M&A Report

2026

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Note From the Editor

This year's M&A Report offers a detailed review of the global M&A market, including an analysis of market activity across key geographies and industry sectors. We examine how easing interest rates, shifting macroeconomic conditions, and regulatory developments helped propel a worldwide recovery in 2025, led by growth in larger transactions valued at a billion dollars or more, and we analyze the factors shaping the market outlook for 2026.

We discuss a recent change in the tender offer rules and its potential impact on market practice generally, and public M&A in particular. And we take a closer look at common takeover defenses available to public companies and how market and investor pressures continue to influence governance practices.

We also review trends in VC-backed company M&A deal terms, examining how deal structures, indemnification practices, earnouts, and the use of representation and warranty insurance have evolved in recent years as companies and investors navigate a changing deal environment.

Please **subscribe to our mailing lists** to stay up to date on the latest developments related to M&A. And don't forget to check out WilmerHale's **IPO Report** and **Venture Capital Report** for additional insights.

Andrew Bonnes
PARTNER
Co-Chair, Mergers and Acquisitions Practice

What's Inside

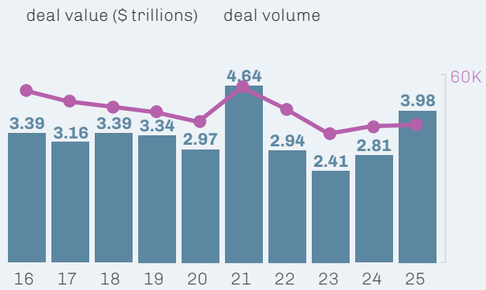
Market Review and Outlook

2025 was a recovery year for M&A. The macroeconomic headwinds that have buffeted the market since 2022 started to subside, and total deal value increased significantly compared to 2024, surging toward the end of the year—particularly in the United States. These positive trends were not evenly distributed, however, and on closer inspection the picture was more complicated, with mixed storylines playing out in different sectors of the market throughout the year.

The year began with high levels of optimism, driven by expectations that a more business-friendly administration would restore confidence and unleash pent-up demand building since the end of the COVID-19 boom. Beginning in February 2025, however, the Trump administration unveiled a series of sweeping global tariff policies that introduced a fresh round of uncertainty. In the United States, Hart-Scott-Rodino filings—a good real-time indicator of M&A activity—dropped by 61% from February to March. Geopolitical and trade tensions amplified market volatility, while inflation remained stubbornly above the Federal Reserve's 2% target. As a result, the dealmaking environment remained challenging. But as interest rates improved, credit markets stabilized, and businesses adapted to the new trade regime, deal activity accelerated in mid-2025.

This growth, however, was not felt across the entire market. Most buyers remained very selective, focusing on significant strategic acquisitions of premium targets. A perceived easing in antitrust enforcement may have also contributed to greater confidence at the top end of the market, and the second half of 2025 saw a surge in high-value transactions. Notable megadeals included multiple multi-billion-dollar transactions, such as the Netflix bid for Warner Bros. Discovery (now pending with Skydance/Paramount as the buyer), Union Pacific's merger with Norfolk Southern, and Electronic Arts' $55 billion take-private buyout—each emblematic of renewed strategic confidence among corporate buyers.

Global M&A Activity
2016 to 2025

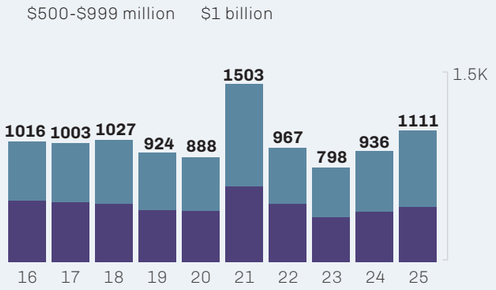


44,817
M&A deals in 2025, a 1% increase

$3.98T
deal value in 2025, a 42% increase

The growth in M&A deal value in 2025 was driven primarily by an increase in very large transactions, while overall transaction volume remained relatively flat. Global reported M&A deal value surged by 42%, from $2.81 trillion in 2024 to $3.98 trillion in 2025; by contrast, the number of reported M&A transactions worldwide increased by only 1%, from 44,379 deals to 44,817. Average deal size was $88.9 million in 2025, up 40% from $63.4 million in 2024.

Large Global Transactions
2016 to 2025



644
billion-dollar transactions in 2025, a 25% increase

467
$500–$999M transactions in 2025, an 11% increase

The number of billion-dollar transactions worldwide increased by 25%, from 514 in 2024 to 644 in 2025, while their total value increased by 61%, from $1.87 trillion to $3.00 trillion. Excluding billion-dollar transactions, total worldwide deal value increased by only 3% between 2024 and 2025, and the total value of deals under $500 million actually declined by a fraction of a percent.

The market dynamics in early 2026 feel eerily familiar. A strong start to the year, particularly at the top end of the market, once again ran into unexpected geopolitical headwinds during the first quarter. Hostilities between the United States and Iran have roiled global energy markets and threatened the stability of other sectors that are sensitive to the price of fuel, bringing fresh uncertainty to M&A decision-makers. Whether the market can again absorb these shocks and resume its growth trajectory remains an open—and central—question for 2026.

GEOGRAPHIC RESULTS

Deal volume and value were up across all major geographic regions in 2025, with deal volume increasing only modestly while valuations surged.

United States

Deal volume increased by 2%, from 17,963 transactions in 2024 to 18,330 in 2025. US deal value jumped by 55%, from $1.80 trillion to $2.80 trillion. Average deal size increased by 52%, from $100.5 million to $152.6 million. The number of billion-dollar transactions involving US companies jumped by 27%, from 341 in 2024 to 434 in 2025, while their total value increased by 68%, from $1.38 trillion to $2.32 trillion.

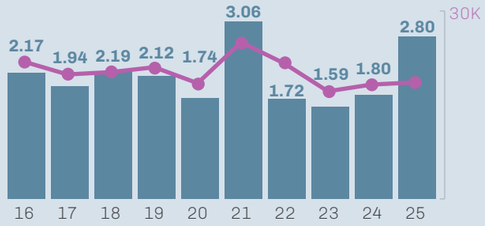
Europe

The number of transactions in Europe increased by less than 1%, from 16,390 in 2024 to 16,518 in 2025. Total deal value increased by 33%, from $943.3 billion to $1.26 trillion. Average deal size increased by 33%, from $57.6 million to $76.2 million. The number of billion-dollar transactions involving European companies increased by 24%, from 199 in 2024 to 245 in 2025, while their total value increased by 53%, from $621.5 billion to $950.2 billion.

Asia-Pacific

In the Asia-Pacific region, deal volume increased by 3%, from 11,631 transactions in 2024 to 11,937 in 2025. Total deal value in the region increased by 19%, from $798.0 billion to $948.0 billion, resulting in an average deal size that climbed 16%, from $68.6 million to $79.4 million. The number of billion-dollar transactions involving Asia-Pacific companies climbed by 13%, from 141 in 2024 to 160 in 2025, while their total value grew by 35%, from $451.6 billion to $608.6 billion.

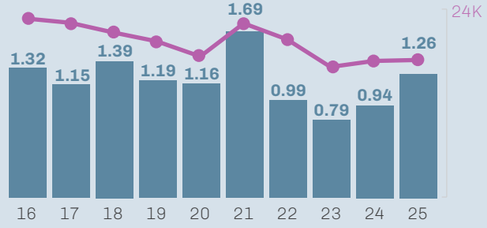
US M&A Activity
2016 to 2025



18,330
M&A deals in 2025,
a 2.0% increase

$2.80T
deal value in 2025,
a 55.0% increase

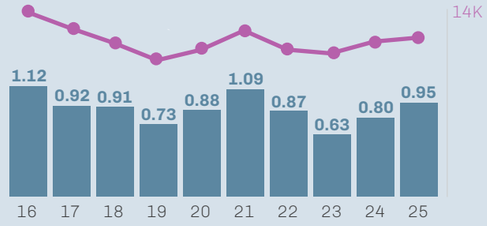
European M&A Activity
2016 to 2025



16,518
M&A deals in 2025,
a 1% increase

$1.26T
deal value in 2025,
a 33% increase

Asia-Pacific M&A Activity
2016 to 2025

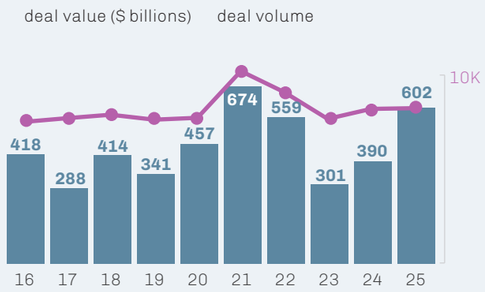


11,937
M&A deals in 2025,
a 3% increase

$0.95T
deal value in 2025,
a 19% increase

SECTOR RESULTS

Technology Global M&A Activity
2016 to 2025

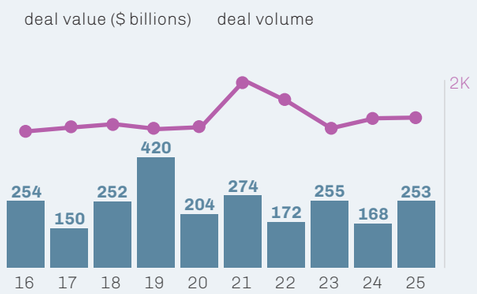


8,118
M&A deals in 2025,
a 0.5% increase

$602B
deal value in 2025,
a 54% increase

While global transaction volume in the technology sector increased by less than 1%, from 8,078 deals in 2024 to 8,118 deals in 2025, global deal value increased by 54%, from $390.1 billion to $602.3 billion. Average deal size climbed by 54%, from $48.3 million to $74.2 million. US technology deal volume increased by 10%, from 3,384 to 3,715 transactions, while total US technology deal value jumped 68%, from $288.8 billion to $486.2 billion, resulting in a 53% increase in average deal size, from $85.4 million to $130.9 million.

Life Sciences Global M&A Activity
2016 to 2025

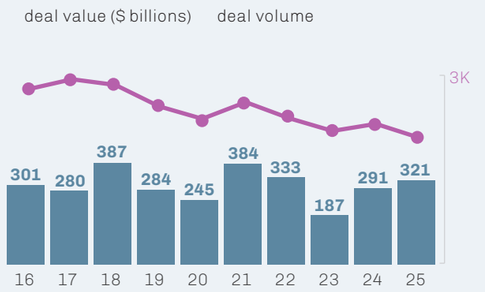


1,082
M&A deals in 2025,
a 15% decrease

$253B
deal value in 2025,
a 51% increase

Global transaction volume in the life sciences sector declined by 15%, from 1,270 deals in 2024 to 1,082 deals in 2025, while global deal value grew 51%, from $168.1 billion to $253.3 billion. Average deal size increased by 77%, from $132.4 million to $234.1 million. In the United States, deal volume declined by 15%, from 587 to 499 transactions, while deal value grew by 56%, from $137.2 billion to $213.5 billion, resulting in an 83% increase in average deal size, from $233.7 million to $427.9 million.

Financial Services Global M&A Activity
2016 to 2025

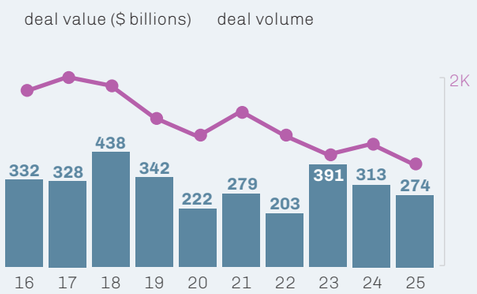


2,167
M&A deals in 2025,
a 7% decrease

$321B
deal value in 2025,
an 11% increase

Global M&A activity in the financial services sector decreased by 7%, from 2,327 deals in 2024 to 2,167 deals in 2025. Global deal value increased by 11%, from $290.8 billion to $321.5 billion, resulting in a 19% increase in average deal size, from $124.9 million to $148.3 million. In the United States, financial services sector deal volume decreased by 8%, from 1,218 to 1,125 transactions, while total deal value increased by less than 1%, from $187.1 billion to $188.7 billion. Average US deal size increased by 9%, from $153.6 million to $167.7 million.

Energy Global M&A Activity
2016 to 2025



1,082
M&A deals in 2025,
an 18% decrease

$274B
deal value in 2025,
a 13% decrease

Global transaction volume in the energy sector decreased by 18%, from 1,317 deals in 2024 to 1,082 deals in 2025. Deal value decreased by 13%, from $312.8 billion to $273.6 billion, resulting in a 7% increase in average deal size, from $237.5 million to $252.9 million. US energy deal volume decreased 13%, from 511 to 444 transactions, while deal value declined by 12%, from $218.3 billion to $191.8 billion. The average US energy deal size increased by 1%, from $427.1 million to $432.0 million.

Key Themes

- Activist pressures contributed significantly to deal flow. 2025 was a record-breaking year for activist activity, with a growing focus on M&A, which appeared in 54% of campaigns in the second half of the year, up from 35% in the first half. These campaigns also applied renewed pressure on diversified companies to divest non-core operations, with 17% of campaigns agitating for breakups or divestitures, driving higher volumes of spinoffs, carve-outs, and structured divestitures.
- Private equity sponsors focused more on exits, portfolio cleanup, and structured liquidity solutions in 2025, driven by LP distribution pressures. GP-led secondaries and continuation vehicles grew meaningfully, supporting liquidity while preserving exposure to high-conviction assets. Regulatory considerations increasingly informed transaction design and timelines. In addition, global private equity fundraising declined by one-third between 2024 and 2025, from $611.6 billion to $407.5 billion, with the 2025 figure representing the lowest annual total since the $344.5 billion raised in 2016. The number of funds achieving final closes dropped by almost half, from 1,025 in 2024 to 540 in 2025, pointing to a broader consolidation in fundraising.
- AI and AI-adjacent infrastructure transactions remained the dominant strategic driver in tech M&A, as buyers sought proprietary data, scalable talent, power generation, bandwidth and AI-ready technology platforms.

2026 OUTLOOK

While the number of reported transactions worldwide in 2025 was the third lowest in the last ten years, total 2025 deal value finished behind only the $4.64 trillion recorded in 2021, a year with almost 30% more deals. The last two quarters of 2025 each had a total deal value above $1 trillion, and the $1.26 trillion figure recorded in the fourth quarter of 2025 surpassed the previous quarterly deal value record of $1.24 trillion set in the fourth quarter of 2015. Strength at the top end of the market is often a bellwether for broader growth, and these figures suggest that the market was well positioned for a strong year leading into 2026. However, the emergence of geopolitical instability in the first quarter, and its impact on key markets, presents new uncertainty that M&A professionals will need to navigate.

Important factors that could affect M&A activity over the remainder of 2026 include:

- **Macroeconomic Conditions:** Global GDP growth has proved more resilient than expected in the face of unprecedented uncertainty resulting from the enactment of US tariffs and retaliatory countermeasures, slowing only modestly from 2.8% in both 2023 and 2024 to 2.7% in 2025. US GDP growth eased from 2.9% in 2023 to 2.8% in 2024, and the most recent estimate for 2025 is 2.1%. The energy shock and supply chain disruptions from the Iran war are likely to dampen both global and US GDP growth. The Federal Reserve has now lowered interest rates six times since September 2024, and political pressure to continue this trend remains intense. However, the impact of geopolitical events described below may impede further rate cuts in 2026.
- **Geopolitical Uncertainty and the Cost of Fuel:** Geopolitical uncertainty—particularly in the Persian Gulf—could dampen global M&A activity in the short term. Hostilities between the United States and Iran have already impacted the market for oil and other important commodities, and the downstream effects on the global economy could be significant if these supply disruptions persist or worsen. The potential impact on inflation, interest rates and supply chains could make the dealmaking environment more challenging, and cross-border transactions may face heightened regulatory scrutiny due to the political fallout from these events. Although the US-Iran conflict is generally expected to be a drag on the market, select sectors may see new opportunities as a result of these hostilities, such as defense and aerospace.
- **Valuations:** Lower interest rates have helped ease the pressure on company valuations. Certain sectors, such as technology, that are heavily reliant on future growth expectations, and that saw punishing valuation declines as interest rates were ratcheted up, have seen strong rebounds in their valuations. Underwhelming macroeconomic fundamentals are likely to continue to limit organic growth in many sectors and, as the valuation gap between what buyers are willing to pay and what sellers are willing to accept declines, 2026 is likely to see continued opportunities for strategic acquirors, especially in technology, healthcare and manufacturing.
- **The Dual Effects of AI:** AI continues to be one of the dominant forces driving the market, as buyers pursue exposure to the underlying technology, as well as the data and infrastructure that supports it, and this momentum is expected to continue in 2026. On balance, the enthusiasm around AI as a transformative technology is expected to support growth in the market (particularly on a dollar-value basis), but it could also negatively impact sentiment in select sectors. Businesses seen as prone to disruption by AI, such as non-AI-driven software, may see less enthusiasm from buyers due to concerns over the exposure of their business model to the new technology.
- **Regulatory Environment:** Over a year into the new administration, the overall sentiment remains that the antitrust environment is more "pro-growth," and there has been renewed receptivity to negotiated settlements and structural remedies and divestitures. Pro-growth doesn't always align cleanly with an "America First" stance, however, and M&A transactions that have a negative cost-of-living impact on American consumers or raise national security concerns may continue to receive increasing scrutiny, both at the state and federal levels.
- **Private Equity Activity:** If a more stable interest rate environment is able to persist, lower financing costs are likely to fuel continued deal value growth in 2026. The 2025 pullback in fundraising has led to the level of "dry powder" coming down, albeit marginally, from recent record highs, but private equity firms also continue to face pressure to deploy committed capital, meaning deal activity is likely to remain active.
- **VC-Backed Exits:** The number of reported US acquisitions of VC-backed companies in 2025 was the second highest annual level on record. Deal volume increased by 18%, from 1,181 in 2024 to 1,398 in 2025, and reported deal value more than tripled from $50.8 billion in 2024 to $162.7 billion in 2025, surpassing the previous annual high of $110.2 billion set in 2021. VC-backed companies and their investors often prefer the relative ease and certainty of a company acquisition to the lengthier and more uncertain IPO process, and, with cash flows to VC LPs a negative $196.9 billion since 2022, pressure to return capital is likely to drive more exits in 2026, especially as competition for later-stage venture financing rounds intensifies.
- **SPAC Mergers:** While the number of SPAC IPOs remains well below 2020 and 2021 levels, SPAC IPO activity has trended up over the last three years, with 2025 producing 144 SPAC IPOs, a figure more than double the 57 in 2024. The aggregate value of SPAC IPO gross proceeds tripled year over year, from $8.7 billion in 2024 to $26.8 billion in 2025. The number of SPACs that have completed business combinations has, conversely, declined each year since 2021. In 2025, there were 43 mergers involving SPACs, compared to 73 in 2024 and 98 in 2023. At the end of 2025, there were 175 SPACs seeking a business combination and a further 98 that had announced a merger but not yet closed. While not all announced deals are likely to come to fruition, these figures point to a rebound in SPAC merger activity in 2026. ■

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Data compiled by Tim Gallagher, a senior corporate analyst in WilmerHale's Corporate Practice.

M&A data is sourced from S&P Global Market Intelligence. Data discussed in this report is based on announced transactions, excluding transactions that are subsequently terminated. Reported M&A data for a given year may be adjusted over time to reflect the removal of terminated transactions and the inclusion of previously unannounced transactions.

Selected WilmerHale Mergers & Acquisitions Transactions

55+
mergers & acquisitions transactions in 2025

$35B+
aggregate value, providing guidance in corporate, securities, governance and tax, as well as antitrust, CFIUS and other regulatory areas in 2025

EQUITYZEN
Acquisition by
Morgan Stanley
Undisclosed
January 2026

TechTarget
Combination with
Informa Tech's Digital Businesses
Over $1,500,000,000
(implied equity value)
December 2024

Dedrone
Acquisition by
Axon
$500,000,000
October 2024

Akamai
Acquisition of
Noname Security
$450,000,000
June 2024

ThermoFisher SCIENTIFIC
Acquisition of
Clario
$8,875,000,000
M arch 2026

mks Technology for Productivity
Acquisition of
Atotech
$4,400,000,000
(financing counsel)
August 2022

ENDURANCE International Group
Acquisition by
Clearlake Capital Group
$3,000,000,000
February 2021

Houghton Mifflin Harcourt
Acquisition by
Veritas Capital
$2,800,000,000
April 2022

AVEO ONCOLOGY
Acquisition by
LG Chem
$566,000,000
(implied equity value)
January 2023

Apellis
Acquisition by
Biogen
$5,600,000,000
(co-counsel)
Pending
(as of May 2026)

Kalaris Therapeutics
Reverse merger with
AlloVir
$463,000,000
(combined equity value)
March 2025

Medtronic
Acquisition of
Cosmo Pharmaceuticals's AI-Enabled GI Products Business
$200,000,000
(including contingent payments)
December 2023

TMX
Acquisition of
VettaFi
$848,000,000
January 2024

NORDSTROM Family
Acquisition of
Nordstrom by the Nordstrom Family and Liverpool
$6,250,000,000
(enterprise value)
May 2025

Mersana THERAPEUTICS
Acquisition by
Day One Biopharmaceuticals
$285,000,000
(including contingent payments)
January 2026

revvity
Sale of Applied, Food and Enterprise Services businesses to
New Mountain Capital
$2,450,000,000
March 2023

FORTIVE
Acquisition of
ServiceChannel
$1,200,000,000
August 2021

Eaton Vance
Acquisition by
Morgan Stanley
$7,000,000,000
March 2021

casella
Acquisition of
GFL Environmental
$525,000,000
June 2023

Herb Chambers
Acquired by
Asbury Automotive Group
$1,450,000,000
July 2025

ALTIOSTAR
Acquisition by
Rakuten
$1,000,000,000
August 2021

KBR
Spin-off of
Mission Technology Solutions Segment
Pending
(as of May 2026)

ACACIA COMMUNICATIONS, INC.
Acquisition by
Cisco Systems
$4,500,000,000
March 2021

TECAN.
Acquisition of
Paramit
$1,000,000,000
August 2021

ADORE ME
Acquisition by
Victoria's Secret
$700,000,000
(including post-closing payments)
December 2022

XLFleet
Acquisition of
Spruce Power
$600,000,000
September 2022

PennMutual
Sale of Janney Montgomery to
KKR
Undisclosed
November 2024

Bottomline Technologies
Acquisition by
Thoma Bravo
$2,600,000,000
(co-counsel)
May 2022

spectris
Acquisition of
Micromeritics
$683,000,000
(including contingent payments)
August 2024

Decibel THERAPEUTICS
Acquisition by
Regeneron
$213,000,000
(including contingent payments)
September 2023

Telix
Acquisition of
RLS (USA)
$250,000,000
(including contingent payments)
January 2025

AKOUOS
Acquisition by
Eli Lilly
$610,000,000
(including contingent payments)
December 2022

Merchants FLEET
Acquisition by
Bain Capital and Abu Dhabi Investment Authority
Undisclosed
October 2022

STATE STREET
Acquisition of
PriceStats
Undisclosed
November 2025

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SEC Exemptive Order Authorizes Accelerated Tender Offers

By Chris Barnstable-Brown, Andrew Bonnes, Glenn Pollner, Alan Wilson, Daniel Zimmermann, Jane Cha, Shaina Hourizadeh

On April 16, 2026, the Securities and Exchange Commission (the "SEC") issued an exemptive order (the "Exemptive Order") that cuts in half the minimum offering period for certain types of equity tender offers. This relief would capture most negotiated, all-cash tender offers for US public company acquisitions and provides a powerful incentive for dealmakers to favor tender offers as the structure of choice for all-cash transactions. The Exemptive Order also provides relief to partial issuer tender offers by public and private companies, although, as discussed below, we believe it is less likely to have as significant an impact on market practice in this context.

Background

Rules 13e-4 and 14e-1 under the Securities Exchange Act of 1934 (the "Exchange Act") generally require tender offers to remain open for at least 20 business days. Although the SEC has previously provided relief from this rule in a variety of circumstances, either through rulemaking (as in the case of certain cross-border tender offers) or as a matter of discretion (as in the case of no-action relief for debt tender offers), the 20-business-day period has consistently applied to tender offers for the acquisition of US public companies for the last 40 years.

Under this historic regime, a two-step transaction structure—utilizing a tender offer followed by a short-form "squeeze out" merger to acquire the remaining share—was already the structure that generally offered the fastest path to completing an all-cash acquisition of a US public company. This was for two primary reasons. First, in a tender offer, the parties can file and mail definitive offer materials immediately, and any SEC review is typically conducted during the tender offer period. By contrast, in a one-step merger, which entails a stockholder vote followed by a merger, the target must file a preliminary proxy statement at least 10 calendar days prior to filing and mailing the definitive proxy statement, and the mailing generally occurs at least 20 business days prior to the stockholder meeting that precedes the merger.[1] Second, in an all-cash tender offer, the 30-calendar-day waiting period under the Hart-Scott-Rodino ("HSR") Act is reduced to 15 calendar days.

These timing gains were relatively modest, however, and not always enough to cause parties to utilize a tender offer in an all-cash transaction (even where regulatory clearances were not expected to extend the timeline). As discussed further below, the additional potential timing gains available under the Exemptive Order provide a powerful incentive to revisit the factors influencing this decision and may trigger further adoption of the two-step structure in public company M&A.

[1] This 20 business day period is not a strict requirement for these transactions, but Note D.6 of Schedule 14A requires a proxy statement be sent to stockholders at least 20 business days prior to the date of the stockholder vote if any document other than an annual report required by Rule 14a-3(b) is incorporated by reference in the proxy statement. Parties typically adhere to this period (for a variety of reasons), but it is technically possible to accelerate the one-step transaction timeline by forgoing incorporation by reference.

Negotiated All-Cash Offers for Public Companies

The Exemptive Order provides relief to third-party tender offers for equity securities subject to Regulation 14D under the Exchange Act (i.e., offers for the securities of a US reporting company), allowing for a minimum initial offering period of 10 business days, instead of the standard 20 business days, if they meet the following criteria:

1. **Negotiated transaction.** The offer must be made pursuant to a negotiated merger agreement or similar business combination agreement between the target and the offeror. Hostile tender offers do not qualify.
2. **All shares/all cash.** The offer must be made for all outstanding securities of the subject class and the consideration must consist solely of cash at a fixed price.
3. **Recommendation statement.** The target's Schedule 14D-9 (solicitation/ recommendation statement) must be filed and disseminated by 5:30 p.m. Eastern Time on the first business day after the commencement of the tender offer.
4. **No going-private transactions**. The tender offer must not be a "going private" transaction subject to Rule 13e-3.
5. **No cross-border exemptions.** The tender offer must not be made in reliance on the Tier II cross-border exemptions set forth in Rule 14d-1(d) or Rule 13e-4(i).
6. **No competing tender offer at announcement.** At the time of public announcement of the tender offer, the subject securities must not be subject to a previously announced or pending tender offer by another offeror.
7. **Extension if a competing offer is announced.** If a competing tender offer is publicly announced after commencement of a tender offer relying on this exemption, the initial tender offer must be extended so that it remains open for at least 20 business days from its commencement.
8. **Public announcement; access to tender offer materials.** The tender offer must be announced by 10 a.m. Eastern Time on the commencement date in a widely disseminated press release that includes the basic terms of the offer and an active hyperlink to a website where security holders may access the tender offer materials.
9. **Notice of price or size changes.** Any change in the percentage of securities sought (other than an increase of 2% or less) or any change in the consideration offered must be publicly announced no later than 9 a.m. Eastern Time on the fifth business day before expiration of the offer.
10. **Notice of other material changes**. Any other material change to the terms of the tender offer must be publicly announced no later than 9 a.m. Eastern Time on the second business day before expiration of the offer.

Unless there is a bidding war, these criteria generally either track or require only minor modifications to standard market practice, so it should not be difficult for deal participants to satisfy the technical requirements for this relief. Given the significant timing advantages and the fact that tender offers have already been proven to be a viable transaction structure, it seems likely that the Exemptive Order will have a significant impact on the public M&A market.

Partial Issuer Tender Offers by Public and Private Companies

The Exemptive Order also provides similar relief for partial issuer tender offers for equity securities—allowing the same minimum initial offering period of 10 business days—with distinct criteria applying to public and private companies.

Issuer tender offers for the equity securities of reporting companies subject to Rule 13e-4 of the Exchange Act qualify for relief if they are for less than all outstanding securities of the subject class, offer consideration consisting only of cash at a fixed price and are not a "going-private" transaction subject to Rule 13e-3. The criteria contemplated by items 5 through 10 in the list above for third-party tender offers also technically apply, although these are less likely to be relevant in the issuer tender offer context. This relief may offer flexibility to public companies executing share buybacks that might make self-tenders a potentially more attractive alternative, in certain circumstances, to the safe harbor requirements under Rule 10b-18, accelerated share repurchase (ASR) programs or privately negotiated transactions. However, the relief does not apply to certain buyback strategies where tender offers are already deployed, such as variants of Dutch auctions that do not entail a fixed price.

Issuer tender offers for the equity securities of non-reporting companies (i.e., issuers that do not have a class of securities registered under Section 12 of the Exchange Act and are not required to file reports pursuant to

Section 15(d) of the Exchange Act) qualify for relief if they are for less than all outstanding securities of the subject class, if they offer consideration consisting only of cash at a fixed price, and if any changes to the price or size of the offer or any other material changes are communicated to security holders in advance, consistent with the notice requirements described under items 9 and 10 above. The most likely application of this relief is to accelerate offers by private companies to buy back equity from their employees, which often triggers the tender offer rules. This occurs most often among later-stage emerging companies that may be seeking to provide liquidity to long-tenured employees without undergoing a broader strategic transaction like an IPO or a sale.

While the Exemptive Order offers potential benefits to public and private companies considering self-tenders, we believe this relief is less likely to cause significantly more widespread adoption of the tender offer structure for this purpose. The extensive disclosure requirements associated with issuer tender offers are generally the most significant impediment to their use, rather than the minimum offering period, and the Exemptive Order does not provide any relief from these requirements. However, in situations where an issuer tender offer would otherwise be necessary, the Exemptive Order will provide welcome relief.

Takeaways

By shaving 10 business days off the timeline for qualifying tender offers, the Exemptive Order presents public M&A deal participants with a very different calculus when deciding on an optimal structure. Parties that once looked at a timing advantage of roughly 10-14 days (on a typical timeline) may now be able to save almost a month by adopting a tender offer structure, without significant changes to their disclosure obligations or the offer requirement more generally.

From the target's perspective, the delta becomes more meaningful when considering deal risk and the time value of the transaction consideration to their shareholders. From the buyer's perspective, the accelerated process dramatically shortens the window for topping bids and may operate as a form of de facto deal protection because of the time pressure it puts on potential competing bidders.

While there are many transactions that are structured as one-step mergers due to unavoidable delays associated with regulatory clearances and other closing conditions, or to the anticipated need for more time to complete a shareholder solicitation process that is expected to be challenging (such as a target with a high percentage of "retail" ownership), there are others where parties have more control over whether or not they pursue the potential benefits of a tender offer. This is particularly true in transactions involving private equity buyers, who might have previously favored the one-step structure because it avoided complications in executing financing arrangements for leveraged buyout transactions. These parties may face increased pressure from sellers, particularly in competitive auctions, to adopt a two-step structure (even if it entails more financing risk to the buyer), and larger institutions that are able to backstop the entire purchase price with an equity commitment may see an even greater competitive advantage in this scenario.

The potential to shorten the window for topping bids so dramatically may also drive changes in deal planning and execution. There may be more focus on accelerating the preparation of disclosure documents and HSR filings during the negotiation period to start the clock on the statutory offer and waiting periods as quickly as possible after signing. It also remains to be seen whether such accelerated timeframes have any impact on the common law analysis of deal protections and pre-signing market checks. It is too early to predict all the ways in which the Exemptive Order may impact public M&A practice, but it is likely that its impact will be significant.

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Beyond the "Just Say No" Defense:

Updated Data on Common Takeover Defenses Available to Public Companies

Public companies have faced mounting pressure from institutional investors over the last 25 years to dismantle takeover defenses, and the prevalence of many of these defenses once considered standard has declined markedly over that period. With occasional exceptions, implementing new defenses in the current climate is usually impractical, which raises important considerations for companies going public. At the time of their IPO, companies generally have more freedom to implement structural defenses than they will once they face added shareholder scrutiny as a public company. Moreover, in light of market pressures opposing structural defenses, the IPO is often viewed as the last and only chance to adopt many such measures. Consequently, the prevalence of takeover defenses among IPO companies is significantly higher than among longer-tenured public companies.

This study dissects these trends from a few different angles, looking at how takeover defense practices among IPO companies have evolved over time, how they compare to practices among established large cap and small cap public companies, and how practices differ among IPO companies depending on the nature of their ownership at the time of the IPO.[1] In analyzing these trends, this study tracks the defenses described below.

Classified Boards

In a classified board, directors serve in multiple classes serving staggered terms—generally three classes serving staggered three-year terms—so that only a fraction of the board is up for reelection at each annual meeting. Supporters believe that this structure enhances the knowledge, experience and expertise of boards by helping ensure that, at any given time, a majority of the directors will have experience and familiarity with the company's business. These supporters believe classified boards promote continuity and stability, which in turn allow companies to focus on long term strategic planning, ultimately leading to a better competitive position and maximizing stockholder value. Opponents of classified boards argue that annual elections for all directors increase director accountability to stockholders, which in turn improves director performance, and that classified boards entrench directors, foster insularity and impede efforts to expand board diversity.

Supermajority Voting Requirements

Supermajority voting requirements impose a heightened standard on the vote required to take certain significant corporate actions—for purposes of this study, approving mergers or amending the corporate charter or bylaws. Advocates claim that these provisions help preserve and maximize the value of the company by ensuring that

[1] IPOs raising gross proceeds of at least $50 million accounted for 81% of all IPOs in 2021. Over the four-year period since 2021, smaller IPOs have accounted for a historically disproportionate share of the IPO market and IPOs raising gross proceeds of at least $50 million have accounted for only one-third of all IPOs. The overall characteristics of these smaller-sized IPOs differ quite markedly from those with gross proceeds of at least $50 million and have accordingly been excluded from the analysis of IPO companies in the tables below.

important corporate actions are taken only when it is the clear will of the stockholders. By contrast, proponents of a majority-vote standard believe it makes the company more accountable to stockholders and that improved accountability leads to better company performance. Supermajority requirements are also viewed by their detractors as entrenchment devices used to block initiatives that are supported by holders of a majority of the company's stock but opposed by management and the board.

Prohibition of Stockholders' Right to Act by Written Consent

Action by written consent, in which a stockholder vote is obtained in writing instead of at a stockholder meeting, can be a swift and efficient means to obtain stockholder approval. However, it can also allow a subset of stockholders to take action without any prior notice or any opportunity for management or other stockholders to express their views on a given decision. If stockholders are not permitted to act by written consent, all stockholder action must be taken at a duly called stockholders' meeting for which stockholders receive notice, including information regarding the matters to be voted on.

Limitation of Stockholders' Right to Call Special Meetings

The right to call special meetings of stockholders—rather than waiting until the next annual meeting to propose matters for stockholder action—provides another means by which a subset of stockholders can force action on an expedited basis without cooperation from the board or management. Such actions can be disruptive to a company's ability to execute a long-term strategy, potentially resulting in abrupt changes in board composition, interfering with the board's ability to maximize stockholder value, or resulting in significant expense and distraction. The counter-argument is that limiting authority to call a special meeting to the board or specified officers or directors could have the effect of delaying until the next annual meeting actions that are otherwise favored by the holders of a majority of the company's stock.

Advance Notice Requirements

Advance notice requirements establish timeframes within which stockholders must submit nominations for directors or other proposals for consideration at annual meetings. These requirements ensure there is ample time for stockholders to consider the desirability of stockholder proposals, and for the board to gather information to support their recommendations, including information about the experience and suitability of board candidates. An opponent might argue that these provisions could also have the effect of delaying until the next stockholder meeting actions that are otherwise supported by stockholders. However, investors generally do not object to advance notice requirements as long as the advance notice period is not unduly long.

Section 203 of the Delaware General Corporation Law ("DGCL")

Under Section 203 of the DGCL, a public company incorporated in Delaware is prevented from engaging in a "business combination" with any "interested stockholder" for three years following the time that the person became an interested stockholder without board approval. In general, an interested stockholder is any stockholder that, together with its affiliates, beneficially owns 15% or more of the company's stock. A public company incorporated in Delaware is automatically subject to Section 203 unless it opts out in its original charter or a subsequent charter or bylaw amendment approved by stockholders. Remaining subject to Section 203 helps eliminate the ability of an insurgent to accumulate and/or exercise control without paying a control premium. The counterargument is that Section 203 could prevent stockholders from accepting an attractive acquisition offer that is opposed by an entrenched board.

REASONS TO ADOPT TAKEOVER DEFENSES

Companies adopt takeover defenses to help:

- ensure stability and continuity in decision-making and leadership that will enable the company to focus on long-term value creation;
- provide the board with adequate time to evaluate and react in an informed manner to unsolicited acquisition proposals;
- provide negotiating leverage for the board; and
- maximize overall stockholder value by providing economic disincentives against inadequate, unfair or coercive bids.

STOCKHOLDER RIGHTS PLANS

A traditional stockholder rights plan (often referred to as a "poison pill") is a defensive measure designed to deter any acquisition of shares exceeding a specified ownership threshold without board approval. The rights plan gives all stockholders (other than a stockholder acquiring shares in excess of the specified threshold) a contractual right to purchase additional securities of the company at a substantial discount, thereby significantly diluting the acquiring stockholder's economic and voting power. When combined with a classified board, a rights plan makes an unfriendly takeover particularly difficult. US IPO companies no longer go public with poison pills in place, and their adoption is also quite uncommon among established public companies. As of the end of 2025, less than 2% of both S&P 500 and Russell 3000 companies had active poison pills in place. However, it is quite common for public companies to have a form of poison pill that has been reviewed with the board "on the shelf" so that it can be deployed quickly if a threat arises.

Blank Check Preferred Stock

When blank check preferred stock is authorized, the board has the right to issue preferred stock in one or more series without stockholder approval and has the discretion to determine the voting, dividend, conversion and redemption rights and liquidation preferences of each such series. Among other things, the availability of blank check preferred stock allows a board to implement a stockholder rights plan, or "poison pill," without stockholder action.

Multi-Class Capital Structures

While the majority of companies go public with a single class of common stock that provides the same voting and economic rights to every stockholder, some companies employ a multi-class capital structure under which the company's founders or other pre-IPO stockholders hold shares of common stock that are entitled to multiple votes per share, while the public is issued a separate class that is entitled to only one vote per share, or no voting rights at all. Use of a multi-class capital structure enables the holders of the high-vote stock to retain voting control of the company and to pursue strategies to maximize long-term stockholder value. Critics believe that a multi-class structure entrenches the holders of the high-vote stock, insulating them from takeover attempts and the will of public stockholders, and that the mismatch between voting power and economic interest may increase the possibility that the holders of the high-vote stock will pursue a riskier business strategy.

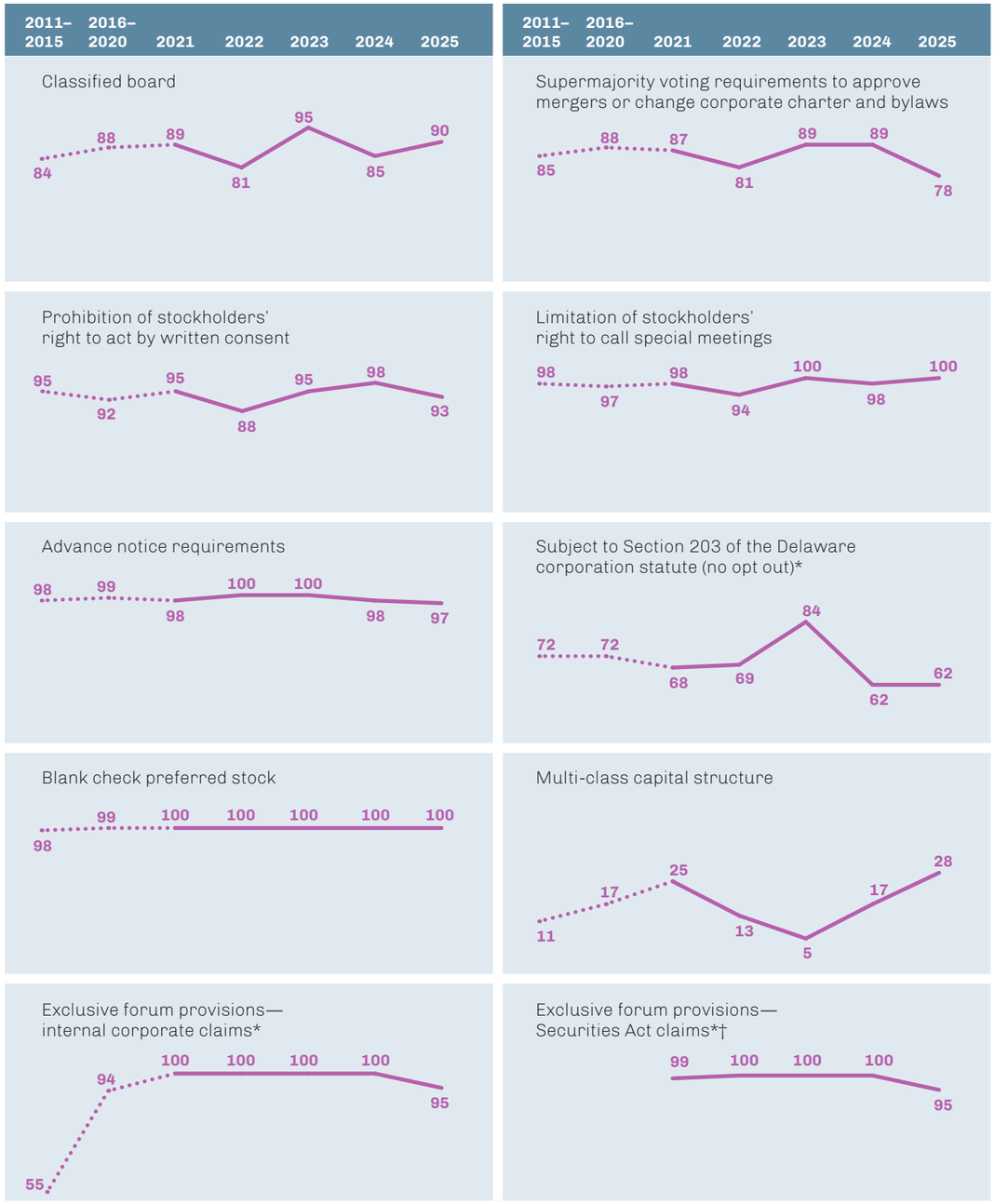
Exclusive Forum Provisions for Internal Corporate Claims

Exclusive forum provisions stipulate that the Court of Chancery of the State of Delaware is the exclusive forum in which internal corporate claims arising under Delaware state law may be brought by stockholders against the company. Proponents of these provisions are motivated by a desire to adjudicate such claims in a single jurisdiction that has a well-developed and predictable body of corporate case law and an experienced judiciary. Opponents argue that these provisions—which have been expressly authorized by the Delaware corporation statute since 2015—deny aggrieved stockholders the ability to bring litigation in a court or jurisdiction of their choosing.

Exclusive Forum Provisions for Securities Act Claims

Prior to 2020, in response to the growing trend of plaintiffs bringing federal securities law class-action lawsuits in state courts, a handful of IPO companies incorporated in Delaware adopted "federal forum" provisions requiring stockholders to sue in federal court, rather than state court, over alleged violations of the Securities Act of 1933. Adoption of federal forum provisions has soared on the heels of a 2020 Delaware Supreme Court decision confirming the validity of the technique. Federal forum provisions are intended to help a company avoid duplicative litigation filings and steer cases to federal courts more accustomed to hearing federal securities claims, while opponents argue that the provisions prevent stockholders from seeking recourse in state courts they may view as more receptive to their claims. ■

TRENDS IN TAKEOVER DEFENSES AMONG IPO COMPANIES



*Delaware corporations only
†2021–2025 only

Source: WilmerHale analysis of SEC filings from 2011 to 2025 for US issuer IPOs with gross proceeds of at least $50 million.

PREVALENCE OF TAKEOVER DEFENSES

	IPO COMPANIES, 2020-2025	ESTABLISHED PUBLIC COMPANIES, YEAR-END 2025	
		S&P 500	RUSSELL 3000
Classified board	88%	10%	36%
Supermajority voting requirements to approve mergers or change corporate charter and bylaws	86%	16% to 28%, depending on type of action	17% to 51%, depending on type of action
Prohibition on stockholders' right to act by written consent	95%	70%	75%
Limitation of stockholders' right to call special meetings	98%	22%	47%
Advance notice requirements	98%	97% to 99%, depending on type of action	93% to 96%, depending on type of action
Subject to Section 203 of the Delaware corporation statute (no opt out)*	67%	88%	79%
Blank check preferred stock	100%	93%	94%
Multi-class capital structure	23%	8%	9%
Exclusive forum provisions—internal corporate claims	99%*	58%**	63%**
Exclusive forum provisions—Securities Act claims†	99%	28%	37%

*Delaware corporations only
**Not limited to Delaware corporations
†2021–2025 only

Source: IPO company data is based on WilmerHale analysis of SEC filings from 2021 to 2025 for US issuer IPOs with gross proceeds of at least $50 million. Established public company data is from the Deal Point Data database at year-end 2025.

DIFFERENCES IN ANTI-TAKEOVER PRACTICES AMONG TYPES OF IPO COMPANIES

	ALL IPO COMPANIES	VC-BACKED COMPANIES	PE-BACKED COMPANIES	OTHER IPO COMPANIES
Classified board	88%	93%	87%	64%
Supermajority voting requirements to approve mergers or change corporate charter and bylaws	86%	92%	82%	64%
Prohibition of stockholders' right to act by written consent	95%	96%	96%	85%
Limitation of stockholders' right to call special meetings	98%	99%	99%	92%
Advance notice requirements	98%	99%	97%	95%
Subject to Section 203 of the Delaware corporation statute (no opt out)*	67%	93%	27%	39%
Blank check preferred stock	100%	100%	100%	100%
Multi-class capital structure	23%	25%	17%	24%
Exclusive forum provisions—internal corporate claims*	99%	100%	98%	97%
Exclusive forum provisions—Securities Act claims*†	99%	99%	98%	97%

*Delaware corporations only
†2021–2025 only

Source: WilmerHale analysis of SEC filings from 2021 to 2025 for US issuer IPOs with gross proceeds of at least $50 million.

Trends in VC-Backed Company M&A Deal Terms

We reviewed all merger transactions between 2021 and 2025 involving VC-backed targets (as reported in PitchBook) in which the merger documentation was publicly available and the deal value was $25 million or more. Based on this review, we have compiled the following deal data:[1]

Characteristics of Deals Reviewed		2021	2022	2023	2024	2025
The number of deals we reviewed and the type of consideration paid in each	Sample Size	45	22	15	17	17
	Cash	24%	41%	40%	53%	35%
	Stock	18%	5%	20%	12%	6%
	Cash and Stock	58%	54%	40%	35%	59%

Deals With Earnout		2021	2022	2023	2024	2025
Deals that provided contingent consideration based upon post-closing performance of the target, achievement of milestones by the target or other contingencies concerning the value of target (other than balance sheet adjustments)	With Earnout	42%	41%	27%	41%	47%
	Without Earnout	58%	59%	73%	59%	53%

Deals With Indemnification		2021	2022	2023	2024	2025
Deals where the target's shareholders or the buyer indemnified the other post-closing for breaches of representations, warranties and covenants	With Indemnification					
	By Target's Shareholders	76%[2]	86%	67%	65%[3]	53%
	By Buyer	29%	68%	47%	24%	24%

Deals With Representation and Warranty Insurance		2021	2022	2023	2024	2025
Deals that expressly contemplate representation and warranty insurance	With Representation and Warranty Insurance	47%	50%	33%	41%	65%

Survival of Representations and Warranties		2021	2022	2023	2024	2025
Length of time that representations and warranties survived the closing for indemnification purposes (subset: deals where representations and warranties survived the closing for indemnification purposes)[4]	Shortest	12 Mos.	12 Mos.	12 Mos.	12 Mos.	12 Mos.
	Longest	24 Mos.	24 Mos.	24 Mos.	18 Mos.	12 Mos.
	Most Frequent	12 Mos.	12 Mos.	12 & 18 Mos. (tie)	18 Mos.	12 Mos.

[1] For certain transactions, certain deal terms have been redacted from the publicly available documentation and are not reflected in the data compiled in this table.
[2] Excludes two transactions that do not provide for indemnification but permit setoff against contingent consideration.
[3] Excludes one transaction where representations do not survive closing, but seller is obligated to reimburse buyer for 50% of the damages buyer cannot recover due to the retention under its representation and warranty insurance.
[4] Measured for representations and warranties generally; specified representations and warranties may survive longer.

Caps on Indemnification Obligations		2021	2022	2023	2024	2025
Upper limits on indemnification obligations where representations and warranties survived the closing for indemnification purposes	With Cap	100%	100%	100%	100%	100%
	Limited to Escrow[5]	90%	78%	80%	80%	75%
	Limited to Purchase Price	0%	0%	0%	0%	0%
	Exceptions to Limits[6]	100%	89%	100%	100%	100%
	Without Cap	0%	0%	0%	0%	0%

Escrows		2021	2022	2023	2024	2025
Deals having escrows securing indemnification obligations of the target's shareholders (subset: deals with indemnification obligations of the target shareholders)	With Escrow	91%	89%	90%	73%	65%
	% of Deal Value					
	Lowest[7]	5%	7%	5%	7%	6%
	Highest	18%	15%	10%	10%	12%
	Most Frequent	10%	8%	6%	10%	10%
	Length of Time[8]					
	Shortest	12 Mos.	12 Mos.	12 Mos.	12 Mos.	12 Mos.
	Longest	36 Mos.	30 Mos.	24 Mos.	18 Mos.	36 Mos.
	Most Frequent	12 Mos.	12 Mos.	12 & 18 Mos.(tie)	18 Mos.	12 Mos.
	Exclusive Remedy	53%	73%	56%	75%	64%
	Exceptions to Escrow Limit Where Escrow Was Exclusive Remedy[6]	100%	91%	100%	100%	100%

Baskets for Indemnification		2021	2022	2023	2024	2025
Deals with indemnification only for amounts above a specified "deductible" or only after a specified "threshold" amount is reached	Deductible	71%[10]	53%[9]	80%	64%	71%
	Threshold	26%[10]	32%[9]	10%	36%	29%

MAE Closing Condition		2021	2022	2023	2024	2025
Deals with closing condition for the absence of a "material adverse effect" with respect to the other party, either explicitly or through representation brought down to closing	Condition in Favor of Buyer	97%	100%	91%	100%	88%
	Condition in Favor of Target	37%	29%	18%	40%	35%

Exceptions to MAE		2021	2022	2023	2024	2025
Deals where the definition of "material adverse effect" for the target contained specified exceptions	With Exception[11]	95%[12]	100%	100%	100%	100%

[5] Includes two transactions in 2021 and one transaction in 2023 where the limit was below the escrow amount.
[6] Generally, exceptions were for fraud, willful misrepresentation and certain "fundamental" representations commonly including capitalization, authority and validity. In a limited number of transactions, exceptions also included intellectual property representations.
[7] Excludes transactions that also specifically referred to representation and warranty insurance as recourse for the buyer.
[8] Length of time does not include transactions where such time period cannot be ascertained from publicly available documentation.
[9] A "hybrid" approach with both a deductible and a threshold was used in another 10% of these transactions in 2020 and 11% of these transactions in 2022.
[10] A 50/50 cost sharing approach was used in another 3% of these transactions in 2021.
[11] Generally, exceptions were for general economic and industry conditions.
[12] The only transaction(s) not including such exceptions provided for a closing on the same day the definitive agreement was signed.

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