
From: Wannemacher, Ryan F. - Dir Financial Planning & Analysis <wannrf@jea.com>
Sent: Thursday, December 21, 2017 9:06 AM
To: Michael Mace
Subject: Fwd: Follow up Info #3

Sent from my iPhone

Begin forwarded message:

From: "Gredell, Jason" <jason.gredell@jpmchase.com>
To: "Wannemacher, Ryan F. - Dir Financial Planning & Analysis" <wannrf@jea.com>
Subject: Follow up Info #3

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Utility and General M&A trends

This message is confidential and subject to terms at: <http://www.jpmorgan.com/emaildisclaimer> including on confidentiality, legal privilege, viruses and monitoring of electronic messages. If you are not the intended recipient, please delete this message and notify the sender immediately. Any unauthorized use is strictly prohibited.

ELECTRIC AND GAS UTILITY MERGERS AND ACQUISITIONS: TRENDS IN DEAL TERMS, CONTRACT PROVISIONS, AND REGULATORY MATTERS

*William S. Lamb & Michael Didriksen**

Synopsis: Recent economic and competitive factors in the industry have accelerated the long-term trend towards consolidation in the investor-owned electric and gas utility sector, as a result of which a “seller’s market” has evolved, with rising valuations and increasingly seller-friendly contract terms. This article explores these developments in the context of mergers and acquisitions announced during the past four years involving investor-owned electric and gas utilities in the United States.

I. Introduction.....	133
II. Valuation	135
III. Reverse Break-Up Fees.....	136
IV. Contract Terms.....	137
V. Contract Provisions Relating to Damages and Willful Breach	139
VI. Regulatory Orders.....	140
A. Pepco/Exelon.....	141
B. CLECO/Macquarie/BCIMC.....	143
C. UIL/Iberdrola.....	144
D. HEI/NextEra.....	145
VII. Conclusion.....	147
Exhibit A: Selected Electric and Gas Utility Mergers and Acquisitions	148
Exhibit B: Risk Allocation re Regulation Approvals in Selected Utility Mergers and Acquisitions.....	152
Exhibit C: Effect of Willful Breach in Selected Utility Mergers and Acquisitions.....	158

I. INTRODUCTION

United States investor-owned gas and electric utility companies have been consolidating for more than 100 years. In the early twentieth century there were more than one thousand investor-owned utilities in the United States.¹ By 1980

* Messrs. Lamb and Didriksen are Partners at Baker Botts L.L.P. The views expressed in this article are strictly the personal views of the authors and not the views of Baker Botts L.L.P., its clients or any other person.

1. H. Lee Willis & Lorrin Philipson, *Understanding Electric Utilities and De-Regulation* 91 (CRC Press 2006).

there were only 238 investor-owned utilities in the United States.² Ten years later, the number had dropped to 206, and by 2000 it was below 190.³ In 2005, the Public Utility Holding Company Act of 1935 was repealed and the long-term trend toward utility consolidation accelerated. Today, there are approximately fifty-five investor-owned electric utilities and approximately the same number of investor-owned gas utilities in the United States, although the gas companies are, on average, much smaller than the electric companies.⁴

The current wave of consolidation appears to have begun relatively slowly in the late 1980s, and gained momentum during the 1990s, driven in part by the Energy Policy Act of 1992 and electric industry restructuring initiatives that were taking place in many states. This wave of consolidation crested in 1999 when approximately thirty transactions were announced. In the early 2000s, merger and acquisition activity was severely depressed due to the stock market decline, the Enron bankruptcy, and the related dislocations in wholesale power markets, including the power crisis in California. From 2004 to 2008, activity was relatively steady with six to ten major transactions announced each year. Activity declined again in 2009 during the economic downturn, but has recovered modestly since then with approximately four major transactions per year.

During the past four years, there have been over \$115 billion of merger and acquisition activity involving publicly traded electric and gas utility companies in the U.S.⁵ About 80% of these transactions involved electric or combination electric and gas companies, with the remaining 20% being local gas distribution companies. Several factors are driving this activity. The broader wave of consolidation is being driven by managements and boards of directors in search of new revenue in an era of little or no growth in electrical load and the economic efficiencies available to larger companies, together with a desire for regulatory and geographic diversity. During the past seven or eight years, activity has also been driven by historically low interest rates which facilitated relatively easy acquisition financing. These factors, combined with a shrinking pool of potential acquisition candidates, resulted in a “seller’s market” where there are often many potential suitors for each available company. Companies that seek multiple bids before entering into transactions benefit from robust competition among potential acquirers.

This seller’s market resulted in significant evolution in market norms for key transaction terms. Perhaps most important from an investor’s perspective are valuations, which have risen to unprecedented levels. Another important development is the shift toward highly seller-friendly contract terms. In particular, buyers have assumed progressively more of the regulatory risk associated with these transactions. So-called “reverse break-up fees” that require a buyer to make a substantial payment to the seller in the event a transaction fails to close under circumstances in which all required regulatory approvals have not been obtained

2. *Id.*

3. *Id.*

4. S&P Capital IQ/SNL Energy database.

5. Vincent Kruger, *US Utilities Saw More Mergers and Acquisitions in 2015*, MARKET REALIST (Dec. 18, 2015), <http://marketrealist.com/2015/12/us-utilities-see-boosted-mergers-acquisitions-2015/>.

have become fixtures in merger agreements. Buyers also have assumed progressively greater amounts of regulatory risk in the covenants and closing conditions relating to regulatory approvals. Exhibits A and B below summarize key provisions of the major mergers and acquisitions involving regulated electric and gas companies that have been announced in the past four years. Key trends associated with these transactions are discussed in more detail below.

II. VALUATION

Valuations can be assessed using a variety of methods. One commonly cited metric is the premium the acquisition price represents relative to the market price of the target company's stock before the transaction was announced. This number is easy to calculate and understand. It tells a shareholder how much more he or she can obtain for a share of stock as a result of the transaction. However, the premium to market is subject to wide variation due to a variety of factors, not the least of which is market expectations about whether a company is likely to enter into a transaction. Consequently, other measures are more meaningful when comparing valuations among different transactions. Acquirers and financial advisers typically assess valuations by comparing the acquisition price to financial metrics of the target company such as historical and expected earnings and EBITDA. Another commonly used method is based on the expected discounted cash flow (DCF) of the target company. Performing a DCF analysis is a complicated process that requires a high degree of financial expertise as well as access to non-public information about a company's business plan and internal financial projections. For purposes of this discussion, we limit our analysis to three commonly used valuation measures that are relatively easy to calculate based on publicly available information: acquisition price as a multiple of (1) expected earnings for the next year, (2) the previous year's earnings and (3) EBITDA for the previous year. The chart below details how these multiples have changed during the past twelve years.

Average Valuation Multiples - Electric and Gas Utility Mergers and Acquisitions (January 1, 2005 - March 1, 2017)				
Year(s)	Number of Transactions	Forward 12 Months P/E	Last 12 Months P/E	Transaction Value/EBITDA
2017	2	30.5	31.8	13.4
2016	4	22.1	25.5	11.7
2015	4	25.3	28.6	11.5
2014	4	19.6	19.0	9.1
2013	2	19.3	18.9	8.9
2005 - 2012	11	19.0	18.4	10.2

As this chart shows, during the eight years ending in 2012, average multiples were below any of the averages for any subsequent year. In 2015, multiples jumped significantly and have generally held in that range into the beginning of 2017.

III. REVERSE BREAK-UP FEES

Another trend worth commenting on is the appearance of reverse break-up fees in transactions involving regulated companies. These provisions require the buyer to pay a fee to the seller in the event the transaction does not close for specified reasons, typically either a financing failure or a failure to obtain required regulatory approvals. Reverse break-up fees have been common for some time in transactions outside the utility industry. Initially, these provisions were used to provide private equity buyers with a way to get out of a transaction if for some reason their financing was not available when it came time to close. The mechanism spread to transactions involving strategic buyers, where a buyer would be required to pay the fee if it did not obtain the necessary anti-trust clearance for the transaction. Since these fees are generally at least 2.5%, and often more than 5%, of the equity value of the transaction, a reverse break-up fee creates a strong incentive for a buyer to do whatever is necessary to close a transaction, including obtaining antitrust clearance and the other regulatory approvals.

At first, reverse break-up fees were seen in energy and utility transactions only in competitive bidding situations where a buyer intended to obtain financing for the transaction. These fees typically would be triggered only in the event of a financing failure. Beginning with the Pepco/Exelon transaction in 2014, however,

a reverse break-up fee was payable upon the failure to obtain the required regulatory approvals, and since that time this approach has become common in electric and gas utility acquisitions. In the Pepco transaction, the reverse break-up fee was structured as a mandatory purchase by Exelon of a block of preferred stock that was redeemable by Pepco at its original purchase price in the event regulatory approvals were obtained, and for no consideration if all regulatory approvals were not obtained. Since then, eleven of the thirteen major announced transactions (AGL/Southern Company and UIL/Iberdrola being the two exceptions) have included some form of reverse break-up fee, and in the HEI/NextEra transaction it was ultimately triggered when the Hawaiian regulators refused to approve the transaction. Fees have ranged in size from a low of 2.60% of equity value in the Pepco/Exelon deal to a high of 5.35% in Cleco/Macquarie. Exhibit A provides more detail regarding the size of these fees and how they compare to the primary break-up fee for the target company.

IV. CONTRACT TERMS

Another significant trend in the last four years has been the seller-friendly evolution of contract terms. Although this trend is apparent in many provisions in definitive acquisition agreements, it is perhaps most stark in the provisions that specify (1) the efforts that an acquirer must expend in attempting to obtain the necessary regulatory approvals and satisfy any other conditions precedent to closing and (2) the magnitude of adverse terms and conditions that an acquirer is required to accept in the required regulatory orders.

The provision that specifies the level of effort that must be expended is typically a covenant that applies to both parties. As a practical matter, however, the burden of these efforts falls largely on the acquirer. A corollary provision specifies the circumstances under which the acquirer will not be required to move forward with the transaction in the event that one or more of the regulatory approvals contains materially adverse terms and conditions.

As the Exhibit B chart attached shows, until the TECO/Emera transaction in September 2015, the standard in the regulatory approvals covenant was almost always to use “reasonable best efforts to take all actions and to do all things necessary, including [a litany of specified actions]” in order to obtain the necessary regulatory approvals and satisfy the other conditions to closing. Beginning with the TECO/Emera transaction and continuing with several others since that time, this formulation has changed slightly to require the acquirer to “take all actions and do all things necessary” including “using reasonable best efforts” to eliminate any specified litany of impediments to closing the transaction. Coupled with changes that were simultaneously taking place in triggers for paying reverse break-up fees, these changes arguably constitute a significant change in the level of regulatory risk being assumed by acquirers.

The discussion above highlights the trend towards reverse break-up fees in the case where the parties fail to obtain the required regulatory approvals. But what happens when the approvals are obtained but impose significant unwanted burdens on the company going forward? There are three basic outcomes here, and again the recent trend has favored the sellers.

Historically, the closing conditions in the acquisition agreement typically provided that if the regulatory orders contained what was often referred to as a “burdensome condition” (effectively conditions in the regulatory order that would result in a material adverse effect on the target company), the acquirer would not have any obligation to close. The concept of a burdensome condition is similar to the concept of a Material Adverse Effect (MAE), which is a more general protection against material adverse developments that gives acquirers some protection in virtually every acquisition agreement. Courts interpreting these so-called MAE clauses have been consistent in finding that an MAE is a high standard to satisfy. There are few if any cases where a court has concluded that an MAE has occurred; all of the major cases have found that no MAE has occurred.⁶ Carrying this principle over to the concept of burdensome condition, although there is little or no judicial guidance about how to determine what constitutes a burdensome condition, there is certainly a basis for arguing that a burdensome effect must be something of major significance, probably much more than merely “material.” Consequently, the typical provisions in definitive agreements relating to the required regulatory approvals were seller-friendly to begin with. That being said, the typical approach until recently had been that if a burdensome condition was imposed, not only did the acquirer not have any obligation to close, it also would not have any liability for failure to close. Recently, this approach has evolved with two alternatives, both of which impose greater risk on the acquirer.

The first alternative approach was originally seen in the Pepco/Exelon transaction in April 2014, which was the first transaction to contain a reverse break-up fee. There, the acquirer was not obligated to close if one or more of the regulatory orders contained a burdensome condition, but if the transaction ultimately terminated because the so-called “drop dead date” passed, then the acquirer was obligated to pay the reverse break-up fee. The effect of this approach is to give the acquirer time to attempt to obtain modifications to the order, but the risk of a regulatory order containing a burdensome condition still lies with the acquirer. Essentially, payment of the reverse break-up fee is a “hell or high water” provision.

In the next three transactions with reverse break-up fees that followed the Pepco/Exelon transaction, Integrys/WEC, Cleco/Macquarie, and HEI/NextEra, the approach taken reverted to the more typical formulation seen historically: i.e., even though a reverse break-up fee was included in these deals, there was no liability for the acquirer if the regulatory orders were obtained, but the transaction did not close because one or more of them contained a burdensome condition. This formulation evolved yet again in the TECO/Emera transaction. There, the entire concept of a burdensome condition was absent, and as a result the acquirer had to accept whatever burdens the regulators imposed in the regulatory approvals, without the ability to defer closing in hopes of obtaining a revised order with better terms. Not only did the reverse break-up fee have to be paid if the acquirer refused to close due to the conditions in the approval, the acquirer’s liability was not limited to the fee in this circumstance—rather the seller could also sue for damages on top of the reverse break-up fee.

6. See, e.g., *IBP v. Tyson Foods*, 2001 Del. Ch. LEXIS 81 (June 15, 2001); *Hexion Specialty Chemicals v. Huntsman*, C.A. No. 3841-VCL, 2008 WL 4457544 (Del. Ch. Sept. 29, 2008).

Since the TECO/Emera transaction, the approach taken for deals with reverse break-up fees has followed either the Pepco/Exelon approach or the TECO/Emera approach, with Piedmont/Duke, Questar/Dominion, Empire District/Algonquin, and Westar/Great Plains following the approach taken in Pepco/Exelon, and ITC/Fortis following TECO/Emera. The effect of this evolution is that acquirers are assuming even more regulatory risk than was the case just a few years ago.

V. CONTRACT PROVISIONS RELATING TO DAMAGES AND WILLFUL BREACH

Although there is no clear trend apparent in the evolution of provisions relating to breaches and remedies in the past few years, an interesting question in any transaction is what remedies are available in the event of a breach of the agreement by one of the parties. As discussed above, most agreements provide for payment of a break-up fee or a reverse break-up fee in the event that certain closing conditions are not satisfied. However, the triggers for payment of these fees do not encompass all of the possible problems that might arise.

A preliminary issue is what remedies should be available for a breach of the agreement. While one might think that any breach necessitates a remedy, the typical approach in these transactions has been to state that if the agreement is terminated, there are no remedies unless there has been a willful (or some similar formulation) breach. Attached as Exhibit C is a chart that details the relevant provisions relating to willful breach and the remedies available, including whether break-up or reverse break-up fees are payable. As shown in the chart, the concept of willful breach was often not defined, but after the issue was the subject of some judicial decisions in the Delaware Court of Chancery (in a non-utility context),⁷ parties began to focus on defining what willful breach means. While the definitions have varied, they tend to focus on situations where the acts of the breaching party appear to indicate that the breaching party knew that a breach would follow as a consequence of its actions. As a result, in these transactions it appears that, for example, in the event of a breach of the seller's representations and warranties that is not willful (e.g. a mistake or a breach that simply evolves because of changed circumstances) but is nonetheless quite significant, the buyer does not have any remedy beyond terminating the transaction.

Also shown in the chart is that if a willful breach has occurred, it often has an effect on what remedies may be available. For example, in some agreements in circumstances where there has been a willful breach and a break-up fee or reverse break-up fee is payable, the other party may be entitled to seek damages in addition to the fee. See, for example, Westar/Great Plains and Empire District/Algonquin, although in the latter agreement this "adder" of damages on top of the fee only applies to the Reverse Break-up Fee.

In several transactions, the existence of a willful breach allows the seller to seek to recover the lost premium to its shareholders as part of its damages claim if a willful breach occurs. This feature first appeared in the TECO/Emera transaction and was also used in ITC/Fortis, Empire District/Algonquin, and Westar/Great Plains.

7. See, e.g., *Hexion Specialty Chemicals*, 2008 WL 4457544.

As noted above, it is difficult to discern a pattern with these provisions beyond the use of greater specificity around defining willful breach and the general trend towards more seller-friendly terms. What can be said is that there are various permutations to these provisions that should be carefully evaluated during the negotiations.

VI. REGULATORY ORDERS

Although not necessarily definitive trends, there also are some developments worth commenting on with respect to the regulatory proceedings relating to utility mergers. With the exception of 2014, when a particularly difficult set of transactions appears to have been announced (which are discussed in more detail below), the regulatory approval process for electric and gas utility mergers seems to have become much more expeditious. Anecdotally, we believe that this is because regulators have become more accepting that the benefits of mergers are real, that they understand the most significant risks associated with mergers, and that they have become more comfortable with regulatory mechanisms for capturing benefits and mitigating risks. In a similar vein, a somewhat standard menu of commitments by the acquirers in these transactions has developed such that, while not all of them are present in any particular transaction, the parties and the regulators know and expect that certain types of commitments will be made.

The regulatory approvals typically required in connection with a merger or acquisition of two regulated utilities include clearance from the Department of Justice or the Federal Trade Commission under the Hart Scott Rodino Antitrust Improvements Act of 1976, the approval of FERC under the Federal Power Act (generally required only if an electric utility is involved in the transaction)⁸, approval from the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (only if a nuclear licensee is involved in the transaction), approval from the Federal Communications Commission (FCC) (required because most utilities have radio licenses subject to FCC jurisdiction) and the approval of one or more state commissions. The commitments made in connection with obtaining state regulatory approval often include some of the following commitments:

- Maintaining the target's headquarters in its current location;
- Agreeing to a rate freeze for a specified time period;
- Committing to no-layoffs among the target's work force for a specified time period;
- Committing to maintain compensation and benefit levels for the target's employees;
- Ring fencing the target from financial risk associated with the acquirer's other business activities;
- Agreeing that transaction costs and premiums can't be recovered in rates;
- Agreeing to maintain the existing management structure at the target;

8. A number of predominately gas companies have interests in electric generating companies that are considered to be public utilities and thus trigger FERC approval requirements under the Federal Power in the event of a merger of acquisition. (E.g., ETE/Southern Union).

- Committing to rate credits for the target's customer base; and
- Agreeing to maintain community organizations/commitments of the target.

Most of the twelve transactions that have been completed since 2012 went through the regulatory approval process relatively smoothly, but a handful of them seemed to have been more contentious, and another transaction (NextEra/HEI) was eventually terminated due to an inability to obtain the requisite approvals. These are discussed briefly below.

A. Pepco/Exelon

Exelon Corporation and Pepco Holdings announced their proposed combination in April of 2014.⁹ The transaction required approval from utility regulatory commissions in the District of Columbia, Delaware, Maryland, New Jersey and Virginia. By August 2015, the transaction seemed to be on course to close well before year-end, having obtained all approvals except the District of Columbia Public Service Commission (DCPSC). However, on August 27, 2015 the DCPSC issued an order denying approval for the transaction.¹⁰

In its order the DCPSC expressed concerns that the proposed management structure would diminish Pepco's role and ability to make decisions responding to the needs of D.C. ratepayers and policy directives, and that the proposed merger, taken as a whole, did not meet the District's threshold for a net public benefit, rather than a simple no harm standard.¹¹ The Commission acknowledged that there would be benefits associated with the merger, but also expressed concern about potential harms that could result from the transaction.¹² On balance, the Commission concluded that the potential benefits did not outweigh the potential harms and consequently rejected the transaction.¹³ One Commissioner dissented on the grounds that the other Commissioners had not sufficiently explored the potential to mitigate deficiencies in the merger by imposing conditions on the parties and did not provide guidance regarding how the Commission's concerns could be addressed.¹⁴

Not surprisingly, the companies launched an intensive effort to obtain approval of the transaction, including filing a request for rehearing on September 28th, and, following that up in October, with a settlement agreement with the Mayor of the District and other key constituencies that included significant enhancements to the proposed package of benefits to customers and others in the

9. Press Release, Pepco Holdings, Exelon to Acquire Pepco Holdings, Inc., Creating the Leading Mid-Atlantic Electric and Gas Utility (Apr. 30, 2014), <http://www.pepcoholdings.com/library/templates/Interior.aspx?Pageid=87&id=6442454881>.

10. Opinion and Order at 171, In re Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Elec. Power Co., Exelon Energy Delivery Co. LLC And New Special Purpose Entity, LLC, Formal Case No. 1119 (D.C. Pub. Serv. Comm'n 2015), http://edocket.dcpsc.org/pdf_files/commorders/orderpdf/orderdemo_17947_FC1119.pdf.

11. *Id.* at 170.

12. *Id.* at 158-59.

13. *Id.* at 160.

14. *Id.* at Attachment Pg. No. 7.

District.¹⁵ Following the settlement, the Mayor, the D.C. Council and numerous others came out in public support of the transaction.¹⁶ Opponents of the transaction also weighed in, causing the Commission to reopen the record in the proceeding so that it could consider additional evidence regarding the settlement agreement. The Maryland Attorney General also made an unsuccessful effort to have the Maryland PSC's approval of the transaction vacated.

On February 26, 2016, the DCPSC, by a two to one vote, rejected the proposed settlement, but also presented a series of conditions that, if accepted by the parties would result in automatic approval of the deal.¹⁷ An intense few weeks followed. After some of the parties said they would not agree to the conditions, Exelon and Pepco offered additional benefits. On March 23rd, in a vote that surprised many observers, the Commission voted, again with one dissent, to approve the merger, subject to the conditions that it had offered in its February 26th order.¹⁸ The transaction closed later that day.

In order to obtain the DCPSC's approval, Exelon committed, among other things, to the following:

- Rate credits to customers totaling some \$39.6 million, of which \$14 million would be paid out within sixty days of closing with the remainder used to offset any distribution rate increases that may be approved in the future;
- Exelon agreed to establish a fund of approximately \$47.2 million to subsidize grid modernization projects and energy efficiency and conservation initiatives;
- Any transaction costs and premiums cannot be recovered in Pepco's rates;
- For a period of ten years following the closing, Exelon agreed to make charitable contributions and maintain traditional local community support activities that exceed the levels provided by Pepco in 2014;
- Pepco is to forgive all residential customer accounts in arrears for more than two years;
- Implementation of ring-fencing measures to insulate Pepco and its customers from risks associated with Exelon's non-regulated operations;
- Exelon is to honor Pepco's existing commitments to workforce diversity and all existing collective bargaining agreements;

15. Press Release, Pepco Holdings, Exelon And Pepco Holdings File For Reconsideration of Their Merger (Sep. 28, 2015), <http://www.pepcoholdings.com/library/templates/Interior.aspx?Pageid=87&id=6442457994>; Press Release, Pepco Holdings, Pepco Holdings And Exelon Reach Merger Settlement With D.C. Gov't (Oct. 6, 2015), <http://www.pepco.com/library/templates/interior.aspx?pageid=6442454157&id=6442458056>.

16. Press Release, Pepco Holdings, Pepco Holdings And Exelon Reach Merger Settlement With D.C. Gov't (Oct. 6, 2015), <http://www.pepco.com/library/templates/interior.aspx?pageid=6442454157&id=6442458056>.

17. Suzanne Herel, *DCPSC: Will OK Exelon-Pepco Deal for Additional Concessions*, RTO INSIDER (Feb. 26, 2016), <https://www.rtoinsider.com/dc-psc-oks-exelon-pepco-22536/>.

18. Press Release, Exelon Corp., Pepco Holdings And Exelon Close Merger Following Approval By The Pub. Serv. Comm'n Of The D.C. (Mar. 23, 2016), <http://www.exeloncorp.com/newsroom/merger-close>.

- For a period of five years Exelon committed that there would be no net involuntary workforce reductions at Pepco;
- Exelon committed \$5.2 million to fund development programs in the District for employees;
- Exelon will re-locate its corporate headquarters to the District by January 1, 2018; and,
- Exelon committed to facilitate the development of 7 MW of solar generation in DC by December 31, 2018, and to purchase 100 MW of wind energy in the PJM Interconnection LLC.¹⁹

B. CLECO/Macquarie/BCIMC

The Cleco transaction was announced in October of 2014 and required the approval of the Louisiana Public Service Commission (LPSC).²⁰ As part of its initial filing with the LPSC, Cleco, its public utility subsidiaries and the investor group making the acquisition proposed ring-fencing commitments intended to insulate Cleco Power from its parent companies and affiliates, and confirmed that Cleco Power President Darren Olagues would become President and CEO of Cleco.²¹ They also committed that the company's headquarters would remain in Pineville, Louisiana following completion of the transaction, and that Cleco would continue to operate as an independent company led by local management, with no changes to the company's operations, staffing levels, compensation levels or employee and retiree benefits programs as a result of the transaction.²²

The parties were initially optimistic that they could close the transaction during 2015; however, the LPSC staff did not file its testimony in the proceeding until the end of July 2015, more than five months after Cleco and the investor group filed the initial application. Moreover, the staff recommended that the transaction not be approved, although it offered a litany of conditions that might mitigate its concerns.²³ Many of these conditions were directed at mitigating financial risks to Cleco. Subsequent to the staff's testimony, Cleco and the investors proffered two rounds of enhanced commitments to customers and other constituencies. The cumulative additional enhancements included a \$125 million rate credit, a series

19. Pub. Serv. Comm'n of the D.C., Matrix of Commitments From the Pepco-Exelon Merger FC 1119 2016-E-1615 Order No. 18160 Attachment B (2016), <http://dcpssc.org/PSCDC/media/PDFFiles/MergerConditionTrackingMatrix10172016.pdf>.

20. Press Release, Cleco Co., Cleco Enters Agreement to be Acquired by North Am. Inv. Group Led by Macquarie Infrastructure and Real Assets and Brit. Colum. Inv. Mgmt. Corp. (Oct. 20, 2014), https://www.cleco.com/newsroom/-/asset_publisher/BUN21WHLp8es/content/cleco-enters-agreement-to-be-acquired-by-north-american-investor-group-led-by-macquarie-infrastructure-and-real-assets-and-british-columbia-investment.

21. *Id.*

22. *Id.*

23. Press Release, Cleco Co., Cleco and North Am. Inv. Group Led by Macquarie Infrastructure and Real Assets and Brit. Colum. Inve. Mgmt. Corp. Near Final Stages of State Reg. Approval Process (Oct. 2, 2015), https://www.cleco.com/newsroom/-/asset_publisher/BUN21WHLp8es/content/cleco-and-north-american-investor-group-led-by-macquarie-infrastructure-and-real-assets-and-british-columbia-investment-management-corporation-near-fi.

of financial undertakings designed to preserve Cleco Power's investment grade credit rating and protections for employees.²⁴

Notwithstanding the additional concessions, the LPSC rejected the transaction in February of 2016.²⁵ The parties sought a rehearing of the decision and simultaneously offered up additional commitments in connection with the merger. The key additional commitments offered up included the following:

- \$136 million in ratepayer credits (an increase from the \$100 million initially offered), translating to an average of \$500 for every residential and small business customer; and,
- A guaranty that Cleco would not file for a rate case prior to June 30, 2019, with any new rates not taking effect until July 1, 2020²⁶.

On March 28, 2016, the LPSC approved the transaction on the basis of the revised commitments, and the transaction proceeded to closing on April 13, 2016.²⁷

C. UIL/Iberdrola

Iberdrola USA's proposed acquisition of UIL Holdings Corporation was unveiled on February 25, 2015.²⁸ The transaction was subject to approval by the public utility commissions in Connecticut and Massachusetts. Filings were made in Connecticut and Massachusetts on March 25, 2015, and the proceedings appeared to be moving along quickly at first, with hearings scheduled within a few weeks after the filings.²⁹ Then at the end of June, the Connecticut Public Utilities Regulatory Authority (PURA) issued a draft of a decision denying approval of the transaction.³⁰ Key reasons cited by the PURA for its position were concerns about whether the utility would be locally managed following the merger, a lack of concrete benefits for customers and the absence of any studies regarding potential

24. Press Release, Cleco Co., Cleco and Inv. Group Enhance Commitments to Create Additional Value for Customers and Obtain Approval of the La. Pub. Serv. Comm'n (Jan. 4, 2016), https://www.cleco.com/newsroom/-/asset_publisher/BUN21WHLp8es/content/cleco-and-investor-group-enhance-commitments-to-create-additional-value-for-customers-and-obtain-approval-of-the-louisiana-public-service-commission.

25. Press Release, Cleco Co., Cleco and North Am.-led Inv. Group Issue Statement in Response to La. Pub. Serv. Comm'n's Decision Regarding Transaction (Feb. 24, 2016), https://www.cleco.com/newsroom/-/asset_publisher/BUN21WHLp8es/content/cleco-and-north-american-led-investor-group-issue-statement-in-response-to-louisiana-public-service-commission-s-decision-regarding-transaction.

26. Cheryl Kaften, *Louisiana PSC Approves Sale of Cleco, Conditional on \$136M in Customer Credits*, ENERGY MANGER TODAY (Apr. 4, 2016), <https://www.energymanagertoday.com/louisiana-psc-approves-sale-of-cleco-conditional-on-136-million-in-customer-credits-0122879/>.

27. Press Release, Cleco Co., State regulators approve sale of Cleco (Mar. 28, 2016), https://www.cleco.com/newsroom/-/asset_publisher/BUN21WHLp8es/content/state-regulators-approve-sale-of-cleco.

28. Press Release, Iberdrola USA, Inc., Iberdrola USA to Combine with UIL (Feb. 25, 2015).

29. Letter from Bob Kump, CCO Iberdrola USA Inc., to Iberdrola USA Inc. employees (March 26, 2015) (on file with the Securities Exchange Commission).

30. Emmett N. Ellis, Monica W. Sargent & Steven C. Friend, *The Evolving Public Interest-Recent Decisions in Utility Merger Proceedings*, 55 INFRASTRUCTURE 4, 8 (2016).

savings that would result from the merger.³¹ The regulator also wanted more information about the potential benefits and harm that could result from the merger as well as stronger ring-fencing provisions.³²

Shortly after the draft decision came out, the companies withdrew their application and refiled a few weeks later. The revised proposal included enhanced benefits for customers, including:

- A rate credit of approximately \$20 million within the first year following closing to customers of United Illuminating (UI), Connecticut Natural Gas (CNG) and Southern Connecticut Gas Company (SCG);
- Additional rate credits payable over ten years of (1) \$12.5 million for customers of CNG and (2) \$7.5 million for customers of SCG;
- A commitment to increase spending on the replacement of cast iron piping from \$11 million to \$22 million, without seeking rate recovery on the increased spending until the next general rate case;
- A rate freeze for UI until January 1, 2017, and for CNG and SCG until January 1, 2018;
- Funding of \$6 million to the Connecticut Department of Energy and Environmental Protection for purposes of encouraging investment in energy efficiency projects, renewable energy, electric vehicles and clean technologies;
- Creation of a multi-year system resiliency plan that limits cost recovery for storm resiliency spending to \$50 million in the first year of implementation; and,
- Hiring 150 people in Connecticut in the first three years following closing.³³

In September 2015, the companies reached a settlement with the Connecticut consumer counsel, and then in October settled with the Massachusetts Attorney General and the Massachusetts Department of Energy Resources.³⁴ As a result, the transaction was back on track and it proceeded to closing in mid-December after receiving shareholder approval and authorization from Connecticut and Massachusetts regulators.³⁵

D. HEI/NextEra

The NextEra/HEI transaction was announced on December 3, 2014, and, among other conditions, it required the approval of the Hawaii Public Utilities

31. Joint Application of Iberdrola, S.A., Et Al., And UIL Holdings Corporation for Approval of a Change of Control, Docket No. 15-03-45 (Conn. Pub. Utils. Reg. Auth. June 30, 2015).

32. *Id.*

33. Joint Application of Iberdrola, S.A., et al., And UIL Holdings Corporation for Approval of a Change of Control, Docket No. 15-07-38 (Conn. Pub. Utils. Reg. Auth. Dec. 9, 2015).

34. *Id.*

35. *Id.*

Commission (HPUC).³⁶ The initial application with the HPUC was filed on January 29, 2015, and included commitments that Hawaiian Electric would not submit any applications seeking a general base rate increase and would forego recovery of the incremental operations and maintenance revenue adjustment under its decoupling rate mechanism for at least the first four years following the transaction's closing.³⁷ The companies asserted that these undertakings would result in approximately \$60 million in cumulative savings for Hawaiian Electric's customers.³⁸ NextEra also committed not to seek to recover through Hawaiian Electric rates any acquisition premium, transaction or transition costs that may arise from the acquisition, and that there would be no "involuntary reductions" to Hawaiian Electric's workforce as a result of the transaction for at least two years after the deal closes.³⁹ NextEra also proposed a series of ring-fencing provisions designed to ensure that Hawaiian Electric and its customers are not impacted by the activities and businesses of NextEra's other activities.⁴⁰

Despite these commitments, the proceeding before the HPUC bogged down in a debate about what Hawaii's energy policy should be during the next several decades. On the day before the companies filed their application for approval, the Hawaii Senate leader introduced a bill that would require Hawaii to obtain 100% of its power from renewable energy sources by 2040.⁴¹ The measure was subsequently enacted by the legislature with an almost unanimous vote.⁴² Hawaii already has deeper penetration of renewable energy from distributed generation than any other state.⁴³

The companies advocated that the transaction be approved on the basis that the combination would let them implement a shared vision of increasing renewable energy in Hawaii, modernize the islands' electric grid, reduce Hawaii's dependence on imported oil, integrate more rooftop solar energy and generally lower customer bills. Nevertheless, opposition persisted. The consumer advocate attempted to slow the proceedings down, but the effort was rejected by the PUC. Various political groups on the islands were reported to be considering ways to convert Maui Electric Co. and other HEI utility subsidiaries into government-owned public utilities. The Governor also came out against the combination, and various legislative initiatives were launched that would impose additional hurdles to completion of the merger. The companies pressed on despite the opposition, citing the potential for \$1 billion in merger-related savings, boosted their proposed commitments to customers and emphasized that the company would continue to be locally

36. Company PowerPoint, Hawaiian Electric Industries, Inc., NextEra Energy and Hawaiian Electric Industries to Combine (Dec. 3, 2014).

37. Press Release, NextEra Energy, NextEra Energy and Hawaiian Electric File Joint Application with the Hawaii Public Utilities Commission (Jan. 29, 2015).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Governor Signs Bill Setting Hawaii's Renewable Energy Goal at 100%*, HAWAII CLEAN ENERGY INITIATIVE (June 9, 2015), <http://www.hawaii-clean-energy-initiative.org/governor-signs-bill-setting-hawaiis-renewable-energy-goal-at-100/>.

42. *Id.*

43. *Id.*

managed following the merger.⁴⁴ The companies also extended the termination date under the Merger Agreement to accommodate additional delay in the proceeding.

These efforts were to no avail, as on July 15, 2016 the Hawaii Public Utilities Commission dismissed the companies' application for approval of the merger.⁴⁵ The Commission's decision concluded that, while NextEra was fit, willing and able to perform the services that would be required of the owner of the Hawaiian Electric Companies, the applicants had failed to demonstrate that the transaction was reasonable and in the public interest.⁴⁶ In reaching its conclusion, the Commission focused on five fundamental areas of concern: benefits to ratepayers, risks to ratepayers, applicants' clean energy commitments, the proposed change of control's effect on local governments and the proposed change of control's effect on competition in local energy markets.⁴⁷ The Commission provided a detailed list of concerns and uncertainties associated with each of these categories. Although, the dismissal was without prejudice, the tone of the order was quite negative.

After reviewing the order, on July 18, 2016, the companies announced that they had terminated their merger agreement.⁴⁸ Upon termination, NextEra also paid to Hawaiian Electric Company a break-up fee of \$90 million plus reimbursed expenses of up to \$5 million.⁴⁹ As noted above, this appears to be the first instance in the electric and gas utility industries of a reverse breakup fee being paid following termination of an acquisition agreement upon failure to obtain regulatory approvals.

VII. CONCLUSION

The last four years have seen a continuation of the long-standing trend towards consolidation in the electric and gas utility space. During this time, the increasingly smaller pool of targets has combined with other factors (little or non-existent load growth, the desire for scale and a low interest rate environment) to create a seller's market. The result has been an increase in realized valuations together with a shift towards markedly seller-friendly deal terms. While there may be some moderation of these trends in a rising interest rate environment, structural elements of the electric and gas utility industry will continue to incentivize consolidation. As a result, the long-standing trend towards consolidation seems likely to continue.

44. *Id.*

45. *NextEra Energy and Hawaiian Electric Industries announce termination of Merger Agreement*, NEXTERA ENERGY (July 18, 2016), <http://www.nexteraenergy.com/news/contents/2016/071816.shtml>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

Exhibit A: Selected Electric and Gas Utility Mergers and Acquisitions

January 1, 2013 – March 1, 2017

Date Announced (Closed)	Parties	Total Transaction Value (millions)	Equity Value (millions)	Consideration	Premium to Market Price (days prior to announcement)	P/E NTM	Break-Up Fee (% of Equity Value)	Reverse Break-Up Fee (% of Equity Value)	Management Structure/Other Undertakings	Required Regulatory Approvals	Nature of Process
2/21/17 (pending)	Delta Natural Gas/PNG Companies	\$269.1	\$218.7	Cash	17.4% (1 day)	34.9x	\$4.34M (1.6%)	\$4.34M (1.6%)	Maintain headquarters in KY; one Delta director will be an independent representative of Delta's constituents' interests	HSR, KY	N/A
1/25/17 (pending)	WGL Holdings/ AltaGas	\$6,324.34	\$4,520.08	Cash	27.9% (11/28/16 unaffected)	26.2x	\$136M (3.0%)	\$205M, \$182M or \$68M (4.5%, 4.0% & 1.5%)	Maintain headquarters in Washington, D.C.; WGL management to manage all AltaGas US operations	HSR, FERC, CFUS, DC, MD and VA	Competitive
5/13/16 (pending)	Westar/ Great Plains	\$12,193.75	\$8537.88	Cash	13.4% (1 day) 36.1% (3/9/16 unaffected)	25.0x	\$280M (3.28%)	\$380M (4.45%)	Maintain headquarters in Topeka, KS; one Westar director to be appointed to board of combined company	HSR, FERC, KS, NRC and FCC	Competitive
2/9/16 (1/1/17)	Empire District/ Algonquin	\$2,389.81	\$1,487.95	Cash	21.3% (1 day)	23.2x	\$53M (3.56%)	\$65M (4.37%)	Empire District management to head regional management team; no changes to management or employees at Empire	HSR, FERC, CFUS, AR, KS, MO, OK and FCC	Competitive

Date Announced (Closed)	Parties	Total Transaction Value (millions)	Equity Value (millions)	Consideration	Premium to Market Price (days prior to announcement)	P/E NTM	Break-Up Fee (% of Equity Value)	Reverse Break-Up Fee (% of Equity Value)	Management Structure/Other Undertakings	Required Regulatory Approvals	Nature of Process
2/9/16 (10/14/16)	ITC Holdings/ Fortis, Inc.	\$11,426.90	\$6,945.86	Cash/Stock	15.5% (1 day)	21.9x	\$245M (3.53%)	\$280M/\$245M (4.03%/3.53%)	Maintain headquarters in MI, no force reductions	HSR, FERC, CFJUS, IL, KS, MO, OK and WI	Competitive
2/1/16 (9/16/16)	Questar/ Dominion	\$5,982.94	\$4,396.74	Cash	23.2% (1 day prior)	19.1	\$99M (2.25%)	\$154M (3.5%)	One Questar representative to be appointed to each of Dominion and Dominion Midstream's boards; maintenance of headquarters in Salt Lake City	HSR, UT, WY, ID	Bilateral
10/26/15 (10/3/16)	Piedmont/ Duke	\$6,589.35	\$4,794.90	Cash	40% (1-day prior)	30.9x	\$125M (2.61%)	\$250M (5.21%)	One Piedmont representative will be added to Duke's Board of Directors; an existing member of Piedmont's management team will lead Duke's natural gas operations.	HSR, NC, FCC	Competitive
9/4/15 (7/1/16)	TECO/ Emera	\$10,422.48	\$6,481.18	Cash	48% (unaffected price as of 7/15/15)	24.7x	\$212.5M (3.28%)	\$326.9M (5.04%)	Tampa Electric and NM Gas to maintain existing headquarters in Tampa and Albuquerque	HSR, CFJUS, FERC, NM, FCC	Competitive

Date Announced (Closed)	Parties	Total Transaction Value (millions)	Equity Value (millions)	Consideration	Premium to Market Price (days prior to announcement)	P/E NTM	Break-Up Fee (% of Equity Value)	Reverse Break-Up Fee (% of Equity Value)	Management Structure/Other Undertakings	Required Regulatory Approvals	Nature of Process
8/24/15 (7/1/16)	AGL/ Southern	\$12,001.74	\$7,924.74	Cash	36.3% (20-day VWAP)	21.8x	\$201M (2.54%)	N/A	AGL to maintain separate board and management team	HSR, CA, GA, IL, MD, NJ, VA, FCC	Bilateral
2/26/15 (12/16/15)	UIL/ Iberdrola (USA)	\$4,847.02	\$3,040.02	Stock/Cash	24.6% (est. 1-day prior)	21.6x	\$75M (2.47%)	N/A	UIL CEO to be CEO of combined entity; UIL CEO and two others to join Iberdrola (USA) board of directors	HSR, CFIUS, CT, MA, FCC	Bilateral
12/3/14 (terminated 7/16/16)	HEI/ NextEra	\$4,567.39	\$2,601.37	Stock	21% (est. 20-day VWAP)	15.9x	\$90M (3.46%)	\$90M (3.46%)	HEI to maintain local headquarters and be managed locally	HSR, FERC, HA, FCC	Bilateral
10/20/14 (4/13/16)	CLECO/ Macquarie/ BCIMC	\$4,703.54	\$3,365.13	Cash	14.7% (1-day prior)/(strategic process had been previously disclosed)	20.3x	\$120M (3.57%)	\$180M (5.35%)	CLECO to maintain local headquarters and management; CLECO President to become CEO upon closing	HSR, CFIUS, FERC, LA	Competitive
6/23/14 (6/29/15)	Integritys/ WEC	\$9,114.57	\$5,684.47	Stock/Cash	17.3% (1 day prior)	19.5x	\$175M (3.08%)	\$175M (3.08%)	Three Integritys Directors to join WEC Board upon closing	HSR, FERC, WIA, IL, MI, MN, FCC	Bilateral
4/30/14 (3/23/16)	Peppo/ Exelon	\$12,605.43	\$6,912.43	Cash	19.6% (1 day prior); 29.5% (20-day VWAP)	22.4x	\$293M (4.24%)	\$180M (2.60%)	Maintenance of local and regional headquarters and management	HSR, FERC, DE, DC, MD, NJ, VA, FCC	Competitive

Date Announced (Closed)	Parties	Total Transaction Value (millions)	Equity Value (millions)	Consideration	Premium to Market Price (days prior to announcement)	P/E NTM	Break-Up Fee (% of Equity Value)	Reverse Break-Up Fee (% of Equity Value)	Management Structure/Other Undertakings	Required Regulatory Approvals	Nature of Process
12/11/13 (8/15/14)	UNS/Fortis	\$4,343.11	\$2,502.68	Cash	30.1% (1 day prior)	18.4x	\$63.9M (2.55%)	N/A	UNS management team to remain in place, UNS headquarters to remain in Tucson and four current directors of UNS to remain on UNS Board of Directors following closing	HSR, CFUS, FERC, AZ, FCC	Bilateral
5/29/13 (12/19/13)	NV/ Berkshire	\$10,688.83	\$5,664.63	Cash	20.3% (1 day prior)	18.0x	\$56.6M (1st 6 weeks) (1.0%)\$169.7 M (3.0%)	N/A	NV to continue to operate as a separate subsidiary and maintain local headquarters	HSR, FERC, NV, FCC	Bilateral

Exhibit B: Risk Allocation re Regulatory Approvals in Selected Utility Mergers and Acquisitions

January 1, 2013 – March 1, 2017

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>Delta Natural Gas/PNG Companies</i> 2/21/17 (pending)	HSR; KY	Burdensome Condition based on Company MAE or Combined Company MAE	Reasonable best efforts to consummate the transaction, including: <ul style="list-style-type: none"> agreeing to divestitures (except in the case of anti-trust approvals) defending through litigation, including appeals terminating or relinquishing or modifying any existing relationships, ventures or contractual rights of Buyer creating new relationships, ventures, and contractual rights 	Payment of Reverse Break-up Fee (\$4.34M) if failure to obtain approvals is due to a breach by Buyer of its covenants to obtain regulatory approvals. Otherwise, no liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Either Party may extend drop dead date by three months if all other Conditions Precedent have been satisfied or waived.
<i>WGL/AltaGas</i> 1/25/17 (pending)	HSR, FERC, CFIUS, DC, MD and VA	Burdensome Condition based on Company MAE or Buyer MAE	Reasonable best efforts to consummate the transaction. Take any and all steps that may be required, including: <ul style="list-style-type: none"> agreeing to divestitures terminating or relinquishing or modifying any existing relationships, ventures or contractual rights of Buyer creating new relationships, ventures, and contractual rights 	"Hell or High Water" Payment of Regulatory Termination Fee (\$68M), unless a Burdensome Condition is imposed. Payment of Parent Termination Fee (\$182M) if Buyer failed to comply with its covenants as regards seeking to obtain the required regulatory approvals. Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>Westar/Great Plains</i> 5/31/16 (pending)	HSR, FERC, KS, NRC and FCC	Regulatory MAE based on a company the size of Westar for purposes of the closing conditions, but none for termination and the reverse break-up fee	Take all actions and do all things necessary. Reasonable best efforts to eliminate all impediments, including (subject to the condition precedent "gauge"): <ul style="list-style-type: none"> defending through litigation, including appeals agreeing to divestitures agreeing to conduct limitations taking any action required by a Governmental Entity 	"Hell or High Water" Payment of Reverse Break-up Fee (\$326.9M). Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.
<i>Empire District/Algonquin</i> 2/9/16 (1/1/17)	HSR, FERC, CFIUS, AR, KS, MO, OK and FCC	Burdensome Condition is based on Combined Company MAE	Take all actions and do all things necessary. Reasonable best efforts to eliminate all impediments, including (subject to the condition precedent "gauge"): <ul style="list-style-type: none"> defending through litigation, including appeals agreeing to divestitures agreeing to conduct limitations taking any action required by a Governmental Entity 	"Hell or High Water" Payment of Reverse Break-up Fee (\$65M), even if due to an order that would impose a Burdensome Condition on Algonquin. Automatic six month extension if all other Conditions Precedent have been satisfied or waived.

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>ITC Holdings/Fortis</i> 2/9/16 (10/14/16)	HSR, FERC, CFTUS, IL, KS, MO, OK and WI	None	<p>Proceed diligently and in good faith, and use best efforts.</p> <p>Take all actions and do all things necessary, including:</p> <ul style="list-style-type: none"> • taking any action and agreeing to any concession or condition requested or required by a Governmental Entity • agreeing to divestitures • terminating or restructuring existing relationships contracts or governance 	<p>"Hell or High Water" Payment of Reverse Break-up Fee (\$280M).</p> <p>Either Party may extend drop dead date by up to six months if all other Conditions Precedent have been satisfied or waived.</p>
<i>Questar/Dominion</i> 2/1/16 (9/16/16)	HSR, UT, WY, ID	Company MAE or Combined Company MAE (with Combined Company deemed to be only the size of the Company)	<p>Reasonable best efforts generally. Take all steps necessary to remove impediments and obtain approval, including:</p> <ul style="list-style-type: none"> • agreeing to divestitures • terminating or modifying existing relationships, ventures, contract rights or other arrangements • creating relationships, ventures or arrangements <p>Reasonable best efforts to defend through litigation, including appeals.</p>	<p>"Hell or High Water" Payment of Reverse Break-up Fee (\$154M), even if due to an order that would impose a Burdensome Condition on Dominion.</p> <p>Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.</p> <p>Company may extend an additional three months if all conditions satisfied (including re receipt of approvals) but an injunction has been issued preventing Closing.</p>

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>Piedmont/Duke</i> 10/26/15 (10/3/16)	HSR, NC, FCC	Company MAE or Combined Company MAE (with Combined Company deemed to be only the size of the Company)	Reasonable best efforts generally. Take all steps necessary to remove impediments and obtain approval, including: <ul style="list-style-type: none"> • agreeing to divestitures • terminating or modifying existing relationships, ventures, contract rights or other arrangements • creating relationships, ventures or arrangements Reasonable best efforts to defend through litigation, including appeals.	"Hell or High Water" Payment of Reverse Break-up Fee (\$250M), even if due to an order that would impose a Burdensome Condition on Duke. Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.
<i>TECO/Emera</i> 9/4/15 (7/1/16)	HSR, CFTUS, FERC, NM, FCC	None	Take all actions and do all things necessary. Reasonable best efforts to eliminate all impediments, including (subject to the condition precedent "gauge"): <ul style="list-style-type: none"> • defending through litigation, including appeals • agreeing to divestitures • agreeing to conduct limitations • taking any action required by a Governmental Entity 	"Hell or High Water" Payment of Reverse Break-up Fee (\$326.9M). Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.
<i>AGL/Southern</i> 8/24/15 (7/1/16)	HSR, CA, GA, IL, MD, NJ, VA, FCC	Combined Company MAE or a requirement to divest of a Company subsidiary or a Buyer subsidiary that constitutes more than 25% of the respective operations of the Company and its subsidiaries or Buyer and its subsidiaries	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> • defending through litigation, including appeals • eliminate all impediments to obtaining approvals • agreeing to divestitures • taking any action required by a Governmental Entity • agreeing to conduct limitations 	No liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>UTIL/Berdrola (USA)</i> 2/26/15 (12/16/15)	HSR, CFUS, CT, MA, FCC	Company MAE (with Company deemed to be 150% of its size)	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> • defending through litigation, including appeals • agreeing to divestitures • taking any action required by a Governmental Entity • agreeing to conduct limitations 	No liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Either Party may extend drop dead date by up to two successive three month periods if all other Conditions Precedent have been satisfied or waived.
<i>HEI/NextEra</i> 12/3/14 (terminated - 7/16/16)	HSR, FERC, HA, FCC	Buyer MAE (with Buyer deemed to be the size of the Company) or Company MAE, in each case after giving effect to the related spin transaction	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> • defending through litigation, including appeals • agreeing to divestitures • taking any action required by a Governmental Entity • agreeing to conduct limitations 	Payment of Reverse Break-up Fee (\$90M). Issuance of a regulatory approval that imposes a Burdensome Condition does not require payment of the Reverse Break-up Fee. Automatic six month extension if all other Conditions Precedent have been satisfied or waived.
<i>CLECO/Macquarie/BCIMC</i> 10/20/14 (4/13/16)	HSR, CFUS, FERC, LA	Company MAE or Combined Company MAE, in each case with the Company deemed to be 50% of its size	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> • defending through litigation, including appeals • agreeing to divestitures • taking any action required by a Governmental Entity • agreeing to conduct limitations 	Payment of Reverse Break-up Fee (\$180M), but only if terminated by Purchaser. Issuance of a regulatory approval that imposes a Burdensome Condition does not require payment of the Reverse Break-up Fee. Automatic six month extension if all other Conditions Precedent have been satisfied or waived.

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
<i>Integrity/WE</i> 6/23/14 (6/29/15)	HSR, FERC, WIA, IL, MI, MN, FCC	Combined Company MAE (with Combined Company deemed to be only the size of the Company)	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> defending through litigation, including appeals eliminate all impediments to obtaining approvals agreeing to divestitures taking any action required by a Governmental Entity agreeing to conduct limitations 	No liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Either Party may extend drop dead date by six months if all other Conditions Precedent have been satisfied or waived.
<i>Pepco/Exelon</i> 4/30/14 (3/24/16)	HSR, FERC, DE, DC, MD, NJ, VA, FCC	Company MAE (with Company deemed to be 50% of its size and matters imposed on Buyer deemed to be imposed on the Company)	Reasonable best efforts to take all actions and do all things necessary, including defending through litigation.	"Hell or High Water" Payment of Reverse Break-up Fee (\$180M), even if due to an order that would impose a Burdensome Condition on Exelon. Fee is paid via redemption for \$0 of Preferred Stock purchased by Exelon at signing of Merger Agreement. Either Party may extend drop dead date by three months if all other Conditions Precedent have been satisfied or waived.
<i>UNS/Fortis</i> 12/11/13 (8/15/14)	HSR, CFIUS, FERC, AZ, FCC	Company MAE or Combined Company MAE (with Combined Company deemed to be only the size of the Company)	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> defending through litigation, including appeals eliminate all impediments to obtaining approvals agreeing to divestitures taking any action required by a Governmental Entity agreeing to conduct limitations 	No liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Automatic six month extension if all other Conditions Precedent have been satisfied or waived.

Transaction Announcement Date (Closing Date)	Required Regulatory Approvals	Regulatory Approvals Condition Precedent "Gauge"	Efforts Required	Effect of Failure to Obtain
NT/Berkshire 5/29/13 (12/19/13)	HSR, FERC, NV, FCC	Company MAE or Combined Company MAE (with Combined Company deemed to be only the size of the Company)	Reasonable best efforts to take all actions and do all things necessary, including: <ul style="list-style-type: none"> • defending through litigation, including appeals • eliminate all impediments to obtaining approvals • agreeing to divestitures • taking any action required by a Governmental Entity • agreeing to conduct limitations 	No liability if terminated due to failure to obtain approvals or imposition of a burdensome condition by approvals. Either Party may extend drop dead date by three months if all other Conditions Precedent have been satisfied or waived.

Exhibit C: Effect of Willful Breach in Selected Utility Mergers and Acquisitions
January 1, 2013 – March 1, 2017

Transaction Announcement Date (Closing Date)	Applicable Break-Up Fees	Willful Breach Definition	Effect of Willful Breach on Available Remedies
<i>Delta Natural Gas/PNG Companies</i> 2/21/17 (pending)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful and material breach not defined.	No damages remedy unless a willful and material Breach occurs In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy If a willful and material breach occurs, the company can pursue damages, including lost premium to shareholders
<i>WGL Holdings/AltaGas</i> 1/25/17 (pending)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	“Willful and Material Breach” means a material breach that is a consequence of an action undertaken or failure to act by the breaching party with the actual knowledge that the taking of such action or such failure to act would constitute a breach of this Agreement. “Regulatory Failure Willful and Material Breach” means (a) a Willful and Material Breach by Parent of its obligations under Section 5.4 and (b) Parent acted in bad faith.	No damages remedy unless a Willful and Material Breach occurs or, in the case of the buyer’s obligations to seek the regulatory approvals, a Regulatory Failure Willful and Material Breach occurs. In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy unless a Willful and Material Breach occurs In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy unless a Regulatory Failure Willful and Material Breach occurs If a Willful and Material Breach occurs (or, in the case of buyer’s covenants to obtain the regulatory approvals), a Regulatory Failure Willful and Material Breach occurs, the company can pursue damages

Transaction Announcement Date (Closing Date)	Applicable Break-Up Fees	Willful Breach Definition	Effect of Willful Breach on Available Remedies
<i>Westar/Great Plains</i> 5/31/16 (pending)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	"Willful Breach" means a breach that is a consequence of a deliberate act or deliberate failure to act undertaken by the breaching Party with the Knowledge that the taking of, or failure to take, such act would, or would reasonably be expected to, cause or constitute a material breach of any covenants or agreements contained in this Agreement; provided that, without limiting the meaning of Willful Breach, the Parties acknowledge and agree that any failure by any Party to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the Closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a Willful Breach of this Agreement.	No damages remedy unless a Willful Breach occurs In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy unless a Willful Breach occurs In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy unless a Willful Breach occurs If a Willful Breach occurs, the company can pursue damages, including lost premium to shareholders
<i>Empire District/Algonquin</i> 2/9/16 (1/1/17)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	"Willful Breach" means a breach that is a consequence of an act or omission undertaken by the breaching Party with the Knowledge that the taking of or the omission of taking such act would, or would reasonably be expected to, cause or constitute a material breach of this Agreement; provided that, without limiting the meaning of Willful Breach, the Parties acknowledge and agree that any failure by any Party to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a Willful Breach of this Agreement.	No damages remedy unless a Willful Breach occurs. In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy unless a Willful Breach occurs If a Willful Breach occurs, the company can pursue damages, including lost premium to shareholders

Transaction Announcement Date (Closing Date)	Applicable Break-Up Fees	Willful Breach Definition	Effect of Willful Breach on Available Remedies
<i>ITC Holdings/Foris</i> 2/9/16 (10/14/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	"Willful Breach" means with respect to any breaches or failures to perform any of the covenants or other agreements contained in this Agreement, a material breach that is a consequence of an act or failure to act undertaken by the breaching Party with actual knowledge that such Party's act or failure to act would, or would reasonably be expected to, result in or constitute a breach of this Agreement. For the avoidance of doubt, a Party's failure to consummate the Closing when required pursuant to Section 1.2 shall be a Willful Breach of this Agreement.	No damages remedy unless a Willful Breach occurs. In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy In cases where the Reverse Break-up Fee is not payable but a Willful Breach has occurred, damages may include lost premium to shareholders
<i>Questar/Dominion</i> 2/1/16 (9/16/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful and material breach not defined	No damages remedy unless a willful and material breach occurs Break-up Fees are sole and exclusive remedy
<i>Piedmont/Duke</i> 10/26/15 (10/3/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful and material breach not defined	No damages remedy unless a willful and material breach occurs Break-up Fees are sole and exclusive remedy unless there is a willful and material breach

Transaction Announcement Date (Closing Date)	Applicable Break-Up Fees	Willful Breach Definition	Effect of Willful Breach on Available Remedies
<i>TECO/Emera</i> 9/4/15 (7/1/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	"Willful Breach" means a breach that is a consequence of an act or omission undertaken by the breaching Party with the Knowledge that the taking of or the omission of taking such act would, or would reasonably be expected to, cause or constitute a material breach of this Agreement, provided that, without limiting the meaning of Willful Breach, the Parties acknowledge and agree that any failure by any Party to consummate the Merger and the other transactions contemplated hereby after the applicable conditions to the Closing set forth in Article VII have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, which conditions would be capable of being satisfied at the time of such failure to consummate the Merger) shall constitute a Willful Breach of this Agreement.	No damages remedy unless a Willful Breach occurs. In cases where the Break-up Fee is payable, the Break-up Fee is sole remedy In cases where the Reverse Break-up Fee is payable, the Reverse Break-up Fee is sole remedy unless a Willful Breach occurs, in which case the company can pursue damages as well, including lost premium to shareholders.
<i>AGL/Southern</i> 8/24/15 (7/1/16)	Break-up Fee payable in specified circumstances No Reverse Break-up Fee	Intentional breach not defined. "Willful" breach will be deemed to have occurred if the Company took or failed to take action with knowledge that such action or inaction constituted a breach of such obligation	No damages remedy unless an intentional breach occurs. Break-up Fee is sole remedy unless a Willful breach occurs and relates to (1) calling shareholders meeting/proxy or (2) covenant not to solicit alternative transaction
<i>UIL/Bardola (US4)</i> 2/26/15 (12/16/15)	Break-up Fee payable in specified circumstances No Reverse Break-up Fee	Knowing and intentional breach not defined	No damages remedy unless knowing and intentional breach occurs, except for breach of representations, warranties and covenants If termination is due to breach (apparently without regard to whether knowing and intentional or not) of representations, warranties or covenants, Acquirer may collect Break-up Fee and also sue for damages
<i>HEI/NextEra</i> 12/3/14 (terminated - 7/16/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful breach not defined	No damages remedy unless a willful breach occurs Break-up Fees are sole and exclusive remedy unless there is a willful breach

Transaction Announcement Date (Closing Date)	Applicable Break-Up Fees	Willful Breach Definition	Effect of Willful Breach on Available Remedies
<i>CLECO/Macquarie/BCIMC</i> 10/20/14 (4/13/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Knowing and intentional breach not defined	No damages remedy unless knowing and intentional breach occurs Acquirer's maximum liability cannot exceed the amount of the Reverse Break-up Fee
<i>Integrus/VEC</i> 6/23/14 (6/29/15)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful breach not defined	No damages remedy unless a willful breach occurs Break-up Fees not explicitly stated to be sole remedies
<i>Pepco/Exelon</i> 4/30/14 (3/24/16)	Break-up Fee payable in specified circumstances Reverse Break-up Fee payable in specified circumstances	Willful and intentional material breach not defined	No damages remedy unless willful and intentional material breach occurs Break-up Fees are sole and exclusive remedy
<i>UNS/Forris</i> 12/11/13 (8/15/14)	Break-up Fee payable in specified circumstances No Reverse Break-up Fee	Willful and material breach not defined	No damages remedy unless willful and material breach occurs Break-up Fee is a liquidated damage unless there is willful and material breach
<i>NY/Berkshire</i> 5/29/13 (12/19/13)	Break-up Fee payable in specified circumstances No Reverse Break-up Fee	Willful and material breach not defined	No damages remedy unless willful and material breach occurs Break-up Fee is a liquidated damage unless there is willful and material breach

2015 Transaction Termination Fee Study

Table of Contents

	Page
1. 2015 Transaction Termination Fee Study Summary	3
2. 2015 Transaction Termination Fee Detail	26
3. 2015 Reverse Transaction Termination Fee Detail	32
4. About Houlihan Lokey	35
5. Disclaimer	37

2015 Transaction Termination Fee Study Summary

Introduction

Houlihan Lokey's 2015 Transaction Termination Fee Study (the "2015 Study") employs search and screening criteria similar to those used in previous studies. We applied these criteria to the universe of announced transactions in 2011 through 2014, and 2015 to provide a basis for comparison. Our study focuses on termination fees both as a percentage of "transaction value" and "enterprise value." Transaction value is the total value of consideration paid by an acquirer, excluding fees and expenses, and is, for the most part, generally tantamount to "equity value." Enterprise value is defined as the number of shares outstanding multiplied by the per-share offer price, plus the cost to acquire convertible securities, debt, and preferred equity, minus cash and marketable securities.

We conducted our search using data from Thomson Reuters and applied the following screening criteria:

- Target company is a U.S. public company.
- Transaction announcement date is between January 1, 2015 and December 31, 2015.
- Transaction value is greater than \$50 million.
- Transaction type, as classified by Thomson Reuters, comprises
 - acquisitions of full or majority interest;
 - leveraged buyouts; and
 - tender offers (bankruptcy, divestiture, and spinoff transactions are excluded).
- Deal status is completed, pending, or withdrawn.
- Target termination fee is disclosed.

For the 2015 Study, 126 transactions met these criteria. We have analyzed these transactions in terms of both transaction and enterprise values.

Transaction Termination Fees

Given the time and expense involved in negotiating and structuring a proposed transaction, acquirers are continuously looking for creative ways to deter competing bids before the consummation of a transaction. Protective devices used by acquirers are heavily negotiated and may include termination fees, “lockup” agreements, and “no-shop” provisions. Conversely, in seeking to maximize stockholder value, boards of directors of target companies try to obligate the acquirer to consummate the agreed-upon transaction while maintaining the flexibility to seek and accept a superior offer for the target.

Termination, or breakup, fees are probably the most common type of lockup device and are typically payable by the target to the acquirer to compensate the acquirer if the transaction fails to close because, among other things:

- The target board elects to terminate the acquisition agreement in order to accept a competing offer;
- The target board changes its recommendation and the acquirer elects to terminate the merger agreement rather than proceed with the stockholder vote; or
- The original bid fails for some other specified reason, such as being voted down by the stockholders, after a competing proposal has been announced and is agreed to or closed within a specified period (typically six to 12 months).

Properly crafted, a termination fee provision can facilitate the sale of a company by ensuring that the bidder will receive a material “consolation prize” to defray its investment—in time, out-of-pocket expense and opportunity cost—if the transaction is not consummated. On the other hand, termination fees protect the acquirer by effectively increasing the price that a third-party bidder will need to pay in order to consummate a competing transaction.

Enterprise and Transaction Values

Of the 126 transactions reviewed in 2015, the mean transaction value equaled approximately \$6.2 billion, a 80.5% increase from the 2014 mean transaction value of approximately \$3.4 billion. The mean enterprise value equaled approximately \$8.4 billion, a 72.5% increase from the 2014 mean enterprise value of approximately \$4.8 billion.⁽¹⁾

The median transaction value in 2015 equaled approximately \$1.3 billion, a 83.3% increase from the 2014 median transaction value of \$727.5 million. The median enterprise value equaled approximately \$2.1 billion, which was 43.1% higher than the 2014 median enterprise value of approximately \$1.5 billion.

Enterprise and Transaction Value Annual Summary (\$ in millions)

	Transaction Value					Enterprise Value ⁽²⁾				
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
Mean	\$2,238.0	\$1,267.8	\$2,015.0	\$3,435.4	\$6,200.2	\$2,865.5	\$1,695.2	\$2,872.6	\$4,843.2	\$8,357.0
Median	\$571.4	\$409.8	\$566.5	\$727.5	\$1,333.6	\$673.5	\$662.9	\$861.8	\$1,472.3	\$2,107.2
No. of Transactions	166	158	130	127	126	153	129	94	103	103

Source: Thomson Reuters.

⁽¹⁾ The mean transaction and enterprise value indications in 2015 were impacted by six "mega deals" with implied transaction values greater than \$30 billion, including Pfizer Inc.'s \$145.8 billion withdrawn merger with Allergan plc, Dell Inc.'s \$66.0 billion pending acquisition of EMC Corporation, Charter Communications, Inc.'s \$55.6 billion acquisition of Time Warner Cable Inc., H.J. Heinz Holding Corporation's \$46.1 billion merger with Kraft Foods Group, Inc., Aetna Inc.'s \$34.6 billion pending acquisition of Humana Inc., and Shire plc's \$31.0 billion pending acquisition of Baxalta Incorporated.

⁽²⁾ Excludes banks and other financial institutions due to lack of reliable data.

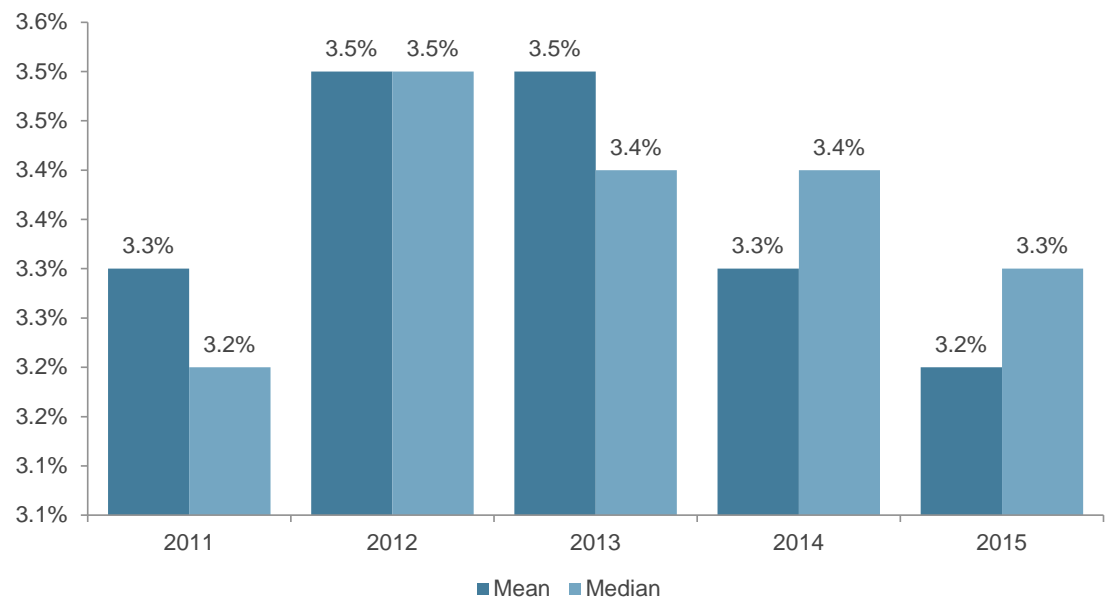
Transaction Termination Fees

Transaction Value

In the 2015 Study, termination fees as a percentage of transaction value ranged from 1.1% to 4.9%, with a mean of 3.2% and median of 3.3%.

- The 1.1% termination fee was observed in Monument Partners LLC’s \$1.9 billion acquisition of Landmark Apartment Trust, Inc.
- The 4.9% termination fee was observed in Ciena Corporation’s \$308 million acquisition of Cyan, Inc.

Transaction Termination Fees as a Percentage of Transaction Value

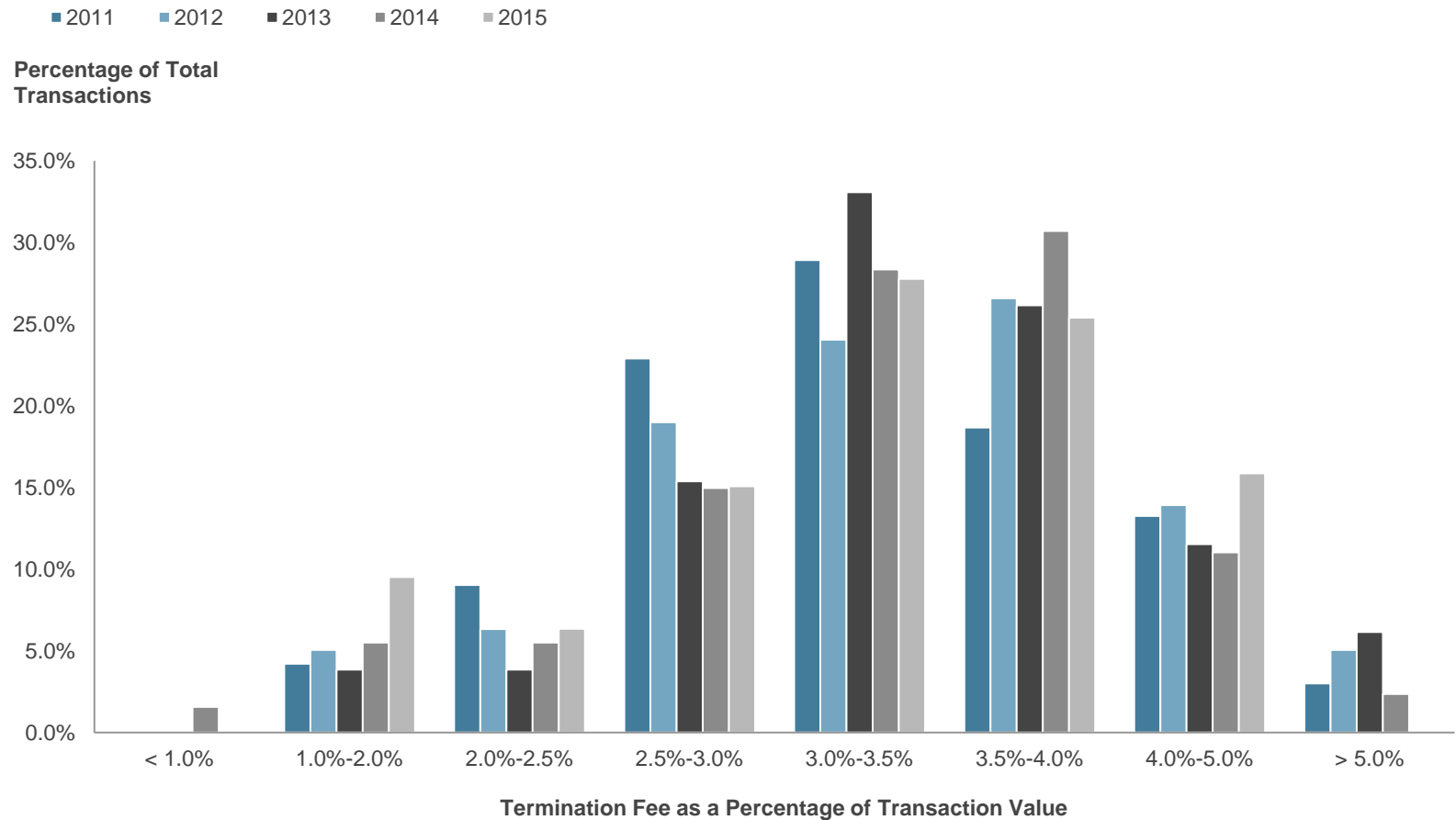


Transaction Termination Fees

Transaction Value (cont.)

The distribution of termination fees as a percentage of transaction value generally resembles a classic bell curve, with most results clustered around the observed mean (3.2%) and median (3.3%).

Distribution of Termination Fee Percentages

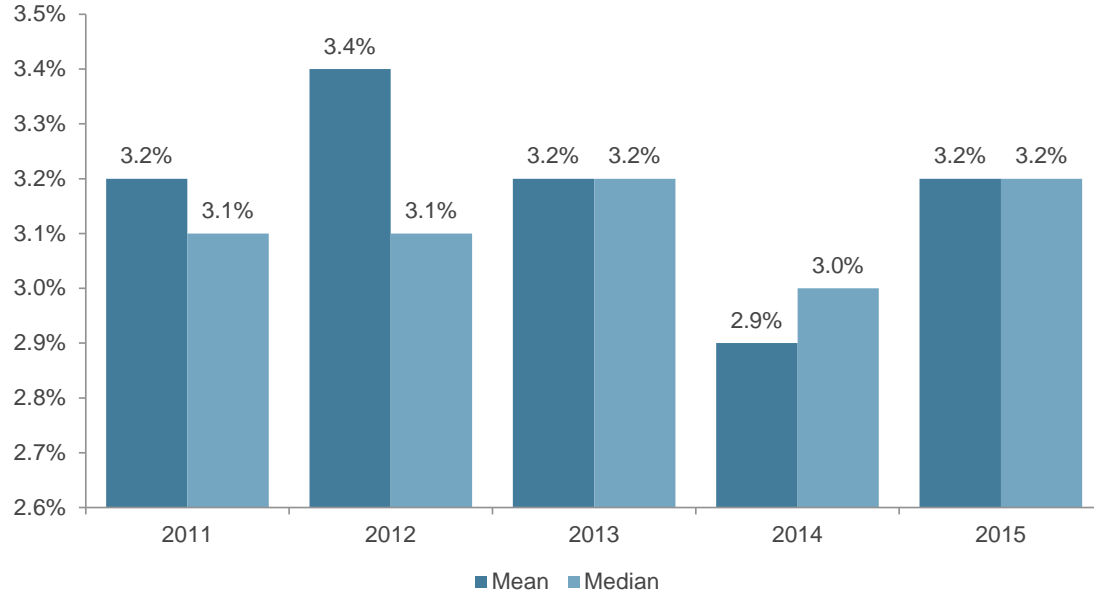


Transaction Termination Fees

Enterprise Value

Termination fees as a percentage of enterprise value were analyzed for deals announced from 2011 through 2015. Due to the inclusion of debt, the enterprise value (the denominator in the fee percentage calculation) is typically greater than transaction value. Accordingly, the observed median termination fees based on enterprise value are generally slightly lower than that observed using transaction values.

Transaction Termination Fees as a Percentage of Enterprise Value⁽¹⁾

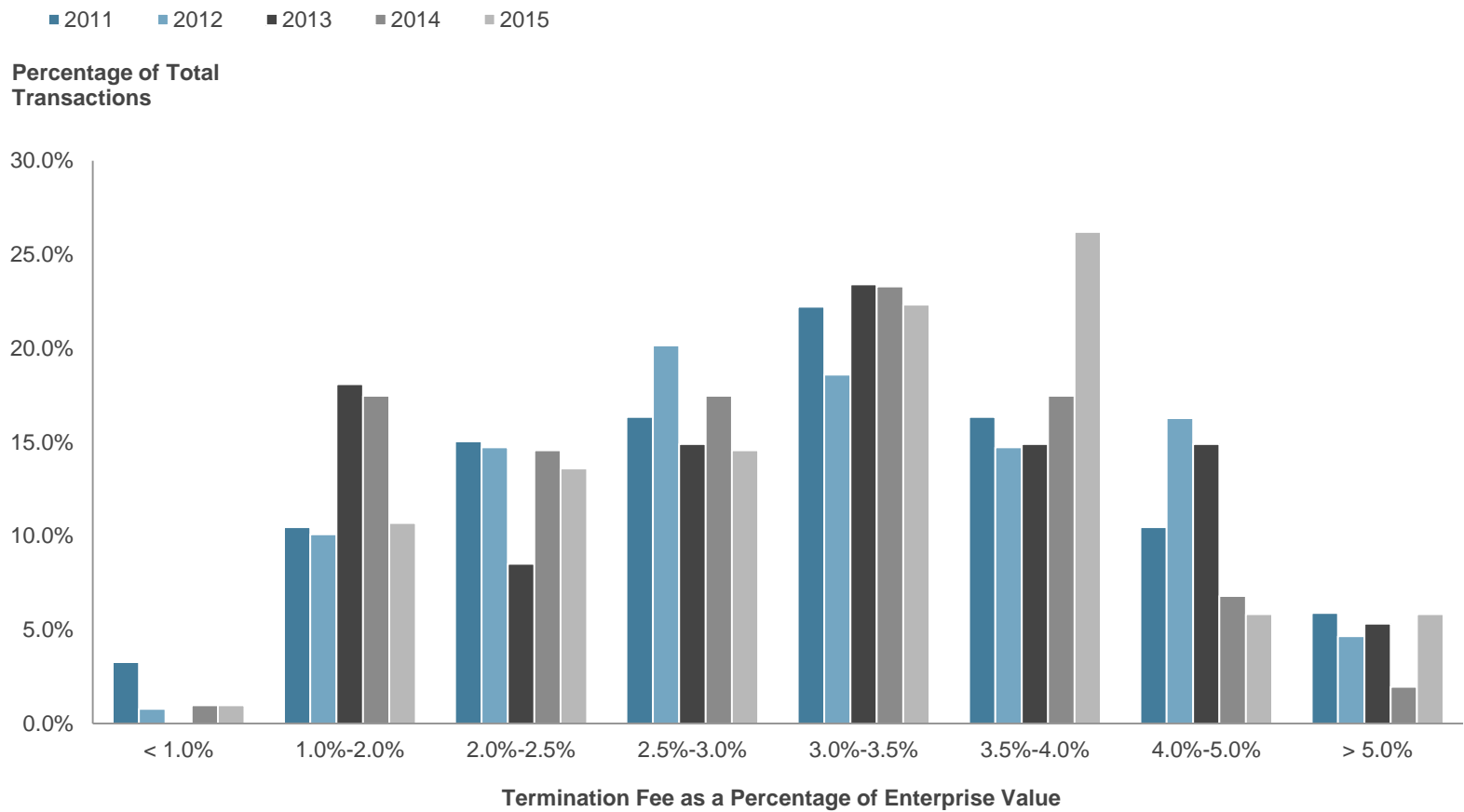


Transaction Termination Fees

Enterprise Value (cont.)

The distribution of termination fees as a percentage of enterprise value is weighted toward fees (as a percentage of enterprise value) near the mean of 3.2%.

Distribution of Termination Fee Percentages



Transaction Termination Fees

Semi-Annual Summary

The number of announced transactions decreased in the second half of 2015, but the median transaction size increased, with the median transaction value in the second half of 2015 (approximately \$2.3 billion) more than doubling that of the first half of 2015 (approximately \$813.4 million).

In dollar terms, the median termination fee increased from \$25.0 million in the first half of 2015 to \$60.0 million in the second half of 2015, which reflects an increase in the size of observed deals over the same time period. The median termination fee increased as a percentage of transaction value (3.3% to 3.4%) and decreased as a percentage of enterprise value (3.3% to 3.2%) in the second half of 2015.

2015 Termination Fee Summary (\$ in millions)

	First Half of 2015	Second Half of 2015
No. of Transactions	77	49
Median Transaction Value	\$813.4	\$2,270.3
Median Enterprise Value⁽¹⁾	\$1,371.0	\$2,655.7
Median Termination Fee	\$25.0	\$60.0
Median Fee as a Percentage of Transaction Value	3.3%	3.4%
Median Fee as a Percentage of Enterprise Value⁽¹⁾	3.3%	3.2%

Termination Fees by Transaction Size

Transaction Value

In the 2015 Study, 32 deals had transaction values greater than \$5 billion, compared with 22 in 2014. These large transactions accounted for 25.4% of the sample in 2015, compared to 17.3% in 2014. For transactions of this magnitude, the median termination fee as a percentage of transaction value was 3.0% in 2015, a decrease from the 3.1% observed in 2014.

In dollar terms, the highest termination fee among the transactions in 2015 was observed in Pfizer Inc.'s withdrawn \$145.8 billion merger with Allergan plc (termination fee of \$3.5 billion, or 2.4% of transaction value).⁽¹⁾

Termination Fees by Transaction Size – Transaction Value (\$ in millions)

Transaction Size	No. of Transactions		Median Transaction Value		Median Termination Fee		Median Termination Fee as a Percentage of Transaction Value ⁽²⁾	
	2014	2015	2014	2015	2014	2015	2014	2015
\$50 million to \$250 million	33	27	\$136.0	\$118.9	\$5.0	\$3.8	3.8%	3.7%
\$250 million to \$500 million	23	16	\$351.8	\$319.2	\$12.4	\$12.8	3.6%	3.7%
\$500 million to \$1 billion	13	15	\$726.2	\$591.1	\$25.0	\$20.0	3.4%	3.5%
\$1 billion to \$5 billion	36	36	\$1,813.1	\$2,381.9	\$62.4	\$69.6	3.0%	3.3%
More than \$5 billion	22	32	\$8,491.3	\$13,634.3	\$263.2	\$384.5	3.1%	3.0%
All	127	126	\$727.5	\$1,333.6	\$22.9	\$36.8	3.4%	3.3%

Source: Thomson Reuters.

⁽¹⁾ Pfizer Inc. elected to terminate its planned \$145.8 billion merger with Allergan plc after the U.S. Treasury Department issued new rules to combat tax-inversions. Pfizer Inc. agreed to pay \$150 million of Allergan plc's transaction fees and expenses in connection with the terminated transaction.

⁽²⁾ Based on median of all calculated termination fees as a percentage of transaction value, not calculation of observed median of transaction value and termination fee.

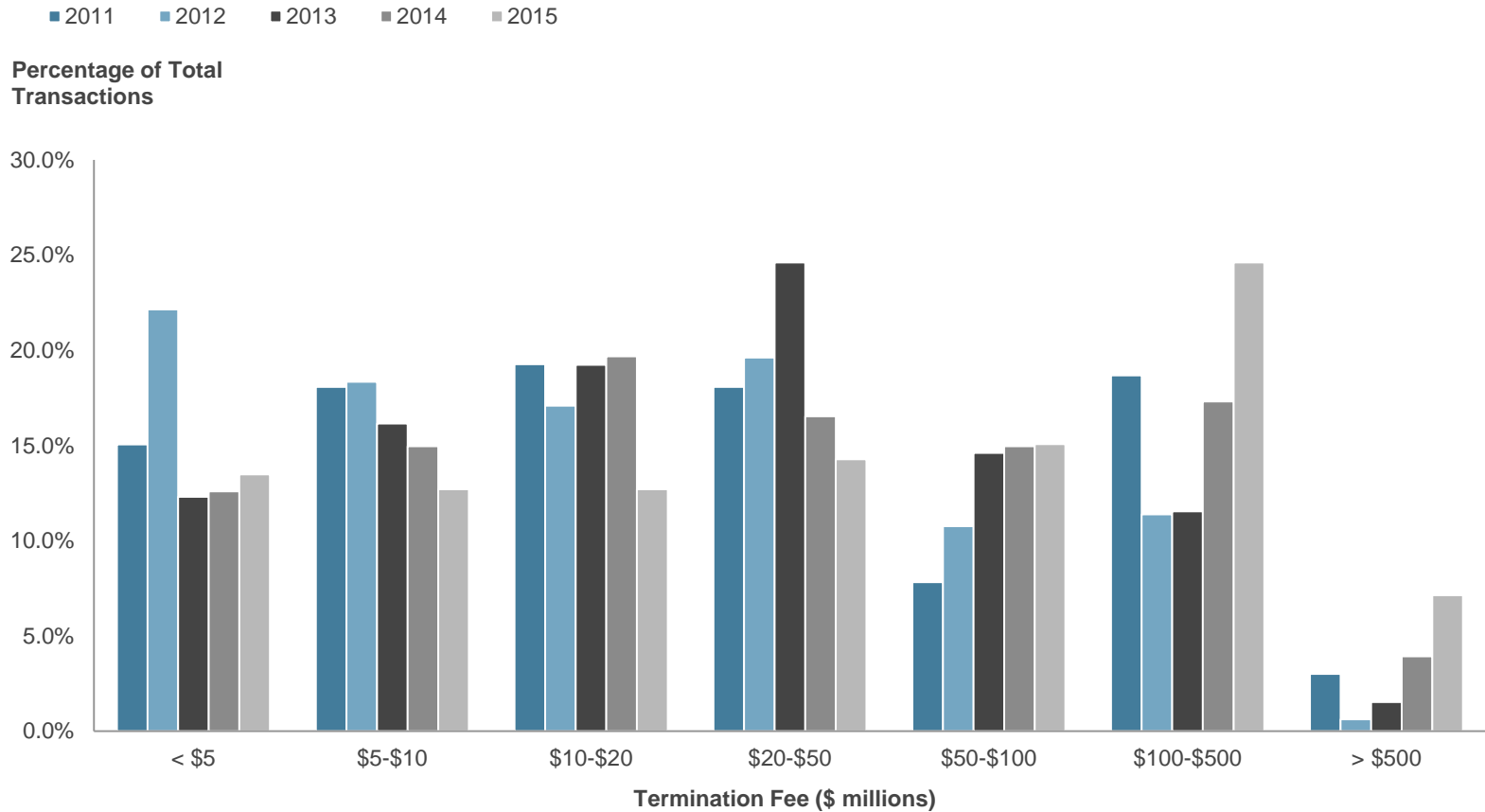
Termination Fees by Transaction Size

Distribution of Termination Fees

In dollar terms, termination fees tend to be heavily weighted toward the lower end of the distribution curve. This was less pronounced in recent years because the median transaction value continued to increase from \$571.4 million in 2011 to approximately \$1.3 billion in 2015.

Approximately 26.2% of the deals sampled in the 2015 Study had termination fees of less than \$10 million, compared with 27.6% in 2014, 28.5% in 2013, 40.5% in 2012, and 33.1% in 2011.

Distribution of Termination Fees



Termination Fees by Transaction Size

Enterprise Value

In the 2015 Study, 30 deals had enterprise values greater than \$5 billion compared with 26 deals in 2014. These large transactions accounted for approximately 29.1% of the sample in 2015, compared to 25.2% in 2014. Within this segment of the sample, the median termination fee was 2.8% of enterprise value, consistent with the 2.8% observed in 2014.

Termination fees as a percentage of enterprise value are inversely correlated to deal size.

Termination Fees by Transaction Size – Enterprise Value (\$ in millions)⁽¹⁾

Transaction Size	No. of Transactions		Median Enterprise Value		Median Termination Fee		Median Termination Fee as a Percentage of Enterprise Value ⁽²⁾	
	2014	2015	2014	2015	2014	2015	2014	2015
\$50 million to \$250 million	12	15	\$120.4	\$133.4	\$4.5	\$5.0	3.8%	3.9%
\$250 million to \$500 million	19	11	\$323.3	\$308.7	\$11.8	\$10.0	3.3%	3.7%
\$500 million to \$1 billion	10	14	\$728.4	\$629.6	\$19.4	\$19.8	2.9%	3.6%
\$1 billion to \$5 billion	36	33	\$1,834.5	\$2,461.7	\$52.5	\$72.0	2.6%	3.4%
More than \$5 billion	26	30	\$8,296.3	\$13,972.7	\$252.5	\$400.0	2.8%	2.8%
All	103	103	\$1,472.3	\$2,107.2	\$32.5	\$58.6	3.0%	3.2%

Source: Thomson Reuters.

(1) Excludes banks and financial institutions due to lack of reliable data.

(2) Based on median of all calculated termination fees as a percentage of enterprise value, not calculation of observed median of enterprise value and termination fee.

Termination Fees by Consideration Form

While termination fees correlate to enterprise value and transaction size, they do not correlate strongly to the form of consideration.

The analysis indicates that, during 2015, a slightly higher percentage of the transactions included some form of stock consideration compared to 2014 (52% of the 2015 sample compared to 48% of the 2014 sample).

Termination Fee by Consideration Form (\$ in millions)

Consideration Form			Median				Median Termination Fee		Median Termination Fee as a Percentage of			
			Transaction Value		Enterprise Value ⁽¹⁾				Transaction Value ⁽²⁾		Enterprise Value ⁽¹⁾⁽²⁾	
	No. of Transactions											
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
All Stock	25	19	\$282.2	\$813.2	\$1,552.0	\$1,371.0	\$11.0	\$25.0	3.7%	3.3%	2.3%	3.3%
All Cash	66	61	\$763.7	\$1,900.0	\$946.7	\$2,224.9	\$21.6	\$39.5	3.3%	3.2%	3.1%	3.3%
Cash and Stock	36	46	\$1,533.3	\$1,713.8	\$5,433.2	\$2,739.4	\$46.3	\$52.9	3.5%	3.4%	2.7%	2.7%
All	127	126	\$727.5	\$1,333.6	\$1,472.3	\$2,107.2	\$22.9	\$36.8	3.4%	3.3%	3.0%	3.2%

Source: Thomson Reuters.

(1) Excludes banks and financial institutions due to lack of reliable data.

(2) Based on median of all calculated termination fees as a percentage of deal value, not calculation of observed median of deal value and termination fee.

Termination Fees by Acquisition Type

Transaction fees in 2015 were only somewhat affected by the nature of the transactions.

- We compared public-to-private transactions (including management buyouts, leveraged buyouts, and private equity investments) to all other types of transactions.
 - 22 transactions involved public targets going private, with median termination fees of 3.4% and 3.3% of transaction and enterprise values, respectively. The remaining 104, non-going-private transactions yielded median termination fees of 3.3% and 3.2% of transaction and enterprise values, respectively.
- We also compared termination fees paid in transactions involving strategic buyers to those paid in transactions involving financial buyers. A strategic buyer is defined, for the purposes of our study, as a buyer in the same industry, or a buyer seeking to vertically or horizontally integrate (including private equity platform add-ons); a financial buyer is defined as a buyer seeking to profit by making an acquisition, but not necessarily by expanding its own business operations.
- For the 102 transactions involving acquirers we considered strategic, the median termination fees equaled 3.4% and 3.2% of transaction and enterprise values, respectively. The remaining 24 transactions involved financial acquirers and had a median termination fee of 3.1% and 3.4% of transaction and enterprise values, respectively.

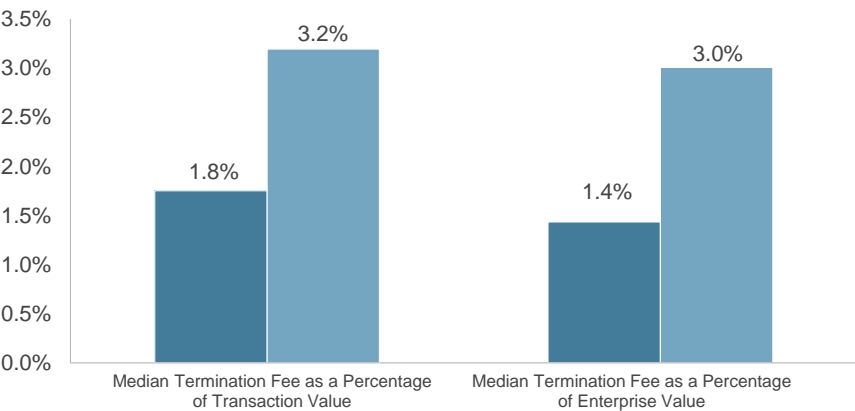
Bifurcated Termination Fees

Transactions with so-called “go-shop” provisions generally feature bifurcated termination fees. A lower termination fee is payable during the go-shop period (the period during which the target is allowed to actively solicit competing offers). In the 2015 Study, 12 transactions (9.5% of sample) included bifurcated termination fees.

The post-go-shop period generally has higher termination fees as a percentage of transaction and enterprise value.

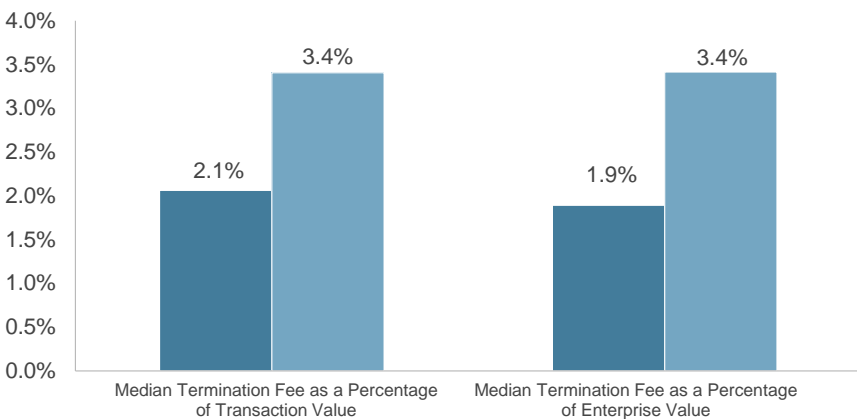
**Bifurcated Termination Fees
for Deals Announced in 2014**

■ During Go-Shop Period ■ After Go-Shop Period



**Bifurcated Termination Fees
for Deals Announced in 2015**

■ During Go-Shop Period ■ After Go-Shop Period



Transaction Termination Fees in Court

The Delaware courts have found termination fees to be an acceptable and customary component of M&A transactions. However, a target company's board of directors can face criticism if the agreed-upon termination fee (alone or in conjunction with other protective provisions) is sufficiently onerous to dissuade or prevent another potential bidder from making a superior offer for the target.

In assessing the reasonableness of termination fees, the Delaware Chancery Court (the Court) has refused to establish a bright-line rule as to the maximum permissible size of a termination fee. Instead, the Court has insisted that each case be decided on the particular facts and circumstances surrounding the transaction. In this regard, Vice Chancellor Strine in *In re Toys "R" Us, Inc. S'holder Litig.*, 877 A.2d 975 (Del. Ch. 2005) (Toys "R" Us) observed that the reasonableness of a particular termination fee requires a "nuanced fact intensive inquiry." That inquiry requires the Court to "consider a number of factors, including without limitation: the overall size of the termination fee, as well as its percentage value; the benefits to shareholders, including a premium (if any) that directors seek to protect; the absolute size of the transaction, as well as the relative size of the partners to the merger; the degree to which a counterparty found such protections to be crucial to the deal, bearing in mind differences in bargaining power; and the preclusive or coercive power of all deal protections included in a transaction, taken as a whole." See *Louisiana Municipal Police Employees' Retirement System v. Crawford*, 918 A.2d 1172 (Del. Ch. 2007).

The reasonableness of termination fees was not a significant issue in any 2015 decisions and was discussed in only a few relatively recent cases.

In *In re Zale Shareholders Litig.*, 2015 Del. Ch. LEXIS 249 (Oct. 1, 2015), the plaintiffs alleged that the Board of Directors of Zale Corporation agreed to impermissible deal protections, including, among other things, a \$26.7 million termination fee (equal to 2.75% of the transaction value). Citing prior cases approving fees of similar magnitude, the Court rejected the allegation.

In *Southeastern Pennsylvania Transportation Authority v. Abbvie Inc.*, C.A. Nos. 10374, 10408-VCG (Del. Ch. Apr. 15, 2015), the plaintiffs sought to inspect the books and records of AbbVie Inc. ("AbbVie") for the purpose of investigating potential breaches of fiduciary duty by AbbVie's board in connection with AbbVie's payment of a \$1.635 billion reverse termination fee that was triggered by the termination of its proposed inversion transaction with Shire plc. The plaintiffs argued that the board's breach resulted from its approving and eventually triggering an "enormous" reverse termination fee that did not carve out a contingency for the U.S. government taking action to deter tax-driven, merger-based inversions.

Transaction Termination Fees in Court (cont.)

In the course of denying the plaintiff's motion, the Court noted that "the [reverse breakup fee] is 'enormous,' to use SEPTA's phrasing, in the abstract, but not in the context of the equally enormous value of the transaction itself: [a]greeing to a 3% termination fee is not intrinsically unusual, let alone a credible indication of bad faith." The Court also observed that the record suggests that the fee was an actively negotiated provision sought by Shire, the target company, and that, though a large dollar amount, "it was a commonplace 3% of total value of that target."

In *In re Comverge, Inc. S'holders Litig.*, C.A. No 7368-VCP (Del. Ch. Nov. 25, 2014), the Court refused to dismiss a complaint alleging that the board of directors of Comverge, Inc. ("Comverge"), a financially distressed company, acted in bad faith by approving an unreasonable termination fee in connection with the acquisition of Comverge by H.I.G. Capital ("HIG"). The stated termination fee was equal to 5.55% of Comverge's equity value (or 5.2% of enterprise value) if triggered during the "go-shop" period and 7% of the equity value (or 6.6% of enterprise value) if triggered afterwards.

The plaintiff argued that the potentially preclusive effects of these termination fees had to be assessed with reference to a \$12 million convertible bridge loan that HIG provided to Comverge as part of the transaction (the "Bridge Note"). The plaintiff alleged that the conversion feature in the Bridge Note, which allowed HIG to purchase Comverge common stock at a 20% discount to the merger price, would significantly increase the cost of a topping bid. Conversion of the Bridge Note, the plaintiff argued, would result in a total payment equal to 11.6% of the deal's equity value during the go-shop period and 13.1% of the deal's equity value after the go-shop period.

For purposes of the motion, Vice Chancellor Parsons accepted the plaintiff's argument that the Bridge Note, if converted, could add more than \$3 million to the purchase price a competing buyer would have to pay, and therefore should be considered as part of the termination fee. In doing so, the Court also observed that the termination fees of 5.5% of equity value (or 5.2% of enterprise value) during the go-shop period and 7% of equity value (or 6.6% of enterprise value) after the go-shop period "test the limits of what this Court has found to be within a reasonable range for termination fees." Vice Chancellor Parsons concluded that, for purposes of surviving a motion to dismiss, it was reasonably conceivable that the plaintiff might be able to show that the Comverge board's decision was "so beyond the bounds of reasonable judgment" as to be only explainable as "bad faith"—and thus not exculpable under a Section 102 (b)(7) exculpatory clause.

Transaction Termination Fees in Court (cont.)

In reviewing various deal protections for reasonableness under the Unocal standard, Vice Chancellor Noble, in *In re TriQuint Semiconductor, Inc. S'holders Litig.*, C.A. No. 9415-VCN (Del. Ch. Jun. 13, 2014), found a 2.8% termination fee to be common and acceptable under Delaware law. Similarly, in *C&J Energy Services, Inc. v. City of Miami General Employees*, 107 A. 3d 1049, the Delaware Supreme Court found a \$65 million termination fee to be “modest” given it was “2.27% of the deal value.”

In *In re Crimson Exploration Inc., S'holders Litig.*, C.A. No. 8541-VCP (Del. Ch. Oct. 24, 2014), Vice Chancellor Parsons found that it was not “reasonably conceivable that the plaintiffs could show that the director defendants acted in bad faith by approving, among other things, a \$7 million termination fee that represented 1.8% of Crimson’s enterprise value, notwithstanding that the fee “represented 4.5% of Crimson’s equity value, which is at the high end of the range of fees the courts have found reasonable.”

The signpost for the outer limit of acceptability remains *Phelps Dodge Corp. v. Cyprus Amax Minerals Co.*, C.A. No. 17398 (Del. Ch. Sept. 27, 1999), in which the Court found that a 6.3% termination fee “stretches the definition of reasonableness beyond its breaking point.” In this regard, in *In re Theragenics Corp. S'holders Litig.*, C.A. No. 8790 (Del. Ch. May 5, 2014), Vice Chancellor Laster declined to approve a settlement agreement, in part, because of a bifurcated termination fee that equated to “around north of 5 percent” of transaction value during the go-shop period and increased to 7.8% after the go-shop period. Another judicial warning is Vice Chancellor Strine’s admonition in Toys “R” Us that, in mega-deals, the absolute size of a termination fee can be offensive irrespective of being within the range of historical percentages due to the “preclusive differences between termination fees starting with a ‘b’ rather than an ‘m’.”

Reverse Breakup Fees

Prior to 2005, private equity transactions were typically subject to financing conditions that would allow the buyer to terminate the deal if debt financing was unavailable. As competition among private equity firms increased and financing became readily available, targets began to require private equity buyers to absorb more of the financing risk and to provide recourse, in the form of “reverse breakup fees,” which are fees payable by the acquirer to the target if funding falls through or the transaction is otherwise terminated. These fees are backstopped by a limited guarantee by the private equity fund. The rationale behind such fees is to compensate the target for the risk that “committed” financing does not fund and the transaction does not close.

With the addition of a fund commitment or guarantee, financial sponsors sought to limit the exposure of their investors by seeking a cap on the maximum extent of the fund's exposure for a failed deal. Sponsors were generally successful in this effort, and the reverse termination fee quickly became a ceiling on a fund's liability for intentionally breaching the agreement.

In the aftermath of the numerous transactions that were abandoned in late 2007 and 2008, sellers became more concerned about the optionality created by the reverse termination fee structure. As a result, among other things, reverse breakup fees increased in magnitude, with the median percentage of transaction value increasing to 4.7% in 2009 from 3.5% in 2008 and the median percentage of enterprise value increasing to 4.1% in 2009 from 3.2% in 2008. Reverse breakup fees remained at these elevated levels in 2010 (4.5% of transaction value and enterprise value), 2011 (5.1% of transaction value and 4.5% of enterprise value), 2012 (5.0% of transaction value and 4.7% of enterprise value), and 2013 (5.8% of transaction value and 5.5% of enterprise value). The median reverse breakup fee as a percentage of transaction and enterprise value fell in 2014 (4.1% and 3.8%, respectively) and 2015 (4.3% and 4.0%, respectively), which among other factors, reflects an increase in the median deal size. Similar to target termination fees, reverse breakup fees as a percentage of transaction and enterprise value are typically inversely correlated to deal size.

In recognition, however, of the sometimes turbulent financing markets, two-tier fees were not uncommon, with a lower fee payable if the closing did not occur due to a financing failure rather than a willful failure. For example, during 2011, in connection with its acquisition of Emdeon Inc., Blackstone Capital Partners VI agreed to a reverse termination fee of 3.6% of transaction value in the event it was unable to raise financing; but a 7.0% reverse termination fee for a “willful breach” of the merger agreement. Similarly, in 2011 Eagle Parent Inc. agreed to pay 2.5% of transaction value in the event it was unable to raise financing for its acquisition of Epicor Software Corp., but a fee of 7.5% for a “willful breach” of the merger agreement.

Reverse Breakup Fees (cont.)

Beginning in 2008, a number of strategic cash deals began to duplicate the private equity reverse break fee structure. Historically, sellers had had less deal protection concerns with strategic buyers than with private equity buyers. However, with the state of the financing markets at the time and the fact that banks had begun to introduce greater conditionality into their commitments, that attitude changed. In April 2008, the \$23 billion Mars Inc./Wm. Wrigley Jr. Co. deal became the first large strategic deal to be structured with a private equity-style reverse termination fee.

During 2011, there was increased use of reverse termination fees as a means of mitigating antitrust risk. For example, Google Inc.'s merger agreement with Motorola Mobility Holdings, Inc. required Google to pay a reverse termination fee of \$2.5 billion (20.7% of transaction value and 27.6% of enterprise value) if antitrust clearance was not obtained and the transaction was terminated as a result. Similarly, AT&T Inc. agreed to pay a \$3.0 billion reverse termination fee (7.7% of transaction value and enterprise value) to Deutsche Telekom AG in connection with AT&T's proposed acquisition of T-Mobile USA, Inc., which was ultimately blocked for antitrust reasons.

In connection with its 2013 acquisition of Vodafone's interest in Verizon Wireless, Verizon Communications ("Verizon") agreed to pay Vodafone a \$10 billion reverse termination fee (7.69% of transaction value) if Verizon was unable to complete its financing for the acquisition. The fee was the largest reverse termination fee ever agreed to.

Commentators have noted that forward and reverse termination fees serve different functions and should be analyzed differently. Target termination fees have the potential to foreclose a competitive bidding process, against the interests of shareholders of the target, by making acquisitions prohibitively expensive for bidders late to approach the target. Accordingly, courts have expressed concern that termination fees greater than approximately 3% of the purchase price may interfere with the Revlon duties of a sellers' board to secure the highest price under the circumstances. Reverse termination fees, by contrast, raise no such obvious concerns because they do not increase the cost of a bidding contest for later bidders.

Reverse Breakup Fees (cont.)

Of the 126 transactions reviewed in the 2015 Study, 45 (approximately 36%) had reverse breakup fees, with median fees of 4.3% and 4.0% of transaction and enterprise values, respectively. In 2014, 62 (49%) of the 127 transactions reviewed had reciprocal termination fees, with median fees of 4.1% and 3.8% of transaction and enterprise values, respectively.

Reverse Breakup Fee Summary (\$ in millions)

	2014	2015
No. of Transactions	62	45
Median Transaction Value	\$1,439.2	\$1,981.5
Median Target Fee as a Percentage of Transaction Value	3.4%	3.2%
Median Acquirer Fee as a Percentage of Transaction Value	4.1%	4.3%
Median Enterprise Value	\$2,139.8	\$3,115.7
Median Target Fee as a Percentage of Enterprise Value	2.9%	3.0%
Median Acquirer Fee as a Percentage of Enterprise Value	3.8%	4.0%
Percentage with Identical Termination Fee	37.1%	35.6%
Percentage with Target Fee Higher than Acquirer Fee	14.5%	6.7%
Percentage with Acquirer Fee Higher than Target Fee	48.4%	57.8%

Reverse Breakup Fees (cont.)

In 2014 and 2015, reverse breakup fees as a percentage of transaction and enterprise values were significantly higher in transactions involving financial buyers.

Reverse Breakup Fee Summary (\$ in millions)

	2014 Transactions		2015 Transactions	
	Strategic Buyers	Financial Buyers	Strategic Buyers	Financial Buyers
No. of Transactions	42	20	33	12
Median Transaction Value	\$1,611.1	\$1,190.4	\$1,981.5	\$2,207.9
Median Target Fee as a Percentage of Transaction Value	3.4%	3.3%	3.2%	3.2%
Median Acquirer Fee as a Percentage of Transaction Value	3.6%	5.8%	4.0%	6.1%
Median Enterprise Value	\$2,290.6	\$1,197.8	\$4,327.8	\$2,523.6
Median Target Fee as a Percentage of Enterprise Value	2.7%	3.0%	2.7%	3.5%
Median Acquirer Fee as a Percentage of Enterprise Value	3.3%	5.3%	3.7%	6.5%

Analysis of Withdrawn Transactions

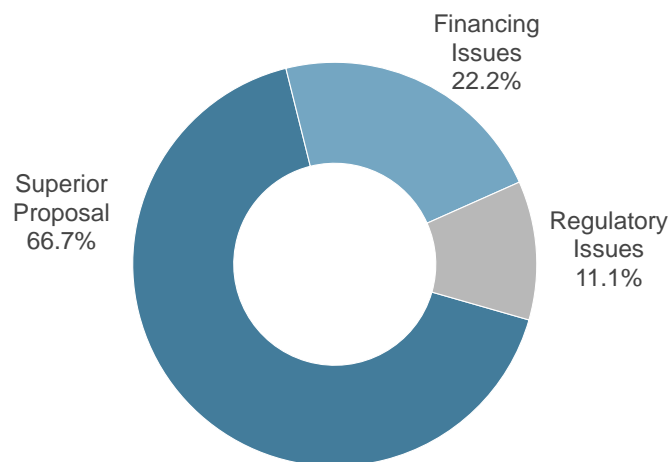
Of the 126 transactions reviewed in the 2015 Study, nine (7.1%) were terminated. In comparison, only three of the 127 transactions reviewed in 2014 were withdrawn, or approximately 2.4%.

Of the nine withdrawn transactions in 2015, six were withdrawn because the target received an unsolicited offer that constituted a superior proposal, two were withdrawn due to difficulties obtaining financing, and one was terminated due to regulatory issues.

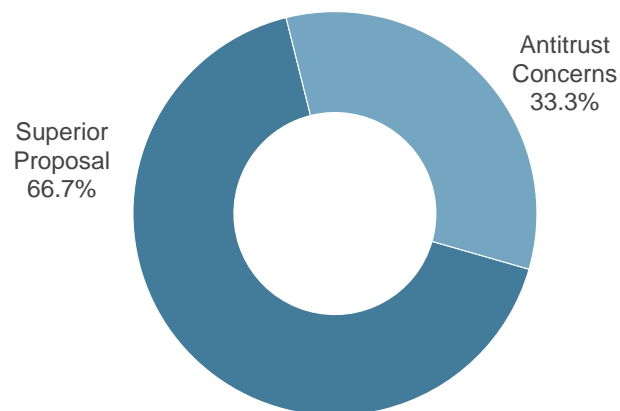
- Of note, Pfizer Inc. elected to terminate its planned \$145.8 billion merger with Allergan plc, which was the largest merger announced in 2015, after the U.S. Treasury Department issued new rules to combat tax-inversions. Pfizer Inc. agreed to pay \$150 million of Allergan plc's transaction fees and expenses, which was significantly less than the contractual amount of \$3.5 billion.

Of the identified nine terminated transactions, termination fees were paid, or under agreement to be paid, in eight of the transactions.

Reasons for Termination of Transactions in 2015



Reasons for Termination of Transactions in 2014



2015 Transaction Termination Fee Detail

2015 Transaction Termination Fee Detail

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Target's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
01/05/2015	Completed	Uranerz Energy Corp.	Uranium mining company	Energy Fuels Inc.	Uranium and vanadium mining company	Stock Swap	Stock	\$151.9	\$151.9	\$5.0	3.3%	3.3%
01/11/2015	Completed	NPS Pharmaceuticals Inc.	Biopharmaceutical company	Shire PLC	Manufactures pharmaceuticals	Tender Offer	Cash	\$5,138.9	\$5,074.7	\$155.9	3.0%	3.1%
01/12/2015	Completed	Foundation Medicine Inc.	Medical diagnostics company	Roche Holding AG	Manufactures medical instruments	Not Applicable	Cash	\$780.2	\$1,346.7	\$30.0	3.8%	2.2%
01/12/2015	Completed	MWI Veterinary Supply Inc.	Wholesales animal health products	AmerisourceBergen Corp.	Wholesales drugs and pharmaceuticals	Tender Offer	Cash	\$2,455.6	\$2,522.5	\$76.0	3.1%	3.0%
01/16/2015	Withdrawn	Courier Corp.	Publishing company	Quad/Graphics Inc.	Provides printing services	Not Applicable	Cash / Stock	\$240.2	\$272.9	\$10.0	4.2%	3.7%
01/22/2015	Completed	City National Corp.	Bank holding company	Royal Bank of Canada	Provides banking and financial services	Stock Swap	Cash / Stock	\$5,394.0	NA	\$220.0	4.1%	NA
01/26/2015	Completed	Rock-Tenn Co.	Manufactures packaging products	MeadWestvaco Corp.	Manufactures packaging products	Stock Swap	Stock	\$8,143.3	\$11,086.6	\$230.0	2.8%	2.1%
01/26/2015	Completed	Regency Energy Partners LP	Provides gas gathering services	Energy Transfer Partners LP	Owns and operates natural gas pipelines	Stock Swap	Cash / Stock	\$18,447.9	\$18,222.8	\$450.0	2.4%	2.5%
01/27/2015	Completed	Silicon Image Inc.	Manufactures semiconductors	Lattice Semiconductor Corp.	Semiconductor components	Tender Offer	Cash	\$576.0	\$411.7	\$20.8	3.6%	5.1%
01/27/2015	Completed	National Bancshares Corp.	Bank holding company	Farmers National Banc Corp.	Bank holding company	Stock Swap	Cash / Stock	\$71.5	NA	\$2.5	3.5%	NA
02/03/2015	Completed	Entropic Communications Inc.	Manufactures semiconductors	MaxLinear Inc.	Manufactures semiconductors	Stock Swap	Cash / Stock	\$273.9	\$177.3	\$11.7	4.3%	6.6%
02/04/2015	Pending	Office Depot Inc.	Retails and wholesales office supplies	Staples Inc.	Retail office supplies	Not Applicable	Cash / Stock	\$6,306.1	\$6,825.9	\$185.0	2.9%	2.7%
02/05/2015	Completed	E2open Inc.	Software publishers	Insight Venture Partners LLC	Private equity firm	Going Private	Cash	\$252.1	\$233.0	\$9.0	3.6%	3.9%
02/05/2015	Completed	Hospira Inc.	Manufactures pharmaceuticals	Pfizer Inc.	Manufactures pharmaceuticals	Not Applicable	Cash	\$15,820.2	\$16,770.8	\$500.0	3.2%	3.0%
02/05/2015	Completed	Courier Corp.	Publishing company	RR Donnelley & Sons Co.	Provides commercial printing services	Stock Swap	Cash / Stock	\$267.7	\$300.4	\$7.5	2.8%	2.5%
02/10/2015	Completed	Saba Software Inc.	Develops management software	Vector Capital Corp.	Private equity firm	Going Private	Cash	\$268.1	\$253.9	\$8.1	3.0%	3.2%
02/12/2015	Completed	Orbitz Worldwide Inc.	Provides online travel information services	Expedia Inc.	Provides online travel booking services	Not Applicable	Cash / Stock	\$1,334.2	\$1,589.2	\$57.5	4.3%	3.6%
02/19/2015	Completed	Peoples Bancorp, Auburn, Indiana	Commercial bank	Horizon Bancorp, IN	Bank holding company	Stock Swap	Cash / Stock	\$73.1	NA	\$3.5	4.8%	NA
02/22/2015	Completed	Salix Pharmaceuticals Ltd.	Manufactures specialty pharmaceuticals	Valeant Pharmaceuticals Intl.	Manufactures pharmaceuticals	Tender Offer	Cash	\$14,467.6	\$15,622.7	\$456.4	3.2%	2.9%
02/23/2015	Completed	Globe Specialty Metals Inc.	Manufactures silicon metal and alloys	Grupo Ferroatlantica SA	Manufactures iron and steel	Going Private	Stock	\$1,333.0	\$1,348.0	\$25.0	1.9%	1.9%
02/25/2015	Withdrawn	SFX Entertainment Inc.	Provides music and entertainment services	SFXE Acquisition LLC	Miscellaneous Intermediation	Not Applicable	Cash	\$330.5	\$512.3	\$15.5	4.7%	3.0%
02/25/2015	Completed	Emulex Corp.	Manufactures network storage products	Emerald Merger Sub Inc.	Semiconductor device manufacturing	Tender Offer	Cash	\$575.3	\$540.0	\$19.5	3.4%	3.6%
02/25/2015	Completed	UIL Holdings Corp.	Electric utility holding company	Iberdrola USA Inc.	Electricity and gas distribution services	Stock Swap	Cash / Stock	\$2,982.8	\$4,666.3	\$75.0	2.5%	1.6%
03/02/2015	Completed	Aruba Networks Inc.	Manufactures wireless LAN equipment	Hewlett Packard Co.	Manufactures computer equipment	Not Applicable	Cash	\$2,972.9	\$2,461.7	\$90.0	3.0%	3.7%
03/02/2015	Completed	Mavenir Systems Inc.	Provides wireless telecom services	Mitel Networks Corp.	Communications software	Tender Offer	Cash / Stock	\$559.1	\$531.2	\$8.4	1.5%	1.6%
03/04/2015	Completed	Pharmacyclics Inc.	Manufactures pharmaceuticals	AbbVie Inc.	Manufactures pharmaceuticals	Tender Offer	Cash / Stock	\$20,774.0	\$19,917.0	\$680.0	3.3%	3.4%

2015 Transaction Termination Fee Detail (cont.)

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Target's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
03/09/2015	Completed	RTI International Metals Inc.	Manufactures metal products	Alcoa Inc.	Manufactures aluminum products	Stock Swap	Stock	\$1,267.7	\$1,393.9	\$50.0	3.9%	3.6%
03/09/2015	Completed	Bridge Capital Holdings	Bank holding company	Western Alliance Bancorp, NV	Bank holding company	Stock Swap	Cash / Stock	\$421.6	NA	\$15.9	3.8%	NA
03/11/2015	Withdrawn	Salix Pharmaceuticals Ltd.	Manufactures specialty pharmaceuticals	Endo International PLC	Pharmaceutical manufacturing	Stock Swap	Cash / Stock	\$14,635.1	\$15,787.5	\$356.0	2.4%	2.3%
03/12/2015	Completed	Integrated Silicon Solution	Manufactures integrated circuits	Integrated Silicon Solution	Other financial vehicles	Going Private	Cash	\$813.4	\$682.3	\$19.2	2.4%	2.8%
03/16/2015	Completed	Life Time Fitness Inc.	Owns physical fitness centers	Life Time Fitness Inc., SPV	Other financial vehicles	Going Private	Cash	\$2,815.1	\$4,062.8	\$97.0	3.4%	2.4%
03/18/2015	Completed	Vitesse Semiconductor Corp.	Manufactures semiconductors	Microsemi Corp.	Manufactures semiconductors	Not Applicable	Cash	\$365.4	\$348.6	\$13.6	3.7%	3.9%
03/25/2015	Completed	First Security Group Inc.	Bank holding company	Atlantic Capital Bancshares	Bank holding company	Going Private	Cash / Stock	\$157.0	NA	\$6.3	4.0%	NA
03/25/2015	Completed	Kraft Foods Group Inc.	Produces packaged food products	HJ Heinz Co.	Produces processed food	Stock Swap	Cash / Stock	\$46,105.5	\$54,716.5	\$1,200.0	2.6%	2.2%
03/30/2015	Completed	Norcraft Cos Inc.	Manufactures cabinetry	Fortune Brands Home & Sec Inc.	Manufactures home and security products	Tender Offer	Cash	\$441.4	\$528.9	\$20.0	4.5%	3.8%
03/30/2015	Completed	Catamaran Corp.	Pharmacy benefits management services	UnitedHealth Group Inc.	Provides HMO services	Not Applicable	Cash	\$12,827.9	\$13,242.2	\$450.0	3.5%	3.4%
03/30/2015	Completed	Hyperion Therapeutics Inc.	Pharmaceutical manufacturing	Horizon Pharma PLC.	Pharmaceutical manufacturing	Tender Offer	Cash	\$1,017.1	\$898.6	\$35.0	3.4%	3.9%
03/30/2015	Completed	Auspex Pharmaceuticals Inc.	Pharmaceutical manufacturing	Teva Pharmaceutical Industries	Manufactures pharmaceuticals	Tender Offer	Cash	\$3,394.0	\$3,263.7	\$104.0	3.1%	3.2%
03/30/2015	Completed	Cellular Dynamics Intl Inc.	Biotechnology company	FUJIFILM Holdings Corp.	Manufactures imaging products	Tender Offer	Cash	\$276.9	\$254.6	\$8.3	3.0%	3.3%
04/07/2015	Completed	Informatica Corp.	Provides data integration software	Informatica Corp SPV	Other financial vehicles	Going Private	Cash	\$5,173.3	\$4,674.0	\$160.0	3.1%	3.4%
04/20/2015	Completed	LRR Energy LP	Oil/gas exploration production company	Vanguard Natural Resources LLC	Oil and gas exploration production company	Stock Swap	Stock	\$503.2	\$459.1	\$7.3	1.4%	1.6%
04/22/2015	Completed	Associated Estates Realty Corp.	Real estate investment trust	Brookfield Asset Mgmt Inc.	Provides asset management services	Not Applicable	Cash / Stock	\$1,670.5	NA	\$60.0	3.6%	NA
04/22/2015	Completed	Palmetto Bancshares Inc.	Bank holding company	United Community Banks Inc.	Bank holding company	Not Applicable	Cash / Stock	\$246.7	NA	\$7.5	3.0%	NA
04/22/2015	Completed	Procera Networks Inc.	Provides network management services	Francisco Partners Management	Private equity firm	Going Private	Cash	\$239.1	\$131.4	\$7.2	3.0%	5.5%
04/27/2015	Completed	iGATE Corp.	Provides IT and outsourcing services	Cap Gemini SA	Provide information technology services	Not Applicable	Cash	\$3,933.4	\$4,433.9	\$161.3	4.1%	3.6%
04/29/2015	Completed	MCG Capital Corp.	Provides commercial finance services	Investor Group	Investor group	Going Private	Cash / Stock	\$165.0	NA	\$7.0	4.2%	NA
04/30/2015	Completed	Audience Inc.	Manufactures digital signal processors	Knowles Corp.	Audio and Video Equipment	Tender Offer	Cash / Stock	\$125.6	\$84.8	\$5.0	4.0%	5.9%
05/04/2015	Completed	Cyan Inc.	Develops prepackaged software	Ciena Corp.	Manufactures fiber optic cable systems	Stock Swap	Cash / Stock	\$308.0	\$241.5	\$15.0	4.9%	6.2%
05/04/2015	Completed	PMFG Inc.	Energy company	CECO Environmental Corp.	Manufactures and wholesales air filters	Stock Swap	Cash / Stock	\$161.3	\$141.1	\$3.2	2.0%	2.3%
05/05/2015	Completed	Borderfree Inc.	All other business support services	Pitney Bowes Inc.	Manufactures postage meters	Not Applicable	Cash	\$476.5	\$383.8	\$17.0	3.6%	4.4%
05/06/2015	Completed	Bank of the Carolinas Corp.	Bank holding company	Bank of the Ozarks Inc.	Bank holding company	Stock Swap	Stock	\$64.7	NA	\$2.3	3.5%	NA
05/06/2015	Completed	Quality Distribution Inc.	General freight trucking	Apax Partners LP	Private equity firm	Going Private	Cash	\$452.0	\$776.9	\$8.2	1.8%	1.1%

2015 Transaction Termination Fee Detail (cont.)

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Target's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
05/07/2015	Completed	Micrel Inc.	Manufactures integrated circuits	Microchip Technology Inc.	Manufactures semiconductors	Not Applicable	Cash / Stock	\$837.1	\$721.8	\$34.6	4.1%	4.8%
05/11/2015	Completed	Trade Street Residential Inc.	Real estate investment trust	Independence Realty Trust	Lessors of other real estate property	Not Applicable	Cash / Stock	\$269.5	NA	\$12.0	4.5%	NA
05/11/2015	Completed	Rosetta Resources Inc.	Oil and gas exploration production company	Noble Energy Inc.	Oil and gas exploration production company	Stock Swap	Stock	\$3,816.5	\$3,637.1	\$65.0	1.7%	1.8%
05/12/2015	Completed	AOL Inc.	Online content and advertising services	Verizon Communications Inc.	Telecommunication services	Tender Offer	Cash	\$4,073.8	\$4,056.1	\$150.2	3.7%	3.7%
05/13/2015	Completed	Pall Corp.	Filters and separations equipment	Danaher Corp.	Manufactures tools and control equipment	Not Applicable	Cash	\$13,700.1	\$13,779.8	\$423.2	3.1%	3.1%
05/18/2015	Completed	ANN Inc.	Women's clothing stores	Ascena Retail Group Inc.	Women's clothing stores	Not Applicable	Cash / Stock	\$2,197.1	\$2,020.8	\$48.3	2.2%	2.4%
05/21/2015	Completed	Eagle Rock Energy Partners LP	Oil and gas exploration production company	Vanguard Natural Resources LLC	Oil and gas exploration production company	Stock Swap	Stock	\$591.1	\$543.6	\$20.0	3.4%	3.7%
05/21/2015	Completed	Omnicare Inc.	Retails and wholesales pharmaceuticals	CVS Health Corp.	Owms and operates drug stores	Not Applicable	Cash	\$14,076.6	\$12,461.8	\$350.0	2.5%	2.8%
05/22/2015	Completed	Frisch's Restaurants Inc.	Owms and operates restaurants	NRD Partners I LP	Private equity fund	Going Private	Cash	\$174.5	\$172.1	\$5.0	2.9%	2.9%
05/26/2015	Pending	Time Warner Cable Inc.	Provides cable TV services	Charter Communications Inc.	Provides cable TV and Internet services	Not Applicable	Cash / Stock	\$55,637.6	\$78,376.7	\$2,000.0	3.6%	2.6%
05/26/2015	Withdrawn	Geeknet Inc.	Provides e-commerce retail services	Hot Topic Inc.	Other clothing stores	Going Private	Cash	\$118.3	\$81.2	\$3.7	3.1%	4.5%
05/27/2015	Completed	Rally Software Dvp Corp.	Develops lifecycle management software	CA Inc.	IT management software	Tender Offer	Cash	\$513.8	\$446.1	\$17.4	3.4%	3.9%
05/27/2015	Completed	Geeknet Inc.	Provides e-commerce retail services	GameStop Inc.	Owms and operates toy stores	Tender Offer	Cash	\$135.7	\$98.6	\$3.7	2.7%	3.7%
05/29/2015	Completed	Premier Valley Bank, Fresno, CA	Commercial bank (for U.S.)	Heartland Financial USA Inc.	Bank holding company	Stock Swap	Cash / Stock	\$97.3	NA	\$3.0	3.1%	NA
06/01/2015	Completed	OM Group Inc.	Manufactures industrial equipment	Apollo Global Management LLC	Private equity firm	Not Applicable	Cash	\$1,033.3	\$1,020.3	\$36.6	3.5%	3.6%
06/01/2015	Completed	Altera Corp.	Manufactures semiconductors	Intel Corp.	Manufactures semiconductors	Not Applicable	Cash	\$16,299.3	\$15,331.1	\$500.0	3.1%	3.3%
06/04/2015	Completed	Naugatuck Valley Fintl Corp.	Bank holding company	Liberty Bank	Chartered mutual savings bank	Going Private	Cash	\$77.8	NA	\$3.1	4.0%	NA
06/04/2015	Completed	Bio-Reference Laboratories Inc.	Provides clinical lab testing services	OPKO Health Inc.	Manufactures pharmaceuticals	Stock Swap	Stock	\$1,471.3	\$1,517.7	\$54.0	3.7%	3.6%
06/10/2015	Completed	HCC Insurance Holdings Inc.	Insurance holding company	Tokio Marine & Nichido Fire	Insurance company	Not Applicable	Cash	\$7,540.9	\$8,336.7	\$187.5	2.5%	2.2%
06/15/2015	Completed	DealerTrack Technologies Inc.	Management software services	Cox Automotive Inc.	Motor vehicle merchant wholesalers	Going Private	Cash	\$3,572.8	\$4,379.4	\$118.0	3.3%	2.7%
06/17/2015	Completed	KYTHERA Biopharmaceuticals Inc.	Biopharmaceutical company	Allergan Inc.	Pharmaceutical manufacturing	Not Applicable	Cash / Stock	\$2,127.9	\$1,967.7	\$69.8	3.3%	3.5%
06/18/2015	Completed	Louisiana Bancorp Inc.	Bank holding company	Home Bancorp Inc.	Bank holding company	Not Applicable	Cash	\$74.5	NA	\$3.0	4.0%	NA
06/22/2015	Completed	Home Properties Inc.	Real estate investment trust	Lone Star Funds	Private equity firm	Going Private	Cash	\$4,421.5	NA	\$50.0	1.1%	NA
06/29/2015	Completed	Ameriana Bancorp	Bank holding company	First Merchants Corp.	Bank holding company	Stock Swap	Stock	\$69.6	NA	\$1.5	2.2%	NA
06/30/2015	Completed	Towers Watson & Co.	Provides management consulting services	Willis Group Holdings PLC	Provides insurance brokerage services	Stock Swap	Stock	\$8,353.1	\$7,710.5	\$255.0	3.1%	3.3%
07/01/2015	Completed	Gramercy Property Trust Inc.	Real estate investment trust	Chambers Street Properties	Real estate investment trust	Stock Swap	Stock	\$1,457.1	NA	\$43.5	3.0%	NA

2015 Transaction Termination Fee Detail (cont.)

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Target's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
07/03/2015	Pending	Humana Inc.	Provides healthcare services	Aetna Inc.	Provides HMO services	Not Applicable	Cash / Stock	\$34,580.3	\$36,762.3	\$1,314.0	3.8%	3.6%
07/13/2015	Completed	MarkWest Energy Partners LP	Natural gas exploration production company	MPLX LP	Owns operates crude oil pipelines	Stock Swap	Cash / Stock	\$22,296.4	\$22,845.3	\$625.0	2.8%	2.7%
07/14/2015	Completed	Receptos Inc.	Pharmaceutical manufacturing	Celgene Corp.	Biopharmaceutical products	Tender Offer	Cash	\$7,730.7	\$7,151.6	\$230.0	3.0%	3.2%
07/20/2015	Withdrawn	Vivint Solar Inc.	Electric power distribution	SunEdison Inc.	Semiconductor manufacturing	Not Applicable	Cash / Stock	\$1,757.2	\$1,757.2	\$34.0	1.9%	1.9%
07/22/2015	Completed	Thoratec Corp.	Manufactures medical devices	St. Jude Medical Inc.	Manufactures medical devices	Not Applicable	Cash	\$3,520.4	\$3,246.3	\$110.5	3.1%	3.4%
07/29/2015	Completed	Cytec Industries Inc.	Manufactures specialty chemicals	Solvay SA	Manufactures chemicals	Not Applicable	Cash	\$5,515.6	\$6,134.0	\$140.0	2.5%	2.3%
08/04/2015	Completed	Metro Bancorp Inc., Harrisburg	Bank holding company	FNB Corp.	Bank holding company	Stock Swap	Stock	\$463.5	NA	\$17.5	3.8%	NA
08/04/2015	Pending	Baxalta Inc.	Pharmaceutical manufacturing	Shire PLC	Manufactures pharmaceuticals	Stock Swap	Cash / Stock	\$30,951.9	\$35,218.7	\$369.0	1.2%	1.0%
08/05/2015	Completed	Tecumseh Products Co.	Manufactures hermetic compressors	MA Industrial JV LLC	Investment company	Going Private	Cash	\$92.8	\$120.0	\$3.8	4.1%	3.2%
08/10/2015	Completed	Yodlee Inc.	Software publishers	Envestnet Inc.	Provides wealth management services	Not Applicable	Cash / Stock	\$647.6	\$578.0	\$17.8	2.7%	3.1%
08/11/2015	Pending	Terex Corp.	Manufactures construction equipment	Konecranes Abp	Manufactures industrial cranes	Stock Swap	Stock	\$2,761.8	\$4,327.8	\$37.0	1.3%	0.9%
08/12/2015	Completed	Planar Systems Inc.	Manufactures display and digital signage	Leyard Optoelectronic Co. Ltd.	Manufactures LED products	Not Applicable	Cash	\$149.7	\$133.4	\$4.0	2.7%	3.0%
08/17/2015	Completed	Zulily Inc.	Sells retail women and kids apparel	Liberty Interactive Corp.	Provides cable TV services	Tender Offer	Cash / Stock	\$2,420.7	\$2,107.2	\$79.0	3.3%	3.7%
08/31/2015	Completed	Blyth Inc.	Manufactures home fragrance products	The Carlyle Group LP	Private equity firm	Going Private	Cash	\$96.8	\$83.0	\$3.9	4.0%	4.7%
09/03/2015	Completed	Pericom Semiconductor Corp.	Manufactures integrated circuits	Diodes Inc.	Manufactures semiconductors	Not Applicable	Cash	\$396.4	\$275.9	\$15.0	3.8%	5.4%
09/08/2015	Withdrawn	Meredith Corp.	Publishing company	Media General Inc.	Television broadcasting	Not Applicable	Cash / Stock	\$2,343.5	\$3,115.7	\$60.0	2.6%	1.9%
09/09/2015	Completed	Con-way Inc.	Provides freight transportation services	XPO Logistics Inc.	Provides logistics services	Tender Offer	Cash	\$3,015.7	\$3,015.8	\$102.9	3.4%	3.4%
09/29/2015	Completed	Rentrak Corp.	Develops web-based software	cornScore Inc.	Provides online research services	Stock Swap	Stock	\$813.2	\$734.3	\$28.5	3.5%	3.9%
10/01/2015	Completed	First Capital Bancorp	Bank holding company	Park Sterling Corp.	Bank holding company	Stock Swap	Cash / Stock	\$71.8	NA	\$3.3	4.5%	NA
10/01/2015	Completed	Security California Bancorp	Commercial bank	Pacific Premier Bancorp Inc.	Bank holding company	Stock Swap	Cash / Stock	\$118.9	NA	\$4.5	3.8%	NA
10/05/2015	Withdrawn	PMC-Sierra Inc.	Manufactures semiconductors	Skyworks Solutions Inc.	Manufactures signal semiconductors	Not Applicable	Cash	\$2,324.7	\$2,267.6	\$88.5	3.8%	3.9%
10/09/2015	Completed	UTi Worldwide Inc.	Provides transportation services	DSV A/S	Transportation and logistics services	Not Applicable	Cash	\$970.8	\$1,125.7	\$34.0	3.5%	3.0%
10/12/2015	Pending	EMC Corp.	Manufactures storage platforms	Dell Inc.	Manufactures computer equipment	Going Private	Cash / Stock	\$65,999.8	\$63,966.3	\$2,500.0	3.8%	3.9%
10/13/2015	Completed	Wausau Paper Corp.	Manufactures fine printing paper	Svenska Cellulosa AB SCA	Manufactures hygiene products	Not Applicable	Cash	\$514.5	\$681.2	\$18.2	3.5%	2.7%
10/19/2015	Completed	PMC-Sierra Inc.	Manufactures semiconductors	Microsemi Corp.	Manufactures semiconductors	Tender Offer	Cash / Stock	\$2,420.2	\$2,363.2	\$88.5	3.7%	3.7%
10/21/2015	Completed	SolarWinds Inc.	Network management software	SolarWinds Inc SPV	Special purpose acquisition vehicle	Going Private	Cash	\$4,474.5	\$4,370.9	\$159.0	3.6%	3.6%

2015 Transaction Termination Fee Detail (cont.)

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Target's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
10/21/2015	Pending	KLA-Tencor Corp.	Manufactures semiconductors	Lam Research Corp.	Manufactures wafer fabrication equipment	Stock Swap	Cash / Stock	\$10,763.3	\$11,643.7	\$290.0	2.7%	2.5%
10/22/2015	Completed	Landmark Apartment Trust Inc.	Lessors Of other real estate property	Monument Partners LLC	Other financial vehicles	Not Applicable	Cash	\$1,900.0	NA	\$20.0	1.1%	NA
10/26/2015	Withdrawn	The PEP Boys-Manny Moe & Jack	Provides retail auto parts and accessories	Bridgestone Ret Op LLC	General automotive repair	Going Private	Cash	\$929.8	\$1,053.0	\$39.5	4.2%	3.8%
10/26/2015	Pending	VBI Vaccines Inc.	Biological product manufacturing	SciVac Therapeutics Inc.	Biological product manufacturing	Stock Swap	Stock	\$83.9	\$74.3	\$3.3	4.0%	4.5%
10/26/2015	Completed	River Valley Bancorp.	Bank holding company	German American Bancorp, IN	Bank holding company	Stock Swap	Cash / Stock	\$87.2	NA	\$3.2	3.7%	NA
10/26/2015	Completed	TriVascular Technologies Inc.	Medical instrument manufacturing	Endologix Inc.	Manufactures catheters	Stock Swap	Cash / Stock	\$202.8	\$218.1	\$6.3	3.1%	2.9%
10/26/2015	Pending	Piedmont Natural Gas Co Inc.	Gas utility company	Duke Energy Corp.	Provides electric delivery services	Not Applicable	Cash	\$6,594.9	\$6,577.6	\$125.0	1.9%	1.9%
10/29/2015	Pending	Astoria Financial Corp.	Bank holding company	New York Community Bancorp Inc.	Bank holding company	Stock Swap	Cash / Stock	\$1,981.5	NA	\$69.5	3.5%	NA
11/02/2015	Pending	Furmanite Corp.	Provides industrial maintenance services	Team Inc.	Provides specialty industrial services	Stock Swap	Stock	\$285.9	\$308.7	\$10.0	3.5%	3.2%
11/02/2015	Completed	Constant Contact Inc.	Provides online marketing services	Endurance Intl Group Inc.	Provides online application services	Not Applicable	Cash	\$1,112.1	\$931.6	\$36.0	3.2%	3.9%
11/02/2015	Completed	MedAssets Inc.	Develops prepackaged software	Pamplona Capital Management	Private equity firm	Going Private	Cash	\$1,939.1	\$2,655.7	\$58.6	3.0%	2.2%
11/02/2015	Completed	Dyax Corp.	Biotechnology company	Shire PLC	Manufactures pharmaceutical	Not Applicable	Cash	\$6,557.0	\$6,225.6	\$180.0	2.7%	2.9%
11/08/2015	Completed	Plum Creek Timber Co. Inc.	Owms and operates timberlands	Weyerhaeuser Co.	Owms and operates timberlands	Stock Swap	Stock	\$8,462.4	\$11,621.4	\$250.0	3.0%	2.2%
11/09/2015	Completed	RealD Inc.	Manufactures motion picture systems	Rizvi Traverse Management LLC	Private equity firm	Going Private	Cash	\$560.1	\$521.2	\$24.0	4.3%	4.6%
11/16/2015	Pending	Starwood Hotels & Resorts	Owms and operates hotels	Marriott International Inc.	Owms and operates hotels and resorts	Stock Swap	Cash / Stock	\$13,568.5	\$14,815.5	\$400.0	2.9%	2.7%
11/17/2015	Pending	Airgas Inc.	Supplies industrial and medical equipment	Air Liquide SA	Manufactures industrial gases	Not Applicable	Cash	\$10,630.0	\$13,400.4	\$400.0	3.8%	3.0%
11/18/2015	Pending	Fairchild Semiconductor Intl.	Manufactures semiconductors	ON Semiconductor Corp.	Manufactures semiconductors	Tender Offer	Cash	\$2,270.3	\$2,224.9	\$72.0	3.2%	3.2%
11/23/2015	Withdrawn	Allergan PLC	Pharmaceutical manufacturing	Pfizer Inc.	Manufactures pharmaceuticals	Stock Swap	Cash / Stock	\$145,785.3	\$191,522.1	\$3,500.0	2.4%	1.8%
12/03/2015	Pending	Pulaski Financial Corp., MO	Savings, loan holding company	First Busey Corp., Urbana, IL	Bank holding company	Stock Swap	Stock	\$217.7	NA	\$9.0	4.1%	NA
12/07/2015	Completed	Keurig Green Mountain Inc.	Coffee and tea manufacturing	Investor Group	Investor group	Not Applicable	Cash	\$13,877.5	\$14,165.6	\$475.0	3.4%	3.4%
12/15/2015	Pending	Heartland Payment Systems Inc.	Provides payment processing services	Global Payments Inc.	Provides electronic processing services	Not Applicable	Cash / Stock	\$3,709.0	\$4,033.4	\$153.0	4.1%	3.8%
12/29/2015	Pending	Fairchild Semiconductor Intl.	Manufactures semiconductors	Fairchild Semiconductor SPV	Special purpose acquisition vehicle	Not Applicable	Cash	\$2,476.6	\$2,391.4	\$72.0	2.9%	3.0%

2015 Reverse Transaction Termination Fee Detail

2015 Reverse Transaction Termination Fee Detail

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Acquirer's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
01/05/2015	Completed	Uranerz Energy Corp.	Uranium mining company	Energy Fuels Inc.	Uranium and vanadium mining company	Stock Swap	Stock	\$151.9	\$151.9	\$5.0	3.3%	3.3%
01/26/2015	Completed	Rock-Tenn Co.	Manufactures packaging products	MeadWestvaco Corp.	Manufactures packaging products	Stock Swap	Stock	\$8,143.3	\$11,086.6	\$230.0	2.8%	2.1%
02/03/2015	Completed	Entropic Communications Inc.	Manufactures semiconductors	MaxLinear Inc.	Manufactures semiconductors	Stock Swap	Cash / Stock	\$273.9	\$177.3	\$11.7	4.3%	6.6%
02/04/2015	Pending	Office Depot Inc.	Retails and wholesales office supplies	Staples Inc.	Retail office supplies	Not Applicable	Cash / Stock	\$6,306.1	\$6,825.9	\$250.0	4.0%	3.7%
02/05/2015	Completed	Courier Corp.	Publishing company	RR Donnelley & Sons Co.	Provides commercial printing services	Stock Swap	Cash / Stock	\$267.7	\$300.4	\$12.0	4.5%	4.0%
02/25/2015	Withdrawn	SFX Entertainment Inc.	Provides music and entertainment services	SFXE Acquisition LLC	Miscellaneous intermediation	Not Applicable	Cash	\$330.5	\$512.3	\$7.8	2.4%	1.5%
03/02/2015	Completed	Mavenir Systems Inc.	Provides wireless telecom services	Mitel Networks Corp.	Communications software	Tender Offer	Cash / Stock	\$559.1	\$531.2	\$35.8	6.4%	6.7%
03/09/2015	Completed	Bridge Capital Holdings	Bank holding company	Western Alliance Bancorp, NV	Bank holding company	Stock Swap	Cash / Stock	\$421.6	NA	\$15.9	3.8%	NA
03/25/2015	Completed	First Security Group Inc.	Bank holding company	Atlantic Capital Bancshares	Bank holding company	Going Private	Cash / Stock	\$157.0	NA	\$6.3	4.0%	NA
03/30/2015	Completed	Hyperion Therapeutics Inc.	Pharmaceutical manufacturing	Horizon Pharma PLC.	Pharmaceutical manufacturing	Tender Offer	Cash	\$1,017.1	\$898.6	\$75.0	7.4%	8.3%
04/07/2015	Completed	Informatica Corp.	Provides data integration software	Informatica Corp SPV	Other financial vehicles	Going Private	Cash	\$5,173.3	\$4,674.0	\$320.0	6.2%	6.8%
04/29/2015	Completed	MCG Capital Corp.	Provides commercial finance services	Investor Group	Investor group	Going Private	Cash / Stock	\$165.0	NA	\$7.0	4.2%	NA
05/04/2015	Completed	PMFG Inc.	Energy company	CECO Environmental Corp.	Manufactures and wholesales air filters	Stock Swap	Cash / Stock	\$161.3	\$141.1	\$9.6	6.0%	6.8%
05/11/2015	Completed	Trade Street Residential Inc.	Real estate investment trust	Independence Realty Trust	Lessors of other real estate property	Not Applicable	Cash / Stock	\$269.5	NA	\$25.0	9.3%	NA
05/26/2015	Pending	Time Warner Cable Inc.	Provides cable TV services	Charter Communications Inc.	Provides cable TV and Internet services	Not Applicable	Cash / Stock	\$55,637.6	\$78,376.7	\$1,000.0	1.8%	1.3%
06/01/2015	Completed	OM Group Inc.	Manufactures industrial equipment	Apollo Global Management LLC	Private equity firm	Not Applicable	Cash	\$1,033.3	\$1,020.3	\$62.7	6.1%	6.1%
06/15/2015	Completed	DealerTrack Technologies Inc.	Management software services	Cox Automotive Inc.	Motor vehicle merchant wholesalers	Going Private	Cash	\$3,572.8	\$4,379.4	\$118.0	3.3%	2.7%
06/22/2015	Completed	Home Properties Inc.	Real estate investment trust	Lone Star Funds	Private equity firm	Going Private	Cash	\$4,421.5	NA	\$300.0	6.8%	NA
06/30/2015	Completed	Towers Watson & Co.	Provides management consulting services	Willis Group Holdings PLC	Provides insurance brokerage services	Stock Swap	Stock	\$8,353.1	\$7,710.5	\$255.0	3.1%	3.3%
07/01/2015	Completed	Gramercy Property Trust Inc.	Real estate investment trust	Chambers Street Properties	Real estate investment trust	Stock Swap	Stock	\$1,457.1	NA	\$61.2	4.2%	NA
07/03/2015	Pending	Humana Inc.	Provides healthcare services	Aetna Inc.	Provides HMO services	Not Applicable	Cash / Stock	\$34,580.3	\$36,762.3	\$2,691.0	7.8%	7.3%
07/14/2015	Completed	Receptos Inc.	Pharmaceutical manufacturing	Celgene Corp.	Biopharmaceutical products	Tender Offer	Cash	\$7,730.7	\$7,151.6	\$400.0	5.2%	5.6%
08/05/2015	Completed	Tecumseh Products Co.	Manufactures hermetic compressors	MA Industrial JV LLC	Investment company	Going Private	Cash	\$92.8	\$120.0	\$4.8	5.2%	4.0%
08/11/2015	Pending	Terex Corp.	Manufactures construction equipment	Konecranes Abp	Manufactures industrial cranes	Stock Swap	Stock	\$2,761.8	\$4,327.8	\$37.0	1.3%	0.9%
09/08/2015	Withdrawn	Meredith Corp.	Publishing company	Media General Inc.	Television broadcasting	Not Applicable	Cash / Stock	\$2,343.5	\$3,115.7	\$60.0	2.6%	1.9%
09/29/2015	Completed	Rentrak Corp.	Develops web-based software	comScore Inc.	Provides online research services	Stock Swap	Stock	\$813.2	\$734.3	\$57.0	7.0%	7.8%

2015 Reverse Transaction Termination Fee Detail (cont.)

Date Announced	Status	Target Name	Target Description	Acquirer Name	Acquirer Description	Acquisition Technique	Consideration	Transaction Value (\$ M)	Enterprise Value (\$ M)	Acquirer's Termination Fee (\$ M)	Term Fee as a % of Transaction Value	Term Fee as a % of Enterprise Value
10/12/2015	Pending	EMC Corp.	Manufactures storage platforms	Dell Inc.	Manufactures computer equipment	Going Private	Cash / Stock	\$65,999.8	\$63,966.3	\$6,000.0	9.1%	9.4%
10/13/2015	Completed	Wausau Paper Corp.	Manufactures fine printing paper	Svenska Cellulosa AB SCA	Manufactures hygiene products	Not Applicable	Cash	\$514.5	\$681.2	\$26.0	5.1%	3.8%
10/21/2015	Completed	SolarWinds Inc.	Network management software	SolarWinds Inc SPV	Special purpose acquisition vehicle	Going Private	Cash	\$4,474.5	\$4,370.9	\$317.9	7.1%	7.3%
10/21/2015	Pending	KLA-Tencor Corp.	Manufactures semiconductors	Lam Research Corp.	Manufactures wafer fabrication equipment	Stock Swap	Cash / Stock	\$10,763.3	\$11,643.7	\$290.0	2.7%	2.5%
10/22/2015	Completed	Landmark Apartment Trust Inc.	Lessors of other real estate property	Monument Partners LLC	Other financial vehicles	Not Applicable	Cash	\$1,900.0	NA	\$50.0	2.6%	NA
10/26/2015	Pending	VBI Vaccines Inc.	Biological product manufacturing	SciVac Therapeutics Inc.	Biological product manufacturing	Stock Swap	Stock	\$83.9	\$74.3	\$2.7	3.2%	3.6%
10/26/2015	Completed	TriVascular Technologies Inc.	Medical instrument manufacturing	Endologix Inc.	Manufactures catheters	Stock Swap	Cash / Stock	\$202.8	\$218.1	\$9.5	4.7%	4.4%
10/26/2015	Pending	Piedmont Natural Gas Co Inc.	Gas utility company	Duke Energy Corp.	Provides electric delivery services	Not Applicable	Cash	\$6,594.9	\$6,577.6	\$250.0	3.8%	3.8%
10/29/2015	Pending	Astoria Financial Corp.	Bank holding company	New York Community Bancorp Inc.	Bank holding company	Stock Swap	Cash / Stock	\$1,981.5	NA	\$69.5	3.5%	NA
11/02/2015	Completed	Constant Contact Inc.	Provides online marketing services	Endurance Intl Group Inc.	Provides online application services	Not Applicable	Cash	\$1,112.1	\$931.6	\$72.0	6.5%	7.7%
11/02/2015	Completed	MedAssets Inc.	Develops prepackaged software	Pamplona Capital Management	Private equity firm	Going Private	Cash	\$1,939.1	\$2,655.7	\$117.2	6.0%	4.4%
11/02/2015	Completed	Dyax Corp.	Biotechnology company	Shire PLC	Manufactures pharmaceutical	Not Applicable	Cash	\$6,557.0	\$6,225.6	\$280.0	4.3%	4.5%
11/08/2015	Completed	Plum Creek Timber Co. Inc.	Owns and operates timberlands	Weyerhaeuser Co.	Owns and operates timberlands	Stock Swap	Stock	\$8,462.4	\$11,621.4	\$250.0	3.0%	2.2%
11/09/2015	Completed	RealD Inc.	Manufactures motion picture systems	Rizvi Traverse Management LLC	Private equity firm	Going Private	Cash	\$560.1	\$521.2	\$29.0	5.2%	5.6%
11/16/2015	Pending	Starwood Hotels & Resorts	Owns and operates hotels	Marriott International Inc.	Owns and operates hotels and resorts	Stock Swap	Cash / Stock	\$13,568.5	\$14,815.5	\$400.0	2.9%	2.7%
11/17/2015	Pending	Airgas Inc.	Supplies industrial and medical equipment	Air Liquide SA	Manufactures industrial gases	Not Applicable	Cash	\$10,630.0	\$13,400.4	\$400.0	3.8%	3.0%
11/18/2015	Pending	Fairchild Semiconductor Intl.	Manufactures semiconductors	ON Semiconductor Corp.	Manufactures semiconductors	Tender Offer	Cash	\$2,270.3	\$2,224.9	\$180.0	7.9%	8.1%
11/23/2015	Withdrawn	Allergan PLC	Pharmaceutical manufacturing	Pfizer Inc.	Manufactures pharmaceuticals	Stock Swap	Cash / Stock	\$145,785.3	\$191,522.1	\$3,500.0	2.4%	1.8%
12/29/2015	Pending	Fairchild Semiconductor Intl.	Manufactures semiconductors	Fairchild Semiconductor SPV	Special purpose acquisition vehicle	Not Applicable	Cash	\$2,476.6	\$2,391.4	\$215.0	8.7%	9.0%

About Houlihan Lokey

About Houlihan Lokey

Houlihan Lokey (NYSE: HLI) is a global investment bank with expertise in mergers and acquisitions, capital markets, valuation, financial restructuring, and strategic consulting. The firm serves corporations, institutions, and governments worldwide with offices in the United States, Europe, and the Asia-Pacific region. Independent advice and intellectual rigor are hallmarks of our commitment to client success across our advisory services. Houlihan Lokey is ranked as the No. 1 M&A advisor for all U.S. transactions, the No. 1 global M&A fairness opinion advisor over the past 15 years, and the No. 1 global restructuring advisor, according to Thomson Reuters.

Disclaimer


Disclaimer

© 2016 Houlihan Lokey. All rights reserved. This material may not be reproduced in any format by any means or redistributed without the prior written consent of Houlihan Lokey. Houlihan Lokey is a trade name for Houlihan Lokey, Inc. and its subsidiaries and affiliates, which include: United States: Houlihan Lokey Capital, Inc., a SEC-registered broker-dealer and member of FINRA (www.finra.org) and SIPC (www.sipc.org) (investment banking services); Houlihan Lokey Financial Advisors, Inc. (financial advisory services); Houlihan Lokey Consulting, Inc. (strategic consulting services); Houlihan Lokey Real Estate Group, Inc. (real estate advisory services); Europe: each of Houlihan Lokey (Europe) Limited and Houlihan Lokey (Financial Advisory) Limited, authorized and regulated by the U.K. Financial Conduct Authority; Houlihan Lokey GmbH; Houlihan Lokey (Netherlands) B.V.; and Houlihan Lokey (España) S.A.; Hong Kong SAR: Houlihan Lokey (China) Limited, licensed in Hong Kong by the Securities and Futures Commission to conduct Type 1, 4 and 6 regulated activities to professional investors only; China: Houlihan Lokey Howard & Zukin Investment Consulting (Beijing) Co., Limited (financial advisory services); Japan: Houlihan Lokey K.K. (financial advisory services); Australia: Houlihan Lokey (Australia) Pty Limited (ABN 74 601 825 227), a company incorporated in Australia and licensed by the Australian Securities and Investments Commission (AFSL number 474953) in respect of financial services provided to wholesale clients. In the European Economic Area and Hong Kong, this communication may be directed to intended recipients including professional investors, high-net-worth companies or other institutional investors.

Houlihan Lokey gathers its data from sources it considers reliable; however, it does not guarantee the accuracy or completeness of the information provided within this presentation. The material presented reflects information known to the authors at the time this presentation was written, and this information is subject to change. Houlihan Lokey makes no representations or warranties, expressed or implied, regarding the accuracy of this material. The views expressed in this material accurately reflect the personal views of the authors regarding the subject securities and issuers and do not necessarily coincide with those of Houlihan Lokey. Officers, directors and partners in the Houlihan Lokey group of companies may have positions in the securities of the companies discussed. This presentation does not constitute advice or a recommendation, offer or solicitation with respect to the securities of any company discussed herein, is not intended to provide information upon which to base an investment decision, and should not be construed as such. Houlihan Lokey or its affiliates may from time to time provide investment banking or related services to these companies. Like all Houlihan Lokey employees, the authors of this presentation receive compensation that is affected by overall firm profitability.

**CORPORATE FINANCE
FINANCIAL ADVISORY SERVICES
FINANCIAL RESTRUCTURING
STRATEGIC CONSULTING**

HL.com

A large, colorful geometric graphic on the left side of the page, composed of numerous triangles in shades of blue, green, orange, purple, and teal, arranged in a complex, overlapping pattern.

Middle-Market M&A SurveyBook

2017 Survey of Key M&A Deal Terms

Introduction

Seyfarth Shaw LLP is pleased to present the 4th edition of its Middle-Market M&A SurveyBook (“Survey”) which analyzes key transaction terms included in over 150 middle-market (i.e., transactions with a purchase price of less than \$1 billion) private target acquisition agreements signed in 2016.¹ The information presented is intended to serve as a guide to buyers, sellers and deal professionals on “what’s market” when negotiating private target acquisition agreements in what we expect will be an active 2017.

The Survey focuses on key deal terms comprising the “indemnity package” included in almost all private target acquisition agreements to address the issue of a seller’s potential post-closing liability to a buyer and defining the scope by which the purchase price paid to a seller may be potentially clawed back by a buyer.

The data analyzed in this Survey suggests that while the current M&A environment is still trending to be more favorable to sellers as has been the case over the past two years, there are indications to suggest that certain terms are slightly less seller favorable than 2015. For example, our Survey data shows an increase in the median escrow period, an increase in the

number of deals with an indemnity escrow amount of 10% or more, an increase in the median escrow amount, and an increase in the use of tipping baskets as opposed to a true deductible.

The competition among buyers searching to acquire quality assets continues to be fierce and the purchase of representation and warranty insurance continues to be a powerful tool used by buyers in an effort to make their acquisition proposal more attractive to a seller by significantly limiting potential post-closing liability of the seller.

North American middle-market M&A deal volume and deal value declined 17.98% and 8.69%, respectively, in 2016.² It appears that a key driver for the reduction in deal activity was political uncertainty prior to the U.S. election, which is not unusual in an election year, and post-election uncertainty regarding the incoming Trump administration’s policies in the areas of taxation, interest rates and financial industry regulation, among others. It is important to note, however, that M&A activity in the last couple of years was at or near record highs and consequently 2016 was still a solid year for M&A despite the declines noted above.

To be sure, each deal has unique facts and circumstances that impact the negotiation of the acquisition agreement, including, importantly, the relative leverage of the buyer and seller. It is nonetheless helpful when negotiating an acquisition agreement to have a strong understanding of where the terms of your “indemnity package” fall in the current market spectrum. This Survey aims to arm you with this information and help answer the question of “what’s market?”. Our Survey provides you with data on these key terms, together with our insights, in an easily readable format as a quick reference guide to assist you in negotiating private target acquisition agreements.

If you would like more information regarding the data presented in our Middle-Market M&A SurveyBook, we welcome the opportunity to further discuss our findings with you.

¹For purposes of this Survey, “purchase price” means the total cash consideration paid by the buyer in a transaction, but does not include contingent purchase price payments (e.g., earnouts). This Survey does not include any transactions that involved the payment of any consideration other than cash.

²Source: S&P Capital IQ.

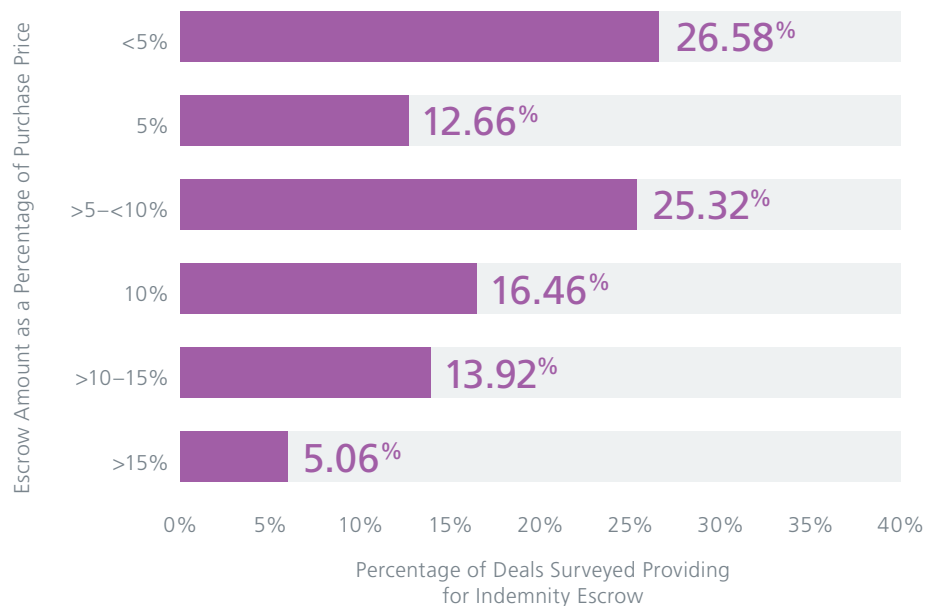
Key Deal Terms Surveyed*

- Indemnity Escrow Amount
- Indemnity Escrow Period
- Representation & Warranty Survival Period
- Carve Outs to General Survival Period
- Indemnity Basket Type
- Indemnity Basket Size
- Indemnity Cap

*A glossary of these terms can be found on page 10.

Indemnity Escrow Amount

Approximately 55% of all deals surveyed provided for an indemnity escrow.



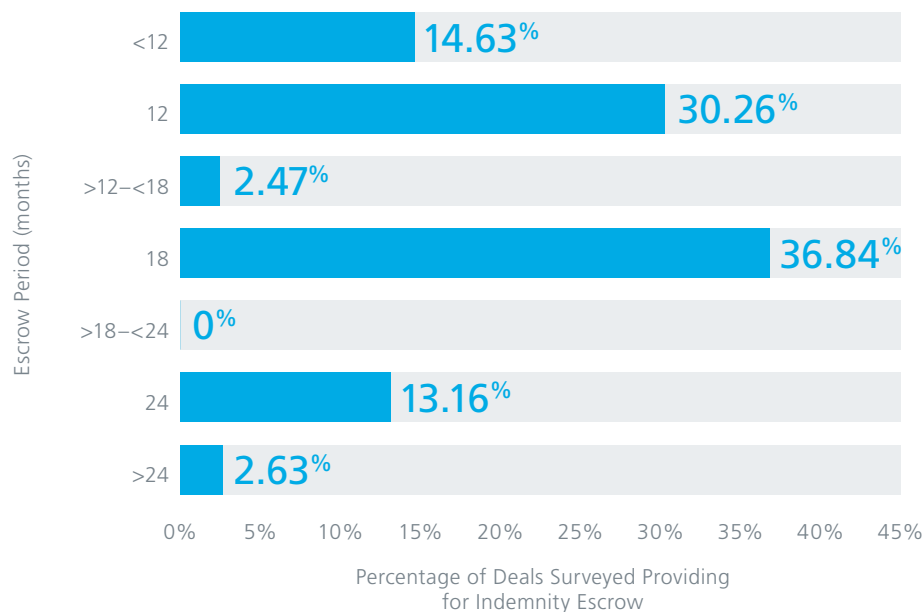
Observations*

Of the deals surveyed which provided for an indemnity escrow:

- The median indemnity escrow amount in 2016 was 8% of the purchase price (compared to 6% in 2015, 7.41% in 2014, and 8.78% in 2013).
- Approximately 65% had an indemnity escrow amount of less than 10% (compared to 76% in 2015, 59% in 2014, and 48% in 2013).
- Approximately 27% had indemnity escrow amounts of less than 5% (compared to 31% in 2015, and 21% in 2014). As recently as 2013, only 16% of deals had indemnity escrow amounts of less than 5%.

*Data used in this Survey for prior year comparisons has been derived from the results of our prior surveys.

Indemnity Escrow Period

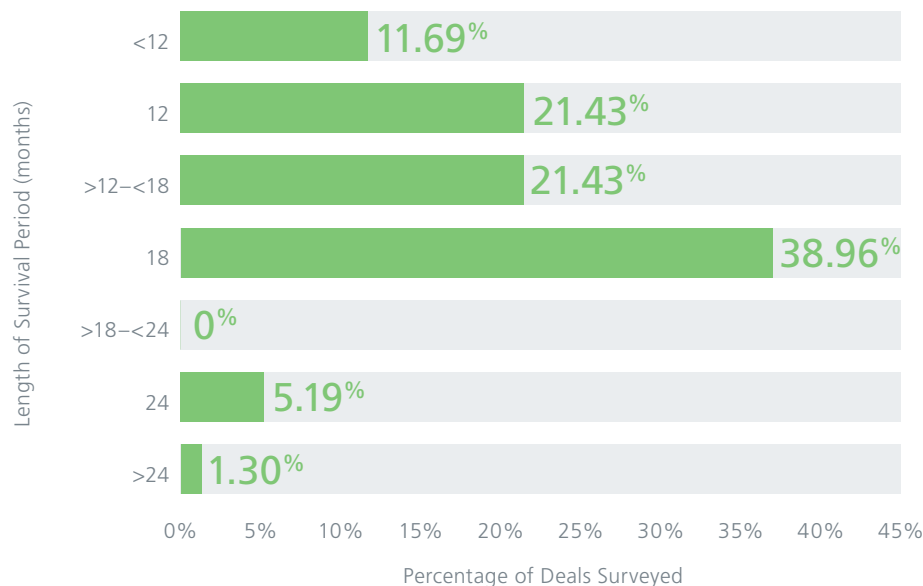


Observations

Of the deals surveyed which provided for an indemnity escrow:

- The median indemnity escrow period increased slightly in 2016 to 18 months (compared to 16.5 months in 2015 and 15 months in 2014 and 2013).
- The percentage of deals with an indemnity escrow period of 12 months or less remained relatively unchanged at approximately 45% in 2016 compared to 46% in 2015. This percentage has steadily increased since 2013 when the percentage of deals with an indemnity escrow period of 12 months or less was only 34%.
- The percentage of deals with an indemnity escrow period of 24 months or greater increased to approximately 16% in 2016 as compared to 13% in 2015 and 11% in 2014.

Representation & Warranty Survival Period*

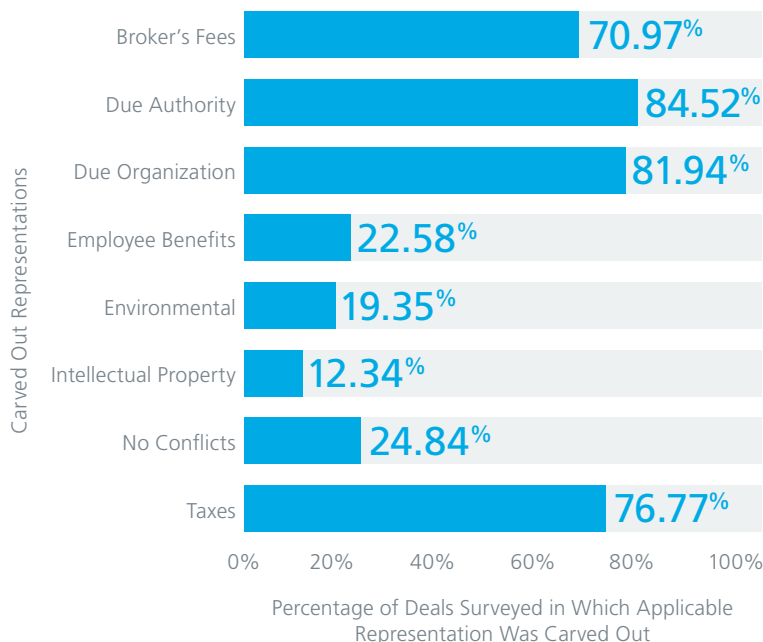


Observations

- The median survival period for deals surveyed was 15 months, which has remained consistent since 2013.
- Approximately 82% of deals surveyed had survival periods from 12 to 18 months, representing a slight increase when compared to 80% in 2015 and 78% in 2014.
- Approximately 39% of deals surveyed had a survival period of 18 months, representing a continued increasing trend when compared to 36% in 2015 and 32% in 2014.

*For purposes of this Survey, the survival periods set forth in this chart are for “general” representations and warranties. This chart does not take into account longer survival periods for certain representations and warranties that are sometimes carved out of the general survival period (see page 6 for information regarding carve outs).

Carve Outs to General Survival Period



Employee Benefits and Environmental

- The percentage of deals surveyed that carved out representations and warranties regarding employee benefits was approximately 23% in 2016 compared to 28% in 2015.
- The percentage of deals surveyed that carved out representations and warranties regarding environmental matters was approximately 19% in 2016, which has been on a steady decline since 2013 when it was 30%.

Other Carved Out Representations

Capitalization

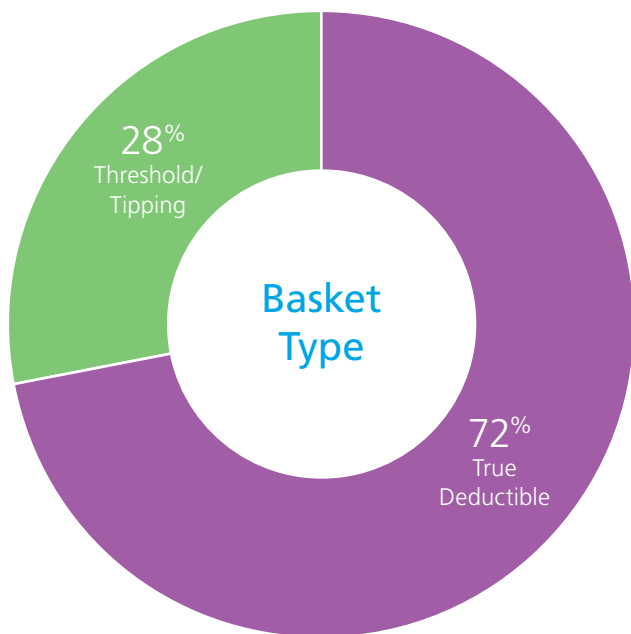
Approximately 75% of deals surveyed involving the purchase of equity interests carved out representations and warranties regarding capitalization from the general survival period (compared to 72% in 2015).

Title to Assets

Approximately 67% of deals surveyed involving the purchase of assets carved out representations and warranties regarding title to assets from the general survival period (compared to 51% in 2015).

Indemnity Basket Type

Approximately 91% of deals surveyed provided for an indemnity basket, broken down as follows:

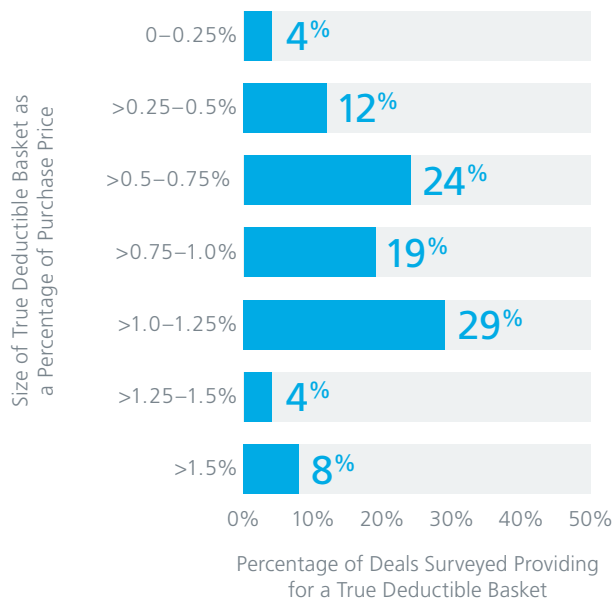


Observations

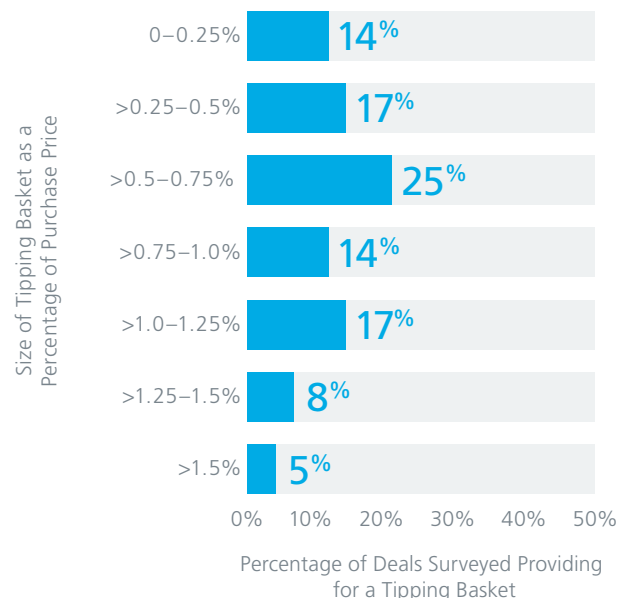
- Approximately 91% of deals surveyed provided for an indemnity basket (compared to 89% in 2015, 91% in 2014 and 97% in 2013).
- The use of true deductible basket types decreased to approximately 72% of deals with baskets in 2016 from approximately 75% of deals with baskets in 2015. Accordingly, the use of threshold/tipping baskets increased to approximately 28% in 2016 from approximately 25% in 2015.

Indemnity Basket Size

True Deductible Basket Size



Threshold/Tipping Basket Size

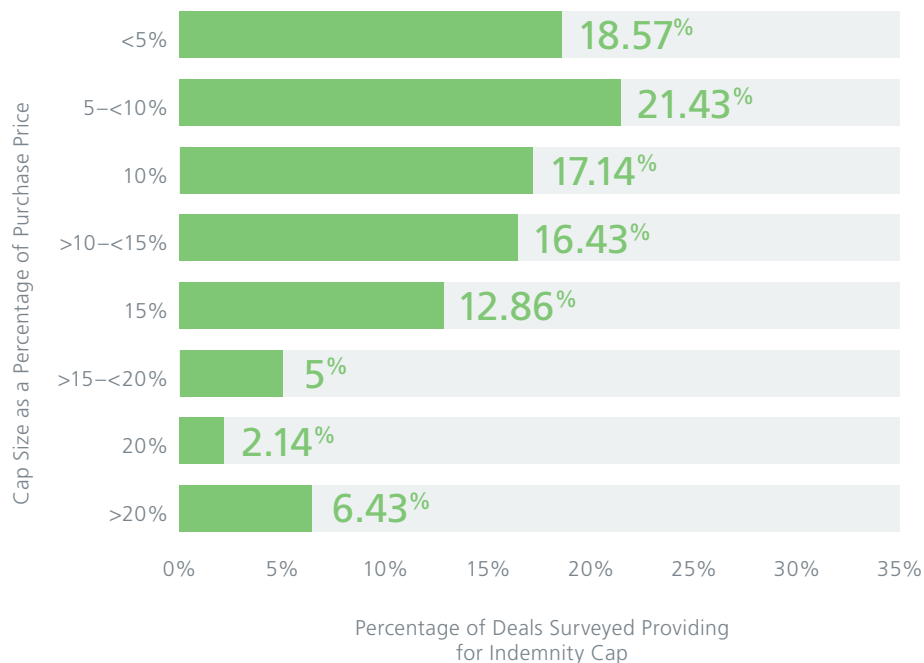


Observations

- Median basket size remained unchanged from 2015 at 0.75% of the purchase price.
- The median basket size for deals surveyed having a true deductible was 0.82% of the purchase price in 2016 (compared to 0.84% in 2015).
- The median basket size for deals surveyed having a threshold/tipping basket was 0.53% of the purchase price in 2016, a significant decrease from 0.72% in 2015.
- Approximately 84% of true deductible baskets were greater than 0.5% of the purchase price (compared to 72% in 2015), and approximately 41% of such baskets were greater than 1% of the purchase price (compared to 16% in 2015).

Indemnity Cap Size

Approximately 93% of deals surveyed had an indemnity cap.



Observations

- Median indemnity cap continues to remain unchanged since 2013 at 10%.
- Approximately 57% of transactions in 2016 had a cap of 10% or less, unchanged from 2015.
- Approximately 19% of deals surveyed had an indemnity cap of less than 5% of the purchase price, which represents an increase from 2015 when 14% of deals surveyed had indemnity caps of less than 5% of the purchase price.

Glossary

Indemnity Escrow Amount

The indemnity escrow amount is the portion of the purchase price held in escrow to serve as a fund to satisfy indemnification claims against the seller.

Indemnity Escrow Period

The indemnity escrow period is the length of time after the transaction closing date that the indemnity escrow amount is held before being released to the seller.

Representation & Warranty Survival Period

The survival period is the length of time after the transaction closing date during which a party may make claims for breaches of representations and warranties.

Carve Outs to General Survival Period

Certain specified representations and warranties may be carved out of the general survival period for representations and warranties and survive for a longer period of time.

Indemnity Basket

An indemnity basket requires a party to incur a certain amount of indemnifiable losses before it can seek indemnification from the other party. There are generally two types of baskets: **true deductibles** and **threshold/tipping baskets**. With a true deductible, the indemnifying party is only responsible for losses exceeding the basket amount. With a threshold/tipping basket, the indemnifying party is responsible for all losses from dollar one once a party's indemnifiable losses reach the basket amount. Indemnity baskets typically apply only to breaches of "general" representations and warranties.

Indemnity Cap

The indemnity cap limits a party's maximum liability under the indemnification provisions to a stated dollar amount. Indemnity caps typically only apply to breaches of "general" representations and warranties.

Seyfarth's Leading Middle-Market M&A Practice



Law360 ranked us among the top 100 U.S.-based firms with the most merger and acquisition partners globally.



Recognized as a leading middle-market M&A (sub-\$500m) practice by *The Legal 500* since 2012 and shortlisted for its 2015 US Practice of the Year Award in the M&A Corporate and Commercial: Mid-Market category.



U.S. News & World Report: Best Lawyers 2017 "Best Law Firms" recognized Seyfarth's Corporate Law and Mergers & Acquisitions Law practices.

The Seyfarth team “works with clients to help them build their businesses in an efficient and high-quality manner.”

– Client quote, *The Legal 500* (2016)

Seyfarth’s “counsel during M&A procedures is consistently accurate and timely, and the team’s knowledge and expertise proves invaluable.”

– Client quote, *The Legal 500* (2016)

“M&A knowledge is deep, and the team is extremely responsive; it is pretty much on call for clients 24/7 and brings together all the firm’s resources to meet clients’ needs.”

– Client quote, *The Legal 500* (2015)

For More Information



Andrew Lucano

Practice Group Vice-Chair
New York
alucano@seyfarth.com
(212) 218-6492



Michael Clark

Partner
Los Angeles
mclark@seyfarth.com
(310) 201-5277



Tom Schramkowski

Partner
Atlanta
tschramkowski@seyfarth.com
(404) 885-6779



Whitney Schmidt

Associate
Chicago
wschmidt@seyfarth.com
(312) 460-5612



Lloyd Steele

Associate
New York
lsteele@seyfarth.com
(212) 218-5528

Disclaimer: The acquisition agreement provisions that form the basis of this Survey are drafted in many different ways and do not always fit precisely into particular “data point” categories. Therefore, Seyfarth Shaw LLP has had to make various judgment calls regarding how to categorize certain provisions and has rounded certain figures for ease of presentation. As a result, the conclusions presented in this Survey may be subject to important qualifications that are not expressly articulated in this Survey. The findings presented in this Survey do not necessarily reflect the views of Seyfarth Shaw. In addition, while Seyfarth Shaw gathers its data from sources it considers reliable, it does not guarantee the accuracy or completeness of the information provided within this Survey. Seyfarth Shaw makes no representations or warranties, expressed or implied, regarding the accuracy of this material.

Attorney Advertising. This is a general communication from Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion with respect to any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.



Atlanta

Boston

Chicago

Houston

London

Los Angeles

Melbourne

New York

Sacramento

San Francisco

Shanghai

Sydney

Washington, D.C.

"Seyfarth Shaw" refers to Seyfarth Shaw LLP. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership.