

Negotiating the Private Company Deal

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Overview Of Presentation

- Negotiating the “full disclosure” representation
- Negotiating the non-reliance provision
- Negotiating basic indemnification language and the definition of “damages”
- Negotiating language relating to the time limitations applicable to indemnification claims
- Negotiating the fraud exception to indemnification limitations
- Negotiating the “sandbagging” provision
- Negotiating the MAE carve-out for actions required under the acquisition agreement

Negotiating the full disclosure representation

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Full disclosure representation

- **Buyer's draft:**

"Neither this Agreement nor the Disclosure Schedule contains any representation or other statement that omits to state a material fact necessary to make the representations or other statements therein, in light of the circumstances in which they were made, not misleading. Except for facts set forth in this Agreement or the Disclosure Schedule, there is no fact that has specific application to Target (other than facts relating to general economic or industry conditions) and that might reasonably be expected to materially and adversely affect the assets, business, prospects, financial condition or results of operations of Target."

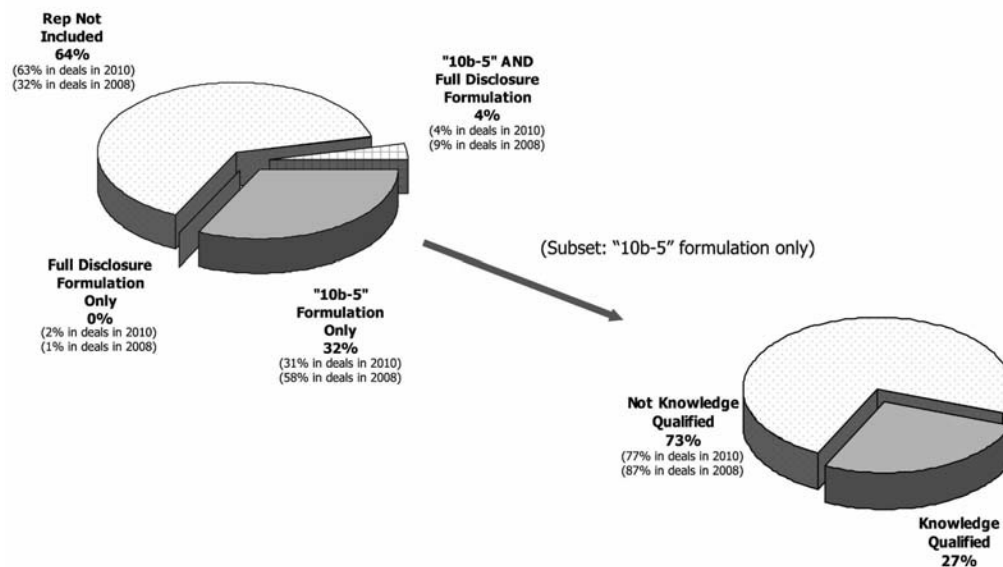
- **Target's response:**

Delete the representation

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Full disclosure representation

"10b-5"/Full Disclosure Representation



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Negotiating the non-reliance provision

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First appeared as part of the conference materials for the
11th Annual Mergers and Acquisitions Institute session

"Negotiating the Private Company Deal: A Mock Negotiation of Today's—and
Tomorrow's—Hot Issues"