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Middle-Market M&A SurveyBook:

A Survey of Key M&A Deal Terms

First Half of 2013



Introduction

As a leader in middle-market M&A transactions, Seyfarth Shaw LLP is pleased to publish this edition of our Middle Market M&A SurveyBook of Key Deal Terms (the “Survey”).

This Survey summarizes selected terms in 81 publicly available private acquisition agreements for the purchase of assets, equity or business units signed in the first half of 2013 with deal values up to \$1 billion. The Survey does not include the review of transactions providing for contingent purchase price payments or that involved the payment of any consideration other than cash. For purposes of this Survey, “purchase price” means the total consideration paid by an acquirer in a transaction.

While each private target transaction is unique and terms generally will be driven by the specific facts and circumstances underlying the transaction, “**what’s market?**” is a question often faced by the parties engaged in a transaction. Understanding current trends and patterns in deal terms is a valuable tool for buyers, sellers and deal professionals evaluating and negotiating private target transactions.

This Survey is intended to be a quick reference guide of current market practice with respect to key M&A deal terms and aid parties negotiating private acquisition agreements.

KEY DEAL TERMS SURVEYED

- Indemnity Escrow Amount
- Indemnity Escrow Period
- Representation & Warranty Survival Period
- Indemnity Basket Size & Type
- Indemnity Cap Size



Indemnity Escrow Amount

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



Observations

- 52% of all deals surveyed had an indemnity escrow.
- The median indemnity escrow amount included in deals surveyed was 9%.
- Of the deals surveyed which provided for indemnity escrow:
 - nearly 60% had indemnity escrow amounts of 9% of the purchase price or greater.
 - 28% had indemnity escrow amounts of 5% of the purchase price or less.



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.



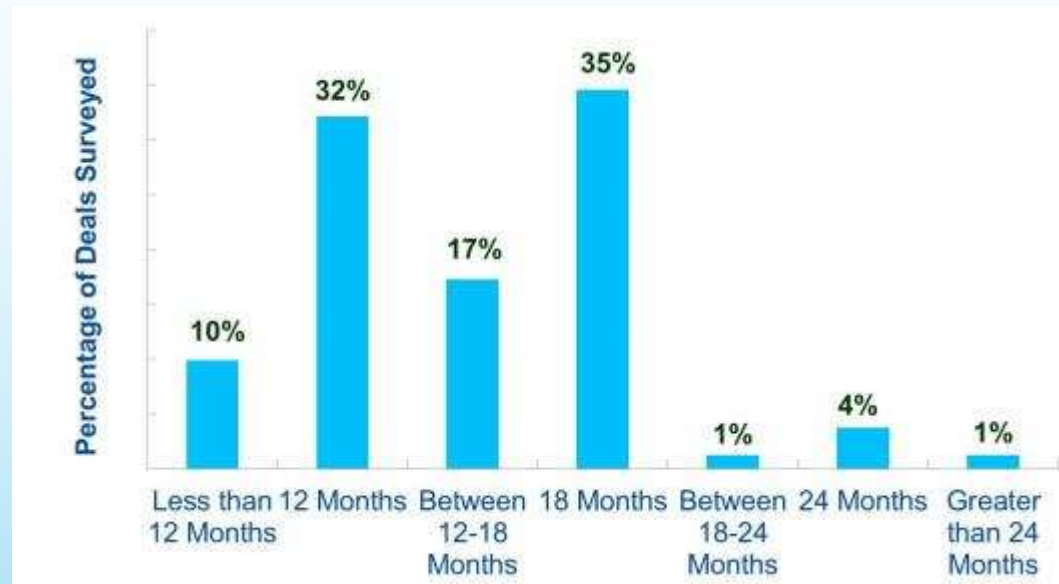
Observations

- The median escrow period included in deals surveyed was 15 months.
- Of the deals surveyed which had an indemnity escrow, 91% had indemnity escrow periods from 12 to 18 months.



Representation & Warranty Survival Period

The survival period is the length of time after the transaction closing date during which a party is permitted to make claims with respect to breaches of representations and warranties. For purposes of this Survey, the survival periods referred to below apply to “general” representations and warranties, not “fundamental” representations and warranties. “Fundamental” representations and warranties generally have longer survival periods and typically include representations and warranties regarding: capitalization, due authority and organization, title, taxes, employee benefits, environmental, and brokers.



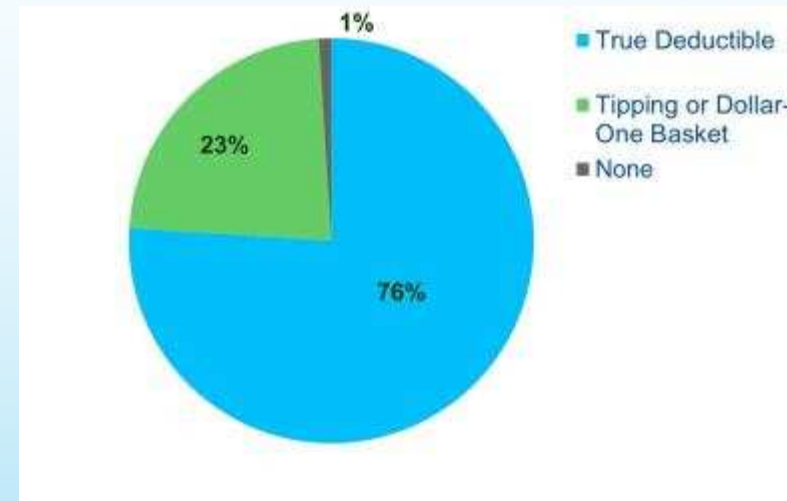
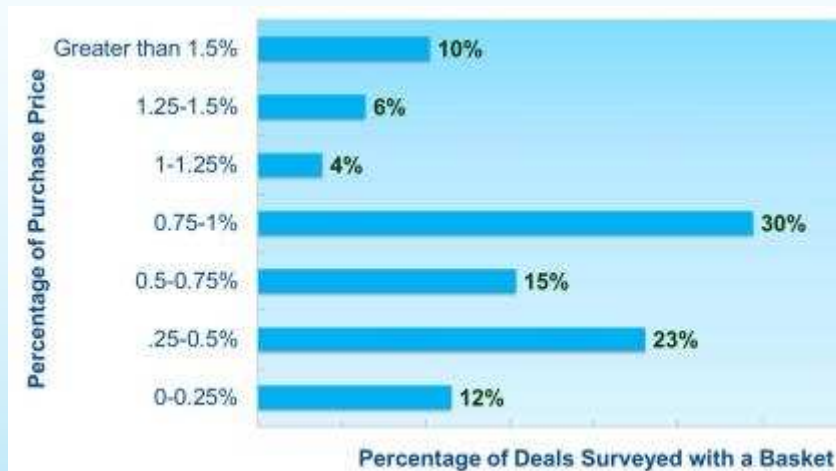
Observations

- Each deal surveyed included a survival period.
- In general, survival periods mirrored indemnity escrow periods.
- The median survival period included in deals surveyed was 15 months.
- 84% of deals surveyed had survival periods from 12 to 18 months.
- 10% of deals surveyed had survival periods of less than 12 months.



Indemnity Basket Size & Type

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 tipping or dollar-one baskets. With a true deductible an indemnifying party is only responsible for damages exceeding the basket amount. With a tipping or dollar-one basket an indemnifying party is responsible for all damages once damages reach the basket amount. Indemnity baskets typically only apply to breaches of “general” representation and warranties.



Observations

- 99% of deals surveyed had baskets.
- The median basket size included in deals surveyed was 0.76%.
- 80% of deals surveyed had baskets of less than or equal to 1% of the purchase price.



Indemnity Cap Size

The indemnity cap limits a party's liability under the indemnification provisions to a stated dollar amount. Indemnity caps typically only apply to breaches of representations and warranties (subject to carve-outs for "fundamental" representations).



Observations

- 95% of deals surveyed had an indemnity cap.
- The median indemnity cap size included in deals surveyed was 11%.



About Seyfarth's M&A Practice

Clients want...

Market Knowledge

Over the last two years, our M&A attorneys have been engaged in over 250 M&A transactions

Attention

Unlike other large law firms, we provide senior-level attention to all transactions — big or small

Value & Innovation

Our market leading SeyfarthLean approach uses innovative technology to increase efficiency and improve communication, resulting in a meaningful reduction in overall costs and enhanced client service

Top-Tier Practice

Recognized as a leading middle-market M&A practice by *Legal 500* 2012 + 2013

Expertise

Our M&A practice is supported by a national group of specialists in areas such as finance, employee benefits, IP, labor and employment, tax, real estate, environmental and antitrust

Middle-Market Focus

Our M&A practice includes more than 60 attorneys who focus on middle-market transactions

We deliver...



What's tangling up your legal team?

Financial Times Award Top 10

For the second consecutive year, leading law firm Seyfarth has earned a spot among the top 10 most innovative law firms in the Financial Times (FT) *U.S. Innovative Lawyers Report 2012*.



Seyfarth Named to Top 5

Seyfarth named to BTI Consulting's "Client Service A-Team," recognizing the best firms in client service via a survey of *Fortune* 1000 in-house counsel.



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Learn more about our work at: www.seyfarth.com/Mergers-and-Acquisitions

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 has had to make various judgment calls regarding how to categorize certain provisions. 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.

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