

KEY CONSIDERATIONS IN PRIVATE M&A DEALS IN UNCERTAIN MARKET CONDITIONS

University of Texas' 37th Annual Technology Law Conference
May 23, 2024

1

Presenters



Andrew (Andy) Smetana
Austin Office Managing Partner
Perkins Coie, LLP
ASmetana@perkinscoie.com
www.perkinscoie.com



Ross Cooper
Director, Investment Banking
Bank of America Merrill Lynch
ross.cooper@bofa.com
www.business.bofa.com



Robert (Rob) Suffoletta
Austin Office Managing Partner
Wilson Sonsini Goodrich & Rosati, P.C.
RSuffoletta@wsqr.com
www.wsqr.com



Kin Gill
Chief Legal Officer
Auctane
kin.gill@auctane.com
www.auctane.com

Note: Opinions expressed are those of the respective panelists, not those of their respective companies or firms, nor are they indicative of the views of the panelists' respective clients.

2

2

Overview

- **Current M&A Market Conditions**
 - Ross Cooper
- **Recent Buy-Side Experience and In-House Considerations**
 - Kin Gill
- **Notable Trends in Deal Terms**
 - Rob Suffoletta
- **Recent Developments in Delaware Case Law**
 - Andy Smetana
- **Considerations in Distressed Company Transactions**
 - Andy Smetana & Rob Suffoletta

3

3

CURRENT M&A MARKET CONDITIONS

4

4



Americas M&A: 2023 Review and 2024 Outlook

M&A Resurgence in 2024 Bolstered by Diverse Driving Factors



Potential Drivers of Resurgence in Deal Activity



CEO Confidence

✓ CEO confidence has improved, a key driver of M&A



Longer Private Equity Asset Hold Periods Creating Robust M&A

✓ As private equity firms waited for market conditions to improve, median holding periods have increased to 6.3 years



Heightened Interest in Founder / Family-Owned Businesses

✓ Private equity firms, including large cap sponsors, steered towards founder-owned businesses for add-on opportunities and platforms



Converging Valuation Expectations

✓ Buyer and seller expectations are increasingly converging as valuation multiples have trended down relative to pandemic highs



Carveouts and Take-Private Transactions are Prevalent

✓ Carveouts represented ~30% of middle market M&A while take-private transactions reached a 10-year high



Continued Reliance on Tools to Bridge Valuation Gaps

✓ Median earnouts increased to ~33% as a percentage of deal size, underscoring their continued use to bridge value gaps



Potential Headwinds



Continued inflationary pressure and high interest rate environment



Geopolitical instability and tensions



Potential volatility ahead of U.S. Election



Source: BofA IBK assessment, Pitchbook database and Pitchbook Q3 2023 U.S. PE Middle Market Report as of December 31, 2023.

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: Key Considerations in Private M&A Deals in Uncertain Market Conditions

Also available as part of the eCourse

[2024 Technology Law eConference](#)

First appeared as part of the conference materials for the
37th Annual Technology Law Conference session

"Key Considerations in Private M&A Deals in Uncertain Market Conditions "