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Middle-Market

M&A

SurveyBook

2015 Survey of Key M&A Deal Terms

Introduction

Seyfarth Shaw LLP is pleased to present the 2015 edition of its Middle-Market M&A SurveyBook of Key Deal Terms (the “SurveyBook”). The climate for middle-market M&A transactions in 2014 was strong and our team of M&A experts have analyzed certain key transaction terms included in nearly 300 publicly available private target acquisition agreements signed in 2014 with a purchase price between \$25 million and \$1 billion.¹

Seyfarth Shaw’s SurveyBook focuses on the key deal terms comprising the “indemnity package” often included in private target acquisition agreements to address the issue of the seller’s potential post-closing liability to the buyer and defining the scope by which the purchase price paid to the seller may be potentially clawed back by the buyer. In our view, the data analyzed suggest that the current M&A environment is having a favorable impact on these key deal terms from the seller’s perspective. An improving economy, increasing corporate profits, cheap financing and record cash reserves have created a robust deal environment with fierce competition among potential

buyers to acquire quality assets. One way buyers have been attempting to differentiate themselves and present a more compelling bid for acquisition targets or their assets is by taking on more risk in their acquisition agreements and offering more aggressive contractual terms to sellers. We have also noticed an increasing trend for buyers to purchase representation and warranty insurance to supplement the seller’s indemnification obligations in an effort to make their acquisition proposal even more attractive to the seller. These trends have carried over into the first quarter of 2015 and we expect them to continue throughout the upcoming year.

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. Seyfarth Shaw’s SurveyBook aims to arm you with this information. Our SurveyBook

provides you with data on these key terms, together with our insights, in an easily readable format and is intended to be a quick reference guide to assist buyers, sellers and deal professionals negotiating private target acquisition agreements.

If you would like more information regarding the data presented in our 2015 Middle-Market M&A SurveyBook, we welcome the opportunity to further discuss our findings with you.

¹For purposes of the SurveyBook, “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). The SurveyBook does not include any transactions that involved the payment of any consideration other than cash.

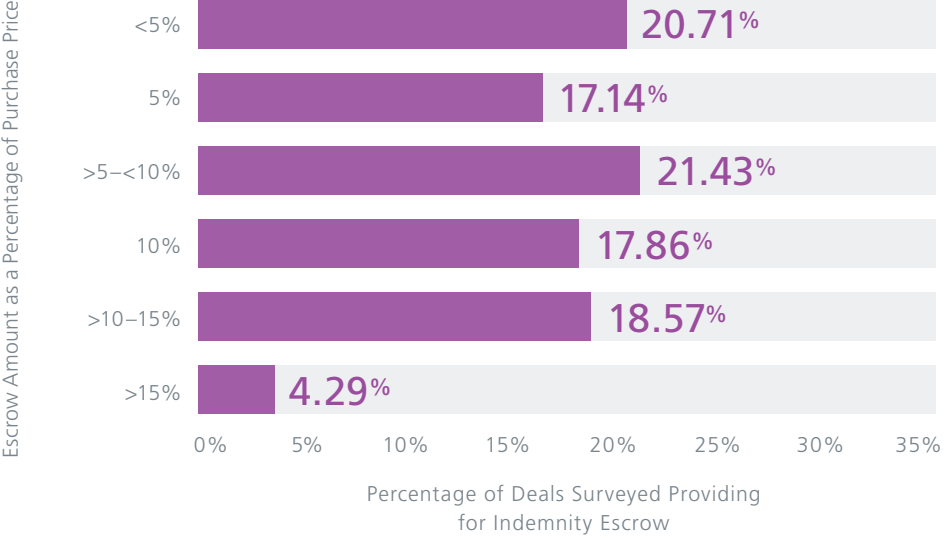
Key Deal Terms Surveyed*

- 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

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

Indemnity Escrow Amount

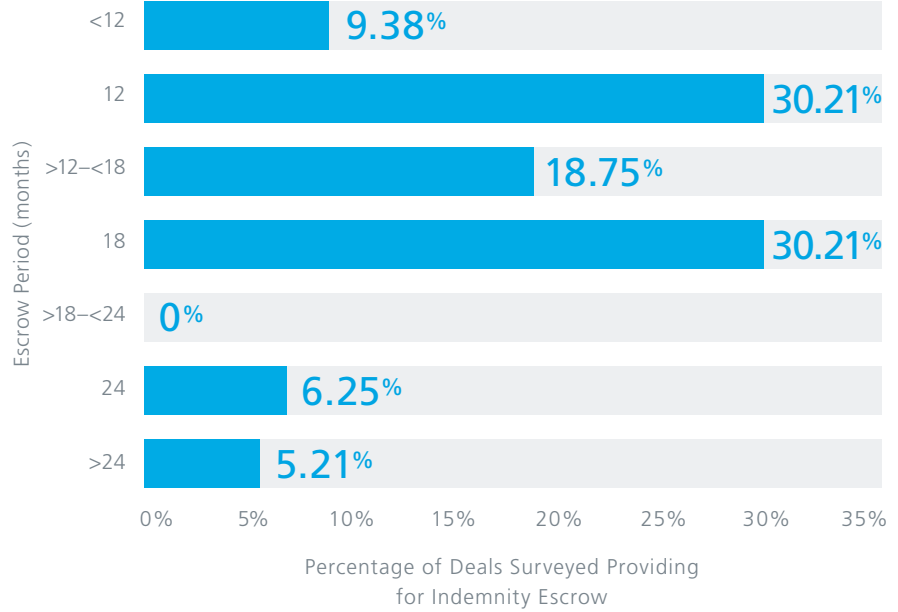
Approximately 52% of all deals surveyed provided for an indemnity escrow.



Observations

- Of the deals surveyed which provided for an indemnity escrow:
 - The median indemnity escrow amount in 2014 was 7.41% of the purchase price compared to 8.81% in 2013.
 - Approximately 79% had indemnity escrow amounts of 5% of the purchase price or greater.
 - Approximately 59% had an indemnity escrow amount of less than 10% compared to 48% in 2013.

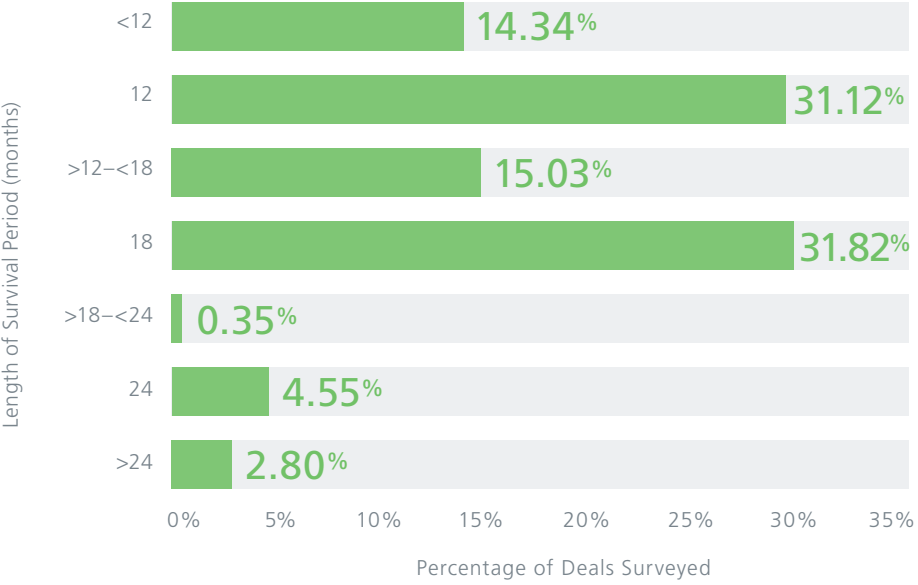
Indemnity Escrow Period



Observations

- Of the deals surveyed which provided for an indemnity escrow:
 - The median indemnity escrow period in 2014 was 15 months.
 - Approximately 79% had indemnity escrow periods from 12 to 18 months.
- While the median escrow period remained steady at 15 months, the percentage of deals with an indemnity escrow period of less than 12 months more than doubled in 2014 to 9.38%.

Representation & Warranty Survival Period*

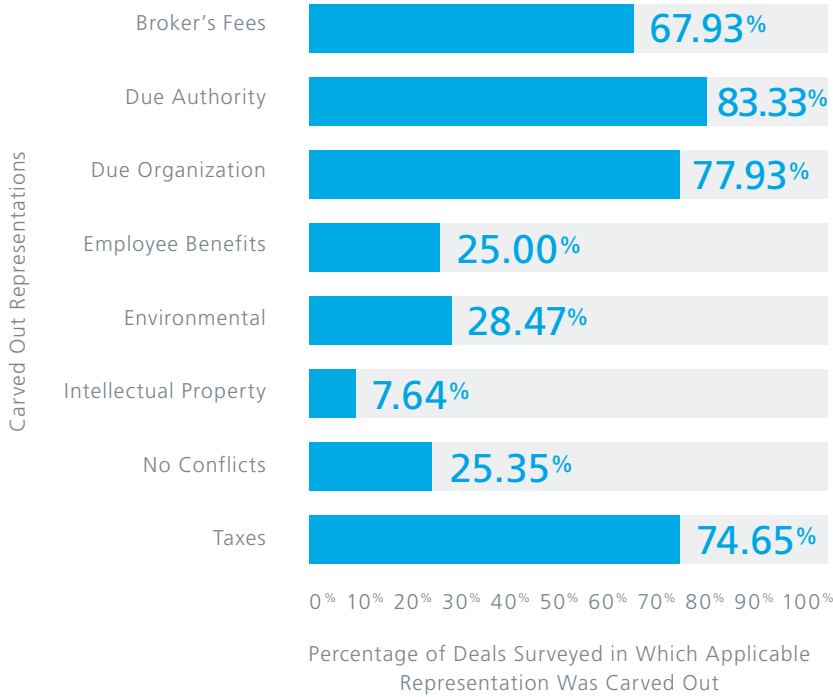


Observations

- The median survival period for deals surveyed was 15 months.
- Approximately 78% of deals surveyed had survival periods from 12 to 18 months.
- While most transactions continue to have a survival period of between 12 and 18 months, 2014 saw an increase in the percentage of transactions with a representation and warranty survival period of less than 12 months—jumping from 6.04% in 2013 to 14.34% in 2014.

*For purposes of the SurveyBook, the survival periods set forth in the chart above are for “general” representations and warranties. The 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).

Carve Outs to General Survival Period



Other Carved Out Representations

Capitalization

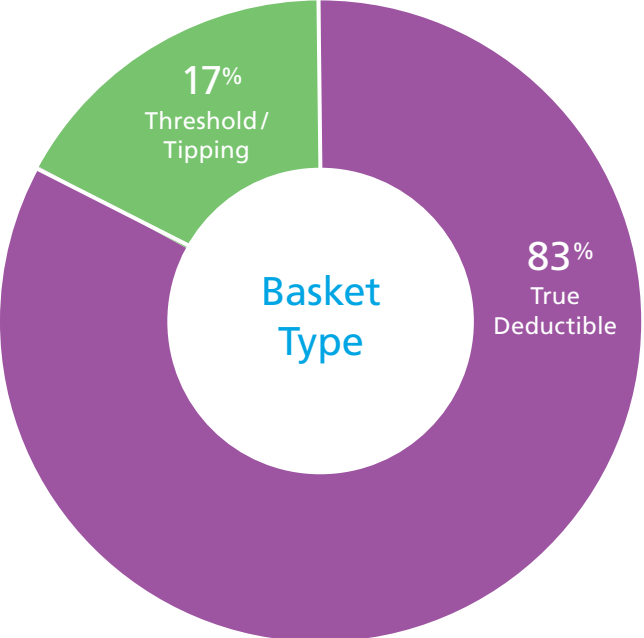
Approximately 76% of deals surveyed involving the purchase of equity interests carved out representations and warranties regarding capitalization from the general survival period.

Title to Assets

Approximately 56% of deals surveyed involving the purchase of assets and 11% of deals surveyed involving the purchase of equity interests carved out representations and warranties regarding title to assets from the general survival period.

Indemnity Basket Type

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

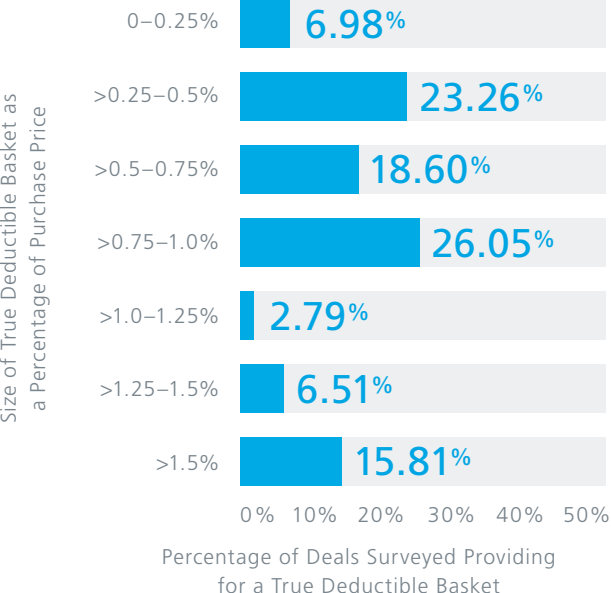


Observation

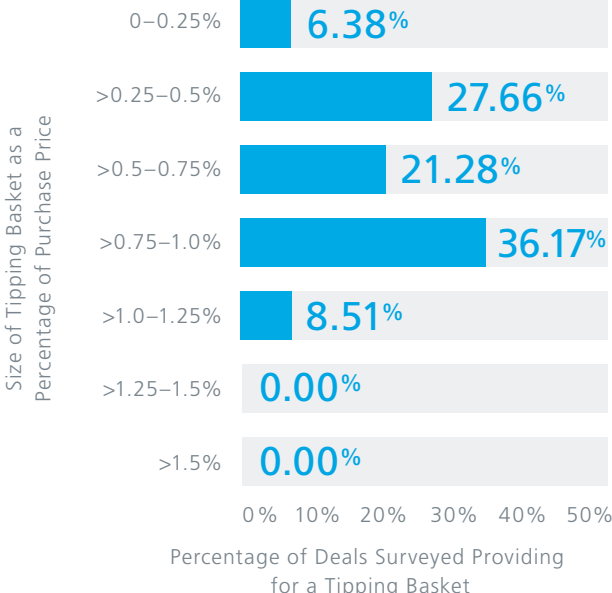
- Occurrence and breakdown of indemnity basket type remained relatively consistent in 2013 and 2014.

Indemnity Basket Size

True Deductible Basket Size



Threshold/Tipping Basket Size

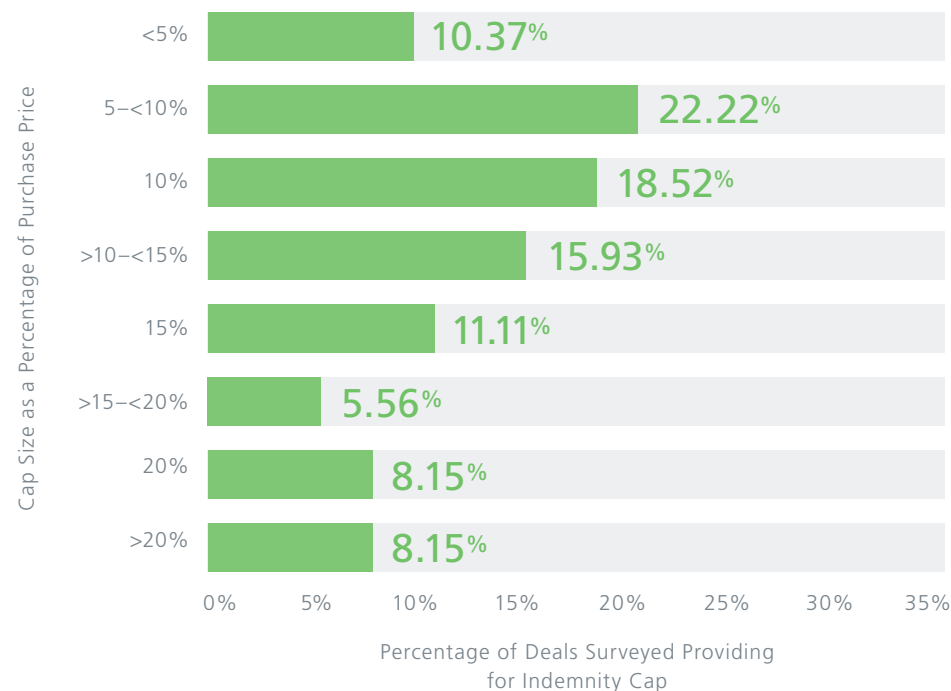


Observations

- 2014 saw a slight increase in the median basket size, increasing to 0.76% of the purchase price compared to 0.72% in 2013.
- The median basket size for deals surveyed having a true deductible was 0.80% of the purchase price.
- The median basket size for deals surveyed having a threshold/tipping basket was 0.73% of the purchase price.
- Approximately 70% of deductible baskets were greater than 0.5% of the purchase price.

Indemnity Cap Size

Approximately 95% of deals surveyed had an indemnity cap.



Observations

- The median indemnity cap remained steady in 2014 at 10% of the purchase price of deals surveyed.
- Approximately 78% of deals surveyed had an indemnity cap of 15% of the purchase price or less, which is also consistent with results from 2013.

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.

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Clients want... We deliver...

Market Knowledge

Over the last two years, our lawyers have been engaged in more than 250 M&A transactions across a diverse range of industries

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 meaningful reduction of overall costs and enhanced client service

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Expertise

Seyfarth provides 360° legal support for M&A transactions, from environmental and labor & employment to intellectual property and tax issues

Middle-Market Focus

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

Accolades



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

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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 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.

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