a syndicate in order to properly fund growth-stage biotech companies, given the high capital needs of these companies. Typically, investors tend to syndicate with other investors that are of similar or larger size, as they want to ensure that sufficient capital will be available when needed.
3. ***European biotech companies tend to raise less money than U.S. biotech companies,***

as European investors tend to tie raises to a company's forecast over a specified period of time. Panelists noted that European investors typically invest a smaller amount of money in any given round than their U.S. counterparts, representing a difference in funding strategy. European investors only like to invest as much as is required by a company's forecast, where U.S. investors are typically willing to invest more than is needed, although they often do so in tranches. Panelists also noted that European biotechs tend to be smaller than their U.S. counterparts and have lower operating costs.

4. ***Structured M&A deals are a good sources of financing for a company, but many of these deals do not result in an actual acquisition, therefore, companies that enter into these deals need to be prepared.*** Panelist noted that structured M&A transactions, such as options to acquire, can provide companies with a solid fundraising source, but companies must be cognizant that many challenges exist with these deals. For example, in most option to acquire deals, the optioned company is prohibited from engaging in certain actions without the prior consent of the potential buyer. The optioned company should keep these prohibitions as light as possible to avoid cumbersome intrusion by the potential buyer. In addition, many option deals do not end with the optioned company being acquired by the potential buyer or being acquired on the terms originally agreed to. This could leave the optioned company in a bad position, such as, without additional funding, and having to agree to a new, less desirable deal with the buyer. In addition, other potential buyers might view the company as tainted, wondering why the original buyer backed out of the deal.
5. ***In structuring option deals, goal is to maximize upfront payment given the uncertainty in option deals and decreased likelihood that later milestones will be paid out.*** Given the uncertainty associated with option to acquire deals, panelists suggested that an optioned company seek as large an upfront payment as possible to avoid the potential of leaving money on the table. In addition, even if an acquisition of the optioned company does take place, outlets such as SRS have reported that approximately only 30% of milestones associated with a deal end up being paid out.