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Middle-Market M&A SurveyBook

2013 Survey of Key M&A Deal Terms



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 182 publicly available private target acquisition agreements signed in 2013 with a purchase price of up to \$1 billion. For purposes of this Survey, “purchase price” means the total consideration paid by an acquirer in a transaction (but does not include contingent purchase price payments). The Survey does not include any transactions that involved the payment of any consideration other than cash.

While each transaction is unique and deal 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 target acquisition agreements.

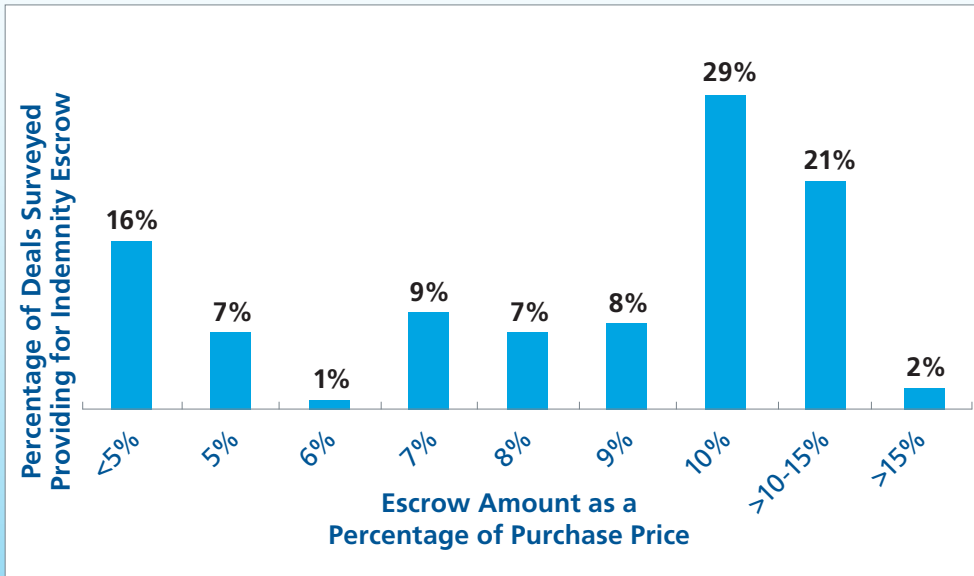
KEY DEAL TERMS SURVEYED

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



Indemnity Escrow Amount

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



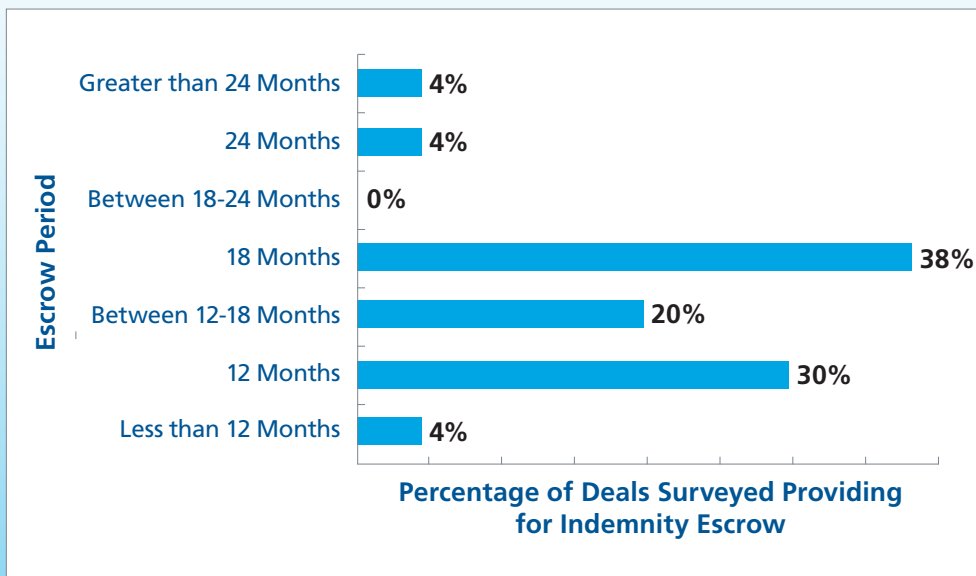
Observations

- Approximately 54% of all deals surveyed provided for an indemnity escrow.
- The median indemnity escrow amount for deals surveyed which provided for indemnity escrow was approximately 8.8% of the purchase price.
- Of the deals surveyed which provided for indemnity escrow, approximately 84% had indemnity escrow amounts of 5% of the purchase price or greater.



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.



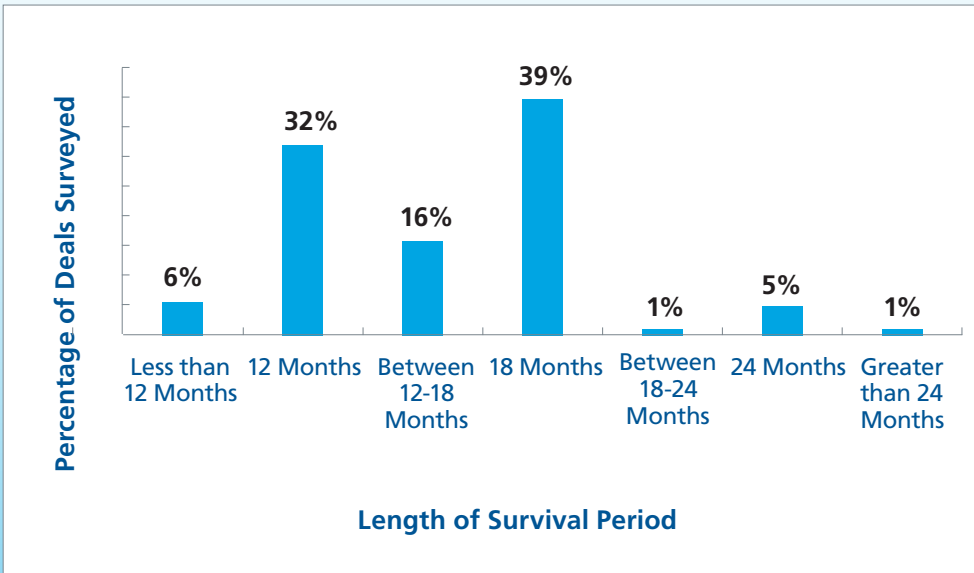
Observations

- The median indemnity escrow period included in deals surveyed which provided for an indemnity escrow was 15 months.
- Of the deals surveyed which provided for an indemnity escrow, approximately 88% had indemnity escrow periods from 12 to 18 months.
- In general, indemnity escrow periods were closely tied to survival periods for “general” representations and warranties.



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. For purposes of this Survey, the survival periods referred to below apply to “general” representations and warranties and do not take into account longer survival periods for certain representations and warranties that are sometimes carved out of the general survival period.



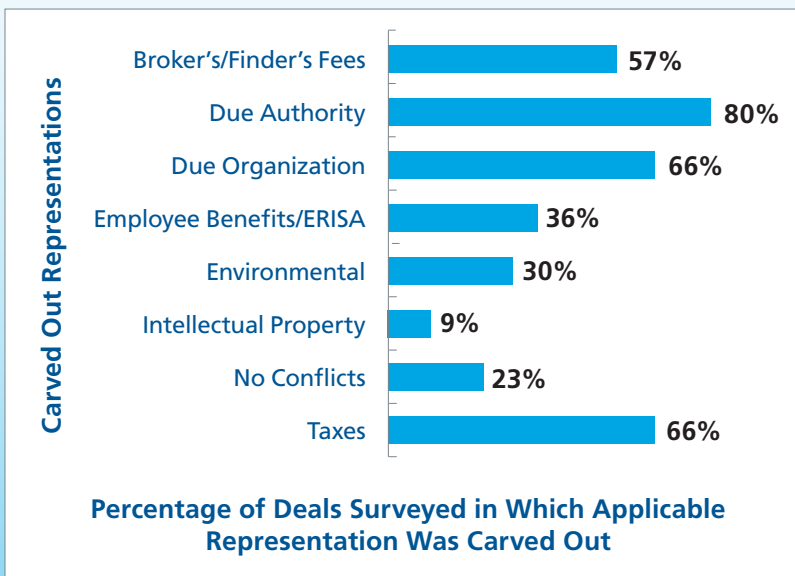
Observations

- The median survival period for deals surveyed was 15 months.
- Approximately 87% of deals surveyed had survival periods from 12 to 18 months.



Carve Outs to General Survival Period

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



Other Carved Out Representations

Capitalization

- Approximately 70% of deals surveyed involving the purchase of equity interests carved out representations regarding capitalization from the general survival period.

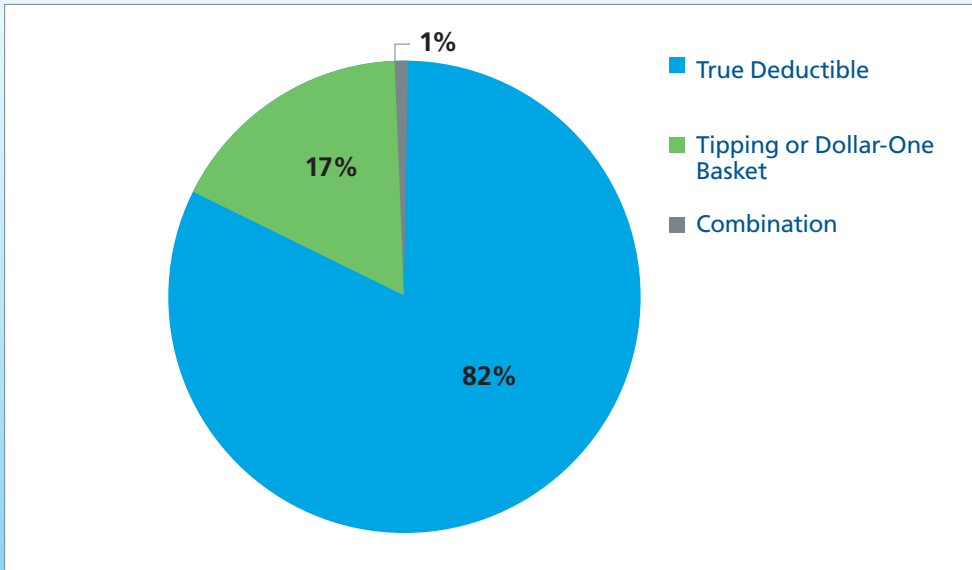
Title to Assets

- Approximately 46% of deals surveyed involving the purchase of assets carved out representations regarding title to assets from the general survival period.
- Approximately 11% of deals surveyed involving the purchase of equity interests carved out representations regarding title to assets from the general survival period.



Indemnity Basket 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, the indemnifying party is only responsible for losses exceeding the basket amount. With a tipping or dollar-one basket, the indemnifying party is responsible for all losses once a party's indemnifiable losses attain the basket amount.



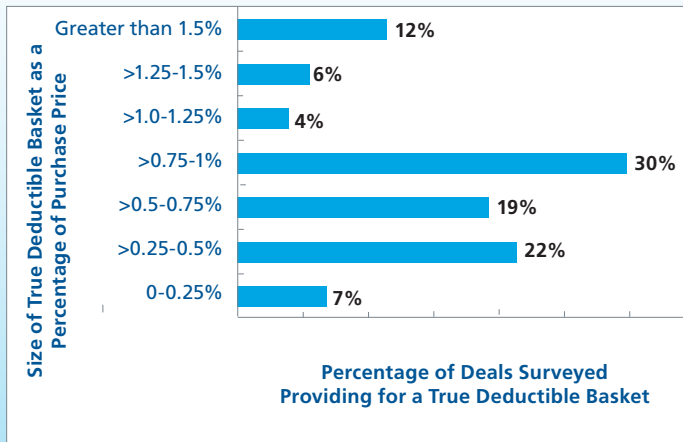
Observations

- Approximately 97% of deals surveyed provided for an indemnity basket.
- Indemnity baskets typically apply only to breaches of “general” representations and warranties.

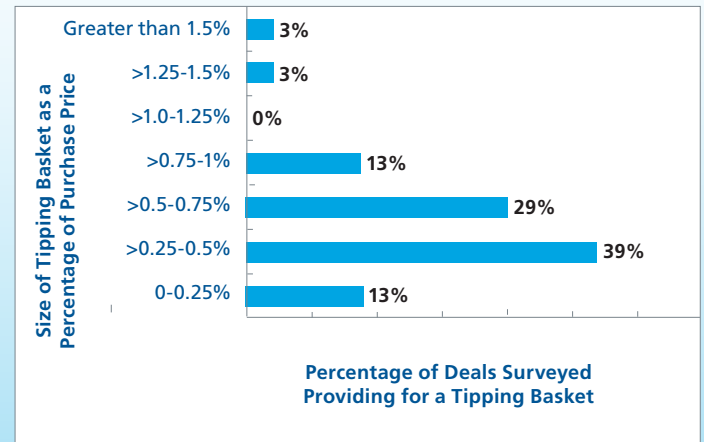


Indemnity Basket Size

True Deductible Basket Size



Tipping Basket Size



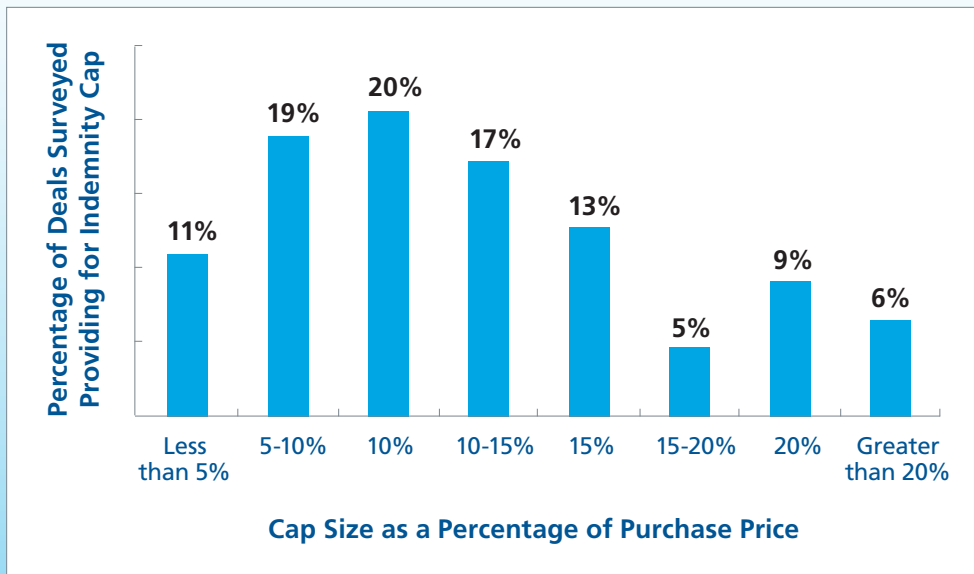
Observations

- The median basket size included in all deals surveyed was 0.72% of the purchase price.
- The median basket size for deals surveyed having a true deductible basket was 0.8% of the purchase price.
- The median basket size for deals surveyed having a tipping basket was 0.5% of the purchase price.



Indemnity Cap Size

The indemnity cap limits a party's maximum liability under the indemnification provisions to a stated dollar amount.



Observations

- Approximately 97% of deals surveyed had an indemnity cap.
- The median indemnity cap size included in deals surveyed was 10% of the purchase price.
- Approximately 80% of deals surveyed had an indemnity cap size of 15% of the purchase price or less.
- Indemnity caps typically only apply to breaches of "general" representations and warranties.



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Clients want...

We deliver...

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



Financial Times US Law Firm Innovator

Seyfarth has earned a spot among the nation's most innovative firms, with top-ranking recognition for Business of Law and honors for Litigation.



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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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 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.

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