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DESPITE IPO RESURGENCE, SMALLEST COMPANIES STILL SQUEEZED OUT OF MARKET

U.S. initial public offering activity has picked up recently as investors search for higher-yielding assets, but with confidence in the economy weak, the trend has mainly benefited dividend-paying companies such as real estate investment trusts, as smaller growth-industry companies have largely been left behind.

Eleven companies were expected to complete IPOs in the U.S. during the week of May 6 to raise more than $2.15 billion, according to research firm Ipreo. That was the most since late 2007. The previous week, only seven companies were scheduled to price IPOs to raise $1.7 billion.

The 11 deals included several by large REITs including **American Residential Properties Inc.**, which raised $287.7 million in an offering that priced on May 8, and **Armada Hoffler Properties Inc.**, which raised $173.7 million on May 7. **Quintiles Transnational Holdings Inc.**, a contract lab operator for pharmaceutical companies, and some of its shareholders raised $948 million from an offering that priced May 8.

A number of emerging growth companies also were scheduled to price IPOs. Mortgage company **PennyMac Financial Services Inc.** raised $199.8 million in an offering that priced May 8, while oil and gas company **Emerge Energy Services LP** raised $127.5 million. Special purpose acquisition company **Capitol Acquisition Corp. II** raised $180 million May 10, while Pittsburgh-based bank **TriState Capital Holdings Inc.** raised $65.6 million in an offering that priced May 8. Network software company **Cyan Inc.** raised $88 million, while biotech **Receptos Inc.** raised $72.8 million. Finally, **First NBC Bank Holding Co.**, a New Orleans-based bank, raised $100.1 million on May 9.

BioAmber Inc., which converts feedstocks into chemicals, raised $80 million on May 9 after lowering its price range earlier in the week.

"It's not surprising that we're seeing so many IPOs at the larger end of the emerging growth company spectrum with the stock markets doing so well right now," said Mitchell Littman, a partner at the law firm of **Littman Krooks LLP** in New York.

At the other end of the market, however, there are few underwriters willing to arrange offerings of less than $75 million for emerging growth companies, he said.

"With the larger investment banking firms dominating the market at the top end, it doesn't leave much room for the smaller boutique firms at the bottom," he said. "We're stuck in a loop."

The IPO market is basically following the laws of supply and demand, said Stuart Bressman, a partner at the law firm of **Proskauer Rose LLP**.

Real estate investment trusts "have exploded in popularity because they offer an attractive return versus the bond market," he said. "Demand is there for REITs because of the dividends they're willing to pay. You're not going to find many emerging growth companies or tech companies willing or able to pay dividends."

IPO activity also is up largely because U.S. stock market indexes keep touching record highs. The records, however, have come despite general misgivings about the strength of the U.S. economic recovery.

"The market has been up but people still aren't convinced that the economy is in good shape," Bressman said. "There's nowhere else to put your money. People are chasing yield."

The IPO market for smaller emerging growth companies won't improve until the U.S. economy improves, he said.

"You have to feel positive about the economy before you can feel positive about an emerging growth company," he said. "People have to see real signs of

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growth, jobs and consumer spending."

IPO activity by U.S. life sciences and biotechnology companies also is being hurt by "uncertainty" about how President Obama's healthcare reform legislation will be implemented next year, he said.

"You have a company with a new drug and you're wondering how it's going to be paid," he said. That uncertainty probably won't lift until after the law is implemented in 2014, he said.

Follow-on activity also has been up significantly and, like the IPO market, it's mainly consisted of larger companies. Six fully marketed U.S. follow-on offerings priced last week, with volume totaling $1.2 billion, the largest number of follow-ons in a single week so far this year, according to data from Dealogic.

Fees earned on the six deals that priced the week ending May 3 totaled about $48 million, Dealogic said. Volume and fees earned also reached a year-to-date high for fully marketed follow-ons, Dealogic said.

The fully marketed secondary offerings that priced that week include **Idera Pharmaceuticals Inc.**, which raised $17 million; **Macquarie Infrastructure Co. LLC** raising $360 million; **Sinclair Broadcast Group Inc.**, which raised $491 million; **Northern Tier Energy LP** raising $315 million; **Spark Networks Inc.**, which raised $36 million; and **NeoStem Inc.** raising $12 million.

The follow-on offerings of Spark Networks, NeoStem and Northern Tier Energy had financial-sponsor backing from **Great Hill Partners LLC**, **RimAsia Capital Partners LP**, and **TPG Capital** and **ACON Investments LLC**, respectively.

By contrast, accelerated bookbuilds accounted for only two deals last week, the lowest weekly level since the beginning of January. This was the first week since April 2012 that fully marketed follow-ons have outnumbered accelerated bookbuilds.

"The Dow Jones and S&P 500 keep hitting new highs and there's nowhere to go with bonds," said Charles Mather, co-head of equity capital markets at **Janney Montgomery Scott LLC** in New York. "People are taking advantage by issuing securities at prices they haven't seen in a long time."

"The market's been good and equity has been cheap compared with bonds," said John Borer, the head of investment banking at **The Benchmark Cos.** "There are two reasons you raise money: because you need it and because your stock price has had such a run that you'd regret not having raised capital at that level."

Borer said that a lot of new money from index funds seems to be pouring into the market and pushing the Dow and S&P 500 higher.

"If it continues for a couple more weeks, maybe we'll have something," he said.

Borer's skeptical optimism is shared by Jack Hogoboom, a partner with the law firm of **Lowenstein Sandler PC** in Roseland, N.J.

"It's only recently that everything seems to have come out of the woodwork," Hogoboom said.

"I've suddenly become busy working on IPOs, CMPOs and even PIPEs," he said. "It's the first time in over a year I've had a backlog of work to keep me busy for the next three to six months. It's great for us in the microcap financing market because 2012 was a terrible year."

For his part, Hogoboom said the sudden increase in activity may have to do with hedge funds taking the first three months of the year to reassess their situations after facing year-end redemptions and, at the same time, trying to raise new money.

"It takes them until March to figure out who is in and who is out," he said. "I hope this is just the beginning of a good 2013, but I have no real confidence. It could change overnight. It doesn't feel that way though." —*DL*

PHARMACEUTICAL COMPANY SUES K&L GATES ALLEGING BOTCHED REVERSE MERGER

by Bill Meagher

Pharmaceutical company **Emmaus Life Sciences Inc.** is suing **K&L Gates LLP** and its partner Tom Poletti, alleging that the law firm botched its reverse merger by working on both sides of the deal.

The lawsuit, filed April 30 in California Superior Court in Los Angeles, alleges malpractice and breach of fiduciary duty.

According to the suit, K&L Gates represented Emmaus in a 2011 transaction with **AFH IV Inc.**, a registered shell company controlled by Amir Heshmatpour of **AFH Holding & Advisory LLC**.

The transaction was designed to raise as much as $20 million and boost the company's market cap to $70 million. However, Emmaus claims that Poletti failed to advise Emmaus that reverse mergers had begun to fall out of favor with the Securities and Exchange Commission, the New York Stock Exchange and Nasdaq, or that Poletti had a longtime relationship with Heshmatpour, who it claims has a checkered past.

Emmaus also alleges that Poletti advised both Emmaus and Heshmatpour despite an agreement that stated it was solely counsel to Emmaus.

The company claims the failed deal has cost it more than $1 million in legal fees