

University of Texas Annual Technology Law Conference

Recent Developments in Private Company Mergers and Acquisitions

May 2019

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Topics to be Covered

- Recent M&A Deal Terms
- Recent Delaware M&A Caselaw
- Trends in M&A Deal Insurance
- Questions

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Recent M&A Deal Terms

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M&A in 2018 – An Overview

- Large increase in aggregate deal value
- Number of transactions declines
 - \$1.3T in deals done last year (50% up) on 14% fewer deals
- Deal success drivers
 - 40% of survey respondents say that half their deals fail to generate sufficient value
 - Reasons include economic forces/outside factors, expected sales failed to materialize, gaps in integration, lack of strategy
 - More interesting is the reasons that deals succeed:
 - 23% say the most important factor for a successful deal is effective integration
 - 19% say economic certainty
 - 18% say accurate valuation
 - 16% say regulatory and legislative stability
 - 14% say proper target identification, and
 - 11% sound due diligence process

Source: Deloitte: The state of the deal – M&A trends 2019

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What to Expect in 2019

- Executives are bullish
 - 79% expect the deal volume within their organization to increase
 - 70% expect the deal size to increase
- Increased cash balances lead to increased M&A activity
- High expectations of divestitures
- Industry convergence/consolidation
- Foreign Market M&A
 - Canada tops the list again
 - Increased investment in China
 - Decreased investment in the UK
- Obstacles
 - Global trade uncertainty
 - Rising interest rates

Source: Deloitte: The state of the deal – M&A trends 2019

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Analysis of Deal Terms – Financial Terms

- Time from first investment round to exit = 7 years
- Number of equity rounds at exit = 4
- Median investment = \$31 million; Average investment - \$51 million
- Median ROI = 3.8x; Mean ROI = 6.1x
- Increasing use of:
 - Separate escrow for post-closing purchase price adjustments = 56%
 - Cash-only deals = 86%
- Decreasing use of:
 - Full acceleration of option vesting = 31%
 - Management carveouts = 8%

Sources: SRS Acquiom: 2019 M&A Deal Terms Study
SRS Acquiom: 2018 M&A Deal Terms Study

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