

## ABA PRIVATE M&A DEAL POINTS STUDY (SAMPLE)

### Selected Data from the 2007 ABA Private Target M&A Deal Points Study

#### POST-CLOSING PURCHASE PRICE ADJUSTMENTS & EARNOUTS

<b>Adjustment to Purchase Price</b>	
• "yes"	32%
• "no"	68%
<b>Estimated Adjustment at Closing</b>	
• "yes"	64%
• "no"	36%
<b>Adjustment Metrics: (29% include &gt; metric)</b>	
• earnings	4%
• working capital	69%
• debt	20%
• assets	15%
• cash	13%
• other	27%
<b>Based on Seller's Closing Financials</b>	
• buyer right to approve	34%
• no approval right	66%
<b>Separate Escrow for Adjustment</b>	
• "yes"	22%
• "no"	78%
<b>Earnouts</b>	
• "yes"	19%
• "no"	81%
<b>Earnout Metrics</b>	
• revenue / turnover	30%
• earnings / EBITDA	37%
• other (e.g., milestones)	26%
• not determinable	11%

#### INDEMNIFICATION

<b>Cap equal to:</b>	
• purchase price	9%
• less than purchase price	91%
• < 10% of price	26%
• 10% of price	21%
• > 10%-15% of price	17%
• 15%-25% of price	17%
• > 25%-50% of price	5%
• > 50-< price	5%
• yes, but undeterminable	4%
• silent	1%
<b>Cap carve-outs:</b>	
• taxes (rep)	40%
• intent. misrepresentation	36%
• fraud	64%
• authority	43%
• capitalization	46%
<b>Basket:</b>	
• deductible	54%
• first dollar	36%
• combination	7%
• no basket	3%
<b>Basket (% of deal value):</b>	
• >2%	2%
• >1% - 2%	8%
• >0.5% - 1%	28%
• 0.5% or less	62%
• deductible (mean %)	0.53%
• 1 <sup>st</sup> \$ (mean %)	0.50%
• deductible + 1 <sup>st</sup> \$ (mean %)	0.52%
<b>Indemnification as Exclusive Remedy:</b>	
• exclusive	77%
• non-exclusive	13%
• silent	10%

#### Carve-outs to exclusive remedy:

• fraud	81%
• intentional misrep.	40%
• equitable remedies	45%
• covenant breach	17%
• capitalization rep	3%

#### Escrows:

• exclusive source for indemnification	32%
• non-exclusive	43%
• no escrow	43%
• % of deal value	
o < 3%	8%
o >3%-<5%	13%
o 5%	5%
o >5%-7%	12%
o >7%-<10%	14%
o 10%	21%
o >10%-15%	16%
o >15%-20%	6%
o >20%-25%	3%

#### Survival of reps:

• silent or expressly none	5%
• 6 months	1%
• >6-<12 months	1%
• 12 months	26%
• >12-<18 months	9%
• 18 months	34%
• >18-24 months	3%
• 24 months	16%
• >24 months	5%

#### Carve-outs to survival:

• taxes	67%
• capitalization	59%
• benefits	39%
• environmental	37%
• authority	54%
• covenants	36%

#### REPS/WARRANTIES

##### Financial statements rep, "fairly presents":

• GAAP qualified	24%
• non-GAAP qualified	75%
• no rep	2%

##### Other SOX reps:

• includes internal controls	45%
• includes accurate and complete	31%

##### No undisclosed liabilities rep:

• includes rep	93%
• "all liabilities" (buyer fav.)	68%
• "GAAP liabilities" (seller fav.)	32%
• knowledge qualified	7%
• excludes immaterial liabilities	44%
• ord. course since balance sheet	83%

##### Full-disclosure (10b-5) rep:

• rep not included	38%
• 10(b)-5 only	52%
• full disclosure AND 10(b)-5	10%
• knowledge qualified	26%

#### CLOSING CONDITIONS

##### Buyer's MAE:

• stand-alone	78%
• back-door (rep. plus bring-down)	22%

(A Project of the M&A Market Trends Subcommittee of the Committee on Negotiated Acquisitions (CNA) of the Amer. Bar Ass'n's Sec. of Bus. Law, published Aug. 2007; the info. below is qualified and should be construed only in connection with the complete Study)

SAMPLE OVERVIEW: Transaction Value Range: \$25—500MM (63%); \$50—100MM: 18%; \$100-200MM: 19%; \$200—500MM: Number of Deals: 143 deals. Consideration: 65% all cash, 5% all stock, 30% mixed. Deferred closings: 88%. Nature of Sellers: Financial—34%; Entrepreneurial—50%; Corporate 14%; Other 2%