

M&A CARVEOUT TRANSACTIONS DEAL POINTS STUDY

(FOR TRANSACTIONS ANNOUNCED FROM
JANUARY 1, 2015 THROUGH DECEMBER 31, 2016)

CARVEOUT

**A PROJECT OF THE MARKET TRENDS SUBCOMMITTEE
OF THE MERGERS AND ACQUISITIONS COMMITTEE**



M&A CARVEOUT TRANSACTIONS DEAL POINTS STUDY

A Project of the M&A Market Trends Subcommittee, Mergers & Acquisitions
Committee of the American Bar Association's Business Law Section

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New Orleans, LA

STUDY LEADERS

Katherine J. Baudistel

Sullivan & Cromwell LLP
Los Angeles, CA

Charlotte May

Covington & Burling LLP
Washington, D.C.

Tyler T. Rosenbaum

Sullivan & Cromwell LLP
Los Angeles, CA

Carveout Transactions Study Working Group (cont'd)

ISSUE AND REVIEW LEADERS

Karen A. Abesamis

Morgan, Lewis & Bockius LLP
Palo Alto, CA

June S. Dipchand

Skadden, Arps, Slate, Meagher & Flom LLP
New York, NY

Jeffrey J. Koh

Barack, Ferrazzano, Kirschbaum & Nagelberg LLP
Chicago, IL

Neal J. Reenan

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Christopher Torrente

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Proskauer Rose LLP
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Michael A. Woronoff

Proskauer Rose LLP
Los Angeles, CA

Ian N. Bushner

Kirkland & Ellis LLP
Chicago, IL

Scott D. Karchmer

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San Francisco, CA

Anshu S. K. Pasricha

Koley Jessen P.C., L.L.O.
Omaha, NE

Allison B. Schiffman

Covington & Burling LLP
New York, NY

Marko S. Zatylny

Ropes & Gray LLP
Boston, MA

Catherine J. Dargan

Covington & Burling LLP
Washington, DC

Alex S. Kaufman

Morrison & Foerster LLP
Palo Alto, CA

Jason Rabbitt-Tomita

White & Case LLP
Palo Alto, CA

Ann Beth Stebbins

Skadden, Arps, Slate, Meagher & Flom LLP
New York, NY

Carveout Transactions Study Working Group (cont'd)

ISSUE TEAM MEMBERS

Gesta Abols

Goodmans LLP
Toronto, ON

Michael Andreasen

Burns & Levinson LLP
Boston, MA

Aaron J. Atkinson

Fasken Martineau
DuMoulin LLP
Toronto, ON

Brett Barocas

Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Samuel W. Beavers

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Columbus, OH

Roger W. Bivans

Baker McKenzie
Dallas, TX

James J. Black

Morrison & Foerster LLP
Washington, DC

Jonathan Bliley

Williams Mullen
Richmond, VA

Jonathan Browalski

Covington & Burling LLP
New York, NY

Ciarra A. Chavarria

Lawyers Alliance
for New York
New York, NY

Calvin Cheng

White & Case LLP
Palo Alto, CA

Timothy J. Clark

Akin Gump Strauss
Hauer & Feld LLP
New York, NY

David D'Urso

Akin Gump Strauss
Hauer & Feld LLP
New York, NY

Janice Z. Davis

Bracewell LLP
Dallas, TX

Paul D. Davis

McMillan LLP
Toronto, ON

Monica A. DeBosscher

Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Lyuba Docheva

Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Barbara R.C. Doherty

Miller Thomson LLP
Toronto, ON

Michael A. Ellis

Buckingham, Doolittle &
Burroughs, LLC
Cleveland, OH

Jonathan Farrokhnia

Baker McKenzie
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George M. Flint, III

Parsons Behle & Latimer
Salt Lake City, UT

Matthew Flower

Taylor English Duma
LLP
Atlanta, GA

Andrew J. Fruit

MEDNAX Services, Inc.
Sunrise, FL

Joseph Gangitano

Covington & Burling LLP
New York, NY

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FisherBroyles, LLP
Atlanta, GA

Mat Goldstein

Dentons
Toronto, ON

Heiko Gruenwald

Smith, Gambrell &
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Atlanta, GA

Kenneth T. Hagan

Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Brad Hamilton

Jones & Keller, P.C.
Denver, CO

Curtis R. Hearn

Jones Walker LLP
New Orleans, LA

Matthew Herman

Freshfields Bruckhaus
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New York, NY

Max S. Heuer

Covington & Burling LLP
New York, NY

Christopher T. Hines

Shearman & Sterling
LLP
San Francisco, CA

Kevin J. Howley

Reinhart Boerner Van
Deuren s.c.
Milwaukee, WI

Christopher R. Johnson

Jones & Keller, P.C.
Denver, CO

Michael Ju

Citibank
New York, NY

Matthew R. Kittay

Fox Rothschild LLP
New York, NY

Adam R. Konrad

Reinhart Boerner Van
Deuren s.c.
Milwaukee, WI

Martin E. Kovnats

Aird & Berlis LLP
Toronto, ON

Alexander Lalka

Miller Thomson LLP
Toronto, ON

Ben Land-Maycock

Covington & Burling LLP
London, UK

Jonathan Lee

Proskauer Rose LLP
Los Angeles, CA

Carveout Transactions Study Working Group (cont'd)

ISSUE TEAM MEMBERS (continued)

Richard Li
Covington & Burling LLP
Shanghai, China

Matthew V. Liberatore
Aird & Berlis LLP
Toronto, ON

Andrew Magnus
Aird & Berlis LLP
Toronto, ON

Jeffrey K. Merk
Aird & Berlis LLP
Toronto, ON

J. Brook Mestre
Baker McKenzie
Dallas, TX

Kade D. Miller
Snell & Wilmer L.L.P.
Las Vegas, NV

Ian Murray
Covington & Burling
Washington, DC

Kathleen A. Negri
Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Benjamin R. Newland
Newland Ventures LLC
New York, NY

Alison Newman
Fox Rothschild LLP
New York, NY

Andrew D. Patterson
Davis Wright
Tremaine LLP
San Francisco, CA

Perry S. Patterson
Buchanan Ingersoll &
Rooney PC
Pittsburgh, PA

Michael C. Phillips
Davis Wright Tremaine
LLP
Portland, OR

Julie Plyler
Covington & Burling LLP
New York, NY

Louann Fang Richard
Baker McKenzie
Dallas, TX

Michael J. Riella
Covington & Burling LLP
Washington, DC

Cameron Rusaw
Davies Ward Phillips &
Vineberg LLP
Toronto, ON

**Jessica Sabbah-
Mani**
Proskauer Rose LLP
Los Angeles, CA

Guillaume Saliah
Fasken Martineau
DuMoulin LLP
Montreal, QC

Comran E. Sharif
Koley Jessen P.C., L.L.O.
Omaha, NE

Shannon E. Sibold
Morrison & Foerster LLP
Palo Alto, CA

Marissa A. Smith
Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Edward Thiele
Barack, Ferrazzano,
Kirschbaum &
Nagelberg LLP
Chicago, IL

**Patrick R.
Tomlinson**
Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Stella Unruh
Kirkland & Ellis LLP
San Francisco, CA

Niko Veilleux
Osler, Hoskin & Harcourt
LLP
Montreal, QC

Josef B. Volman
Burns & Levinson LLP
Boston, MA

Dustin J. Vrabel
Buckingham, Doolittle &
Burroughs, LLC
Canton, OH

**Jennifer R.M.C.
Watson**
Masuda, Funai, Eifert &
Mitchell, Ltd.
Chicago, IL

J.D. Weinberg
Covington & Burling
LLP
New York, NY

Nigel Wheeler
Bracewell LLP
Dallas, TX

Van Whiting
Proskauer Rose LLP
Los Angeles, CA

Jeremy A. Winter
Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Thomas M. Worthington
McGrath North
Omaha, NE

Clark L. Xue
Skadden, Arps, Slate,
Meagher & Flom LLP
New York, NY

Girmay H. Zahilay
Perkins Coie
Seattle, WA

Carveout Transactions Study Working Group (cont'd)

REVIEW TEAM MEMBERS

Paul W. Anderson

Kirkland & Ellis LLP
Chicago, IL

Jane Ledlie Batcheller

WestRock Company
Atlanta, GA

Caroline E. Belloff

Kirkland & Ellis LLP
Chicago, IL

Adam T. Clifford

Kirkland & Ellis LLP
Chicago, IL

Christopher R. Elder

Kirkland & Ellis LLP
Chicago, IL

Jane D. Goldstein

Ropes & Gray LLP
Boston, MA

Daniel A. Guerin

Kirkland & Ellis LLP
Chicago, IL

Eric J. Hall

Hill Ward Henderson
Tampa, FL

L. Taylor Hall

Greensfelder, Hemker &
Gale, P.C.
St. Louis, MO

Dylan Hanson

Kirkland & Ellis LLP
New York, NY

Debra Hatter

Strasburger & Price, LLP
Houston, TX

Joel J. Hughey

Sutherland, Asbill &
Brennan LLP
Atlanta, GA

Vartika Jain

Sullivan & Cromwell LLP
Palo Alto, CA

Claire E. James

Kirkland & Ellis LLP
New York, NY

Robert J. Johannes

Michael Best &
Friedrich LLP
Milwaukee, WI

Richard Kohlberger

Finn Dixon &
Herling LLP
Stamford, CT

Zachary B. Lainer

Sullivan & Cromwell LLP
Los Angeles, CA

Edouard C. LeFevre

Mintz, Levin, Cohen,
Ferris, Glovsky and
Popeo, P.C.
Boston, MA

Helen Lu

Sullivan & Cromwell LLP
Palo Alto, CA

Andrew Lumsden

Corrs Chambers
Westgarth
Sydney, Australia

Kelly N. Meric

Sullivan & Cromwell LLP
Los Angeles, CA

Christopher R. Moore

Hogan Lovells US LLP
Menlo Park, CA

Bradley A. Newby

Farris, Vaughan, Wills &
Murphy LLP
Vancouver, BC

Shanita Nicholas

Stubbs, Alderton &
Markiles, LLP
Los Angeles, CA

Matthew H. O'Brien

Kirkland & Ellis LLP
Chicago, IL

Rajnish Puri

Atkinson, Andelson,
Loya, Ruud & Romo P.C.
Los Angeles, CA

Rolon A. Reed, III

MetLife, Inc.
New York, NY

Andrew S. Rogers

Smithline P.C.
San Francisco, CA

Felicity Saxon

Corrs Chambers
Westgarth
Sydney, Australia

James J. Scheinkman

Snell & Wilmer L.L.P.
Costa Mesa, CA

Gabriel J. Shapiro

Hogan Lovells US LLP
Menlo Park, CA

Rose B. Sorensen

Norton Rose Fulbright
US LLP
Los Angeles, CA

Paul M. Spizzirri

Spizzirri Law Offices
Company Limited
Atlanta, GA

Karen M. Suber

Vision Venture Partners
Los Angeles, CA

Christopher M. Thomas

Kirkland & Ellis LLP
Chicago, IL

Brian R. Umanoff

Sullivan & Cromwell LLP
Los Angeles, CA

Brandon Vongsawad

Kirkland & Ellis LLP
Los Angeles, CA

Paul Wehrmann

FisherBroyles, LLP
Dallas, TX

Peter J. Wu

Gibson, Dunn &
Crutcher LLP
New York, NY

Emily A. Yi

Sullivan & Cromwell LLP
Los Angeles, CA

Carveout Transactions Study Working Group (cont'd)

SPECIALIST ISSUE LEADERS

Arlene A. Hahn

White & Case LLP
New York, NY

Jeffrey Yi

White & Case LLP
Palo Alto, CA

Anne Kim

Proskauer Rose LLP
Los Angeles, CA

SPECIALIST ISSUE TEAM MEMBERS

John C. Connery, Jr.

Hill Ward Henderson
Tampa, FL

Leslie E. DuPuy

Morgan, Lewis &
Bockius LLP
San Francisco, CA

Brandon C. Freeman

Facebook Inc.
New York, NY

Gregory R. Gautam

Snell & Wilmer LLP
Phoenix, AZ

Michael P. Hogan

Sullivan & Cromwell LLP
New York, NY

Serena Hsieh

White & Case LLP
New York, NY

Bowon Koh

Proskauer Rose LLP
New York, NY

Nader A. Mousavi

Sullivan & Cromwell LLP
Palo Alto, CA

Douglas S. Neville

Greensfelder, Hemker
& Gale, P.C.
St. Louis, MO

Justin R. Orr

Sullivan & Cromwell, LLP
New York, NY

Janicelynn A. Park

Proskauer Rose LLP
New York, NY

Jonathan M. Rhein

Sullivan & Cromwell, LLP
New York, NY

Neeraj K. Shah

White & Case LLP
New York, NY

Ajita Shukla

White & Case LLP
Washington, DC

DeVoia N. Stewart

White & Case LLP
New York, NY

Davis J. Wang

Sullivan & Cromwell LLP
New York, NY

P. Prestin Weidner

Hill Ward Henderson
Tampa, FL

RuiHui (Rachel) Yu

Sullivan & Cromwell LLP
New York, NY

Carveout Transactions Study Working Group (cont'd)

IN-HOUSE ADVISORS

Wesley F. Hoag

Nationwide
Columbus, OH

Andrew J. Hubley

Bloomberg BNA
Arlington, VA

Michele A. Kulerman

AR Global
New York, NY

John Rehberg

NXP Semiconductors
(Retired)

Christopher P. Rosa

Sabre Corporation
Southlake, TX

Aram Sethian

QUAD Capital
New York, NY

Diana C. Toman

Compass Minerals
Overland Park, KS

Isabella Wezdecki

Johnson & Johnson
New Brunswick, NJ

DISCLAIMER

Findings presented in this M&A Carveout Transactions Deal Points Study (this “Study”) do not necessarily reflect the personal views of the Working Group members or the views of their respective firms. In addition, the acquisition agreement provisions that form the basis of this Study are drafted in many **different ways and do not always fit precisely into particular “data point” categories.** Therefore, the Working Group members have had to make various judgment calls regarding, for example, how to categorize the nature or effect of particular provisions.

As a result, the conclusions presented in this Study may be subject to important qualifications that are not expressly articulated in this Study.

Furthermore, the results of this Study may not be reflective of data in all carveout transactions because **the sample of agreements studied only includes those agreements that are considered “material” to the Buyer or the Seller** as other agreements would not have been publicly filed. Notably, this may exclude sizable dispositions by very large Sellers if the transactions are not large enough to be considered material to that Seller. In addition, the sample set excludes carveout transactions by private equity Buyers.

With respect to some data points, the sample size may be too small to reach meaningful conclusions about market trends. Nevertheless, some of these data points have been included in this Study because the information may still be of interest to practitioners.

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STUDY OVERVIEW

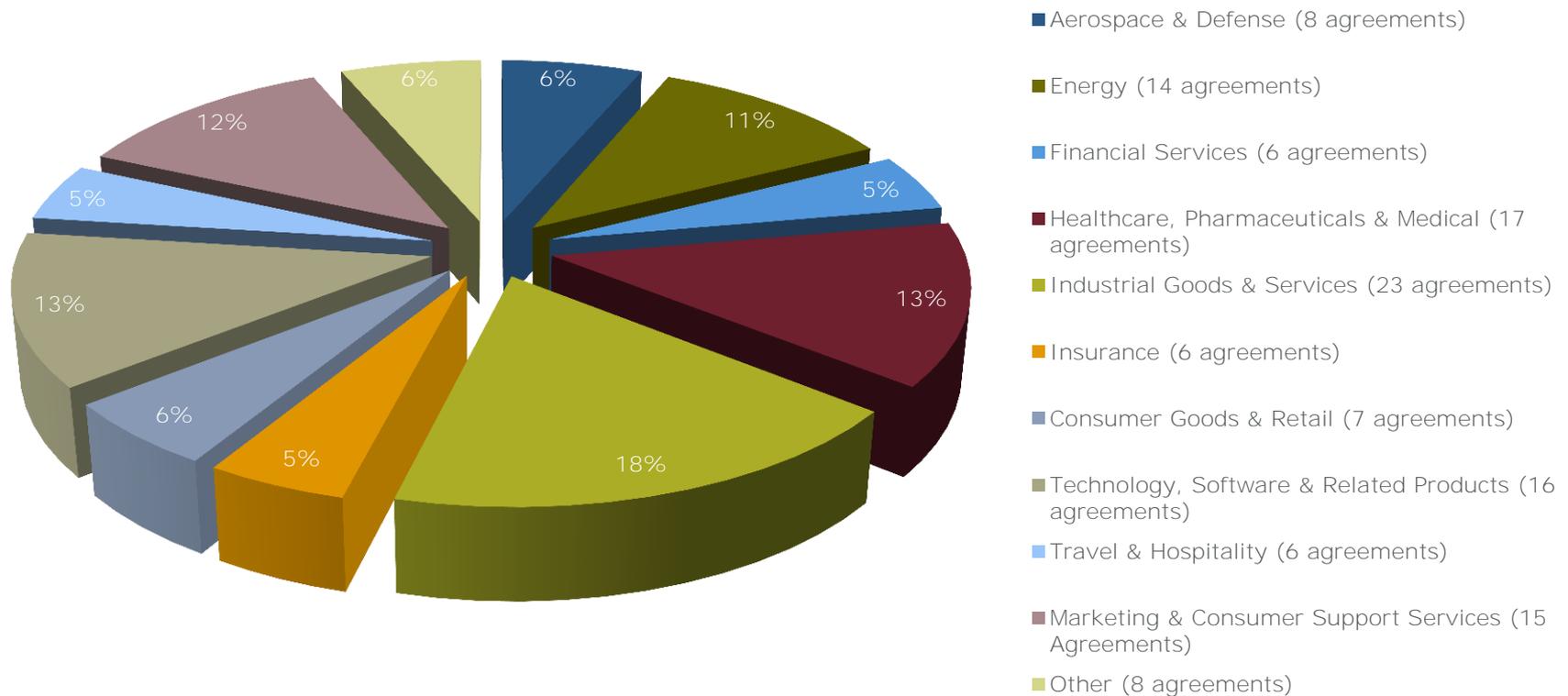
Carveout Transactions Study Sample

- This Study analyzes 126 carveout sale transactions that were announced from January 1, 2015 through December 31, 2016.
- A carveout transaction is a sale of a business line, division or portion of a larger company. By their nature, carveout transactions combine many aspects of public company and private company M&A and also raise their own set of unique issues.
- The sample set of transactions included in this Study was created by identifying all of the carveout transactions filed on EDGAR during the specified time period and by refining the sample set to include transactions meeting the following criteria:
 - The ultimate parent of the Seller is a public company formed in the United States
 - The Seller was not in apparent financial distress at the time of announcement of the transaction
 - The transaction value (excluding potential earnout payments and any other contingent consideration) was in excess of \$10 million
 - The Seller did not retain any equity interest in the business sold
- In addition, the sample set excludes seven agreements that expressly contemplate that the Seller will obtain stockholder approval before consummating the transaction. These agreements are more comparable to public company deals and were excluded so that they would not skew the results of this Study.

Transaction Value Range	Number of Transactions	Transaction Structure			
		Asset Purchase	Equity Purchase	Combination	Merger
\$10M - \$10B	126	28	72	25	1

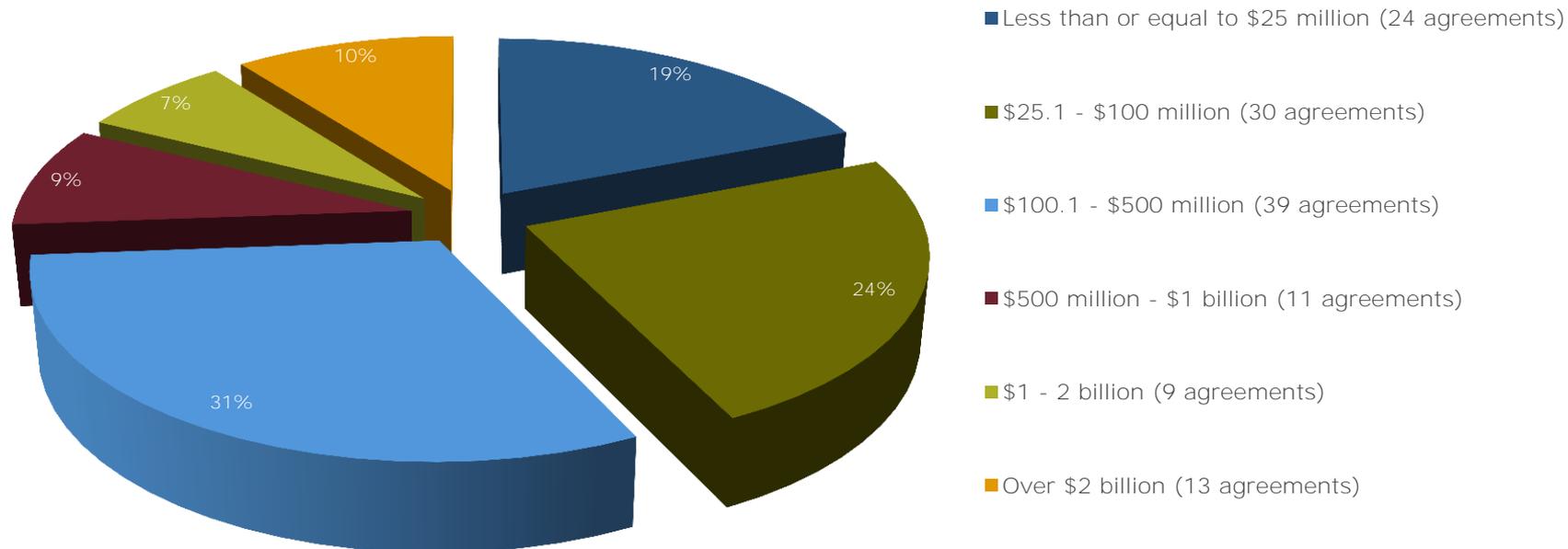
- Note that, due to rounding, not all percentages in this Study will add to 100%.

Carveout Transactions Study Sample (by Industry*)



* Industry of business carved out in the transaction. The industry was determined by reviewing, as applicable, the press release relating to the relevant transaction, the Seller's SIC code and public filings of the Seller describing its business.

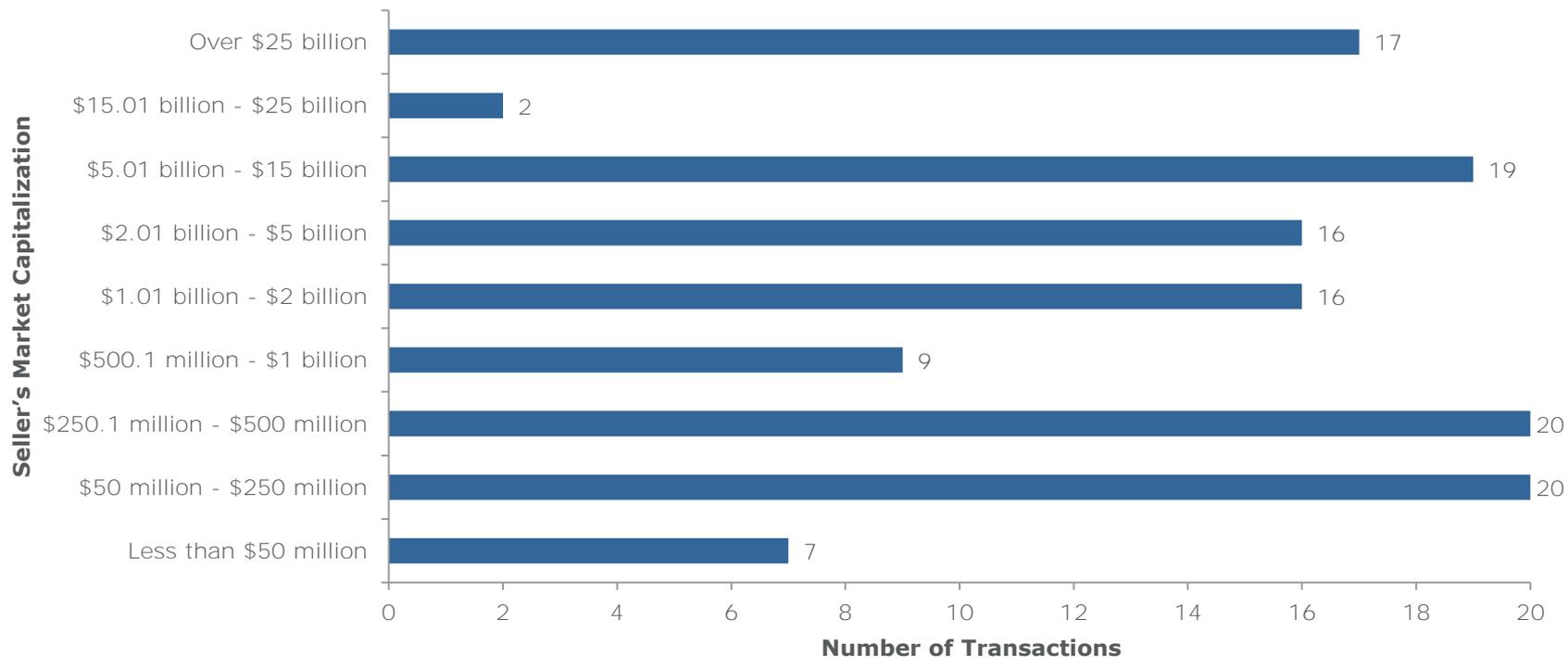
Carveout Transactions Study Sample (by Transaction Value*)



* Excludes potential earnout consideration and other contingent consideration.

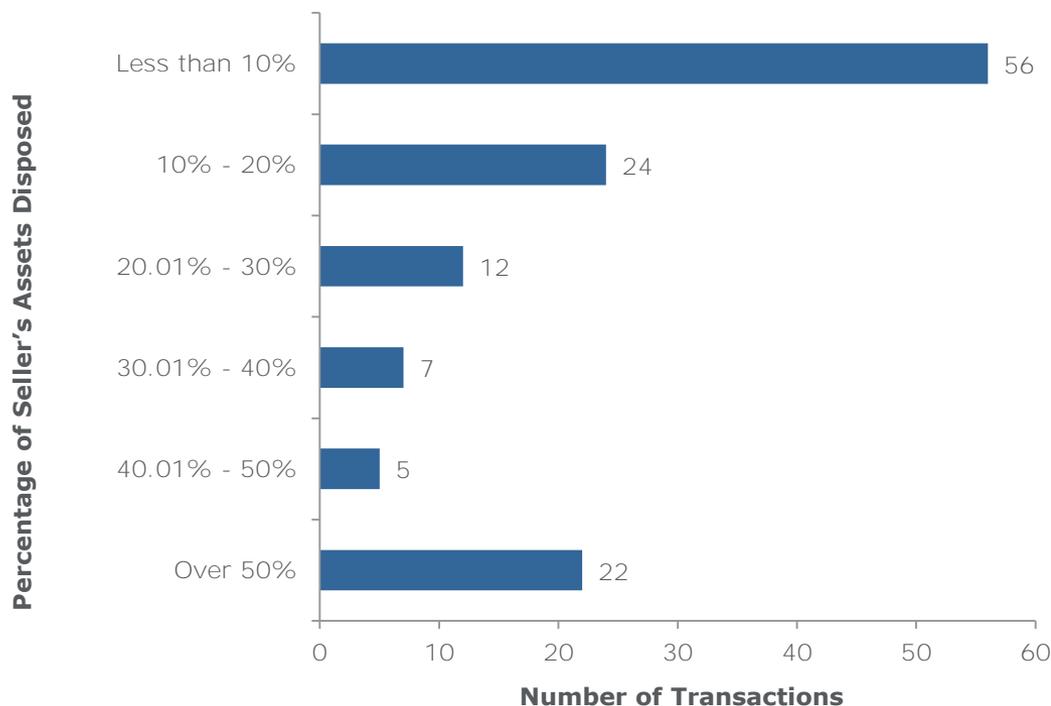
For the sample, the average transaction value is \$770.5 million and the median transaction value is \$147 million. Excluding the transactions valued at \$10 billion, \$9 billion and \$7.4 billion, the average transaction value is \$576.2 million.

Seller's Market Capitalization*



* The Seller's market capitalization was calculated by multiplying (x) the Seller's closing stock price as of the last date of the most recent quarter prior to signing of the agreement by (y) the number of shares of the Seller's stock outstanding as of such date. In instances where this information was unavailable, the Seller's market capitalization was obtained from the Seller's market value as disclosed in the Seller's most recent periodic report filed with the Securities and Exchange Commission ("SEC") prior to the signing of the agreement.

Transaction Value* as Percentage of Seller's Market Capitalization**



* Transaction value excludes potential earnout consideration and other contingent consideration.

** The Seller's market capitalization was calculated by multiplying (x) the Seller's closing stock price as of the last date of the most recent quarter prior to signing of the agreement by (y) the number of shares of the Seller's stock outstanding as of such date. In instances where this information was unavailable, the Seller's market capitalization was obtained from the Seller's market value as disclosed in the Seller's most recent periodic report filed with the SEC prior to the signing of the agreement.

Practice Pointer:

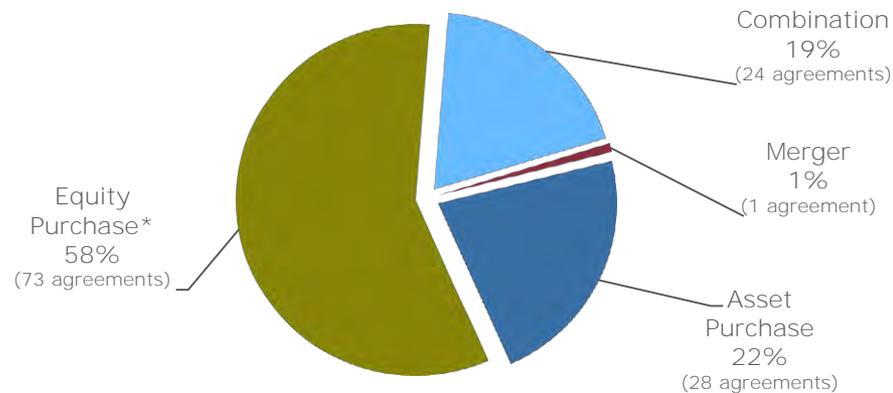
Under many states' corporate statutes (including New York and Delaware), stockholders are required to approve the sale of "all or substantially all" of a corporation's assets. Although the applicable standard varies from state to state, courts generally undertake a qualitative and quantitative analysis as to whether a transaction (or series of transactions) constitutes a sale of "all or substantially all" of the assets. One factor courts consider is the percentage of assets disposed of in the transaction or transactions, but it is not dispositive. Other factors include whether the company (i) retains other significant and valuable assets; (ii) has a clear history of obtaining profits from the assets it retains; (iii) expects profit from those assets in the future; and (iv) remains economically viable after the sale. In addition, courts consider whether the disposition of assets fundamentally changes the purpose of the corporation.

Assuming stockholder approval is not required in a carveout transaction, the Buyer should consider strengthening the Seller's representations to that effect. For example, the Corporate Authority representation can be drafted to provide: **"All requisite corporate action (including a stockholder vote if applicable) has been taken for the execution, delivery and performance of this Agreement and the transactions contemplated hereby."** Alternatively, consider including a stand-alone representation such as the following: **"No vote of the holders of Seller common stock is required to authorize the transactions contemplated by this Agreement."** The Buyer could also consider requiring a legal opinion confirming that stockholder approval is not required from its own or the Seller's counsel.

TRANSACTION STRUCTURE

Structure

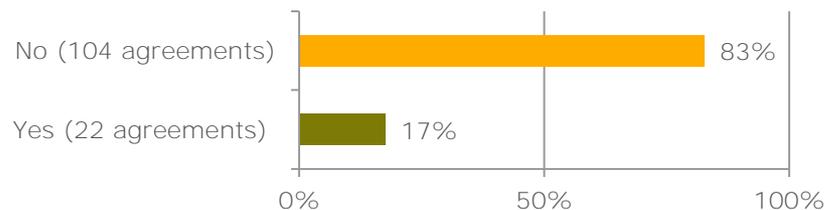
Structure of the Transaction



* One agreement included as an equity purchase contains an asset purchase component, but is excluded from the subset "involving an asset purchase" because it is not primarily an asset purchase and does not contain the common features of an asset purchase.

Ten agreements that involve an equity purchase expressly provide for a pre-closing reorganization whereby assets of the carved-out business are contributed to a subsidiary of the Seller that is acquired by the Buyer.

Simultaneous Sign/Close**



** Some simultaneous sign and close agreements include attributes that are typical for agreements that do not contain a simultaneous sign and close (e.g., closing conditions and termination provisions). Therefore, throughout this Study we have included agreements with a simultaneous sign and close structure in subsets where these agreements contain the applicable features being analyzed.

Practice Pointer:

41% of the agreements (52 agreements) are structured as an asset purchase or combination of asset and equity purchase. Certain logistical issues arise when transactions are structured to include an asset purchase.

These logistical issues may include:

(i) commingled contracts (contracts of the Seller that cover both the carved-out business being sold and other businesses that will be retained by the Seller after completion of the carveout); (ii) third party consents may be necessary to assign contracts; (iii) the Seller's books and records are frequently maintained on a consolidated basis, thus making it difficult to transfer separate records for the carved-out business being sold; (iv) additional documents are often required in order to effectuate an asset transfer such as bills of sale, assignment and assumption agreements and other legal documents that may be required to be delivered and/or filed in order to effect and/or record transfers of certain assets, such as real property or intellectual property; and (v) the need to create, and in some cases license to, legal entities to receive the assets (which may require significant time and effort in some foreign jurisdictions).

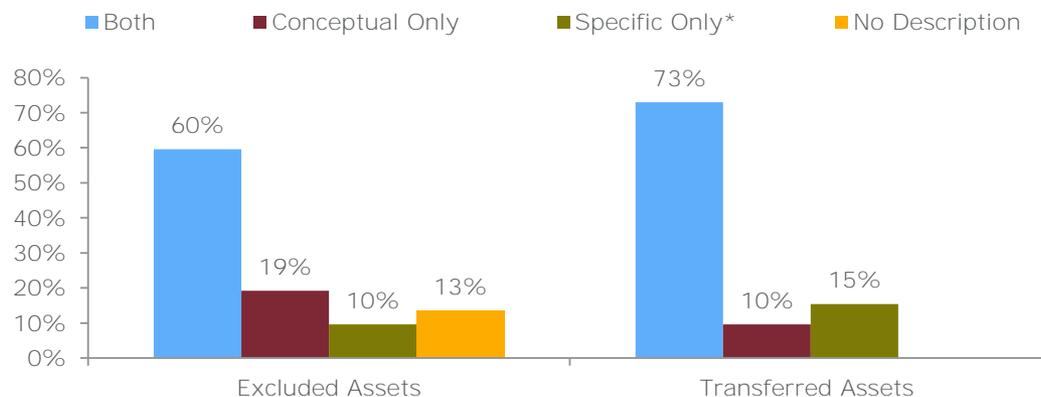
Transferred Assets in Asset Purchases

Practice Pointer:

A key aspect of structuring a carveout as an asset purchase or with an asset purchase component is identifying the specific assets to be transferred and the liabilities to be assumed. As a Buyer, it is critical to ensure that any assets that may be necessary or important to operating the carved-out business will be purchased in connection with the transaction. For this reason, many buy-side drafters prefer to include a defined term for the "Business" (i.e., the carved-out business) to be transferred together with a catch-all provision that conceptually picks up all assets related to, used in or necessary to the operation of the Business (see next page for a breakdown of the standards used to define conceptually described transferred assets). If instead almost all of the assets used in the Business are owned by one or more subsidiaries of the Seller, and those subsidiaries hold few assets unrelated to the Business, the parties may prefer to structure the carveout as a stock purchase of the equity interests in those subsidiaries coupled with a pre-closing reorganization to transfer any assets used in the Business but not already held by those subsidiaries into those subsidiaries, and to transfer any assets not used in the Business but held by those subsidiaries back to the Seller.

Description of Excluded and Transferred Assets: Conceptual or Specific

(subset: 52 agreements involving asset purchases)



* Ten agreements describe transferred assets in a schedule, and five agreements describe excluded assets in a schedule. When assets are described in a schedule not filed with the agreement, we assume the assets are described with specificity.

Practice Pointer:

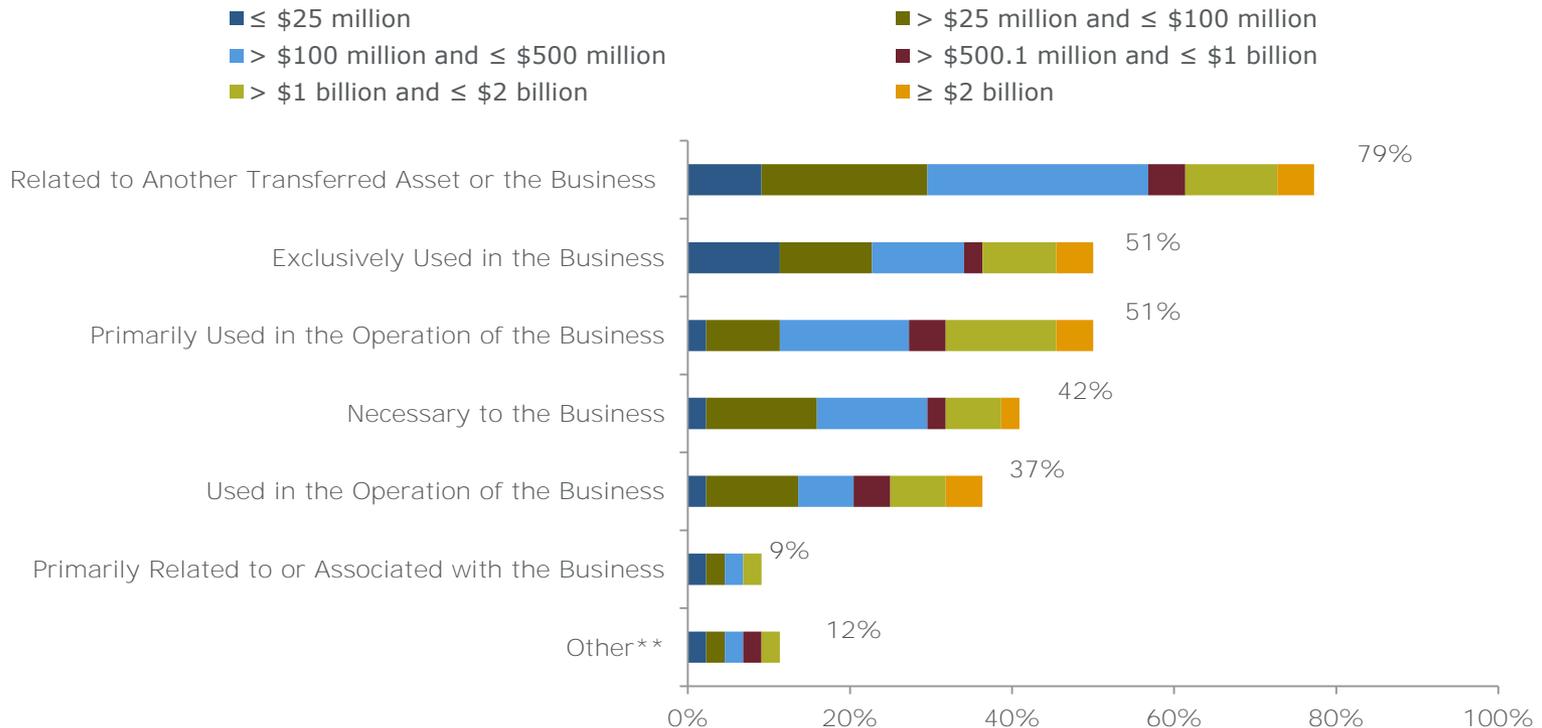
Identifying the Business to be transferred is the first step in deciding exactly which assets should be transferred. An agreement may list and/or describe specific assets for purchase in an attached schedule. However, this may be impractical or tedious and creates the risk that an asset related to the Business will be omitted.

Alternatively, the parties may agree to describe the assets to be purchased conceptually, as discussed on the next page. In such cases, flexible definitions ensure the intended assets will be included in the purchase agreement. However, the added flexibility leaves room for debate as to whether a specific asset is included in the conceptual definition or should remain with the Seller.

Transferred Assets in Asset Purchases (cont'd)

Standards Used to Define Conceptually Described Transferred Assets by Transaction Size

(subset: 44 agreements involving asset purchases in which transferred assets are described conceptually)*



* 36 agreements contain more than one standard.

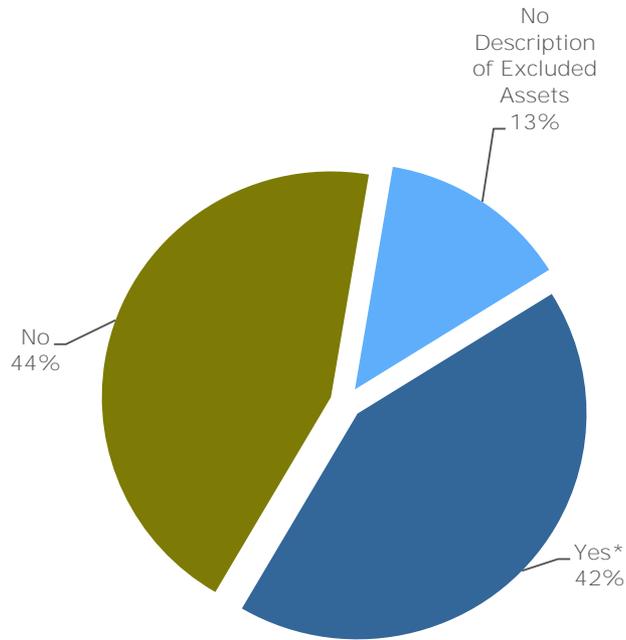
** "Other" includes:

- Located on any of the properties or other assets or primarily used in connection therewith. (1 agreement)
- Appurtenant to, or used or held for use primarily in connection with the ownership or operation of any of the properties or other assets. (1 agreement)
- Associated with an asset (goodwill). (1 agreement)
- Arising out of specified contracts (accounts receivables, prepaid assets, security deposits, other rights). (2 agreements)

Transferred Assets in Asset Purchases (cont'd)

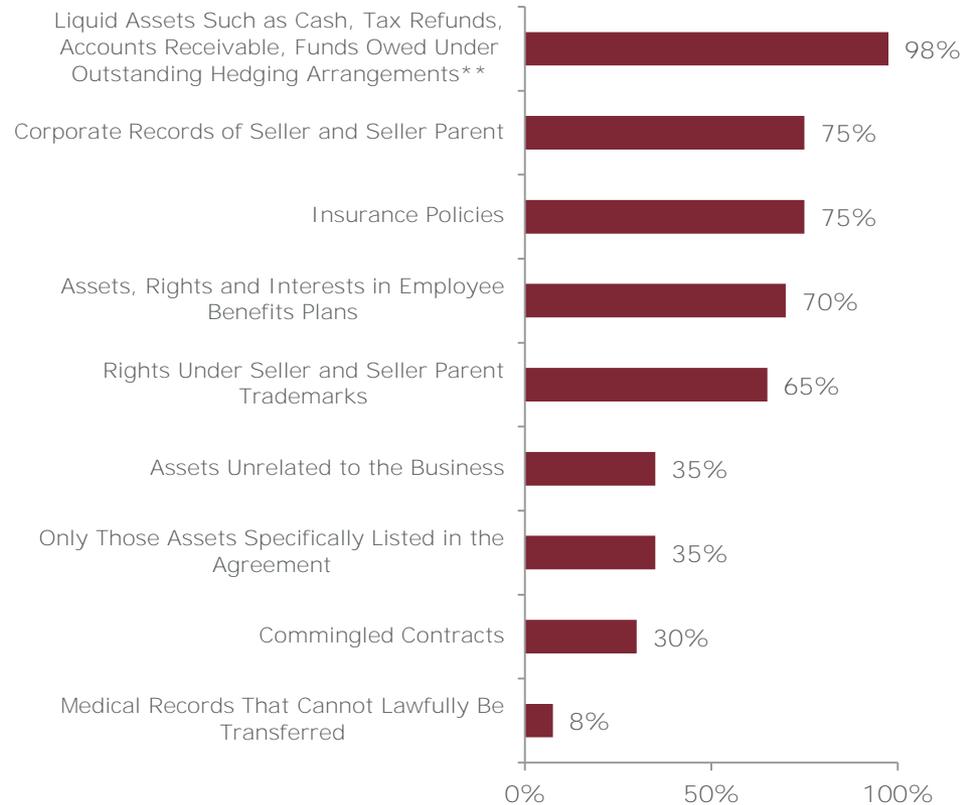
Description of Excluded Assets Includes "All Assets That Are Not Transferred Assets"

(subset: 52 agreements involving asset purchases)



Standards Used to Define Excluded Assets When Described Conceptually

(subset: 40 agreements involving asset purchases in which excluded assets are described conceptually)



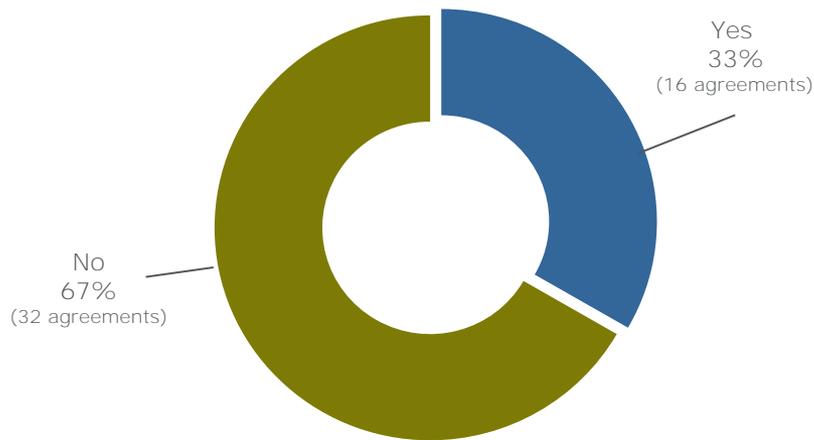
* Includes five agreements in which excluded assets are described in a schedule not filed with the agreement.

** Includes agreements in which only certain types of liquid assets are excluded.

Assumed Liabilities in Asset Purchases

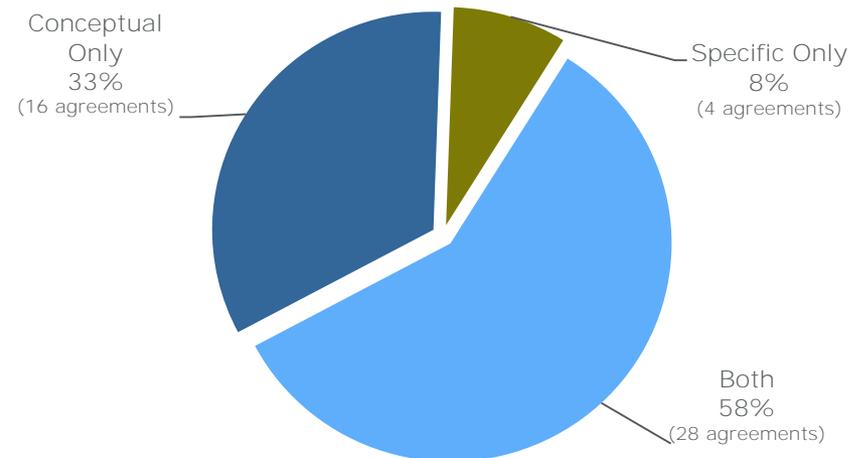
Inclusion of "All Liabilities That Are Not Excluded Liabilities" in the Description of Assumed Liabilities

(subset: 48 agreements involving asset purchases in which any liabilities are assumed)*



Description of Assumed Liabilities: Conceptual or Specific

(subset: 48 agreements involving asset purchases in which any liabilities are assumed)*



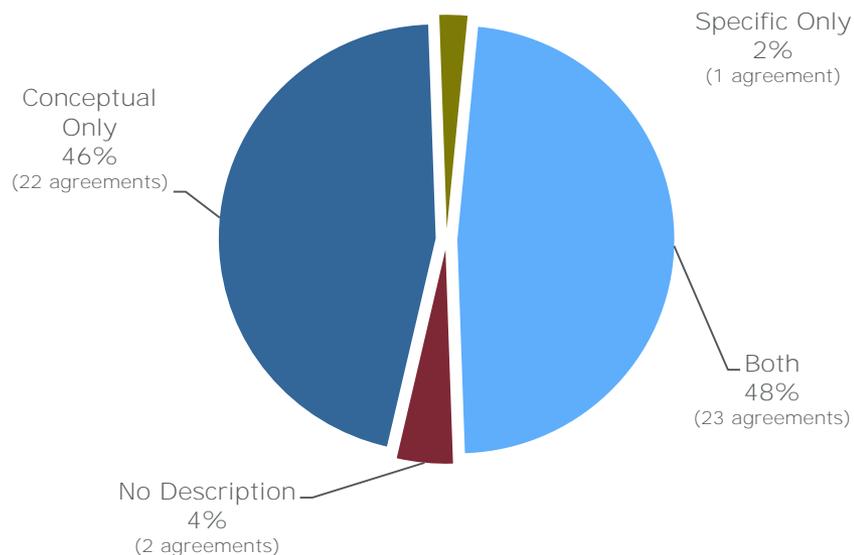
Of the 52 agreements involving asset purchases, all but four contemplate or expressly state that the Buyer will assume liabilities. Of the four that do not provide for the assumption of liabilities, two agreements are structured as an asset sale in which the only assets being sold are real property of the Seller and the other two agreements are structured as a combination of asset and equity purchase in which only limited assets are being sold.

* For the four agreements in which assumed liabilities are described in a schedule not filed with the agreement, we assume the liabilities are described with specificity.

Excluded Liabilities in Asset Purchases

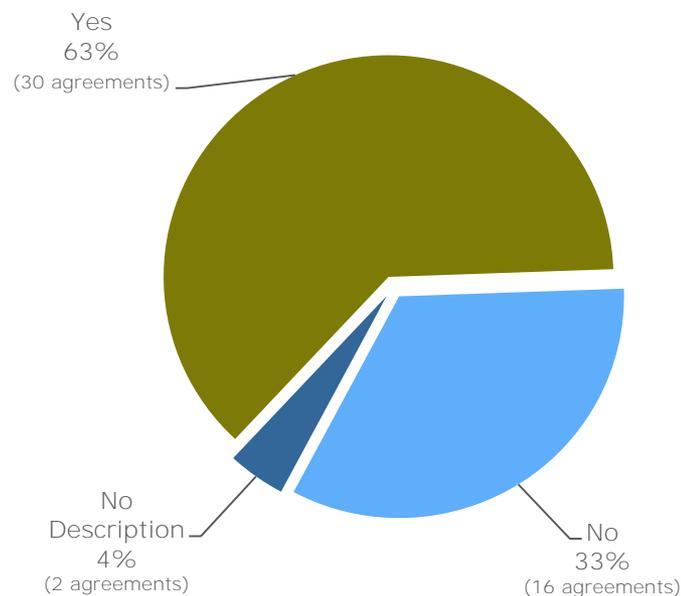
Description of Excluded Liabilities: Conceptual or Specific

(subset: 48 agreements involving asset purchases in which any liabilities are assumed)*



Description of Excluded Liabilities Includes "All Liabilities That Are Not Assumed Liabilities"

(subset: 48 agreements involving asset purchases in which any liabilities are assumed)*

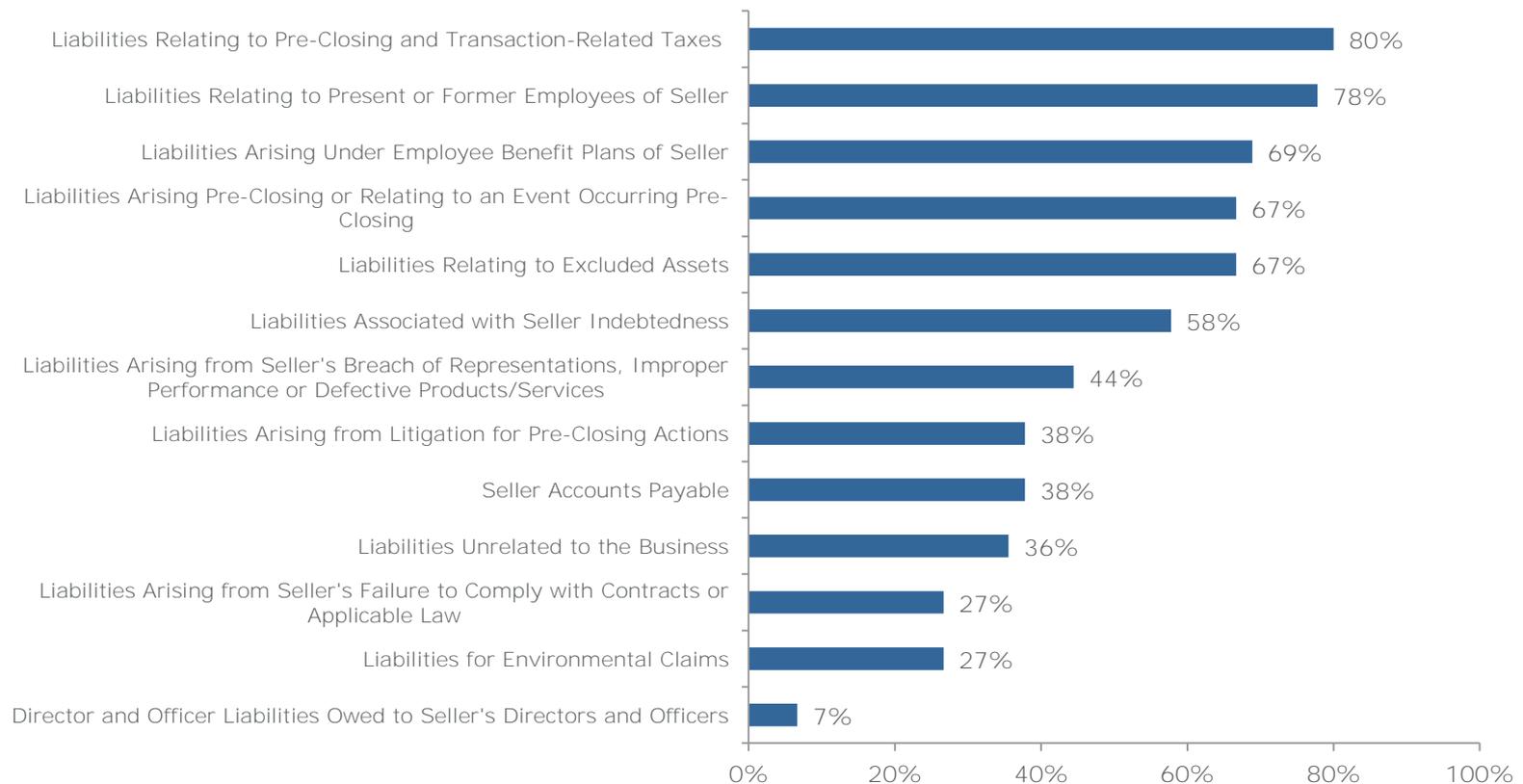


* For the one agreement in which excluded liabilities are described in a schedule not filed with the agreement, we assume the liabilities are described with specificity and do not include "all liabilities that are assumed liabilities" in the description.

Excluded Liabilities in Asset Purchases (cont'd)

Standards Used to Define Conceptually Described Excluded Liabilities

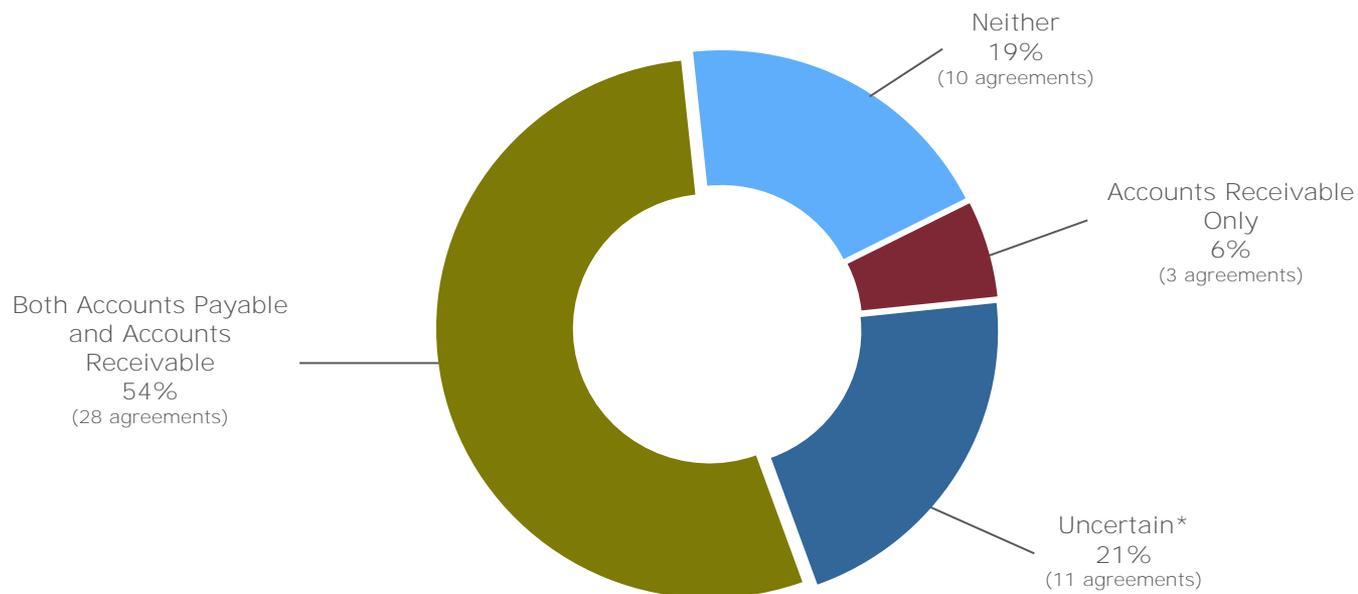
(subset: 45 agreements involving asset purchases in which excluded liabilities are described conceptually)



Transfer of Accounts Receivable & Accounts Payable

Inclusion of Accounts Receivable as a Transferred Asset and/or Accounts Payable as an Assumed Liability

(subset: 52 agreements involving asset purchases)



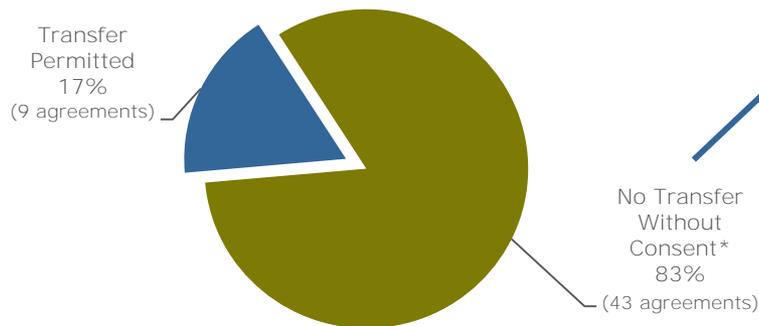
* Insufficient public data to determine. Includes:

- Uncertain regarding accounts payable and accounts receivable. (7 agreements)
- Transfer of accounts receivable, but uncertain regarding accounts payable. (2 agreements)
- No transfer of accounts receivable, but uncertain regarding accounts payable. (2 agreements)

Transfer of Assets & Liabilities – Third Party Consents

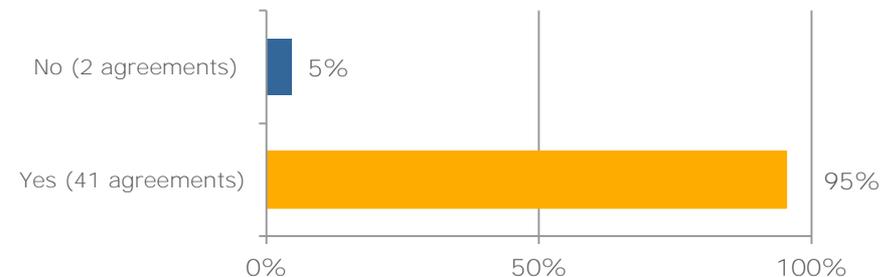
Transfer of Assets/Liabilities Prior to Receipt of Third Party Consent

(subset: 52 agreements involving asset purchases)



Seller Required to Give Contract Benefits To Buyer Pending Receipt of Third Party Consent

(subset: 43 agreements involving asset purchases in which third party consent is required prior to transfer)



* Includes one agreement in which the Buyer has the option to transfer, with a corresponding purchase price adjustment.

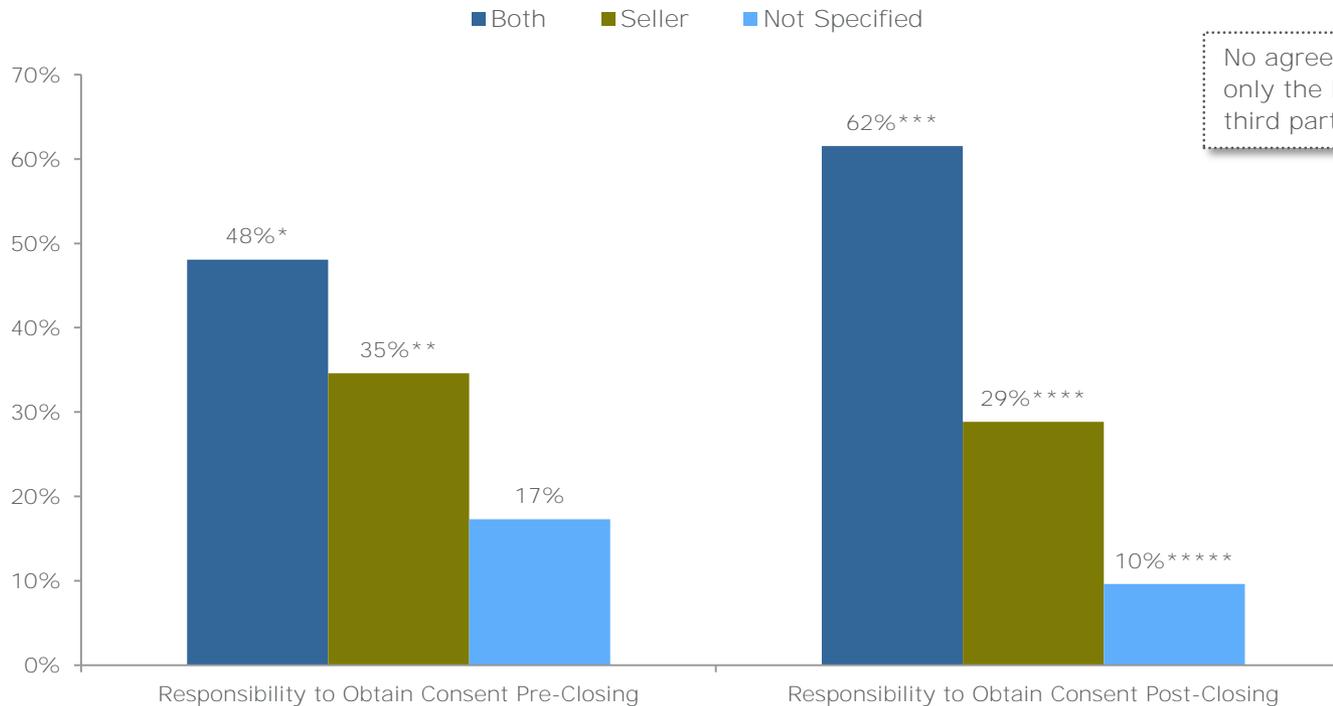
Practice Pointer:

In the context of asset purchases, certain contracts that are necessary for the operation of the carved-out business may require third party consent in order to be assigned or otherwise transferred to the Buyer. Buyers may consider including provisions in the acquisition agreement that address the following: (i) outlining the efforts that the parties must undertake in order to obtain consents; (ii) expressly providing for the consequences in the event that certain contracts cannot be assigned; and/or (iii) conditioning closing on obtaining certain consents. In determining which of these types of provisions to include, the parties should carefully look at the language in the contracts to be transferred. If a contract states that it may not be transferred without consent, then any transfer in violation of such provision may result in a breach of that agreement and entitle the counterparty to any damages incurred as a result of the transfer. However, if the contract to be transferred expressly states that any transfer without consent shall be void, then the contract may not be able to be effectively transferred without such consent and the parties should consider methods for ensuring that the Buyer gets the benefit of that contract. See page 70 titled Third Party Consents as a Condition to Closing.

Responsibility to Obtain Third Party Consent to Transfer Assets or Liabilities

Responsibility to Seek Third Party Consent

(subset: 52 agreements involving asset purchases)



* Includes 2 agreements that have a simultaneous signing and closing date.

** Includes 4 agreements that have a simultaneous signing and closing date.

*** Includes 1 agreement that has a simultaneous signing and closing date.

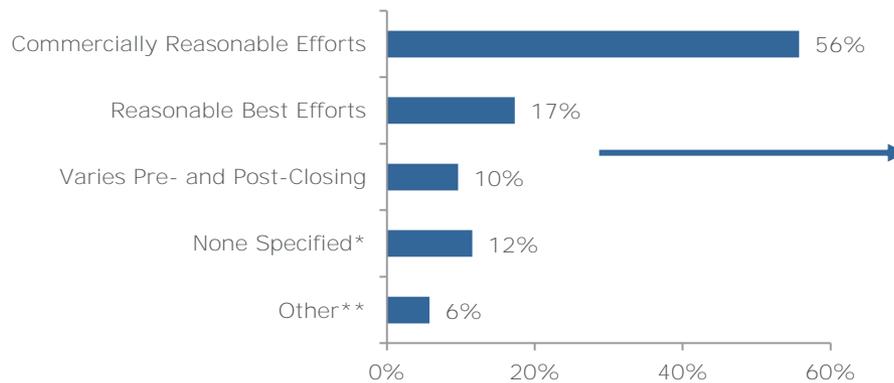
**** Includes 3 agreements that have a simultaneous signing and closing date.

***** Includes 2 agreements that have a simultaneous signing and closing date.

Efforts to Obtain Third Party Consent to Transfer Assets or Liabilities to Buyer

Level of Efforts Required of Party Pursuing Consent

(subset: 52 agreements involving asset purchases)



* Includes 2 agreements that have a simultaneous signing and closing date, one of which the relevant section is redacted.

** "Other" includes: Diligent Efforts (1 agreement), Commercially Reasonable Best Efforts (1 agreement) and Reasonable Best Efforts; in all Reasonable Respects. (1 agreement)

Agreements requiring varying pre- and post-closing levels of efforts to obtain consent include the following:

- **Pre-closing:** Commercially reasonable efforts
Post-closing: Reasonable best efforts
(2 agreements)
- **Pre-closing:** No effort level specified
Post-closing: Reasonable best efforts for purchased domain name; commercially reasonable efforts for remainder of purchased assets
(1 agreement that has a simultaneous signing and closing date)
- **Pre-closing:** Reasonable best efforts
Post-closing: Commercially reasonable efforts
(1 agreement)
- **Pre-closing:** No effort level specified
Post-closing: Commercially reasonable efforts
(1 agreement)

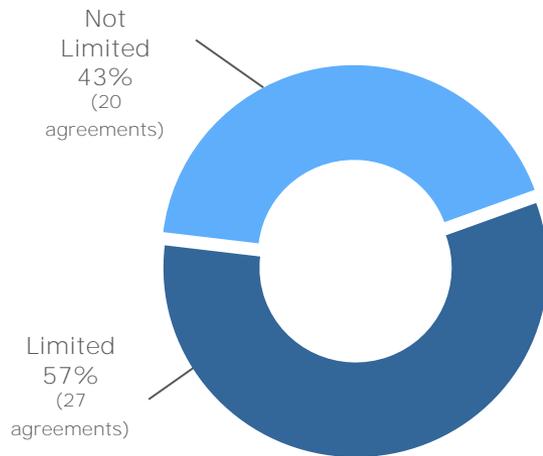
Practice Pointer:

Although not unique to carveout agreements, as this data indicates, numerous formulations of "efforts" clauses are used in carveout transaction agreements, and some agreements have several different efforts standards within the same agreement. Notwithstanding the prevalence of varying standards, the interpretation and application of "efforts" clauses is the subject of considerable uncertainty. In light of this uncertainty when drafting such "efforts" clauses, practitioners should consider issues such as: (i) to what extent specific obligations intended to be undertaken or excluded should be specified (which can be particularly important in carveout transactions in, for example, transition services agreements) or deferred to a court to interpret if a dispute arises; (ii) the intended distinction (if any) between different "efforts" standards articulated in the same agreement; and (iii) the default interpretation under the applicable governing law of such "efforts" clauses.

Limiting the Obligation to Obtain Third Party Consent

Limits on Requirement to Obtain Third Party Consent

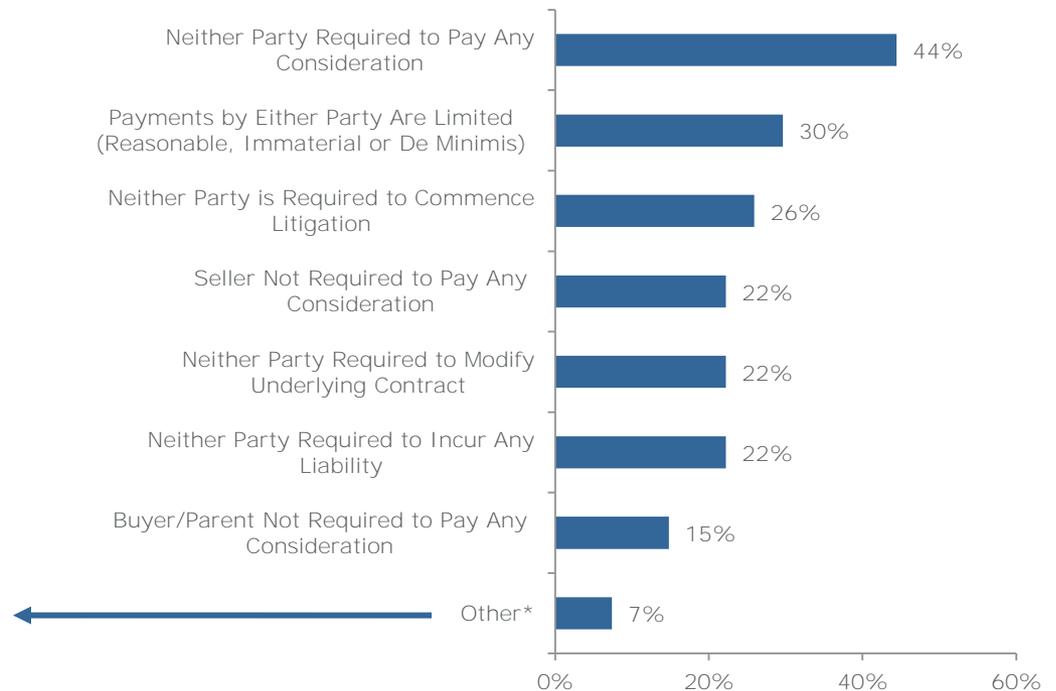
(subset: 47 agreements in which at least one party expressly bears responsibility for obtaining consent for transfer)



* "Other" includes limitations that provide the applicable party or parties would not be required to: (i) take any action that would violate the Seller's policies or procedures or (ii) violate law.

Specified Limits to Obligation to Obtain Third Party Consent

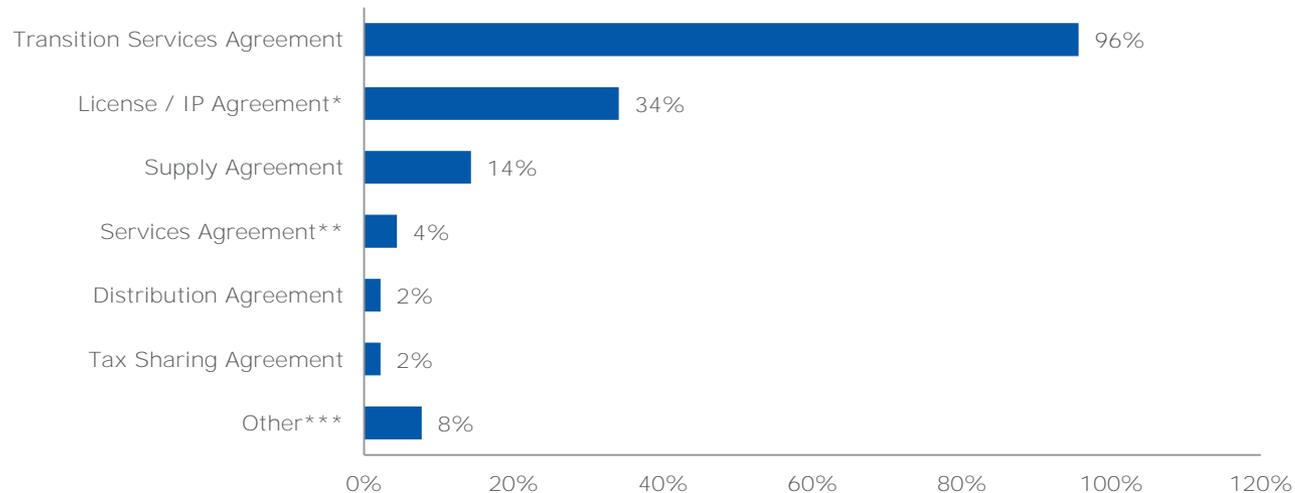
(subset: 27 agreements limiting the duty to obtain consent)



Ancillary Agreements

Type of Ancillary Agreement

(subset: 92 agreements contemplating ancillary agreements)



* One agreement contemplates a sub-license between the parties if a novation is not possible to obtain.

** Includes agreements that provide for a "Services Agreement" other than a "Transition Services Agreement." Three of these agreements provide for both a Transition Services Agreement and a Services Agreement.

*** Other includes: Sublease (2 agreements), Commercial Agreement (1 agreement), Support Agreement (1 agreement), Restrictive Covenant Agreement (1 agreement), Retention Agreement (1 agreement), and Co-Manufacturing Agreement (1 agreement).

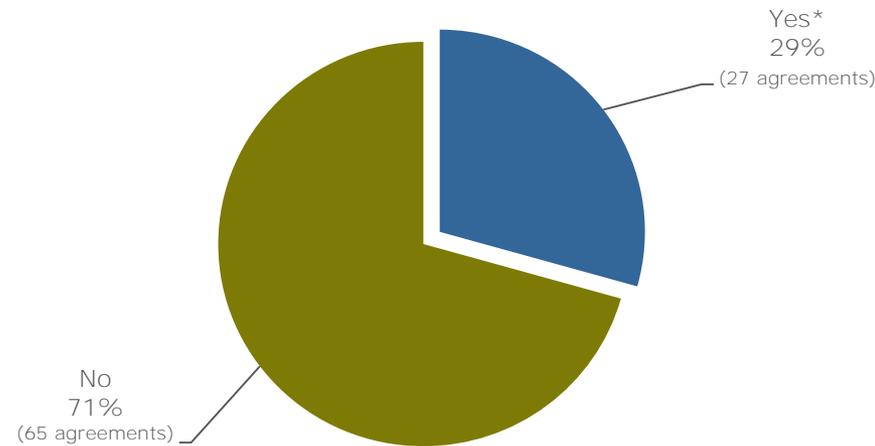
Practice Pointer:

The chart above only includes ancillary agreements that are expressly mentioned in the acquisition agreement. Note that there may be other ancillary agreements that are not expressly contemplated by the acquisition agreement but that are otherwise part of the carveout transaction.

Ancillary Agreements (cont'd)

Ancillary Agreement Subject to Indemnification in the Main Transaction Agreement?

(subset: 92 agreements contemplating ancillary agreements)



* One agreement limits Transition Services Agreement indemnification to the payment of fees/expenses of a broker or finder in connection with its origin, negotiation or execution or the transactions contemplated thereby.

Practice Pointer:

The extent to which obligations in ancillary agreements (particularly those governing the post-closing relationships between the parties) are subject to indemnification under the main agreement can be one of the most heavily negotiated provisions in a carveout transaction. The key point is often whether the ancillary agreement obligations stand on their own or are subject to the overall limitations on indemnity in the agreement (survival periods, deductibles, caps, limitations on losses, etc.). Even where the ancillary agreement obligations are not subject to indemnification under the main agreement, ancillary agreements can still contain their own limitations on indemnification (e.g., remedies are sometimes provided only for breaches resulting from gross negligence, limited to amounts the amounts or benefits received by the breaching party under the ancillary agreement or exclude consequential damages).

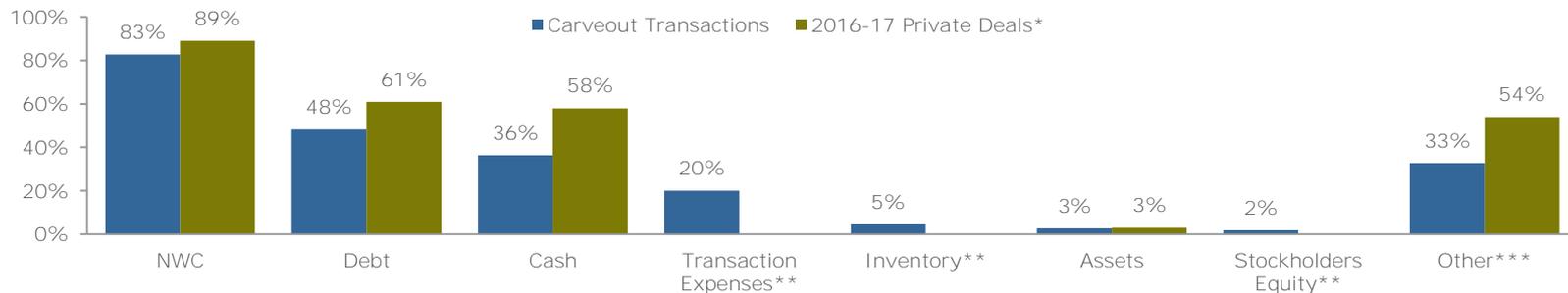
PURCHASE PRICE ADJUSTMENTS

Types of Adjustments

Net working capital (NWC) is a measure of the short term liquidity of a business that is calculated as current assets less current liabilities. Note that NWC definitions are usually specifically tailored for each transaction and the parties carefully determine which line items should be considered current assets and current liabilities. 95 agreements (98%) with NWC purchase price adjustments permit a decrease or increase in the purchase price. However, two such agreements allow an adjustment only in favor of the Buyer. Additionally, 33 of the 39 carveout transactions (85%) that contain both a NWC and cash adjustment expressly exclude cash from the NWC adjustment.

Purchase Price Adjustment Metrics

(subset: 110 agreements with purchase price adjustments)



* References in this Study to 2016-17 Private Deals, 2014 Private Deals and 2012 Private Deals are taken from the 2017 Private Target Mergers & Acquisitions Deal Points Study (the "Private Deal Points Study"). The data for 2016-17 Private Deals include transactions from 2016 and the first half of 2017.

** 2016-17 Private Deals data not available.

*** "Other" includes: tax liens, company-specific accounts, lock-box adjustments, etc. The data for "Other" for 2016-17 Private Deals include inventory, transaction expenses and stockholders equity.

Comparison:

87% of the agreements (110 agreements) in the Study provide for a purchase price adjustment, which is comparable to 2016-17 Private Deals where 86% of transactions provide for a purchase price adjustment. In addition, 63% of these agreements (70 agreements) provide for more than one purchase price adjustment metric. By comparison, 73% of the 2016-17 Private Deals contain purchase price adjustments based on more than one metric.

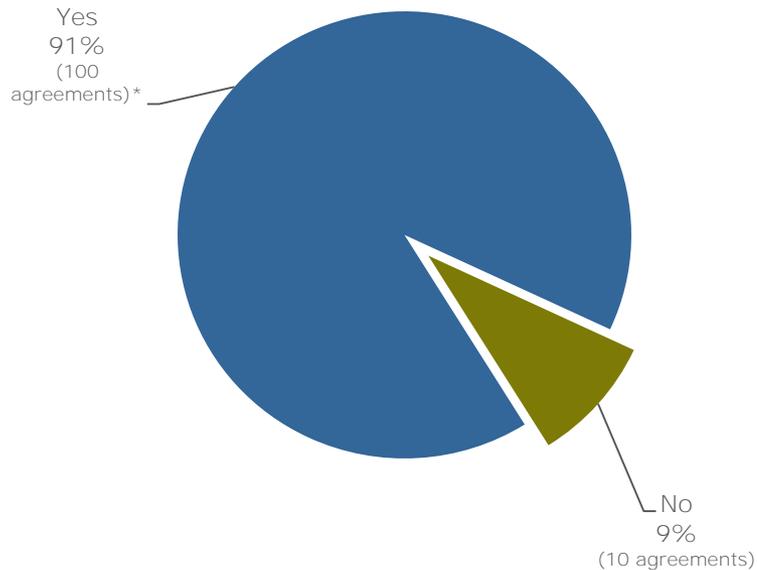
Practice Pointer:

When an agreement includes multiple purchase price adjustments, it is important to consider how these adjustments interact with each other. For example, if there is a NWC adjustment, an additional adjustment for Transaction Expenses would not be necessary if those expenses would already be picked up in the NWC adjustment. To ensure that the adjustments work as intended, the parties can include language to clarify that the transaction expense adjustment only picks up items that are not otherwise accounted for in the NWC adjustment, or the parties may include an express provision that provides that there will be no double counting.

Pre-Closing Estimates

Provides for Pre-Closing Estimate of Purchase Price Adjustment

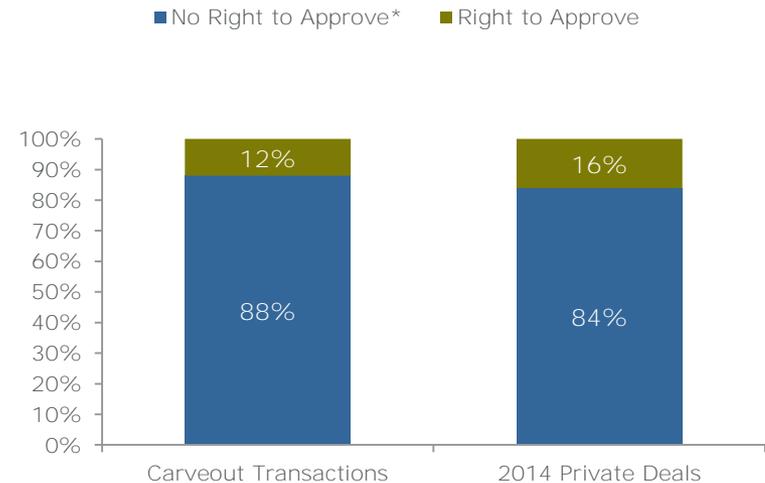
(subset: 110 agreements with purchase price adjustments)



* One agreement provides for an estimate for one adjustment (prepaid tax) but not another (closing inventory).

Buyer Right to Approve Pre-Closing Estimate of Purchase Price Adjustment

(subset: 100 agreements that provide for an estimate of the purchase price adjustment)



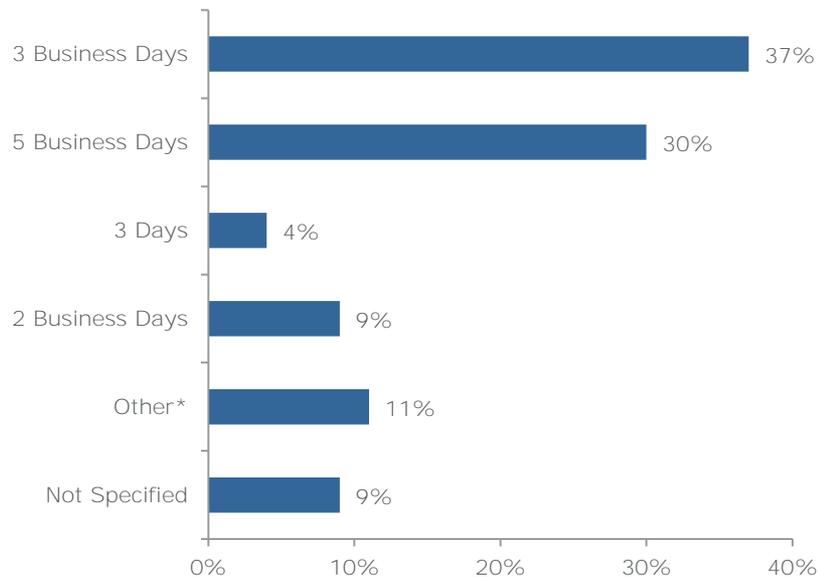
* Includes agreements silent on the issue and agreements containing an express statement indicating no right to approve.

70 agreements (70%) do not give the Buyer a right to approve the pre-closing estimate of the purchase price adjustment. However, 18 of these agreements (25%) do provide the Buyer a right to review and comment on the pre-closing estimate of the purchase price adjustment.

Pre-Closing Estimates (cont'd)

Minimum Time Before Closing in Which the Seller Must Provide the Estimated Purchase Price Adjustment

(subset: 100 agreements that provide for an estimate of the purchase price adjustment)

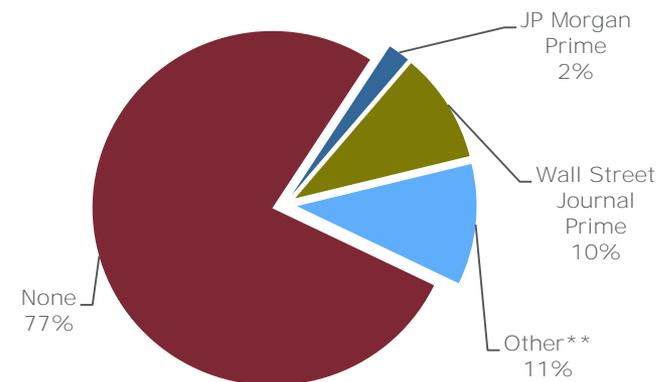


* "Other" includes:

- 1 business day (1 agreement)
- 2 days (1 agreement)
- 4 business days (3 agreements)
- 5 days (1 agreement)
- 7 days (1 agreement)
- 8 business days (1 agreement)
- 10 business days (2 agreements)
- 14 business days (1 agreement)

Interest Accrues on Difference Between Estimated and Actual Purchase Price Adjustment

(subset: 100 agreements that provide for an estimate of the purchase price adjustment)



** "Other" includes one agreement each of the following interest rates: 1%, 3%, 5%, 6%, 1-month LIBOR + 125 basis points, 30-day LIBOR + 200 basis points, 1-month LIBOR + 500 basis points, the Wells Fargo prime rate, the prime rate + 2%, 1-month LIBOR and interest earned on the difference in the escrow account.

Practice Pointer:

Providing for the accrual of interest on the amount of under- or over- payment of the estimated purchase price adjustment may provide an incentive for the parties to estimate the amount accurately.

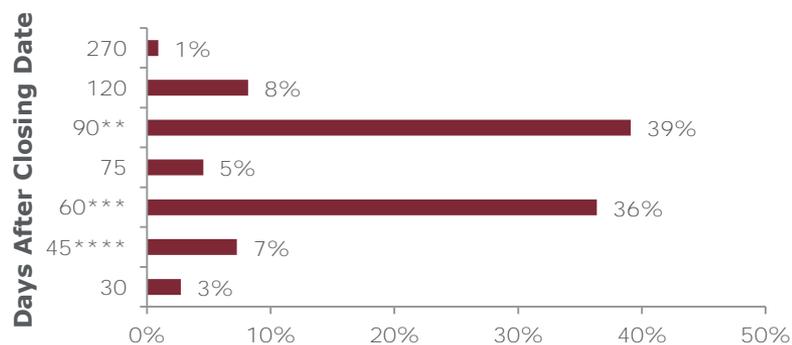
Post-Closing Preparation

Practice Pointer:

Calculation of the purchase price adjustment does not typically occur until 60 or 90 days after the closing date because the preparation of a closing statement is necessary to determine the amount of adjustment. For this reason, the Buyer, as the party in control of the carved-out business as of this date, typically prepares the closing statement. Note that the length of time to prepare the closing statement often corresponds with the nature of the purchase price adjustment. For example, if the adjustment relates to simple metrics such as cash and/or debt, the closing statement may be prepared by closing or shortly thereafter. Adjustments that relate to more complicated metrics may require more time to be determined.

Time to Prepare the Post-Closing Purchase Price Adjustment Statement

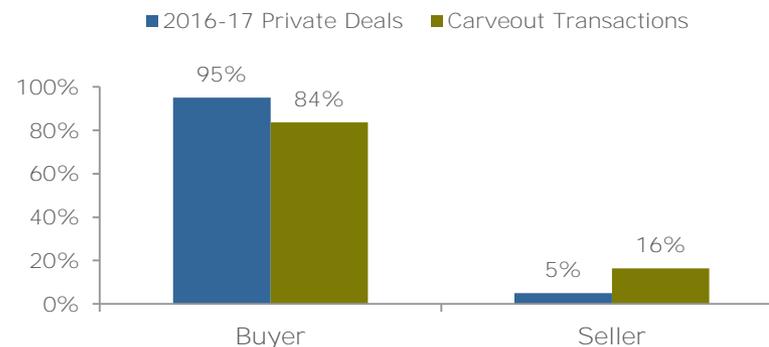
(subset: 110 agreements with purchase price adjustments)*



- * One agreement does not provide for a post-closing statement; rather, the Buyer may dispute the pre-closing statement only.
- ** Includes one agreement specifying preparation 60 days after closing, and in any event no later than 90 days after closing.
- *** Includes one agreement specifying 60 days after closing or 15 business days after receipt of real estate tax notice and one agreement specifying 60 days after closing (but inventory count performed 45 days after closing).
- **** Includes one agreement specifying preparation 45 days after closing (unless closing occurs in the third month of a fiscal quarter, in which case 75 days after closing).

Preparer of the Post-Closing Purchase Price Adjustment Statement

(subset: 110 agreements with purchase price adjustments)*



* One agreement does not provide for a post-closing statement; rather, the Buyer may dispute the pre-closing statement only.

In over 50% of the agreements, the parties use an accounting method based on U.S. GAAP to determine the purchase price adjustment. The method may be modified to align with past practices of the carved-out business or to conform with elections of or modifications to U.S. GAAP, as set forth in an attached schedule.

In 30 of the agreements, there was an obligation that a balance sheet be provided along with the closing statement.

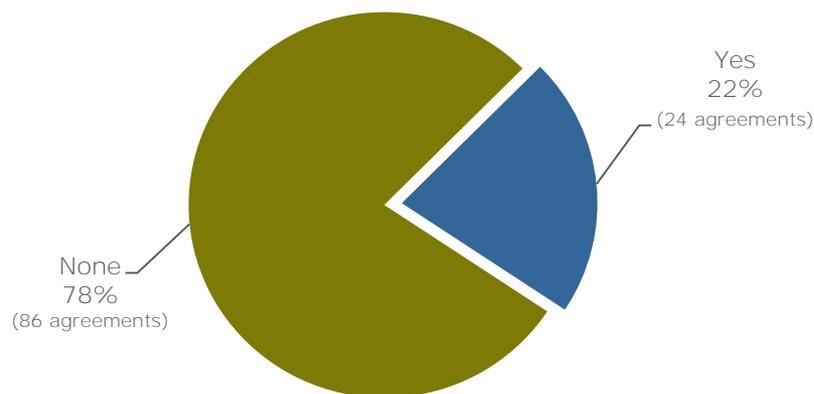
Dollar Limitations

Limitations on purchase price adjustments can come in various forms. The two most common dollar limitations are:

- (1) A limitation that restricts the applicability of a potential purchase price adjustment by defining a range for which there is no adjustment. For instance, an agreement may specify a target for NWC and a collar amount of \$25 million. In such a case, there will only be an adjustment if the NWC exceeds or falls short of the target amount by at least \$25 million, which we refer to in the chart below as a "Band".
- (2) A limitation that restricts the total amount of purchase price adjustment paid by the parties by specifying a cap to the purchase price adjustment.

Limitation on Purchase Price Adjustments

(subset: 110 agreements with purchase price adjustments)

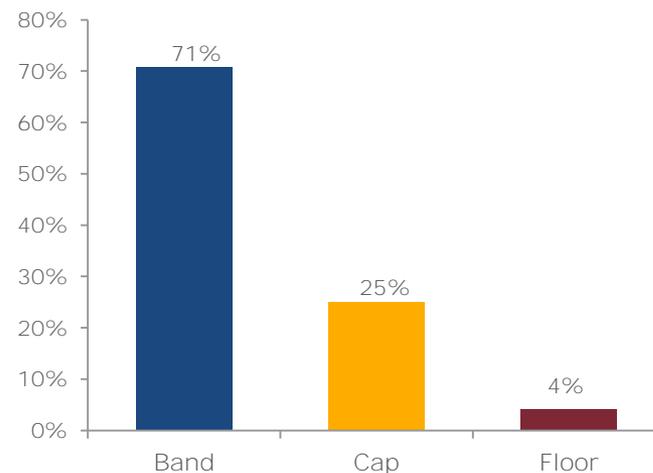


Comparison:

24 agreements (22%) place a limitation on purchase price adjustments, as compared to 16% of 2016-17 Private Deals.

Type of Limitation

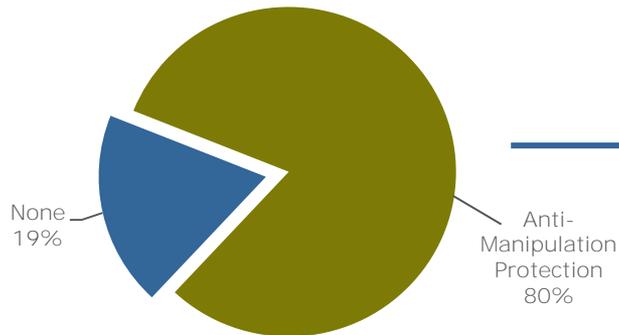
(subset: 24 agreements with limitations on purchase price adjustments)



Anti-Manipulation Protection

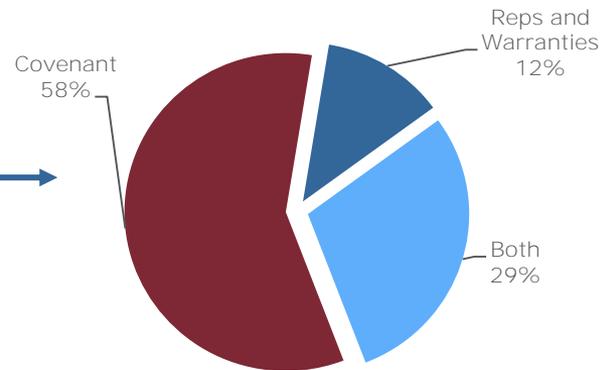
Transactions with Anti-Manipulation Protection

(subset: 110 agreements with purchase price adjustments)



Form of Anti-Manipulation Protection

(subset: 89 agreements with anti-manipulation protection)

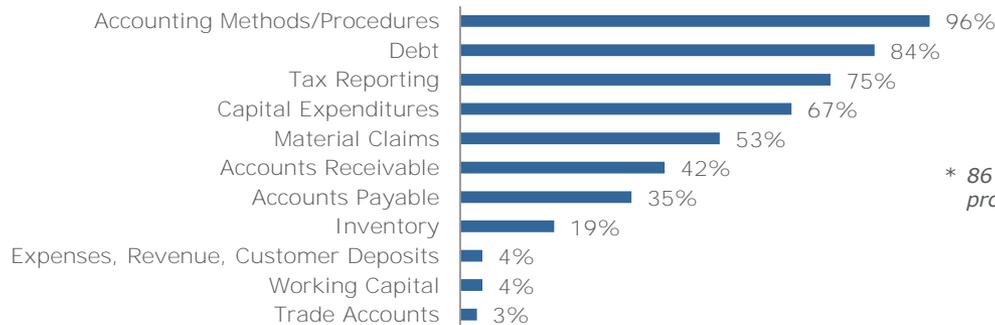


Practice Pointer:

If an agreement provides for a purchase price adjustment based on the balance of an account at closing, the Buyer may want to ensure the Seller does not manipulate the applicable accounts in order to obtain higher acquisition proceeds. The parties may negotiate for anti-manipulation protection in the form of a covenant that there will be no artificially inflated accounts payable or receivable. Alternatively, "back-door" protection occurs when a representation to such effect is brought down as a condition to closing.

Categories Receiving Protection

(subset: 89 agreements with anti-manipulation protection)*



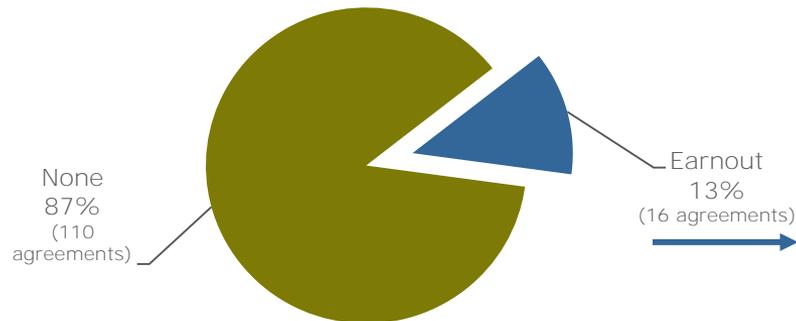
* 86 agreements contain anti-manipulation protection for more than one metric.

Earnouts

Practice Pointer:

An earnout is a post-closing contingent payment mechanism that provides for additional payments based on the carved-out business' performance or achievement following the closing date. Earnout provisions can bridge valuation gaps between the Buyer and the Seller and are particularly useful when a lack of financial history or the uncertain success of an untested product make it difficult to value the carved-out business. An earnout allows the Buyer to purchase a business with high potential with less risk (by reducing the minimum purchase price) while still ensuring a fair price is paid to the Seller in the event that the acquired business performs or achieves as, or better than, expected. Despite the advantages and flexibility of earnouts, they create issues of their own. Negotiations over the timeline and the metrics used for measuring earnouts can create additional tension between the Buyer and the Seller. Further, disputes may arise regarding whether the Buyer operates the business in a manner that frustrates the achievement of the earnout or whether earnout targets are met as a result of the integration of the carved-out business with the Buyer's operations, rather than the performance of the carved-out business itself.

Use of Earnouts



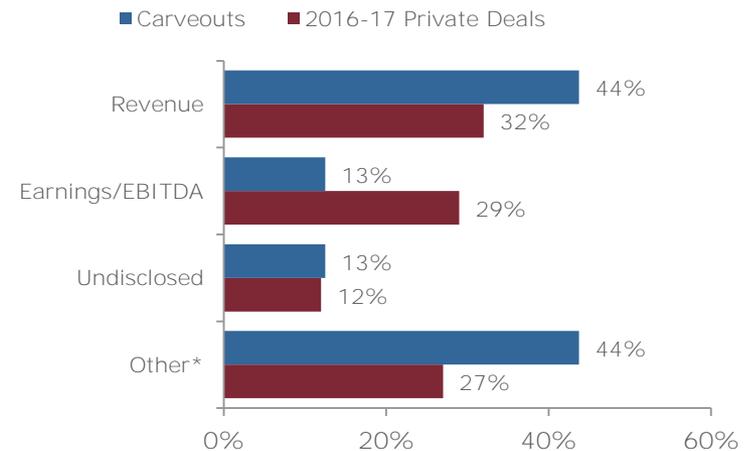
Comparison:

13% of the agreements (16 agreements) include an earnout, compared to 28% of 2016-17 Private Deals.

* "Other" includes: number of wells drilled (1 agreement), customer value (2 agreements), free cash flow (1 agreement), sales volume (2 agreements), regulatory approval (1 agreement) and statutory capital (1 agreement).

Metric Used for Earnout

(subset: 16 agreements with earnouts)



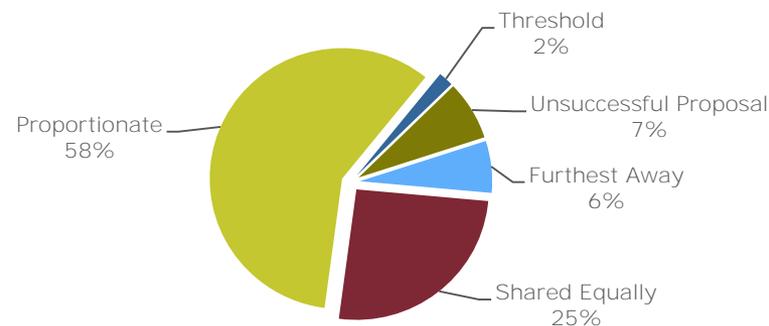
Disputes & Challenges

More than half of the agreements (58%) apportion accounting fees for post-closing purchase price adjustments proportionately, meaning that the disputing party pays a percentage of the fees equal to the proportion of the dollar value of the disputed issues determined in favor of the opposing party, and vice versa. Less commonly used fee arrangements for disputes include:

- **Equal sharing:** Regardless of the complainant or result, the parties equally share accounting fees related to disputes of purchase price adjustments.
- **Furthest away:** The party whose calculation differs from that of the accountant by the greater amount pays the entirety of the accounting fee.
- **Unsuccessful proposal:** The parties share fees related to a successful dispute equally; however, a party who initiates a dispute that is ultimately unsuccessful bears the accounting fees in their entirety.
- **Threshold amount:** Accounting fees are shared by both parties, unless an account is misstated by more than a certain amount (e.g., 15% or 25%), in which case the party that prepared the original statement pays.

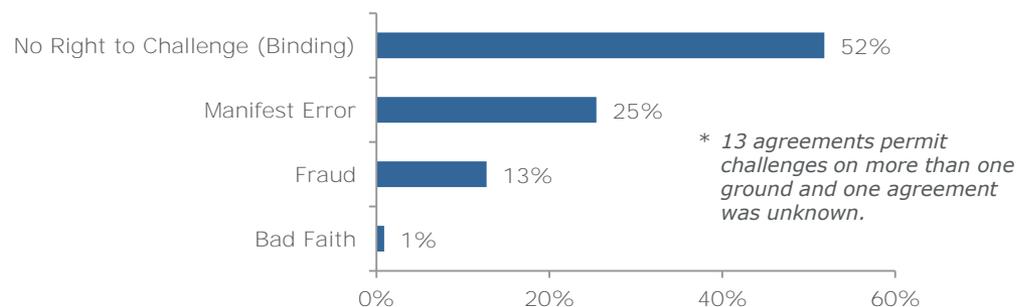
Payment of Accounting Fees for Disputes of Purchase Price Adjustments

(subset: 110 agreements with purchase price adjustments)



Grounds for Challenging the Accountant's Final Determination

(subset: 110 agreements with purchase price adjustments)*



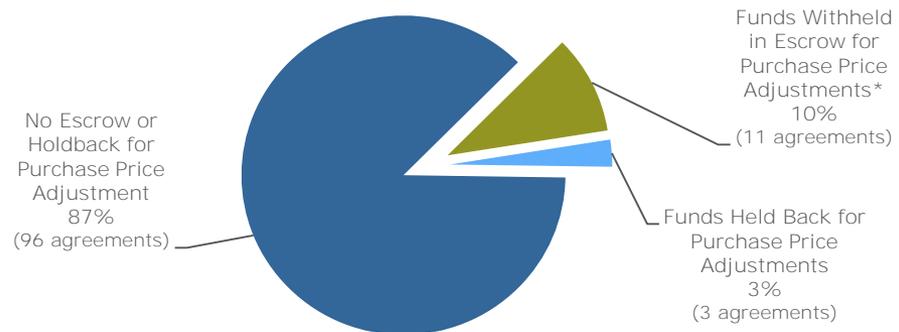
Use of Escrow Accounts/Holdbacks

In approximately one-fourth of the agreements involving purchase price adjustments, funds are either withheld in escrow or held back to provide security for potential purchase price adjustments.

Post-closing purchase price adjustments can result in the amount to which the Seller is entitled changing at closing. Although the transaction agreement can obligate the Buyer and the Seller to make any required payments, collecting such payments can be frustrated or made costlier and more difficult by bankruptcy, other unforeseen events or lack of cooperation. The two most common mechanisms for increasing the ease and certainty of collecting on post-closing purchase price adjustments are escrow accounts and holdback provisions. The former involves setting money aside from the purchase price in an escrow account controlled by an uninterested third-party escrow agent. The escrow agent can then be instructed to allocate the funds between the parties according to their mutual instructions or those of an independent auditor. By contrast, under a holdback mechanism, the Buyer will withhold a portion of the purchase price pending finalization of the purchase price adjustment.

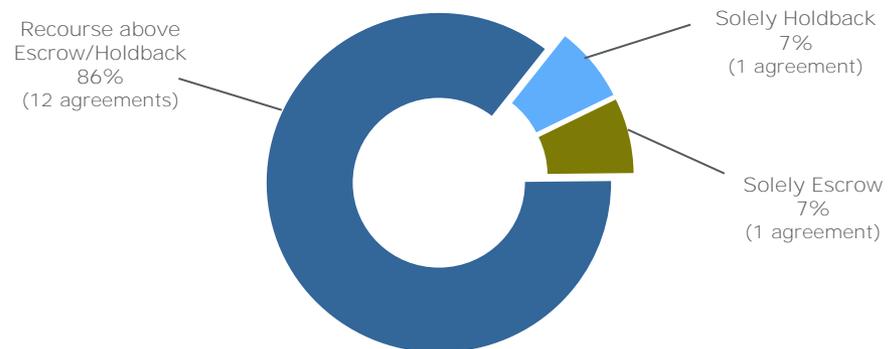
Source for Purchase Price Adjustments

(subset: 110 agreements with purchase price adjustments)



Recourse for Payment of Purchase Price Adjustment

(subset: 14 agreements with purchase price adjustments and escrow or holdback)

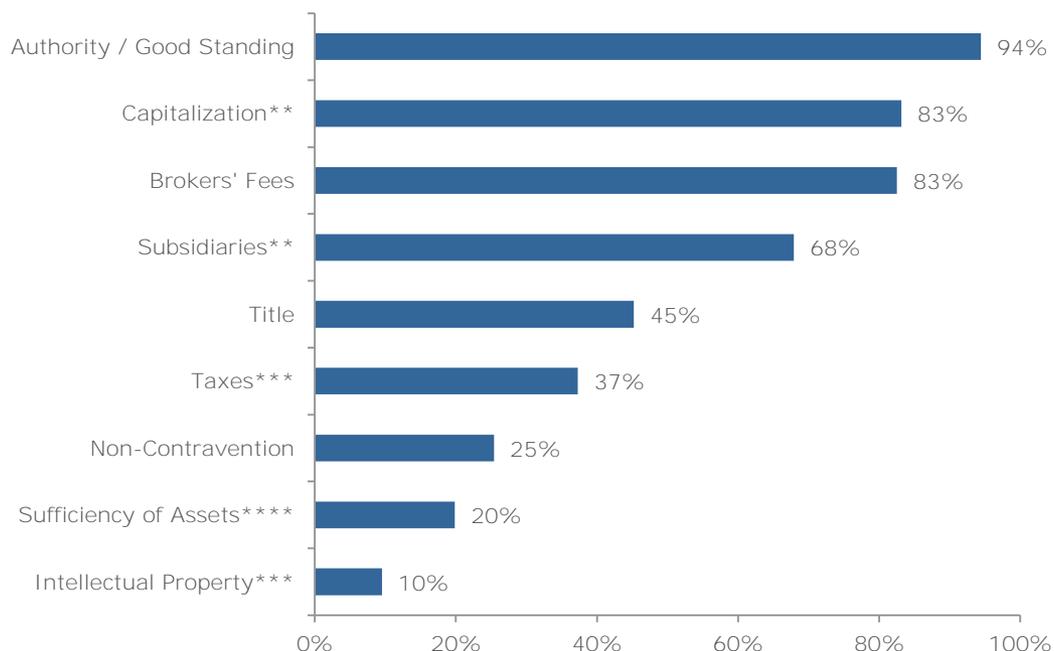


* Includes dual-purpose escrows (e.g., escrows for both indemnity and purchase price adjustment purposes).

REPRESENTATIONS & WARRANTIES

Fundamental Representations

Representations Categorized as Fundamental Representations*



Fundamental representations are representations that are specifically identified in an agreement as being “fundamental” or “specified” or are otherwise identified as being treated differently from general representations. Fundamental representations are typically treated differently with respect to the applicable materiality standard for the accuracy of representations condition, applicable survival periods and/or indemnification deductibles and caps.

Four agreements do not contain any fundamental representations, and one agreement contains only a single fundamental representation.

* Data includes agreements in which any portion of the applicable representation is considered a fundamental representation.

** Data excludes agreements in which such representations would be inapplicable (e.g., asset purchase agreements and agreements in which the Seller does not have any subsidiaries).

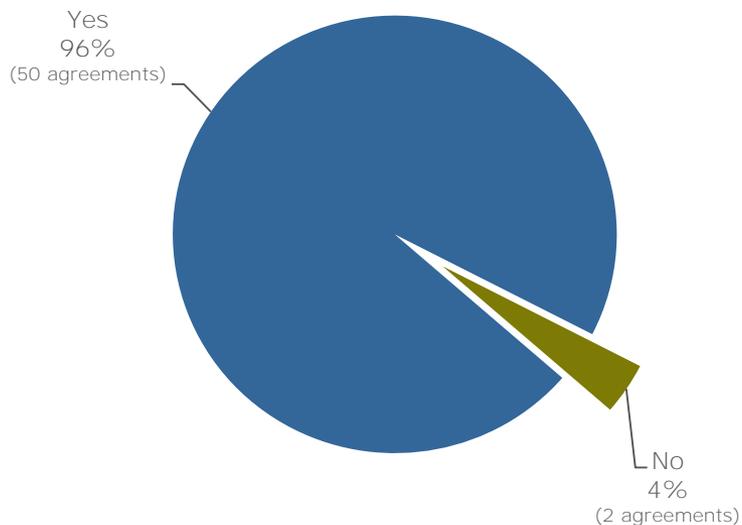
*** Data only includes instances in which such representations are otherwise categorized with other fundamental representations. This data excludes instances in which taxes and IP representations were otherwise treated separately from the general representations and the fundamental representations, which occurs 38% of the time for tax representations and less than 2% of the time for IP representations.

**** Data includes 20 agreements in which this representation is expressly defined as a fundamental representation and 5 agreements in which this representation is not expressly defined as a fundamental representation but is treated differently than general representations with respect to survival period or applicability of deductibles or caps.

Good Title

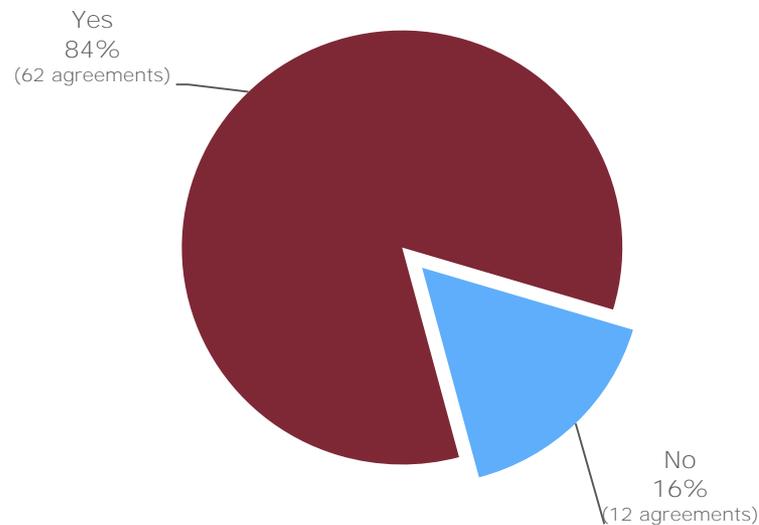
Asset Purchases Seller Represents That It Has Good Title to Assets* Used by the Carved-Out Business

(subset: 52 agreements involving an asset purchase)**



Non-Asset Purchases Seller Represents That It Has Good Title to Assets* Used by the Carved-Out Business

(subset: 74 agreements **not** involving an asset purchase)



* This page does not address a Seller's representation, in the case of equity purchases, that it has good title to the equity interests purchased by the Buyer as this representation would be expected to be included in all such agreements.

** The subset of agreements "involving an asset purchase" includes (i) asset purchases and (ii) combination transactions (i.e., transactions involving both an asset purchase component as well as an equity purchase component).

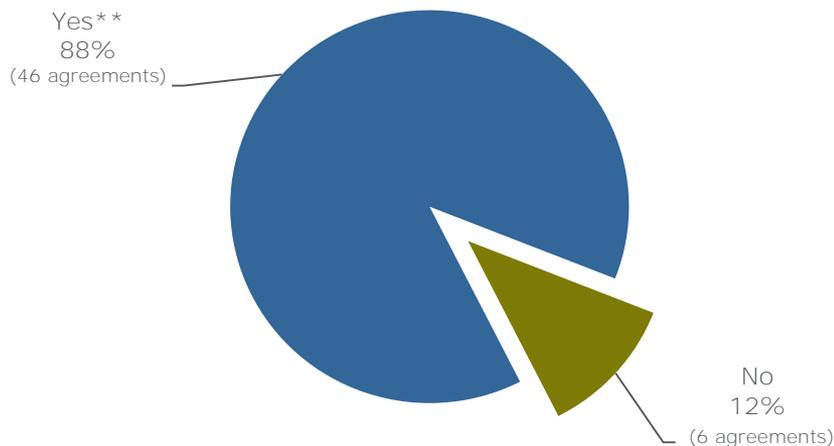
Sufficiency of Assets

Practice Pointer:

In a carveout transaction, the Buyer is acquiring some but not all of the Seller’s assets. Accordingly, a sufficiency of assets representation gives assurance to the Buyer that, upon consummation of the transaction, it will obtain all of the necessary assets to operate the carved-out business without the excluded assets that are retained by the Seller. Agreements for carveout transactions often contain a sufficiency of assets representation regardless of whether they are structured with an asset purchase component.

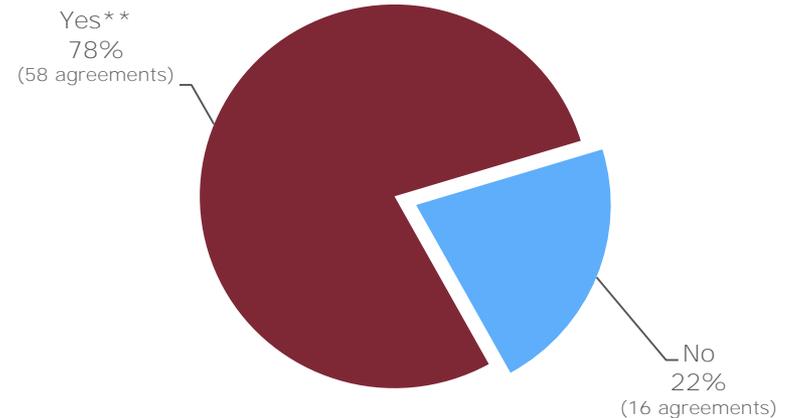
**Asset Purchases
Seller Makes a Sufficiency of Assets
Representation**

(subset: 52 agreements involving an asset purchase)*



**Non-Asset Purchases
Seller Makes a Sufficiency of Assets
Representation**

(subset: 74 agreements **not** involving an asset purchase)

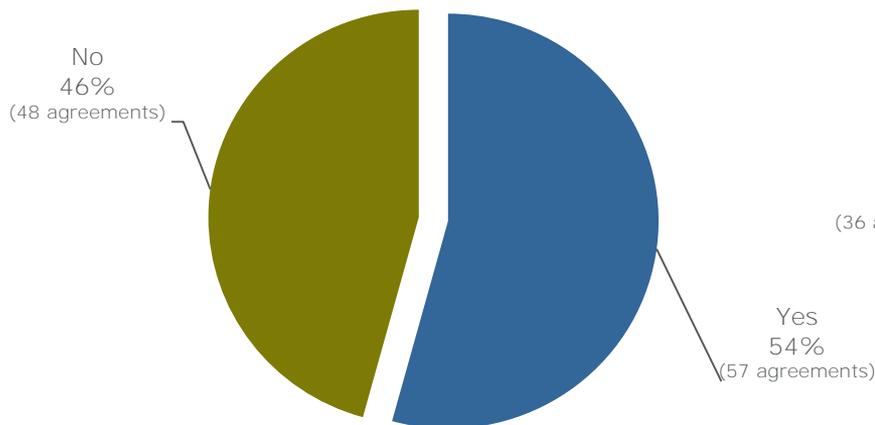


* The subset of agreements "involving an asset purchase" includes (i) asset purchases and (ii) combination transactions (i.e., transactions involving both an asset purchase component as well as an equity purchase component).
 ** Includes sufficiency of assets representations made only with respect to a subset of the transferred assets (e.g., equipment, tangible assets, etc.).

Sufficiency of Assets (cont'd)

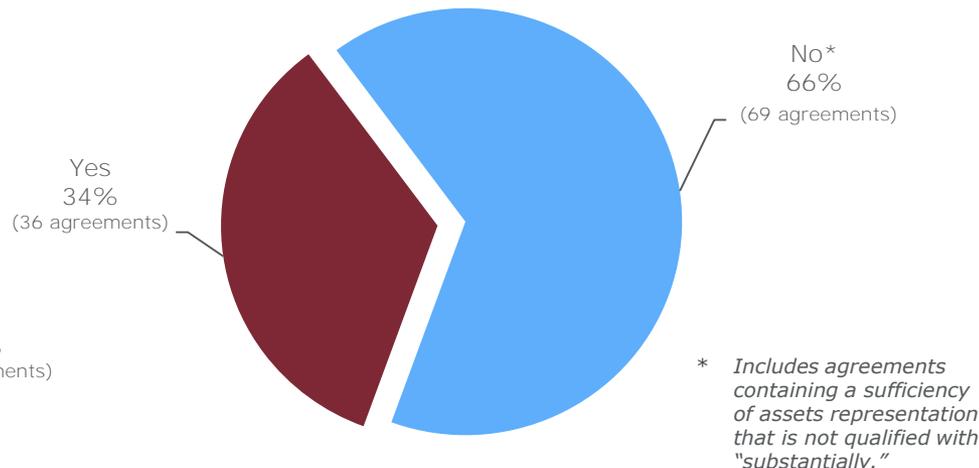
The Sufficiency of Assets Representation is Qualified by Materiality with Respect to the Assets and/or the Business

(subset: 105 agreements with a sufficiency of assets representation)



The Sufficiency of Assets Representation Provides That the Assets Will Be Sufficient to Conduct the Business in Substantially the Same Manner as Conducted Prior to Closing

(subset: 105 agreements with a sufficiency of assets representation)



* Includes agreements containing a sufficiency of assets representation that is not qualified with "substantially."

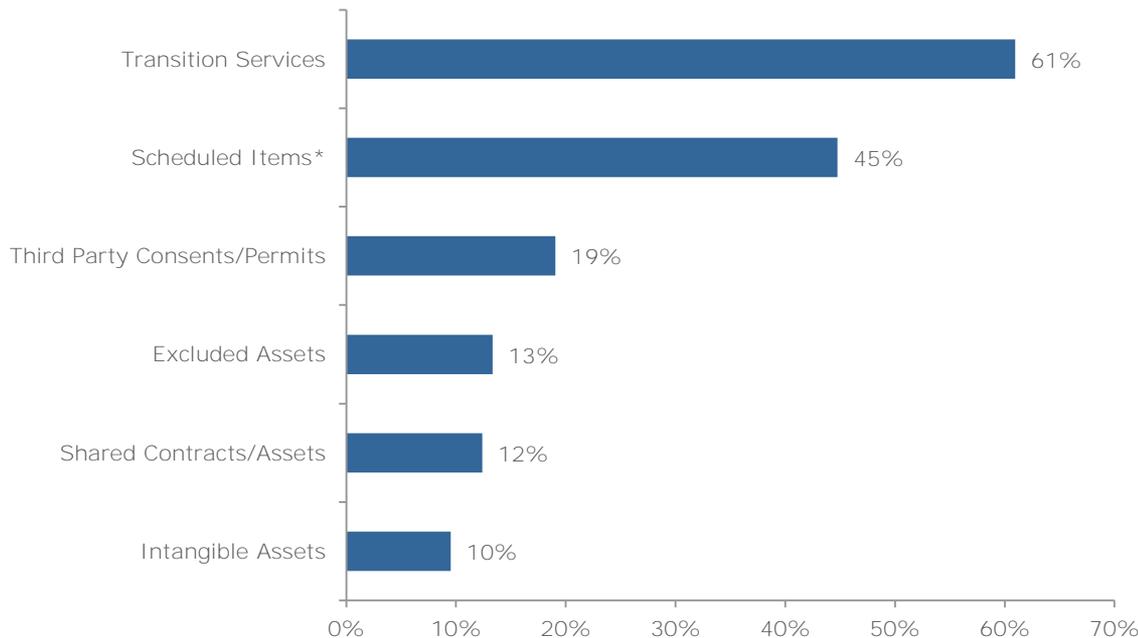
Practice Pointer:

46% of the agreements (48 agreements) containing a Seller sufficiency of assets representation include a materiality qualifier with respect to the assets or the business, and the use of such a qualifier varies in each agreement. A sufficiency of assets representation with a materiality qualifier with respect to the assets may provide, for example, that the transferred assets constitute all of the material assets necessary to conduct the business. A sufficiency of assets representation with a materiality qualifier with respect to the business may provide, for example, that the transferred assets constitute all of the assets necessary to operate the business in all material respects in the manner as it is now being conducted. A sufficiency of assets representation can also include materiality qualifiers with respect to both, providing, for example, that the transferred assets constitute all of the material assets used in the business and constitute all assets necessary to conduct the business in all material respects as currently conducted.

Sufficiency of Assets (cont'd)

Common Exceptions to the Sufficiency of Assets Representation

(subset: 105 agreements with a sufficiency of assets representation)



Practice Pointer:

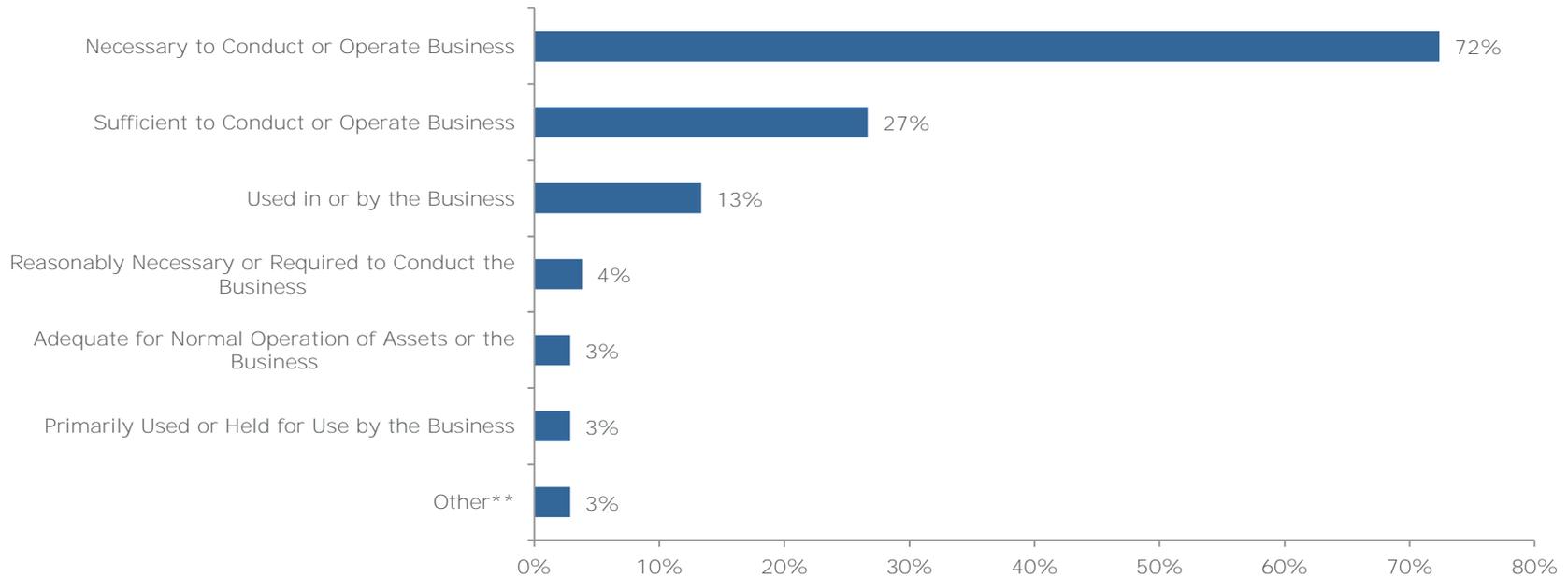
Exceptions to the sufficiency of assets representation provide that the transferred assets are sufficient to conduct the business, with the exception of certain assets. These exceptions may be framed in two different ways. In one formulation, the excepted assets are just excepted as a carveout from the representation itself. For instance, a sufficiency of assets representation may provide that, except for the transition services, and the items listed on the disclosure schedule, the transferred assets are sufficient for the operation of the business. Alternatively, the representation may affirmatively state that specified assets, together with the transferred assets, will be sufficient for post-closing operation of the business. This type of formulation might provide that the transferred assets, the transition services and the items listed on the disclosure schedule are sufficient for the operation of the business.

* Includes agreements in which the sufficiency of assets representation expressly carves out scheduled items. Therefore, although such agreements on their face include certain exceptions to the sufficiency of assets representation, the disclosure schedules (which generally are not made publicly available) may state "none" and therefore contain no exception. Other agreements may include a general lead-in to the representations and warranties section that provides that all representations and warranties are subject to exceptions set forth on the disclosure schedule.

Sufficiency of Assets (cont'd)

Standards for the Sufficiency of Assets Representation

(subset: 105 agreements with a sufficiency of assets representation)*



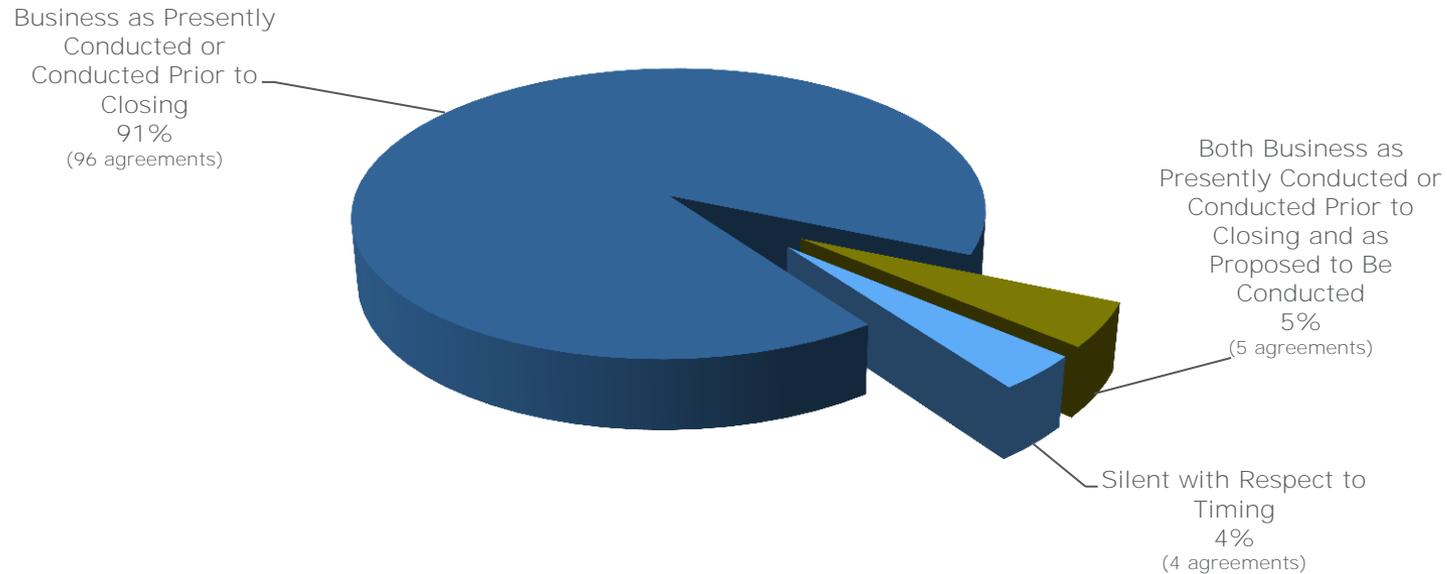
* 28 agreements contain multiple standards for sufficiency.

** "Other" includes: usable and sufficient to conduct the business (1 agreement), owned and used in the conduct of the business (1 agreement), material to and required for the conduct of the business (1 agreement) and essential to operate the business (1 agreement).

Sufficiency of Assets (cont'd)

Benchmark for the Sufficiency of Assets Representation

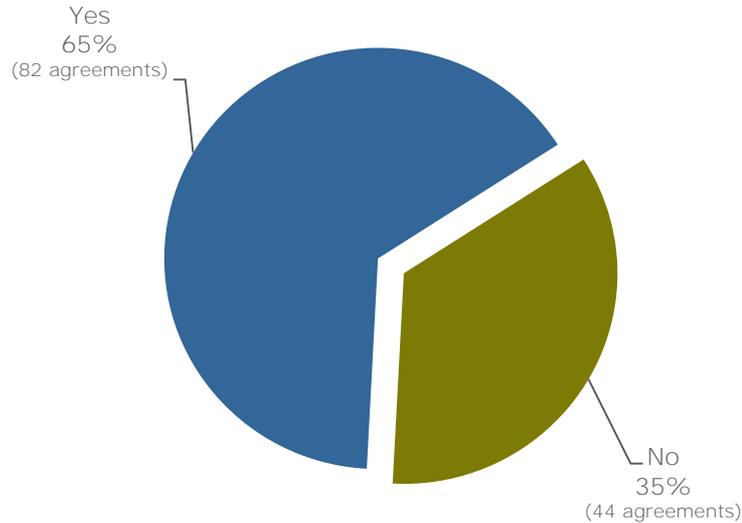
(subset: 105 agreements with a sufficiency of assets representation)



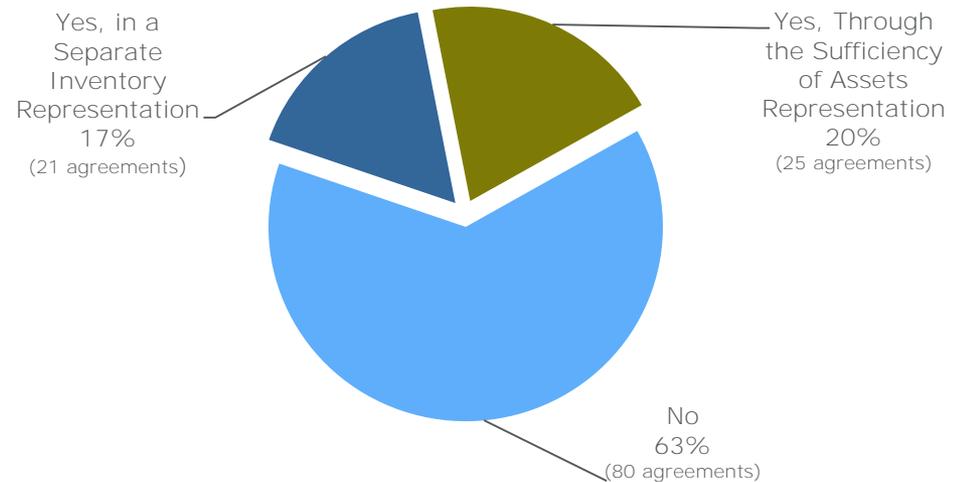
96 agreements that contain a Seller sufficiency of assets representation apply that representation with respect to the business as currently conducted or as has been conducted prior to closing. Some of these provisions provide, for example, that the representation applies to the business (i) as conducted immediately prior to closing; (ii) as is presently being conducted; (iii) as operated consistent with current practices; or (iv) as operated in accordance with past practices. Six agreements containing a sufficiency of assets representation measure the representation with respect to the business as conducted during the six or 12 month period prior to signing or for the period reflected in the most recent financial statements.

Sufficiency of Assets (cont'd)

Seller Represents That the Transferred Assets Are in Good Operating Condition*



Seller Makes a Representation as to the Adequacy of Inventory



* Includes agreements in which the Seller represents that a portion of the transferred assets are in good operating condition (e.g., tangible personal property, equipment).

The above chart includes instances in which defined terms such as "Assets," "Purchased Assets," "Acquired Assets" or "Transferred Assets" expressly include inventory, and, as a result, inventory would thereby be covered by the sufficiency of assets representation. Note, however, that although inventory may be included in such defined terms, the sufficiency of assets representation may also be subject to a materiality or other similar qualifier which could, under circumstances where inventory is not material as compared to all purchased assets, result in inventory being effectively excluded from the sufficiency representation.

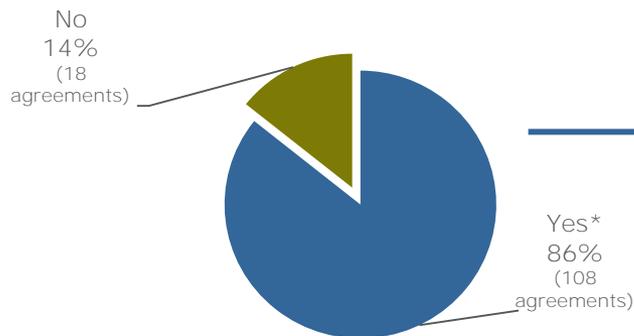
Carveout Financials

Practice Pointer:

All of the Sellers covered by this Study are public companies and are therefore required to prepare audited financial statements at the parent-company level. The type and presentation of financial statements for subsidiaries or business divisions, however, can vary substantially and separate financial statements may not be prepared at all. A Buyer may, for various reasons, require carveout financial statements with respect to the business it is acquiring. For instance, **carveout financial statements may form a significant portion of the Buyer’s due diligence and impact the Buyer’s valuation of the carved-out business**, and the carveout financials may also be necessary for the Buyer to obtain the financing it needs to fund its acquisition of the carved-out business. In addition, in the case of a public company Buyer, if the transaction is significant, then Rule 3.05 of Regulation S-X requires the Buyer to file with the SEC audited financial statements with respect to the carved-out business for up to the three most recent fiscal years (depending on the level of significance of the acquisition). An acquisition is considered “significant” if it exceeds the 20% level for any of the following tests:

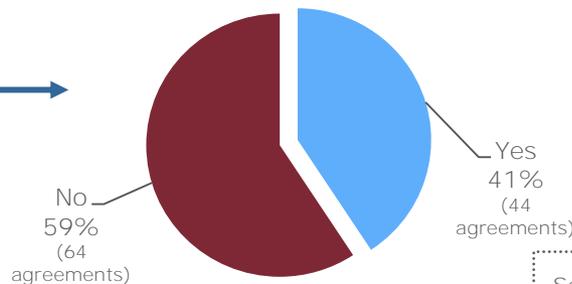
- (1) Investment Test (the amount of the Buyer’s investment in the carved-out business compared to the Buyer’s total assets);
- (2) Total Asset Test (the total assets of the carved-out business compared to the Buyer’s total assets); or
- (3) Pre-Tax Income Test (the carved-out business’s pre-tax income compared to the pre-tax income of the Buyer for its most recent full fiscal year).

Seller Makes Representations With Respect to the Financial Statements of the Carved-Out Business



Requirement that Carveout Financials Be Audited

(subset: 108 agreements containing a representation on carveout financials)



Practice Pointer:

Preparing carveout financial statements may require significant time and resources. Accordingly, if carveout financial statements will be required as part of a transaction, the parties should discuss this as early in the process as possible.

See also page 56, which discusses covenants relating to carveout financials.

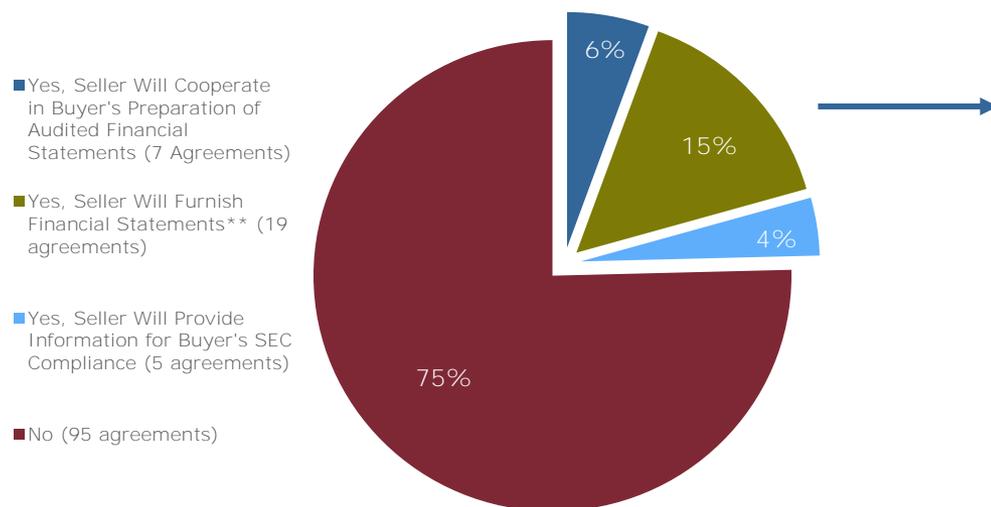
* Includes agreements in which the Seller makes representations with respect to the financial statements of a portion of the carved-out business (e.g., with respect to the equity component of a transaction involving the purchase of both equity and assets). Excludes agreements in which the Seller represents only to certain limited financial information (e.g., balance sheet information only profits and losses only, or the revenue attributed to a product).

COVENANTS

Carveout Financials

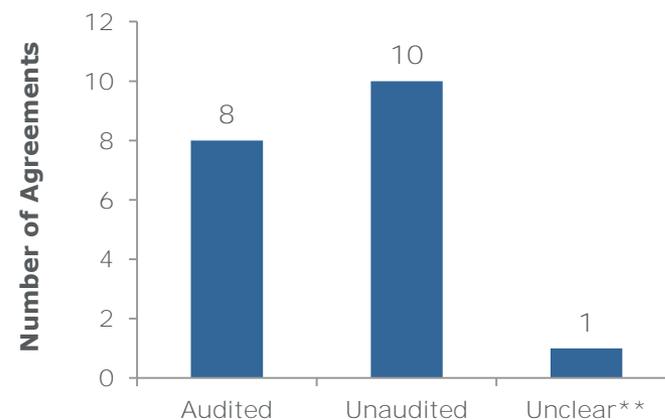
An agreement may include a covenant that provides that the Seller will prepare and deliver audited or unaudited financial statements, which may be in addition to a seller representation with respect to carveout financial statements that have been made available to the Buyer at signing (as discussed in more detail on page 54). Such a covenant is often included expressly for the purpose of enabling the Buyer to comply with its SEC filing requirements in connection with the transaction. As an alternative approach, the Seller may covenant instead to assist the Buyer with its own preparation of the financial statements or to furnish information to the Buyer in connection therewith.

Seller Covenant With Respect to Financial Statements of the Carved-Out Business*



Type of Financial Statements Furnished By Seller Pursuant to Covenant

(subset: 19 agreements pursuant to which Seller covenants to furnish carveout financials)



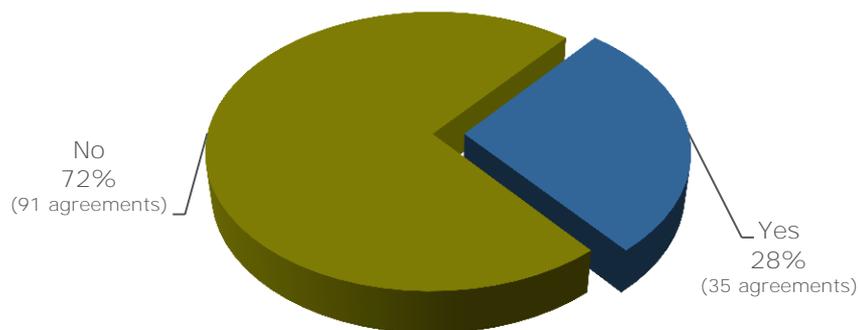
* Excludes agreements containing general covenants of the Seller to provide access to information or to cooperate with the Buyer's financing efforts.

** Includes one agreement that provides that the Seller will provide the information and documents set forth on the disclosure schedule titled "Financial Information and Financial Statements."

Commingled Contracts

Commingled contracts are contracts that cover the carved-out business and all or part of the business to be retained by the Seller. Unwinding refers to the situation in which the carved-out business is released from the commingled contract, or the commingled contract is split into separate contracts (whether by novation, partial assignment or amendment, or some combination thereof).

Commingled Contracts to Be Unwound



35 agreements (28%) expressly provide for the unwinding of commingled contracts. 14 of these agreements provide for unwinding as both a pre- and post- closing covenant, 17 solely as a pre-closing covenant and three solely as a post-closing covenant. One agreement provides the covenant for unwinding of commingled contracts on a schedule not publicly available. Of those agreements that include an unwinding provision, most designate both the Buyer and the Seller as responsible for effectuating the unwinding.

Standard for Unwinding Based on Which Party Is Responsible for Unwinding

(subset: 35 agreements providing for unwinding of commingled contracts)



* "Other" includes:

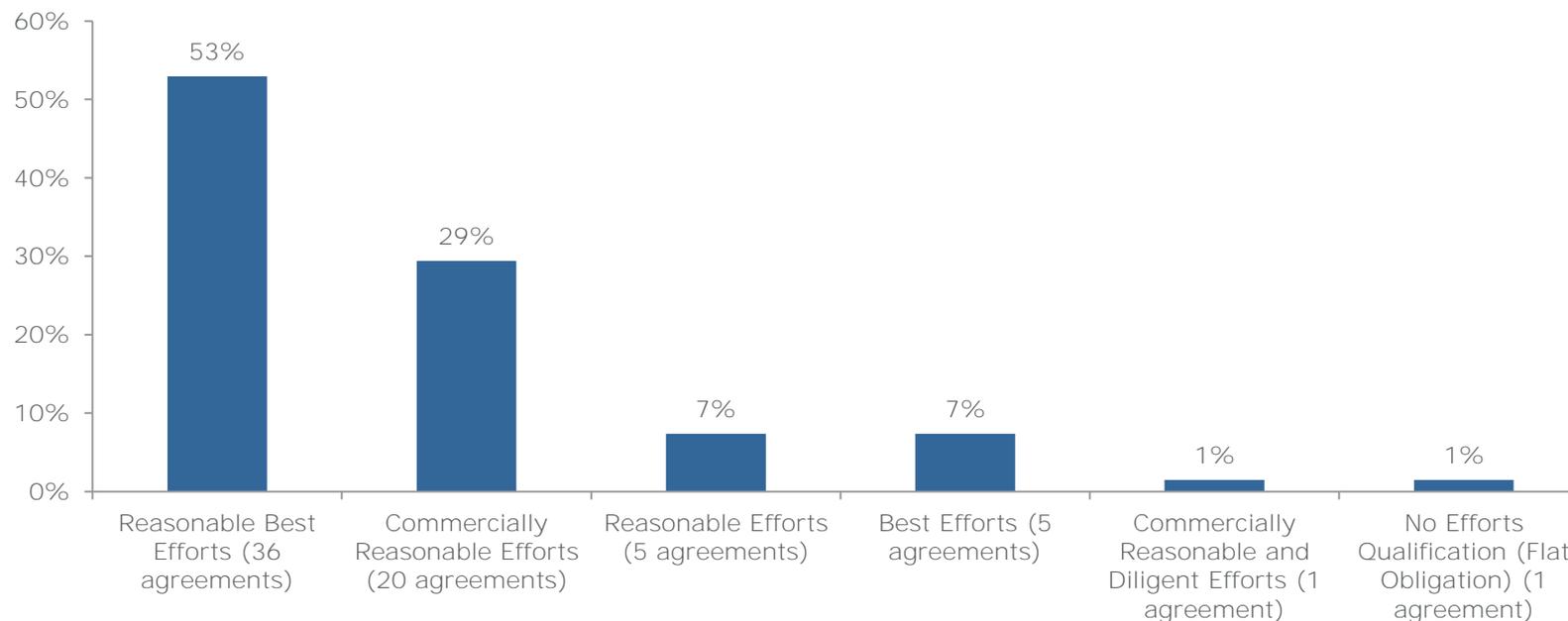
- (1) Bifurcated pre-closing responsibility to the Seller on a commercially reasonable efforts basis and post-closing responsibility to the Buyer on a reasonable efforts basis.
- (1) The Seller with an "obligation of result" (i.e., must cause the termination).
- (2) The Seller must do all things/actions necessary.
- (1) The Seller bears responsibility, but there is no standard provided.
- (1) The Seller bears responsibility, but standard is provided on schedule.
- (1) Both bear responsibility, but there is no standard provided.
- (4) Both bear responsibility and must cooperate with each other.

Regulatory Approval Efforts

68 agreements (54%) contain regulatory efforts covenants that set forth the parties' obligations to take certain actions in order to obtain regulatory approval. Of those agreements, none impose both an absolute obligation to take all actions to obtain regulatory approvals and have a divestiture covenant with no exceptions.

Level of Regulatory Approval Efforts

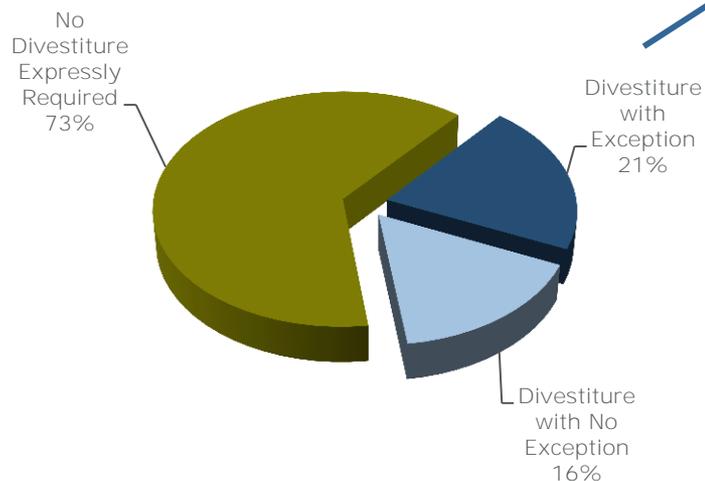
(subset: 68 agreements with regulatory efforts covenants)



Regulatory Approval Efforts (cont'd)

Buyer Divestiture

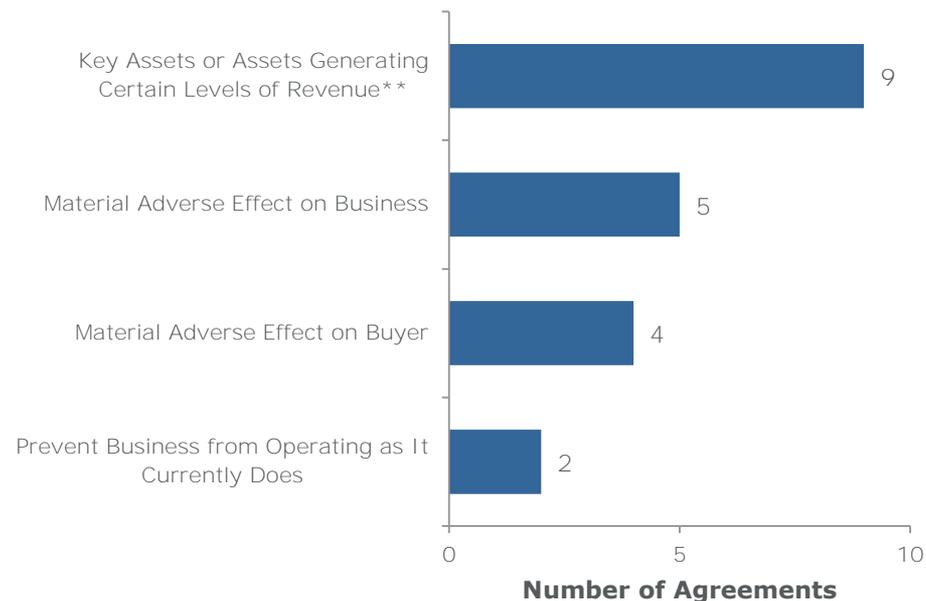
(subset: 68 agreements with a regulatory efforts covenant)



25 agreements (37%) that contain regulatory efforts covenants obligate the Buyer to divest assets in order to obtain regulatory approval. 14 of the 25 agreements that expressly require the Buyer to divest assets in order to obtain regulatory approval qualify that requirement by including exceptions, thereby limiting the Buyer's obligation to divest assets.

Exceptions to Buyer's Divestiture Requirement

(subset: 14 agreements that permit exceptions to otherwise required divestiture of assets)*



* Four agreements contain more than one exception.

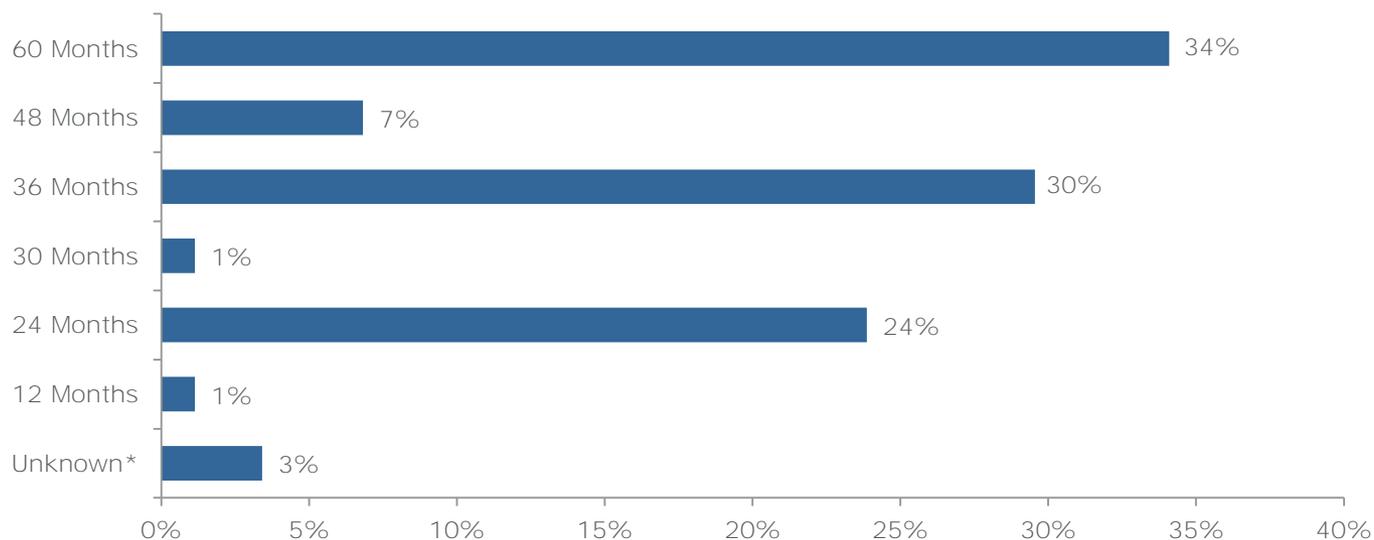
** Two agreements contain a cap on divesting assets over a certain revenue threshold.

Non-Competition Covenants

88 agreements (70%) contain a non-competition covenant that restricts the Seller from competing against the carved-out business. The enforceability of a non-competition covenant can vary by jurisdiction, but generally it must be reasonable in terms of scope, duration and geographical area.

Duration of Non-Competition

(subset: 88 agreements with non-competition covenants)

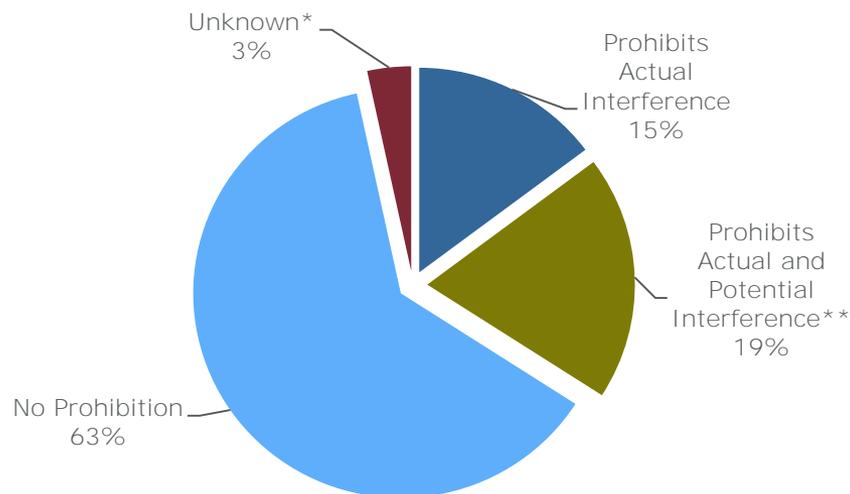


* One agreement redacts this information and two agreements include the non-competition provision on a schedule that is not publicly available.

Non-Competition Covenants (cont'd)

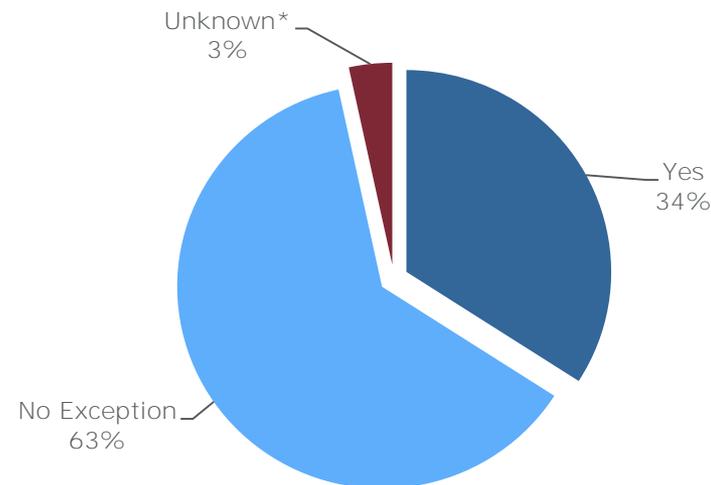
Non-Competition Covenants With Express Provisions Preventing Interference with Customers

(subset: 88 agreements with non-competition covenants)



Non-Competition Covenant Exception Permitting Seller to Be Acquired By (or Own a Passive Interest in) a Competitor of the Buyer or Carved-Out Business

(subset: 88 agreements with non-competition covenants)



* Three agreements redact this information.

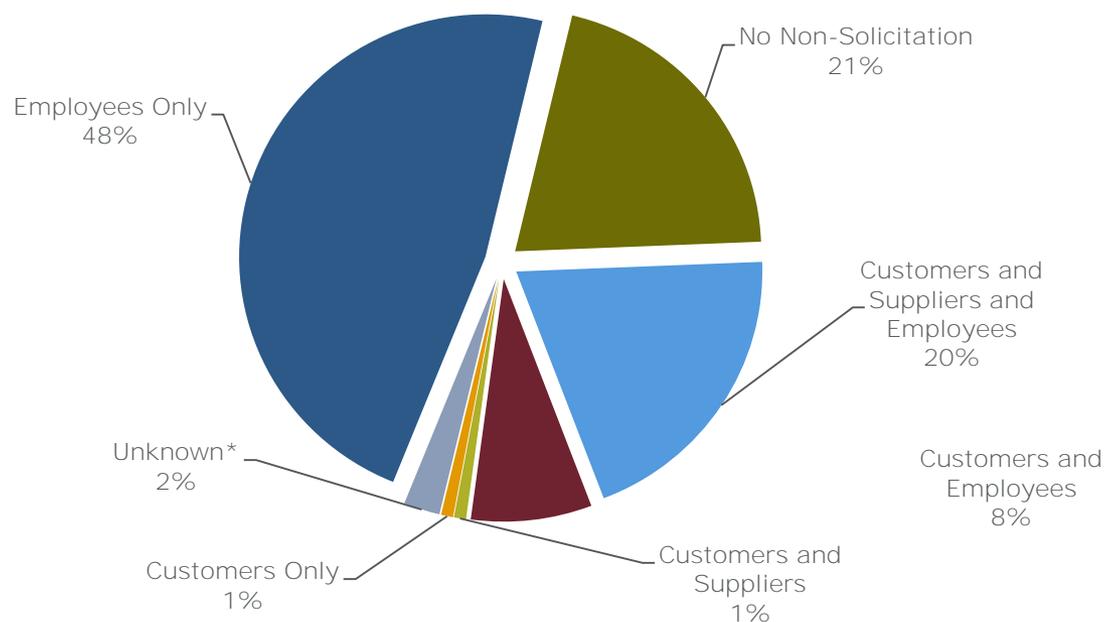
** Potential interference means interference with potential customers.

Non-Solicitation Covenants

Practice Pointer:

In a carveout transaction, the Seller typically remains as an operating business, posing a risk that the Buyer or carved-out business might solicit customers, suppliers or employees from the Seller, or vice versa. As a result, 79% of agreements (100 agreements) include a non-solicitation covenant.

Terms of Non-Solicitation Covenants

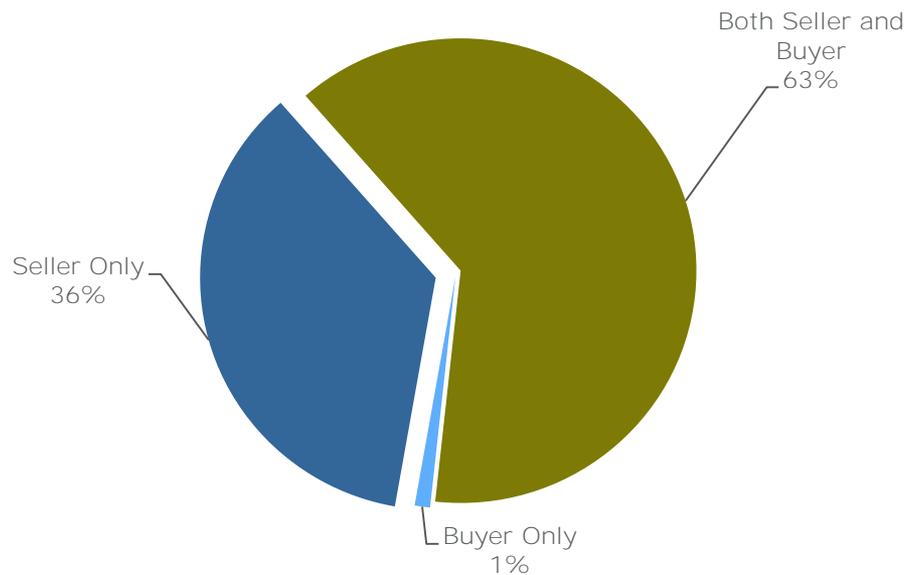


* Two agreements redact this information and one agreement includes the non-solicitation provision on a schedule that is not publicly available.

Non-Solicitation of Employees

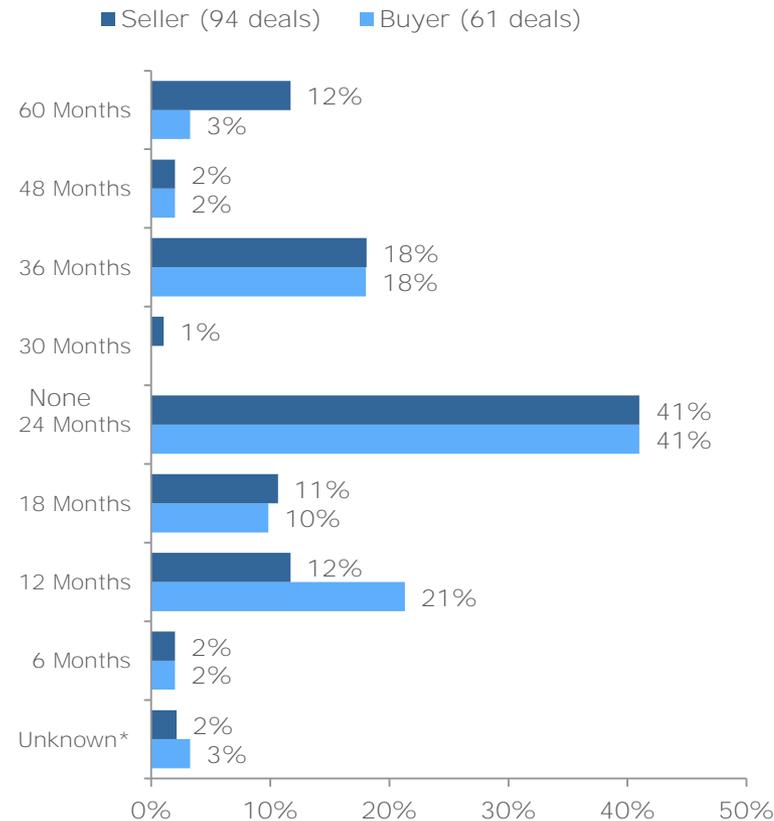
Party Subject to Covenant Not to Solicit Employees

(subset: 95 agreements with a covenant not to solicit employees)



Duration of Covenant Not to Solicit Employees

(subset: 95 agreements with a covenant not to solicit employees)

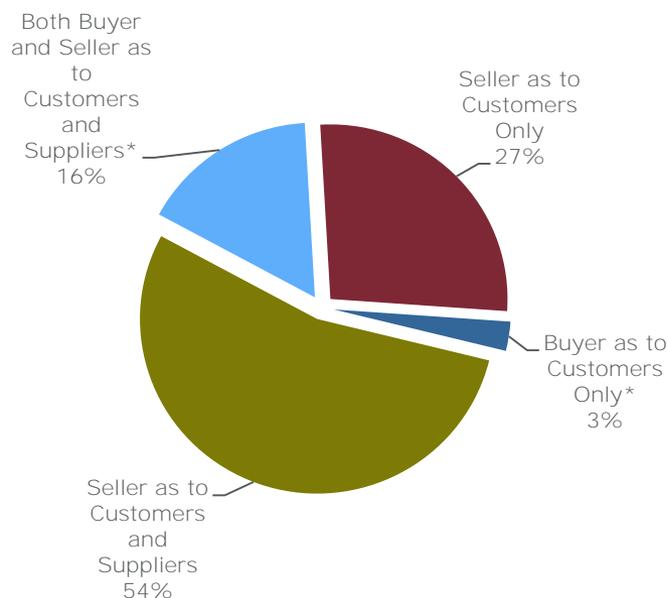


* Two agreements redact this information.

Non-Solicitation of Customers & Suppliers

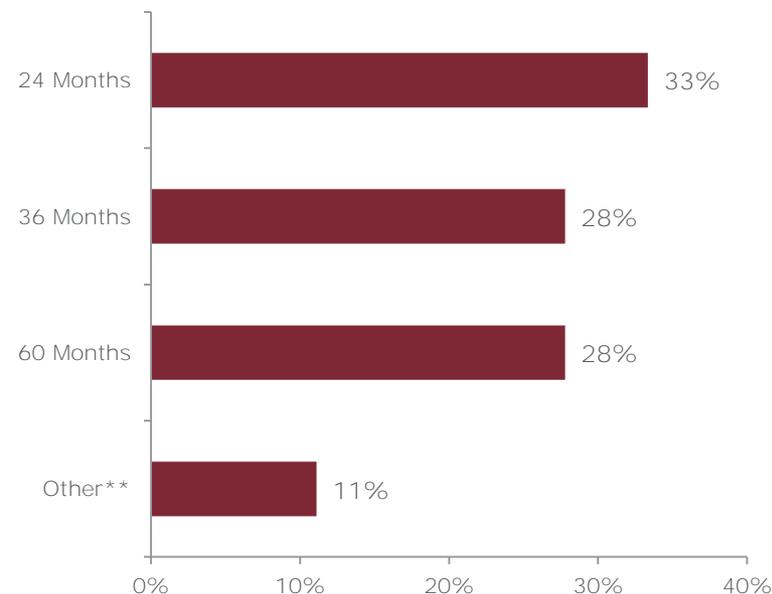
Party Subject to Covenant Not to Solicit Customers and/or Suppliers

(subset: 37 agreements with a covenant not to solicit customers and/or suppliers)



Duration of Covenant of Seller Not to Solicit Customers and/or Suppliers

(subset: 36 agreements with a covenant of Seller not to solicit customers and/or suppliers)

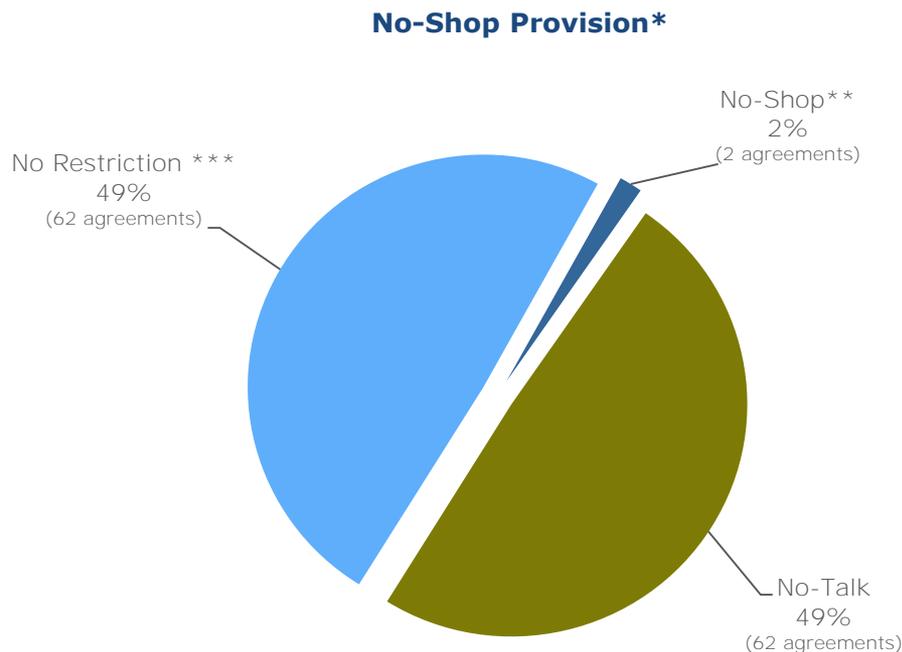


* The duration of the non-solicitation covenant (i) as to only the Buyer is 24 months and (ii) as to both Buyer and Seller that had a separate duration for Buyer is 60 months and (i) and (ii) are not reflected in the chart to the right.

** Other includes: 6 months (1 agreement), 12 months (1 agreement) and 48 months (2 agreements).

NO-SHOP / NO-TALK PROVISIONS

No-Shop/No-Talk Provisions



No-shop provisions are covenants that restrict the Seller and/or the carved-out business from taking certain actions to solicit or encourage third-party bids for the carved-out business. Restricted activities commonly include soliciting competing bids, providing confidential information to competing bidders or otherwise taking action to facilitate the entry into an agreement for a competing transaction. No-shop provisions may contain exceptions permitting the Seller to shop the carved-out business in certain circumstances (usually to comply with the Seller's fiduciary duties). By excluding agreements that expressly provide for stockholder approval from this Study, this effectively excluded agreements with no-shops with fiduciary outs. No-talk provisions prohibit any discussions or negotiations between the target and unsolicited bidders, whether or not initiated by the target. In carveout transactions, no-shop and no-talk provisions are featured in 51% of the agreements, compared with 50%, 90% and 85% of 2016-17 Private Deals, 2014 Private Deals and 2012 Private Deals, respectively.

* Only express no-shop provisions contained in the applicable definitive transaction agreements were assessed in this Study. Transactions may have been subject to "back-door" no-shop provisions by virtue of the application of confidentiality provisions in the definitive agreement itself or in separate confidentiality agreements—these were not considered.

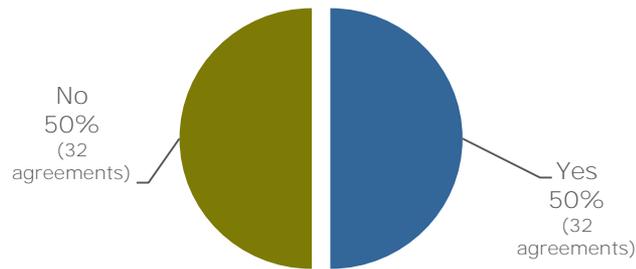
** Includes 1 agreement that has a simultaneous signing and closing date.

*** Includes 22 agreements that have a simultaneous signing and closing date.

No-Shop/No-Talk Provisions (cont'd)

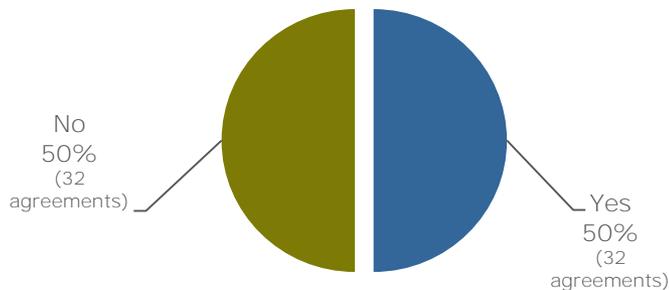
Covenant to Cease Discussion with Third-Party Bidders

(subset: 64 agreements with no-shop/no-talk provisions)



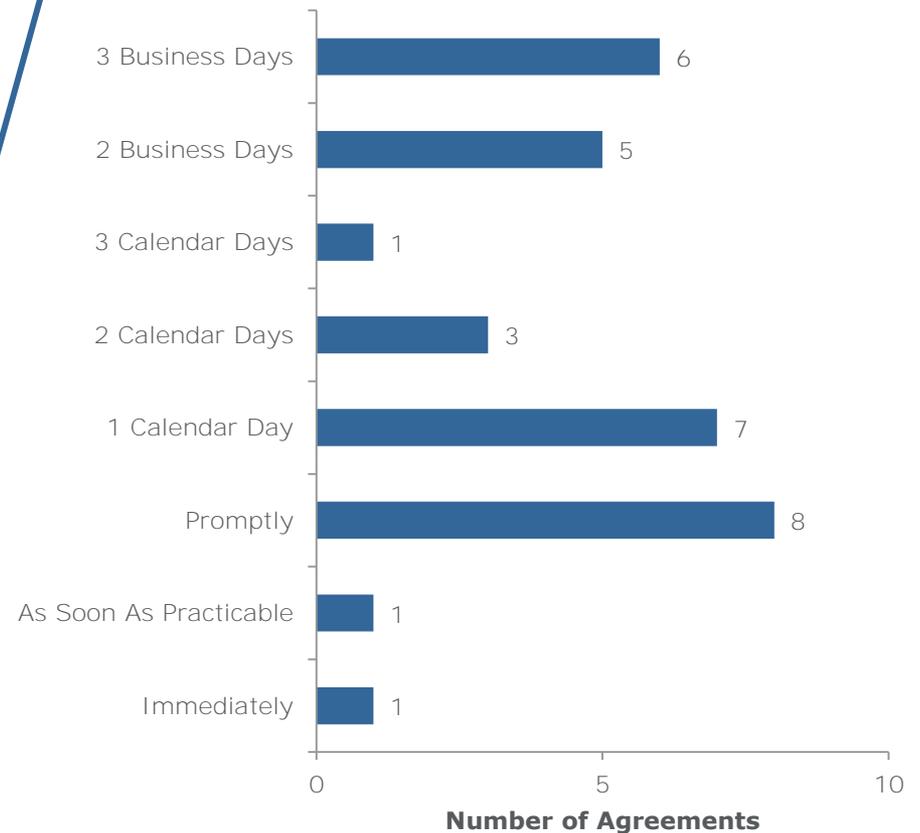
Seller to Notify Buyer in the Event an Alternative Proposal Is Received

(subset: 64 agreements with no-shop/no-talk provisions)



Time Period to Notify Buyer of Competing Bid

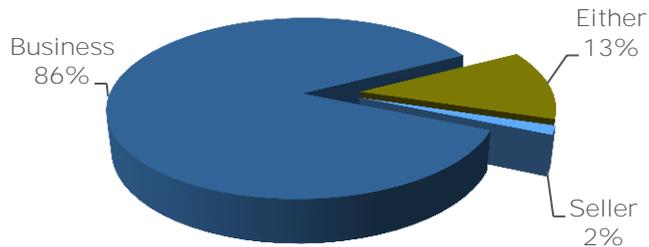
(subset: 32 agreements with notification of competing bids)



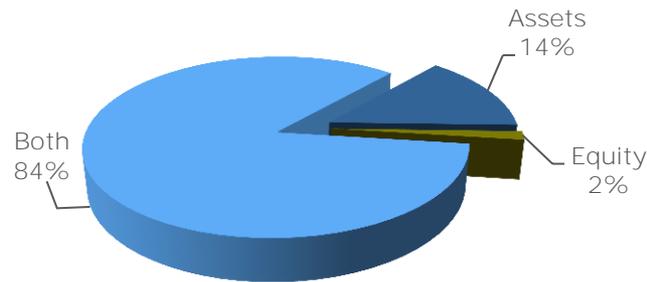
Definition of Acquisition Proposal

(subset: 64 agreements with no-shop/no-talk provisions)

Triggered by Offer for:

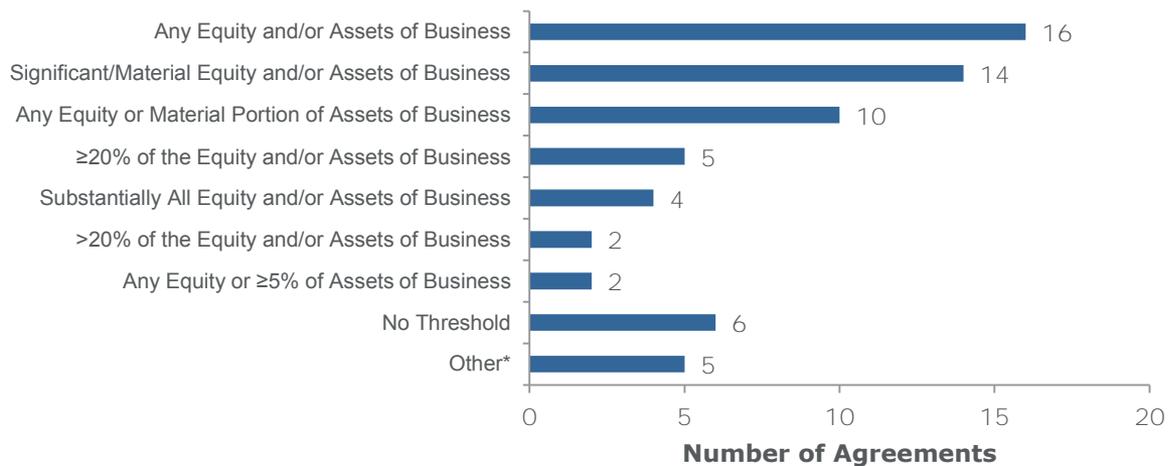


Triggered by Offer for:



14% of the agreements establish different thresholds for assets and equity (with the majority setting the threshold at "any" equity or a "substantial" or "material" portion of the assets). Additionally, approximately one-in-four no-shop/no-talk provisions in the agreement exclude alternative transactions involving the Seller (as opposed to the Business) from the definition of prohibited "Acquisition Proposals."

Threshold of Acquisition Proposal



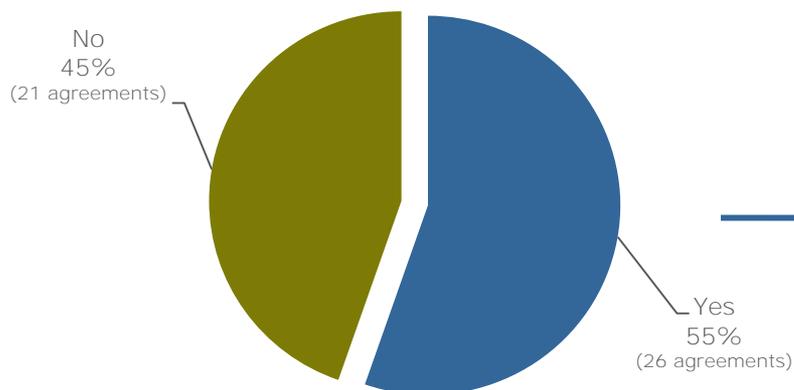
* "Other" includes:
 (1) Any equity of the Seller or assets of Business;
 (1) Material portion of the purchased assets or Business;
 (1) All or any portion of the purchased assets;
 (1) ≥20% of assets of Business or ≥5% of equity of Business; and
 (1) All or any part of the premises or any portion thereof or interest therein.

CONDITIONS

Third Party Consents

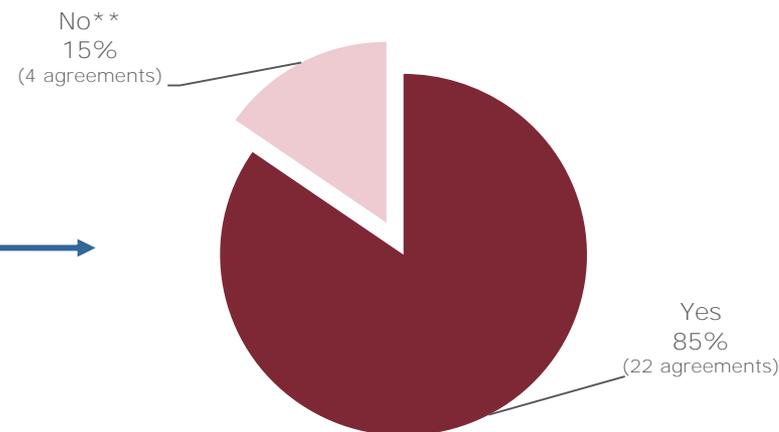
Receipt of Third Party Consents as a Condition to Closing

(subset: 47 agreements involving asset purchases and containing closing conditions) *



Required Third Party Consents Are Set Forth on a Schedule

(subset: 26 agreements involving asset purchases and containing a closing condition for third party consents)



* By comparison, of the 74 agreements structured as an equity purchase or merger, 12 contain a closing condition for third party consents.

** Three agreements specifically list the required consents in the applicable agreement and one agreement states that all required consents must be obtained.

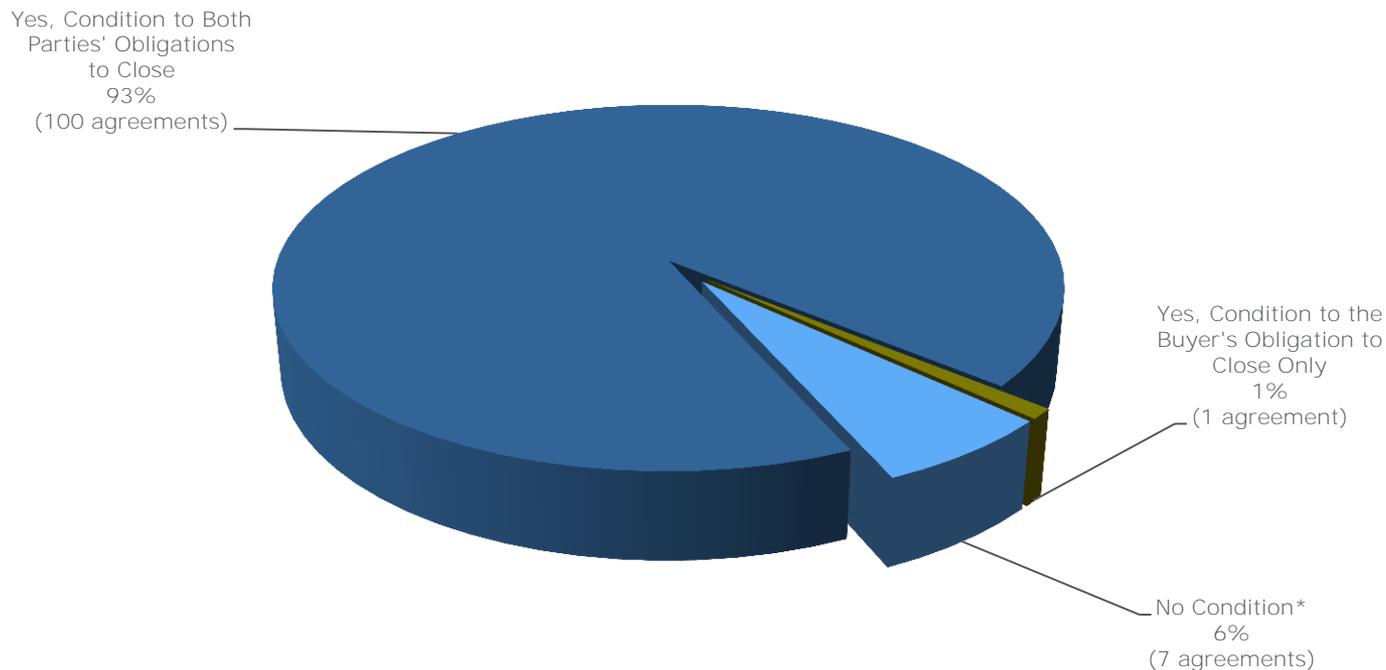
Practice Pointer:

85% of agreements involving an asset purchase and containing a closing condition for third party consents provide that the required consents are set forth on the disclosure schedules. Therefore, although such agreements on their face contemplate obtaining consent, the disclosure schedules (which generally are not made publicly available) may state “none” and therefore effectively have no closing condition. The closing condition may be used by the parties as a placeholder during the negotiation process until the parties agree upon the contracts, if any, for which third party consent will be required.

No Order

Is There a Condition on the Obligations of the Parties to Close in the Event of an Order, Judgment or Injunction Prohibiting the Transaction?

(subset: 108 agreements containing closing conditions)



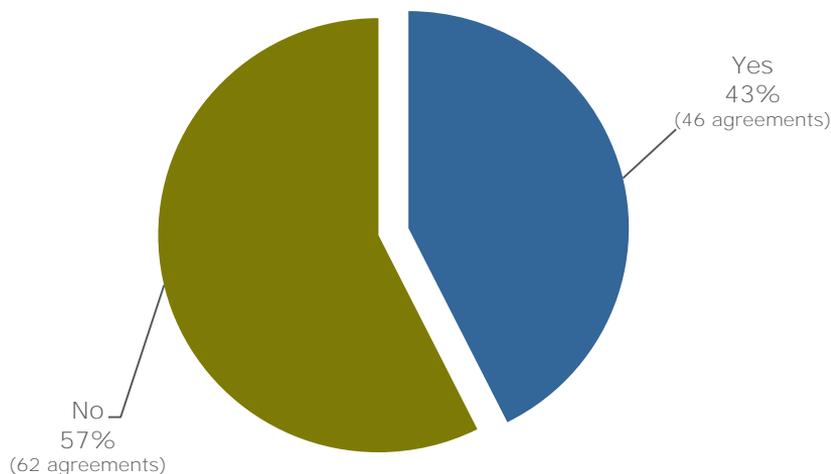
* Two of the agreements that do not contain such a closing condition provide the parties with a right to terminate in the event of an order or injunction restraining the consummation of the transaction. One of the agreements that does not contain a no order condition includes a condition that provides that the parties are not required to close the transaction in the event of any pending litigation seeking to enjoin the transaction.

Absence of Litigation

As indicated on the previous page, 93% of agreements (100 agreements) that include closing conditions contain a condition that provides that one or both of the parties are not obligated to consummate the transaction in the event that there is an actual order or judgment prohibiting or enjoining the transaction from being completed. The charts on this page and the following page examine instances in which one or both parties are not obligated to close the transaction in the event that there is actual or threatened litigation that may have the effect of prohibiting or enjoining the transaction. As compared to the data point studied on the previous page, the outcome of such litigation has not yet been determined.

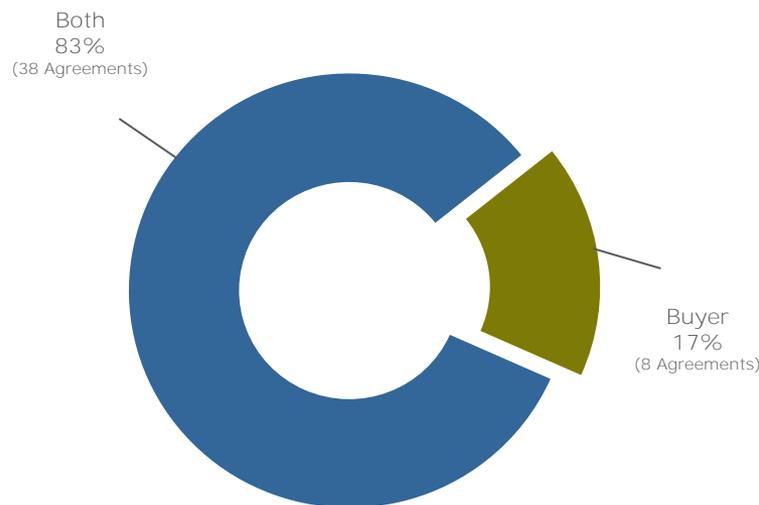
Is There a Closing Condition That There Be No Litigation, Action or Investigation Threatening to Prohibit or Enjoin the Transaction?

(subset: 108 agreements containing closing conditions)



Which Party's Obligation to Close Is Subject to the Absence of Litigation Condition?

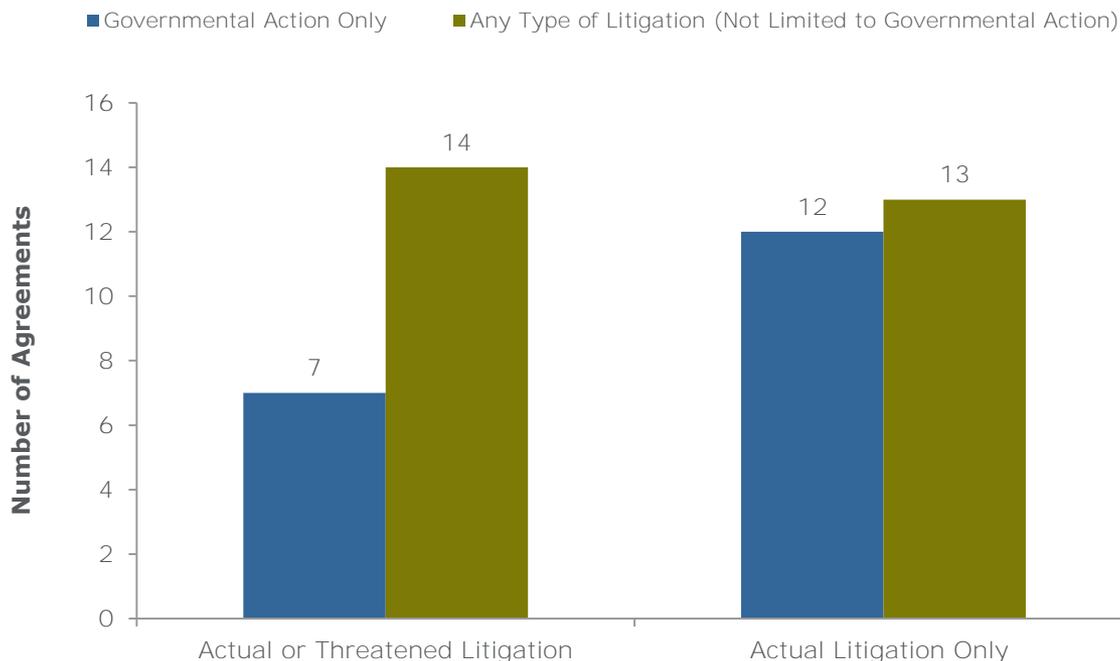
(subset: 46 agreements with an Absence of Litigation condition)



Absence of Litigation (cont'd)

What Types of Litigation Does the Absence of Litigation Condition Apply to?

(subset: 46 agreements with an absence of litigation condition)



Comparison:

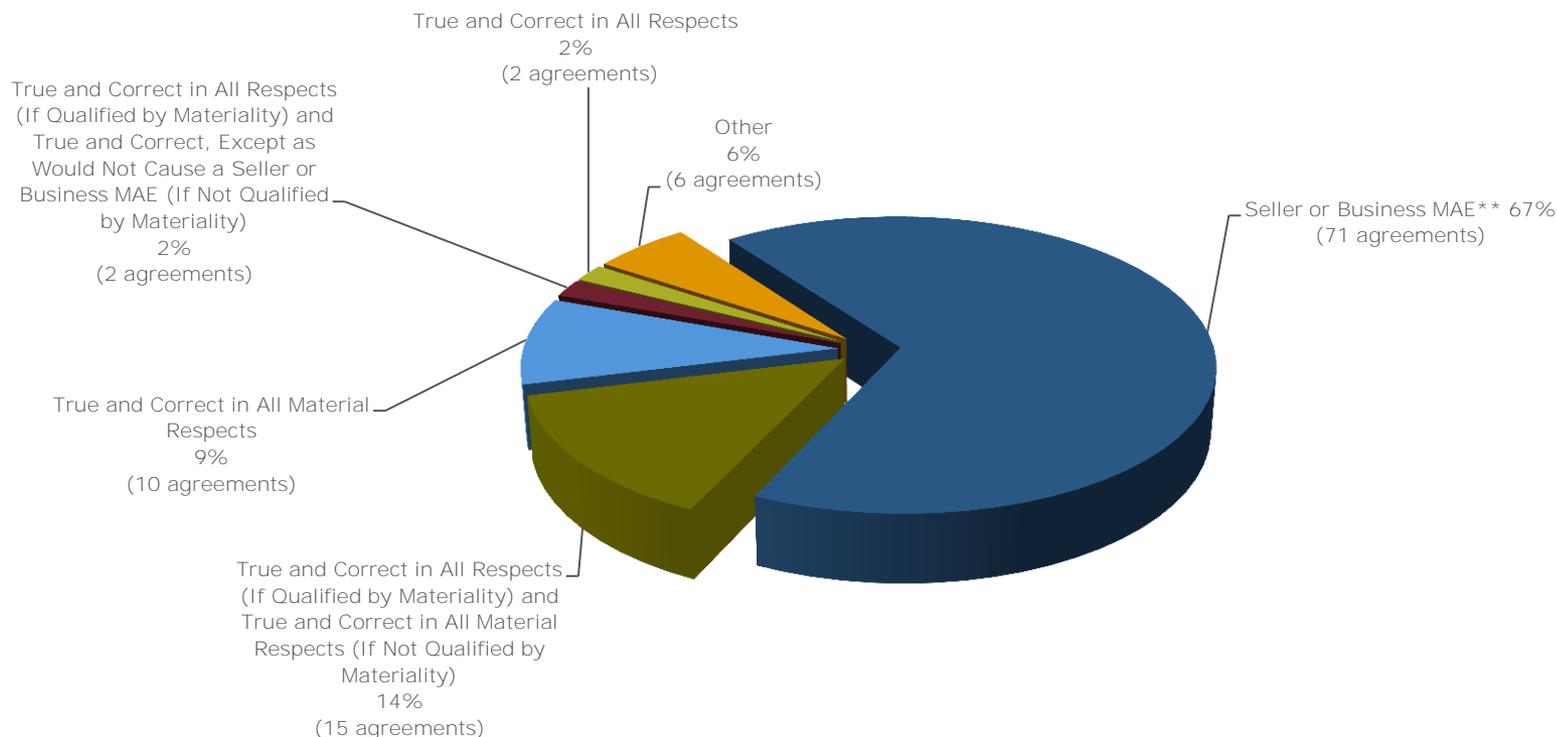
In 37% of the agreements (7 agreements) containing an absence of litigation condition that is limited to governmental actions, the condition applies to both actual and threatened litigation, rather than just actual litigation (i.e., action that is currently pending). Although the Private Deal Points Study does not track this condition, we note that the 2017 Strategic Buyer/Public Target M&A Deal Points Study (the "Public Deal Points Study") indicates that for public deals in 2016, absence of governmental litigation conditions include threatened litigation only 26% of the time. In addition, according to the Public Deal Points Study, no public deals in 2016 included an absence of litigation condition that was limited to governmental action, a result that may reflect the prevalence of stockholder litigation in public company M&A.

With respect to the 21 agreements that provide that a party is not obligated to close in the event of threatened litigation, 39% of such agreements limit the condition to circumstances in which the threat of litigation or investigation is in writing.

Bringdown of Representations

What Is the Standard for Bringdown of General Representations?*

(subset: 106 agreements with a bringdown of general representations)



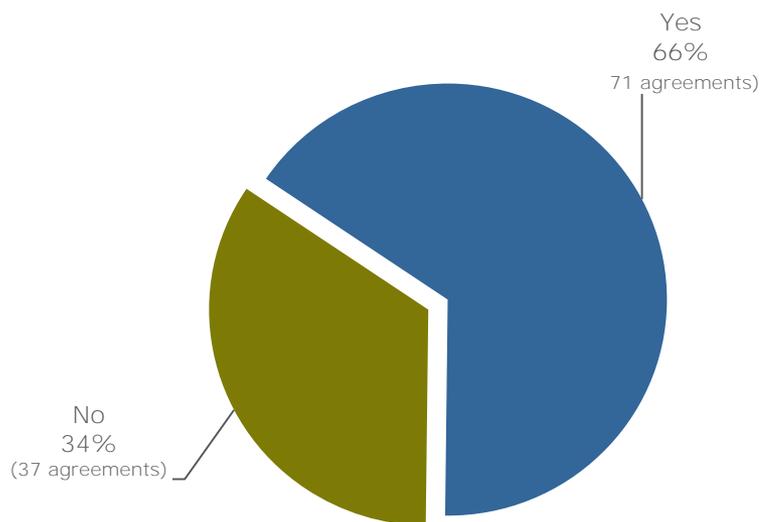
* This chart only shows data with respect to general representations and does not reflect the standard for bringdown of fundamental representations or any other representations with separate treatment that are brought down to a different level than general representations.

** Includes 69 agreements in which the standard is true and correct in all respects, except as would not cause an MAE and two agreements in which the standard is true and correct in all material respects, except as would not cause an MAE.

Material Adverse Effect

Condition That the Business, Transferred Assets, Assumed Liabilities or Some Combination of the Foregoing Have Not Suffered an MAE*

(subset: 108 agreements containing closing conditions)



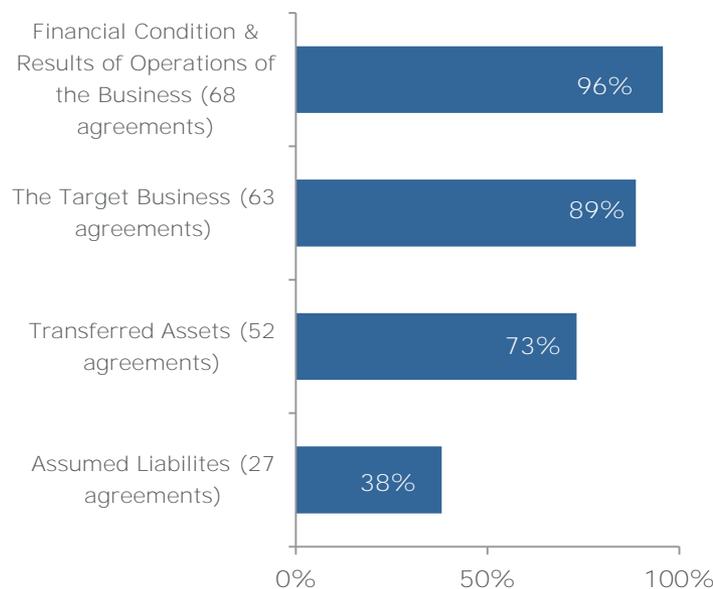
* This chart only includes agreements containing a standalone MAE closing condition and does not include agreements where the no MAE representation contained within the absence of changes representation is brought down at closing.

Practice Pointer:

The standard for successfully establishing that a MAE has occurred is extremely high. In *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.*, the Delaware Chancery Court noted that, as of the date of its opinion (2008), Delaware courts had “never found a material adverse effect to have occurred in the context of a merger agreement.” In order to strengthen MAEs, the Buyer could consider: (1) using objective benchmarks that can be easily measured against; (2) including exceptions to the carveouts (e.g., “disproportionate effect” language); and/or (3) providing a clear time frame for measuring whether an MAE condition has been met.

To What Does the MAE Condition Apply?

(subset: 71 agreements with an MAE condition)**

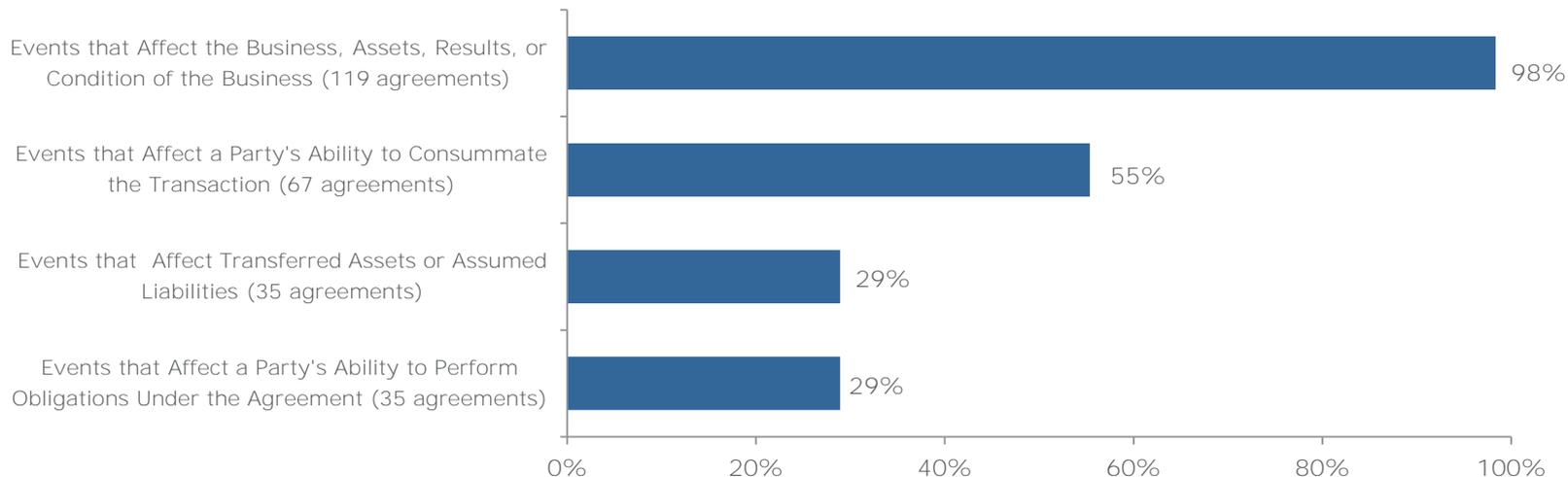


** 67 agreements contain multiple responsive applications.

Material Adverse Effect (cont'd)

Events Contained in the Definition of MAE*

(subset: 121 agreements in which MAE is defined)



* 86 agreements contain multiple events in the definition of MAE.

Other notable types of events contained in the definition of MAE for certain agreements include:

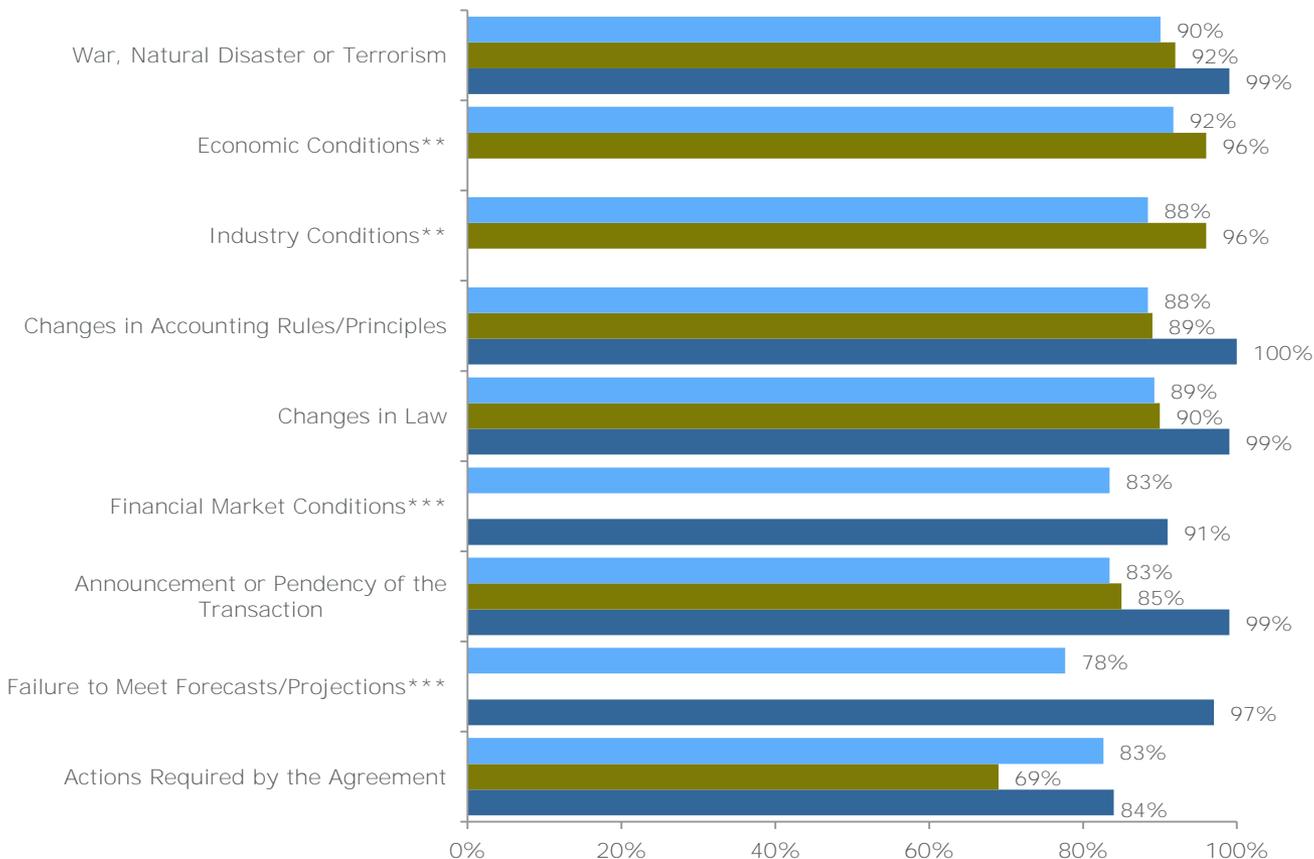
- Events that have an effect on future prospects (5 agreements);
- Events that have an effect on employees of the business (1 agreement); and
- Events that affect whether the Buyer can operate the business in the manner that it is currently operated (1 agreement).

Material Adverse Effect (cont'd)

Events Carved Out from the Definition of MAE

(subset: 121 agreements in which MAE is defined)

■ Carveout Transactions ■ 2016-17 Private Deals ■ 2016 Public Deals*



* References in this Study to 2016 Public Deals are taken from the Public Deal Points Study.

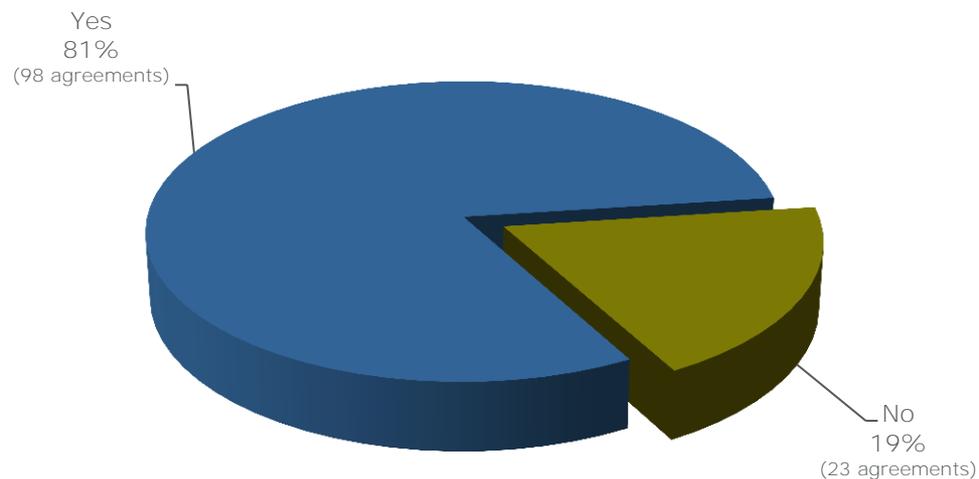
** 2016 Public Deals data not available.

*** 2016-17 Private Deals data not available.

Material Adverse Effect (cont'd)

Is Any MAE Carveout Qualified by "Disproportionate Effect" Language?

(subset: 121 agreements in which MAE is defined)



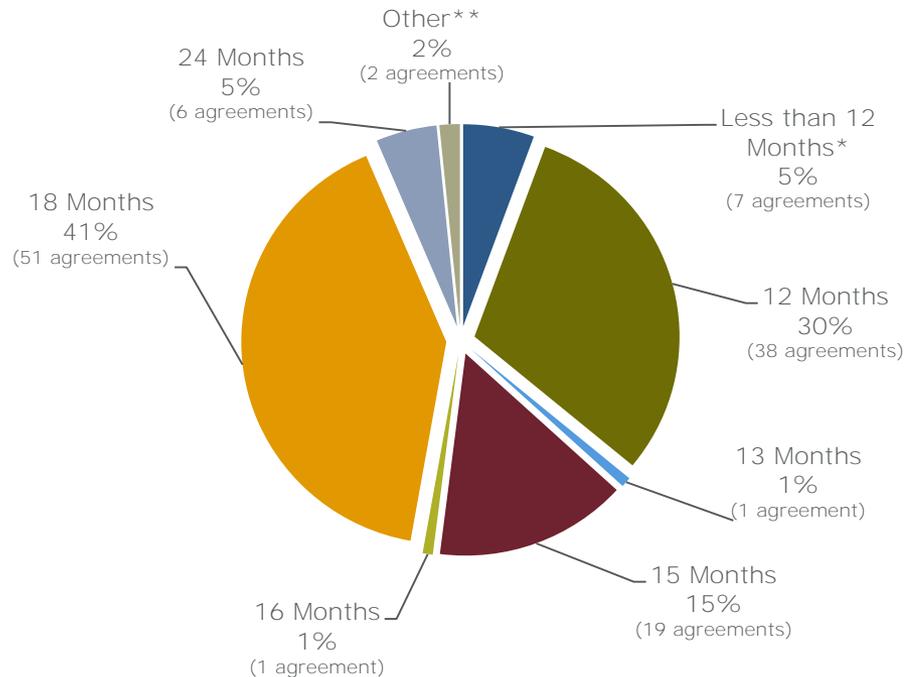
Comparison: In 81% of agreements (98 agreements) in which MAE is defined, at least one carveout to the definition of MAE is qualified by "disproportionate effect" language. By comparison, the definition of MAE in 2016-17 Private Deals, 2014 Private Deals and 2012 Private Deals includes at least one carveout qualified by "disproportionate effect" in 93%, 86% and 91% of agreements, respectively.

INDEMNIFICATION

Survival Periods for Claims

General Representations

(subset: 125 agreements with Seller indemnification)



Comparison:

All but two of the agreements in this Study provide for survival of the **Seller's representations and warranties, covenants or both**. The most common survival periods of 12 months and 18 months, in 30% and 41% of agreements, respectively, are consistent with data presented by the Private Deal Points Study, where representations survive for 12 months in 27% of agreements and for 18 months in 38% of agreements in 2016-17 Private Deals. In recent years, private equity firms have frequently utilized representations and warranties insurance, which is having the effect of reducing the prevalence of traditional indemnification provisions.

* Includes two agreements with Seller indemnification in which there is no survival period for the Seller's general representations.

** Includes one agreement in which the survival period is the earlier of 12 months and 6 months after receipt of the target company's audited financials and one agreement in which the survival period is the later of 15 months after the initial closing date and 17 months after signing.

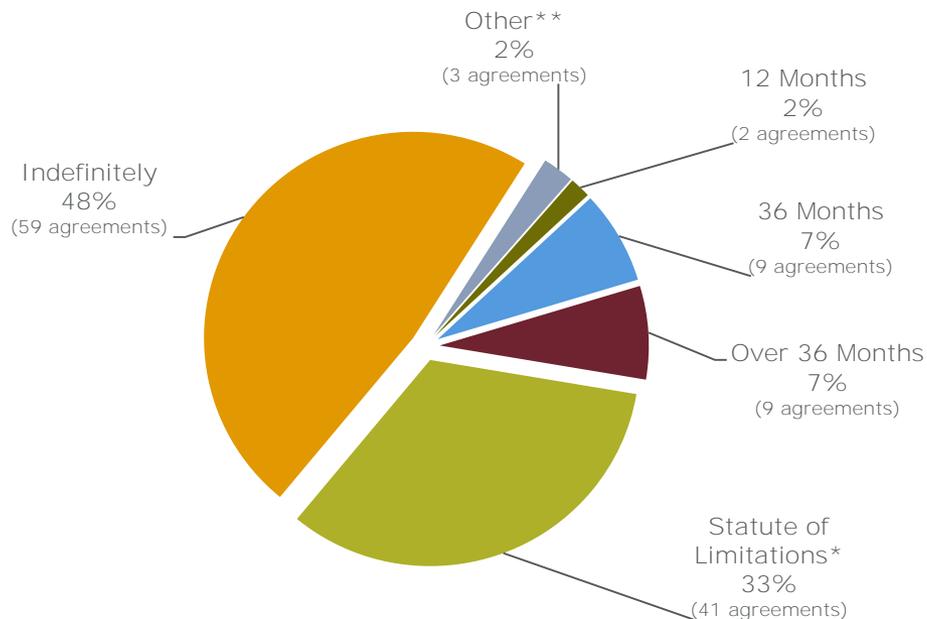
Survival Periods for Claims (cont'd)

Practice Pointer:

In 2014, the Delaware General Corporation Law was amended to provide that, in written contracts involving at least \$100,000, the parties may agree that any breach of contract claims may be brought within a period specified in such contract, provided that such period may not exceed 20 years from the accrual of the cause of action. As a result of this development, if an agreement is governed by Delaware law, the parties may effectively provide for representation and warranty survival periods that exceed the otherwise applicable statute of limitations for a breach of contract, which (other than with respect to contracts signed under seal) was three to four years under prior Delaware law.

Fundamental Representations

(subset: 123 agreements with Seller indemnification and fundamental representations)



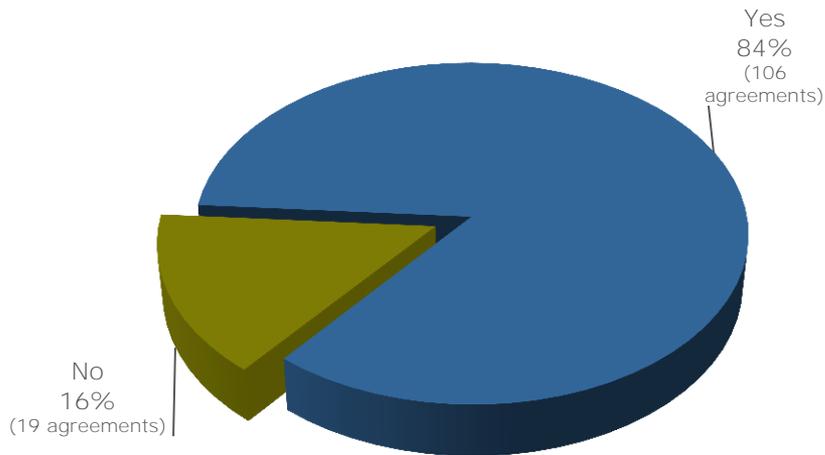
* Includes agreements in which the survival period is the applicable statute of limitations plus a certain number of days and agreements in which the survival period includes a backstop of a specified period of time if there is no applicable statute of limitations. Also includes one agreement in which the survival period is the earlier of 60 months and the statute of limitations.

** Includes (i) one agreement in which the fundamental representations survive indefinitely or for the applicable statute of limitations; (ii) one agreement with a bifurcated survival period of indefinite and 36 months; and (iii) one agreement in which the survival period is six months.

Survival Periods for Claims (cont'd)

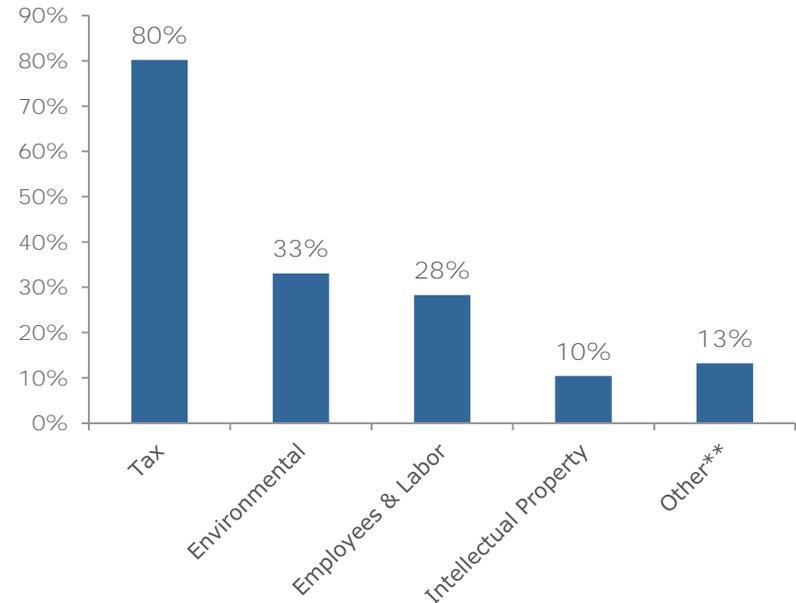
Other Separate Survival Periods*

(subset: 125 agreements with Seller indemnification)



Types of Representations with Separate Survival Periods*

(subset: 125 agreements with Seller indemnification)



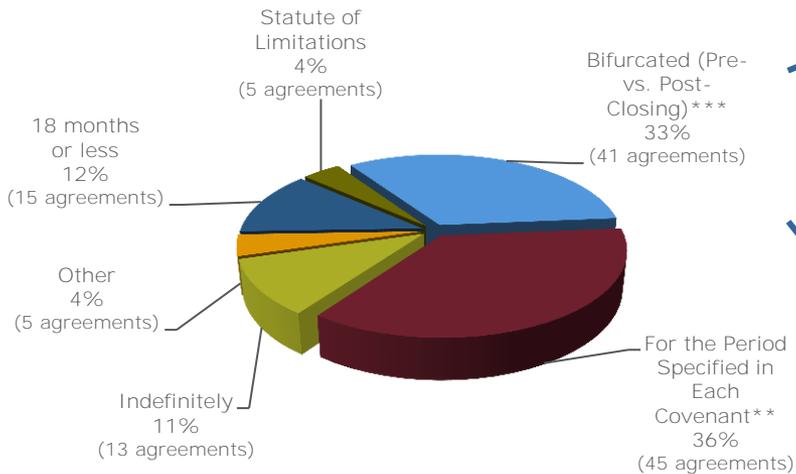
* Includes agreements that contain separate survival periods for specific representations other than general representations or fundamental representations. Does not include instances in which such representations are included within the definition of fundamental representations.

** Other includes representations related to regulatory matters, solvency, real property, subsidiaries of the Seller, product liability and other transaction-specific representations.

Survival Periods for Claims (cont'd)

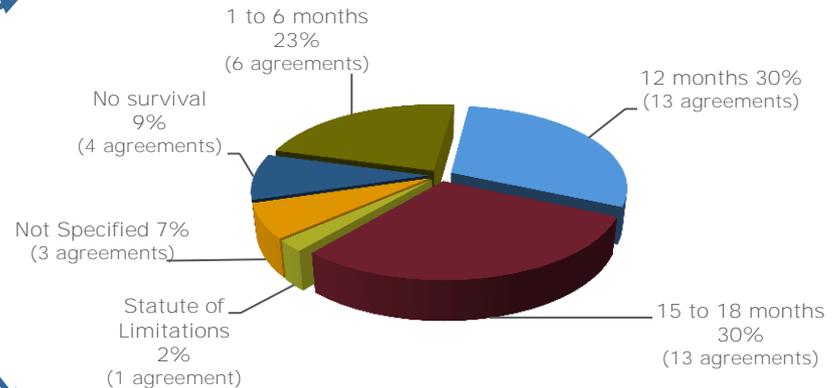
Covenants*

(subset: 125 agreements with Seller indemnification)



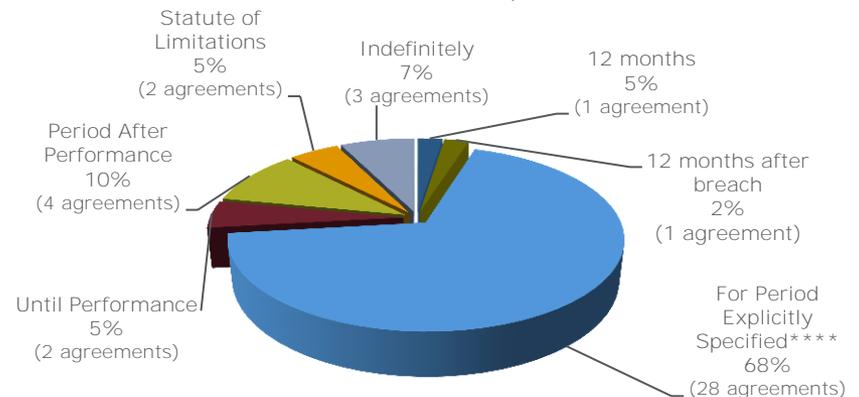
Pre-Closing Covenant Survival Period

(subset: 44 agreements with Seller indemnification and bifurcated covenant treatment)



Post-Closing Covenant Survival Period

(subset: 41 agreements with Seller indemnification and bifurcated covenant treatment)



* With respect to each category, includes agreements in such category if (i) there are only one or two specific covenants that are exceptions to the general survival period that applies to the other covenants in the agreement or (ii) covenants survive for the period stated unless otherwise explicitly specified to the contrary.

** Includes two agreements that provide that the survival period is indefinite, if not otherwise specified, and four agreements that provide that the survival period is the applicable statute of limitations if not otherwise specified. Also includes agreements that are silent with respect to the survival period of covenants.

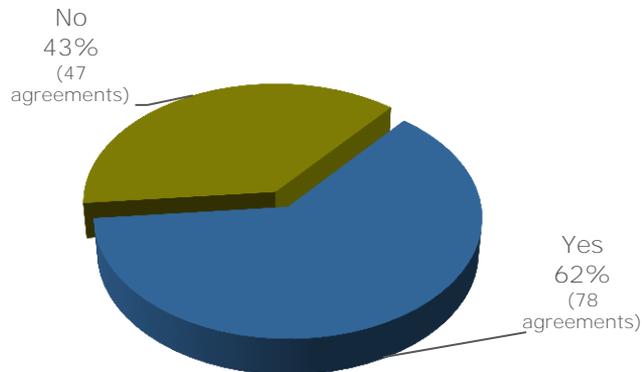
*** In 19 of the transactions, the survival period for covenants is bifurcated (i.e., survival periods differ for pre- and post- closing covenants).

**** Includes agreements in which the post-closing covenant survival period is as explicitly specified or, where silent, the applicable statute of limitations or indefinitely.

Per Claim Thresholds

Per Claim Threshold Amount for Individual Claims

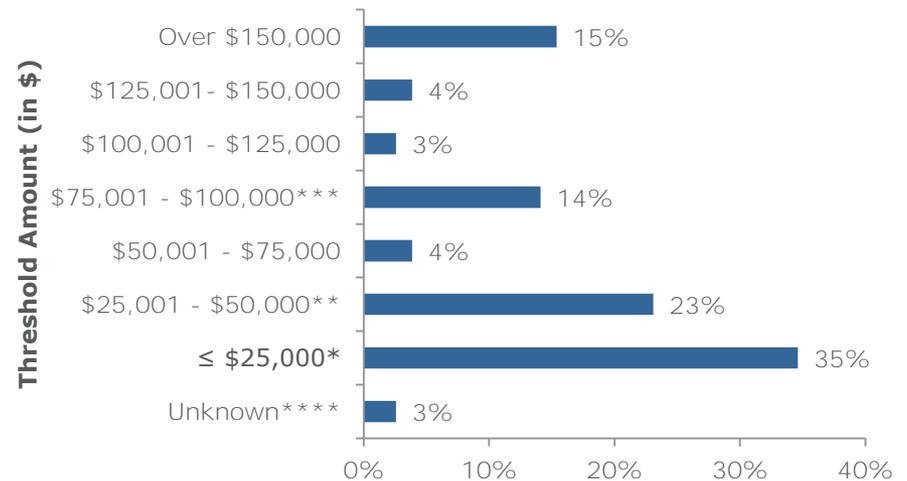
(subset: 125 agreements with Seller indemnification)



With respect to the 78 agreements containing a minimum threshold amount for individual claims, only three agreements provide that claims under the threshold can count toward the indemnification basket.

Per Claim Threshold Amount

(subset: 78 agreements with a per claim threshold amount)



* In 13 agreements, the per claim threshold amount is \$25,000.

** In 16 agreements, the per claim threshold amount is \$50,000.

*** In 11 agreements, the per claim threshold amount is \$100,000.

**** Includes two agreements in which the per claim threshold amount is either redacted or set forth on the disclosure schedule.

	Mean	Median	Minimum	Maximum
Per Claim Threshold Amount (in \$)	\$123,000	\$50,000	\$5,000	\$1,000,000
Per Claim Threshold Amount (as a % of purchase price)	0.0462%	0.0181%	0.0179%	0.6944%

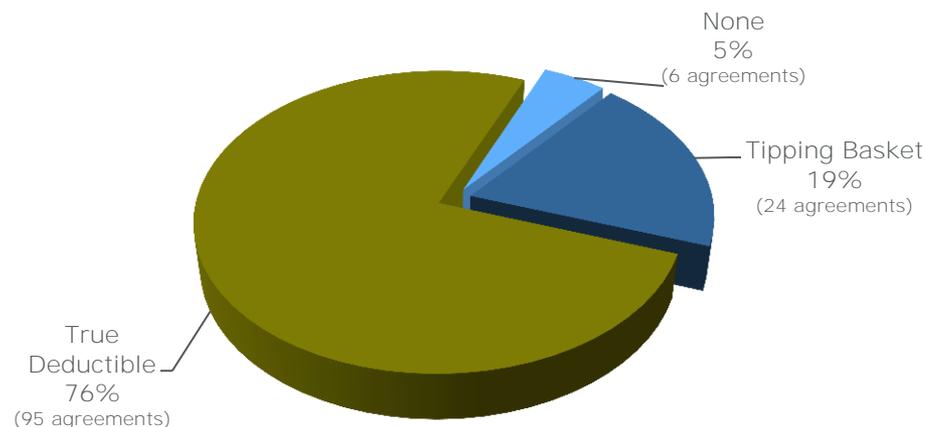
Deductibles & Baskets

Comparison:

95% of the agreements (119 agreements) with Seller indemnification include indemnification deductibles or baskets, of which 76% are true deductibles and 19% are tipping baskets. This is generally consistent with the results of previous studies on private agreements, however, there are slightly more true deductibles in carveout transactions. The percentage of agreements with true deductibles is 70%, 65% and 59% for 2016-17 Private Deals, 2014 Private Deals and 2012 Private Deals, respectively. In addition, as shown in the table below, the size of the deductibles and baskets (as a percentage of total purchase price) tend to be larger on average for carveouts compared to the size of the baskets in 2016-17 Private Deals.

Types of Deductibles & Baskets

(subset: 125 agreements with Seller indemnification)



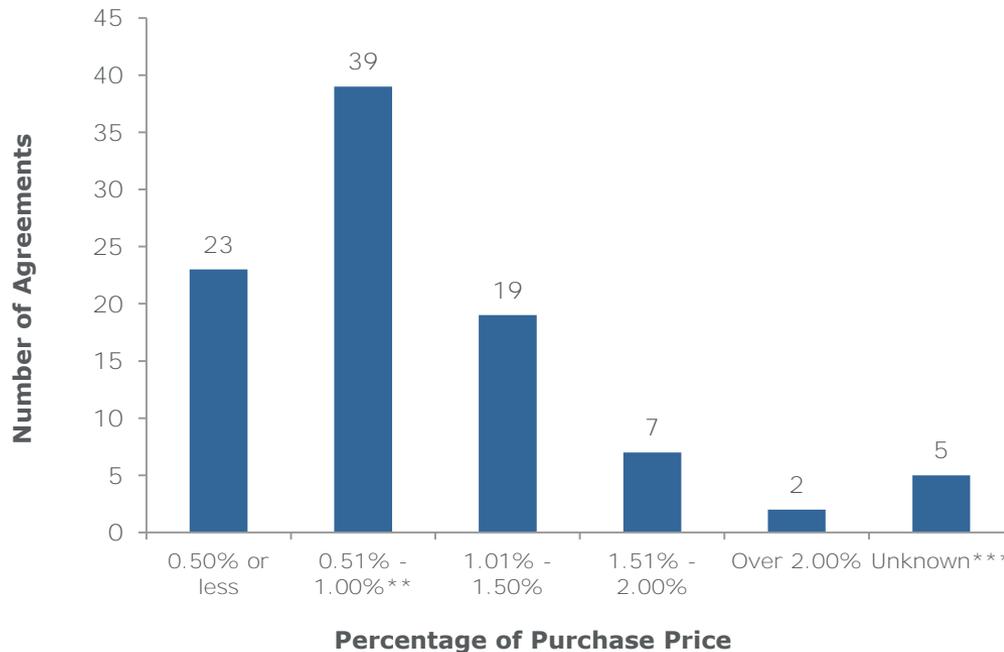
Size of Deductibles & Baskets as a Percentage of Total Purchase Price

	Mean	Median	Minimum	Maximum
Carveout True Deductible Baskets	0.92%	0.98%	0.13%	2.53%
Carveout Tipping Baskets	0.71%	0.63%	0.07%	1.47%
2016-17 Private Deals True Deductible Baskets	0.73%	0.58%	0.05%	10.00%
2016-17 Private Deals Tipping Baskets	0.91%	0.53%	0.08%	10.96%
2014 Private Deals True Deductible Baskets	0.69%	0.50%	0.04%	4.20%
2014 Private Deals Tipping Baskets	0.47%	0.47%	0.05%	1.25%

Deductibles & Baskets (cont'd)

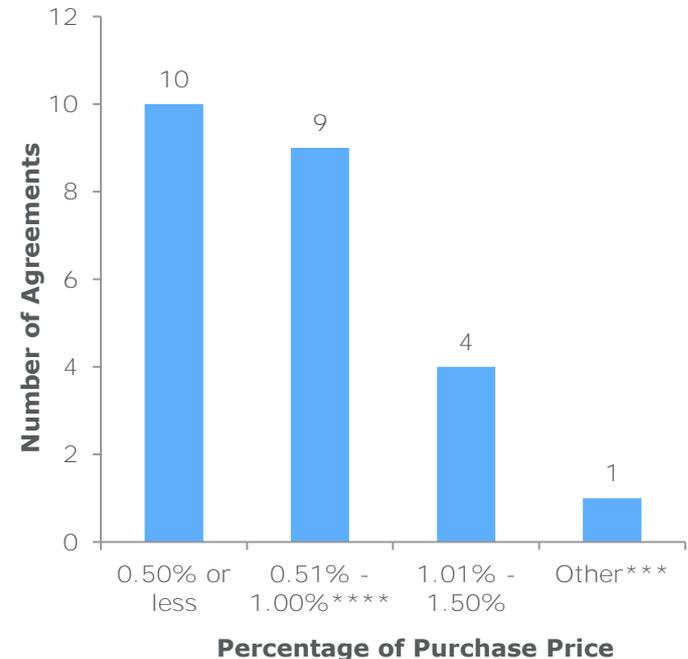
Deductible as a Percentage of Purchase Price*

(subset: 95 agreements with true deductibles)



Tipping Basket as a Percentage of Purchase Price

(subset: 24 agreements with tipping baskets)



* In two instances, the purchase price in the applicable agreement was amended after the deductible amount was set at 1% of the purchase price. Although the deductible amount was not amended in similar manner, 1% was used for purposes of this chart.

** In 17 agreements with a true deductible, the basket size equals 1% of the purchase price.

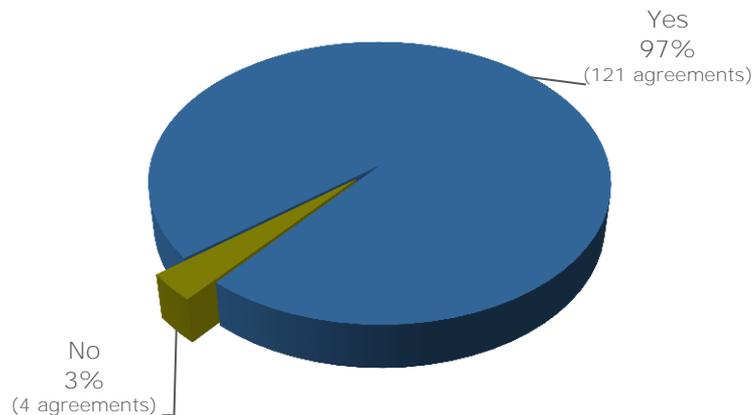
*** The "Other" category includes agreements for which the cap was redacted, provided in the disclosure schedules or not calculable based on the terms of the agreement.

**** In three agreements, the basket size equals 1% of the purchase price.

Caps

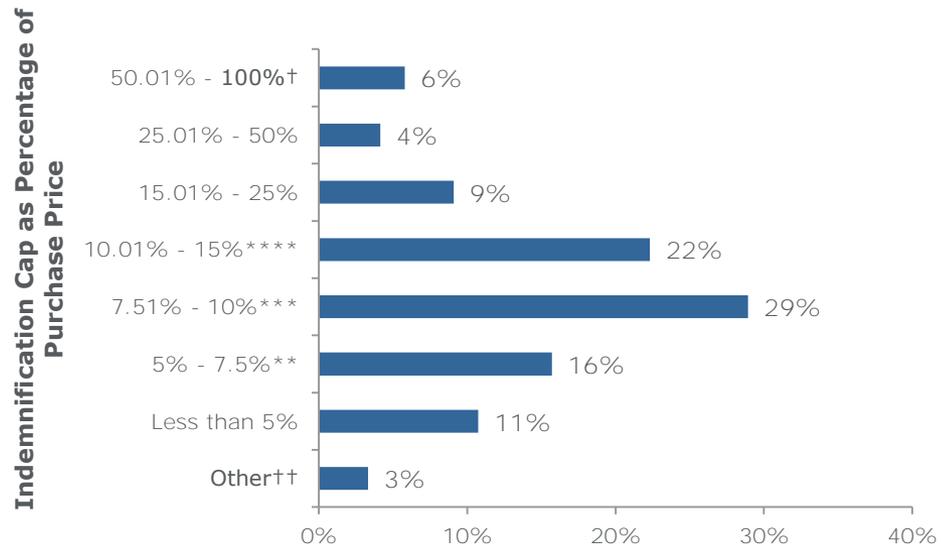
Indemnification Caps

(subset: 125 agreements with Seller indemnification)



Indemnification Cap as a Percentage of Purchase Price*

(subset: 121 agreements with Seller indemnification caps)



97% of transactions that provide for Seller indemnification include an indemnification cap. The range, mean and median indemnification cap amounts are comparable to such data in recent private agreements as shown in the chart below.

	Mean	Median	Min.	Max.
Carveouts	15.7%	10.0%	0.5%	100.0%
2016-17 Private Deals	12.2%	8.4%	0.01%	100.0%
2014 Private Deals	13.2%	10.0%	0.3%	100.0%

* Data reflects the cap for breaches of general representations. In two instances, the purchase price in the applicable agreement was amended after the indemnification cap was set at 7.5% and 10%, respectively, of the purchase price. Although the indemnification caps were not amended in similar manner, 7.5% and 10% were used for purposes of this chart.

** In six agreements, the cap equals 5% of the purchase price.

*** In 22 agreements, the cap equals 10% of the purchase price.

**** In 12 agreements the cap equals 15% of the purchase price.

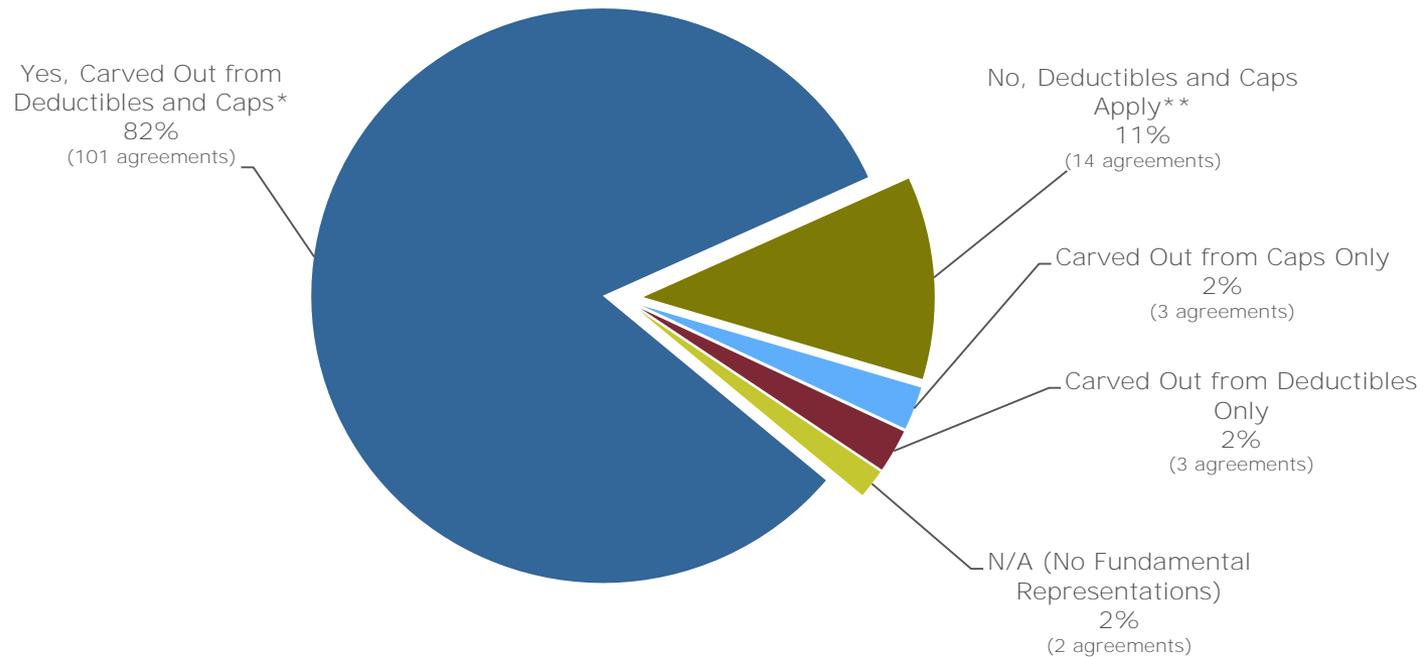
† In five agreements the cap equals 100% of the purchase price.

†† "Other" includes one agreement for which the cap is set forth in the disclosure schedules and three agreements where the cap is otherwise indeterminable.

Carveouts for Deductibles and Caps

Are Fundamental Representations Excluded from Deductibles and Caps?

(subset: 123 agreements with Seller indemnification and deductibles and/or caps)



* One agreement included only a cap and two agreements included only a basket.

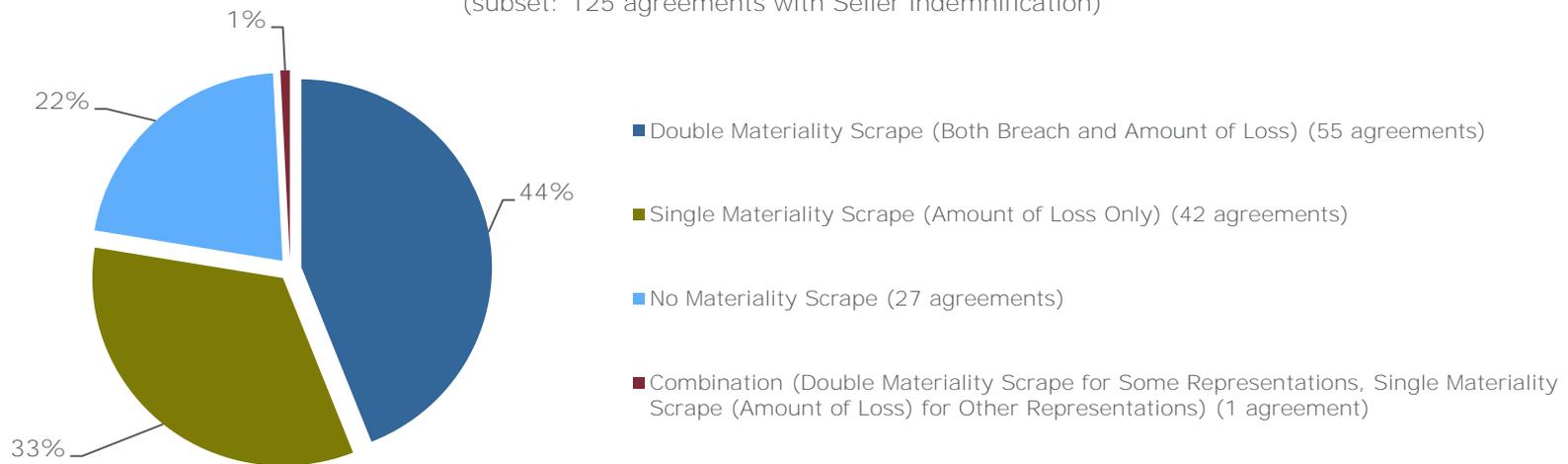
** Two agreements included only a basket.

Materiality Scrapes

A “materiality scrape” is a provision that provides that, for purposes of indemnification, the representations and warranties of the Seller will not be deemed to be qualified by references to materiality, Material Adverse Effect or similar qualifiers. Materiality scrapes can be applied for the purpose of determining (i) whether or not there has been a breach of the representations and warranties and/or (ii) the amount of any losses associated with a breach of representations and warranties. When a materiality scrape applies for determining both (i) and (ii), this is sometimes referred to as a “double materiality scrape.”

Applicability of Materiality Scrape

(subset: 125 agreements with Seller indemnification)



	Includes Materiality Scrape	Materiality Scrape* Applies to Amount of Damages/Losses Only
Carveout Transactions	78%	43%
2016-17 Private Deals	85%	43%
2014 Private Deals	70%	43%
2012 Private Deals	28%	41%

* This subset includes the 97 agreements that contain either a single materiality scrape or double materiality scrape and does not include the agreement that contains both a single materiality scrape and double materiality scrape.

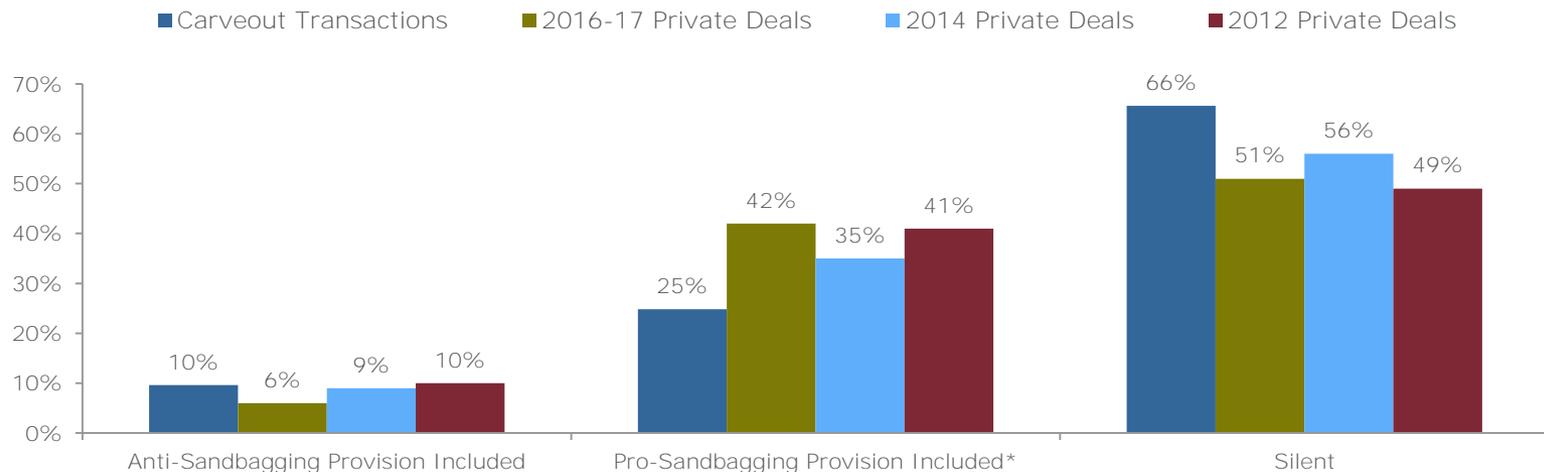
Sandbagging

A **sandbagging provision** (sometimes referred to as a pro-sandbagging provision) is a provision pursuant to which the Buyer reserves the right to bring indemnification claims against the Seller for a breach of a representation or warranty, even if the Buyer knew about the breach prior to the closing and proceeded to close the transaction with such knowledge.

An **anti-sandbagging provision** is a provision that expressly states that the Buyer cannot bring any indemnification claims against the Seller based on an inaccuracy or a breach of a representation or warranty that the Buyer knew about prior to the closing if the Buyer chooses to close the transaction in spite of such inaccuracy or breach.

Sandbagging and Anti-Sandbagging Provisions

(subset: 125 agreements with Seller indemnification)

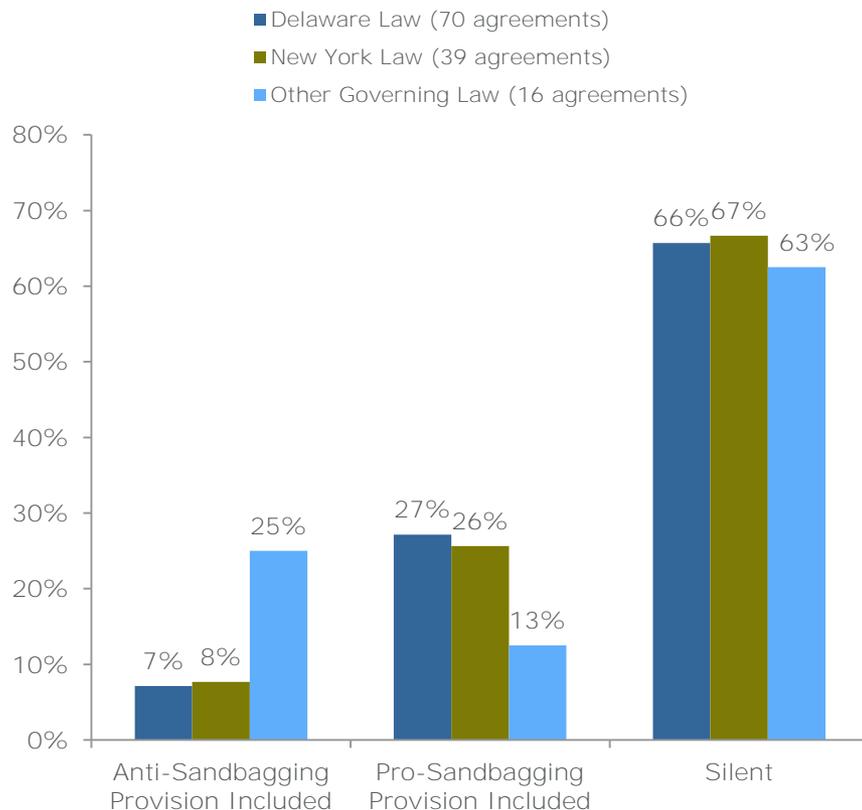


* Does not include provisions that merely state that the Seller's representations and warranties shall not be waived or limited by reason of investigation or due diligence conducted by the Buyer but that do not include an express statement on the impact of the Buyer's knowledge on the Buyer's post-closing indemnification rights.

Sandbagging (cont'd)

Sandbagging and Anti-Sandbagging Provisions

(subset: 125 agreements with Seller indemnification)



Practice Pointer:

66% of the agreements (82 agreements) that provide for indemnification by the Seller are silent with respect to sandbagging. When an agreement is silent as to sandbagging (i.e., the agreement does not expressly allow or expressly prohibit sandbagging), then the state law governing the agreement determines whether sandbagging is permitted or not. Although Sellers may prefer not to include a pro-sandbagging provision, they should consider state law in determining whether silence is preferable to a specifically negotiated provision. Delaware and New York law (which govern many acquisition agreements) generally permit sandbagging by the Buyer under certain circumstances, but application is very fact-specific and the case law is not fully developed in this area.

Delaware law is generally pro-sandbagging if an agreement is silent. *Interim Healthcare, Inc. v. Spherion Corp.* provides that a Buyer is not required to show that it reasonably relied on a Seller's representation in order to recover damages resulting from a breach by the Seller of that representation.

In New York, if an agreement is silent with respect to the issue of sandbagging, then the Buyer's ability to sandbag depends on the expectations of the parties. As set forth in *CBS Inc. v. Ziff-Davis Publishing Co.*, this issue is contingent upon whether the Buyer believed that it was purchasing the Seller's promise as to the truth of the relevant representations and warranties made by the Seller. If the Buyer closes on an agreement in which it had knowledge of facts showing an inaccuracy in a representation or warranty, then the Buyer could be foreclosed from asserting a breach depending on certain other factors, including the timing of the Buyer's becoming aware of such facts and the source of the Buyer's knowledge thereof.

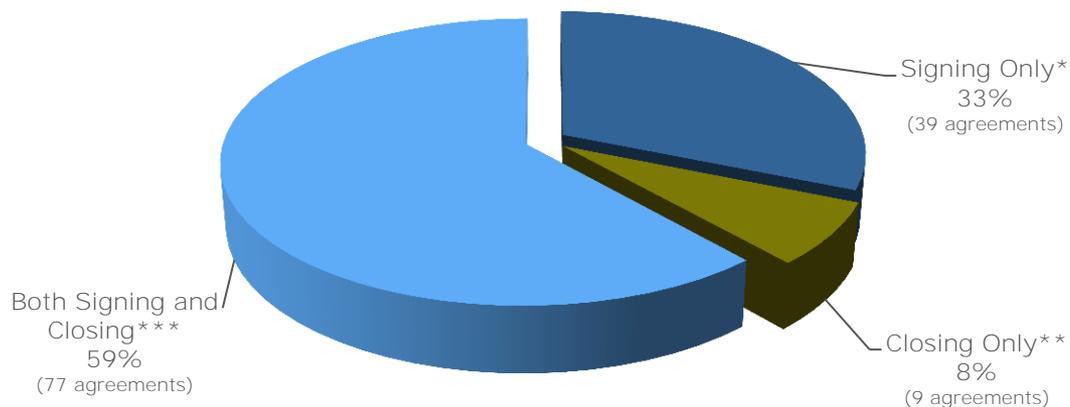
Breach or Inaccuracy of Seller's Representations

Practice Pointer:

It is important to consider the interplay between the timing of when representations and warranties are made and the Seller's ability to update its disclosure schedules. If the Seller makes its representations and warranties at signing and at closing and is also free to update the disclosure schedules at any time before the closing occurs, then the Seller is effectively able to remove from its indemnity obligations any inaccuracies of its representations and warranties that occur between signing and closing. In addition, any such breaches of the representations and warranties that occur between signing and closing would not count towards the determination of whether an MAE has occurred or the calculation of the Buyer's losses. The inclusion of a closing condition that the Seller's representations and warranties continue to be true and correct at closing is of little value to the Buyer in this instance. If the Seller is permitted to update the disclosure schedules, the Buyer may seek other protections such as a right to terminate the agreement in the event of any material updates to the disclosure schedules or the ability to seek indemnification from the Seller for breach of those representations and warranties.

Timing for Accuracy of Seller's Representations for Purposes of Indemnification

(subset: 125 agreements with Seller indemnification)



* Includes three agreements that expressly provide that although the representations are made as of signing, the disclosure schedules may be amended or supplemented prior to closing for indemnification purposes. Also includes two agreements in which most of the representations are made as of the signing date for indemnification purposes, with exceptions for a few representations that are made as of the closing date. Within this category, 16 agreements are simultaneous sign and close.

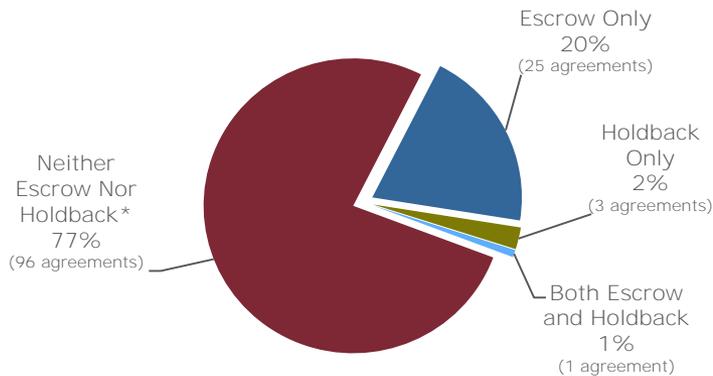
** Within this category, 3 agreements are simultaneous sign and close.

*** This category includes agreements in which the Seller indemnifies for (i) breaches or inaccuracies of representations in the agreement as of signing and (ii) breaches or inaccuracies in a closing certificate pursuant to which the Seller certifies that the representations and warranties are true and correct as of closing. Note, however, that such the materiality qualifiers applicable to representations brought down at closing often differ from those applicable to the representations at signing.

Escrow or Holdback for Seller’s Indemnification Obligations

Escrow and/or Holdback for Seller Indemnification Obligations

(subset: 125 agreements with Seller indemnification)



* Includes one agreement that refers to an escrow agreement that is not provided, and there is no indication as to whether the escrow agreement applies to Seller indemnification obligations.

Comparison:

Although almost all of the agreements provide for indemnification by the Seller, 77% of these agreements (96 agreements) do not include an escrow or holdback with respect to such indemnification. This differs significantly from the 2016-17 Private Deals for which only 24% of agreements that contain survival provisions do not include an escrow or holdback. The low frequency of escrows and holdbacks in carveout transactions is consistent with expectations where there is a Seller that remains to answer for any potential future indemnity claims.

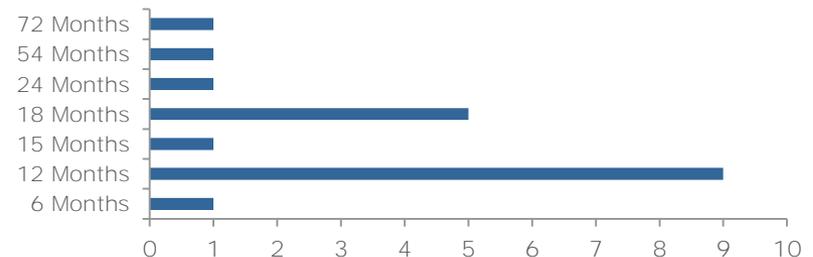
Practice Pointer:

As an alternative (or a supplement) to an escrow or a holdback, the parties may seek to obtain representations and warranties (“R&W”) insurance. The utilization of R&W insurance has increased in the past few years as terms have become more favorable, the process of obtaining insurance has become more efficient and insurance has become more widely accepted within the practice of M&A. If insurance is obtained, the size of the escrow (if there is one) is generally significantly reduced below what would otherwise be considered market by the parties.

Note that only eight agreements expressly contemplate the purchase of R&W insurance. These eight agreements have purchase prices of \$92 million, \$105 million, \$112 million (two agreements), \$147 million, \$280 million, \$350 million and \$412.5 million.

Length of Escrow Period

(subset: 26 agreements with an escrow for Seller indemnification obligations)**



Number of Agreements

	Mean	Median	Minimum	Maximum
Escrow Period** (in months)	19	12	6	72

** Excludes seven agreements with an escrow for Seller indemnification obligations, but for which the length of the escrow period was not publicly disclosed.

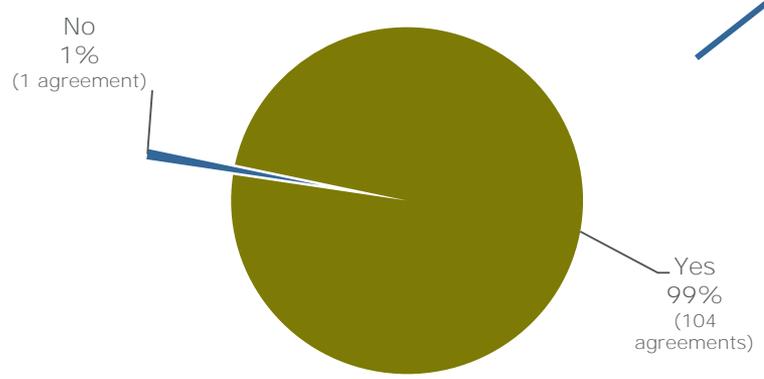
TERMINATION

Outside Date

An outside date (or drop-dead date) provides that one or both parties may elect to terminate the agreement in the event that the transaction is not closed prior to a set deadline. This gives the parties the ability to consider alternatives in the event that the transaction takes too much time to close as a result of any number of issues, such as difficulty with obtaining antitrust approval, an inability to obtain required third party consents or the existence of litigation threatening to prohibit or enjoin the transaction from taking place. For agreements that include an outside date, the average and median duration between signing and the outside date is 143 days and 123 days, respectively.

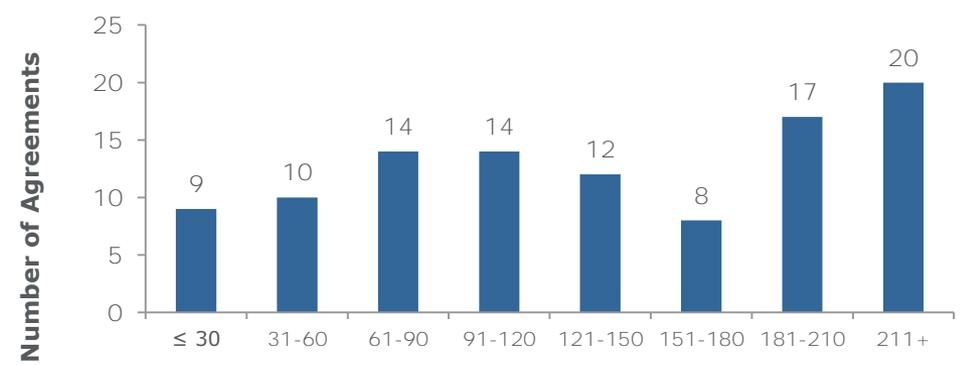
Outside Date

(subset: 105 agreements not structured as simultaneous sign and close transactions)



Duration Between Signing and Outside Dates

(subset: 104 agreements with an outside date)



Practice Pointer:

Often, larger transactions will require antitrust approval or the procurement of financing prior to closing. For example, under the Hart-Scott Rodino Antitrust Improvements Act of 1976, the "size of transaction test," which triggers a requirement to file a notification with the Department of Justice and the Federal Trade Commission, was met with respect to transactions valued in excess of \$80.8 million as of February 27, 2017. In addition, larger transactions may involve more foreign operations that could require additional antitrust, works councils or other approvals. Financing and regulatory conditions may take significant time to be met, and, therefore, a longer outside date or an extension period may be appropriate under such circumstances.

Number of Days Between Signing and Outside Dates

	Mean	Median	Min.	Max.
Time between Signing and Outside Date (in days)*	143	123	7	367

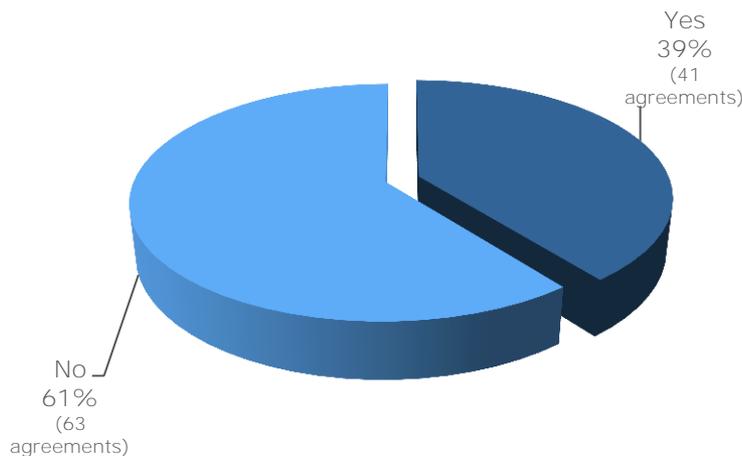
* Data excludes one agreement containing two possible outside dates of 2 or 6 days following signing.

Outside Date (cont'd)

41 agreements (39%) allow for an extension of the outside date under certain circumstances, the most common being in order to obtain antitrust clearance or other regulatory approvals.

Extensions to the Outside Date

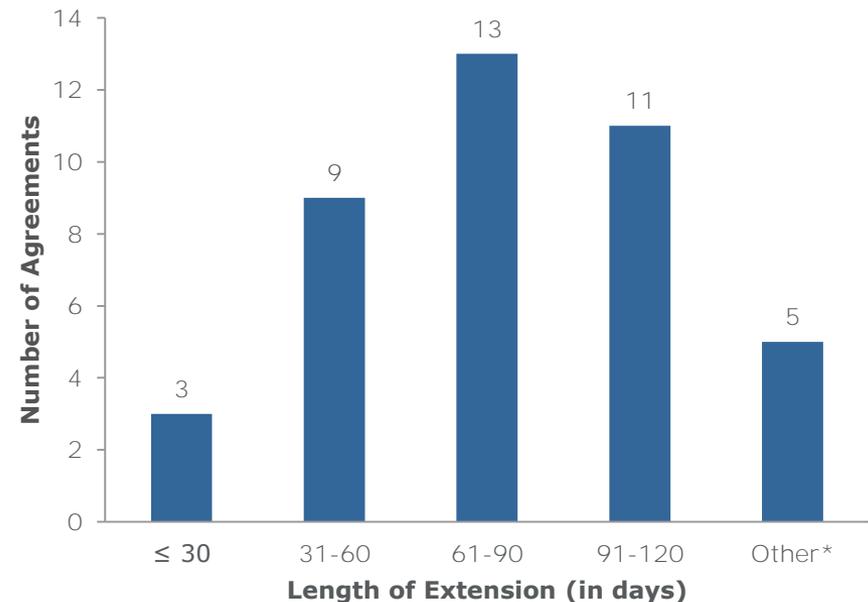
(subset: 104 agreements with an outside date)



	Mean	Median	Min.	Max.
Length of Extension (in days)**	75	90	14	120

Length of Extension to Outside Date (in Days)

(subset: 41 agreements with a provision for extensions to the outside date)



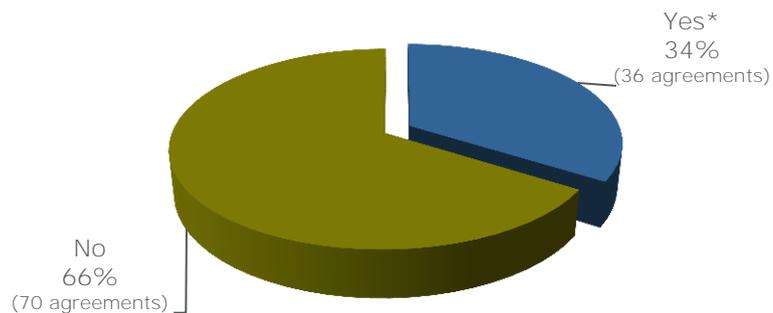
* "Other" includes four agreements in which the length of the extension is not calculable from the agreement or there are alternative possible extension periods. This category also includes one outlier, an agreement in which the length of the extension is 551 days.

** Excludes agreements included in the "Other" category above.

Reverse Termination Fee

Is There a Reverse Termination Fee?

(subset: 106 agreements containing termination provisions)



* Includes one agreement that provides for a reverse termination fee equal to the Seller's documented out-of-pocket expenses up to a maximum amount.

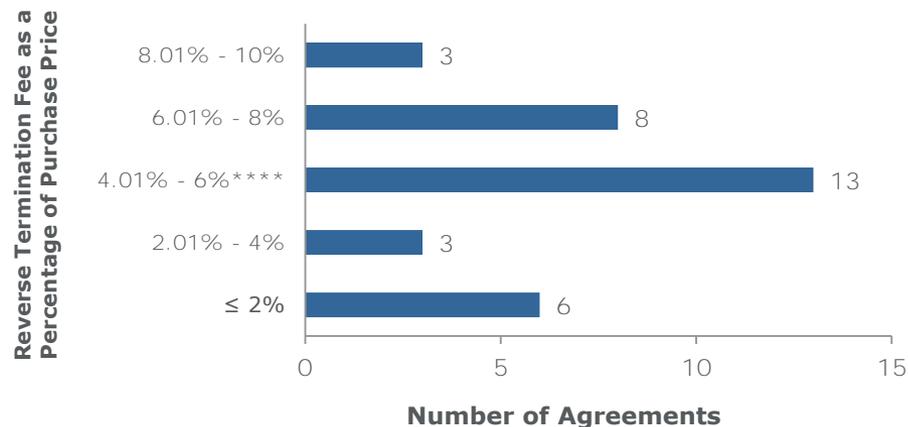
A reverse termination fee (also known as a reverse break fee) is generally used to compensate the Seller if the Buyer fails to close due to breach of the agreement, financing failure or inability to obtain various types of approval (e.g., antitrust or regulatory approval).

Approximately 34% of the agreements (36 agreements) that contain termination provisions include a reverse termination fee.

Comparison: We note that only 12 agreements in this Study contain a Seller (or "forward") termination fee. We have not included additional analysis of this data point because such termination fees are typical features of public company transactions and are generally triggered in connection with the target company's Board of Directors' exercise of its fiduciary out. We also note that reverse termination fees are far more common in acquisitions by private equity buyers, which would not be captured by this Study unless the acquisition involves a public company seller.

Size of Reverse Termination Fees**

(subset: 33 agreements with reverse termination fees)***



** In one instance, the purchase price in the applicable agreement was amended after the reverse termination fee was set at 6.5% of the purchase price. Although the reverse termination fee was not amended in similar manner, 6.5% was used for purposes of this chart.

*** Excludes (i) one agreement in which there are two alternative reverse termination fees (equal to 5% and 6% of the total purchase price); (ii) one agreement for which the reverse termination fee is set forth on a disclosure schedule that is not publicly filed; and (iii) one agreement for which there are two alternative reverse termination fees (equal to 5% and 2.94%, the latter of which may be reduced to 1.47% under certain circumstances.)

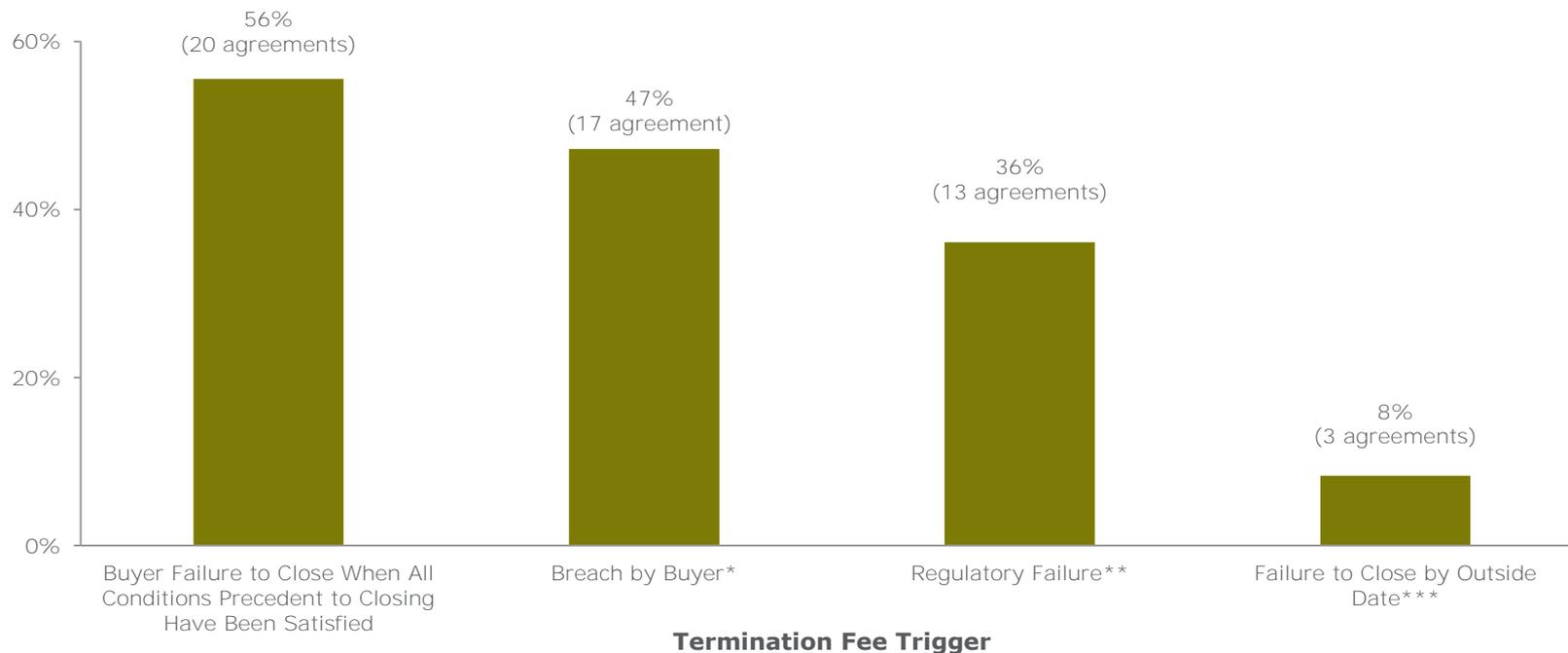
**** In 6 agreements, the termination fee equals 5% of the purchase price.

	Mean	Median	Min.	Max.
Reverse Termination Fee (as a percentage of purchase price)***	5%	5%	1%	10%

Reverse Termination Fee (cont'd)

Frequency of Reverse Termination Fee Triggers

(subset: 36 agreements with reverse termination fees)



* Includes triggers in the event of any breach by the Buyer, willful or intentional breaches by Buyer and breaches of specific covenants by the Buyer (e.g., financing or regulatory efforts covenants).

** Includes, for example, triggers relating to failure to obtain anti-trust approval, CFIUS approval, other governmental or regulatory approval or the entry of a governmental order enjoining the consummation of the transaction.

*** Includes only those agreements in which a termination for failure to close by the outside date is sufficient in and of itself to trigger a reverse termination fee.

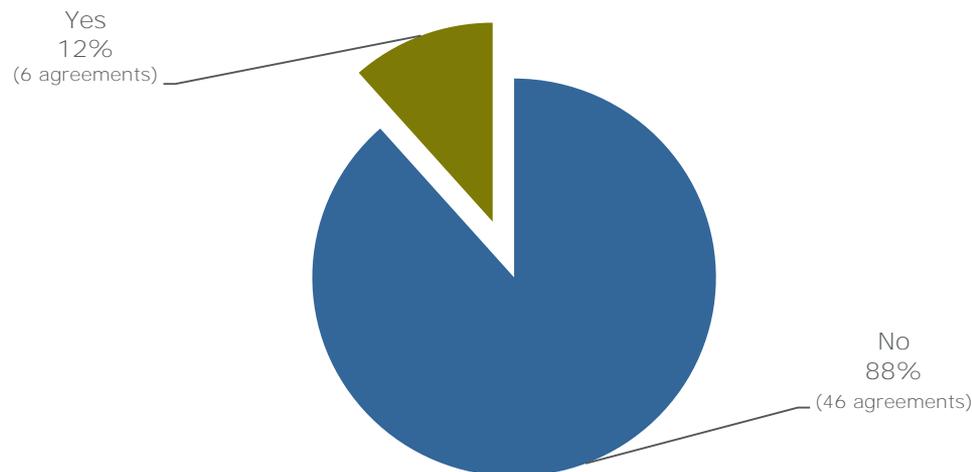
INTELLECTUAL PROPERTY

Catch-All License of Intellectual Property

Intellectual property (“IP”) is typically one of the most difficult assets to separate in a carveout transaction, and often there is a significant amount of IP that the carved-out business needs for its operations but that Seller will retain after the transaction. Often, the carved-out business’s use post-closing of IP retained by the Seller but that is necessary to the operation of the carved-out business is limited in scope to permit only uses that existed prior to the closing. However, if the Seller is exiting an entire line of business through the carveout, the Buyer’s post-closing use of licensed IP may extend to that line of business as it may develop after the closing.

Catch-All License of IP Necessary for Operation of the Business but Not Actually Transferred

(subset: 52 agreements involving asset purchases)



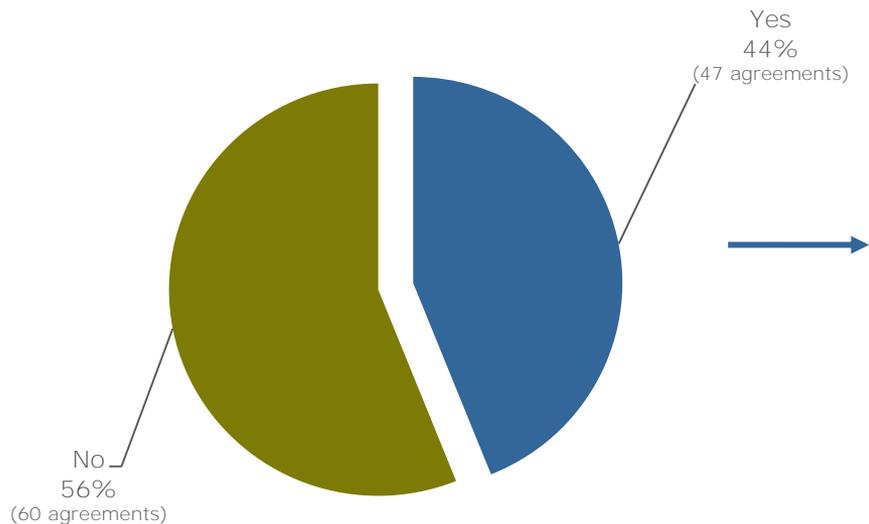
Practice Pointer:

Carveout transactions may implicate significant IP issues that need to be addressed. Most commonly, issues may arise with the use of trademarks owned and retained by the Seller, especially if those marks had been associated with or previously used by the carved-out business. Also note that agreements may deal with the license of IP in an ancillary agreement and not in the acquisition agreement itself. See page 33, titled Ancillary Agreements.

Closing Conditions

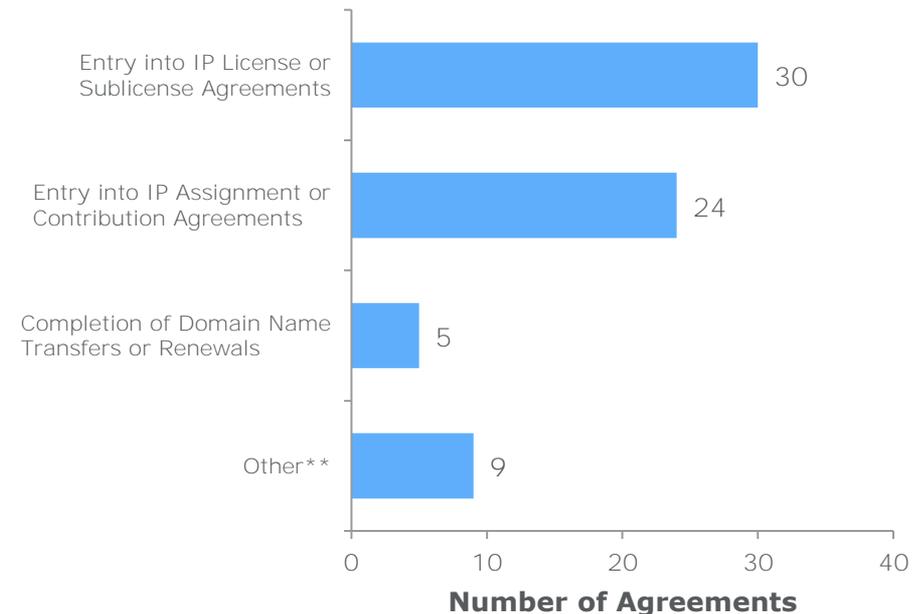
Are There Any IP-Specific Closing Conditions?*

(subset: 107 agreements containing IP provisions and closing conditions)



Types of IP-Specific Closing Conditions*

(subset: 47 agreements containing IP-specific closing conditions)

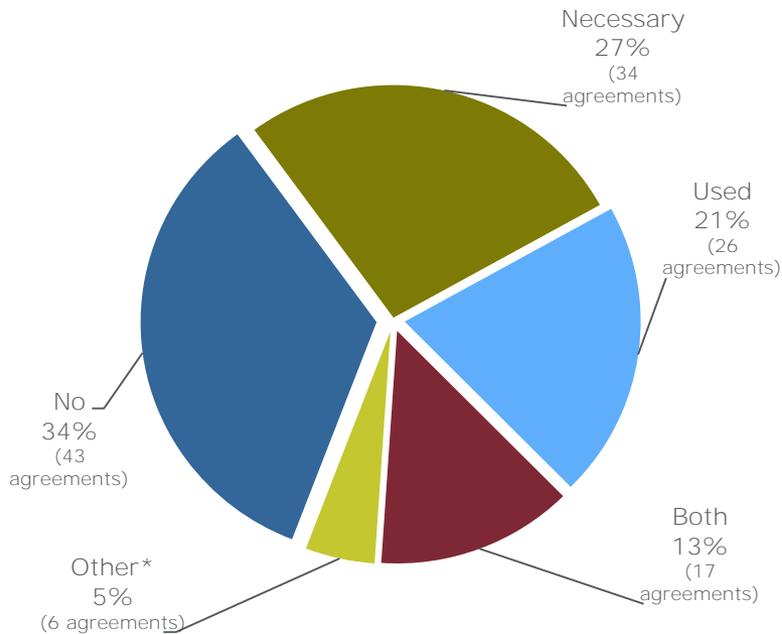


* Excludes conditions requiring the parties to enter into a transition services agreement at closing. Nineteen agreements contain multiple IP-specific closing conditions.

** "Other" includes: (i) two agreements requiring cooperation to obtain or transfer licenses from third parties; (ii) two agreements requiring the Seller to grant certain data to the Buyer; (iii) one agreement requiring the termination and release of liens on all IP; (iv) two agreements requiring the Seller to deliver an agreement relating to compliance with certain privacy and securities laws regarding the use of data; and (v) two agreements requiring the Seller to take certain steps to separate its IT assets prior to the Closing.

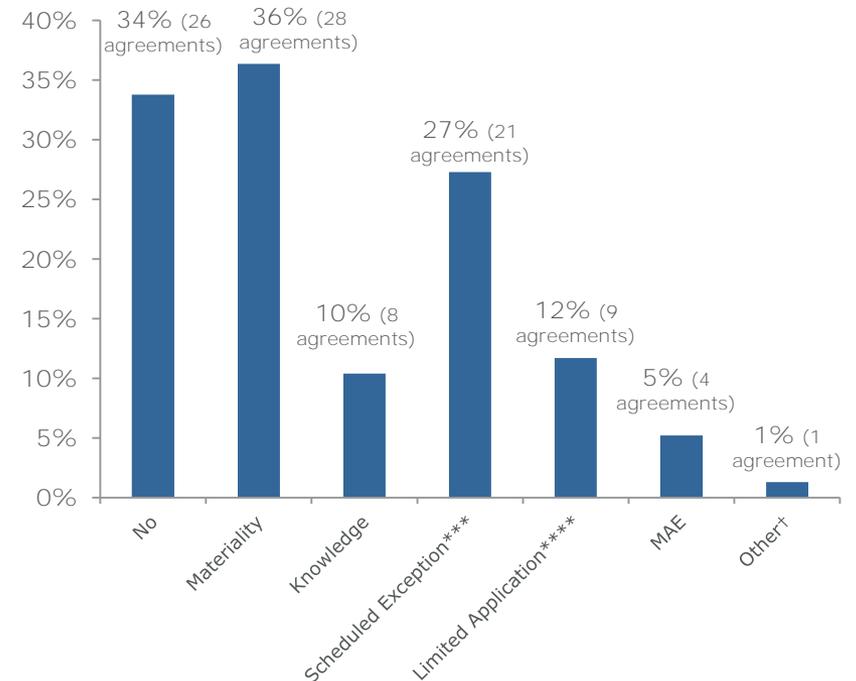
Representations Regarding Transferred IP

Does the Seller Represent that the Transferred IP Includes All IP that is Necessary for, or Used in, the Business?



If So, Are There Any Qualifiers?

(subset: 77 agreements in which the Seller represents that the transferred IP includes all IP that is necessary for, or used in, the business)**



* This includes one agreement in which the Seller represents that the transferred IP is sufficient only, one in which it represents that the transferred IP is necessary and used and one in which it represents that administrative software is used.

** 19 agreements contain more than one qualifier.

*** This qualifier means that the representation does not apply to the extent indicated on a separate schedule. Most schedules are not publicly available, and agreements do not always explicitly indicate when a representation is subject to a schedule. See page 70 for a discussion of scheduling-related considerations.

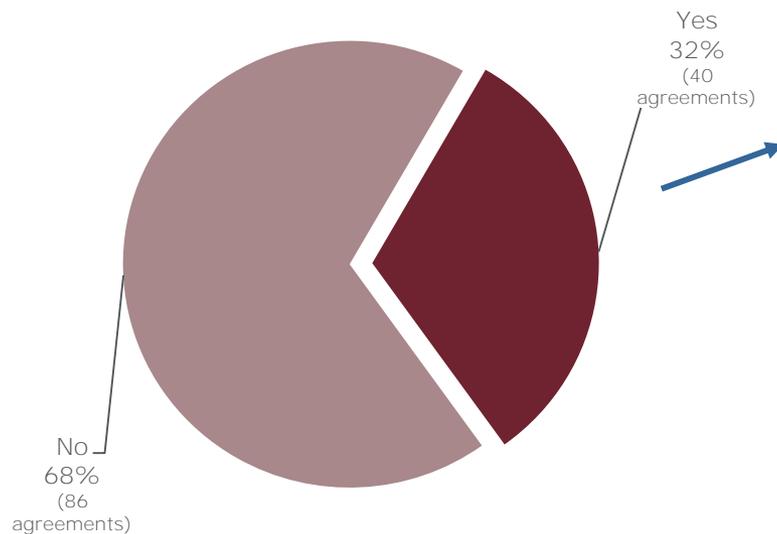
**** This qualifier means that the representation only applies with respect to certain portions of the transferred IP.

† "Other" includes one agreement with a materiality qualifier only as to transferred trademarks.

Representations Regarding Transferred IP (cont'd)

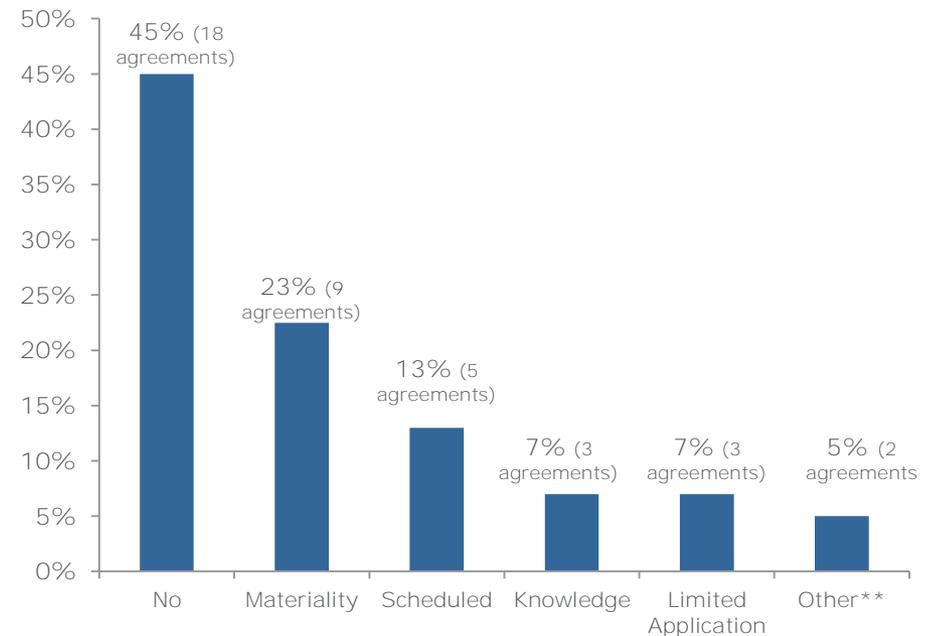
IP licenses often contain provisions restricting the licensee from transferring the licenses or otherwise further licensing the IP to another party or conditioning attempts to do so. Thus, the Buyer may seek assurance from the Seller that the consummation of the transactions will not adversely affect the IP that it is seeking to acquire.

Does the Seller Represent that All Rights in Transferred IP Will Survive the Transaction Unchanged?



If So, Are There Any Qualifiers?

(subset: 40 agreements in which the Seller represents that the transferred IP will survive the transaction unchanged)*

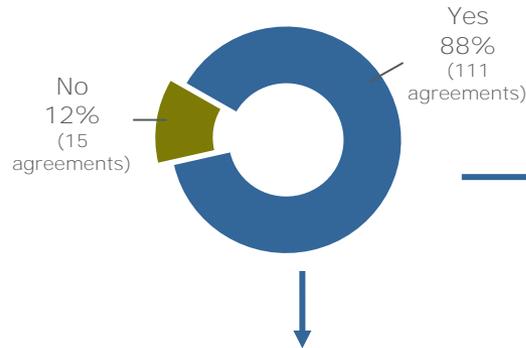


* Please refer to the previous page for a discussion of certain qualifiers.

** "Other" includes one agreement with an MAE qualifier and one agreement with a qualifier that required consents have been received.

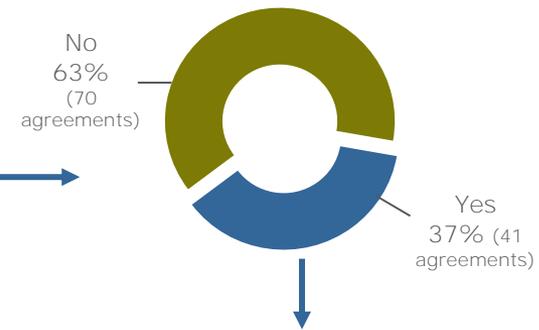
Representations Regarding Transferred IP (cont'd)

Does the Seller Represent that the Business Does Not/Has Not Infringed Third-Party IP?



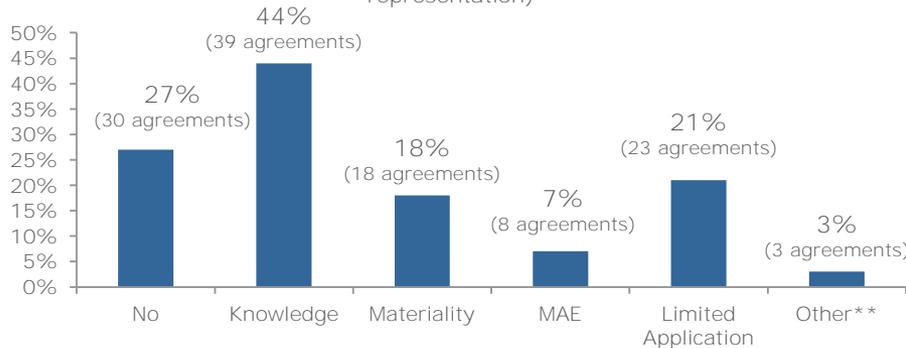
If So, Is the Representation Qualified by a Lookback Period?

(subset: 111 agreements containing a non-infringement representation)***



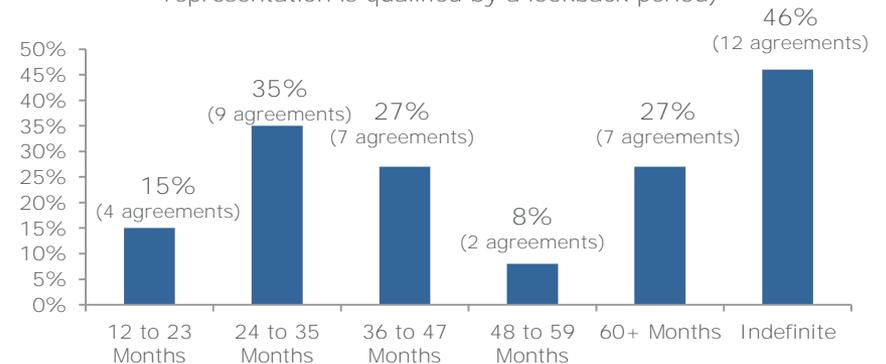
If So, Are There Any Qualifiers?

(subset: 111 agreements containing a non-infringement representation)*



If So, How Long Is the Period?

(subset: 41 agreements in which the non-infringement representation is qualified by a lookback period)



* 10 agreements contain more than one qualifier. Please refer to page 101 for a discussion of qualifiers.

** "Other" includes two agreements in which the representation only applies to portions of the transferred IP and one agreement in which the representation states that the conduct of the business in the ordinary course has not infringed any third-party IP.

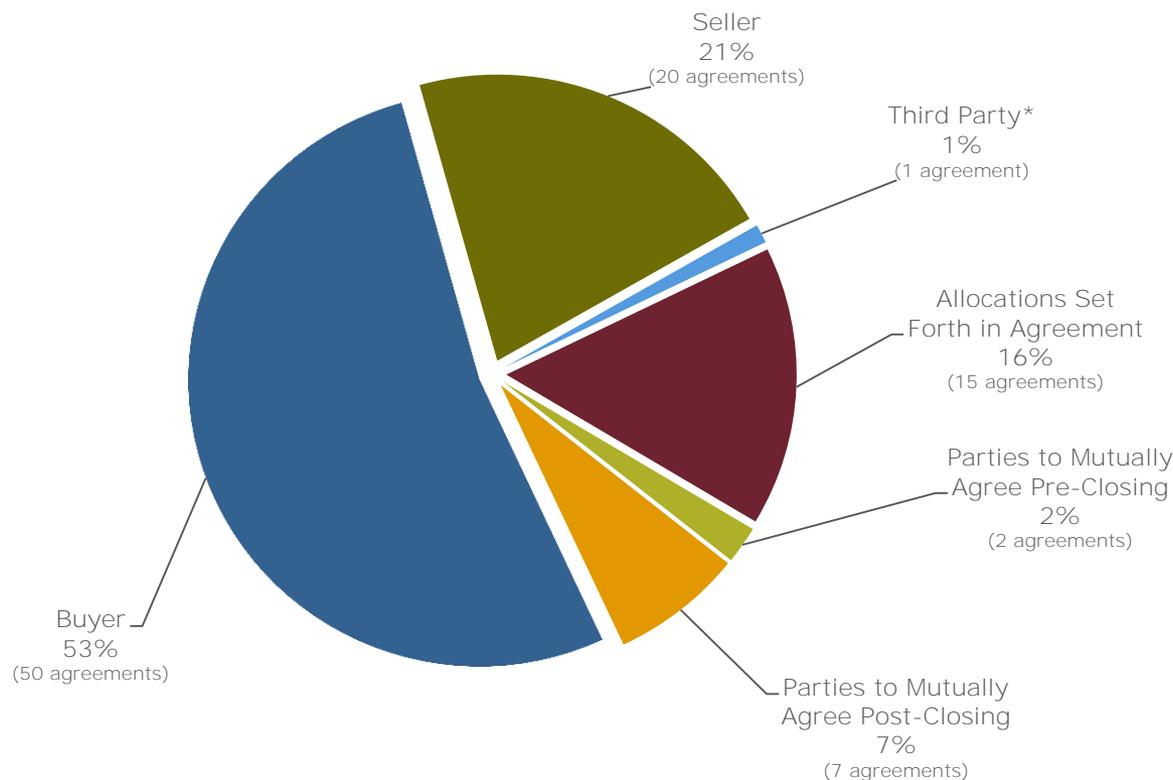
*** An agreement stating that infringement has never occurred is treated as having an indefinite lookback period.

TAX MATTERS

Purchase Price Allocation

Party Preparing Purchase Price Allocation

(subset: 95 agreements providing for purchase price allocation)



Practice Pointer:

In a transaction treated as an asset sale for tax purposes (as opposed to a sale of interests in entities), the parties must determine how to allocate the purchase price among the transferred assets. This allocation impacts the determination of the amount of loss or gain that is realized by the Seller in the transaction and whether that loss or gain is characterized as capital or ordinary. For the Buyer, the allocation will determine the basis of the acquired assets, which impacts gain or loss upon a future disposition and the availability of depreciation and amortization deductions. In a carveout transaction, the parties may set forth a specific purchase price allocation process in the agreement, agree to a specific allocation at signing or provide more generally that the parties will negotiate in good faith to agree upon an allocation.

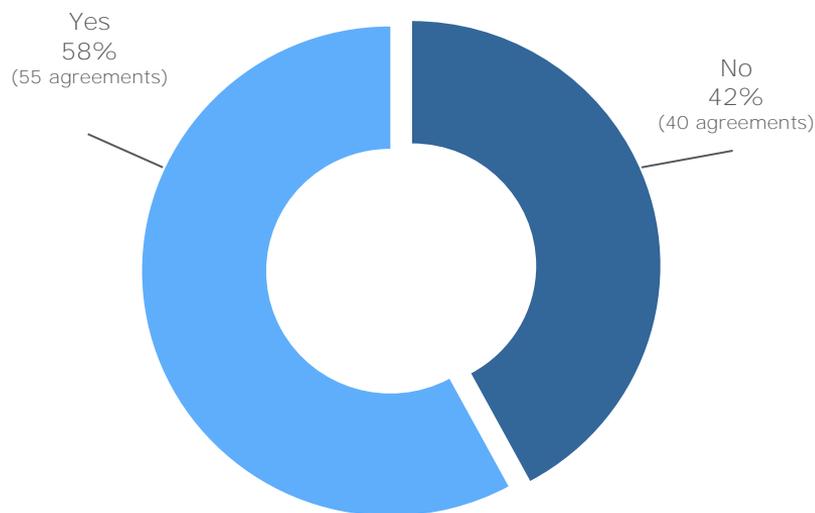
* In one agreement, the Buyer agreed to engage an accounting firm to prepare the purchase price allocation.

Purchase Price Allocation (cont'd)

As described on the previous page, in a carveout transaction treated as an asset sale for tax purposes, the parties must allocate the purchase price among the transferred assets. Each party must file a form with the IRS setting forth the allocation, which can have substantial tax implications for each party. Because of this, agreements will often specify a mechanism for resolving disputes prior to the filing of tax forms.

Is There a Resolution Mechanism for Disputes Over the Purchase Price Allocation?

(subset: 95 agreements providing for purchase price allocation)

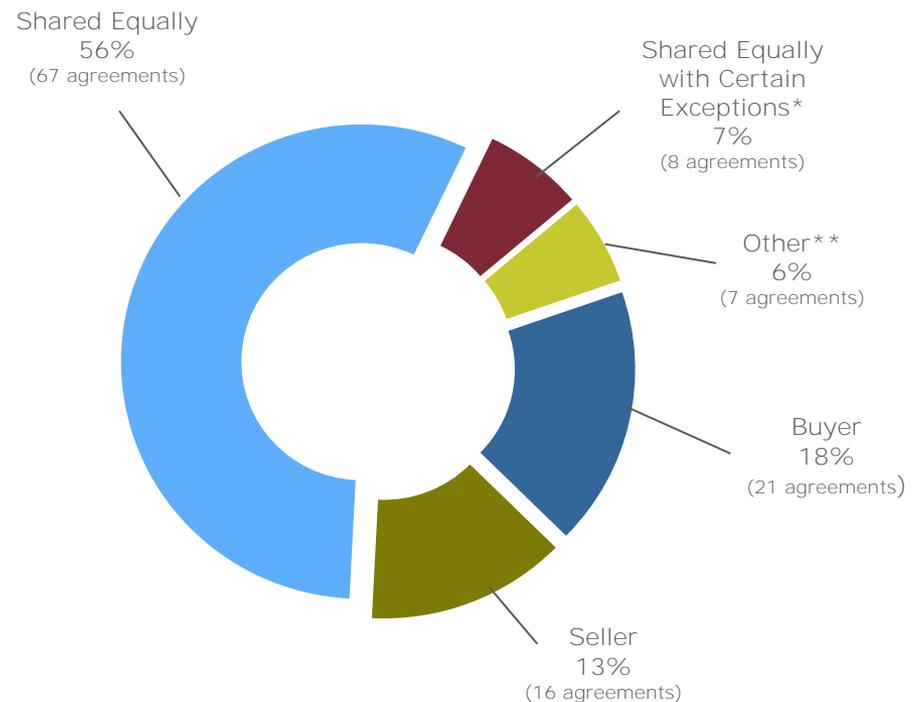


Transfer Taxes

Transfer taxes are state-law taxes imposed on the transfer of property from the Seller to the Buyer. Typical examples include sales tax and real estate transfer tax. In 63% of agreements (75 agreements) that specifically address the payment of transfer taxes, the parties share the taxes equally or share the taxes equally subject to certain exceptions. The Buyer and the Seller are responsible for taxes with similar frequency – in 18% of agreements (21 agreements) that specifically address transfer taxes, the Buyer pays the transfer taxes and in 13% of such agreements (16 agreements) the Seller pays the transfer taxes.

Party Responsible for Paying Transfer Taxes

(subset: 119 agreements containing transfer taxes)



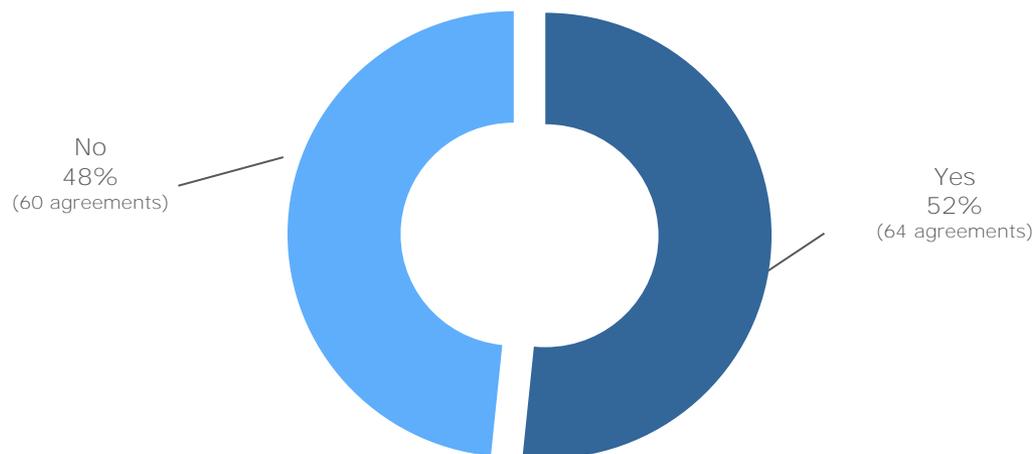
* Exceptions include agreements in which: (i) the Seller is responsible for Value Added Tax ("VAT") and transfer taxes for specified transfers; (ii) the Seller is responsible for taxes in certain specified reorganization transactions; (iii) the Buyer is responsible for German transfer taxes; and (iv) the Buyer is responsible for UK stamp tax.

** "Other" includes: (i) one agreement in which the Buyer bears the first \$2 million of transfer taxes, and then the parties share the transfer taxes equally; (ii) one agreement in which the Seller pays pre-closing transfer taxes and the Buyer pays post-closing transfer taxes; (iii) two agreements in which the party owing such taxes under applicable law is responsible; (iv) one agreement in which the party responsible for paying transfer taxes is redacted; and (v) one agreement in which the Buyer pays transfer taxes other than VAT and specified transfer taxes that are allocated to the Seller.

Reduction of Indemnification Payments for Tax Benefits

Are Indemnification Payments Reduced for Tax Benefits Received by the Indemnified Party?

(subset: 124 agreements containing tax indemnification)

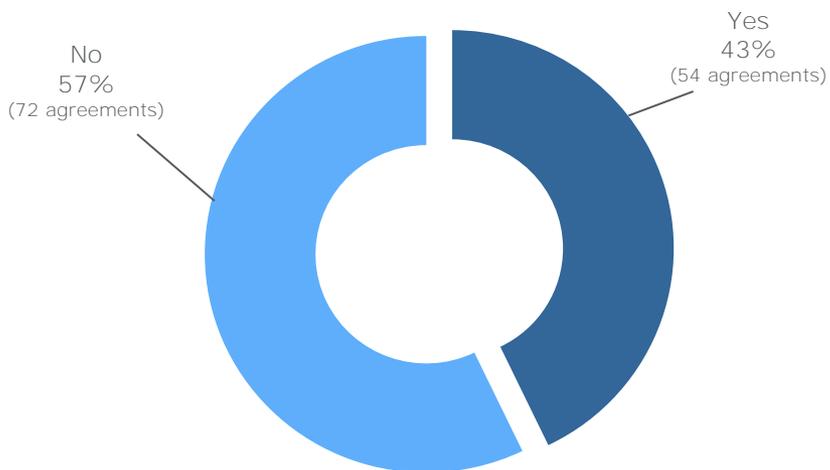


All of the agreements but one provide for the Seller to indemnify the Buyer in certain circumstances. If the Seller breaches a representation, warranty or covenant in the transaction agreement, then the Seller may be required to indemnify the Buyer for its losses suffered as a result of that breach. In addition, the Buyer may be able to obtain a tax benefit by deducting the losses subject to indemnification. Accordingly, the Seller may wish to include a provision limiting its indemnification obligation to the actual losses suffered by the Buyer after taking into account the tax benefit (i.e., the Buyer would be put back into the position it would have been in had the breach not occurred rather than receiving a net "windfall" of the tax benefit on top of its recovery for the losses it suffered).

Section 338 Elections

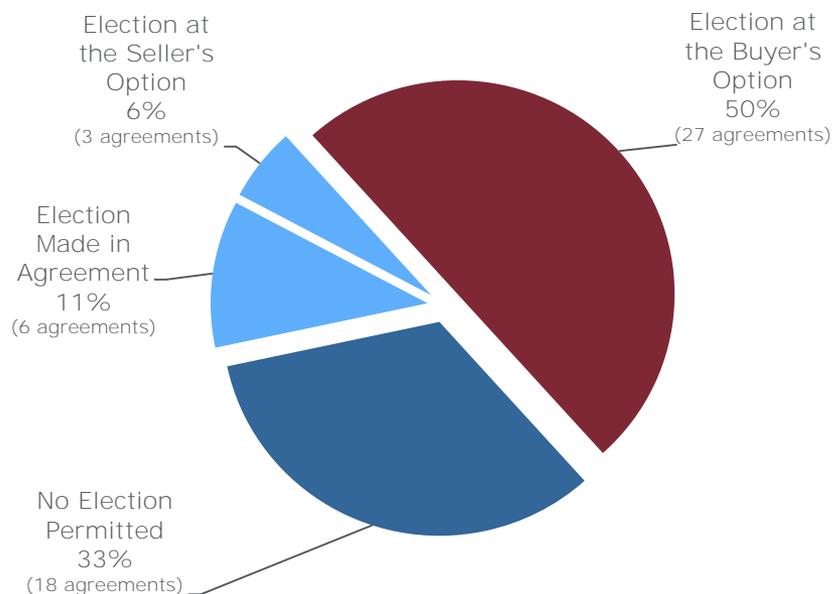
Section 338 of the Internal Revenue Code provides that certain stock purchases may be treated as asset acquisitions for federal income tax purposes, provided that certain other requirements are met. There are two types of Section 338 elections: Section 338(g) elections and Section 338(h)(10) elections. A Section 338(g) election, which applies to acquisitions of C corporations, is made by the Buyer after the stock purchase is consummated. This election causes the Seller to recognize gain on the sale of the stock and the Target to recognize gain as if it had sold its assets. A Section 338(h)(10) election, which applies to acquisitions of corporate subsidiaries or S-corporations, is made jointly by the Buyer and the Seller before the transaction has been completed. This election causes the transaction to be treated as an asset sale for tax purposes.

Does the Agreement Address the Making of a Section 338 Election?



How Is a Section 338 Election Addressed?

(subset: 54 agreements addressing Section 338 Elections)

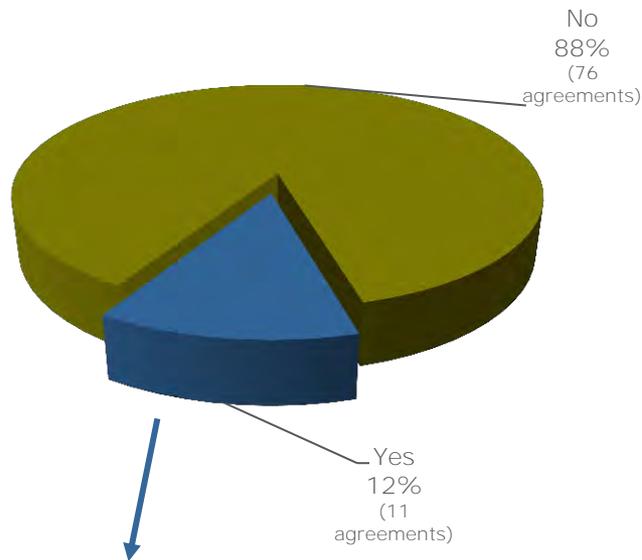


EMPLOYEE BENEFITS

Interim Operating Covenants

Is There an Exception to the Prohibition on Increases in Compensation?

(subset: 87 agreements restricting compensation increases)



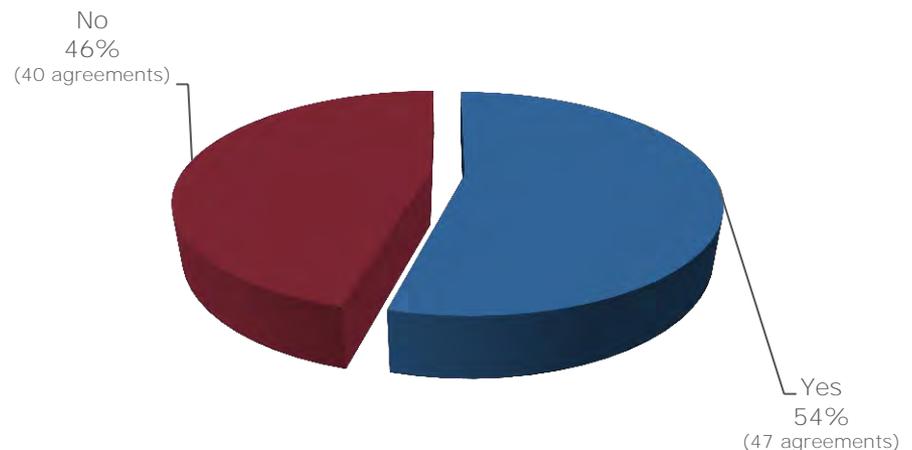
The exceptions include permitting:

- (3) Immaterial increases.
- (1) Increases of less than \$50,000 per employee.
- (1) Increases of less than \$100,000 per employee or \$2 million in the aggregate.
- (1) Increases of less than \$10,000 for non-key employees.
- (1) Increases of less than 15% for employees earning over \$250,000.
- (1) Increases of under 10% for each employee.
- (2) Increases of under 3% for each employee.
- (1) Increases of under 2% in the aggregate.

Employees are often transferred from the Seller to the Buyer in a carveout transaction. However, legal and other considerations (including morale) often will prevent the Buyer from decreasing employee compensation after assuming responsibility for the transferred employees. Therefore, the Buyer will often insist on limiting the Seller's ability to increase its employees' compensation post-signing. In response, the Seller may argue that it needs the flexibility to increase compensation for recruiting or retention purposes, particularly if the period between signing and closing is expected to be lengthy. One common solution, which addresses both parties' concerns, permits the Seller to increase transferred employees' compensation in the ordinary course of its business.

Does the Prohibition Permit Ordinary Course Increases Between Signing and Closing?

(subset: 87 agreements restricting compensation increases)

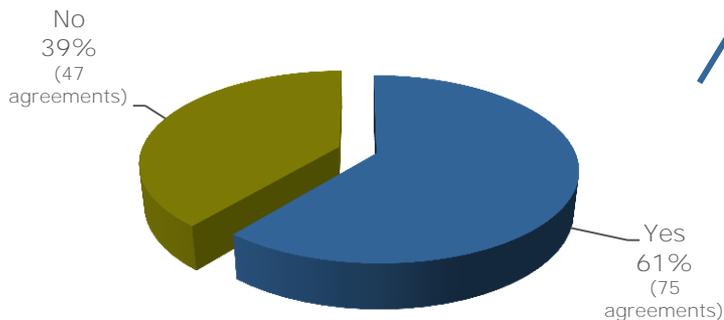


Buyer Covenant to Hire Employees

In connection with a carveout transaction, the Seller may want the Buyer to hire certain employees and the Buyer may want certain employees to continue running the business. If the carveout involves the sale of equity in a subsidiary of the Seller, this could be as simple as requiring the Buyer to hire all of the transferred subsidiary's employees. Alternatively, the parties could identify certain employees or classes of employees on a schedule. A common third option is to use a defined term such as "Business Employee" to conceptually identify for transfer those employees whose work has a sufficiently substantial connection to the transferred business. If the parties select this last option, careful attention should be paid to the definition of "Business Employee" (for example, whether it covers employees whose responsibilities primarily or exclusively relate to the business).

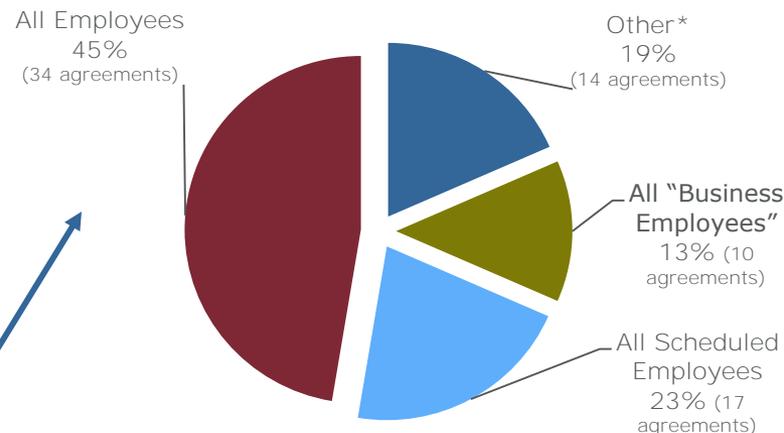
Must the Buyer Hire Any Employees of the Business?

(subset: 122 agreements in which employees are transferred)



Which Employees Must the Buyer Hire?

(subset: 75 agreements in which certain employees must be hired)



Practice Pointer:

In some non-U.S. jurisdictions, the Buyer may be required to hire all employees of the Business even if the agreement is silent on the matter.

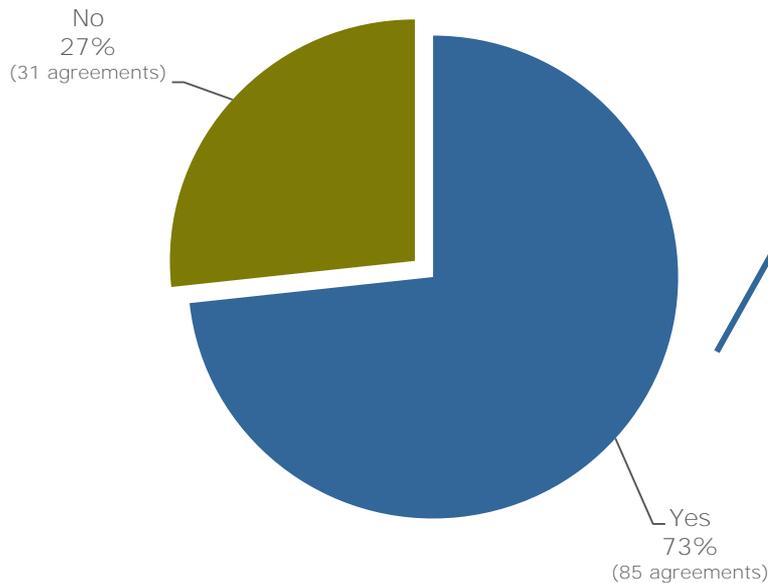
*"Other" includes agreements requiring that the Buyer hire:

- (4) All employees other than those listed on a schedule.
- (3) All active or non-disabled employees or Business Employees.
- (2) All employees mutually agreed by the parties.
- (2) 80% or more of the Business Employees.
- (1) Substantially all Business Employees.
- (1) All Business Employees in the United States and Canada.
- (1) All employees not employed by a particular Seller division.

Buyer Covenant to Match Compensation

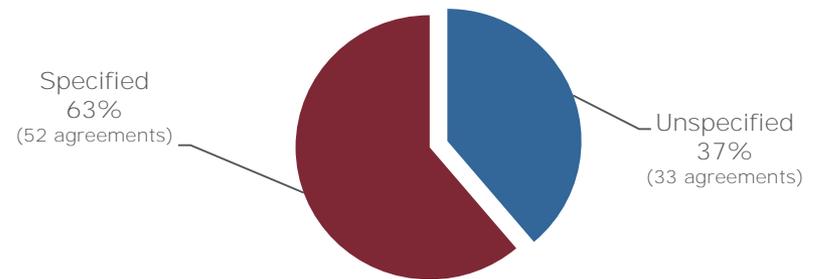
Is the Buyer Required to Provide a Particular Level of Compensation and/or Benefits After the Closing?

(subset: 116 agreements that do not have a condition to closing requiring the Buyer to assume benefit plans)



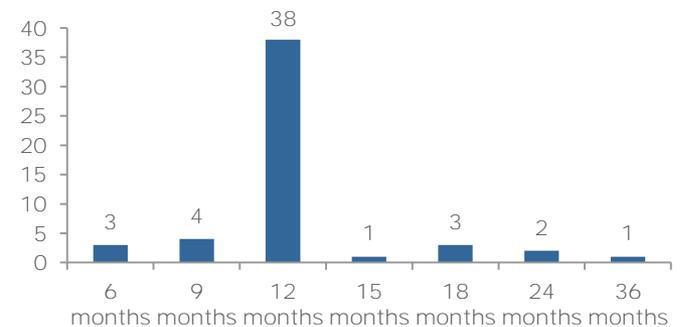
Are the Compensation and Benefits Protection Periods After the Closing Specified?

(subset: 85 agreements requiring the Buyer to provide employee benefits following the closing)



Duration of Benefits Maintenance Period

(subset: 52 agreements specifying the compensation and benefits protection period)

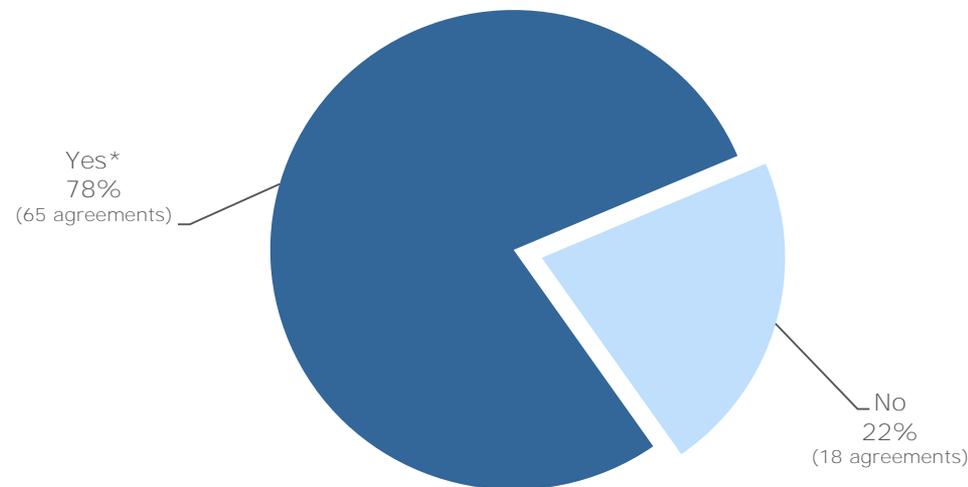


Buyer Covenant to Maintain Benefits

When an agreement contains a covenant requiring the Buyer to provide benefits to the Seller's former employees, the standard determining the parameters of those benefits is important. As a general rule, the Buyer will want to minimize costs and maximize flexibility in determining those benefits and the Seller (on behalf of its employees) will want certainty that the benefits will be at a certain level. The "substantial equivalence" standard is common because it can be viewed as satisfying both of these requirements: the Buyer is not unduly constrained in the level of benefits to be provided, and the Seller can be reasonably certain of the general level of those benefits.

Does the Agreement Impose a "Substantial Equivalence to the Level Provided by Seller Immediately Prior to the Closing" Standard?

(subset: 83 agreements requiring the Buyer to provide employee benefits following the closing)



* Includes one agreement that imposes such a standard only as to a particular subset of the transferred employees.

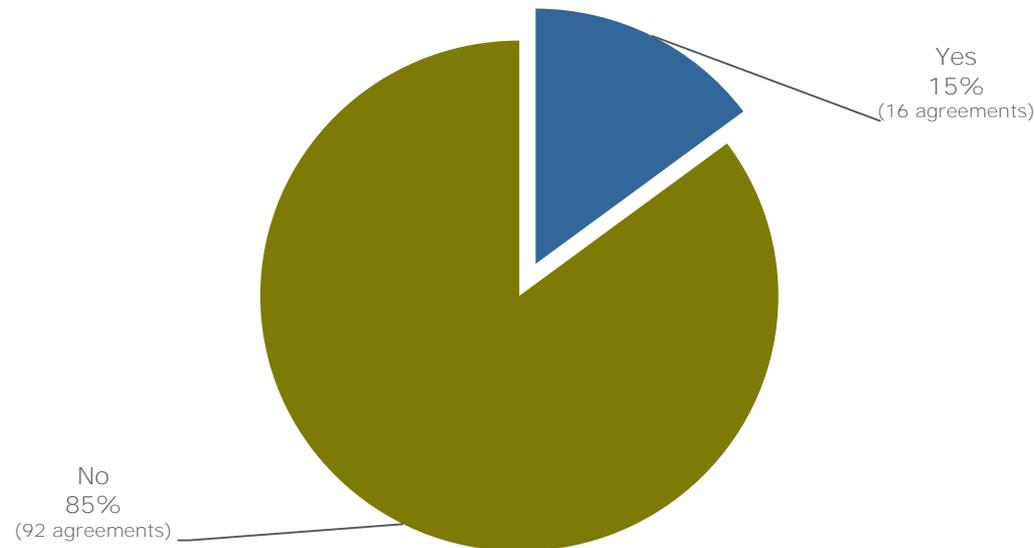
Key Employee Conditions

Practice Pointer:

Although only 15% of the agreements (16 agreements) that contain closing conditions include key employee closing conditions, the parties may also address the employment of key employees outside of the transaction agreement. For example, the parties may negotiate employment agreements to be delivered concurrently with the signing of the applicable transaction agreement to mitigate the negotiating leverage gained by key employees from the post-signing negotiation of their employment agreements, among other reasons.

Agreement Includes a Condition Requiring Key Employees to Remain with the Business

(subset: 108 agreements containing closing conditions)



APPENDIX

Appendix of Agreements

Seller Name (Ultimate Parent Public Company Seller)	Buyer Name (Ultimate Parent)	Date of Signing of Transaction	Structure of Transaction	Purchase Price (excluding potential earnout consideration) (\$mn)	Ultimate Seller Parent's Market Cap as of the most recent quarter prior to signing (\$mn)	Purchase Price as a percentage of Seller's Market Cap (%)	Ultimate Seller Parent's Ticker Symbol (and applicable exchange)	Type of Buyer (e.g., U.S. public company, private company, foreign public company, etc.)	Ultimate Buyer Parent's Ticker Symbol (and applicable exchange)	Market Cap of Ultimate Parent of Buyer as of the most recent quarter prior to signing (\$mn)	Category of Industry of Business Sold
1 West Corporation	Alorica Inc.	1/7/2015	Hybrid	\$275	\$2,778	9.90%	WSTC (Nasdaq)	U.S. private company	N/A	not available	technology, software & related products
2 Signature Group Holdings, Inc. (now Real Industry, Inc.)	PNC Riverarch Capital	1/9/2015	Hybrid	\$78	\$191	40.88%	SGRH (OTQX) (formerly SGGH (OTQX) and now RELY (Nasdaq))	investor group led by PNC Riverarch Capital, a division of PNC Capital Finance, LLC	N/A	not available	industrial goods & services
3 Sabre Corporation	Expedia, Inc.	1/23/2015	Asset Purchase	\$280	\$5,428	5.16%	SABR (Nasdaq)	U.S. public company	EXPE (Nasdaq)	\$10,846	travel & hospitality
4 KCG Holdings, Inc.	BATS Global Markets, Inc.	1/27/2015	Stock Purchase	\$365	\$1,361	26.81%	KCG (NYSE)	U.S. public company	BATS (BATS)	not available	financial services
5 FMC Corporation	Tronox Limited	2/3/2015	Hybrid	\$1,640	\$10,606	15.46%	FMC (NYSE)	Western Australian company	TROX (NYSE)	\$2,749	industrial goods & services
6 Nuverra Environmental Solutions, Inc.	Clean Harbors, Inc.	2/3/2015 (amended on 3/25/15)	Stock Purchase	\$85	\$152	55.72%	NES (NYSE)	U.S. public company	CLH (NYSE)	\$2,830	industrial goods & services
7 Anixter International Inc.	American Industrial Partners	2/11/2015 (amended on 3/24/15, 6/1/15 and 8/21/15)	Asset Purchase	\$380	\$2,922	13.00%	AXE (NYSE)	U.S. private company	N/A	not available	industrial goods & services
8 CafePress Inc.	Circle Graphics, Inc.	2/11/2015	Asset Purchase	\$32	\$40	76.96%	PRSS (Nasdaq)	U.S. private company	N/A	not available	technology, software & related products
9 Myers Industries, Inc.	The HC Companies, Inc.	2/17/2015	Asset Purchase	\$110	\$549	20.06%	MYE (NYSE)	Management of Myers Lawn and Garden Group along with Wingate Partners V, L.P.	N/A	not available	other
10 AAR Corp.	TransDigm Group Incorporated	2/20/2015	Hybrid	\$725	\$1,180	61.42%	AIR (NYSE)	U.S. public company	TDG (NYSE)	\$9,662.	aerospace & defense
11 Johnson & Johnson	Cardinal Health, Inc.	3/1/2015 (amended on 10/2/15)	Hybrid	\$1,873 (original purchase price of \$1,944)	\$33,029.66	4.47%	JNJ (NYSE)	U.S. public company	CAH (NYSE)	\$23,105	healthcare, pharmaceuticals & medical
12 Citigroup Inc.	Springleaf Holdings, Inc. (now OneMain Holdings Inc.)	3/2/2015	Stock Purchase	\$4,250	\$166,769.05	2.55%	C (NYSE)	U.S. public company	OMF (NYSE) (formerly LEAF (NYSE))	\$4,154	financial services
13 Zogenix, Inc.	Pernix Therapeutics Holdings, Inc.	3/10/2015	Asset Purchase	\$100	\$1,680.86	5.95%	ZGNX (Nasdaq)	U.S. public company	PTX (Nasdaq)	\$360	healthcare, pharmaceuticals & medical

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14	Willbros Group, Inc.	Novinium, Inc.	3/17/2015	Stock Purchase	\$40	\$161.29	24.80%	WG (NYSE)	U.S. private company	N/A	not available	energy
15	Abaxis, Inc.	VCA Inc.	3/18/2015	Asset Purchase	\$21	\$1,280.72	1.64%	ABAX (Nasdaq)	U.S. public company	WOOF (Nasdaq)	\$4,045	healthcare, pharmaceuticals & medical
16	Newell Brands Inc.	Stamps.com Inc.	3/22/2015	Stock Purchase	\$215	\$10,996.58	1.96%	NWL (NYSE)	U.S. public company	STMP (Nasdaq)	\$768	technology, software & related products
17	Leidos Holdings, Inc.	Greenleaf Power, LLC	3/24/2015 (amended on 7/17/15)	Stock Purchase	\$101 (original purchase price of \$112.5)	\$3,063.60	3.30%	LDOS (NYSE)	U.S. private company	N/A	not available	energy
18	Atlantic Power Corp.	Terraform Power, Inc.	3/31/2015	Stock Purchase	\$350	\$342.11	102.31%	AT (NYSE)	U.S. public company	TERP (Nasdaq)	\$3,480	energy
19	Intelligent Systems Corporation	CRC Industries, Inc.	3/31/2015	Stock Purchase	\$21.6	\$25.80	83.72%	INS (NYSE MKT)	U.S. private company	N/A	not available	industrial goods & services
20	Johnson Controls, Inc.	CBRE Group, Inc.	3/31/2015	Hybrid	\$1,475	\$33,029.66	4.47%	JCI (NYSE)	U.S. public company	CBG (NYSE)	\$11,405	technology, software & related products
21	American Financial Group, Inc.	HC2 Holdings, Inc.	4/13/2015	Stock Purchase	\$15	\$5,637.87	0.27%	AFG (NYSE)	U.S. public company	HCHC (NYSEMKT)	\$278	insurance
22	Hampshire Group, Limited	David Gren	4/13/2015 (amended on 5/14/15)	Stock Purchase	\$11	\$17.50	62.86%	HAMP (OTCMKT)	individual investor group	N/A	not available	consumer goods & retail
23	Mobile Mini, Inc.	New Acton Mobile Industries LLC	4/16/2015	Asset Purchase	\$92	\$1,954.40	4.71%	MINI (Nasdaq)	U.S. private company	N/A	not available	industrial goods & services
24	Marchex Inc.	GoDaddy Inc.	4/21/2015	Asset Purchase	\$28.1	\$398.50	7.05%	MCHX (Nasdaq)	U.S. public company	GDDY (NYSE)	\$3,107	technology, software & related products
25	Scholastic Corporation	Houghton Mifflin Harcourt Company	4/23/2015	Hybrid	\$575	\$1,151.68	49.93%	SCHL (Nasdaq)	U.S. public company	HMHC (Nasdaq)	\$3,362	technology, software & related products
26	Comverse, Inc. (also Xura Inc.; acquired by affiliates of Siris Capital Group)	Amdocs Limited	4/29/2015	Asset Purchase	\$272	\$376.13	72.31%	CNSI (NYSE) (subsequently MESG (NYSE))	Guernsey (British crown dependency) corporation	DOX (Nasdaq)	\$7,248	technology, software & related products
27	Quanta Services, Inc.	Crown Castle International Corp.	4/29/2015	Stock Purchase	\$1,000	\$5,834.25	17.14%	PWR (NYSE)	U.S. public company	CCI (NYSE)	\$27,549	Other
28	Hudson Global, Inc.	Mastech Holdings, Inc.	5/8/2015	Asset Purchase	\$17	\$93.06	18.27%	HSON (Nasdaq)	U.S. public company	MHH (NYSEMKT)	\$39	technology, software & related products
29	Pitney Bowes Inc.	Red Ventures, LLC	5/11/2015	Stock Purchase	\$310	\$4,547.96	6.82%	PBI (NYSE)	U.S. private company	N/A	not available	technology, software & related products

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30	Axiom Corporation	Aspen Holdco, Inc.	5/19/2015 (amended on 5/19/15)	Stock Purchase	\$140	\$1,492.20	9.38%	ACXM (Nasdaq)	U.S. private company affiliated with investment funds managed by Charlesbank Partners and M/C Partners	N/A	not available	technology, software & related products
31	CDK Global, Inc.	Autobytel Inc.	5/21/2015	Stock Purchase	\$25	\$7,821.82	0.32%	CDK (Nasdaq)	U.S. public company	ABTL (Nasdaq)	\$131	technology, software & related products
32	Kratos Defense & Security Solutions, Inc.	Ultra Electronics Holdings plc	5/31/2015	Stock Purchase	\$265	\$324	81.79%	KTOS (Nasdaq)	British public company	ULE (LON)	\$1,259 (S2 2014)	technology, software & related products
33	KBR, Inc.	Pernix Group, Inc.	6/4/2015	Stock Purchase	\$28	\$206.10	13.59%	KBR (NYSE)	U.S. public company	PRXG (OTC)	\$28	other
34	Escalera Resources Co.	Vanguard Natural Resources, LLC	7/14/2015	Asset Purchase	\$12	\$34.35	34.93%	ESCR (Nasdaq) (no longer traded)	U.S. public company	VNR (Nasdaq)	\$1,296	energy
35	HD Supply, Inc.	Anixter International Inc.	7/15/2015	Hybrid	\$825	\$6,546.53	12.60%	HDS (Nasdaq)	U.S. public company	AXE (NYSE)	\$2,134	industrial goods & services
36	Enterprise Products Partners LP	Genesis Energy, L.P.	7/16/2015	Stock Purchase	\$1,500	\$59,874.85	2.51%	EPD (NYSE)	U.S. public company	GEL (NYSE)	\$4,373	energy
37	M/A-Com Technology Solutions Holdings, Inc.	Autoliv Inc.	7/16/2015	Stock Purchase	\$100	\$1,940.56	5.15%	MTSI (Nasdaq)	U.S. public company	ALV (NYSE)	\$10,280	other
38	United Technologies Corporation	Lockheed Martin Corporation	7/19/2015 (amended on 11/5/15)	Stock Purchase	\$9,000	\$98,794.01	9.11%	UTX (NYSE)	U.S. public company	LMT (NYSE)	\$58,580	aerospace & defense
39	Compass Diversified Holdings	Vista Outdoor Inc.	7/24/2015	Stock Purchase	\$412.5	\$890.52	46.32%	CODI (NYSE)	U.S. public company	VSTO (NYSE)	not available	consumer goods & retail
40	US Ecology	ASPV Holdings, Inc.	8/4/2015	Stock Purchase	\$58	\$1,057.57	5.48%	ECOL (Nasdaq)	U.S. private investor group	N/A	not available	industrial goods & services
41	BioScrip, Inc.	ProCare Pharmacy Benefit Manager Inc. (d/b/a ProCare Rx)	8/9/2015	Asset Purchase	\$25	\$259.10	9.65%	BIOS (Nasdaq)	U.S. private company	N/A	not available	healthcare, pharmaceuticals & medical
42	Symantec Corporation	Carlyle Group L.P.	8/11/2015 (amended on 1/19/2016)	Hybrid	\$7,400 (original purchase price of \$8,000)	\$13,691.88	54.05%	SYMC (Nasdaq)	U.S. public company	CG (Nasdaq)	\$9,274	technology, software & related products
43	Genworth Financial, Inc.	AXA S.A.	9/17/2015	Stock Purchase	\$490	\$4,436.02	11.05%	GNW (NYSE)	French public company	CS (EPA)	not available	insurance

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44	Furmanite Corporation (now merged with Team, Inc.)	Burrow Global, LLC	9/24/2015	Asset Purchase	\$14.4	\$906.00	1.59%	FRM (NYSE) (now merged into TISI (NYSE))	U.S. private company	N/A	not available	industrial goods & services
45	R.J. Reynolds Global Products, Inc.	Japan Tobacco Inc.	9/28/2015	Hybrid	\$5,000	\$26,674.18	18.74%	RAI (NYSE)	Japanese public company	JT (TSE)	not available	consumer goods & retail
46	Epirus Biopharmaceuticals Inc.	Taro Pharmaceutical Industries Limited	10/1/2015	Stock Purchase	\$10	\$107.77	9.28%	EPRS (OTCMKTS)	Israeli public company	TARO (NYSE)	\$6,347	technology, software & related products
47	Black Diamond, Inc.	Dainese S.p.A.	10/7/2015	Stock Purchase	\$65	\$206.51	31.48%	BDE (Nasdaq)	Italian private company	N/A	not available	consumer goods & retail
48	Universal American Corp.	Nassau Reinsurance Group Holdings, L.P.	10/8/2015	Stock Purchase	\$43	\$551.99	7.79%	UAM (NYSE)	U.S. private company	N/A	not available	insurance
49	Diebold Incorporated	Securitas AB	10/25/2015	Asset Purchase	\$350	\$2,372.38	14.75%	DBD (NYSE)	Swedish public company	SECUB (Stockholm)	not available	technology, software & related products
50	ConAgra Foods, Inc.	TreeHouse Foods, Inc.	11/1/2015	Stock Purchase	\$2,700	\$23,670.37	11.41%	CAG (NYSE)	U.S. public company	THS (NYSE)	\$3,352	consumer goods & retail
51	PAR Technology Corporation	Constellation Software	11/4/2015	Asset Purchase	\$16.6	\$82.26	20.18%	PAR (NYSE)	Canadian public company	CSU (TSE)	not available	travel & hospitality
52	Bankrate, Inc.	All Web Leads, Inc.	11/5/2015	Stock Purchase	\$165	\$1,065.45	15.49%	RATE (NYSE)	U.S. private company backed by U.S. portfolio company (GenStar Capital)	N/A	not available	insurance
53	Bonanza Creek Energy, Inc.	Meritage Midstream Services IV, LLC	11/5/2015	Stock Purchase	\$175	\$202.56	86.40%	BCEI (NYSE)	U.S. private company	N/A	not available	energy
54	TEGNA Inc.	Sizmek Inc.	11/12/2015	Stock Purchase	\$20	\$7,263.73	0.28%	TGNA (NYSE)	U.S. public company	SZMK (NasdaqGS)	\$177	technology, software & related products
55	Valhi, Inc.	EnergySolutions Inc.	11/18/2015	Stock Purchase	\$367	\$881.77	41.62%	VHI (NYSE)	U.S. private company owned by private investment company (Rockwell Holdco., Inc.)	N/A	not available	other
56	Intrawest Resorts Holdings, Inc.	Diamond Resorts International Inc.	11/24/2015	Hybrid	\$85	\$391.69	21.70%	SNOW (NYSE)	U.S. private company (acquired by Apollo Global Management, LLC in 2016)	formerly DRII (NYSE) (subsequently acquired in 2016 by Apollo Global Management)	\$1,703	travel & hospitality

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57	Cenveo Corporation	WestRock Company	12/9/2015	Stock Purchase	\$105	\$875.57	11.99%	CVO (NYSE)	U.S. public company	WRK (NYSE)	\$8,581	industrial goods & services
58	Huron Consulting Group, Inc.	Consiilio LLC	12/10/2015	Hybrid	\$112	\$1,451.05	7.72%	HURN (Nasdaq)	U.S. private company	N/A	not available	other
59	Whiting Petroleum Corp.	Tallgrass Energy Partners, LP	12/16/2015	Asset Purchase	\$75	\$3,117.26	2.41%	WLL (NYSE)	U.S. public company	TEP (NYSE)	\$2,380	energy
60	The Medicines Company	Mallinckrodt plc	12/18/2015	Hybrid	\$175	\$2,633.38	6.65%	MDCO (Nasdaq)	Irish public company	MNK (NYSE)	\$13,695	healthcare, pharmaceuticals & medical
61	USMD Holdings Inc.	United Medical Systems, Inc.	12/18/2015	Stock Purchase	\$19.8	\$74.69	26.51%	USMD (Nasdaq)	U.S. private company owned by a private investment firm (New State Capital Partners, LLC)	N/A	not available	healthcare, pharmaceuticals & medical
62	InvenTrust Properties Corp.	University House Communities Group, Inc.	1/3/2016 (amended on 5/30/16 and 6/20/16)	Stock Purchase	\$1,410	\$2,250.36	62.66%	IARE (OTC)	U.S. private company	N/A	not available	other
63	Ducommun Incorporated	Intervala, LLC	1/22/2016	Stock Purchase	\$38.5	\$180.00	21.39%	DCO (NYSE)	U.S. private company	N/A	not available	aerospace & defense
64	MFRI, Inc.	Hengst Holding GmbH	1/29/2016	Stock Purchase	\$11	\$41.10	26.76%	MFRI (Nasdaq)	Germany private company	N/A	not available	industrial goods & services
65	iRobot Corporation	Arlington Capital Partners	2/2/2016	Asset Purchase	\$30	\$1,026.34	2.92%	IRBT (Nasdaq)	U.S. private company	N/A	not available	aerospace & defense
66	Cryolife, Inc.	Merit Medical Systems, Inc.	2/3/2016	Asset Purchase	\$18.5	\$347.70	5.32%	CRY (NYSE)	U.S. public company	MMSI (Nasdaq)	\$823	healthcare, pharmaceuticals & medical
67	WPX Energy Holdings, LLC	Terra Energy Partners LLC	2/8/2016	Stock Purchase	\$910	\$1,581.28	57.55%	WPX (NYSE)	U.S. private company	N/A	not available	energy
68	P&F Industries, Inc.	Argosy Private Equity, a division of Argosy Capital	2/11/2016	Stock Purchase	\$22.24	\$31.76	70.02%	PFIN (Nasdaq)	U.S. private company	N/A	not available	industrial goods & services
69	Novatel Wireless, Inc.	Micronet Enertec Technologies, Inc.	2/18/2016	Asset Purchase	\$24	\$88.82	27.02%	MIFI (Nasdaq)	U.S. public company	MICT (Nasdaq)	\$12	technology, software & related products
70	Encore Capital Group, Inc.	Prophet Capital Asset Management	2/19/2016	Stock Purchase	\$187	\$503.49	37.14%	ECPG (Nasdaq)	U.S. private company	N/A	not available	financial services
71	Ducommun Incorporated	General Atomics	2/24/2016	Stock Purchase	\$14.6	\$180.00	8.11%	DCO (NYSE)	U.S. private company	N/A	not available	aerospace & defense

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72	Harris Corporation	Albany International Corp.	2/27/2016	Stock Purchase	\$210	\$10,904.66	1.71%	HRS (NYSE)	U.S. public company	AIN (NYSE)	\$1,170	aerospace & defense
73	MetLife, Inc.	Massachusetts Mutual Life Insurance Company	2/28/2016	Stock Purchase	\$164	\$43,000.31	0.38%	MET (NYSE)	U.S. private company	N/A	not available	Insurance
74	Microsemi Corporation	Mercury Systems, Inc.	3/23/2016	Stock Purchase	\$300	\$3,032.07	9.89%	MSCC (Nasdaq)	U.S. public company	MRCY (Nasdaq)	\$477	technology, software & related products
75	Vanguard Natural Resources LLC	Titanium Exploration Partners, LLC	3/29/2016	Hybrid	\$280	\$275.32	101.70%	VNR SQ (OTC)	U.S. private company	N/A	not available	energy
76	NewStar Financial, Inc.	Sterling Bancorp	3/31/2016	Stock Purchase	\$112	\$324.95	34.47%	NEWS (Nasdaq)	U.S. public company	STL (NYSE)	\$2,109	financial services
77	Select Medical Holdings Corporation	Encore Rehabilitation Services, LLC	3/31/2016	Stock Purchase	\$65	\$1,563.58	4.16%	SEM (NYSE)	U.S. private company and portfolio company of Revelstoke Capital Partners LLC	N/A	not available	healthcare, pharmaceuticals & medical
78	Ennis, Inc.	Alstyle Operations LLC	4/1/2016	Stock Purchase	\$88	\$514.61	14.77%	EBF (NYSE)	U.S. private company	N/A	not available	consumer goods & retail
79	Demand Media, Inc.	The E.W. Scripps Company	4/8/2016	Asset Purchase	\$39	\$105.45	36.99%	DMD (NYSE)	U.S. public company	SSP (NYSE)	\$1,310	other
80	Maxwell Technologies, Inc.	Data Device Corporation	4/12/2016	Asset Purchase	\$21	\$189.75	11.07%	MXWL (Nasdaq)	U.S. private company	N/A	not available	industrial goods & services
81	United Online, Inc. (acquired by B. Riley Financial Inc. in July 2016)	Prodege, LLC	4/19/2016	Stock Purchase	\$13	\$172.49	8.29%	UNTD (Nasdaq) (subsequently acquired by RILY(Nasdaq))	U.S. private company	N/A	not available	other
82	Ball Corporation	Ardagh Group S.A.	4/22/2016 (amended on 6/9/16)	Hybrid	\$3,420	\$23,755.78	14.40%	BLL (NYSE)	Luxembourg private company	N/A	not available	industrial goods & services
83	Verisk Analytics, Inc.	Veritas Capital Fund Management, LLC	4/25/2016	Stock Purchase	\$820	\$43,476.72	1.89%	VRSK (Nasdaq)	U.S. private company	N/A	not available	healthcare, pharmaceuticals & medical
84	Gaiam, Inc. (now Gaia, Inc.)	Lindblad Expeditions Holdings, Inc.	5/4/2016	Stock Purchase	\$20.00	\$157.07	12.75%	GAIA (NYSE)	U.S. public company	LIND (Nasdaq)	\$453	travel & hospitality
85	Air Products and Chemicals, Inc.	Evonik Industries AG	5/6/2016	Hybrid	\$3,800	\$35,934.08	10.57%	APD (NYSE)	Germany company	EVK (FRA)	not available	industrial goods & services

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86	The Medicines Company	Chiesi Farmaceutici S.p.A.	5/9/2016	Asset Purchase	\$265	\$2,291.63	11.35%	MDCO (Nasdaq)	Italian private company	N/A	not available	healthcare, pharmaceuticals & medical
87	FactSet Research Systems Inc.	Asset International, Inc.	5/21/2016	Stock Purchase	\$165	\$7,637.10	2.16%	FDS (NYSE)	U.S. private portfolio company of Genstar Capital	N/A	not available	technology, software and related products
88	Exar Corporation	Beijing E-town Chipone Technology Co., Ltd.	6/1/2016	Stock Purchase	\$136	\$317.01	42.90%	EXAR (NYSE)	Chinese private company	N/A	not available	technology, software and related products
89	DuPont Fabros Technology, Inc.	QTS Realty Trust, Inc.	6/6/2016	Hybrid	\$125	\$3,016.32	4.14%	DFT (NYSE)	U.S. public company	QTS (NYSE)	\$2,680	technology, software and related products
90	DST Systems, Inc.	Broadridge Financial Solutions, Inc.	6/14/2016	Stock Purchase	\$410	\$5,638.50	7.27%	DST (NYSE)	U.S. public company	BR (NYSE)	\$6,367	technology, software and related products
91	Emerge Energy Services LP	Sunoco LP	6/23/2016	Stock Purchase	\$178.5	\$94.56	188.78%	EMES (NYSE)	U.S. public company	SUN (NYSE)	\$3,347	energy
92	Ares Commercial Real Estate Corporation	Cornerstone Real Estate Advisers LLC	6/28/2016	Stock Purchase	\$93	\$312.88	29.72%	ACRE (NYSE)	U.S. private company	N/A	not available	financial services
93	Blucora, Inc.	OpenMail LLC	7/1/2016	Asset Purchase	\$45	\$429.89	10.47%	BCOR (Nasdaq)	U.S. private company	N/A	not available	technology, software and related products
94	EZCORP, Inc.	Alpha Holding, S.A. de C.V.	7/1/2016	Stock Purchase	\$50	\$408.16	12.25%	EZPW (Nasdaq)	Mexican private company	N/A	not available	financial services
95	Cree, Inc.	Infineon Technologies AG	7/13/2016	Asset Purchase	\$850	\$2,409.81	35.27%	CREE (Nasdaq)	German public company	IFX.DE (XETRA)	\$13,995	industrial goods & services
96	Alphatec Holdings, Inc.	Globus Medical Inc.	7/25/2016	Hybrid	\$80	\$430.48	18.58%	ATEC (Nasdaq)	U.S. public company	GMED (NYSE)	\$2,279	healthcare, pharmaceuticals & medical
97	Healthways, Inc.	Sharecare, Inc.	7/27/2016	Stock Purchase	\$55	\$418.61	13.14%	HWAY (Nasdaq) (subsequently acquired by TVTY (Nasdaq))	U.S. private company	N/A	not available	healthcare, pharmaceuticals & medical
98	Caesars Entertainment Corporation	Alpha Frontier Limited (purchase entity for various hinese consortium)	7/30/2016	Stock Purchase	\$4,400	\$1,129.84	389.44%	CZR (Nasdaq)	U.S. private company (for Chinese Consortium)	N/A	not available	travel & hospitality
99	Resource Capital Corp.	CVC Capital Partners SICAV-FIS S.A.	8/1/2016	Stock Purchase	\$247	\$392.33	62.96%	RSO (NYSE)	Luxembourg private company	N/A	not available	other

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Seller Name (Ultimate Parent Public Company Seller)	Buyer Name (Ultimate Parent)	Date of Signing of Transaction	Structure of Transaction	Purchase Price (excluding potential earnout consideration) (\$mn)	Ultimate Seller Parent's Market Cap as of the most recent quarter prior to signing (\$mn)	Purchase Price as a percentage of Seller's Market Cap (%)	Ultimate Seller Parent's Ticker Symbol (and applicable exchange)	Type of Buyer (e.g., U.S. public company, private company, foreign public company, etc.)	Ultimate Buyer Parent's Ticker Symbol (and applicable exchange)	Market Cap of Ultimate Parent of Buyer as of the most recent quarter prior to signing (\$mn)	Category of Industry of Business Sold	
100	Honeywell International Inc.	KBR, Inc.	8/12/2016	Hybrid	\$300	\$88,504.94	0.34%	HON (NYSE)	U.S. public company	KBR (NYSE)	\$1,886	marketing & consumer support services
101	American International Group, Inc.	Arch Capital Group Ltd.	8/15/2016	Stock Purchase	\$3,400	\$100,843.86	3.37%	AIG (NYSE)	Bermuda public company	ACGL (Nasdaq)	\$8,825	insurance
102	Tribune Media Company	CIM Group Acquisitions, LLC (CIM Group, Inc.)	8/26/2016	Asset Purchase	\$205	\$3,933.04	5.21%	TRCO (NYSE)	U.S. private company	N/A	not available	other
103	USG Corporation	American Builders & Contractors Supply Co., Inc.	8/27/2016	Hybrid	\$670	\$3,934.92	17.03%	USG (NYSE)	U.S. private company	N/A	not available	industrial goods & services
104	Sonoco Plastics, Inc.	Amcor Limited	9/1/2016	Asset Purchase	\$280	\$5,026.99	5.57%	SON (NYSE)	Australian public company	AMC.AX (ASX)	\$11,347	industrial goods & services
105	Accuride Corporation	Grede Holdings LLC	9/2/2016	Stock Purchase	\$14	\$59.82	23.40%	ACQ (NYSE)	U.S. private company	N/A	Not available	industrial goods & services
106	Freeport-McMoran Inc.	Anadarko Petroleum Corporation	9/12/2016	Asset Purchase	\$2,000	\$14,796.80	13.52%	FCX (NYSE)	U.S. public company	APC (NYSE)	\$27,184	energy
107	Zebra Technologies Corporation	Extreme Networks, Inc.	9/13/2016	Asset Purchase	\$55	\$3,594.61	1.53%	ZBRA (Nasdaq)	U.S. public company	EXTR (Nasdaq)	\$421	technology, software & related products
108	Abbott Laboratories	Johnson & Johnson	9/14/2016	Stock Purchase	\$4,325	\$57,785.52	7.48%	ABT (NYSE)	U.S. public company	JNJ (NYSE)	\$332,050	healthcare, pharmaceuticals & medical
109	Avnet, Inc.	Tech Data Corporation	9/19/2016	Stock Purchase	\$2,636	\$5,234.73	50.36%	AVT (NYSE)	U.S. public company	TECD (Nasdaq)	\$2,080	marketing & consumer support services
110	ARC Group Worldwide, Inc.	Winchester Electronics Corporation	9/30/2016	Stock Purchase	\$11	\$43.23	25.45%	ARCW (Nasdaq)	U.S. private company	N/A	not available	technology, software and related products
111	Hamilton Sundstrand Corporation	SL Montevideo Technology, Inc.	9/30/2016	Asset Purchase	\$65	\$83,658.02	0.08%	UTX (NYSE)	U.S. private company	N/A	not available	industrial goods and services
112	Invacare Corporation	Compass Health Brands Corp.	9/30/2016	Stock Purchase	\$14	\$394.48	3.55%	IVC (NYSE)	U.S. private company	N/A	not available	healthcare, pharmaceuticals & medical
113	DXP Enterprises, Inc.	Houston Wire & Cable Company	10/3/2016	Stock Purchase	\$32	\$418.58	7.64%	DXPE (Nasdaq)	U.S. public company	HWCC (Nasdaq)	\$102	industrial goods & services
114	CIT Group, Inc.	Bohai Capital Holding Co., Ltd.	10/6/2016	Stock Purchase	\$10,000	\$7,482.89	133.64%	CIT (NYSE)	Chinese public company	SHE: 000415 (SZSE)	not available	aerospace & defense
115	Pfizer Inc.	ICU Medical, Inc.	10/6/2016	Hybrid	\$1,079	\$204,200.15	0.53%	PFE (NYSE)	U.S. private company	N/A	not available	healthcare, pharmaceuticals & medical

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Seller Name (Ultimate Parent Public Company Seller)	Buyer Name (Ultimate Parent)	Date of Signing of Transaction	Structure of Transaction	Purchase Price (excluding potential earnout consideration) (\$mn)	Ultimate Seller Parent's Market Cap as of the most recent quarter prior to signing (\$mn)	Purchase Price as a percentage of Seller's Market Cap (%)	Ultimate Seller Parent's Ticker Symbol (and applicable exchange)	Type of Buyer (e.g., U.S. public company, private company, foreign public company, etc.)	Ultimate Buyer Parent's Ticker Symbol (and applicable exchange)	Market Cap of Ultimate Parent of Buyer as of the most recent quarter prior to signing (\$mn)	Category of Industry of Business Sold	
116	Duke Energy Corporation	China Three Gorges Corporation	10/10/2016	Stock Purchase	\$970	\$55,142.87	1.76%	DUK (NYSE)	Chinese private company	N/A	not available	energy
117	Duke Energy Corporation	I Squared Capital	10/10/2016	Stock Purchase	\$890	\$55,142.87	1.61%	DUK (NYSE)	Swiss private company	N/A	not available	energy
118	Newell Brands Inc.	Stanley Black & Decker, Inc.	10/12/2016	Hybrid	\$1,950	\$26,503.78	7.36%	NWL (NYSE)	U.S. public company	SWK (NYSE)	\$18,532	consumer goods & retail
119	Isle of Capri Casinos, Inc.	CQ Holding Company, Inc.	10/13/2016	Stock Purchase	\$40	\$779.07	5.13%	ISLE (Nasdaq)	U.S. private company	N/A	not available	travel & hospitality
120	SuperValu	Onex Partners Manager LP	10/16/2016	Merger	\$1,365	\$1,258.56	108.46%	SVU (NYSE)	U.S. private company	N/A	not available	consumer goods & retail
121	Atmos Energy Corporation	CenterPoint Energy, Inc.	10/29/2016	Stock Purchase	\$40	\$7,282.41	0.55%	ATO (NYSE)	U.S. public company	CNP (NYSE)	\$10,005	energy
122	Blucora, Inc.	YFC-BonEagle Electric Co., Ltd.	11/14/2016	Stock Purchase	\$40	\$470.50	8.50%	BCOR (Nasdaq)	Taiwanese public company	TWD (TWO)	not available	technology, software and related products
123	Harte Hanks, Inc.	Syncsort Incorporated	11/29/2016	Stock Purchase	\$112	\$195.10	57.41%	HHS (NYSE)	U.S. private company	N/A	not available	technology, software and related products
124	Icahn Enterprises	Sumitomo Mitsui Financial Group, Inc.	12/16/2016	Hybrid	\$2,778	\$7,162.61	38.78%	IEP (Nasdaq)	Japanese public company	SMFG (NYSE)	\$6,362 (S1 2016)	industrial goods & services
125	Hill International, Inc.	Bridgepoint Development Capital	12/20/2016	Stock Purchase	\$147	\$270.73	54.30%	HIL (NYSE)	British private company	N/A	not available	marketing & consumer support services
126	PerkinElmer, Inc.	Varian Medical Systems, Inc.	12/21/2016	Hybrid	\$276	\$6,144.66	4.49%	PKI (NYSE)	U.S. public company	VAR (NYSE)	\$7,789.7	healthcare, pharmaceuticals & medical

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