

# THE M&A ADVISOR SYMPOSIUM REPORT

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## Featuring

### Dennis Berman

Business Editor

Wall Street Journal

### John K. Castle

CEO & Chairman

Castle Harlan, Inc.

### Nicole Y. Lamb-Hale

Sr. Vice President

Albright Stonebridge Group

## The Washington Factor and M&A

At The M&A Advisor's 12th Annual Mergers and Acquisitions Summit in New York late last year, Wall Street Journal Editor Dennis Berman hosted a keynote conversation with private equity stalwart John K. Castle and Nicole Lamb Hale, now Senior Vice President at global consulting firm Albright Stonebridge Group and most recently a high ranking member of the Obama Administration's Commerce Department and CEO of the government's International Trade Administration.

Before an audience of industry leaders, watchers and influencers, the subject of the effect of uncertainty of the US economy and the current administration's ability to motivate US and foreign investment in our home market was openly debated. In this M&A Advisor Symposium Report, featuring MandA.TV one-on-one interviews with Castle and Lamb Hale and the broadcast of the keynote conversation, we address:

- How uncertainty impacts M&A
- What is Washington doing to promote business
- What business wants from Washington
- Quantitative Easing – a new headache
- Why there aren't more deals in the current environment
- CFIUS and its role in foreign investment

The outlook for growth in the US M&A market is mixed. But what most experts agree upon is that uncertainty is bad for business. In this report, a veteran investor, a commerce department insider and an insightful business editor explore how value creation, predictable cash flows and pent-up demand from both U.S. and foreign investors can affect market expansion.

Presented by





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## EXECUTIVE SUMMARY

Uncertainty about the U.S. economy has been the biggest hindrance to M&A activity since the great recession and a panel of experts concur that we may finally be ready to ride without the training wheels of quantitative easing. The last five years have been difficult for the U.S., but the experts believe a solid recovery based on real value creation, predictable cash flows and pent-up demand from both U.S. and foreign investors makes the environment ripe for a new up cycle for M&A as we move into 2014.

## INTRODUCTION

The experts agree – uncertainty is bad for business. Uncertainty is particularly tough on small and mid-market business owners. Tom Farrell, Executive Vice President of Generational Equity, gives a particularly telling anecdote about the impact of uncertainty on the psyches of small and middle-market business owners.

“My wife and I were in Florida for a business owners’ conference in Mid-October 2013. Congress was in the middle of the budget battle with the debt ceiling looming and there appeared to be no solution in sight. On October 16th, she went to a department store to take advantage of a ‘Friends and Family’ sale. The parking lot was empty and there were no shoppers.

At 11 PM that same evening, Congress decided to raise the debt ceiling. On October 17th, my wife went back to the same store and reported that there was so much traffic, she couldn’t get into the parking lot.”

With Congress passing the budget and the risk of another government shutdown a more distant concern – uncertainty seems to be dissipating for businesses in the U.S. Whether Washington’s other efforts are a help or a hindrance to M&A depends largely on one’s viewpoint.

At the 2013 M&A Advisor Summit in New York, two M&A experts with deep insights into Washington’s intentions and actual realities spoke on the topic of “The Washington Factor and M&A” with one of the most important business editors in the U.S., Dennis Berman of the Wall Street Journal.

The symposium session participants included:

**Dennis Berman**, Business Editor, Wall Street Journal (Moderator)

**John K. Castle**, CEO & Chairman, Castle Harlan, Inc.

**Nicole Y. Lamb-Hale**, Senior Vice President, Albright Stonebridge Group

In the session, Berman moderated a conversation between Mr. Castle and Ms. Lamb-Hale highlighting the many things that Washington has done “right” since the financial crisis, but also where Washington’s actions have perhaps done more to support small and mid-sized businesses and transactions to the detriment of the upper end of the market.

### The topics discussed included:

- How uncertainty impacts M&A
- What is Washington doing to promote business?
- What business wants from Washington
- Quantitative Easing – a new headache?
- Why there aren’t more deals in the current environment
- The role of CFIUS in M&A for foreign investors
- What to do in 2014?

*“It’s not just the Washington Effect. It’s the Beijing Effect, Brussels Effect and the Delhi Effect.”*  
*- Nicole Y. Lamb-Hale*

Mr. Berman opened the conversation by going back five years to the winter of 2008-2009 when the U.S. Government found itself in the center of finance and business and asked, “How are they getting along?”

Ms. Lamb-Hale, a long-time M&A attorney with Foley & Lardner, as well as assistant commerce secretary during the Obama administration, noted that the Washington effect is not just the Washington Effect. “It’s the Beijing Effect, Brussels Effect and the Delhi Effect. It’s the intersection between business and government and helping businesses understand how to navigate that space.”

### UNCERTAINTY IS KEY – AND UNCERTAINTY IS DISSIPATING

Lamb-Hale conceded that talk about Washington is often very negative and noted that, “I think things are turning around....entering a two-year budget deal will help because what we all want is certainty.”

In terms of a positive Washington Effect, Lamb-Hale described how the Federal government is using its power to promote business, trade and investment. She described two trade agreements in the works – the Trans-Pacific Partnership (TPP) and the TransAtlantic Trade and Investment Partnership. The Trans-Pacific Partnership, which Lamb-Hale hopes will be finalized by “first quarter of next year,” is particularly important as it seeks to establish “rule of law” in trade – removing a significant hurdle for U.S. companies and investors seeking to do business in emerging economies where business standards may differ considerably from those used in established economies.

Attracting international M&A investors to the U.S. is also part of the solution; Ms. Hale discussed the SelectUSA program, the Commerce Department’s program to help attract inbound investment to the U.S.

“SelectUSA seeks to provide a one-stop shop for foreign entities looking to invest in the U.S. Unlike other countries such as Ireland and Singapore, the U.S. has long lacked a coordinated effort at the Federal level for foreign entities looking to invest in the U.S. As a result, investors often face myriad obstacles and delays whether seeking environmental and regulatory approval to site a plant or simply trying to get visa applications handled in a timely manner. SelectUSA works as an ombudsman program for foreign investors and is designed to reduce and or eliminate as many investment obstacles as possible.”

Berman then turned the conversation to business’ perception of Washington noting that of the many business people he meets, “most express disappointment with Obama Administration. They view it as out of touch with what businesses need.”

Lamb-Hale noted the positive effect of many government interventions put in place during the 2008-2009 crisis such as government’s intervention in the automotive and financial industries. She also stressed the importance of the Administration’s efforts on the trade agenda, “which is all about pro-business U.S. government is really the only entity that can level that playing field for business.” However, she conceded that the administration found that communicating what it was doing in a way that resonated “was tough” in part because of the complexity and constantly shifting nature of the crisis at the time.

John K. Castle, CEO and Chairman of Castle Harlan, Inc., drew upon his 45 years as an M&A investor to support his view that the business community does not perceive Washington as business-friendly. He noted that the General Motors and Chrysler interventions were largely “union-friendly, but not friendly towards business or particularly bondholders.”

“SelectUSA works as an ombudsman program for foreign investors.”

- Nicole Y. Lamb-Hale

“Most business people look at a range of things in terms of their relationship with Washington and they find them to be negative. The antitrust rules are being enforced aggressively; the environmental laws are troublesome.” Castle cited the American Airlines/US Airways merger as an example where antitrust rules were being strictly interpreted. He pointed to environmental activism seeking to block the TransCanada pipeline and the burdens created by the Affordable Care Act on many businesses as examples why business has a negative view of Washington. “I’ve owned many restaurant companies over the years and when you are buying a restaurant company today, the first question you ask is ‘How is ObamaCare going to affect that?’” He went on to note that many companies had established policies that avoid ObamaCare regulations (such as limiting the hours an employee works each week) and in other cases, companies were likely to pay a penalty for not offering insurance rather than pay the higher cost to provide insurance.

Castle is particularly concerned about a significant hike in the minimum wage. When Berman pointed out the significant decline in purchasing power over the past two decades as a possible reason to raise the minimum wage, Castle countered, “Businesses are incredibly sophisticated. Companies with revenues in the hundreds of millions or even tens of millions can quickly transfer manufacturing to Asia...Jobs are coming back (to the U.S.) to some degree because wage rates have doubled in China over the past eight years. However, if you move the minimum wage to fifteen bucks, we will be back in China.”

Berman then turned the conversation back to M&A. “What’s the most important thing you look for when buying and selling a business as it relates to Washington?”

Castle noted that although “Washington is generally a negative, there is one thing that is a positive, although it may ultimately prove to be a negative. With quantitative easing we’ve had very low relative interest rates.” Although banks have tightened their lending standards, money has been available from hedge funds, GE Credit and other organizations. However even in this environment of “easy credit,” whether or not financing is available, depends on the borrower and the type of project.

Lamb-Hale went on to say that she doesn’t like to see the government intervening in markets; however, “given the crisis that we had, it was necessary.” She worries to some extent about quantitative easing. “It’s addictive. It can’t sustain itself and we will have to come back to some semblance of reality; however, what we are seeing, in terms of improvement in the economy, the reduction in the unemployment rate, is net-net positive.”

**“Quantitative easing has been a help but may prove a headache”**  
*- John K. Castle*

### SO WHERE ARE THE DEALS?

Berman asked, “So why aren’t we seeing more deals? If the Fed is pushing the world to equities, why aren’t the people that are putting companies together taking advantage of this environment?” Castle responded that buyers are looking past this artificial quantitative easing and realize that prices that sellers think they should get are very high.

Berman pushed further on the artificiality of the economy. “The stock market is trading at 16x forward earnings per share (EPS), and yet, if you look at the actual earnings power and earnings growth of companies of the S&P 500, you don’t see any real organic appreciation. If we take away the Fed, the true Washington Effect of this equation, is the real economy for the companies you deal with solid enough to go without those (quantitative) training wheels?”

“People are very concerned that the economy is not solid enough,” according to Castle. “Restaurants are historically a very good coincident indicator of economic strength and right now the restaurant business isn’t very strong now and in many cases it is negative.” He also noted the relative weakness of holiday sales, particularly in light of the shortened holiday shopping season.

Berman went on to summarize Castle’s pessimistic outlook. “So using a base case that the market expects the Fed to pull out in early 2014, the training wheels come off. We are a kid barreling down the sidewalk and we fall off and scrape our knees collectively?”

Lamb-Hale disagrees, “That does not have to be outcome. If we continue to use policies to create certainty, businesses will continue to invest. As confidence in the economy strengthens and as cash moves off corporate balance sheets into investment, we believe that once the training wheels come off, we may not be ready for the Tour de France, but we will be better.” Whether or not the U.S. is a good place to build a business seems to depend largely on the size of the business. Stimulus programs seem to favor smaller companies, while large, highly-profitable entities may find greater advantages in circumventing U.S. regulations and taxes.

Castle interjected that there are so many options for companies to take advantage of differences in global regulations and taxation. “If you can get lower tax rates elsewhere, why not incorporate your company outside the U.S.?”

“You have a number of oil services companies that have reincorporated in Switzerland, and moved their headquarters to Dubai. We have a company now that is organized in Grand Cayman, and because we don’t have any U.S. operations we

“Is the real economy solid enough to go without training wheels?”  
- Dennis Berman

don't pay U.S. income taxes. Because of Sarbanes-Oxley, we have companies that are contemplating public offerings in the U.K. – when a few years ago they would have certainly chosen to list on a U.S. Exchange.”

“What about the JOBS Act?” asked Berman. “While it rolls back decades of securities regulation and investor safeguards, nonetheless isn't it a positive revelation for smaller companies?”

Castle held firm noting that for large companies, the cost and hassle of complying with regulations more than offsets any benefits. “Clearly, the smallest companies can't go to U.K., but the JOBS Act doesn't help very much.” Castle reserves his greatest criticism for Dodd-Frank. “Dodd-Frank is terrible for private equity. Under Dodd-Frank you are forced to do all these things that are relevant perhaps if you are trading in the public securities markets but not if you are trading in private securities. Dodd Frank is as relevant to private equity as giving the FAA jurisdiction over to horseback riding!”

While large business owners and those in the private equity markets may believe that the U.S. is not particularly hospitable to business, perception outside the U.S. is still mostly positive. Lamb-Hale notes, “Certainly, businesses were concerned with the shutdown and gridlock we've had. My experience, however, is that companies based overseas are very attracted to this market because of the talent we have here, the rule of law. Companies say, ‘I don't care what the rule is as long as I know what the rule is.’”

Finally Berman asked Lamb-Hale, “What should a business person do in this environment particularly if they don't feel they have certainty? What's your counsel?”

“It is most important to understand your stakeholders and to consider counsel particularly in emerging markets where opacity can make it difficult to navigate. For investors looking at the U.S., SelectUSA and other programs can help foreign investors navigate the issues our own country.”

Foreign investors looking at the U.S. should also understand the ins-and-outs of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an inter-agency committee of the United States Government that reviews the national security implications of foreign investments in U.S. companies or operations. CFIUS is chaired by the Secretary of the Treasury and includes representatives from 16 U.S. departments and agencies, including the Defense, State and Commerce departments, and the Department of Homeland Security.

**“CFIUS is a process if taken into account early in a deal can be managed effectively”**  
- Nicole Y. Lamb-Hale



As a former member of CFIUS, Lamb-Hale was able to provide some insight and dispel some myths about CFIUS and its review process. “CFIUS does not affect every foreign direct investment that comes into the U.S. Less than 1% of such deals are subject to CFIUS review and has no effect on greenfield investments.” At the same time, she advises foreign investors to be aware of the potential for CFIUS review, seek knowledgeable and experienced counsel and understand that it may add 75 days to the deal flow. However, “It is a process that if navigated, if taken into account early in a deal can be managed very effectively.”

Berman turned back to Castle, “If you were starting today, if you were Greenfield Castle Harlan, would you even be based in the U.S.?” Castle said that New York is an interesting place to be based, as are many other cities. “Today, most companies have some international aspect and therefore in the process of building that business you may conclude that it makes sense to organize somewhere outside the U.S.”

In conclusion, Berman asked Lamb-Hale, “This panel is entitled ‘The Washington Effect.’ Have things fundamentally changed in Washington? Can we finally put aside our worries about certainty and cooperation in government?”

“If the deal gets done, we can probably put aside our worries for two years – which is much better than six months,” opined Lamb-Hale.

Castle agreed that the Republican Party had learned from the gridlock and how to manage the Tea Party constituency. “Republicans appear to have made some basic decisions to work around the Tea Party. This will make them more cooperative. They’ve concluded that being obstructionist is not a constructive or useful thing to do.”

The final question went to Castle. “Perhaps the ultimate test of whether you believe in America – Are you putting your money to work here and why?”

Quintessential veteran investor, Castle kept his cards close to his vest. “We put our money to work anywhere in the world. We look at deals in the U.S and we look at deals across the globe. No doubt there are high return investments here in the U.S. If they fit our criteria, then we have money to invest.”

So will Washington be a positive for business and M&A in 2014? Small-to-mid-sized businesses are getting unprecedented support and have many reasons for optimism. However, large business owners may resent Washington’s efforts to level the playing field and view the opportunity in 2014 as “Not enough!”

**“Many companies have an international aspect...It may make sense to organize outside the U.S.”**

**- John K. Castle**

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**John K. Castle**  
Chairman  
Castle Harlan, Inc.



**Nicole Y. Lamb-Hale**  
Senior Vice President  
Albright Stonebridge Group

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## SESSION FACULTY PROFILES



**Dennis K. Berman** is the Wall Street Journal's Marketplace Editor, responsible for the Journal's global business and corporate news. He is author of a regular column, "The Game," that covers the world of business. Previously, Mr. Berman was deputy bureau chief for Money & Investing, helping oversee the Journal's financial coverage and rebuilding its presence on WSJ.com. For four years, Mr. Berman was the Journal's mergers and acquisitions reporter, breaking news on a series of large deals including Bank of America's purchase of Merrill Lynch, AT&T's purchase of BellSouth, Sprint's purchase of Nextel, and Federated Department Stores' purchase of May Department Stores. In 2007, he launched Deal Journal on WSJ.com, which has become one of the Journal's most popular online blogs. Mr. Berman began his career at Business Week Online and joined the Journal in 2001 as a telecom reporter and technology columnist. He covered the historic financial collapse and subsequent accounting scandals at companies such as Lucent, Global Crossing and WorldCom. Mr. Berman shares in the 2003 Pulitzer Prize for explanatory journalism, and the 2009 Loeb Award – business journalism's highest honor – for his coverage of the global financial crisis. He has been honored in "Best Newspaper Writing" published by the American Society of Newspaper Editors. He is a magna cum laude graduate of the University of Pennsylvania, a lecturer on journalism at New York University and Columbia University and a Kentucky Colonel.



**John K. Castle** is a pioneer in private equity investing, a philanthropist in health and education and an adventurer. Mr. Castle's business career is long and distinguished. He is Chairman and Chief Executive Officer of Castle Harlan, Inc., a private merchant bank with more than 42,000 employees. John Castle is also Chairman and Chief Executive Officer of Branford Castle, Inc., a firm that makes long-term investments in small to medium-sized private companies. Further, Mr. Castle is an Advisory Director of the DuPont Corporation Investment Management Co. Prior to forming Castle Harlan in 1986, John Castle was President and Chief Executive Officer of Donaldson, Lufkin and Jenrette, Inc., at the time one of Wall Street's largest investment banks. He also served as a director of the Equitable Life Assurance Society of the US and a Life Member of the Society of Manufacturing Engineers. John Castle is also the Chairman and Co-Publisher of Castle Connolly Medical Limited and affiliated companies, which publish America's Top Doctors; Top Doctors: New York Metro Area and other books to help people find the best healthcare. Sister companies of CCML are Castle Connolly Graduate Medical Ltd and Publishing Works Ltd. CCGM publishes more than a dozen guides to assist resident physicians in preparing for their medical specialty boards while Publishing Works produces healthcare newsletters and journals for hospitals and physicians groups. Starting in 1969, as Chairman of DLJ's Merchant Banking and Sprout Group, John Castle was one of the founders of the institutionalization of the private equity business utilizing limited partnerships as a vehicle for pension funds and other large capital sources to invest private capital needed by companies to build their businesses. As a philanthropist, John Castle has committed a substantial portion of his time and resources to public service in education, healthcare and religious organizations over the past 35 years, and a number of philanthropies.



**Nicole Y. Lamb-Hale** is a Senior Vice President of Albright Stonebridge Group, a leading global commercial diplomacy and strategic advisory firm. With more than two decades of professional experience traversing the private and public sectors, Ms. Lamb-Hale provides strategic advice to companies as they develop and implement their global business objectives, including the expansion of their exports to, and presence in, international markets. A passionate advocate for business, Ms. Lamb-Hale served in the Obama Administration as the Assistant Secretary for Manufacturing and Services in the Department of Commerce's International Trade Administration (ITA). In this role, she was the Chief Executive Officer of the industry-facing unit of ITA, serving as the liaison between U.S. industry and the federal government with respect to access to international markets and U.S. policies impacting the competitiveness of U.S. exports. Ms. Lamb-Hale regularly led business delegations on international trade and trade policy missions during which she negotiated with senior foreign government officials to create policy environments conducive to free trade and to eliminate market access barriers to U.S. exports. She managed a \$49 million operating budget and 200 professional and support staff. Ms. Lamb-Hale also served as the Department's lead on the Committee on Foreign Investment in the United States (CFIUS). Prior to serving as Assistant Secretary, Ms. Lamb-Hale was appointed by President Obama to serve as the Deputy General Counsel for the U.S. Department of Commerce. In that role, she was the Chief Operating Officer of the Office of General Counsel, where she managed a \$50 million operating budget and 300 attorneys, and assisted the General Counsel as the legal advisor to the Secretary of Commerce and the chief legal officer for the Department. Prior to government service, Ms. Lamb-Hale was a Partner in the law firm of Foley & Lardner LLP, counseling corporate clients in significant business transactions, including out of court restructurings and bankruptcy. A member of the Council on Foreign Relations, Ms. Lamb-Hale attended the University of Michigan where she studied in the Honors College and earned her A.B. with high honors in political science in 1988. She earned her J.D. from Harvard Law School in 1991.

## CONTRIBUTING FACULTY PROFILES



**Garrett Baker** is President at Waller Capital Partners. He initiates and executes M&A transactions for cable and telecom clients, leads Waller Capital's cable coverage, and oversees the day-to-day operations of the firm. Garrett's early career focused on telecom operators, including wireless carriers, fiber providers and ISPs. Since 2005, Garrett has been the most active M&A banker in the cable industry. Recent transactions include representing: Wave Broadband on its sale to Oak Hill Capital Partners and GI Partners, RCN on its sale to ABRY Partners; US Cable on its sale to MidContinent, Baja & Charter; MCV Guam on its sale to NTT Docomo; WideOpenWest on its sale to Avista Capital; Alpheus Comm on its sale to Gores Group; Time Warner Cable on its non-core divestiture to Windjammer Communications; American Fiber Systems on its sale to Zayo; Everest Broadband on its sale to SureWest; JetBroadband on its sale to ShenTel; Choice Cable on its sale to Spectrum Equity / Patriot Media; New Wave on its acquisition of non-strategic assets from Charter Communications; Grande Communications on its recapitalization; The Blackstone Group on the sale of Sigecom; JetBroadband on the acquisition of Suddenlink's Virginia assets; NY3G on its sale to Sprint Nextel; Providence Equity on the sale of Northland Cable to Metrocast/Harron; Alameda Telecom on its sale to Comcast; Vision Communications on its sale to Eatel. Prior to Waller, Garrett was an M&A banker at Bear Stearns & Co. During his career, he has completed over 70 M&A transactions valued at over \$15 billion. Garrett has been recognized by MultiChannel News as one of the cable industry's "40 Under 40" top executives. He is a member of the Young Presidents' Organization (YPO). Garrett graduated with honors from Wake Forest University with a B.S. in Analytical Finance. He holds the Series 7, 63, 24 and 79 FINRA licenses.



**John Wm. (Jack) Butler, Jr.** advises companies, their boards, management, owners, creditors and investors, handling restructurings in and out of court, financial recapitalizations, business reorganizations and other distressed M&A transactions. Most recently, Jack represented the Official Committee of Unsecured Creditors in American Airlines' reorganization and December 2013 merger with US Airways Group, Inc., which was cited for its innovation, collaboration and creativity in the *Financial Times US Innovative Lawyers 2013* rankings. He has been recognized as one of The American Lawyer's Dealmakers of the Year for his work on the Delphi Corporation, Kmart Corporation and Xerox Corporation restructurings, among others. Jack was named one of the decade's most influential lawyers by *The National Law Journal*, and one of ten lawyers profiled for developing "creative solutions" during the credit crisis in the Financial Times' inaugural "US Innovative Lawyers" report. He is also a member of the *M&A Advisors' Hall of Fame* and the *Turnaround, Restructuring and Distressed Investing Industry Hall of Fame*. Jack is a recipient of the *Ellis Island Medal of Honor*, which is given to Americans who exemplify outstanding qualities in both their personal and professional lives.



**Jim Millstein** is the Chairman and Chief Executive Officer of Millstein & Co. Until March 2011, he was the Chief Restructuring Officer at the U.S. Department of the Treasury. In that role, he was responsible for oversight and management of the Department's largest investments in the financial sector. He was the architect of American International Group's (AIG) successful restructuring, described by the Wall Street Journal as the "Super Bowl of Corporate Turnarounds." Prior to serving at the Treasury Department, Mr. Millstein spent more than two decades in the private sector, where he "worked on some of the biggest bankruptcies in history," per the New York Times. From July 2000 to April 2009, Mr. Millstein served as Managing Director and Global Co-Head of Corporate Restructuring at Lazard. Mr. Millstein managed a leading restructuring practice in Europe, the United States and Asia. Before joining Lazard, Mr. Millstein was Partner and Head of the Corporate Restructuring practice at Cleary, Gottlieb, Steen & Hamilton. Mr. Millstein is an adjunct professor of law at Georgetown University Law Center, where he teaches financial regulation. Mr. Millstein is a commissioner on the American Bankruptcy Institute Commission to study the Reform of Chapter 11, and the Trustee of Weantinoge Heritage Land Trust, the largest land trust in Northwest Connecticut.



**John Potter** is a Partner in the Transaction Services practice at PwC. He specializes in providing strategic, financial, economic and accounting advice impacting deals to both private equity and multi-national corporate clients. He also has extensive experience in the capital raising process, which provides an integral connection throughout the deal process. His experience includes both buy-side and sell-side transaction advisory work, with substantial experience in various sectors, including Retail & Consumer, Industrial Products, Education, and Technology, working across the value chain. John spent three years working in our London office, as well as Chicago, and is currently based in Minneapolis.