

Understanding Buyer Power In Negotiating M&A Deals



■ Panelists

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Tab 1

Cash vs. Buyer's Stock
as Acquisition Currency

Cash vs. Buyer's Stock as Acquisition Currency

	Cash	Buyer's Stock
Typical pricing formulation	\$X per share	Exchange ratio (fixed, floating, collared)
Vote of <u>buyer's</u> stockholders required?	No	Yes, if sufficient buyer shares are issuable
Need to comply with registration requirements of federal securities laws?	No	Yes (unless an exemption is available)
Due diligence	One-way (buyer performs due diligence investigation with respect to target)	Two-way, if sufficient buyer shares are issuable (each company performs due diligence investigation with respect to the other)
Will target's directors typically be subject to " <i>Revlon</i> " duties?	Yes	No
Tax deferral potentially available for target stockholders?	No	Yes, if applicable requirements of IRC and related regs are satisfied
Accretive/dilutive to buyer's EPS?	Generally more accretive/less dilutive than using buyer's stock as acquisition currency	Generally less accretive/more dilutive than using cash as acquisition currency

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Tab 2

Pricing Formulations in “Stock-For-Stock” Mergers

Assumed Facts.....	Page 1
Fixed Exchange Ratio (Without “Collar”).....	Page 2
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Fixed Dollar Value (With “Collar”)	Page 5
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■ **Assumed Facts:**

- Acquirer Corporation (“ACo”), a publicly-traded company, is to acquire the business of Target Corporation (“TCo”) by means of a “stock-for-stock” merger in which TCo will be merged into ACo. ACo will be the surviving corporation in the merger, and all of the outstanding TCo stock will be converted into shares of ACo stock pursuant to the merger.
- TCo has 10,000,000 shares of common stock (and no other equity securities) outstanding.

■ **Consider the following hypothetical scenario:**

- Shortly before the execution of the definitive merger agreement:
 - ACo shares are trading at a price of \$15 per share; and
 - The parties have determined that the (equity) value of TCo is \$300,000,000, or \$30 per share of TCo stock (i.e., 2 times the trading price of a share of ACo stock.)

■ **What are some of the pricing formulations the parties might consider?**

As used in the accompanying materials, the term “Closing ACo Stock Price” refers to the market price of a share of ACo stock at the time the merger consummated. (Note that, in some transactions, this is expressed as an average price over a specified period – e.g. “the average closing price of a share of ACo stock as reported on the New York Stock Exchange over the 20 trading days immediately preceding the date on which the merger becomes effective.”)

Note: Some figures in the accompanying materials have been rounded.

Fixed Exchange Ratio (2:1) Without “Collar”

Sample Language to be Included in Definitive Merger Agreement to Reflect This Pricing Formulation			Risks and Potential Benefits of This Pricing Formulation (Relating to Movements in ACo's Stock Price After Execution of Merger Agreement)	
<p><i>"At the effective time of the merger, each outstanding share of TCo stock will be converted into 2 shares of ACo stock."</i></p>			Risks to ACo; Potential Benefits to TCo's Stockholders	Risks to TCo's Stockholders; Potential Benefits to ACo
			<ul style="list-style-type: none"> An increase in ACo's stock price would increase the value of the consideration to be provided by ACo to TCo's stockholders in the merger. 	<ul style="list-style-type: none"> A decline in ACo's stock price would reduce the value of the consideration to be received by TCo's stockholders from ACo in the merger.
Table Specifying Number and Value of ACo Shares to be Issued in the Merger (at Various Closing ACo Stock Price Levels)			Graph Showing How Changes in Closing ACo Stock Price Affect Total Number of ACo Shares to be Issued in the Merger	
Closing ACo Stock Price	Total Number of ACo Shares to be Issued	Total Dollar Value of ACo Shares to be Issued	<p>The graph plots 'No. of ACo shares to be issued (millions)' on the y-axis (0 to 60) against 'Closing ACo Stock Price (\$ per share)' on the x-axis (0 to 30). A horizontal green line is drawn at 20 million shares, indicating that the number of shares issued is constant and does not change with the stock price.</p>	
\$ 5 per share	20,000,000	\$100,000,000		
\$ 10 per share	20,000,000	\$200,000,000		
\$ 15 per share	20,000,000	\$300,000,000		
\$ 20 per share	20,000,000	\$400,000,000		
\$ 25 per share	20,000,000	\$500,000,000		
\$ 30 per share	20,000,000	\$600,000,000		
\$ 35 per share	20,000,000	\$700,000,000		
			Graph Showing How Changes in Closing ACo Stock Price Affect Total Dollar Value of ACo Shares to be Issued in the Merger	
			<p>The graph plots 'Value of ACo shares to be issued (\$ millions)' on the y-axis (0 to 700) against 'Closing ACo Stock Price (\$ per share)' on the x-axis (0 to 30). A green line starts at the origin (0,0) and rises linearly to approximately (35, 700), showing a direct proportionality between the stock price and the total value of shares issued.</p>	

Fixed Dollar Value (\$300 Million) Without “Collar”

Sample Language to be Included in Definitive Merger Agreement to Reflect This Pricing Formulation

"At the effective time of the merger, each outstanding share of TCo stock will be converted into the number of shares of ACo stock determined by dividing \$30 by the Closing ACo Stock Price."

Risks and Potential Benefits of This Pricing Formulation (Relating to Movements in ACo's Stock Price After Execution of Merger Agreement)

Risks to ACo; Potential Benefits to TCo's Stockholders

- A decline in ACo's stock price would increase the number of ACo shares required to be issued by ACo to TCo's stockholders in the merger.

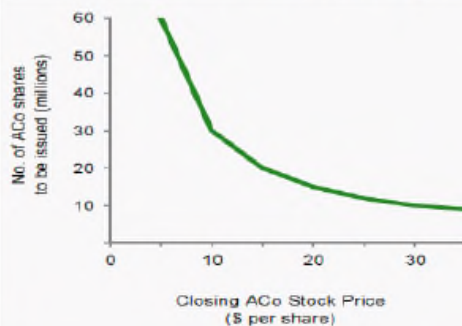
Risks to TCo's Stockholders; Potential Benefits to ACo

- An increase in ACo's stock price would reduce the number of ACo shares to be received by TCo's stockholders from ACo in the merger.

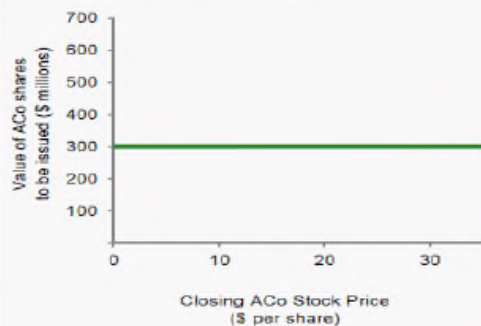
Table Specifying Number and Value of ACo Shares to be Issued in the Merger (at Various Closing ACo Stock Price Levels)

Closing ACo Stock Price	Total Number of ACo Shares to be Issued	Total Dollar Value of ACo Shares to be Issued
\$ 5 per share	60,000,000	\$300,000,000
\$ 10 per share	30,000,000	\$300,000,000
\$ 15 per share	20,000,000	\$300,000,000
\$ 20 per share	15,000,000	\$300,000,000
\$ 25 per share	12,000,000	\$300,000,000
\$ 30 per share	10,000,000	\$300,000,000
\$ 35 per share	8,571,429	\$300,000,000

Graph Showing How Changes in Closing ACo Stock Price Affect Total Number of ACo Shares to be Issued in the Merger



Graph Showing How Changes in Closing ACo Stock Price Affect Total Dollar Value of ACo Shares to be Issued in the Merger



Fixed Exchange Ratio (2:1) With "Collar" (at \$10/\$20 Per ACo Share)

Sample Language to be Included in Definitive Merger Agreement to Reflect This Pricing Formulation

"At the effective time of the merger, each outstanding share of TCo stock will be converted into 2 shares of ACo stock; provided, however, that:

- (i) if the Closing ACo Stock Price is less than \$10 per share, then each outstanding share of TCo stock will be converted into the number of shares of ACo stock determined by dividing \$20 by the Closing ACo Stock Price; and
- (ii) if the Closing ACo Stock Price is greater than \$20 per share, then each outstanding share of TCo stock will be converted into the number of shares of ACo stock determined by dividing \$40 by the Closing ACo Stock Price."

Risks and Potential Benefits of This Pricing Formulation (Relating to Movements in ACo's Stock Price After Execution of Merger Agreement)

Risks to ACo; Potential Benefits to TCo's Stockholders

- An increase in ACo's stock price would increase the value of the consideration to be provided by ACo to TCo's stockholders in the merger, but the aggregate value of this consideration could never exceed \$40,000,000.
- A decline in ACo's stock price below \$10 per share would increase the number of ACo shares required to be issued by ACo to TCo's stockholders in the merger.

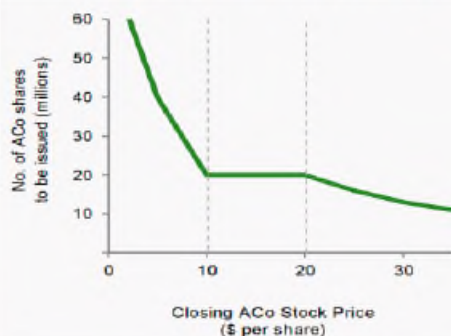
Risks to TCo's Stockholders; Potential Benefits to ACo

- A decline in ACo's stock price would reduce the value of the consideration to be received by TCo's stockholders from ACo in the merger, but the aggregate value of this consideration could never be reduced below \$200,000,000.
- An increase in ACo's stock price above \$20 per share would reduce the number of ACo shares to be received by TCo's stockholders from ACo in the merger.

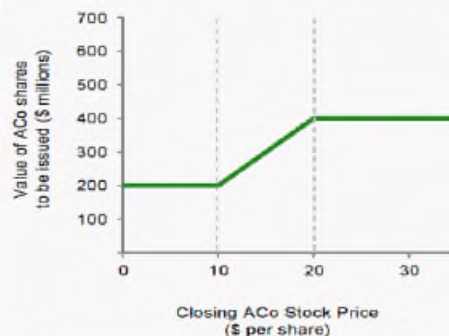
Table Specifying Number and Value of ACo Shares to be Issued in the Merger (at Various Closing ACo Stock Price Levels)

Closing ACo Stock Price	Total Number of ACo Shares to be Issued	Total Dollar Value of ACo Shares to be Issued
\$ 5 per share	40,000,000	\$200,000,000
\$ 10 per share	20,000,000	\$200,000,000
\$ 15 per share	20,000,000	\$300,000,000
\$ 20 per share	20,000,000	\$400,000,000
\$ 25 per share	16,000,000	\$400,000,000
\$ 30 per share	13,333,333	\$400,000,000
\$ 35 per share	11,428,571	\$400,000,000

Graph Showing How Changes in Closing ACo Stock Price Affect Total Number of ACo Shares to be Issued in the Merger



Graph Showing How Changes in Closing ACo Stock Price Affect Total Dollar Value of ACo Shares to be Issued in the Merger



Fixed Dollar Value (\$300 Million) With “Collar” (at \$10/\$20 Per ACo Share)

Sample Language to be Included in Definitive Merger Agreement to Reflect This Pricing Formulation

“At the effective time of the merger, each outstanding share of TCo stock will be converted into the number of shares of ACo stock determined by dividing \$30 by the Closing ACo Stock Price; provided, however, that:

- (i) if the Closing ACo Stock Price is less than \$10 per share, then each outstanding share of TCo stock will be converted into 3 shares of ACo stock; and*
- (ii) if the Closing ACo Stock Price is greater than \$20 per share, then each outstanding share of TCo stock will be converted into 1.5 shares of ACo stock.”*

Risks and Potential Benefits of This Pricing Formulation (Relating to Movements in ACo’s Stock Price After Execution of Merger Agreement)

Risks to ACo; Potential Benefits to TCo’s Stockholders

- An increase in ACo’s stock price above \$20 per share would increase the value of the consideration to be provided by ACo to TCo’s stockholders in the merger.
- A decline in ACo’s stock price would increase the number of ACo shares required to be issued by ACo to TCo’s stockholders in the merger, but the number of ACo shares required to be issued could never exceed 30,000,000 shares.

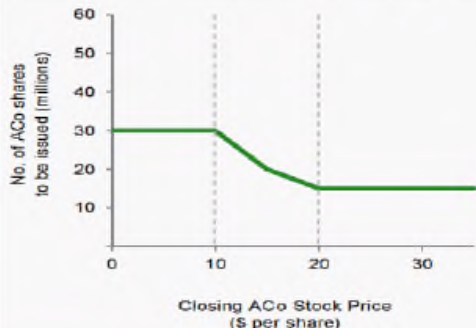
Risks to TCo’s Stockholders; Potential Benefits to ACo

- A decline in ACo’s stock price below \$10 per share would reduce the value of the consideration to be received by TCo’s stockholders from ACo in the merger.
- An increase in ACo’s stock price would reduce the number of ACo shares to be received by TCo’s stockholders from ACo in the merger, but the number of ACo shares to be received by TCo’s stockholders could never be reduced below 15,000,000 shares.

Table Specifying Number and Value of ACo Shares to be Issued in the Merger (at Various Closing ACo Stock Price Levels)

Closing ACo Stock Price	Total Number of ACo Shares to be Issued	Total Dollar Value of ACo Shares to be Issued
\$ 5 per share	30,000,000	\$150,000,000
\$ 10 per share	30,000,000	\$300,000,000
\$ 15 per share	20,000,000	\$300,000,000
\$ 20 per share	15,000,000	\$300,000,000
\$ 25 per share	15,000,000	\$375,000,000
\$ 30 per share	15,000,000	\$450,000,000
\$ 35 per share	15,000,000	\$525,000,000

Graph Showing How Changes in Closing ACo Stock Price Affect Total Number of ACo Shares to be Issued in the Merger



Graph Showing How Changes in Closing ACo Stock Price Affect Total Dollar Value of ACo Shares to be Issued in the Merger



Summary Comparison of Pricing Formulations

Closing ACo Stock Price	Total Number of ACo Shares to be Issued in the Merger			
	Fixed Exchange Ratio (Without "Collar")	Fixed Dollar Value (Without "Collar")	Fixed Exchange Ratio, With "Collar"	Fixed Dollar Value, With "Collar"
\$ 5 per share	20,000,000 shares	60,000,000 shares	40,000,000 shares	30,000,000 shares
\$10 per share	20,000,000 shares	30,000,000 shares	20,000,000 shares	30,000,000 shares
\$15 per share	20,000,000 shares	20,000,000 shares	20,000,000 shares	20,000,000 shares
\$20 per share	20,000,000 shares	15,000,000 shares	20,000,000 shares	15,000,000 shares
\$25 per share	20,000,000 shares	12,000,000 shares	16,000,000 shares	15,000,000 shares
\$30 per share	20,000,000 shares	10,000,000 shares	13,333,333 shares	15,000,000 shares
\$35 per share	20,000,000 shares	8,571,429 shares	11,428,571 shares	15,000,000 shares

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Closing ACo Stock Price	Total Dollar Value of ACo Shares to be Issued in the Merger			
	Fixed Exchange Ratio (Without "Collar")	Fixed Dollar Value (Without "Collar")	Fixed Exchange Ratio, With "Collar"	Fixed Dollar Value, With "Collar"
\$ 5 per share	\$100,000,000	\$300,000,000	\$200,000,000	\$150,000,000
\$10 per share	\$200,000,000	\$300,000,000	\$200,000,000	\$300,000,000
\$15 per share	\$300,000,000	\$300,000,000	\$300,000,000	\$300,000,000
\$20 per share	\$400,000,000	\$300,000,000	\$400,000,000	\$300,000,000
\$25 per share	\$500,000,000	\$300,000,000	\$400,000,000	\$375,000,000
\$30 per share	\$600,000,000	\$300,000,000	\$400,000,000	\$450,000,000
\$35 per share	\$700,000,000	\$300,000,000	\$400,000,000	\$525,000,000

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Tab 3

Certain Considerations
in Negotiating
Earnout Provisions

Definition of Earnout Metrics

■ On what metric(s) should the earnout be based?

- Revenue?
- Gross profit or other profit-related metric?
- Other (*e.g.*, number of “active users”)?

■ Potential complexities?

- What revenue counts?
 - Limited to specific products? Products to be defined broadly to prevent the Acquirer from “designing around” the earnout?

Definition of Earnout Metrics *(cont'd)*

- Are there likely to be enhancements, add-ons, derivative products, etc. that should be included in the definition of products?
- How should revenues be allocated if products are sold in a bundle? Should there be minimum prices for earnout purposes?
- How to protect against the buyer using the target company's products as a loss leader to drive other revenue?

Definition of Earnout Metrics *(cont'd)*

- Revenue recognition issues/deductions?
 - How will sales be determined (will “Gross Sales” be used, adjusted for freight, insurance and trade discounts and allowances? other adjustments)?
 - How will product returns be handled?
 - At what point in time will revenues be recognized (*i.e.*, when products are shipped, when products are accepted, when cash is received, etc.)?
 - Will revenue recognition be the same for direct and indirect (through distributors or other resellers) sales?

Definition of Earnout Metrics *(cont'd)*

- Will a reserve be established at the end of the sales measurement period and, if so, on what basis?
- Will the buyer sell the products through affiliates (such as affiliated distributors) and, if so, will any special revenue recognition rules apply?
 - Will such revenues be recognized upon shipment to the affiliate?
 - On the assumption that the buyer might provide discounts to affiliates, should sales prices to affiliates be increased by some factor?
- Are there any other revenue recognition policies that should be specified?

Definition of Earnout Metrics *(cont'd)*

- What costs count?
 - What costs should be deducted if profit-related metric?
 - How should shared costs be allocated?

Measurement Period

- What is the proper sales measurement period?
- What type of provisions should be included to prevent increased sales (for example, to distributors or other resellers) shortly before or after the sales measurement period (which might reduce sales during the sales measurement period)?

Operational Issues

- Will the buyer agree to maintain the target company as a separate stand-alone entity? Any exceptions?
- Will the key employees of the target company be entitled to any control of the operations of the target company? If so: (a) what remedies apply in the case of a breach; and (b) what limits, if any, will apply (*e.g.*, limits on incurrence of liabilities)?
- If the buyer provides the key employees of the target company with any operational control, will the buyer also include “Intervention Events” – that is, events, such as performance well below forecasts, that would enable the buyer to take back any control that it ceded to such key employees?

Operational Issues *(cont'd)*

- What general level of efforts, if any, will the buyer be required to undertake in order to maximize the earnout (*i.e.*, best efforts, commercially reasonable efforts, good faith efforts, etc.)?
- What specific covenants, if any, will be imposed on the buyer in respect of the post-closing operation of the Surviving Company as a means of elaborating on the efforts standard identified above in order to ensure that the buyer will seek to maximize sales, and what remedies should be imposed in the event of a breach of such covenants? For example:

Operational Issues *(cont'd)*

- Will specific benchmarks be established to enhance the likelihood that the buyer will meet product launch deadlines (such as requiring that specified resources be dedicated to research and development)?
- Will the Surviving Company prepare an operating plan and, if so, will it be subject to the approval of the Representative?
- What funding obligations, if any, will be imposed upon the buyer – such as for research and development, capital expenditures, sales and marketing, etc.?

Acceleration of Earnout

- Because it might be difficult to enforce the controls mentioned above in certain situations, will any or all of the following events cause the earnout payments to be accelerated:
 - A sale of the Surviving Company or all or substantially all of its assets
 - A sale of the buyer or all or substantially all of its assets

Acceleration of Earnout *(cont'd)*

- A license of all or substantially all of the target company's technology
- The failure to use [best/commercially reasonable/good faith] efforts to achieve the revenue target (including the failure to dedicate appropriate resources toward that end)
- The completion of an initial public offering of the shares of the Surviving Company
- The termination or constructive termination of certain key employees without cause; and/or death or permanent disability of such key employees

Acceleration of Earnout *(cont'd)*

- Are there other ways to address the concerns raised by the events mentioned above (*e.g.*, in the event of termination of a key employee without cause, giving the target company shareholders credit for the better of actual achievement of the applicable metric or deemed achievement of the applicable metric (based on results prior to the time of termination))?

Other Matters

- Reporting requirements?
- Verification procedures?
- Timing of payments – partial payments in the event of a dispute?

CAVEAT: *This outline is intended only to highlight certain key issues that may arise in the context of negotiating earnout provisions. Every earnout provision must be carefully tailored to reflect the specific terms of the transaction to which it relates.*

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Tab 4

Joint ABA/SRS Acquiom
“Buyer Power Ratio” Study
2017

Impact of “Buyer Power Ratio” on Selected M&A Deal Terms in Acquisitions of Privately Held Target Companies by Publicly Traded Buyers

July 2017

(Including Transactions Completed 2012 – 2016)



Mergers & Acquisitions Committee

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ABOUT THIS STUDY AND THE “BUYER POWER RATIO”

This Study is a product of the joint efforts of the Mergers & Acquisitions Committee of the ABA’s Business Law Section (the “M&A Committee”) and SRS Acquiom Inc.

To compile the sample set for this Study, we utilized SRS Acquiom’s database of acquisition agreements relating to purchases of privately held U.S. companies by publicly traded buyers. Many of the acquisition agreements in this database have not been filed with the SEC and are not publicly accessible.

This Study is built around a newly developed metric, which we refer to as “**Buyer Power Ratio**” or, simply, “**BPR.**” Buyer Power Ratio has two components:

1. The **market capitalization** (market cap) of the buyer; and
2. The **purchase price** paid by the buyer in the acquisition.

The Buyer Power Ratio for a particular acquisition is determined by dividing the buyer’s market cap by the applicable purchase price, i.e.:

$$\text{Buyer Power Ratio} = \frac{\text{Buyer Market Cap}}{\text{Purchase Price}}$$

ABOUT THIS STUDY AND THE “BUYER POWER RATIO” (cont'd)

This Study demonstrates that the Buyer Power Ratio for a particular transaction generally correlates with the level of the buyer's negotiating strength in that transaction, as measured by the buyer's ability to obtain buyer-favorable deal terms. For example, a large buyer with a \$100 billion market cap buying a relatively small company for \$50 million (BPR = 2,000) would ordinarily be expected to have a higher degree of negotiating leverage than a smaller buyer with a \$500 million market cap buying a company for \$250 million (BPR = 2). That is, all other things being equal, a buyer should be able to obtain deal terms that are more buyer-favorable in a transaction with a BPR of 2,000 than in a transaction with a BPR of 2.

Of course, BPR is not the only factor that can affect a buyer's negotiating leverage. Among the other factors that may come into play are: the price the buyer is willing and able to pay; the importance of the transaction to the buyer relative to its importance to the seller; and the presence of competing bidders for the target company. This Study does not attempt to measure the effect of these other factors on buyers' ability to obtain favorable deal terms.

This Study shows, for each deal point featured, the correlation between BPR and a buyer-favorable resolution of that deal point. Therefore, this Study, unlike other deal points surveys, allows a prospective buyer and seller to calculate the BPR for their

ABOUT THIS STUDY AND THE “BUYER POWER RATIO” (cont’d)

proposed transaction and then focus specifically on the particular statistics relevant to other transactions with similar BPRs. In most cases, this Study shows that the frequency of buyer-favorable outcomes increases as BPR increases.

For comparison purposes, this Study also shows, for each deal point featured, the relevant statistics presented in the studies prepared by the M&A Committee in 2013 and 2015, for which the sample set consists exclusively of deals with acquisition agreements filed with the U.S. Securities and Exchange Commission (“SEC”). The average BPR for the transactions surveyed by the M&A Committee in 2013 and 2015 is significantly lower than the average BPR for the transactions surveyed in this Study. This is not surprising, given that transactions with high BPRs are unlikely to be sufficiently material to the buyer to require the filing of information on the transaction with the SEC.

For completeness of presentation, we have looked separately at the correlation between deal point resolution and each of the two individual components of BPR – buyer’s market cap and purchase price. The results of these separate analyses appear in Appendices 2 and 3, which are available for download at both the ABA and SRS Acquiom web sites.

TERMINOLOGY USED IN THIS PRESENTATION

ABA Data (2012, 2014)

Data from the 2013 and 2015 Private Target Mergers & Acquisitions Deal Points Studies prepared by the M&A Committee, for transactions completed in 2012 (136 transactions) and 2014 (117 transactions), with acquisition agreements filed with the SEC.* The data from these two studies was merged as described in Appendix 1.

SRSA Data (2012 – 2016)

Data on private target M&A transactions completed in 2012 through 2016 in which SRS Acquiom served as the shareholder representative, where the buyer's equity securities were, as of the date of the acquisition agreement, publicly listed on a U.S. stock exchange, so that the buyer's US\$ market capitalization could be calculated (457 transactions)

Buyer Market Cap

The buyer's market capitalization (as reported by YCharts**) as of the date of the acquisition agreement

Buyer Power Ratio

Buyer Market Cap *divided by* aggregate purchase price (with aggregate purchase price including amounts held back in escrow but excluding potential earn-out payments)

* ABA Data only includes transactions with SEC-filed agreements, as analyzed by the M&A Committee studies. U.S. buyers are generally not required to file with the SEC agreements for transactions that, in light of the buyer's size and other factors, are not material.

** Approximately 10% of market cap values were not available in YCharts. These market cap values were determined using Wolfram Alpha or manual SRS Acquiom calculations.

DISCLAIMERS

- Because of SRS Acquiom's confidentiality obligations with respect to the acquisition agreements included in its proprietary database, the M&A Committee was not permitted to review any of the acquisition agreements on which the Study results are based. Those acquisition agreements were reviewed exclusively by SRS Acquiom.
- The number of the transactions in the sample set varies slightly from deal point to deal point, either because a particular deal point was not applicable to specific transactions, or, in some situations, a clear determination of buyer- or seller-favorability could not be made.
- The acquisition agreement provisions that form the basis of this Study are drafted in many different ways and do not always fit precisely into particular "deal point" categories. Therefore, the Study Chairs and Advisory Group members have made various judgment calls regarding, for example, how to categorize the nature or effect of particular provisions. The conclusions presented in this Study should be viewed with these caveats in mind.
- Findings presented in this Study do not necessarily reflect the views of the ABA, the M&A Committee or SRS Acquiom, or the personal views of the Study Chairs or Advisory Group members or the views of their respective firms.

Representations & Warranties

“No undisclosed liabilities” representation

Is the “no undisclosed liabilities” representation drafted broadly to include all liabilities, including contingent liabilities (so as to favor buyers)?

How does Buyer Power Ratio correlate with this deal point?

“No undisclosed liabilities” representation

Sample provisions:

“no undisclosed liabilities” representation (Buyer-favorable formulation):

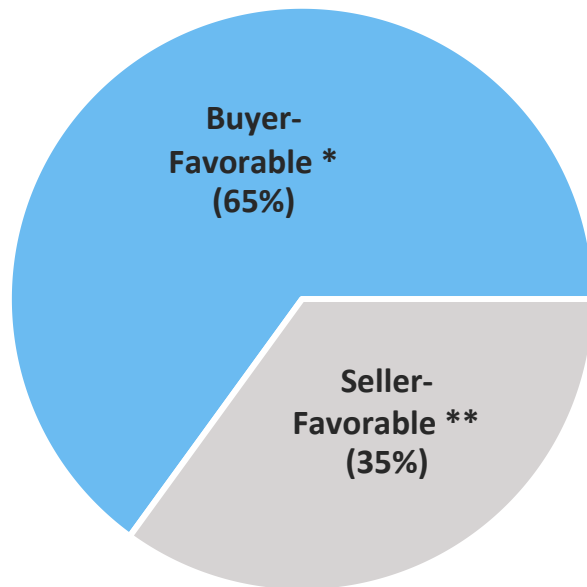
“Target has no liabilities of any nature (accrued, unaccrued, contingent or otherwise, and whether or not required to be disclosed on a balance sheet), except for liabilities reflected in the Interim Balance Sheet and current liabilities incurred in the ordinary course of business since the date of the Interim Balance Sheet.”

“no undisclosed liabilities” representation (Seller-favorable formulation):

“Target has no liabilities of the type required to be disclosed in the liabilities column of a balance sheet prepared in accordance with generally accepted accounting principles (GAAP), except for...”

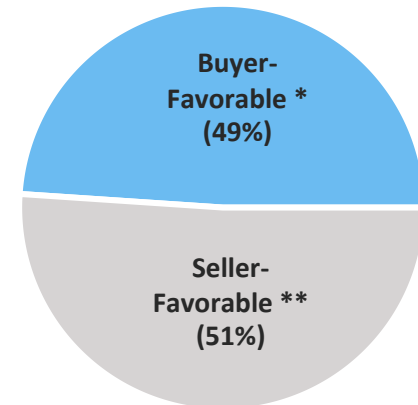
“No undisclosed liabilities” representation

ABA Data (2012, 2014)

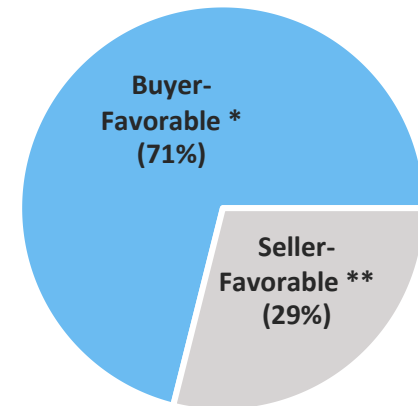


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200

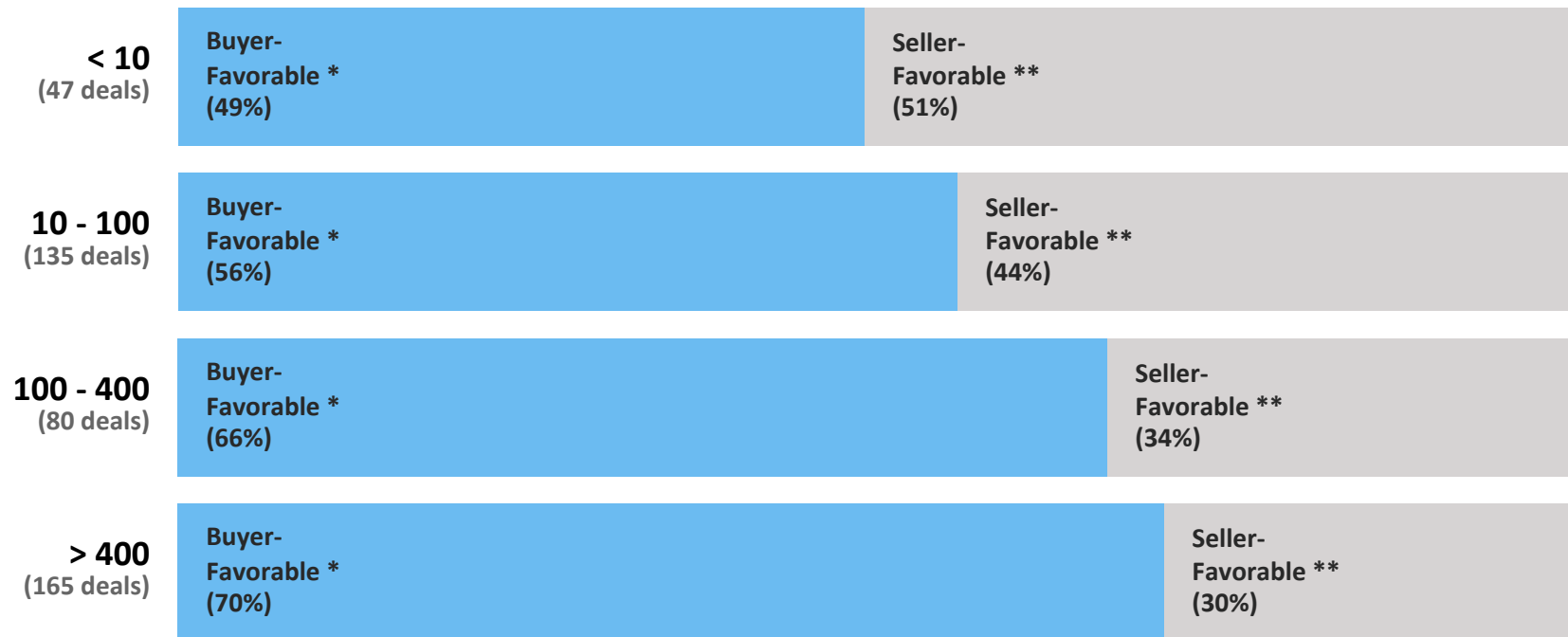


* Buyer-Favorable = all liabilities
** Seller-Favorable = GAAP liabilities or no rep

“No undisclosed liabilities” representation

SRSA Data (2012 - 2016)

Buyer Power
Ratio



* Buyer-Favorable = all liabilities

** Seller-Favorable = GAAP liabilities or no rep

“10b-5” or “full disclosure” representation

Does the acquisition agreement contain a “10b-5”
or “full disclosure” representation
(so as to favor buyers)?

How does Buyer Power Ratio
correlate with this deal point?

“10b-5” or “full disclosure” representation

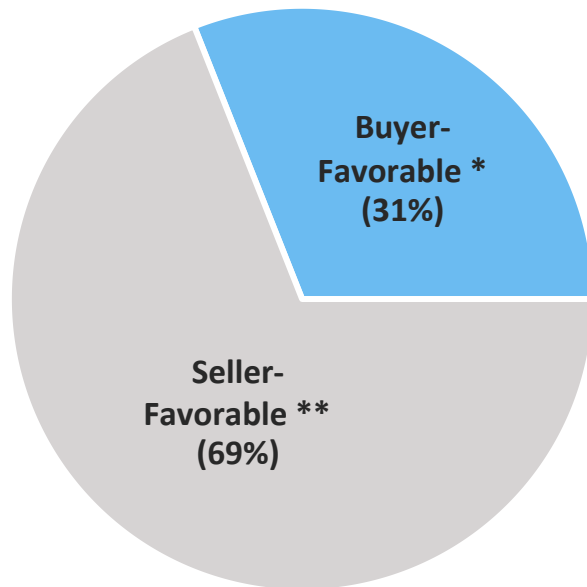
Sample provisions:

“10b-5” representation (Buyer-favorable formulation): A representation to the following effect: “No representation or warranty made by Target in this Agreement...contains any untrue statement of material fact or omits to state a material fact necessary to make the statements in this Agreement, in light of the circumstances in which they were made, not misleading.”

“full disclosure” representation (Buyer-favorable formulation): A representation to the following effect: “Target does not have knowledge of any fact that has specific application to Target (other than general economic or industry conditions) and that may materially adversely affect the business, financial condition or results of operations of Target, other than facts set forth in this Agreement or the Disclosure Schedule.”

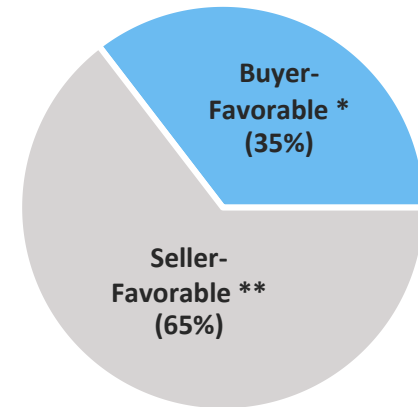
“10b-5” or “full disclosure” representation

ABA Data (2012, 2014)

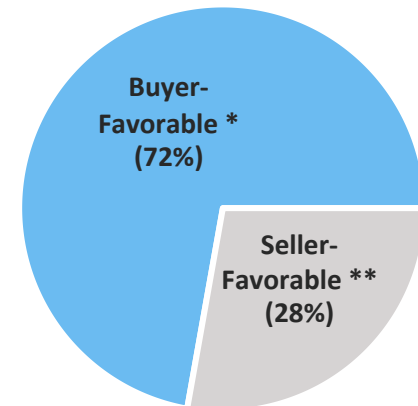


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



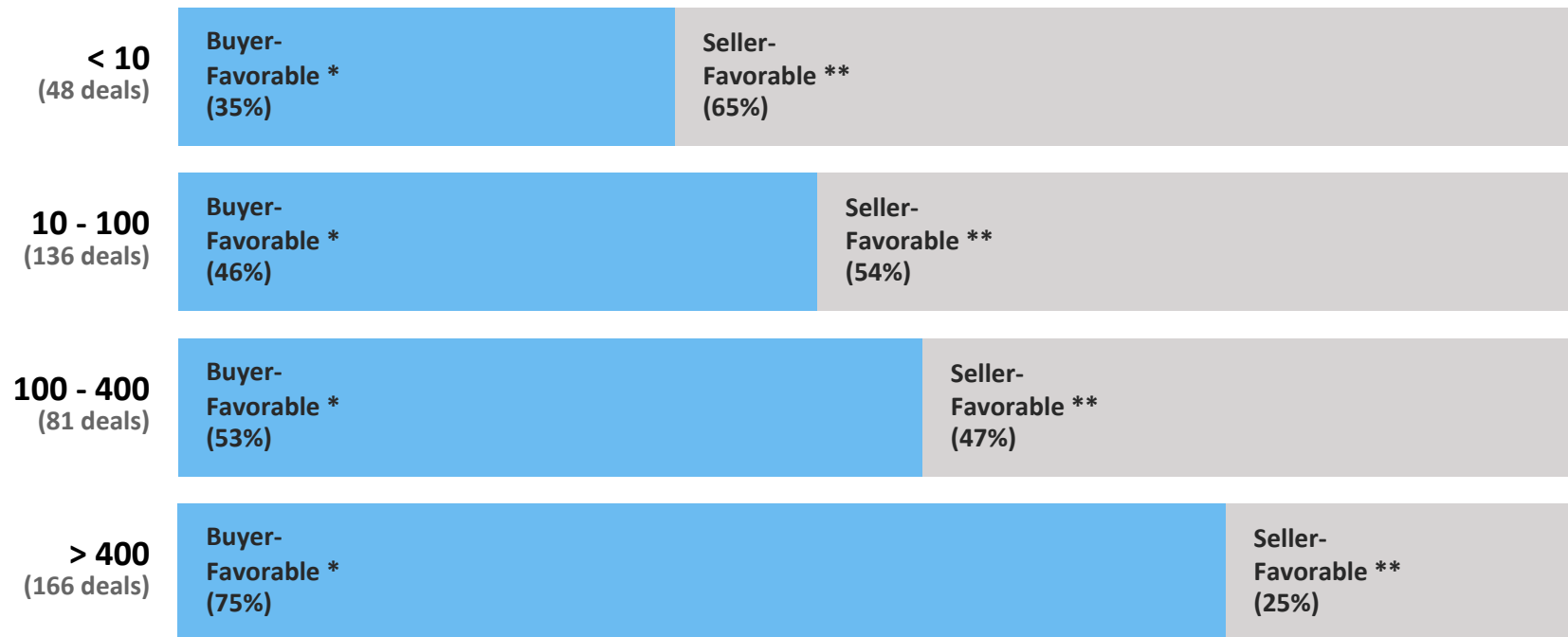
* Buyer-Favorable = Either a “10b-5” or a “full disclosure” rep is included

** Seller-Favorable = Neither a “10b-5” nor a “full disclosure” rep is included

“10b-5” or “full disclosure” representation

SRSA Data (2012 - 2016)

Buyer Power
Ratio



* Buyer-Favorable = Either a “10b-5” or a “full disclosure” rep is included

** Seller-Favorable = Neither a “10b-5” nor a “full disclosure” rep is included

Closing Conditions

“Accuracy of representations” condition – times(s) as of which accuracy is tested

When must the sellers’/target’s reps be accurate –
at closing (seller-favorable), or both at signing and at
closing (buyer-favorable)?

How does Buyer Power Ratio
correlate with this deal point?

“Accuracy of representations” condition – timing

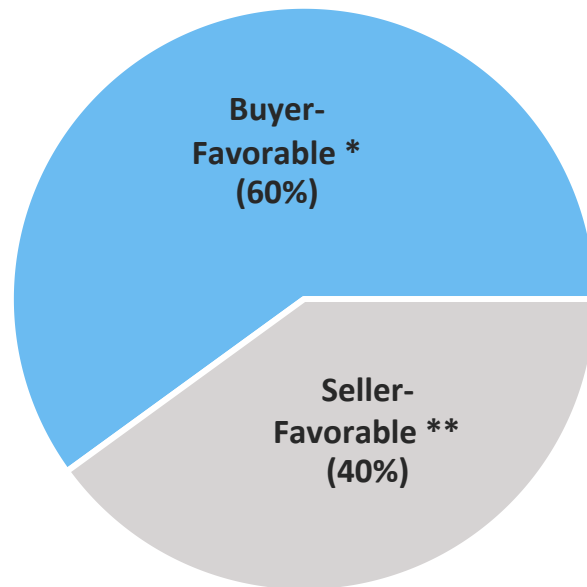
Sample provisions:

at closing only (Seller-favorable formulation): “The representations and warranties made by Sellers/Target in this Agreement shall be accurate [*reference to applicable materiality standard*] as of the Closing Date as if made on the Closing Date.”

at signing and closing (Buyer-favorable formulation): “The representations and warranties made by Sellers/Target in this Agreement shall have been accurate [*reference to applicable materiality standard*] as of the date of this Agreement and shall be accurate [*reference to applicable materiality standard*] as of the Closing Date as if made on the Closing Date.”

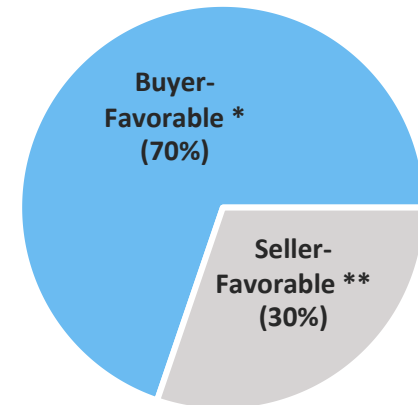
“Accuracy of representations” condition – timing

ABA Data (2012, 2014)

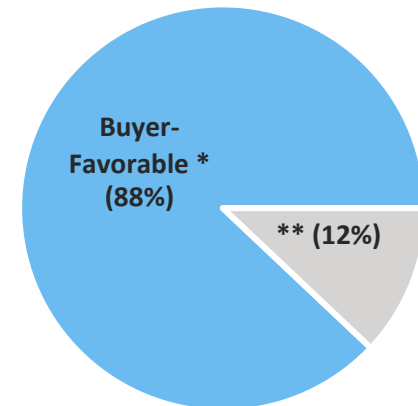


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



* Buyer-Favorable = reps accurate both at signing and at closing

** Seller-Favorable = reps accurate at closing only

“Accuracy of representations” condition – timing

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = reps accurate both at signing and at closing

** Seller-Favorable = reps accurate at closing only

“Accuracy of representations” condition – materiality standard

What materiality standard is applied in testing the accuracy of the sellers’/target’s general (non-fundamental) representations?

How does Buyer Power Ratio correlate with this deal point?

“Accuracy of representations” condition – materiality

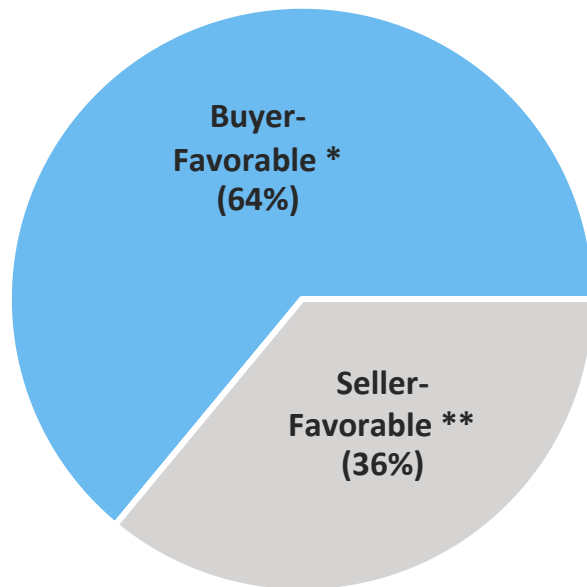
Sample provisions:

“in all respects” or “in all material respects” standard (Buyer-favorable formulation): “The general (i.e., non-fundamental) representations and warranties made by Sellers/Target in this Agreement shall be accurate in all respects [or in all material respects] [*reference to timing*] ...”

“MAE” standard (Seller-favorable formulation): “The general (i.e., non-fundamental) representations and warranties made by Sellers/Target in this Agreement shall be accurate in all respects [*reference to timing*], disregarding inaccuracies that considered collectively do not have a Material Adverse Effect...”

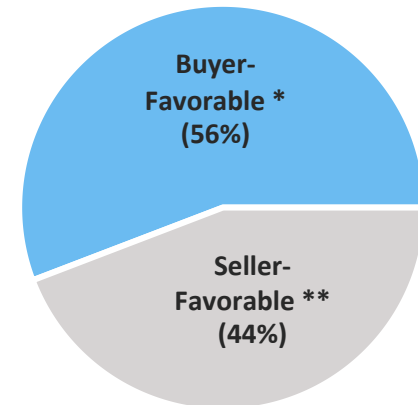
“Accuracy of representations” condition – materiality

ABA Data (2012, 2014)

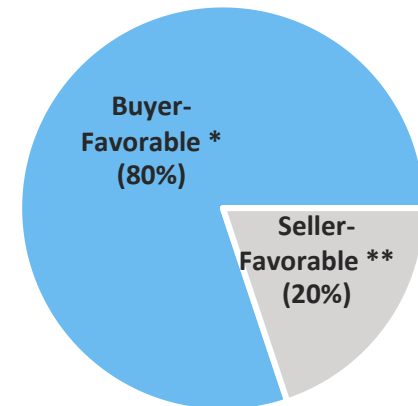


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



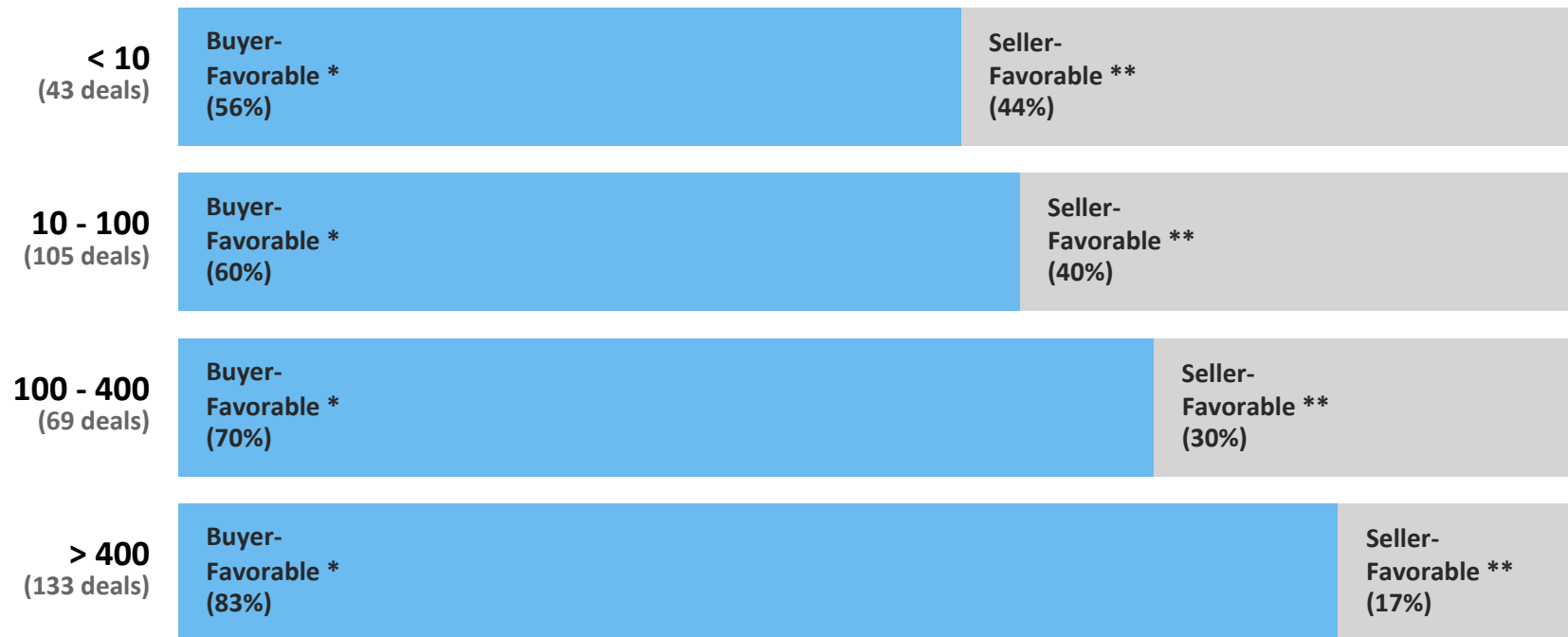
* Buyer-Favorable = “in all respects” or “in all material respects”

** Seller-Favorable = “MAE”

“Accuracy of representations” condition – materiality

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = “in all respects” or “in all material respects”

** Seller-Favorable = “MAE”

Indemnification and Related Provisions

“Sandbagging”

Does the agreement contain a pro-sandbagging provision*
(so as to favor buyers)?

How does Buyer Power Ratio
correlate with this deal point?

* Also sometimes referred to as a “benefit of the bargain” provision. For the purposes of this Study, a provision that merely states, for example, that Sellers’/Target’s representations and warranties “survive Buyer’s investigation” is not classified as a “pro-sandbagging” provision unless it also includes an express statement that the buyer’s knowledge will have no impact on the buyer’s post-closing indemnification rights.

“Sandbagging”

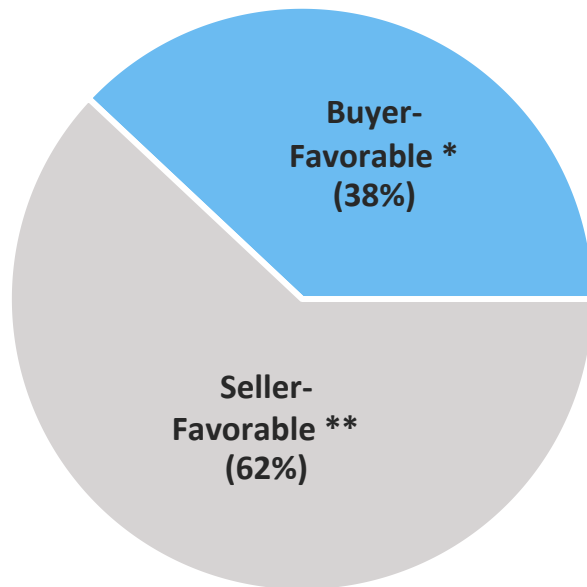
Sample provisions:

pro-sandbagging provision (Buyer-favorable): “The right to any indemnification or other remedy based upon any representation, warranty, covenant, or obligation will not be affected by ... any investigation conducted or any knowledge acquired at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of, or compliance with, such representation, warranty, covenant, or obligation.”

anti-sandbagging provision (Seller-favorable): “No party shall be liable under this Section for any Losses resulting from or relating to any inaccuracy in any representation or warranty in this Agreement if the party seeking indemnification for such Losses had knowledge of such inaccuracy before the Closing.”

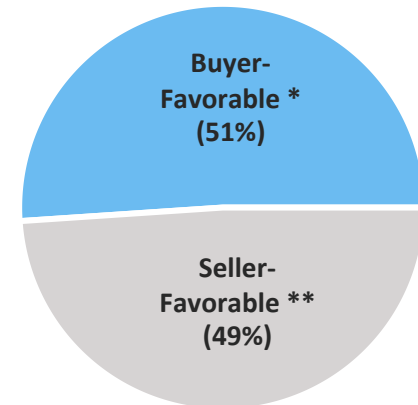
“Sandbagging”

ABA Data (2012, 2014)

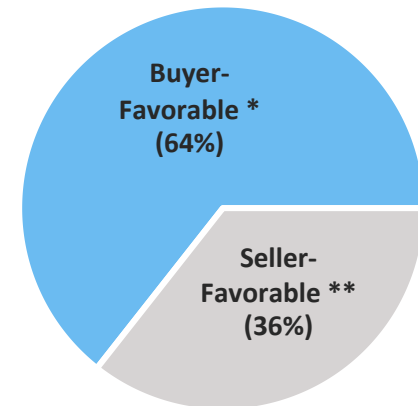


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



* Buyer-Favorable = “pro-sandbagging” (“benefit of the bargain”) provision included

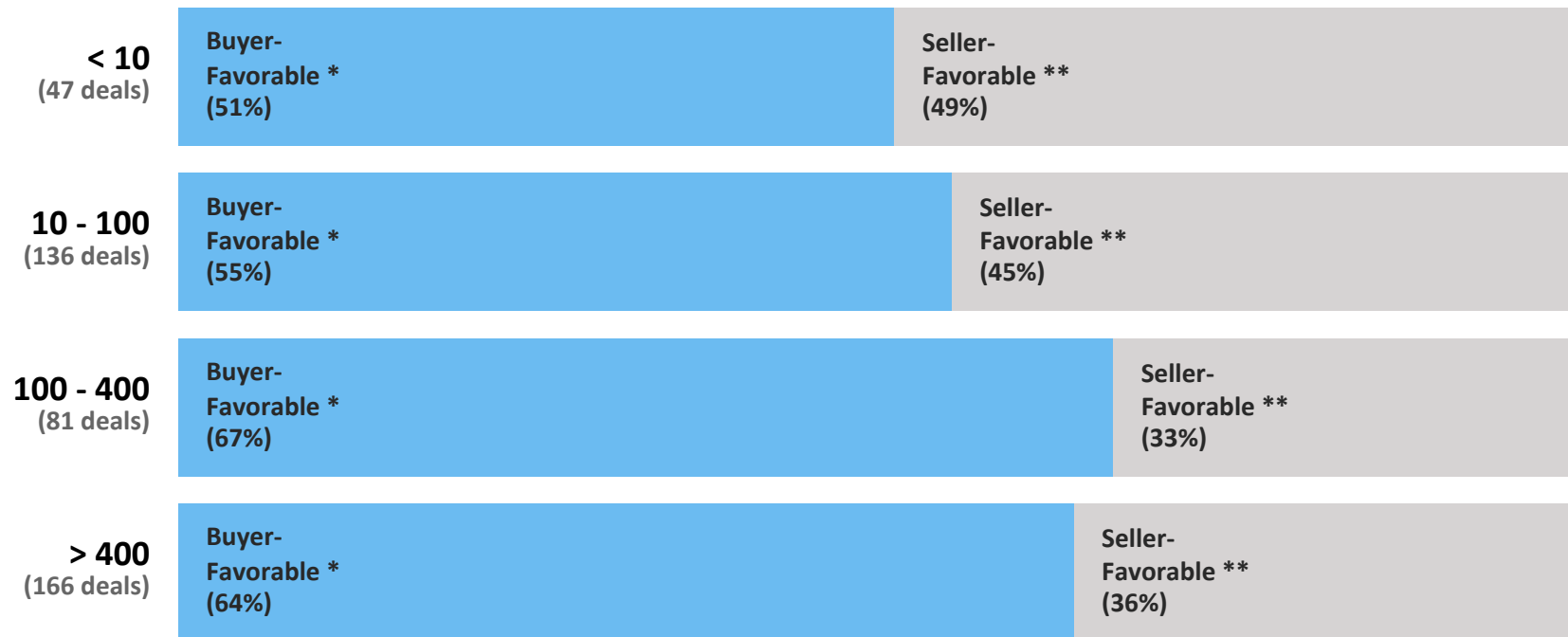
** Seller-Favorable = “anti-sandbagging” provision included, or agreement silent

(Note that in some jurisdictions, an agreement that is silent on “sandbagging” could be considered Buyer-Favorable rather than Seller-Favorable.)

“Sandbagging”

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = “pro-sandbagging” (“benefit of the bargain”) provision included

** Seller-Favorable = “anti-sandbagging” provision included, or agreement silent

(Note that in some jurisdictions, an agreement that is silent on “sandbagging” could be considered Buyer-Favorable rather than Seller-Favorable.)

“Non-reliance” clause

Does the acquisition agreement contain an express “non-reliance” clause* (so as to favor sellers)**?

How does Buyer Power Ratio correlate with this deal point?

* Does not include deals with a “no other representations” provision in the absence of an express disclaimer of reliance.

** Some of the agreements that include a non-reliance clause, and are therefore categorized as Seller-Favorable for purposes of this deal point, may also include a broad “fraud exception,” e.g.: *“Nothing in this Agreement shall operate to limit Buyer’s remedies in the event of fraud (whether or not such fraud relates to the express representations and warranties contained in this Agreement).”* The inclusion of such a fraud exception in an agreement may make the agreement Buyer-Favorable on this deal point, notwithstanding the presence of a non-reliance clause. However, because each agreement in the Study sample was reviewed for the purpose of determining whether a non-reliance clause is included, but not for the additional purpose of determining whether a fraud exception is included, any agreement in the Study sample containing both a non-reliance clause and a fraud exception is categorized as Seller-Favorable for purposes of this Study (even though it may be more appropriate to categorize such an agreement as Buyer-Favorable).

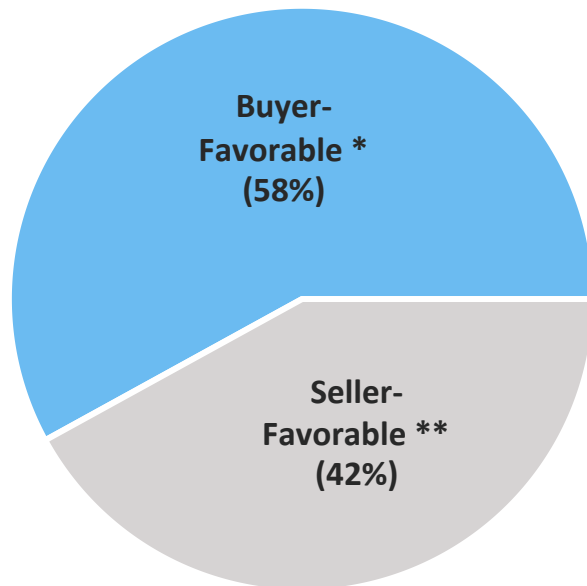
“Non-reliance” clause

Sample provision:

Non-reliance clause (Seller-favorable): “Buyer is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the express representations and warranties of Sellers/Target contained in this Agreement.”

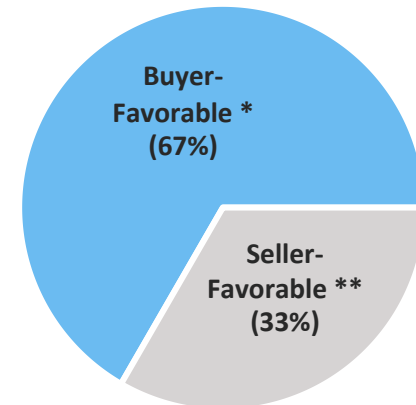
“Non-reliance” clause

ABA Data (2012, 2014)

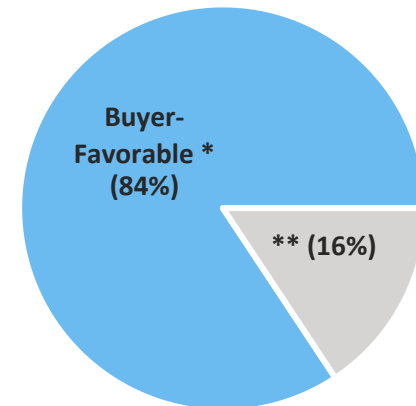


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



* Buyer-Favorable = “non-reliance” clause not included
** Seller-Favorable = “non-reliance” clause included

“Non-reliance” clause

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = “non-reliance” clause not included

** Seller-Favorable = “non-reliance” clause included

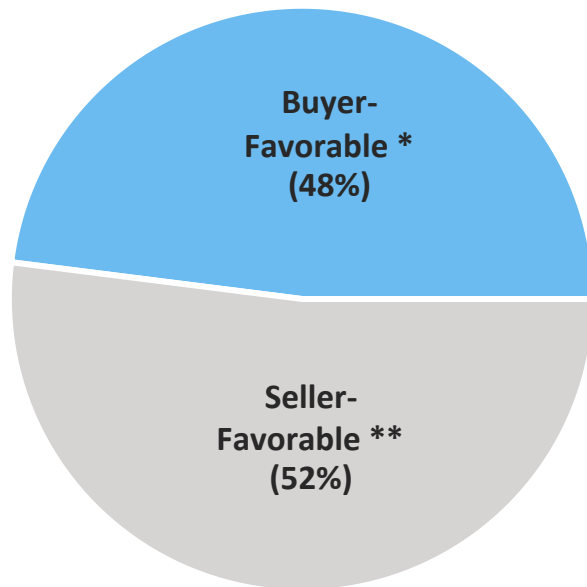
Treatment of “consequential” damages – for indemnification purposes

Are “consequential” damages expressly excluded from
indemnifiable damages
(so as to favor sellers)?

How does Buyer Power Ratio
correlate with this deal point?

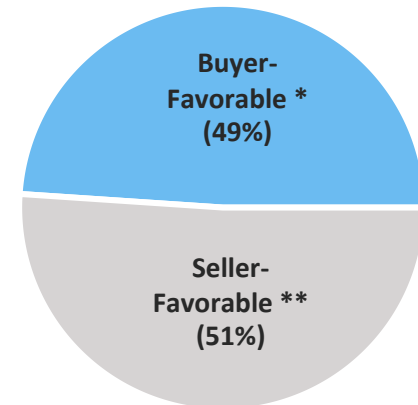
“Consequential” damages exclusion

ABA Data (2012, 2014)

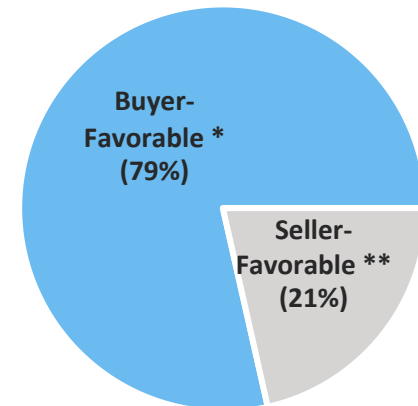


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



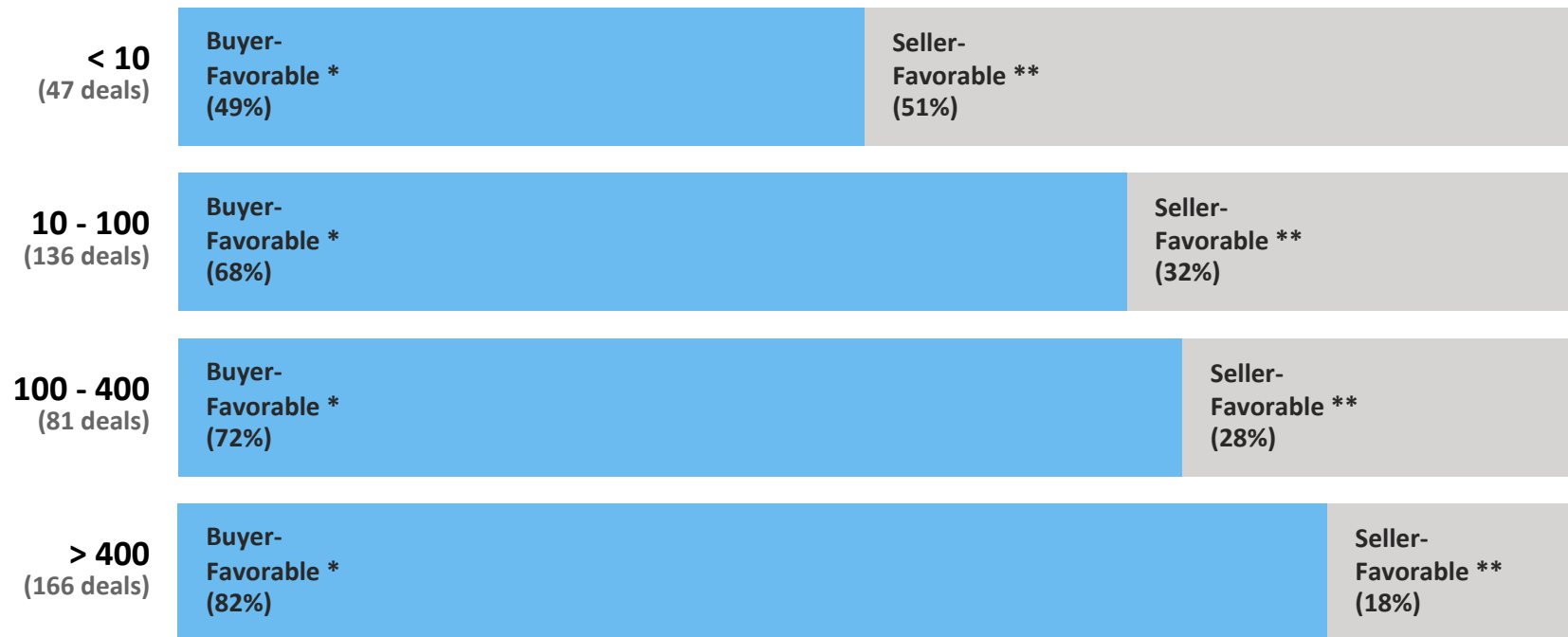
* Buyer-Favorable = “consequential” damages not expressly excluded

** Seller-Favorable = “consequential” damages expressly excluded

“Consequential” damages exclusion

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = “consequential” damages not expressly excluded

** Seller-Favorable = “consequential” damages expressly excluded

IP cap in excess of escrow – in acquisitions of tech companies

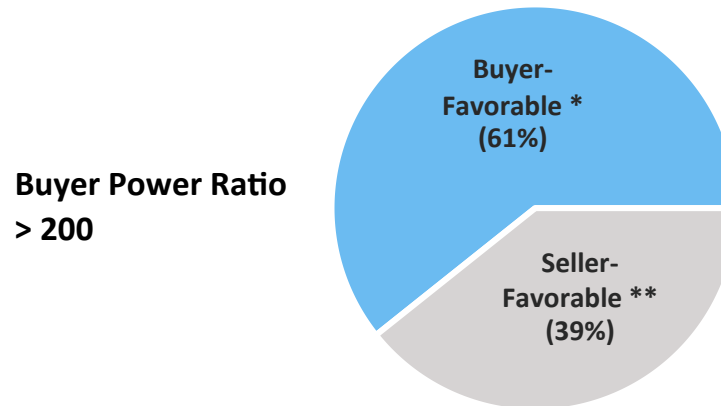
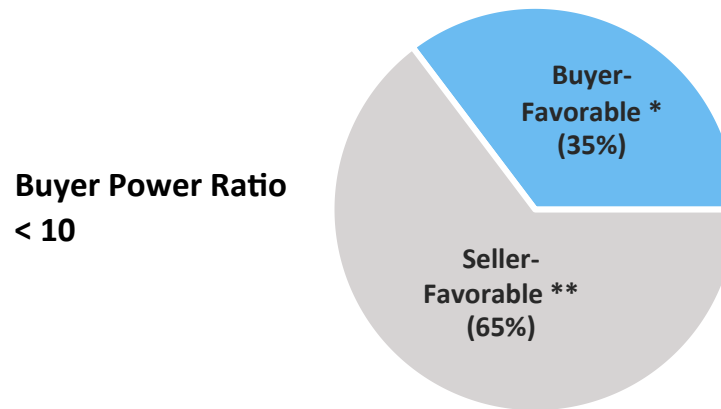
In acquisitions of technology companies, does the cap on the sellers' liability for inaccuracies in the IP representations exceed the escrow amount (so as to favor buyers)?*

How does Buyer Power Ratio correlate with this deal point?

* Note: Because the ABA Data does not report deals by industry, no relevant comparison can be made with the SRSA Data which, for purposes of this deal point, has been limited to only those deals involving target companies in the technology sector. Therefore, for this deal point, there is no pie chart showing the corresponding ABA Data.

IP cap in excess of escrow in acquisitions of tech companies

SRSA Data (2012 - 2016)



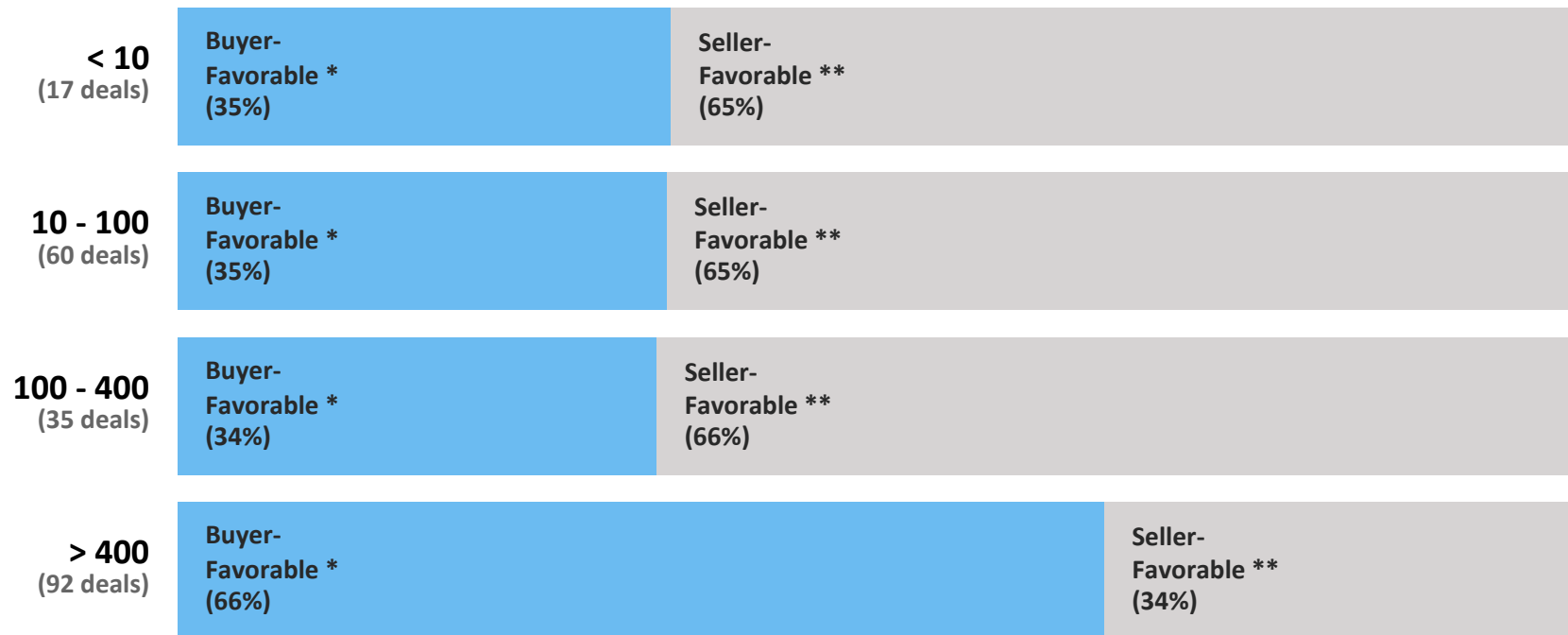
* Buyer-Favorable = IP cap exceeds escrow amount

** Seller-Favorable = no separate IP cap / IP cap equal to escrow amount

IP cap in excess of escrow in acquisitions of tech companies

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = IP cap exceeds escrow amount

** Seller-Favorable = no separate IP cap / IP cap equal to escrow amount

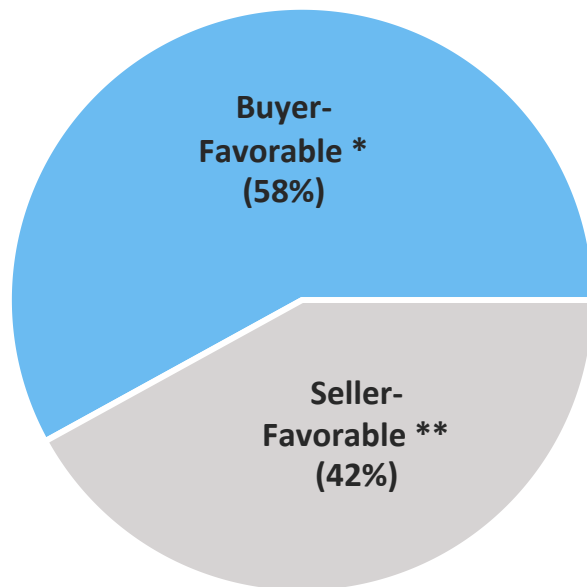
Buyer's contractual obligation to mitigate losses

Does the buyer have an express contractual obligation to mitigate indemnifiable losses (so as to favor sellers)?

How does Buyer Power Ratio correlate with this deal point?

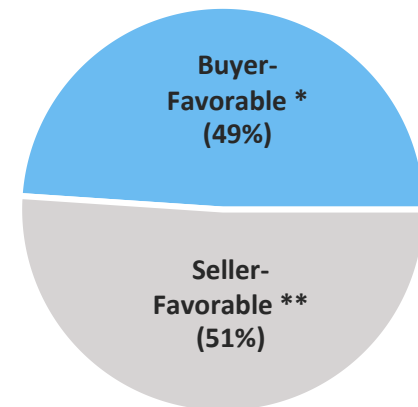
Buyer's contractual obligation to mitigate losses

ABA Data (2012, 2014)

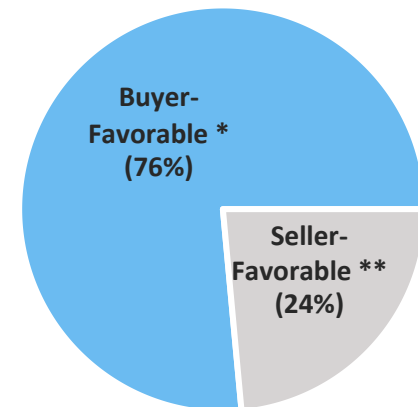


SRSA Data (2012 - 2016)

Buyer Power Ratio
< 10



Buyer Power Ratio
> 200



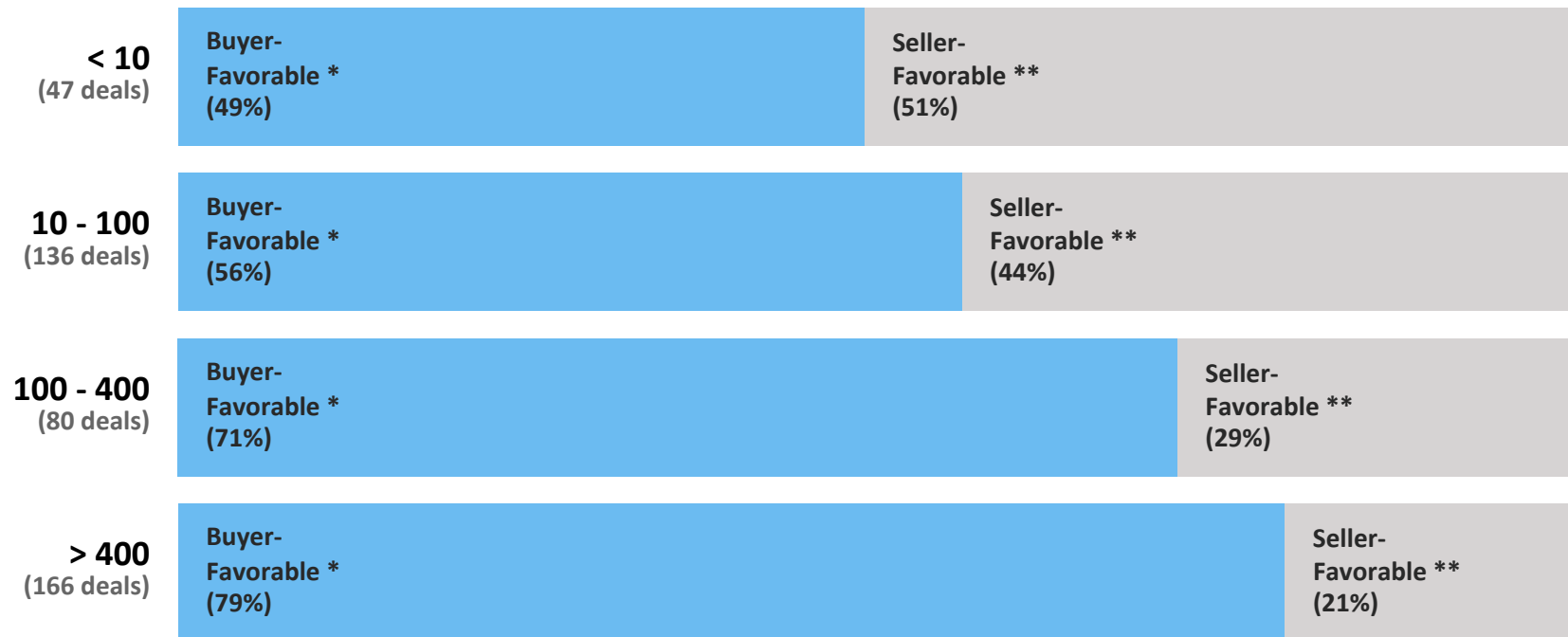
* Buyer-Favorable = agreement is silent or disclaims obligation to mitigate losses

** Seller-Favorable = Buyer has express obligation to mitigate losses

Buyer's contractual obligation to mitigate losses

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = agreement is silent or disclaims obligation to mitigate losses

** Seller-Favorable = Buyer has express obligation to mitigate losses

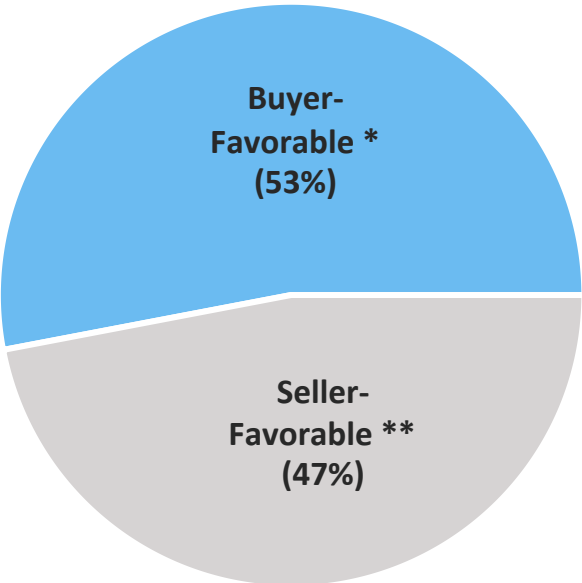
Buyer's indemnifiable losses reduced by tax benefits

Are the buyer's indemnifiable losses reduced by the amount of any tax benefits resulting from those losses (so as to favor sellers)?

How does Buyer Power Ratio correlate with this deal point?

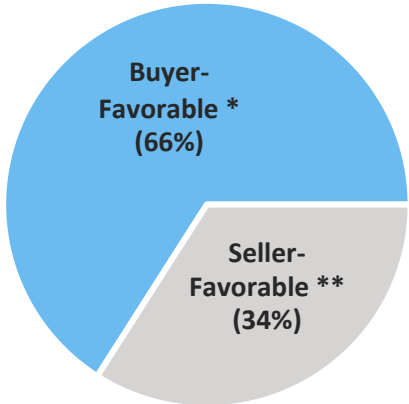
Buyer's indemnifiable losses reduced by tax benefits

ABA Data (2012, 2014)

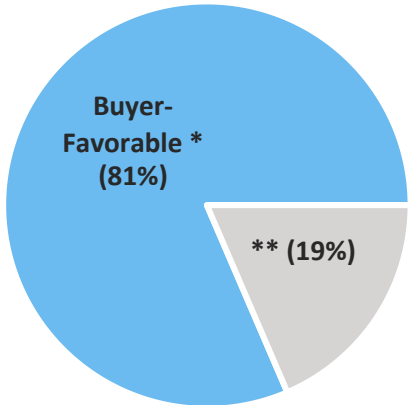


SRSA Data (2012 - 2016)

Buyer Power Ratio < 10



Buyer Power Ratio > 200



* Buyer-Favorable = agreement silent

** Seller-Favorable = Buyer's indemnifiable losses reduced by tax benefits

Buyer's indemnifiable losses reduced by tax benefits

SRSA Data (2012 - 2016)

Buyer Power Ratio



* Buyer-Favorable = agreement silent

** Seller-Favorable = Buyer's indemnifiable losses reduced by tax benefits

Appendix 1

Methodology for Merging ABA Study Data for 2012 and 2014

- The number of transactions in each category for each ABA Study was calculated by multiplying the percentage stated in the ABA Study by the total sample size for that study year.
- To create composite percentages for ABA Study Data (2012, 2014), the number of transactions in each category (Buyer- or Seller-Favorable) for 2012 and 2014 were added; the resulting sum was divided by the sum of the numbers of transactions surveyed in the two ABA studies.
- In cases where a specific subset of transactions was analyzed, the above calculations were carried out on the appropriate subsets.

NEW M&A DEAL POINTS STUDY INTRODUCES NOVEL TOOL FOR DEAL PARTIES – “BUYER POWER RATIO” (BPR)

Study Shows Strong Correlation Between “Buyer Power Ratio” and Parties’ Success in Negotiating Favorable Deal Terms -- When BPR Increases, Buyers Get Better Terms; When BPR Declines, Sellers Get Better Terms

SILICON VALLEY and DENVER, July 17, 2017- The M&A Committee of the American Bar Association’s Business Law Section and SRS Acquiom today announced the release of their first joint deal points study. The Joint Study is titled *“Impact of ‘Buyer Power Ratio’ on Selected M&A Deal Terms.”*

The Joint Study surveys M&A transactions involving publicly traded buyers and privately held target companies, and aims to address the same question other published deal points studies seek to address – *“what’s market?”* But it takes a new approach to answering this question.

The Joint Study differs from other deal points studies by recognizing that M&A transactions involving privately held target companies do not comprise a single, unitary market. Rather, according to the Joint Study, market practice can vary widely based on an important new metric. That metric -- the ratio of the size of the buyer to the size of the transaction – is called the “Buyer Power Ratio” or “BPR.” For example, an M&A transaction in which the size of the buyer, measured by its market capitalization, is 20 times the amount of the purchase price payable for the target company would have a BPR of 20.

The Joint Study utilizes, for its sample set of M&A agreements, SRS Acquiom’s sizable database of acquisition agreements in which that firm served as shareholders’ representative. Specifically, the survey sample consists of agreements in the SRS Acquiom database for M&A transactions completed between January 1, 2012, and December 31, 2016 (a total of more than 450 agreements). The Joint Study focuses on ten key provisions of these agreements -- ten different “deal points” -- that are negotiated by buyers and sellers of privately held target companies in M&A transactions. For every agreement in the Joint Study survey sample, each of these ten deal points was reviewed, analyzed and then characterized as either “buyer-favorable” or “seller-favorable.” Those results were correlated with the BPRs of the related M&A transactions.

The Joint Study shows that, for the ten deal points analyzed, buyers generally get more favorable terms as the Buyer Power Ratio increases. Conversely, sellers typically get more favorable deal terms as the Buyer Power Ratio falls.

The Founder and Chair of the Joint Study, Rick Climan, an M&A partner at Hogan Lovells US LLP and former Chair of the ABA Business Law Section’s M&A Committee, contends that this result is not surprising. “It stands to reason that a large buyer acquiring a relatively small company will typically enjoy greater negotiating leverage, and will typically be able to extract more favorable deal terms, than a smaller buyer buying a relatively large company. Market practice reflects this,” Climan remarked. “In trying to determine market practice, it normally wouldn’t make sense for the parties to a proposed M&A transaction with a BPR of 500 to look, for comparison purposes, at the terms of

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other M&A transactions with BPRs under 100. That's essentially a different market. In most cases, parties negotiating an M&A transaction are best guided by the terms of similar M&A transactions with BPRs in the same general range as the BPR for their own proposed transaction."

An example of how changes in BPR can signal major changes in the way deal terms are negotiated and resolved can be found in the Joint Study's analysis of the so-called "10b-5" and "full disclosure" representations. These are broad representations that, when included in acquisition agreements, are favorable to buyers and commensurately unfavorable to sellers. According to the Joint Study, a 10b-5 or full disclosure representation appeared in the acquisition agreement for only 35% of the M&A transactions surveyed with BPRs under 10. However, such a representation was included in 75% of the surveyed transactions with BPRs above 400. In other words, for this deal point, increases in BPR were linked with dramatic increases in the frequency of buyer-favorable outcomes.

Unlike the Joint Study, which surveys acquisition agreements in SRS Acquiom's proprietary database, some deal points studies limit their survey samples to publicly available acquisition agreements filed with the SEC. These studies, while providing useful information regarding the particular transactions they survey, tend not to capture deals with high BPRs. This is because M&A deals with high BPRs normally won't be material enough to the buyer to require publicly filing the acquisition agreement under applicable SEC regulations.

Paul Koenig, CEO of SRS Acquiom, who, along with Climan, Chaired the Joint Study, observed, "Deal points studies serve as an important tool in the practitioner's tool belt because they provide essential data on what is 'market' for particular issues. But, using this data can be perilous if it does not reliably indicate the expected outcome for the particular proposed deal that is currently on the table. By using SRS Acquiom's robust deal database, our new joint study was able to capture precedent deals with high BPRs as well as deals with lower BPRs. It provides a more representative sample of precedent deals."

Dr. Glenn Kramer, Chief Data Scientist at SRS Acquiom, who oversaw the analysis of the Joint Study data, noted, "Our analysis reveals that the positive correlation between BPR and buyer-favorable negotiation outcomes is unmistakable and extremely strong. BPR appears to have strong predictive power over a wide range of values."

The current Chair of the M&A Committee, Scott Whittaker of Stone Pigman Walther Wittmann L.L.C., said, "This study is a valuable supplement to the many other deal points studies prepared by the M&A Committee over the years. It breaks new ground. While BPR is not the only factor relevant to a buyer's negotiating leverage in an M&A transaction, this new metric will clearly provide significant assistance to M&A lawyers and other dealmakers seeking to better understand market practice."

Climan agreed. "Buyer Power Ratio is a powerful new tool for dealmakers. As more M&A practitioners get familiar with it, I think it's bound to influence the way future deal negotiations play out." He added, "I've always believed that M&A deal negotiators should rely more on reasoned analysis and pure logic, and perhaps less on isolated deal precedents, in staking out their negotiating positions on key issues. But to the extent they find it useful to consult statistics on market practice, they are better off using the

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Buyer Power Ratio to help them zero in on the precedents that matter the most. That's what makes this new study important.”

The Joint Study and its appendices (including descriptions of the methodology used in preparing the Joint Study and various important caveats) are available for download at <https://www.srsacquiom.com/resources/impact-of-buyer-power/>.

The Chairs of the Joint Study were advised in their efforts by the members of the Joint Study Advisory Group, Wilson Chu of McDermott Will & Emery and Jessica Pearlman of K&L Gates. The Joint Study Chairs plan to expand and update the Joint Study periodically by adding new deal points to the ones currently featured, and by adding M&A transactions completed after 2016 to the survey sample.

About the M&A Committee

The Mergers & Acquisitions Committee is a committee of the American Bar Association's Business Law Section, with approximately 5,000 members around the world. Rick Climan, the Founding Chair of the Joint Study, is a former Chair of the M&A Committee; Scott Whittaker is the current Chair. We welcome new members. To join the M&A Committee, please visit the website for the American Bar Association's Business Law Section, and follow the instructions there.

About SRS Acquiom

SRS Acquiom provides a comprehensive platform to manage escrows, payments, risk, documents, and claims on M&A transactions. Our team of experts works at the pace you do to deliver the solutions you need, when you need them. Our results are enabled by tailored service, technology, and data not available anywhere else. With more than 1,600 deals valued at over \$256 billion, we've made a business out of constant innovation with a singular purpose: helping deal parties and their advisors gain the freedom to do more.

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Tab 5

2024 Bios of Panelists

Richard “Rick” Climan

- Partner, Silicon Valley | Global Head of Tech M&A | Hogan Lovells

Richard E. Climan is a preeminent M&A lawyer who has handled some of the most prominent and industry-changing acquisitions in the tech and life sciences sectors over the past three decades. He has been described as "one of the best legal minds in M&A" and a "gold-standard transactional lawyer." He is Global Head of Hogan Lovells' Tech M&A practice and sits on the firm's global Mergers & Acquisitions Leadership Team.

Climan excels at negotiating and advising multinational clients on all types of acquisition transactions and related matters. In *Chambers USA*, he has a Band 1 ranking, being described by clients as "the dean of M&A," a "total star" and a "visionary." He has been recognized by *The National Law Journal* as one of its inaugural technology law Trailblazers and one of the 100 Most Influential Lawyers in America. From 2018 through 2022 he was named one of the Top 100 Lawyers in California by the *Daily Journal*, and in 2024 he was named by *Legal 500* to its inaugural Private Practice Powerlist in the M&A category.

Since bringing the M&A group he leads to Hogan Lovells, Climan has led many high stakes deals, including Walmart's ~US\$16 bn. cross-border acquisition of a 77% stake in Flipkart and Marvell Technology's acquisition of publicly traded Inphi, valued at ~ US\$10 bn.

As an adjunct faculty member at UCLA School of Law and a lecturer at UC Berkeley School of Law, Climan co-taught, with former Delaware Chief Justice Leo Strine, a course titled "Real World M&A."

For more than 25 years, Climan has been an active member of the ABA Bus. Law Section's M&A Committee, with over 5,000 members, serving as Committee Chair from 2002 to 2006. He co-chairs the ABA's annual Nat'l M&A Institute, now in its 26th year, and is the former Chair of the Northwestern Securities Regulation Institute, now in its 51st year. He is founding Chair of the "Buyer Power Ratio" deal points study, launched in 2017.

Climan lectures around the world on M&A-related matters and has presented at Harvard, Columbia, Stanford, UC Berkeley, Duke and University of Virginia law schools.

[continued on next page]



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richard.climan@hoganlovells.com

Education

J.D., cum laude, Harvard Law School, 1977
B.A., cum laude, Harvard College, 1974

Awards, recognition and thought leadership

500 Leading Dealmakers in America
– *Lawdragon* (2024)

Band 1, Corporate/M&A The Elite: (San Francisco, Silicon Valley, & Surrounds)
– *Chambers* (2024)

M&A Powerlist | United States
– *Legal 500* (2024, inaugural edition)

Top 100 Lawyers in California
– *Daily Journal* (2010-14, 2018-22)

Thought Leader, M&A and Governance
– *Who's Who Legal* (2024)

Hall of Fame – *Lawdragon* (2023)

Richard “Rick” Climan (*cont’d*)

- Partner, Silicon Valley | Global Head of Tech M&A | Hogan Lovells

Representative experience

Climan has advised (and led the representation of):

- **Marvell Technology** on several transactions, including:
 - its acquisition of Inphi in a transaction valued at ~ US\$10bn.
 - its acquisition of Cavium in a transaction valued at ~ US\$6bn.
 - its acquisition of Aquantia in a transaction valued at ~ US\$450m.
- **Walmart** in its ~ US\$16bn acquisition of a majority stake in Flipkart and its pending US\$2.3bn acquisition of VIZIO.
- **Sovos Brands** on its acquisition by Campbell’s Soup in a deal valued at ~ US\$2.7bn.
- **Intel Corporation** on its ~ US\$900m acquisition of Moovit.
- **Synopsys** on several transactions including:
 - its acquisition of Black Duck Software in a transaction valued at ~ US\$565m.
 - its acquisition of Magma Design Automation in a transaction valued at greater than US\$500m.*
- **Brocade Communications** in its acquisition of Foundry Networks in a transaction valued at more than US\$2.5bn.*
- **Dell** on several transactions, including:
 - its acquisition of Compellent Technologies for ~ US\$1bn.*
 - its acquisition of SecureWorks.*
- **The Los Angeles Dodgers** in their sale to a consortium led by Guggenheim Partners for ~ US\$2.15bn.*
- **Oracle** in its acquisition of Responsys for ~ US\$1.5bn.*
- **Sabre** in its acquisition of Radixx, valued at ~ US\$110m.
- **Illumina** in its successful defense against Roche’s ~ US\$6.2bn hostile takeover attempt.*
- **Aspect Development** in its sale to i2 Technologies in a transaction valued at ~ US\$9bn.*
- **VeriFone** in its sale to Hewlett-Packard in a transaction valued at greater than US\$1bn.*
- **Blackboard** in its sale to a private equity group led by Providence Equity Partners for more than US\$1.6bn.*
- **Alibaba.com** in its acquisition of Auctiva.*
- **Twilio** in its acquisition of Authy.*
- **Ant Financial** in its acquisition of EyeVerify.*



Awards, recognition and thought leadership (*cont’d*)

Technology Law Trailblazer – *National Law Journal* (2019)

California Trailblazer – *The Recorder* (2019)

Highly Regarded for M&A – *IFLR1000* (2024)

Leading Lawyer for M&A: Large Deals (\$1bn+) – *Legal 500* (2024)

TMT Deal of the Year award (for the Walmart/Flipkart transaction)
– *Asia Legal Awards* and *FinanceAsia* (2018)

US Innovative Lawyers
– *Financial Times* (2011, 2017, 2019)

Founding Chair, “Buyer Power Ratio” Deal Points Study –
ABA/SRS Acquiom (2017)

Legends of the 500 – *Lawdragon* (2015)

*Matter advised on prior to joining Hogan Lovells.

Keith Flaum

- Partner, Silicon Valley | Co-Head of Americas M&A | Hogan Lovells

Keith Flaum is a leading M&A lawyer with more than 30 years of experience representing publicly traded and privately held companies in domestic and cross-border merger and acquisition transactions and complex joint ventures, with a particular emphasis on representing information technology and life sciences companies. He is a trusted adviser to boards of directors and special committees in the M&A context. Flaum serves as the firm's Co-Head of M&A for the Americas and a member of the firm's Global M&A Leadership Team.

Flaum's recent experience includes more than US\$100 billion of M&A activity for some of the world's top technology companies, handling groundbreaking deals throughout the United States, Europe, Asia, the Middle East, and elsewhere.

Legal guides consistently recognize Flaum as one of the top legal minds in M&A. *Chambers USA* ranks him in their highest tier, Band 1, for California Corporate/M&A. In 2021, *Who's Who Legal* named Flaum as one of seven M&A Global Elite Thought Leaders in the U.S. and the *Daily Journal* named him one of the top 100 lawyers in California. In 2019, the *LMG Life Sciences Guide* deemed him a "Life Sciences Star." In 2016, *The National Law Journal* named him a "Trailblazer" in M&A. *Law360* has recognized him as both a "Technology MVP" and "M&A MVP."

Flaum has been actively involved for more than 15 years in the M&A Committee of the ABA's Section of Business Law, including as Vice Chair of the Committee, Chair of the Market Trends Subcommittee, Co-Chair of the International M&A Subcommittee, and a member of the Subcommittee on Acquisitions of Public Companies.

Representative experience

Flaum has advised:

- Oracle** on its US\$28bn acquisition of Cerner Corporation.
- RF Micro Devices** on its US\$1.6bn merger of equals with TriQuint Semiconductor.*
- Dialog Semiconductor** on its US\$276m acquisition of Silego Technology and its US\$500m acquisition of Adesto Technologies.
- Wise Road Capital** on its US\$1.4bn acquisition of Magnachip Semiconductor (terminated).
- Facebook** on its US\$16bn acquisition of WhatsApp.*
- Sovos Brands** on its acquisition by Campbell's Soup in a deal valued at US\$2.7bn.
- Equifax** on its US\$596m acquisition of Boa Vista Serviços in Brazil.
- The Anschutz Corporation** in respect of the US\$5.8bn acquisition of Regal Entertainment Group by Cineworld Group plc.
- Zendesk** on its terminated acquisition of Momentive in a stock-for-stock transaction with a reported value in excess of US\$4bn.



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Education

J.D., University of California, Davis School of Law, 1989
B.A., University of California, Los Angeles, 1986

Awards and rankings

Legends of the 500
- *Lawdragon* 2021

Band 1, Corporate/M&A The Elite: (San Francisco, Silicon Valley, & Surrounds)
- *Chambers* (2024)

M&A Powerlist | United States
- *Legal 500* (2024, inaugural edition)

Leading Lawyer: M&A: Large Deals (\$1BN+)
- *Legal 500* (2024)

Thought Leader, M&A and Governance
- *Who's Who Legal* (2024)

*Matter advised on prior to joining Hogan Lovells.

The logo consists of the words "Hogan Lovells" in a black serif font, stacked vertically within a solid lime green square.

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