



# ACC-NCR: Navigating the New Era of M&A: Trends, ESG and Cross-Border Strategy

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  - 02** ESG in M&A and Corporate Transactions
  - 03** Cross-Border M&A: Regulatory, Legal, and Cultural Complexity
  - 04** GC “Action Checklists” for All Three Areas
  - 05** Question and Answer Session
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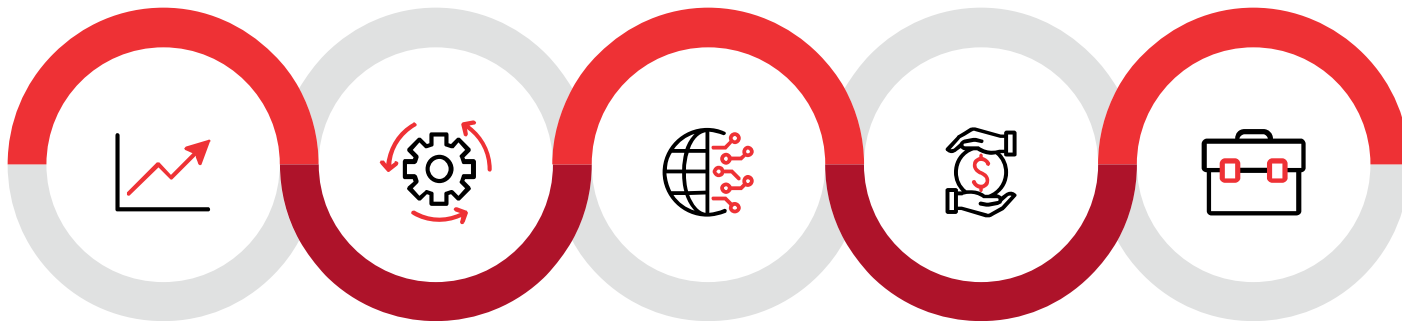
# **01 Current Trends and Emerging Issues in M&A**

# State of the M&A Market

Stabilizing interest rates and gradually improving financing conditions

Stronger activity: AI/chips, energy transition, infrastructure, healthcare

Fewer deals closing “on autopilot” — regulatory friction is now a core execution issue



Reduced megadeals; emphasis on mid-market, bolt-ons, carve-outs

Persistent but narrowing valuation gaps between buyers and sellers

# 2023 Merger Guidelines: Enforcement Lens

- 2023 Merger Guidelines issued by DOJ/FTC on December 18, 2023 (non-binding but highly influential)
- Introduce lower structural presumptions of harm:
  - Presumption when combined share > 30%, or HHI > 1800 in concentrated markets
- Explicit focus on:
  - Serial acquisitions/roll-ups
  - Nascent competitors and platform ecosystems
  - Labor-market effects and competition for workers
- Practical effect: more deals treated as presumptively problematic and probed deeply

# HSR Filing Obligations: 2025 Thresholds

- Hart-Scott-Rodino Act, 15 U.S.C. § 18a; implementing rules at 16 C.F.R. Parts 801–803
- FTC's 2025 adjustment: size-of-transaction threshold = \$126.4 million (up from \$119.5 million in 2024)
- Transactions above (not at) \$126.4 million generally require filing if other tests are met
- Mandatory waiting period (typically 30 days) before closing
- HSR form increasingly resembles a mini-merger review (org charts, overlaps, prior deals, labor data)

# HSR Exemptions & Core Tests

- Some transactions above \$126.4 million can still be **non-reportable** due to exemptions
- Three key analytical concepts under HSR:
  - **Size of person test** — parties' sales/assets thresholds determine if filing is required for deals between \$126.4 million and a higher tier
  - **Size of transaction test** — includes direct and indirect holdings and aggregation of related acquisitions
  - **Commerce/jurisdiction test** — at least one party must be engaged in US commerce or activities affecting US commerce
- Middle-market/private equity deals must analyze HSR early to avoid last-minute surprises

# Antitrust and Regulatory Considerations in M&A Transactions

- **The Hart-Scott-Rodino (HSR) Act** is a US federal law requiring parties in certain large transactions to notify the FTC and DOJ in advance and observe a mandatory waiting period before completing the deal.
- Transactions subject to regulatory review generally must meet a minimum threshold. In 2025, most transactions were above **\$126.4 million**.
- Exemptions to the threshold rule, even if the dollar amount is met, are based on three tests, including:
  - Size of person test
  - Size of transaction test
  - Whether one party engages in U.S. commerce or activities affecting US business.
- Political variations impact antitrust frameworks: different administrations have varying philosophies on enforcement.
  - Some prioritize vigorous enforcement for competition and consumer protection.
  - Others adopt a permissive approach favoring business expansion and fewer regulatory barriers.



# Political Variations in Antitrust Enforcement

- Administration changes shift enforcement philosophy (aggressive vs. permissive)
- Heads of FTC and DOJ Antitrust Division are political appointees, driving:
  - Choice of test cases and remedies
  - Appetite for litigation vs. settlement
- Congress and the White House can influence:
  - Agency funding, staff resources, and ability to pursue complex cases
  - Priority sectors (tech, healthcare, labor, agriculture)
- Bottom line: no “non-enforcement” era ahead — only degrees of intensity

# Artificial Intelligence ('AI') in Diligence: Tools & Benefits

- **AI:** Post-transaction, these types of tools can assist in aligning contracts from the entity acquired and the purchasing entity to ensure redundancies are not present, as well as compliance with new buyer organizational standards are met.
- Widespread use of AI document review platforms (e.g., **Kira**, **eBrevia**) for:
  - Rapid analysis of large contract sets
  - Identification of key clauses, risks, and deviations from templates
- Ethical & Compliance Considerations: Adoption of a “trust but verify” approach remains essential to ensure reliability.
- Benefits:
  - Lower cost and faster diligence for clients
  - Increased consistency in issue-spotting
- Risk management:
  - “Trust but verify” methodology: AI flags, humans decide
  - Confidentiality and data-security safeguards when uploading documents

# AI as a Regulated Asset

- EU AI Act (Regulation (EU) 2024/1689) is first comprehensive AI framework
- Many target businesses will operate “high-risk” AI systems (employment, credit, critical infrastructure, etc.)
- High-risk systems require:
  - Risk management, data governance, human oversight
  - Logging, transparency, and post-market monitoring
- M&A impact:
  - Need to diligence AI models, training data, and compliance programs
  - Post-closing capex for AI compliance may affect valuation

# Tariffs/Market Volatility

- Industries may attempt to pass tariff increases to buyers, offsetting costs but risking future buyer-supplier relationships.
- M&A transactions may mitigate tariff impacts through vertical integration, acquiring suppliers to control more of the value chain and reduce cost volatility.
- Companies may seek targets that increase local or national production in tariff-affected areas.
- Companies may target businesses in countries less impacted by US tariffs and administration-driven decisions.

# Tariffs/Market Volatility

- Current administration has imposed tariffs across multiple countries, impacting various industries.
- Tariffs increase costs and create market uncertainty, influencing cross-industry and specialty M&A activity.
- Higher import/export costs disadvantage retailers, grocers, and their supply chains, ultimately affecting consumers.
- Cross-border M&A valuations and profitability are impacted if targets rely on international trade.
- Tariffs can lead to increased post-close transaction costs.
- Decision-making and due diligence may be delayed as financial impacts are not immediately visible.
- Investors and/or buyers may narrow geographic searches to avoid countries with heavy tariffs or targets with international operations.
- Industries most affected include manufacturing (automotive, machinery, aeronautical), steel, aluminum, and agriculture/food sectors.
- Rising raw material costs and limited access to certain products reduce margins and increase consumer prices.

# Tariffs & Market Volatility

- Tariffs imposed on a range of imports (steel, aluminum, certain industrial goods) increase COGS and squeeze margins
- High exposure sectors: automotive, machinery, aerospace, steel/aluminum, agriculture/grocery
- M&A implications:
  - Tariff costs affect EBITDA and valuation multiples
  - Delayed decision-making when tariff policy is in flux
  - Buyers may avoid certain geographies to mitigate tariff exposure
- Some sellers attempt to pass tariff costs down the chain, risking relationship strain with customers



# Structuring Around Tariff Risk

- Vertical integration to control more of the value chain and reduce exposure to imported inputs
- Near-shoring/on-shoring production for critical components
- Valuation models should include:
  - Scenario analysis for additional or increased tariffs
  - Sensitivity of margins to FX and tariff changes
- Contractual tools:
  - Tariff-sharing or pass-through clauses
  - Price adjustment mechanisms tied to tariff changes post-closing



# Execution Challenges in Today's Deals

- Expanded diligence scope: antitrust, ESG, AI, data, FDI, export controls
- Longer and more iterative interactions with regulators
- Increasing reliance on:
  - Reverse termination fees tied to regulatory failure
  - Long-stop dates and “hell or high water” clauses
  - Detailed cooperation covenants for document production and advocacy
- Integration planning must start pre-signing, not after closing

# 03 ESG in M&A and Corporate Transactions

# ESG as a Core Deal Driver

- ESG factors increasingly material to investors and lenders
- Drivers:
  - Climate risk, supply-chain resilience, human capital
  - Stakeholder and employee expectations
- M&A uses:
  - Acquire “cleaner” or more sustainable assets
  - Exit carbon-intensive or reputationally risky businesses (though we see opposite trend in the US)
- ESG issues now impact price, structure, and integration plans

# ESG as a Core Deal Driver

- Sustainability is increasingly influencing M&A strategies as ESG factors become a priority.
- ESG risks and opportunities are assessed during due diligence.
- Sustainability performance impacts valuation, deal structure, and financing terms.
- Governments are enforcing stricter environmental regulations and disclosure requirements.
- Companies acquire or divest assets to align with compliance and sustainability goals.
- Businesses may impose sustainability standards on vendors and suppliers post- or pre-acquisition.
- M&A deals often aim to boost brand reputation, meet consumer expectations, and build stakeholder trust.
- Sustainability has shifted from a peripheral issue to a core strategic component in M&A.



# ESG Valuation & Financial Diligence

With regard to financial valuations and integration with financial due diligence, ESG risks are quantified where possible, examples including:

- Costs of any environment remediation
- Potential fines based on jurisdictional limits
- Federal guidelines, etc.)

These metrics are then integrated into financial models to risk-adjust projections and final value. Post-transaction, companies may decide to implement monitoring mechanisms to track certain ESG performance and ensure compliance moving forward.



# ESG Valuation & Financial Diligence

- Quantify environmental exposures:
  - Cleanup obligations, PFAS or hazardous materials
  - Expected fines/Penalties under applicable statutes
- Estimate compliance capex to meet CSRD/California/sector rules
- Integrate ESG into models through:
  - Adjusted cash flows and discount rates
  - Downside scenarios for regulatory or climate shocks
- Plan post-closing ESG monitoring and reporting systems

# Key ESG Deal Terms

- Governance reps and warranties
  - Adherence to anti-corruption and anti-bribery laws;
  - Data privacy and cyber security protocols and regulations;
  - Disclosure of governance practices and board oversight on ESG;
  - No pending government investigations.
- ESG indemnitees may include
  - Protection against losses arising from breaches of ESG reps;
  - Indemnification for environmental cleanup costs or social commitment liabilities.
- MAC clauses related to ESG:
  - Conditions allowing deal termination, with or without penalty, if significant ESG related risks or violations emerge during diligence.

# Key ESG Deal Terms

Some examples of deal terms and warranties related to ESG can include:

- Environmental reps and warranties
  - Compliance with environmental laws and regulations both state-wide and federally
  - No current or ongoing violations, fines, penalties – none in the last X years depending on industry need/specifics
  - Disclosure of any contamination
  - Disclosure of environmental permitting, licensing or related regulatory filing.

Social reps and warranties:

- Compliance with state and federal labor laws along with broad compliance across international jurisdictions
- Compliance with human rights laws, workplace safety standards, and child labor laws
- Policies addressing DEI
- Community engagement and social impact commitments from a company.

# ESG Reps & Warranties: Environmental

- Typical environmental reps:
  - Compliance with applicable environmental laws and permits
  - No undisclosed spills, releases, or contamination
  - No outstanding environmental claims, notices, or investigations
  - Accurate disclosure of remediation obligations
- Often paired with special environmental indemnities and escrow

# ESG Reps & Warranties: Social & Governance

- Social reps:

- Compliance with labor, wage/hour, and workplace-safety laws across jurisdictions
- No use of forced or child labor in the supply chain
- Policies regarding DEI, harassment, and human rights

- Governance reps:

- Compliance with anti-bribery (FCPA, UK Bribery Act) and sanctions regimes
- Data privacy and cybersecurity controls designed to comply with GDPR, CCPA, etc.
- Board oversight of ESG and internal controls over ESG-related disclosures

# ESG Indemnities & MAC Clauses

- ESG-focused indemnities may cover:
  - Environmental cleanup and third-party claims
  - Liabilities for mis-described ESG programs or “greenwashing”
  - Specific social-impact obligations (e.g., plant closures, layoffs)
- ESG MAC clauses:
  - Termination rights if significant ESG events or regulatory changes occur pre-closing
  - Often negotiated in carbon-intensive or high-profile consumer sectors
- ESG-linked earnouts tied to emissions reductions or safety metrics



# SEC Climate Rule: Adopted, Stayed and Now Abandoned

- SEC adopted climate disclosure rules on March 6, 2024 (Release Nos. 33-11275, 34-99678; File No. S7-10-22)
- Rules required public companies to disclose:
  - Climate-related risks, governance, and certain GHG emissions
- Implementation was stayed by federal appellate courts amid challenges
- On March 27, 2025, SEC voted to end its defense of the rules, effectively abandoning them as adopted
- Market reality: many large issuers still building climate reporting systems due to investor and global regulatory pressure

# CSRD & Global ESG Convergence

- EU Corporate Sustainability Reporting Directive (CSRD) – Directive (EU) 2022/2464
- Phased application:
  - Large EU companies already under Non-financial Reporting Directive (NFRD): FY 2024 reports due 2025
  - Other large EU companies: FY 2025
  - Listed SMEs: FY 2026 (with some opt-out)
  - Certain non-EU parent companies with large EU subsidiaries: FY 2028
- Requires use of European Sustainability Reporting Standards (ESRS) and assurance
- US companies with EU footprints may become in-scope targets or buyers

# California Climate Laws: SB 253 & SB 261

- **SB 253 – Climate Corporate Data Accountability Act:**
  - Applies to companies “doing business in California” with  $\geq$  \$1 billion in global revenue
  - Requires annual reporting of Scopes 1, 2, and later 3 GHG emissions, with limited/ reasonable assurance over time
- **SB 261 – Climate-Related Financial Risk Act:**
  - Applies generally to companies with  $\geq$  \$500 million in revenue doing business in California
  - Requires biennial climate-related financial risk reports
- Practical effect: creates de facto national standards for larger US companies with a California nexus

# Sustainability in M&A: Key Themes

- Buyers now routinely assess ESG risk and opportunity as part of strategic fit
- Sustainability performance can influence:
  - Valuation (discounts/premiums)
  - Deal structure (earnouts, escrows for ESG liabilities)
  - Financing terms (sustainability-linked loans or bonds)
- Governments adopting stricter environmental and climate rules push companies to:
  - Acquire cleaner tech or assets
  - Divest legacy, carbon-intensive operations

# **04 Cross-Border M&A & International Regulation**



# Cross-Border Deals: What's Changed

- Cross-border M&A increasingly constrained by:
  - National security and FDI screening regimes
  - Export controls on advanced technologies
  - Data privacy and localization laws
- Deals often require multi-jurisdictional approvals and mitigation
- GC role: orchestrate global regulatory mapping early in the process

# CFIUS: National Security & Foreign Investment

- CFIUS: inter-agency committee reviewing certain foreign investments and sensitive real estate for national security impact (50 U.S.C. § 4565)
- Executive Order 14083 (September 15, 2022) elaborates on statutory factors:
  - Supply chain resilience
  - Sensitive data and cyber-security
  - Technological leadership and critical infrastructure
- Rise of “reverse” CFIUS
- Tools:
  - Mitigation agreements
  - Conditions, audits, access restrictions
  - Divestiture of completed transactions

# Global FDI Screening: EU and Beyond

- EU FDI Screening Regulation (2019/452) created an EU-level coordination mechanism; number of EU states with regimes rose from 11 to 21 (and now ~25)
- Many non-EU jurisdictions (UK, Canada, Australia, etc.) have parallel FDI regimes
- Deals in critical sectors (tech, energy, infrastructure, defense) likely to trigger review even where the business is mid-market
- Practical effect: cross-border deals often face stacked FDI reviews with overlapping but distinct tests



# Export Controls as Deal Gatekeeper

- US export controls on advanced semiconductors, AI chips, and high-performance computing to China tightened in October 2022 and 2023, with subsequent refinements
- Deals involving:
  - Advanced manufacturing nodes
  - Cloud/AI services reliant on controlled chips
  - Dual-use technologies must treat export control licensing as a closing condition risk
- Successor liability and historical violations can materially affect price and feasibility

# Cross-Border Data Transfers & Privacy

- EU–US Data Privacy Framework (DPF):
  - Adequacy decision [Commission Implementing Decision \(EU\) 2023/1795](#) on July 10, 2023
  - Upheld by EU General Court on September 3, 2025 (case T-553/23)
- China's [PIPL](#) and associated rules impose strict data export and localization requirements
- For deals:
  - Must map where personal data resides and under what legal transfer mechanisms (DPF, SCCs, local storage)
  - Data may need to be ring-fenced or localized post-closing

# **05 GC “Action Checklists” for All Three Areas**

# GC Checklist: Nuts & Bolts

- Maintain a strict “under the tent” list, limiting knowledge of the transaction to the smallest number of persons internally as possible
- Make a plan in advance on how to respond to rumors about the transaction (internally or in the market)
- Speak to your Board often / provide regular updates on the progress of M&A (from pipeline creation through closing)
- Consider key employee retention risk and broad employee and customer impact of M&A
- Consider all the functional areas internally that M&A will affect (either prior to or after closing)
  - IT and Information Security
  - Human Resources
  - Finance and Accounting
  - Commercial teams

# GC Checklist: Current Trends & Antitrust

- Build a standard antitrust/HSR risk memo process for deals above internal thresholds
- Maintain updated HSR threshold tracker (e.g., \$126.4 million size-of-transaction for 2025)
- Identify serial acquisition/roll-up risk under the 2023 Merger Guidelines
- Create an AI diligence checklist:
  - Systems,
  - Training data
  - Vendor contracts
  - EU AI Act exposure
- Align deal timelines with realistic regulatory review periods and potential second-request risk
- Educate the board that regulatory uncertainty is now baked into deal economics

# GC Checklist: Cross-Border M&A

- Build a cross-border regulatory map for each material deal:
  - CFIUS, FDI regimes, export controls, sanctions, data privacy
- Require a CFIUS/FDI pre-screen for:
  - Foreign investors in sensitive US sectors
  - US investors acquiring sensitive assets abroad
- Maintain and update export-control classifications for key products and technologies
- Conduct data-mapping and localization analysis early (EU, UK, China, others)
- Draft playbook language for:
  - Regulatory cooperation
  - Allocation of mitigation/divestiture obligations
  - Reverse termination fees linked to regulatory outcomes

# GC Checklist: ESG in Transactions

- Map which regimes apply to your group and targets:
  - CSRD
  - SB 253/261
  - Sectoral rules
- Use a standard ESG diligence questionnaire and tailor for high-risk sectors
- Build ESG-specific reps and special indemnities into your standard SPA/APA
- Verify climate and ESG claims in public disclosures and marketing to avoid inherited greenwashing risk
- Integrate ESG capex and liabilities into pricing models and deal approval memos
- Ensure board minutes reflect real oversight of ESG and climate risk, not boilerplate

# Questions



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