

# Impacts on the 2023 M&A and Deals Market

Tuesday, October 17th  
12:30-2 pm EST



Potomac  
LAW GROUP

# Introduction

# Overview

- **New Trends with LOIs and Representation & Warranty Insurance**
- **Antitrust Regulations**
- **Caremark Decision**
- **Preparing for an M&A Transaction**
- **Hot Topics in Due Diligence**
- **Key Takeaways from Recent ABA and SRS Studies**

# New Trends with LOIs and RWI

# Duration of Exclusivity Periods for LOIs

During high M&A market activity prior to Covid, we were seeing exclusivity periods of 30-45 days

With higher interest rates and a difficult market to raise capital or obtain needed financing, exclusivity periods are increasing

We are typically seeing LOIs with 90-day exclusivity periods and options to extend the exclusivity period for financing contingencies as long as the buyer has not proposed any term that materially conflicts with the LOI

# Representations and Warranties Insurance (“RWI”) Trends



At the height of M&A activity in 2021 and beginning of 2022, Sellers were demanding that Buyers purchase RWI and that RWI be the sole recourse for Buyers



The tremendous amount of M&A activity and steep increase in demand for RWI policies by Sellers allowed RWI providers to charge the maximum for their policies. It also meant that RWI insurers could be more particular about which RWI policies they issued



The slowdown in M&A activity at the end of 2022 and during 2023 shifted demand for RWI. Sellers are now more willing to share some of the burden associated with RWI, such as splitting the cost of the policy. In addition, some Sellers are also now willing to indemnify Buyers for items not covered by RWI



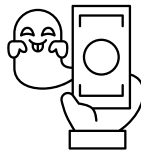
Buyers are also noticing that pricing for RWI is improving and that obtaining RWI is easier, including RWI insurers showing flexibility with lifting exclusions

# RWI



## Indemnification

- 2022 saw fewer “walk-away” or no survival indemnification structures for deals that do not use RWI
- Inclusion of a materiality scrape remains the prevailing practice
- Survival periods, caps, and escrow sizes held steady for deals that do not use RWI



## Fraud Provisions

- “No Other Representations” clauses included a fraud carve out 21% of the time, and “Non-reliance” clauses included a fraud carveout 19% of the time
- Deal parties use the Delaware courts definition of fraud in about 30% of acquisition agreements, while 15% of agreements did not expressly define fraud



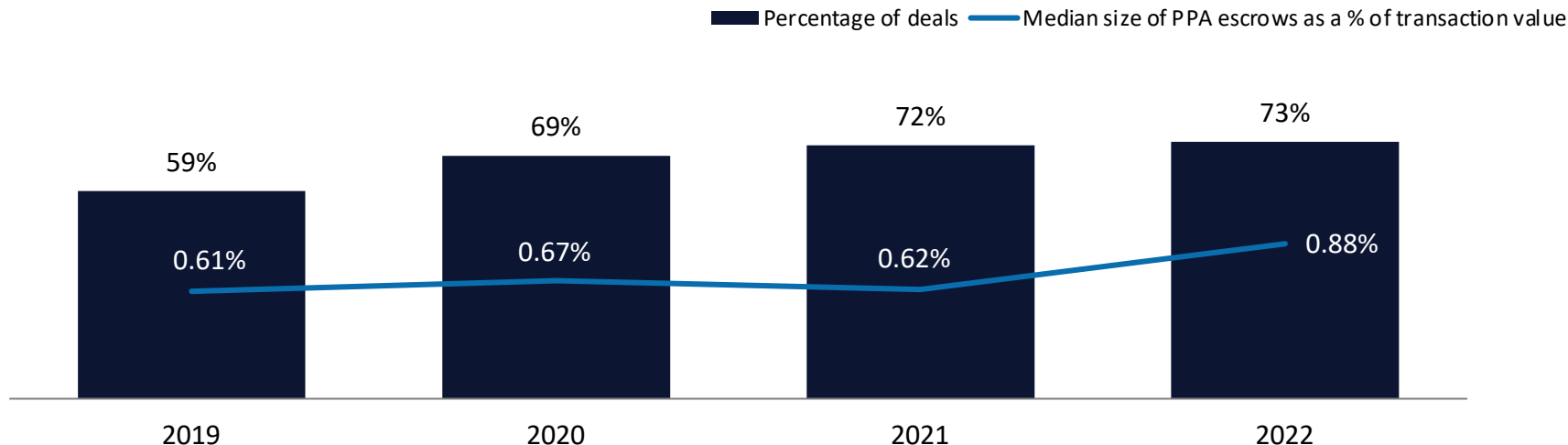
## Effect of Reps and Warranties Insurance (RWI)

- The presence of RWI can materially affect certain deal terms, including use of a separate purchase price adjustment escrow, certain seller representations, survival, sandbagging, materiality scrapes, baskets, caps, and escrows

# Post-closing Purchase Price Adjustments: Separate Escrows

For 2022 deals without a separate PPA escrow, the source of payment for a buyer-favorable adjustment is the indemnity escrow 81% of the time

## Percentage of deals with a separate PPA mechanism that include a PPA escrow, and median sizes<sup>1</sup>



1. For 2022 deals with a separate PPA mechanism, 93% with RWI identified and 56% with no RWI included a PPA escrow

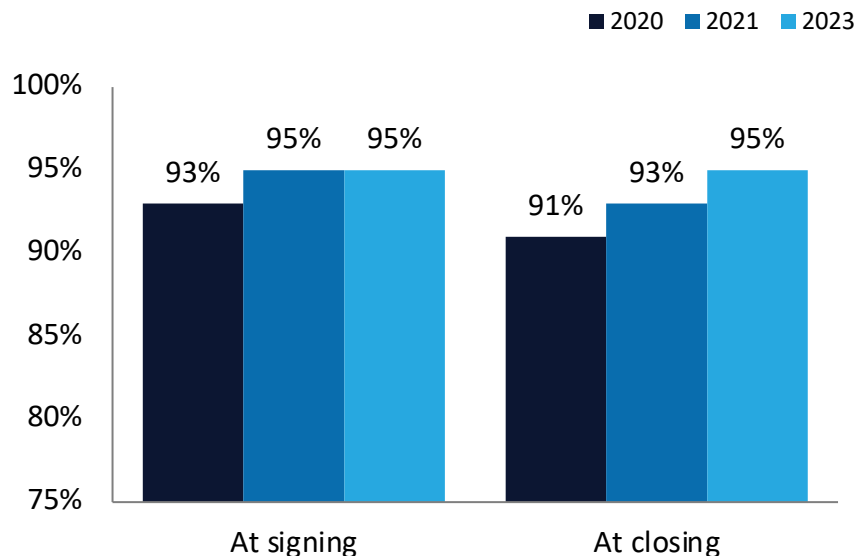
Source: SRS Acquiom 2023 M&A Deal Terms Study

[srsacquiom.com/marketstandard](https://srsacquiom.com/marketstandard)

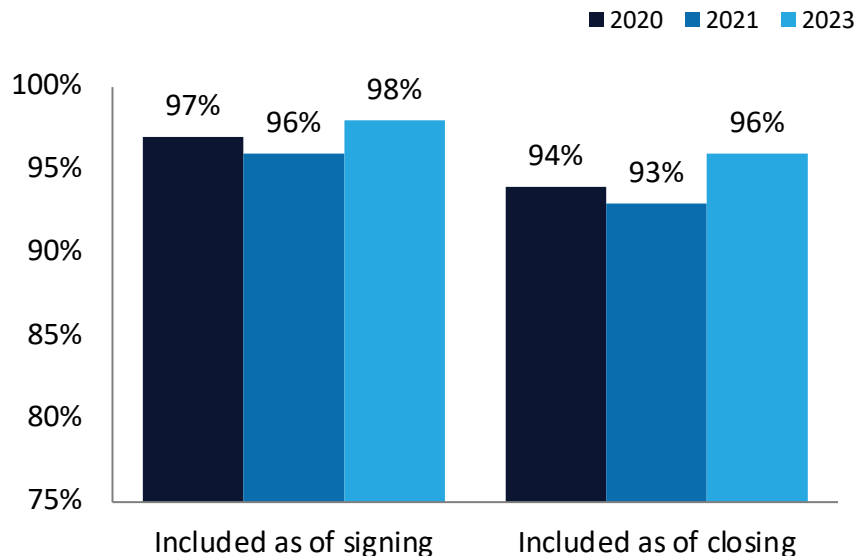


# Accuracy of Seller's Representations: Materiality

MAE Qualifier with Capitalization Representation Carveout<sup>1</sup>



Materiality Scrape Frequency<sup>2</sup>



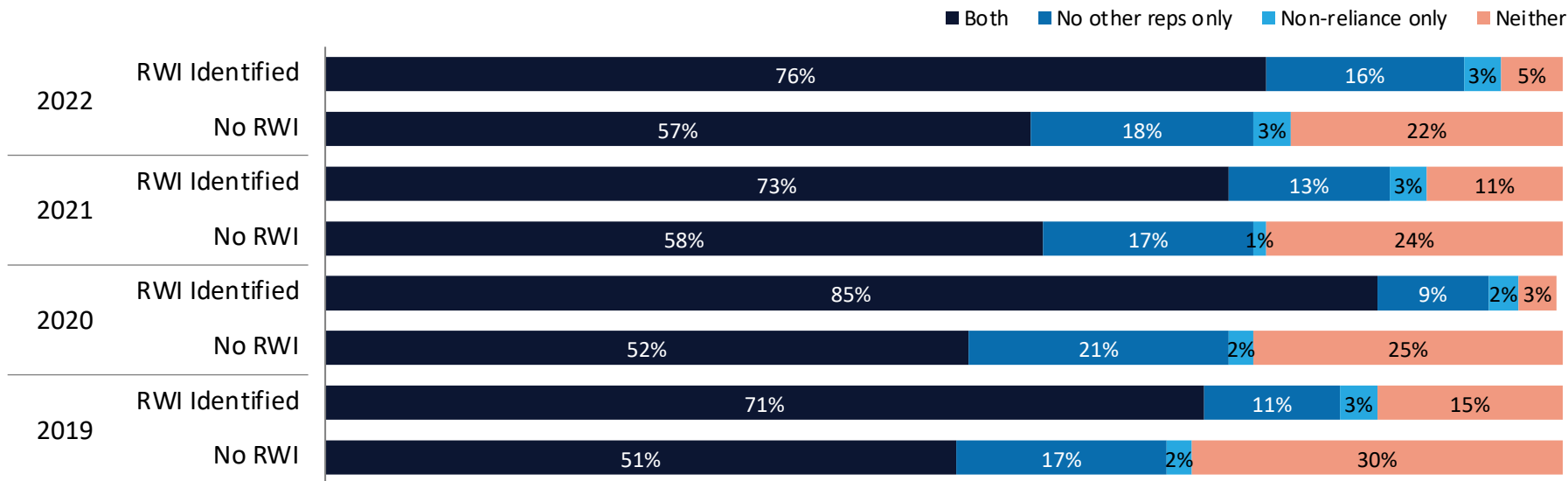
1. Subset: Deals with materiality or MAE qualifiers in the “accuracy of representations” condition 2. Deals with materiality or MAE qualifiers in the “accuracy of representations” condition

Source: SRS Acquiom 2023 M&A Deal Terms Study

[srsacquiom.com/marketstandard](https://srsacquiom.com/marketstandard)

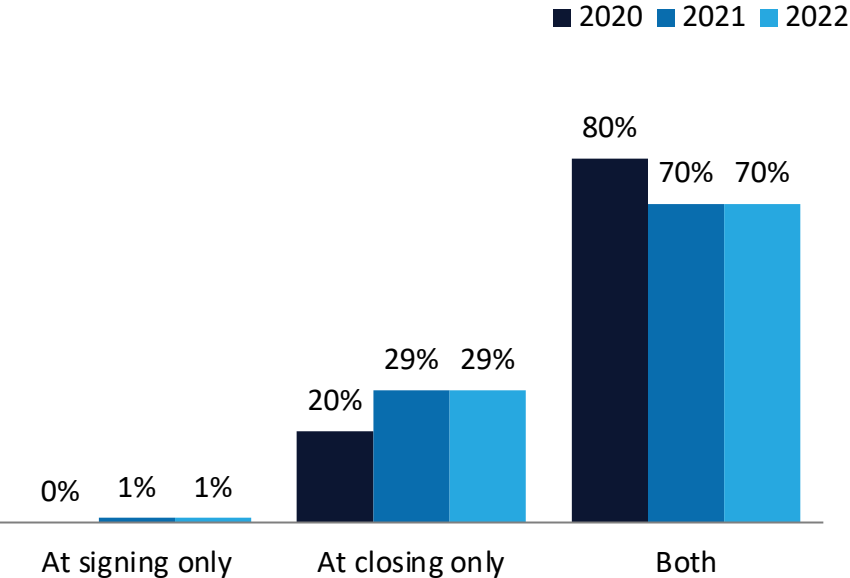
# “No Other Representations” and “Non-Reliance” Clauses: Influence of RWI

## 2019–2022 Deals

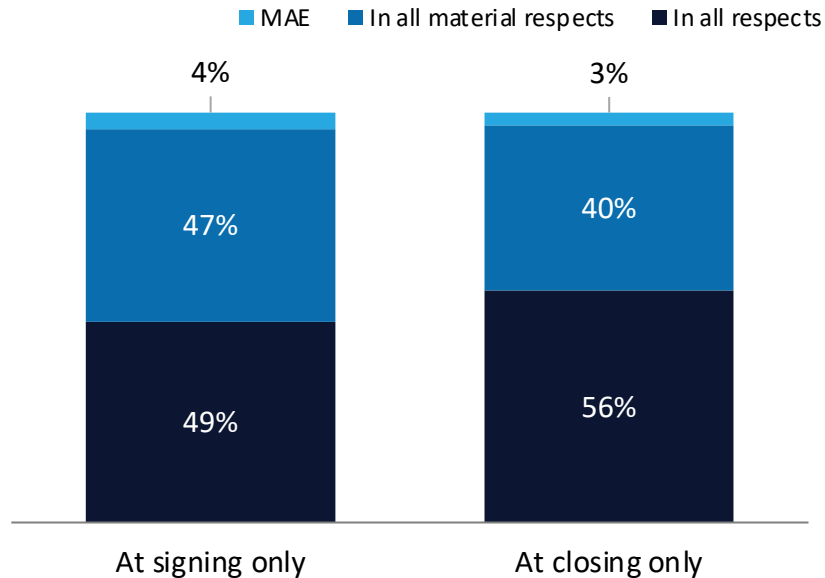


# Accuracy of Seller's Representations: Accuracy and Materiality

## Accuracy: Timing



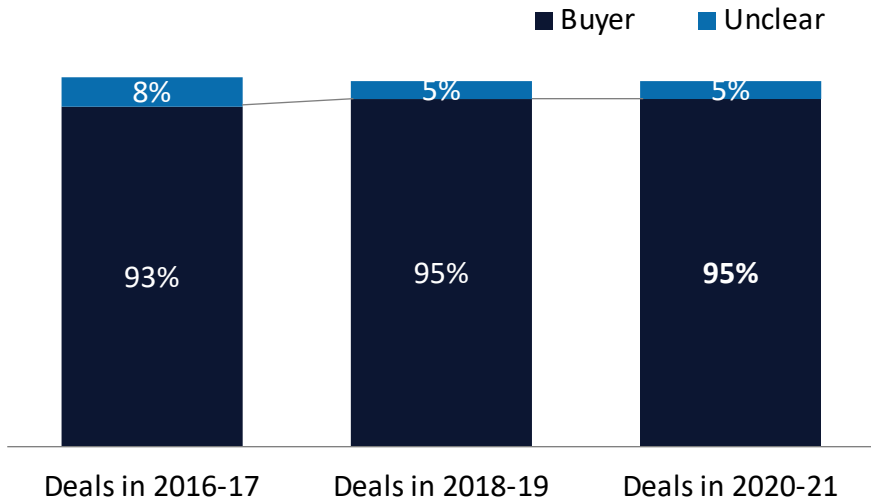
## Accuracy: Materiality (2022 deals)



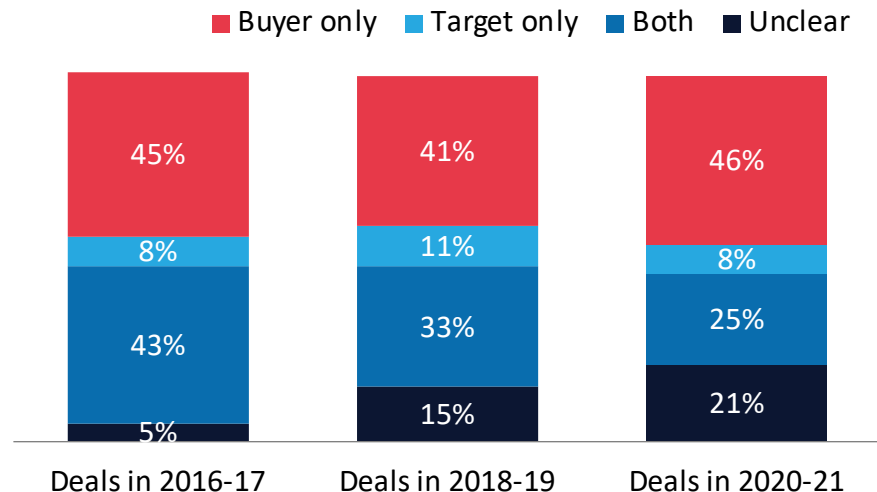
# RWI: Acquisition and Payment

(Subset: deals that reference RWI)

## Who acquires RWI?<sup>1</sup>



## Who pays for RWI?



1. No deals provided that Seller acquires RWI

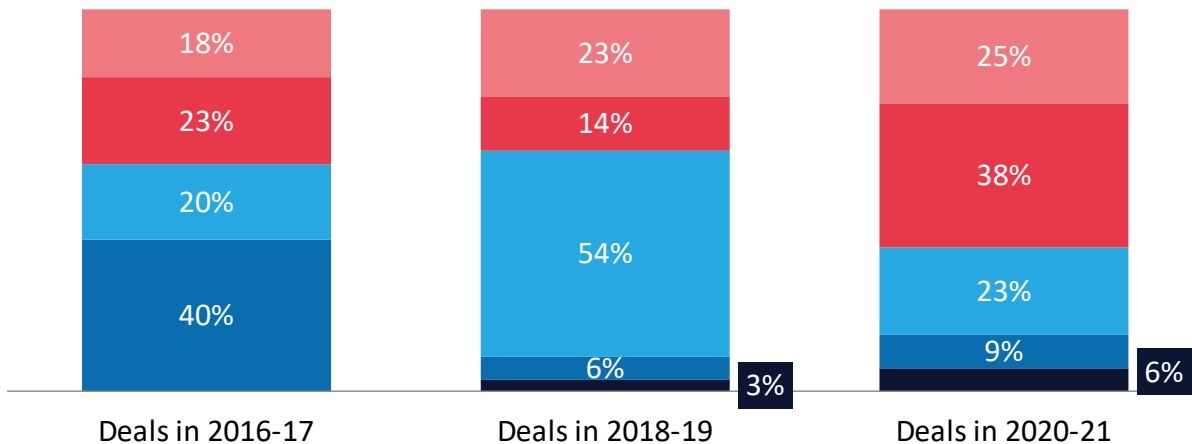
Source: ABA Private Target M&A Deal Points Study 12/30/2021

# RWI: Sole Source of Recovery

(Subset: deals that reference RWI)

## Is RWI buyer's sole source of recovery?

■ Indeterminable ■ Other<sup>1</sup> ■ Express No ■ Yes, for all reps ■ Yes, but only for non fundamental reps



**Buyer hereby acknowledges and agrees that its sole source of indemnification and recovery for Damages based upon Non-Fundamental Representations shall be the Escrow Amount and the RWI Policy, and Buyer shall not directly or indirectly otherwise pursue any right, claim, or action against Seller under this Article, without regard as to whether Buyer does or may actually recover under the RWI Policy**

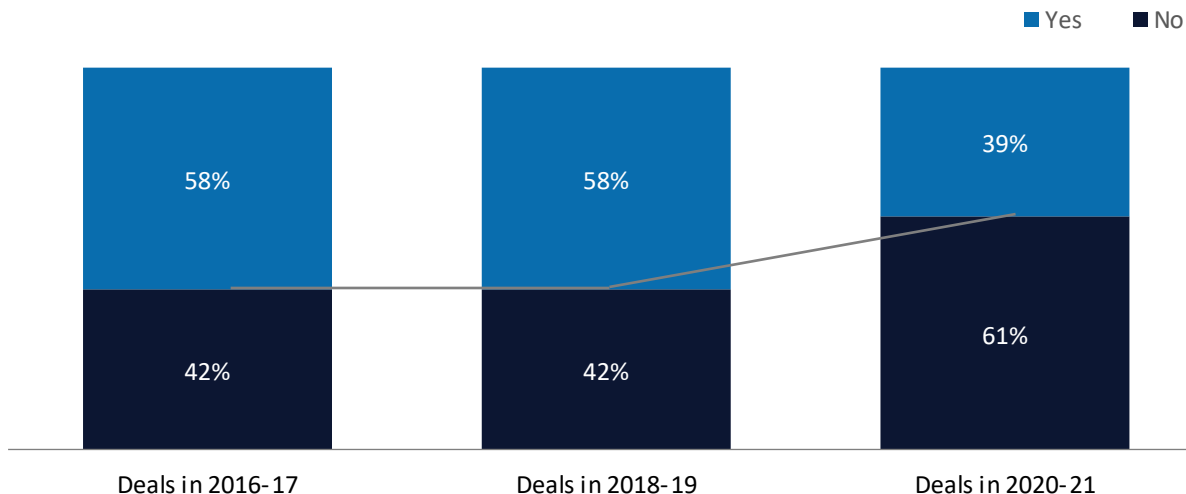
1. Includes one deal permitting recovery of a specified amount for tax or fundamental rep breaches covered by RWI policy, two deals permitting recovery for certain reps if RWI Policy limits exceeded, one deal permitting recovery for excluded liabilities outside the RWI policy and three deals with special escrow/indemnity for certain specified matters

Source: ABA Private Target M&A Deal Points Study 12/30/2021

# RWI: Obligation to Pursue Claim

(Subset: deals for which RWI is not Buyer's sole source of recovery for all representations)

Must buyer first pursue claims under RWI policy?



Buyer shall have no obligation to first submit a claim, seek to collect, or actually collect under the RWI Policy as a precondition to making an indemnification claim or

Buyer may seek recovery for Losses as follows: (a) first, Buyer may pursue recovery from the Escrow; (b) second, only after the RWI Policy's retention has been satisfied, Buyer may pursue recovery by pursuing such Losses under the RWI Policy; and (c) third, only if Buyer has made a valid and timely claim under the RWI Policy and Insurer has notified Buyer in writing that the claim will not be paid, then Buyer may pursue recovery of remaining Losses directly from Sellers, subject to the limitations in this Agreement

# Antitrust Regulations

# Proposed Changes to Premerger Notification Filing Process<sup>1</sup>

On June 27, 2023, FTC and DOJ announced significant proposed changes to premerger notification filing process. As part of these changes, parties will be required to submit additional information and documentation, including the following

- Submission of **ALL DRAFT** "4(c)" and "4(d)" documents (i.e., documents discussing the proposed transaction with respect to markets, competition, expansion, sales growth, synergies, etc.) where previously only the final versions were required. Verbatim translations of all foreign language documents will now be required (none required previously)
- Details about previous acquisitions going back 10 years instead of 5 years
- Identification of and information about all officers, directors, and board observers of all entities within the acquiring person, including the identification of other entities these individuals currently serve, or within the 2 years prior to filing had served, as an officer, director, or board observer
- Identification of and information about all creditors and entities that hold non-voting securities, options, or warrants totaling 10% or more
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1. <https://www.reuters.com/legal/transactional/us-antitrust-agencies-propose-significant-changes-premerger-notification-2023-06-30/>



# Proposed Changes Cont'd<sup>1</sup>

- 1 Disclosure of subsidies by certain foreign governments, including North Korea, China, Russia, and Iran
- 2 Narrative description of the strategic rationale for the transaction (including projected revenue streams), a diagram of the deal structure, and a timeline and narrative of the conditions for closing
- 3 Identification and narrative describing horizontal overlaps, both current and planned
- 4 Identification and narrative describing supply agreements/relationships
- 5 Identification and narrative describing labor markets, as well as submission of certain data on the firms' workforce, including workforce categories, geographic information on employees, and details on labor and workplace safety violations
- 6 Identification of certain defense or intelligence contracts
- 7 Identification of foreign jurisdictions reviewing the deal

1. <https://www.reuters.com/legal/transactional/us-antitrust-agencies-propose-significant-changes-premerger-notification-2023-06-30/>

# Increase in Thresholds<sup>2</sup>

## Size-of-Transaction Threshold

Increase from \$101 million to \$111.4 million (approximately 10%) for minimum transaction size

- HSR filing required (unless otherwise exempt) for transactions resulting in the acquiror holding more than \$111.4 million of seller's voting securities, non-corporate interests or assets

## Size-of-Person Thresholds

Increase in thresholds of also approximately 10%

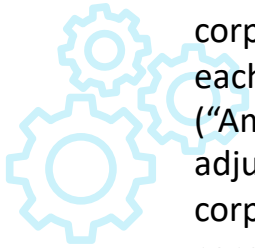
- HSR filing NOT required for transactions valued at more than \$111.4 million but less than \$445.5 million IF one party has \$222.7 million in annual net sales or assets AND the other party has \$22.3 million in annual net sales or assets
- Transaction size of \$445.5 million does not allow application of size-of-person test

Thresholds announced in January 2023 and are updated annually

2. <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-announces-2023-update-size-transaction-thresholds-premerger-notification-filings-interlocking>

# Increase in Thresholds Cont'd

## Thresholds for Interlocking Directorates<sup>3</sup>



The Clayton Act provides that a person cannot serve as a director or officer of two competing corporations. However, interlocking directorates are exempt from Section 8 of the Clayton Act where each corporation has capital, surplus and undivided profits aggregating less than \$10 million, as adjusted (“Amount of Capital”), and (1) the competitive sales of either corporation are less than \$1 million, as adjusted (“Competitive Sales”); (2) the competitive sales of either corporation are less than 2% of that corporation’s total sales; or (3) the competitive sales of each corporation are less than 4% of that corporation’s total sales<sup>3</sup>

	2022	2023 <sup>4</sup>
<b>Amount of Capital</b>	\$41,034,000	\$45,257,000
<b>Competitive Sales</b>	\$4,103,400	\$4,525,700

<sup>3</sup> <https://www.law.cornell.edu/uscode/text/15/19>

<sup>4</sup> [https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-announces-2023-update-size-transaction-thresholds-premerger-notification-filings\\_interlocking](https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-announces-2023-update-size-transaction-thresholds-premerger-notification-filings_interlocking)

# DOJ and FTC Enforcement (1/2)

- 1 Return of criminal enforcement for violations of Section 2 of the Sherman Act – DOJ prosecuted at least 2 cases in 2022 <sup>5</sup>
- 2 FTC's expanded approach to enforcement of Section 5 of the FTC Act, which prohibits unfair methods of competition. Specifically, the FTC policy statement issued on November 10, 2022 indicated that the FTC will focus on “stopping unfair methods of competition in their incipency based on their tendency to harm competitive conditions”
- 3 Increased antitrust scrutiny of the tech industry, both with the FTC (challenge to the proposed Microsoft-Activision merger) and private sector antitrust litigation (Epic Games-Apple lawsuit)
- 4 DOJ and the Department of Health and Human Services entered into an MOU on December 9, 2022 to strengthen cooperation on the enforcement of antitrust laws in the health care market <sup>6</sup>

5. <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/antitrust-year-in-review-enforcement-insights-from-2022>

6. <https://www.justice.gov/opa/pr/justice-department-s-antitrust-division-and-office-inspector-general-department-health-and>

# DOJ and FTC Enforcement (2/2)

- 1 In 2016, DOJ and FTC announced that wage-fixing and no-poach agreements could be prosecuted criminally. DOJ had several trials in 2022 involving wage-fixing and non-solicit allegations<sup>7</sup>
- 2 In January 2023, FTC proposed rule to ban employers from imposing noncompete clauses on their workers. Specifically, the FTC's new rule would make it illegal for an employer to<sup>8</sup>
  - Enter into or attempt to enter into a noncompete with a worker;
  - Maintain a noncompete with a worker; or
  - Represent to a worker, under certain circumstances, that the worker is subject to a noncompete
  - The proposed rule would apply to independent contractors and would also require employers to rescind existing noncompetes. Employers would also have to actively inform workers that they are no longer in effect.
  - FTC expected to vote on the final version of the proposed rule in april 2024.
- 3 On October 4, 2023, DOJ announced that companies can avoid charges when self-reporting violations at acquisition targets. Specifically, DOJ will not prosecute, provided the business discloses the misconduct within six months of a deal closing, corrects the issue within a year, and pays back illegally-gained profits<sup>9</sup>

7. <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>

8. <https://news.bloomberglaw.com/antitrust/ftc-expected-to-vote-in-2024-on-rule-to-ban-noncompete-clauses>

9. [US Offers Merger Safe Harbor to Companies Disclosing Crime \(2\) \(bloomberglaw.com\)](https://www.bloomberglaw.com/news/us-offers-merger-safe-harbor-to-companies-disclosing-crime-2)

# Caremark Decision

# Impact on Due Diligence regarding a Seller's Board of Directors<sup>10</sup>

## ○ Caremark Standard

- Boards of Directors have obligation to make a **good faith** effort to put in place a compliance system designed to help ensure that their companies operate within the bounds of the law and that their products, services, and operations do not cause harm to consumers, community members, or the environment.
- In 2019 Marchand case, Delaware Supreme Court expanded on Caremark and held that board of directors has duty to ensure that a board-level system of oversight was in place to address a “mission critical risk.”

## ○ What Does This Mean for Acquirors?

- Acquirors need to carefully review board records and consider whether (1) the Company has a compliance system in place; (2) the board has oversight over that compliance system and (3) that compliance system covers mission critical risks

## ○ What Does This Mean for Sellers?

- Ensure that their board-level committee structures address all mission critical risks and that the board's efforts in holding meetings and receiving information in aid of its monitoring responsibilities are well documented

10. <https://corpgov.law.harvard.edu/2022/08/09/delaware-and-caremark-an-update/>

# Preparing for M&A Transaction



# Corporate Housekeeping (1/2)

**Prepare, prepare, prepare**

## **Keep and maintain accurate records**

- Board and Shareholder Meetings – Hold regularly scheduled meetings in accordance with bylaws or operating agreement; keep accurate **high level** minutes and document board and shareholder votes or consents, including appointment of officers and directors
- Contracts – Maintain electronic filing system for all contracts whether with employees, customers or vendors, including all amendments and modifications thereto
- Compliance – Implement compliance policies in accordance with nature and type of business
- Litigation/IP Challenges – Create and keep an accurate summary of sequence of events relating to claims or challenges against IP

# Corporate Housekeeping (2/2)

## Organize data room

01

Potential acquirors will want to see copies of all of the above records so keep them organized

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02

If you do not have electronic copies of key documents, then begin the process of scanning the documents and uploading them

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03

Redact PII from diligence

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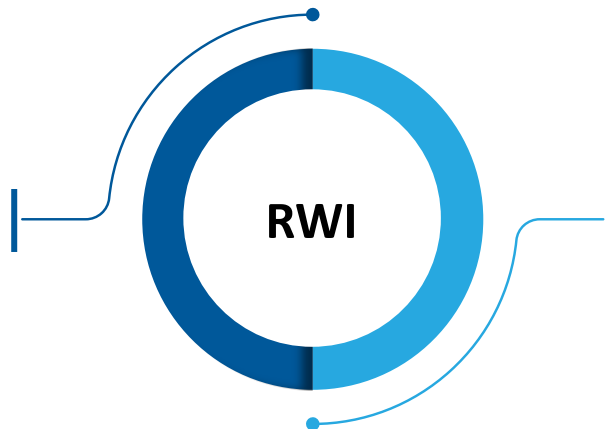
04

REMEMBER – Preparation and organization will save you time and money!

# Corporate Housekeeping - Impact on RWI

**Obtaining an RWI policy depends on the insurer's ability to obtain a clear view of the risks associated with Seller's business**

If Seller cannot provide a clear picture of the company's assets and liabilities (i.e. contracts, employment relationship, regulatory compliance, etc.), potential insurers will not have sufficient information to assess the risk associated with Seller's business. The result – inability to obtain RWI either because insurer will not risk it or not cost effective, or obtaining an RWI policy with so many carveouts that it becomes meaningless



Carveouts from RWI. Acquirors, especially those funded by PE firms, will typically demand special indemnification from the Seller for any liabilities carved out of the RWI policy

# Hot Topics in Diligence

# Privacy<sup>11</sup>

US does NOT have a federal data privacy law unlike the EU, which has the GDPR (General Data Protection Regulation) and China, which has the PIPL (Personal Information Protection Law)

11 US States have already adopted privacy laws and some states like California and Virginia are adopting amendments or additional laws to ensure data privacy in 2023

12 new US states introduced privacy bills in 2023

## Practical Application

- Understand what types of personally identifiable information (PII) the business collects, how the PII is collected and handled
- Review privacy regulations in the state(s) or other jurisdictions where the company operates
- Does the company have a privacy policy posted on its website?

11. <https://pro.bloomberglaw.com/brief/state-privacy-legislation-tracker/>

# Cybersecurity



## Understand what cybersecurity measures are currently in place

- Sellers need to consider action plans in event of security incident
- Buyers need to consider where targets are vulnerable and what will be required to get them up to speed



## Understand differing cybersecurity requirements of potential acquirors

- PE firm – Integration of cybersecurity measures unlikely to be high priority
- Government Contractor – Integration of cybersecurity will be high priority; costs of integration or bringing targets up to standard will detract from potential value

# Key Takeaways from Recent ABA and SRS Studies

# Key Findings

## Purchase Price Adjustments (aka Working Capital Adjustments or PPAs)

- PPAs are nearly universal in private M&A; 94% of 2022 deals included a PPA, predominately via a separate mechanism in the consideration section
- More than one in four PPAs used a customized approach for accounting methodology, typically via a calculation worksheet attached as an exhibit
- 73% of deals with a separate PPA mechanism also included a special PPA escrow, with a median size of 0.88% of the transaction value
- 98% of deals with a separate PPA mechanism include a cap on any buyer-favorable adjustment

## Earnouts

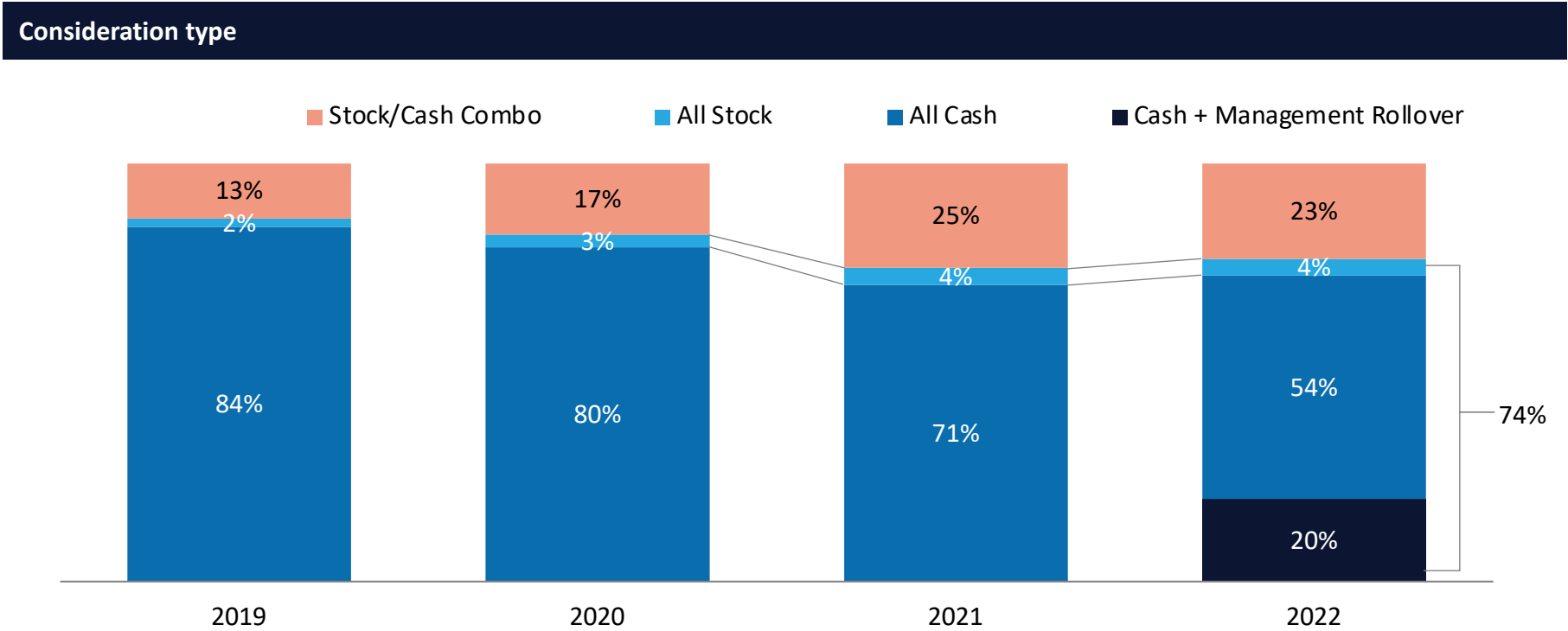
- Shifting trends in earnout structures resulted in a higher prevalence of earnouts, increased use of earnings or EBITDA metrics, longer performance periods, and virtually no deals with a buyer covenant to run the business in a way that maximizes the earnout

## Deal Escrows

- 93% of deals had at least one escrow; 52% of deals had at least two escrows (e.g., indemnification, PPA, or other special escrow)
- The median size of all escrows combined as a percentage of transaction value on deals with an indemnification escrow that do not use RWI was 11.3% and 2.5% for deals with RWI identified, compared to 10% and 0.5%, respectively, for the median size of only the indemnification escrow



# Closing Consideration Trends

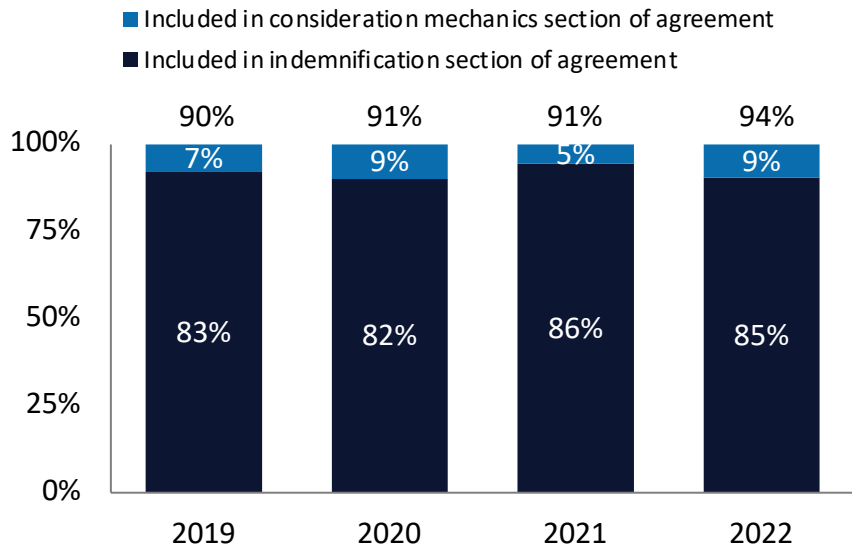


Source: SRS Acquiom 2023 M&A Deal Terms Study  
[srsacquiom.com/marketstandard](https://srsacquiom.com/marketstandard)

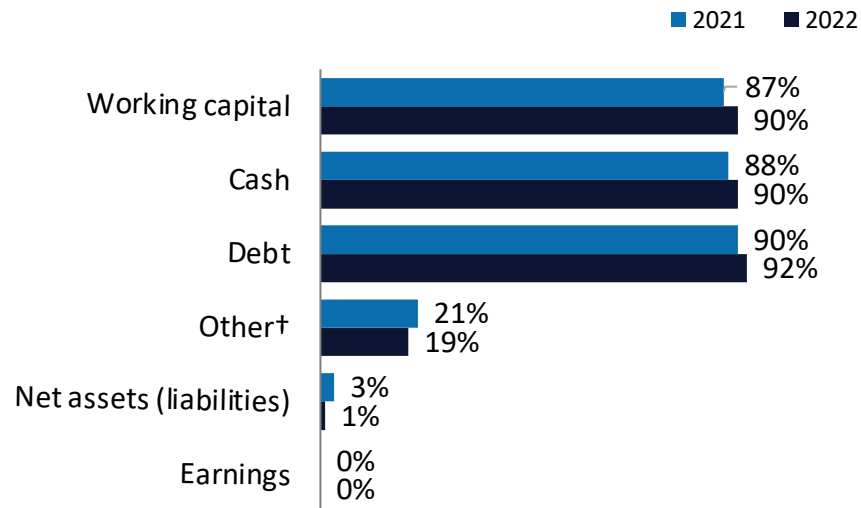
# Post-closing Purchase Price Adjustments

Buyers had a contractual right to review the estimated PPA calculations at or near the time of closing in 11% of 2022 deals with a PPA

## Adjustment provision included



## Adjustment metrics<sup>1</sup>



1. 96% of post-closing purchase price adjustments in 2022 deals were based on more than one metric. † Does not include post-closing adjustments for transaction expenses

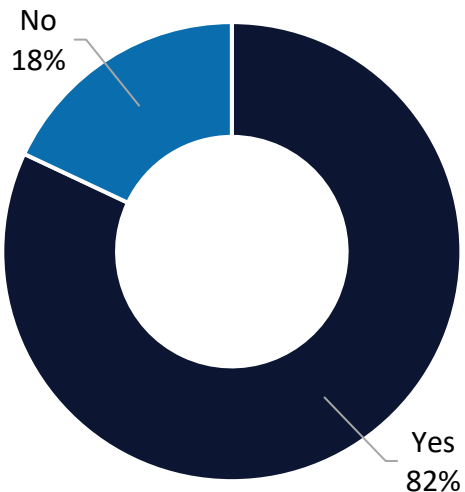
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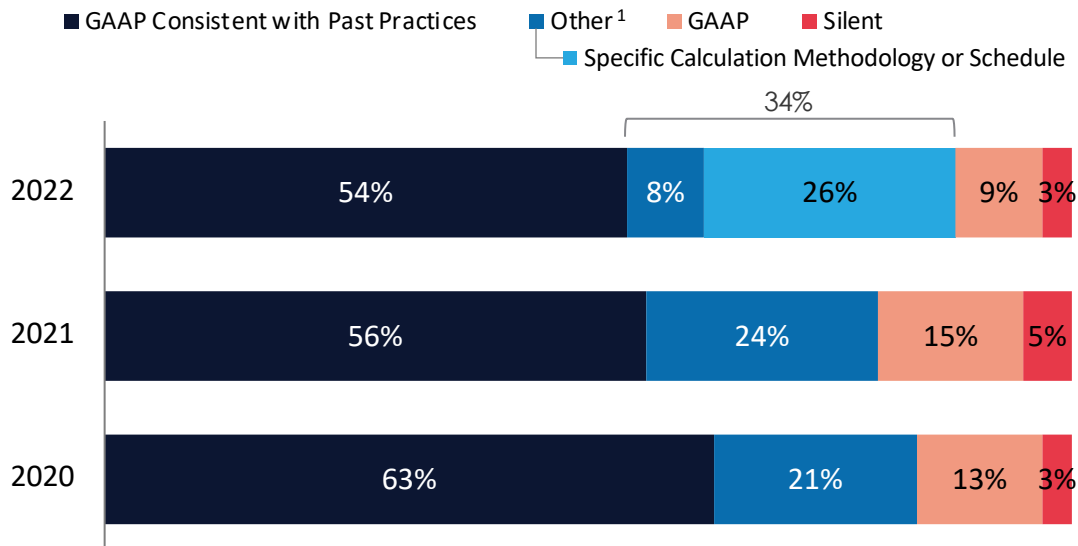
# Post-closing Purchase Price Adjustments: Working Capital Excludes Tax-related Items and Accounting Methodology

Subset: 2022 deals with a Working Capital adjustment

## Adjustment excludes tax-related items



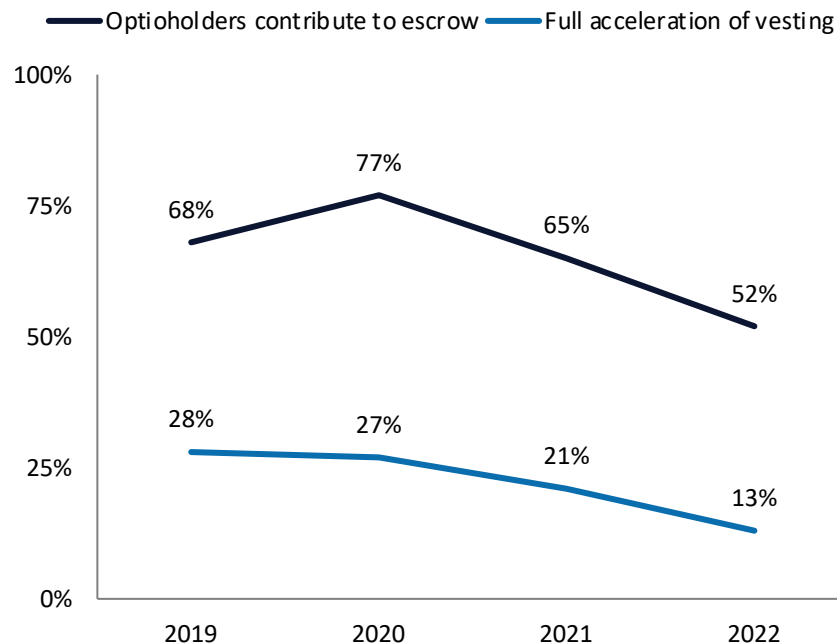
## Subset: Deals with post-closing purchase price adjustments



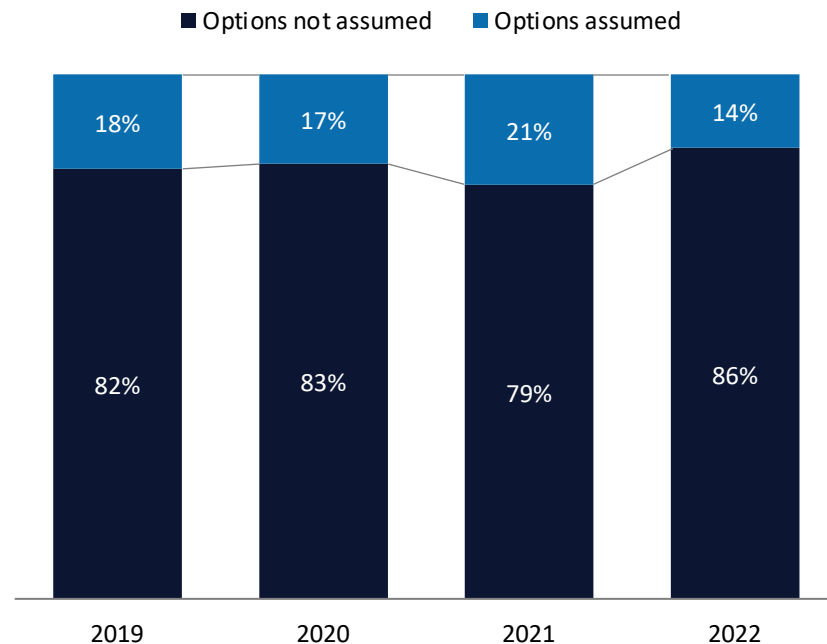
1. "Other" methodology includes, among other things, non-US accounting guidance (e.g., IFRS) or a specific calculation methodology or schedule, the latter of which is most common

# Treatment of Options: Contribution, Acceleration, and Assumption

## Contribution and acceleration<sup>1</sup>



## Assumption of options by buyer



1. Excludes deals where optionholders received no consideration

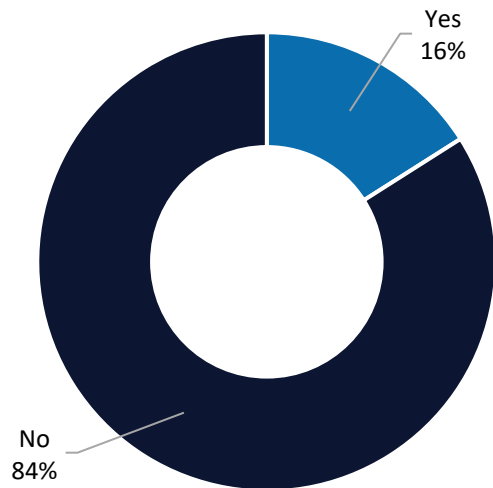
Source: SRS Acquiom 2023 M&A Deal Terms Study

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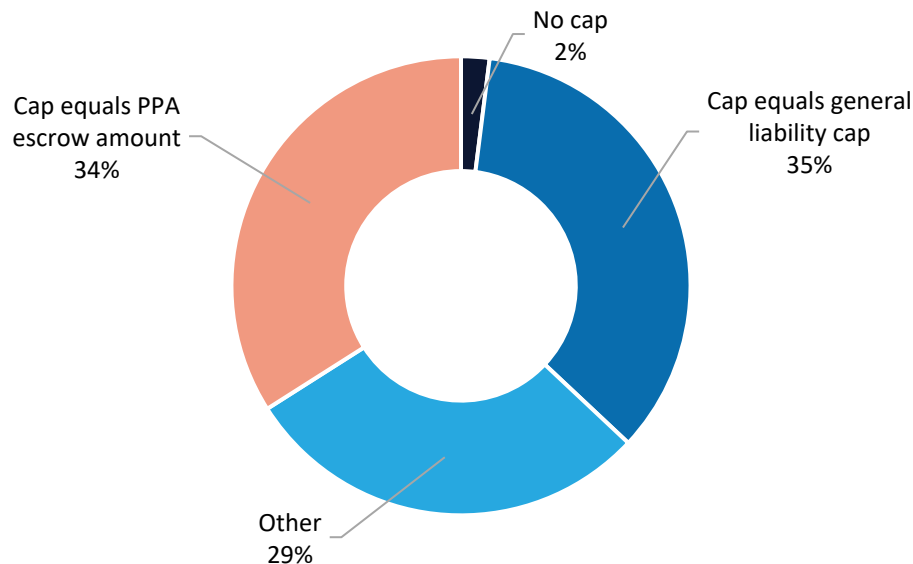
# Post-closing Purchase Price Adjustments: Thresholds and Caps

Subset: 2022 deals with post-closing purchase price adjustments in the consideration mechanics section of the acquisition agreement (as opposed to the indemnification section only)

## Adjustment only if threshold exceeded



## Cap on buyer-favorable purchase price adjustment claims



"Other" includes specified dollar amounts not expressly tied to another deal term (unless such amount equals the PPA escrow amount or general liability cap)

Source: SRS Acquiom 2023 M&A Deal Terms Study

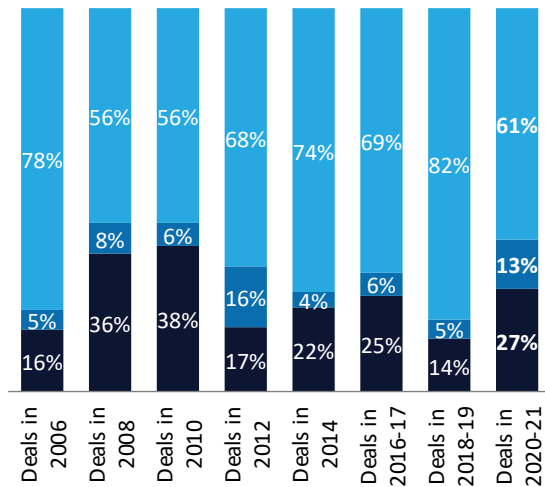
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# Types of damages/losses covered<sup>1</sup>

(Subset: Deals with survival provisions)

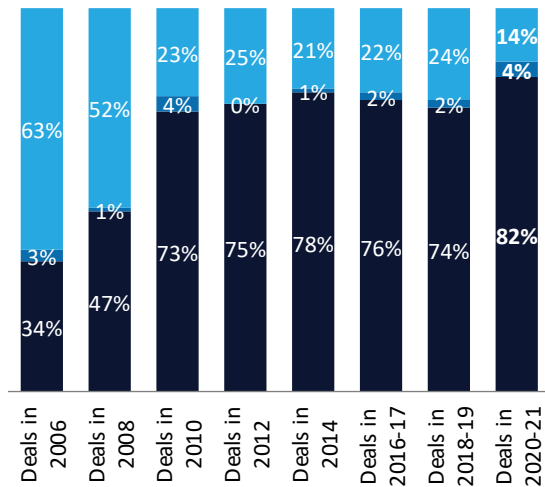
## Incidental damages

■ Expressly excluded ■ Expressly included ■ Silent



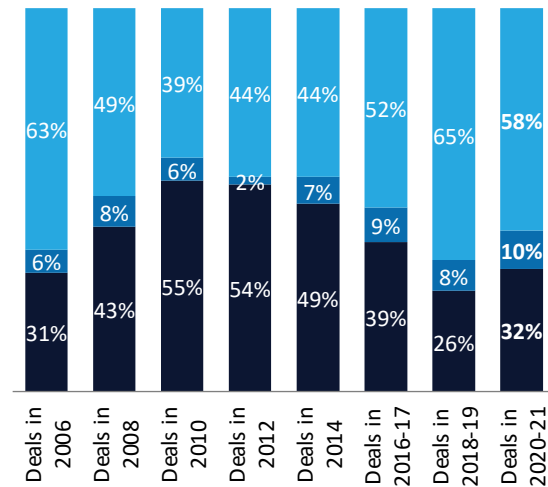
## Punitive damages

■ Expressly excluded ■ Expressly included ■ Silent



## Consequential damages

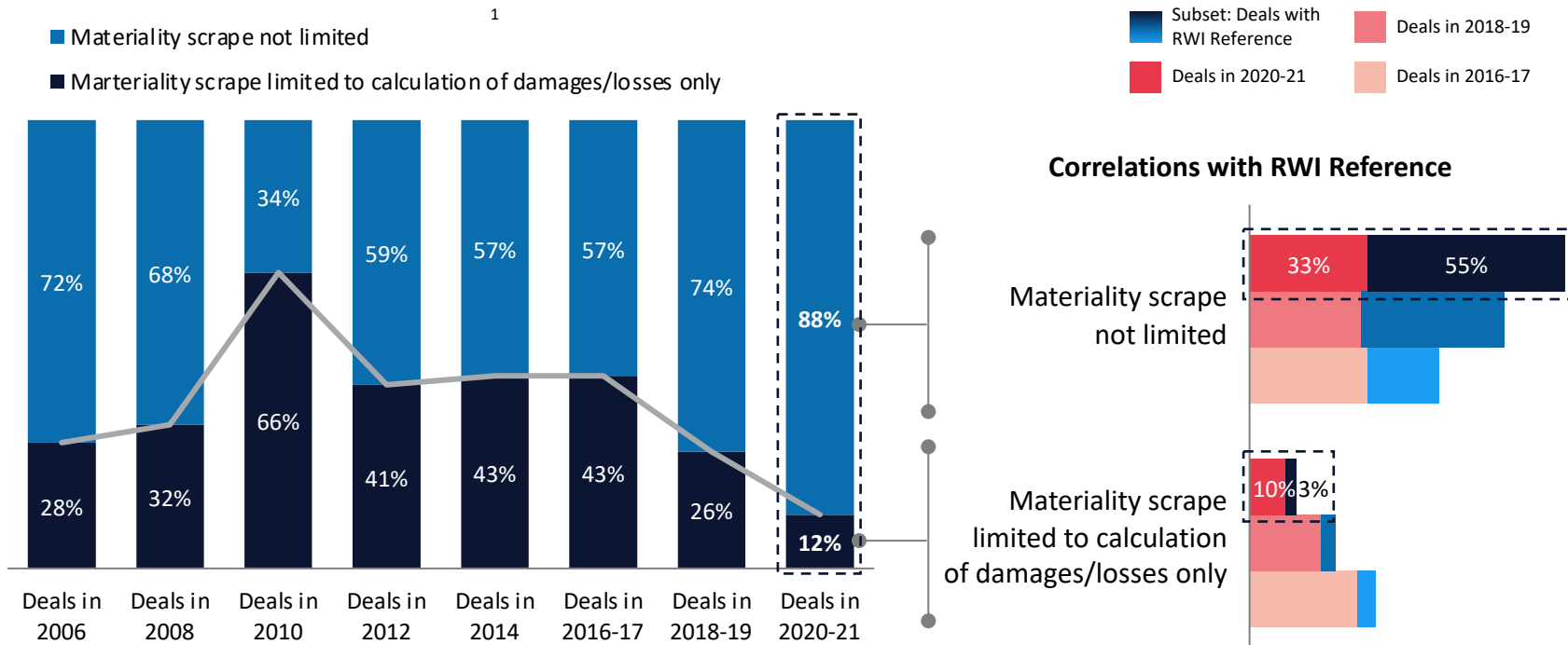
■ Expressly excluded ■ Expressly included ■ Silent



1. "Excluded" categories may include deals with exceptions providing that such damages are recoverable if paid to a third party

# Materiality scrape

(Materiality qualification in reps disregarded) (Subset: Materiality scrape included)



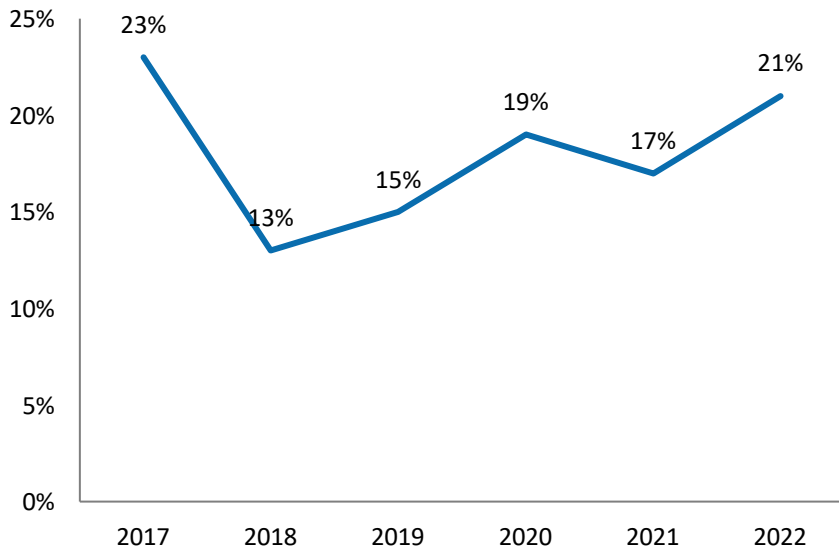
Includes agreements that are silent on this issue

Source: ABA Private Target M&A Deal Points Study 12/30/2021

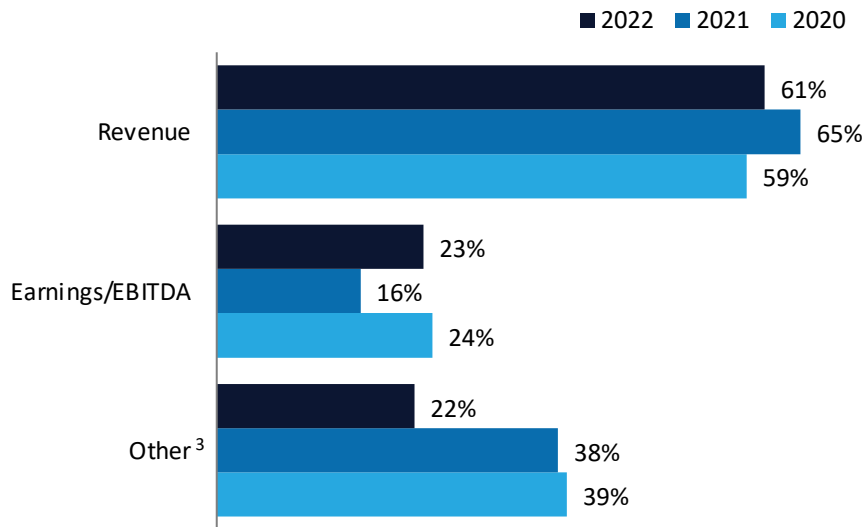
# Earnouts (Non-Life Sciences Deals<sup>1</sup>)

Of the 21% of 2022 non-Life Sciences deals with an earnout, 42% had a single trigger event and 58% had multiple trigger events

Earnout included



Earnout metrics<sup>2</sup>

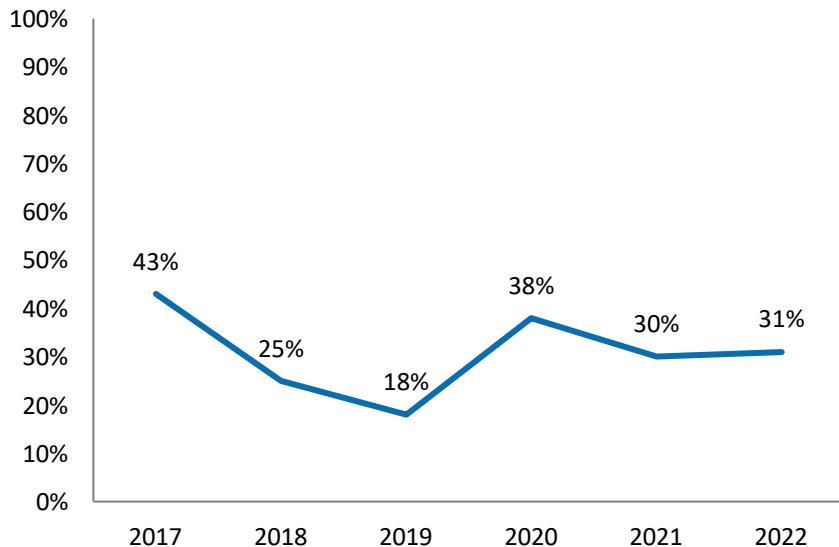


1. For a more detailed analysis of SRS Acquiom's life sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study 2. Earnouts can include more than one metric, such as a combination of revenue and earnings 3. Examples: unit sales, product launches, divestiture of assets; Source: SRS Acquiom 2023 M&A Deal Terms Study

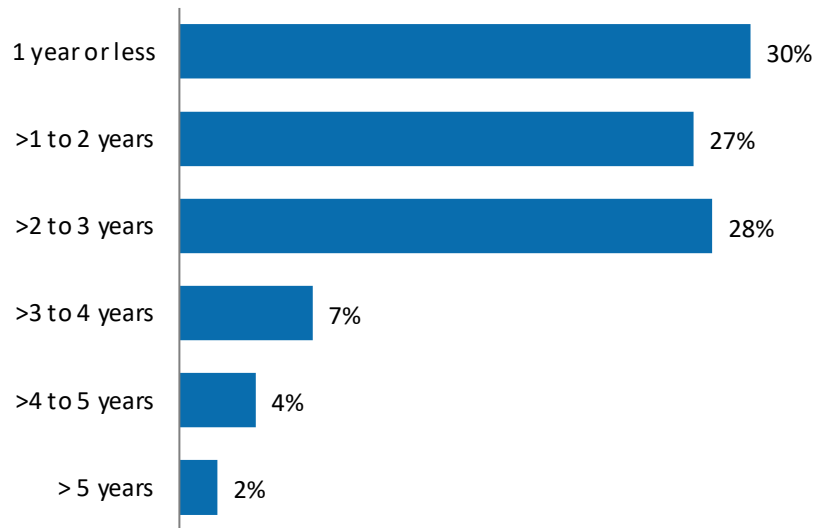


# Earnouts (Non-Life Sciences Deals<sup>1</sup>) Cont'd

Median earnout potential as % of closing payment<sup>2</sup>



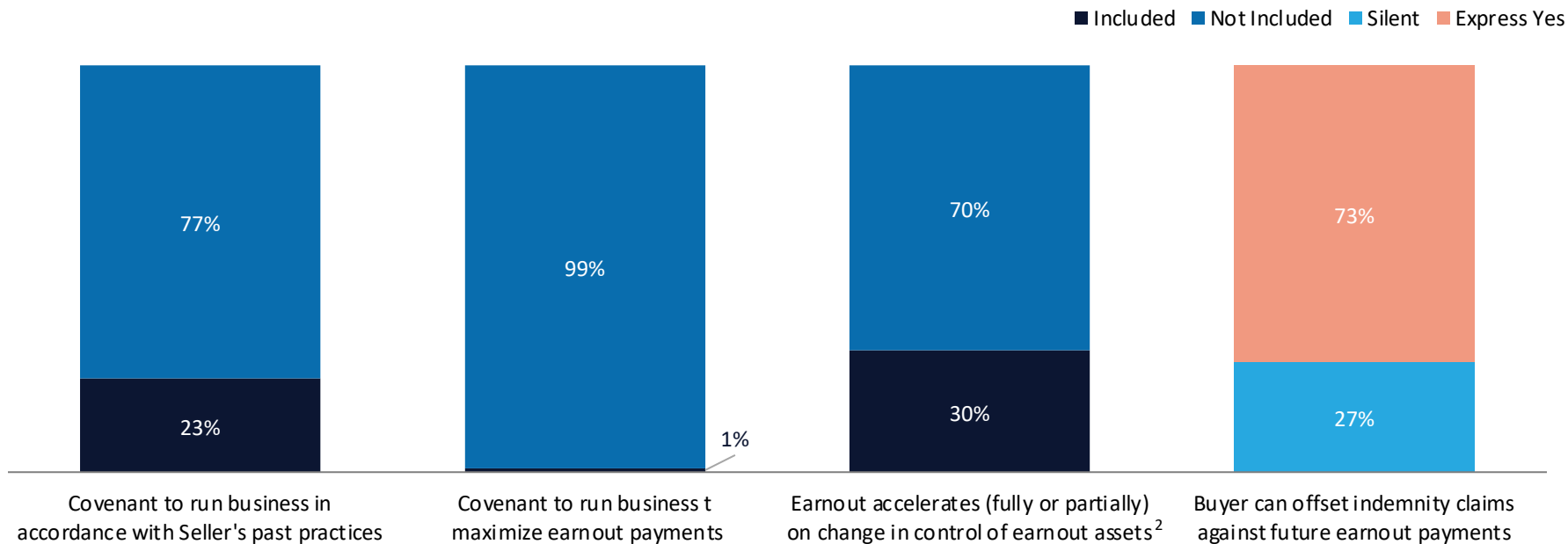
Earnout length<sup>3</sup> (2022 median: 24 months)



1. For a more detailed analysis of SRS Acquiom's life sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study<sup>2</sup>. Calculated as the sum of potential earnout payments over the amount paid at closing (including escrowed amounts) 3. Measured by the date the latest earnout period ends; Source: SRS Acquiom 2023 M&A Deal Terms Study

# Earnouts (Non-Life Sciences Deals<sup>1</sup>): Covenants, Acceleration, and Offsets

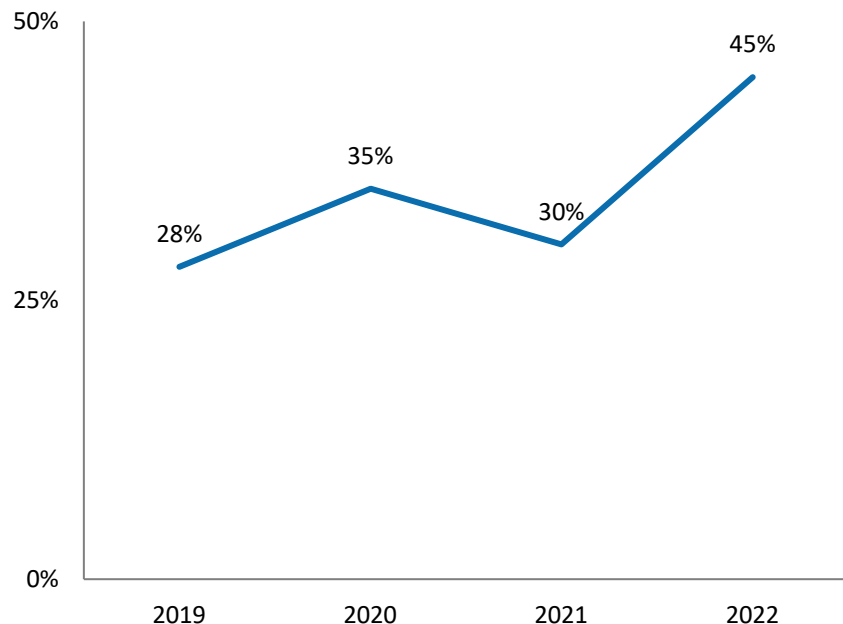
Subset: 2022 deals with earnouts, excluding life sciences deals



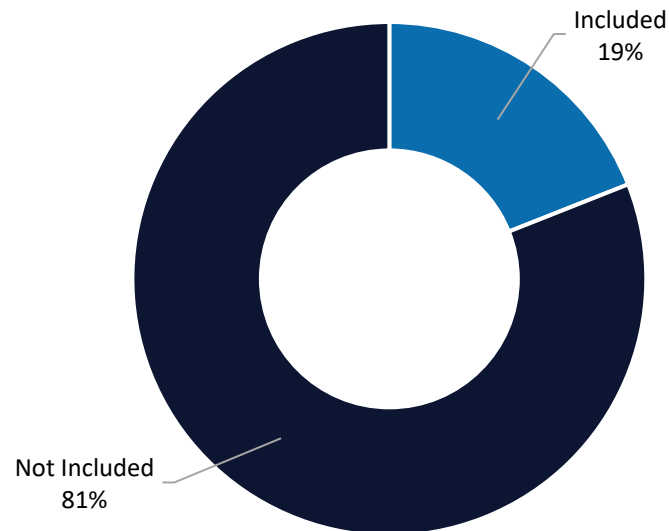
1. For a more detailed analysis of SRS Acquiom's life sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study 2. Generally subject to exceptions, such as if the subsequent buyer assumes the earnout obligations; Source: SRS Acquiom 2023 M&A Deal Terms Study

# Earnouts (Non-Life Sciences Deals<sup>1</sup>): Additional Provisions

## "Earnout is not a security" provision included



## Disclaimer of fiduciary relationship (2022 deals)



1. For a more detailed analysis of SRS Acquiom's life sciences deals, please see the 2021 SRS Acquiom Life Sciences M&A Study

Source: SRS Acquiom 2023 M&A Deal Terms Study

[srsacquiom.com/marketstandard](https://srsacquiom.com/marketstandard)



## Gregory Giammittorio

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### EDUCATION

- University of Virginia School Of Law. J.D.
- University of Virginia, B.A.

### PRIOR ROLES

- Morrison & Foerster LLP, Partner and Co-chair of Mergers & Acquisitions Group, Private Equity Buyout Group, and Emerging Company and Venture Capital Group

### Profile

Greg Giammittorio is a Partner in the firm's Corporate and Intellectual Property Practices representing private and publicly held companies in all stages of growth on a range of issues involving mergers and acquisitions, joint ventures, strategic alliances, venture capital, corporate governance, and public and private securities offerings

### Representative Experience

- Represented the provider of high-end professional services to NIH and other USG research institutions in its sale for over \$100 million to a private equity fund
- Arctic Slope Research Corporation in a series of acquisitions and divestitures of government contracting businesses
- Forcepoint LLC in the acquisition of Imperva's Skyfence business, providing visibility and control solutions for cloud-based enterprise applications
- Forcepoint LLC in its acquisition of RedOwl, a leader in security analytics focused on helping customers manage human risk
- KEYW Corporation in its acquisition of Sotera Defense Solutions, Inc., a national security technology company, for approximately \$235 million from Ares Management, L.P.
- KEYW Corporation in its acquisition of Rsignia, Inc., a provider of advanced cybersecurity solutions to industry and government customers
- KEYW Corporation in its acquisitions of SenSage, Inc., a company focused on helping organizations identify threats, improve cybersecurity defenses, and achieve industry and regulatory compliance
- Mantech International Corporation in the acquisition of several technology focused government services companies with enterprise valuations ranging from \$30 million to \$200 million

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### EDUCATION

- Georgetown University Law Center, J.D.
- Brigham Young University, B.A. magna cum laude, Phi Beta Kappa

### PRIOR ROLES

- McDermott, Will & Emery, LLP
- Riyadh, Saudi Arabia, practiced law

### Profile

Jodi B. Arganbright is a Partner in the firm's Corporate Practice focusing on mergers and acquisitions and general corporate matters. She represents both buyers and sellers, counsels clients on structuring operations and forming new entities and advises company directors and management on governance and compliance matters

### Representative Experience

- Managed due diligence for subsidiary of NYSE traded public utility in approximately \$300 million dollar asset sale to subsidiary of multinational NYSE traded energy company, including negotiating over one hundred third party consent and release agreements and other ancillary documents
- Assisted Swedish based international wine and spirits company in acquisition of majority share of Virgin Islands rum maker for approximately \$120 million dollars followed by second step merger, including drafting all key transaction documents and managing due diligence
- Supported multinational NYSE traded corporation in restructuring of electronics division valued at approximately \$3 billion dollars, including drafting promissory notes, capital subscription agreements, and contributory agreements and formation of new entities
- Assisted publicly traded waste management company in approximately \$150 million dollar stock purchase of privately held environmental services corporation, including drafting leases, service agreements and other ancillary transaction documents
- Assisted subsidiary of large NYSE traded financial corporation in purchase of energy trading assets valued at approximately \$60 million from subsidiary of public utility company, including drafting and negotiating transfer, consent and novation agreements, and assignment agreements; negotiating master power purchase and sale agreements and ISDA agreements
- Assisted large publicly traded company in registration of senior note program with SEC valued at \$200,000,000, including preparing and filing S-4 and related amendments, revising prospectus and related notes