2025 ABA PRIVATE TARGET MERGERS ACQUISITIONS DEAL POINTS STUDY

Date: 19 December 2025

US Corporate Alert

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The American Bar Association's (ABA) Business Law Section has released its *2025 Private Target Deal Points Study*, the flagship product of the Market Trends Subcommittee of the Mergers and Acquisitions (M&A) Committee. The study is widely recognized as the gold standard for market metrics of key negotiated legal issues in acquisitions of US private companies. Firm partner Jessica Pearlman is chair of the study (a role she has held for over 17 years), leading the effort of the over 50-member working group including K&L Gates partners Andrew Lloyd, Barry Price, Shoshannah Katz, and Remsen Kinne.

The study is the preeminent examination of M&A transactions, utilized internationally by practitioners, investment bankers, corporate development teams, and other advisors. It examines the prevalence of specified provisions in publicly available private target M&A transactions. The transactions analyzed in the *2025 Private Target Deal Points Study* were in the middle market, with purchase prices ranging between US$25 million and US$900 million; purchase prices for a majority of deals in the data pool were below US$200 million.

Although the 139 deals in the 2025 study reflect a broad swath of industries, technology and healthcare together made up over 20% of the deals. Deals structured as purchases of substantially all of the target's assets comprised 21% of the study sample, with the remainder consisting of either equity purchases or mergers.

Of the study sample, 42 deals signed and closed simultaneously, whereas the remaining 97 deals had a deferred closing some time after execution of the definitive acquisition agreement.

The 2025 study contains some additional data points not included in prior iterations. Look for the “new data” flags to easily spot the new material, which includes:

- *Transaction Expenses as part of Post-Closing Adjustment*. The 2025 study tracks how often transaction expenses are taken into account in the post-closing purchase price adjustments.
- *Existing Fact or Condition as part of MAE definition*. The 2025 study reflects how often deals that include the definition of material adverse effect (MAE) specify that a fact or condition existing at the time of signing the acquisition agreement could constitute an MAE.
- *Control of Defense of Third-Party Claims – Failure to Adequately Defend and Government Authority Involvement*. The 2025 study has a data point on how often the failure or inability to adequately defend a claim could result in a loss of the indemnifying party's right to control defense of that claim. The 2025 study also adds a similar data point on claims involving government regulatory authority.
- *Fraud as a Stand-Alone Indemnity*. The 2025 study tracks how often fraud is included in purchase agreements as a stand-alone indemnity.

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The 2025 study also contains refreshed data points presented in prior iterations; notable updates include the following:

- *Earnouts*: Earnouts became less prevalent and displayed some buyer-friendly features. The use of earnouts declined from 26% during the period covered by the 2023 study to 18% during the period covered by the 2025 study). Earnouts are often used to address valuation gaps, and this data point suggests those gaps narrowed somewhat during the period covered by the 2025 study.
- *Representations and Warranties Insurance (RWI)*: The use of RWI increased compared to the prior study: 63% of deals in the 2025 study referenced RWI (our proxy for whether a transaction utilized RWI) as compared to 55% in the 2023 study.
- *No Survival Deals*: Deals that provide representations and warranties do not survive closing increased from 30% in the prior study to 41%. This increase is likely related to the increase in RWI deals.
- *Indemnification for Actual vs. Alleged Breaches*: Indemnity coverage for alleged breaches increased from 17% from to 27% in this year's study; this appears to also be driven by an increase in RWI deals.
- *Single vs. Double Materiality Scrape*: The use of double materiality scrapes increased from 69% in the prior study to 82%. Again, this increase appears to be related to the increase in the use of RWI.

Please join us in extending a huge thank you to everyone who worked so hard on this study—from leadership and advisors to issue group leaders and working groups—all of whom are recognized in the credits pages.

For more information, there will be an In the Know webinar with the ABA's chairs and issue group leaders providing analysis and key takeaways from the results of the 2025 Private Target M&A Deal Points Study—watch for details on time and date from the ABA.

To learn more about the study or receive a copy, please contact Jessica Pearlman.

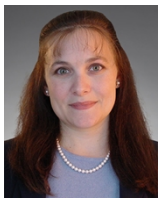
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