

# HOT TOPICS IN M&A

---

1

## Presenters



**Andrew (Andy) Smetana**  
Austin Office Managing Partner  
Perkins Coie, LLP  
[ASmetana@perkinscoie.com](mailto:ASmetana@perkinscoie.com)  
[www.perkinscoie.com](http://www.perkinscoie.com)



**Robert (Rob) Suffoletta**  
Austin Office Managing Partner  
Wilson Sonsini Goodrich & Rosati, P.C.  
[RSuffoletta@wsgr.com](mailto:RSuffoletta@wsgr.com)  
[www.wsgr.com](http://www.wsgr.com)



**Jim Stone**  
Managing Director  
Cascadia Capital LLC  
[Jstone@cascadiacapital.com](mailto:Jstone@cascadiacapital.com)  
[www.cascadiacapital.com](http://www.cascadiacapital.com)



**Corinna (Cori) Ulrich**  
Senior VP and Deputy General Counsel  
RealPage, Inc.  
[Cori.Ulrich@realpage.com](mailto:Cori.Ulrich@realpage.com)  
[www.realpage.com](http://www.realpage.com)

2

2

## Overview

- Current M&A Market Trends
- Recent Developments in Private Company M&A Deals
- Recent Developments in Delaware Case Law
- Key Considerations in Engaging an Investment Bank
- Specialized Terms in M&A NDAs
- FTC's proposed limitations on non-compete agreements

3

3

## CURRENT M&A MARKET TRENDS

---

4

4

# M&A Macro Trends – Focus on Quality Assets

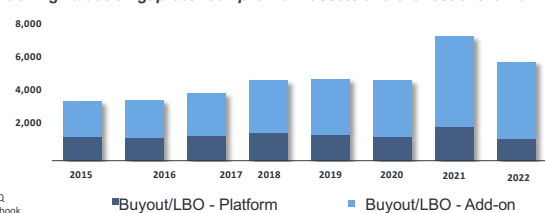
## U.S. Middle Market M&A Activity<sup>(1)</sup> has Moderated as Investors and Buyers Prioritize Flight to Quality...

While U.S. middle market deal volume has declined in light of heightening economic uncertainty, buyers are still pursuing increasingly scarce high-quality assets



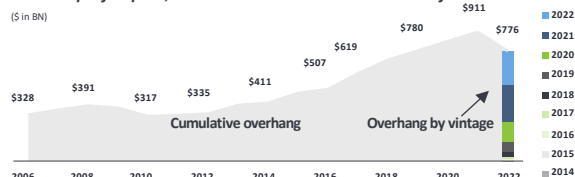
## ...Mirroring the Slowdown in PE Deal Volume<sup>(2)</sup>

Private equity is taking a deliberate approach to dealmaking, creating a widening valuation gap between premium assets and the rest of the market



## ...Despite Funds Sitting on Hoards of Dry Powder<sup>(2)</sup>

PE fund managers with definite fund lives need to deploy nearly \$800BN of equity capital, which continues to drive robust buyside demand



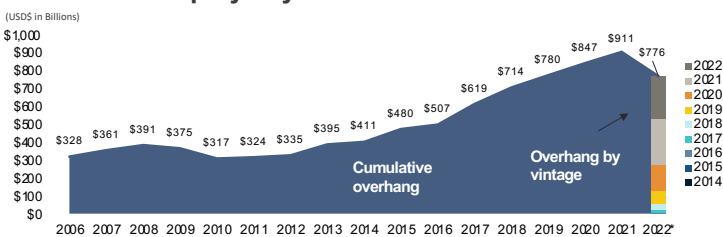
1: CapIQ  
2: Pitchbook

# Private Equity Dry Powder

## US PE has steadily increased amount of capital available to invest

- \$776 B in 2022
- Ever larger funds being raised
- Middle market PE funds have proliferated
- Historically low interest rates leading up to today

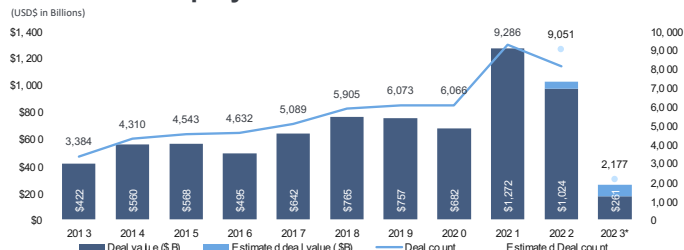
## U.S. Private Equity Dry Powder<sup>1</sup>



## Dry powder not a result of lack of investing

- Investment activity remains on an upward trajectory
- PE a potentially attractive partial exit for companies to participate in a “second bite of the apple”

## U.S. Private Equity Investment Volume<sup>2</sup>



<sup>1</sup> Pitchbook  
<sup>2</sup> Pitchbook – Q1 2023 Annual US PE Breakdown (\*2023 through 3/31/23)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Hot Topics in M&A

Also available as part of the eCourse

[Hooked on CLE: September 2023](#)

First appeared as part of the conference materials for the  
36<sup>th</sup> Annual Technology Law Conference session

"Key Trends in Private Company Mergers and Acquisitions"