

# Public Company Creep in Private Company M&A

October 2019

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## Introduction and Overview

— Topics for discussion:

- Two key contributing factors to recent public company creep
  - Private Equity's Influence on Deal Terms
  - Additional Sources of Capital
- The New Private Company
- Indemnification
- Representation & Warranty Insurance
- Self-Insurance
- Scope of Representations & Warranties
- Closing Conditions
- Equity Price
- Locked-Box Approach

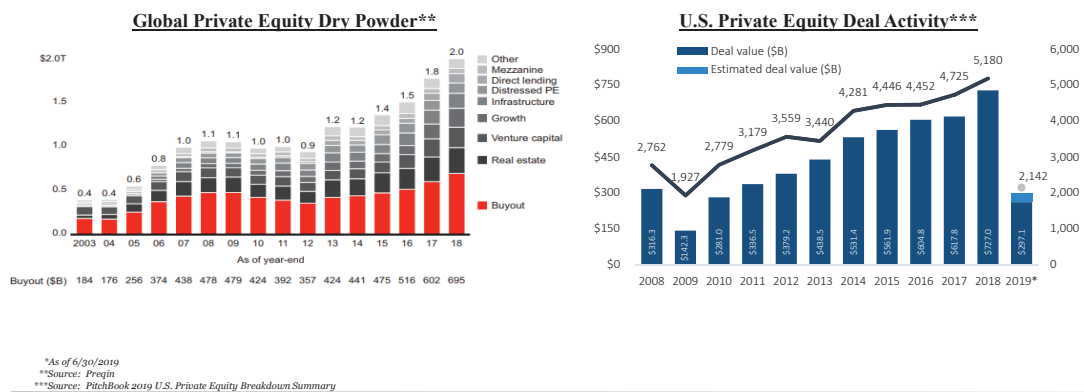
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## Private Equity's Influence on Deal Terms

- Due to the relatively temporary nature of PE funds and the need to return capital to investors at the end of a fund's life, PE firms as sellers have always been reluctant to sign up for long-term indemnities
- On the other hand, due to an increase in dry powder, low interest rates and lofty valuations, in the years following the financial crisis, we have seen PE firms as buyers more willing to give where they can to get the deal done (i.e., settling for seller-favorable deal terms)



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## Additional Sources of Capital

- Private companies have seen new sources of capital emerge which has allowed them to stay private longer and sell only when the price **and the terms** are right
- New sources of favorable funding
  - Minority investments from long-term capital private equity funds that do not require the target to guarantee an early exit
  - Debt financing at low interest rates
  - For some of the largest private companies, traditional public company investors such as mutual funds
    - Vanguard for example held stakes in Airbnb, Pinterest and Uber prior to those companies filing for an IPO
  - Sovereign Wealth Funds

**AUM (US\$tn) Growth of Sovereign Wealth Funds\***



\*Source: Preqin

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First appeared as part of the conference materials for the  
15<sup>th</sup> Annual Mergers and Acquisitions Institute session  
"Public Company Creep Update"