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**13th Annual Mergers & Acquisitions Institute**

# Carveouts:
# Not Exactly a Piece of Cake


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# Carveout Transactions – Latest Trends

## What Is a Carveout Transaction?

- 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.
- <u>Key Attribute of Carveout Transactions</u>:
  - Seller remains an operating business once the transaction has been completed.

# ABA Carveout Transaction Deal Points Study

- The M&A Market Trends Subcommittee of the Mergers & Acquisitions Committee of the American Bar Association's Business Law Section is in the process of a new Deal Points Study on carveout transactions expected to be released by the end of 2017.
- The Deal Points Study includes analysis of approximately 120 carveout sale transactions that were announced from January 1, 2015 through December 31, 2016.
- The carveout transactions included in the Deal Points Study are public deals with transaction values in excess of $10 million where the ultimate parent of the Seller is a U.S. public company, the Seller was not in apparent financial distress at the time of the announcement of the transaction and the Seller did not retain any equity interest in the carved out business sold.
- The Deal Points Study excludes agreements that expressly contemplate that the Seller will obtain stockholder approval prior to consummation of the transaction.
- Note that the data from the Deal Points Study referenced throughout this presentation is preliminary.
- Also note that the data from the Deal Points Study only covers transactions involving public sellers and the data may be different for private sellers.



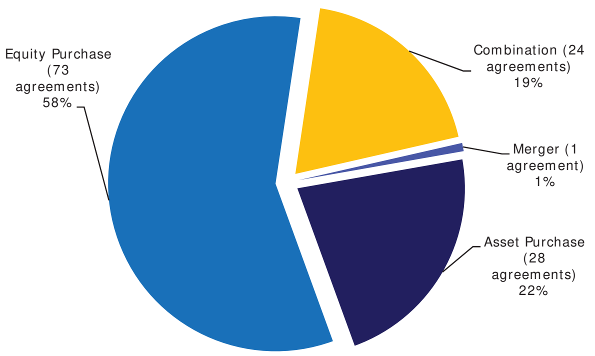
# Carveout Transactions – Structure

- Carveout transactions can take the form of asset purchases in which the Seller identifies and sells or "carves out" specific assets; or the form of an equity purchase in which the Seller sells equity in one or more of its subsidiaries.
- Carveout transactions can also combine the two structures, for example, when the Seller sells both assets and equity in subsidiaries, or when the Seller transfers assets in a pre-closing restructuring to a subsidiary and then sells that subsidiary to a Buyer.
- Even with a transaction structured as an equity purchase, it still may involve an asset sale in connection with a restructuring.
- Practitioners advising a Seller should discuss very early on in the process whether a pre-signing or a pre-closing restructuring, if any, is desirable.
- Structure should also take into account input from tax advisors.

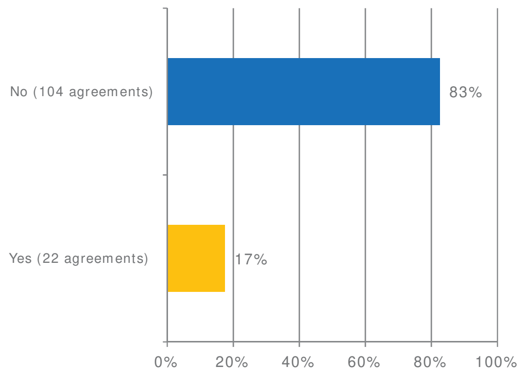
# Carveout Transactions – Structure

*Continued*

**Structure of the Transaction***




**Simultaneous Sign/ Close?***




*Adapted from Draft ABA Study



# Carveout Transactions – Key Issues

Title search: Carveouts: Not Exactly a Piece of Cake

Also available as part of the eCourse
Trending Topics in M&A: Carveouts, "Peter Pan" Companies, and Purchase Price Adjustments

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