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## THE 2018 DEALMAKERS OF THE YEAR

The deals that mattered and the attorneys who made them happen.

### MATTHEW GUEST

WACHTELL, LIPTON, ROSEN & KATZ

MATTHEW GUEST HAS BEEN WORKING WITH Thermo Fisher Scientific since 2006, and in that time he's seen the company become "extraordinarily accomplished at M&A," he says. It's wrapped up deals domestic and international, public and private. But he hadn't seen anything quite like Thermo Fisher's acquisition of Patheon, the Dutch-based, New York-listed pharmaceutical company it snapped up for \$7 billion last year.

Three-quarters of Patheon's shares were held by two firms, meaning that any deal required their approval. And because it was a Dutch transaction, the only structure available was a tender offer under Dutch law, Guest says. Meanwhile, Patheon's board wanted to avoid a deal that could pass with approval from only the two shareholders that represented the majority, so a tender offer with a 75 percent minimum condition was unacceptable.

"The board has a commitment to all their shareholders," Guest says. "They were resistant to the idea of a truly locked-up deal, where there was, from the moment you announce it, no possibility that it cannot be completed from a shareholder perspective."

Ultimately, Patheon's board was given a fiduciary termination right, subject to a 4 percent break fee, and a deal was struck with the major shareholders, giving Thermo Fisher certainty that it would get 75 percent of the stock plus the break fee, at the very least.

"Taken together, while not 100 percent certainty, there was functional certainty that we'd achieve the requisite level of support," Guest says. "And it worked out exactly as you'd expect."

In the end, 99 percent of shares were tendered in.

"The legal creativity that went into it—this set of terms was unprecedented for a Dutch deal—was necessary to implement the business objective," Guest says. "It was a challenge to implement it, but it was a very satisfying result."

—BEN SEAL



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