STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY

(FOR TRANSACTIONS ANNOUNCED IN 2015)

ABA
Defending Liberty
Pursuing Justice

A Project of the M&A Market Trends Subcommittee
of the Mergers and Acquisitions Committee

STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY

A Project of the M&A Market Trends Subcommittee, Mergers & Acquisitions Committee of the American Bar Association's Business Law Section

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DISCLAIMER

Findings presented in this Study do not necessarily reflect the personal views of the Working Group members or the views of their respective firms. In addition, the acquisition agreement provisions that form the basis of this Study are drafted in many different ways and do not always fit precisely into particular "data point" categories. Therefore, Working Group members have had to make various judgment calls regarding, for example, how to categorize the nature or effect of particular provisions. As a result, the conclusions presented in this Study may be subject to important qualifications that are not expressly articulated in this Study.

CONTENTS

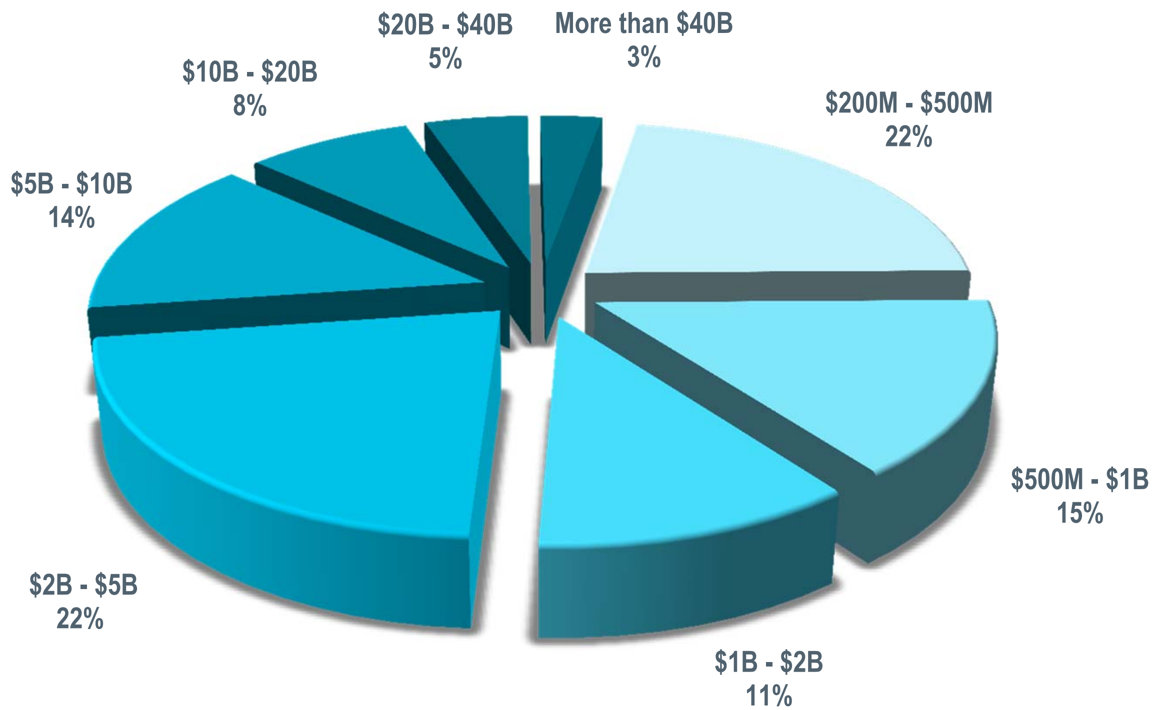
STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY
SAMPLE OVERVIEW

- This Study analyzes acquisition agreements for acquisitions of U.S. publicly traded targets by strategic buyers for transactions announced in 2015. The final sample for this Study of 133 agreements excludes agreements for acquisitions by private equity buyers and transactions otherwise deemed inappropriate for inclusion.
- The Study sample was obtained from www.mergermetrics.com.
- The previous studies published in 2015 and 2014 analyzed merger agreements for transactions announced in 2014 and 2013, respectively.

Year Announced	Transaction Value Range	# of Deals	# of Tender Offers	Consideration**		
				All Cash	*All Stock*	*Mixed****
2015	Over $200M	133	32*	47%	15%	38%****
2014	Over $100M	123	27	45%	23%	32%
2013	Over $100M	106	25	59%	18%	23%

* Six tender offers included stock as part of the consideration.
** Two deals included contingent value rights as part of the consideration.
*** 33% of mixed consideration deals were structured as a cash election.
**** On average, shares of Buyer's stock comprised approximately 57% of the consideration value in mixed consideration deals.

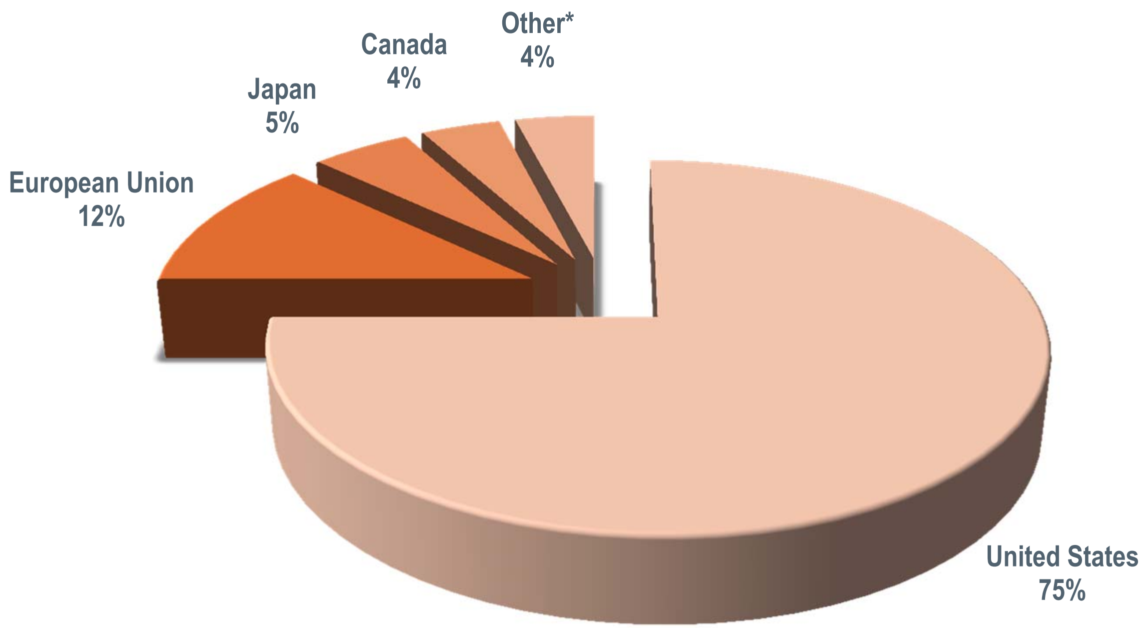
STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY
SAMPLE OVERVIEW
(by transaction value)*



* For the Study sample, the average transaction value was $6.35 billion and the median transaction value was $2.22 billion.

STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY SAMPLE OVERVIEW

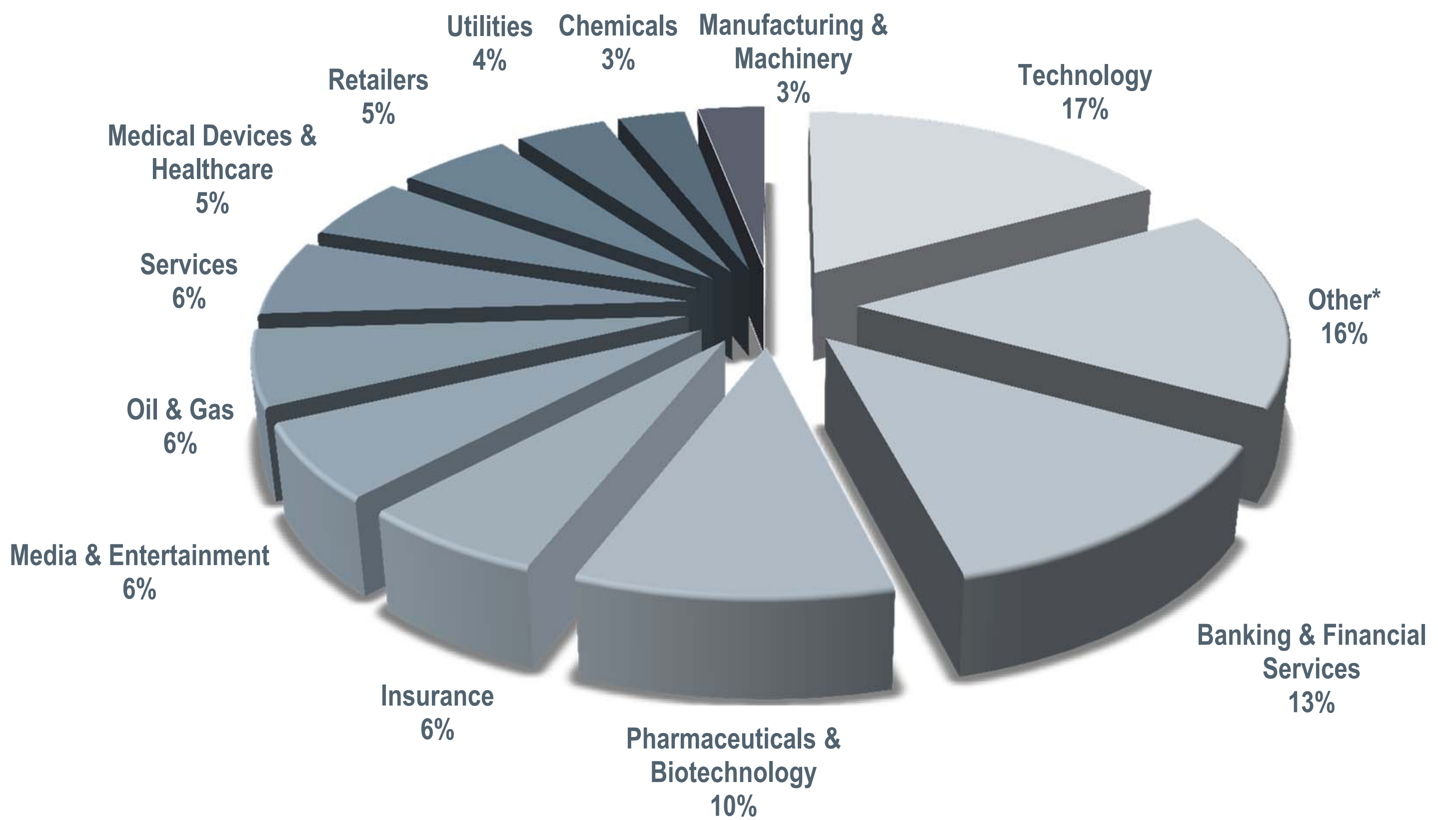
(by jurisdiction of Buyer)



* “Other” includes 2 Buyers in Singapore, 1 in China, 1 in Switzerland and 1 in Israel.

STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY
SAMPLE OVERVIEW

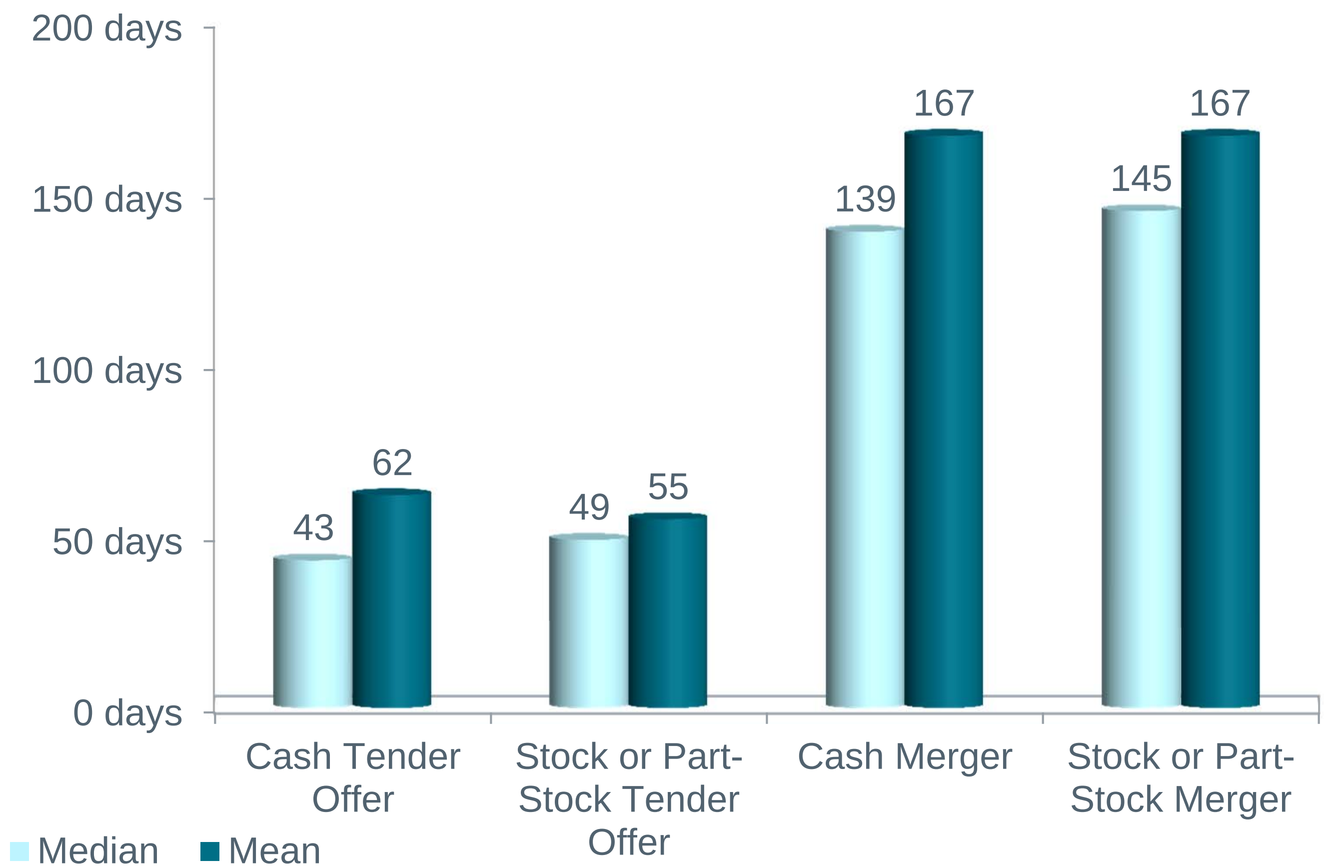
(by industry sector)



* "Other" includes construction & materials (3 deals), food & beverage (3 deals), telecommunications (3 deals), automotive, airline and transportation (2 deals), forestry & paper (2 deals), specialized reits (2 deals), aerospace & defense (1 deal), agriculture (1 deal), consumer goods (1 deal), mining & materials (1 deal) and travel & leisure (1 deal).

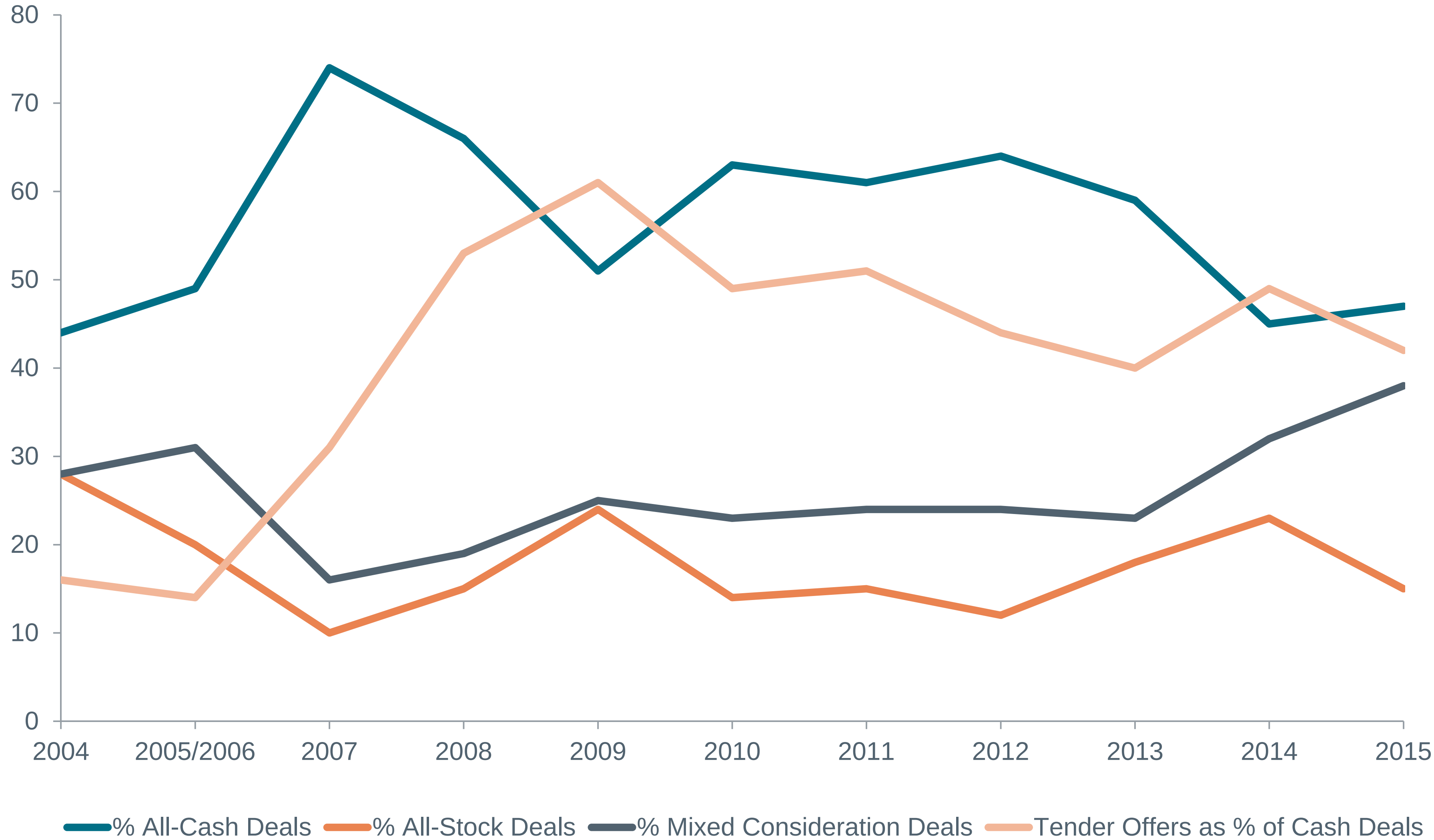
STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY
SAMPLE OVERVIEW

(number of days from signing to closing)*



* Excludes four cash mergers and twelve stock mergers that were still pending or terminated as of December 28, 2016.

STRATEGIC BUYER/PUBLIC TARGET M&A DEAL POINTS STUDY TRENDS IN CONSIDERATION AND STRUCTURE



TARGET'S REPRESENTATIONS AND WARRANTIES

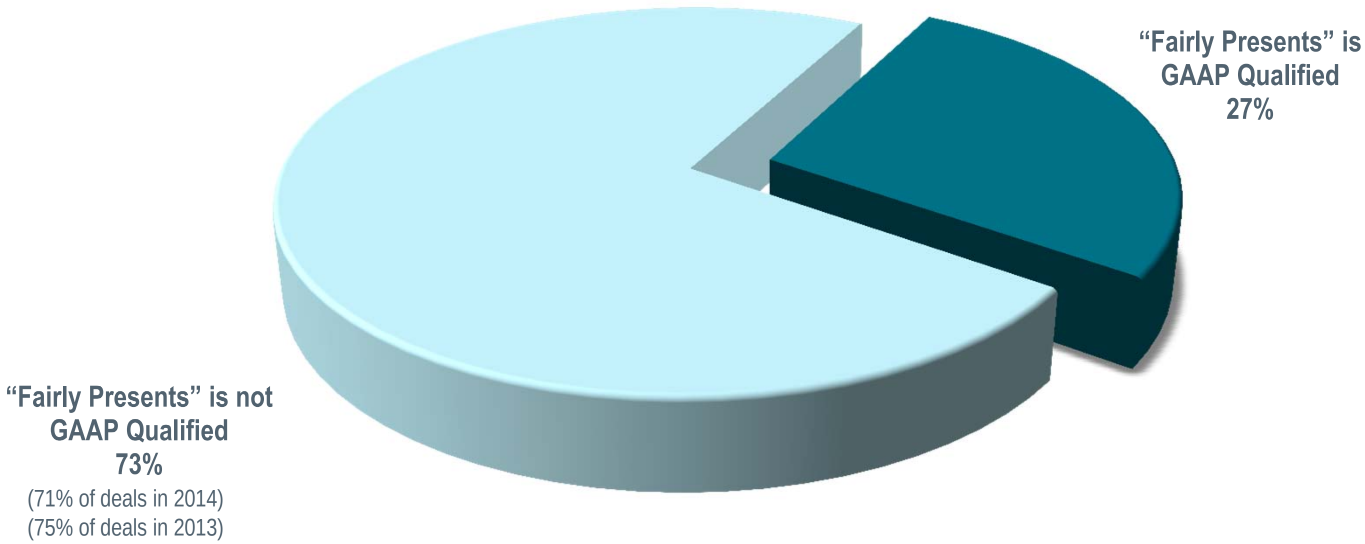
FAIR PRESENTATION REPRESENTATION

"FAIRLY PRESENTS" IS GAAP QUALIFIED

The Target Financial Statements fairly present the financial position of Target as of the respective dates thereof and the results of operations and cash flows of Target for the periods covered thereby, ***all in accordance with GAAP***.

"FAIRLY PRESENTS" IS NOT GAAP QUALIFIED

The Target Financial Statements fairly present the financial position of Target as of the respective dates thereof and the results of operations and cash flows of Target for the periods covered thereby. The Target Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered.



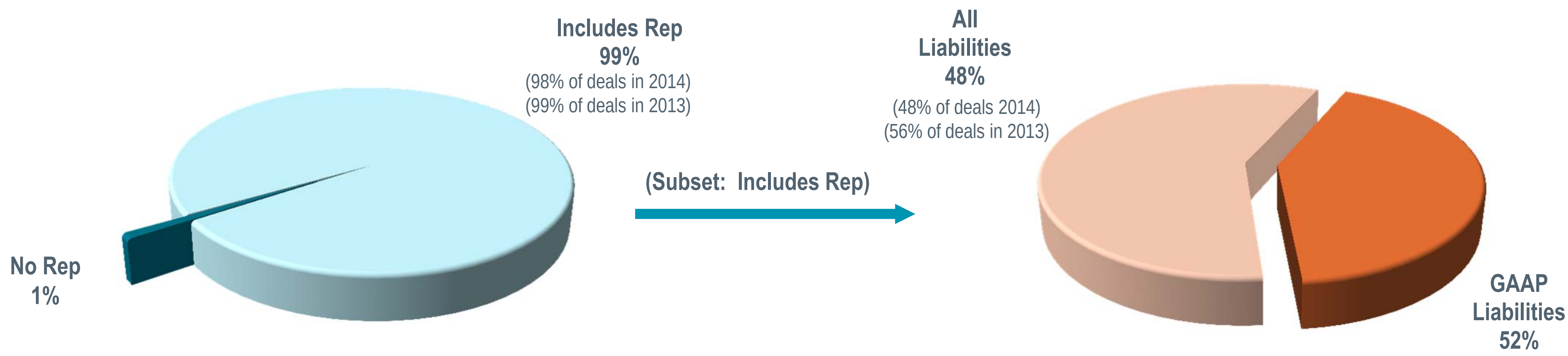
NO UNDISCLOSED LIABILITIES REPRESENTATION

ALL LIABILITIES (BUYER FAVORABLE)

Target has no ***accrued, contingent or other liabilities of any nature, either matured or unmatured***, except for…

GAAP LIABILITIES (TARGET FAVORABLE)

Target has no liabilities ***of the type required to be disclosed in the liabilities column of a balance sheet prepared in accordance with GAAP***, except for…



COMPLIANCE WITH LAW REPRESENTATION

NO TIME LIMIT COMPLIANCE

Target is, ***and at all times has been***, in compliance with all Applicable Law.

DATE RESTRICTED COMPLIANCE

Target is, and at all times ***since [December 31, 2013] has been***, in compliance with all Applicable Law.

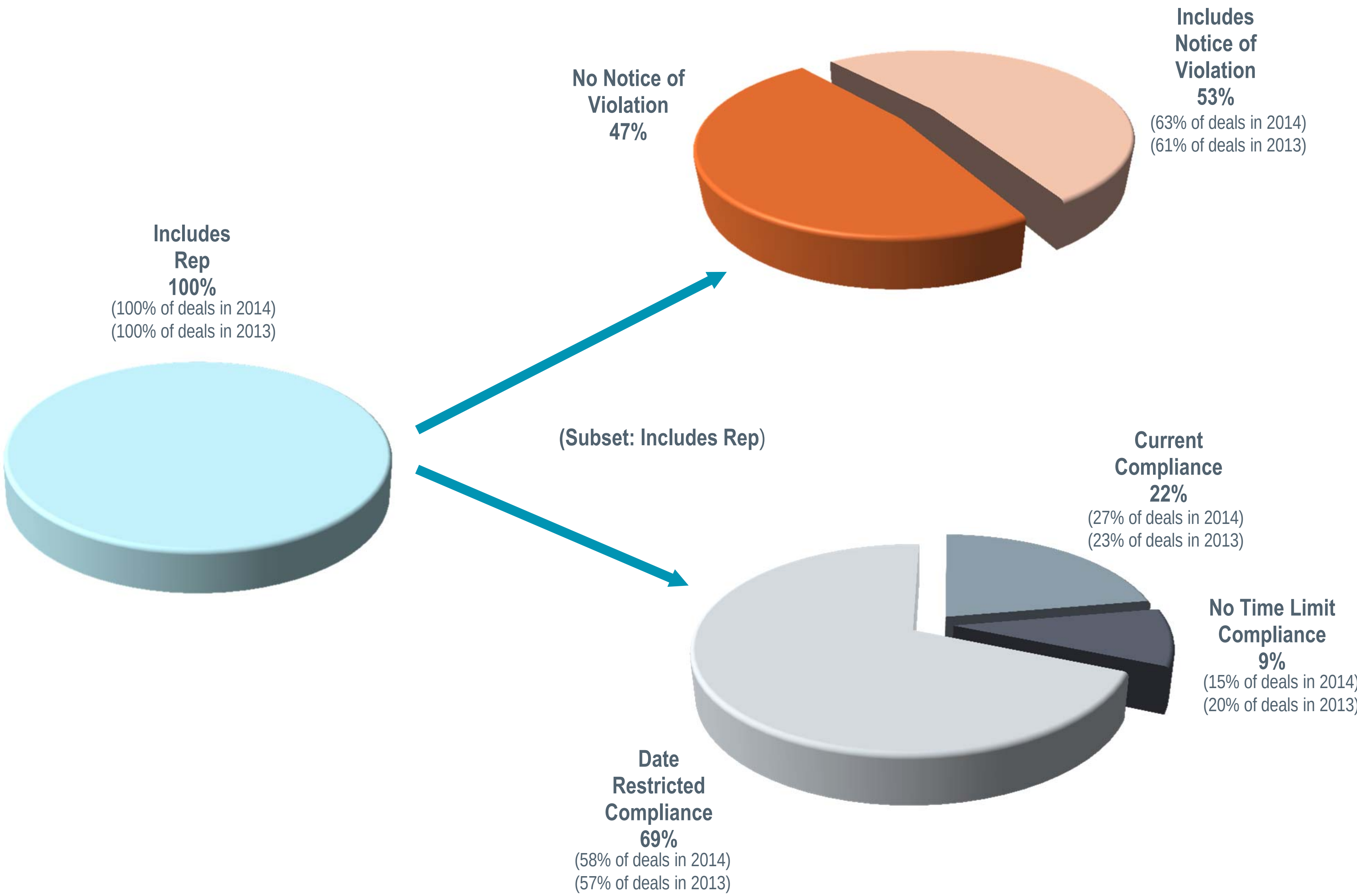
CURRENT COMPLIANCE

Target ***is in compliance*** with all Applicable Law.

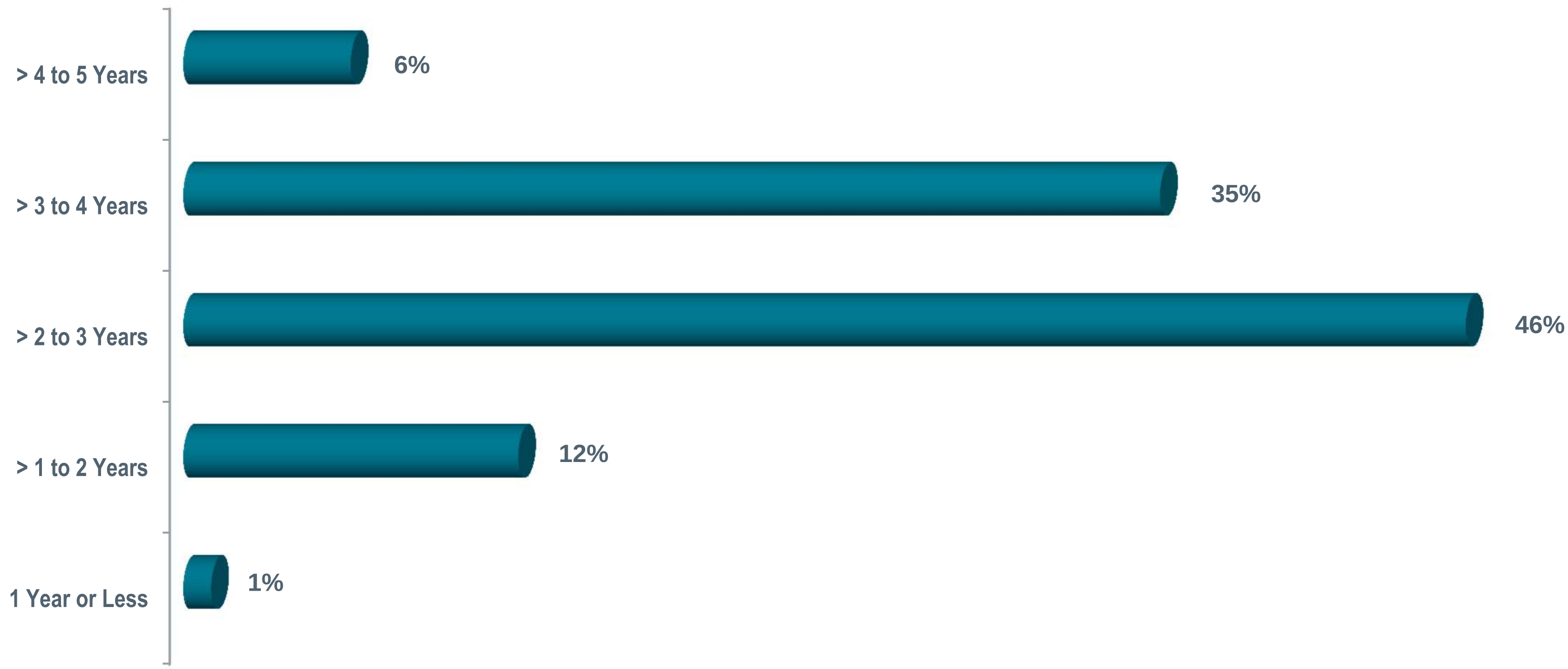
NOTICE OF VIOLATION

Target (i) is, and at all times has been, in compliance with all Applicable Law and (ii) ***has not received [written] notice of any violation*** of Applicable Law.

COMPLIANCE WITH LAW REPRESENTATION



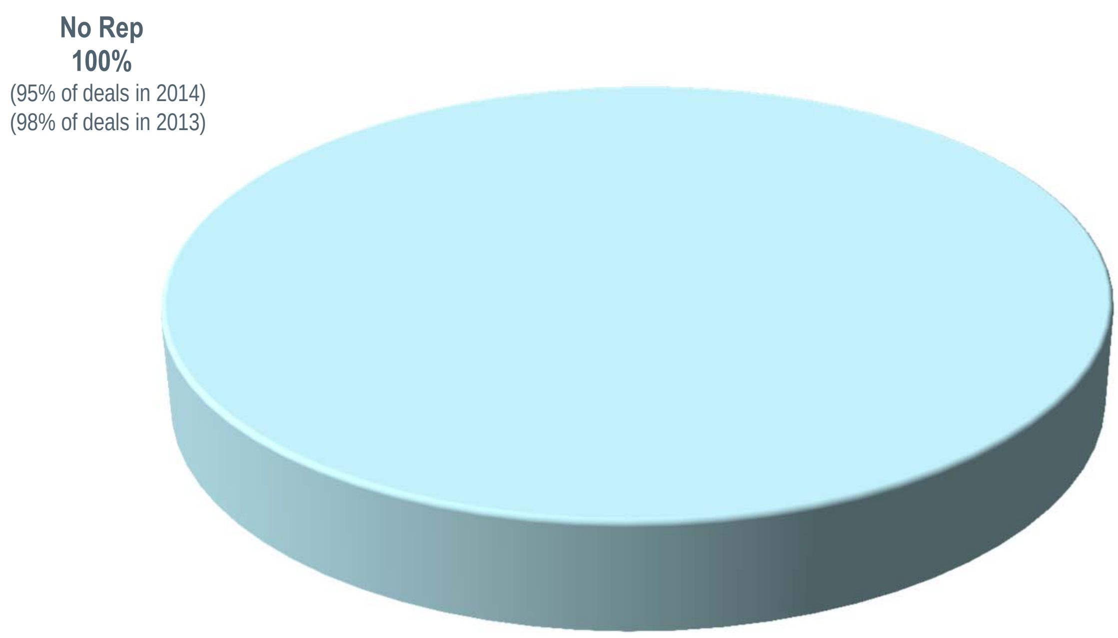
COMPLIANCE WITH LAW REPRESENTATION: DURATION OF DATE RESTRICTED COMPLIANCE



* Duration is measured as the number of full years from the date given in the representation to the signing date.

10b-5 REPRESENTATION

[To the knowledge of Target,] no representation or warranty made by Target in this Agreement contains any untrue statement of a material fact or fails to state a material fact necessary to make any such representation or warranty, in light of the circumstances in which it was made, not misleading.



CONDITIONS TO CLOSING

ACCURACY OF TARGET'S REPRESENTATIONS: *WHEN* MUST THEY BE ACCURATE?

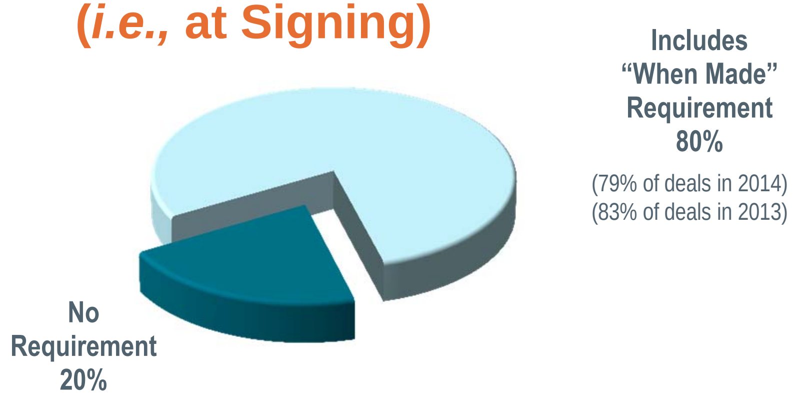
"WHEN MADE" REQUIREMENT (AT SIGNING) | Each of the representations and warranties made by Target in this Agreement shall have been accurate ***as of the date of this Agreement***.

"BRING DOWN" REQUIREMENT (AT CLOSING) | Each of the representations and warranties made by Target in this Agreement shall be accurate ***as of the Closing Date*** as if made on the Closing Date.

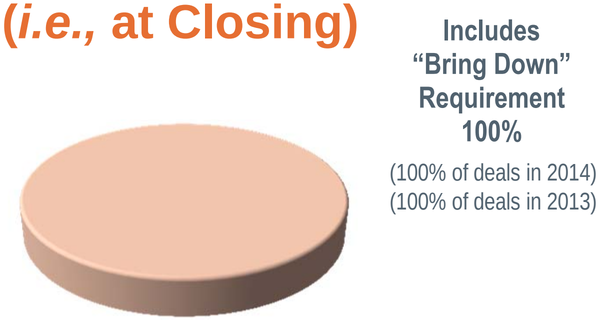
"WHEN MADE" AND "BRING DOWN" REQUIREMENTS | (AT SIGNING AND AT CLOSING)

Each of the representations and warranties made by Target in this Agreement shall have been accurate in all respects ***as of the date of this Agreement, and*** shall be accurate ***as of the Closing Date*** as if made on the Closing Date.

"When Made" Requirement (*i.e.*, at Signing)



"Bring Down" Requirement* (*i.e.*, at Closing)



* Includes deals with both a "when made" and a "bring down" requirement and deals solely with a "bring down" requirement.

ACCURACY OF TARGET'S REPRESENTATIONS: *HOW* ACCURATE MUST THEY BE?

MATERIALITY QUALIFIER IN "BRING DOWN" COMPONENT

ACCURATE IN ALL MATERIAL RESPECTS

Each of the representations and warranties made by Target in this Agreement shall be accurate ***in all material respects*** as of the Closing Date as if made on the Closing Date.

MAE QUALIFIER

Each of the representations and warranties made by Target in this Agreement shall have been accurate in all respects as of the Closing Date as if made on the Closing Date, ***except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to result in a Material Adverse Effect***.

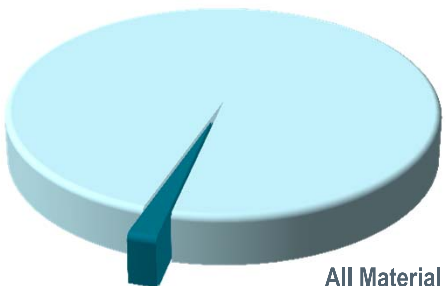
"DOUBLE MATERIALITY" CARVEOUT

Each of the representations and warranties made by Target in this Agreement shall be accurate in all respects as of the Closing Date as if made on the Closing Date, except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to result in a Material Adverse Effect (it being understood that, ***for purposes of determining the accuracy of such representations and warranties, all "Material Adverse Effect" qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded***).

ACCURACY OF TARGET'S REPRESENTATIONS: *HOW* ACCURATE MUST THEY BE?

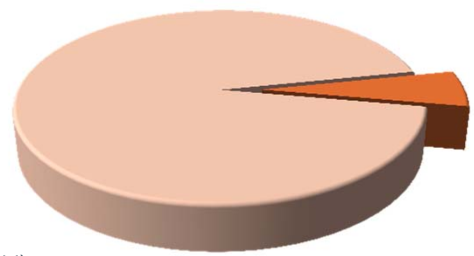
MATERIALITY QUALIFIER IN "BRING DOWN" COMPONENT*

Materiality Standard**



(Subset: MAE Qualified)

"Double Materiality" Carveout



* The statistics for materiality qualifiers in the "when made" component are substantially similar to the statistics for the "bring down" component.

** Many deals included separate (and different) materiality standards for the capitalization and certain other representations. See page 23 for the materiality standards applicable to the capitalization representation and page 24 for materiality standards applicable to certain other representations.

*** Includes other materiality standard formulations, such as the bifurcated standard of "in all material respects" if there is no materiality qualifier in a representation and "in all respects" if there is a materiality qualifier in a representation.

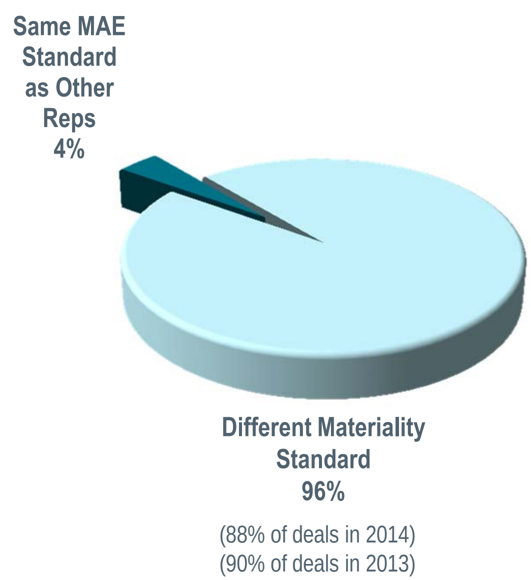
ACCURACY OF TARGET'S REPRESENTATIONS: *HOW* ACCURATE MUST THEY BE?

MATERIALITY QUALIFIER APPLICABLE TO CAPITALIZATION REPRESENTATION

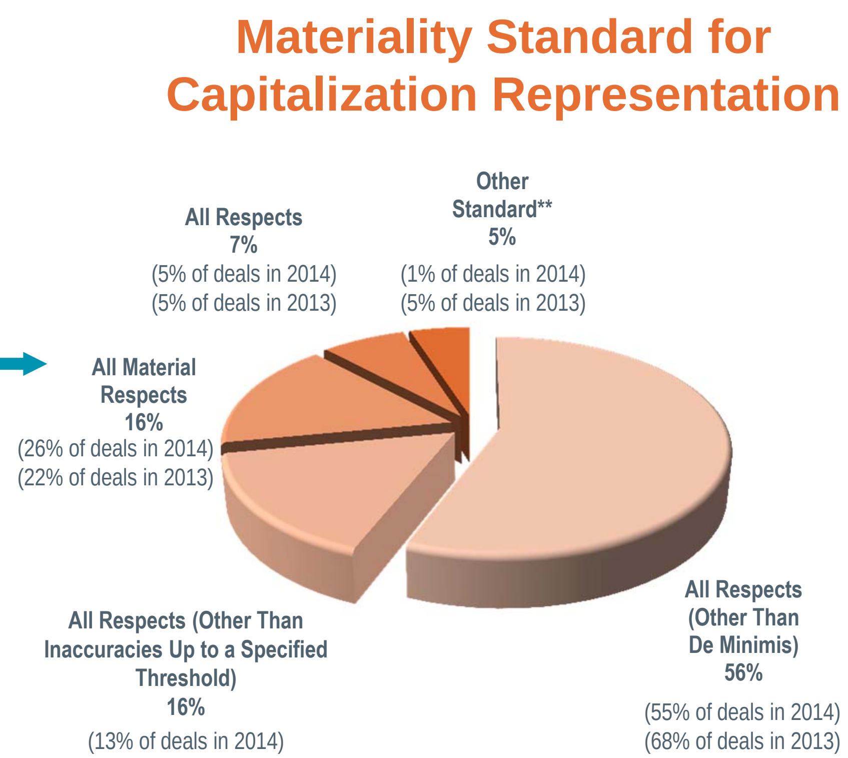
(i) The representations and warranties set forth in Section 2.3 (Capitalization) shall have been accurate [in all respects] [in all respects other than de minimis inaccuracies] [in all respects other than inaccuracies which would not result in liability exceeding $__ million] [in all material respects] as of the Closing Date as if made on the Closing Date, and ***(ii)*** each of the ***other*** representations and warranties made by Target in this Agreement shall have been accurate in all respects as of the Closing Date as if made on the Closing Date, except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to result in a Material Adverse Effect.

ACCURACY OF TARGET'S REPRESENTATIONS: *HOW* ACCURATE MUST THEY BE?

MATERIALITY QUALIFIER APPLICABLE TO CAPITALIZATION REPRESENTATION*
(Subset: Deals that Include MAE Qualifier in "Bring Down")



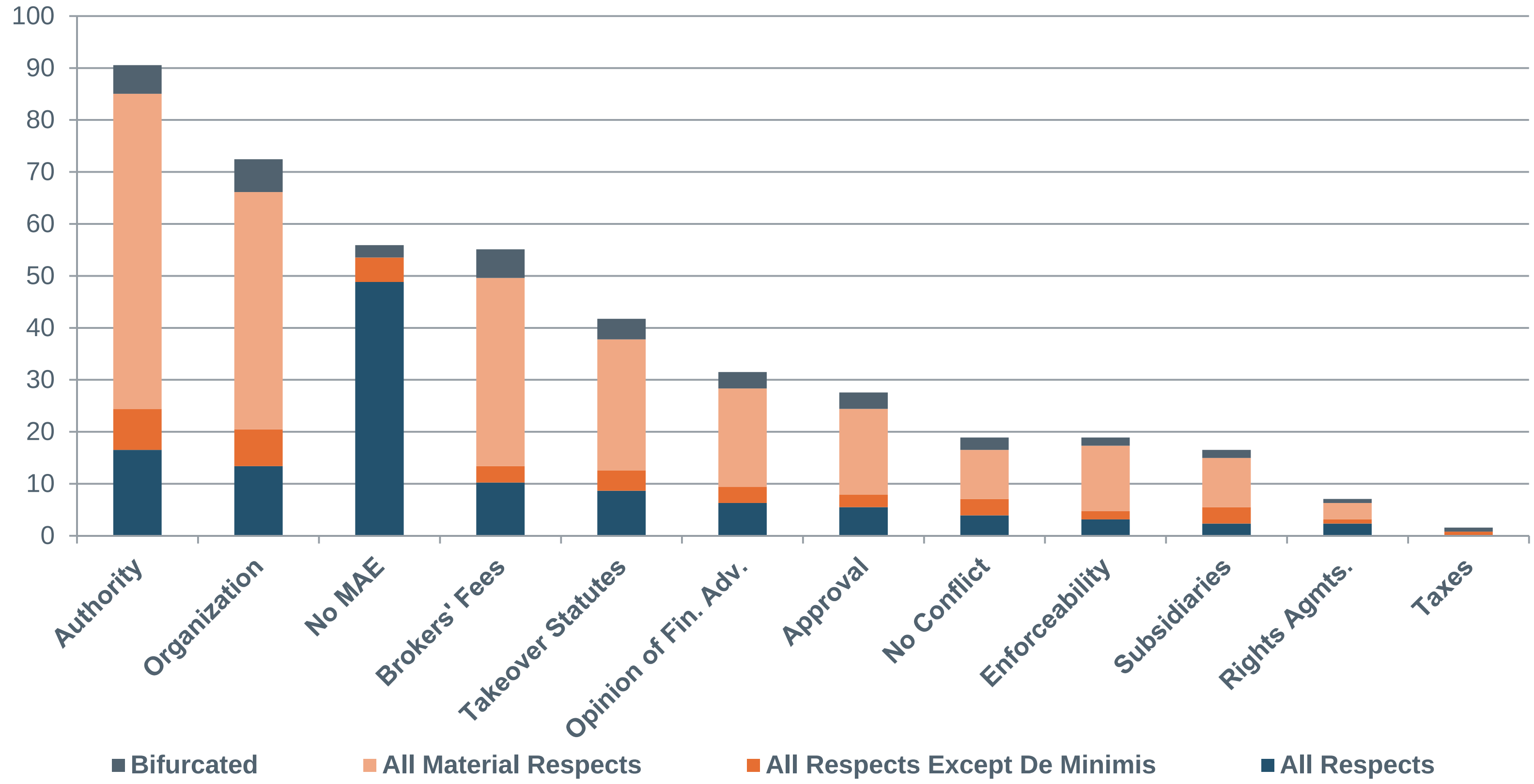
(Subset: Includes Different Materiality Standard)



* The statistics with respect to the capitalization carveout in the "when made" component were substantially similar to the statistics for the "bring down" component.
** Includes other materiality standard formulations, such as different materiality standards for different capitalization representations.

ACCURACY OF TARGET'S REPRESENTATIONS: *HOW* ACCURATE MUST THEY BE?

MATERIALITY QUALIFIER APPLICABLE TO OTHER REPRESENTATIONS
(Subset: Deals that Include MAE Qualifier in "Bring Down")



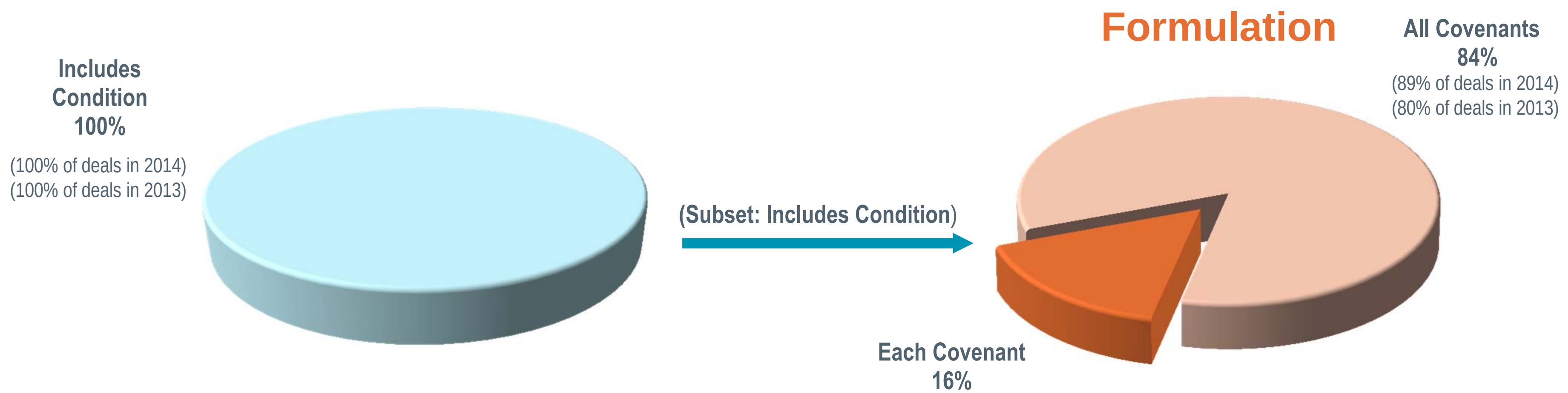
TARGET'S COVENANT COMPLIANCE

COMPLIANCE WITH EACH COVENANT

Target shall have performed in all material respects ***each*** of its obligations required to be performed by it under this Agreement.

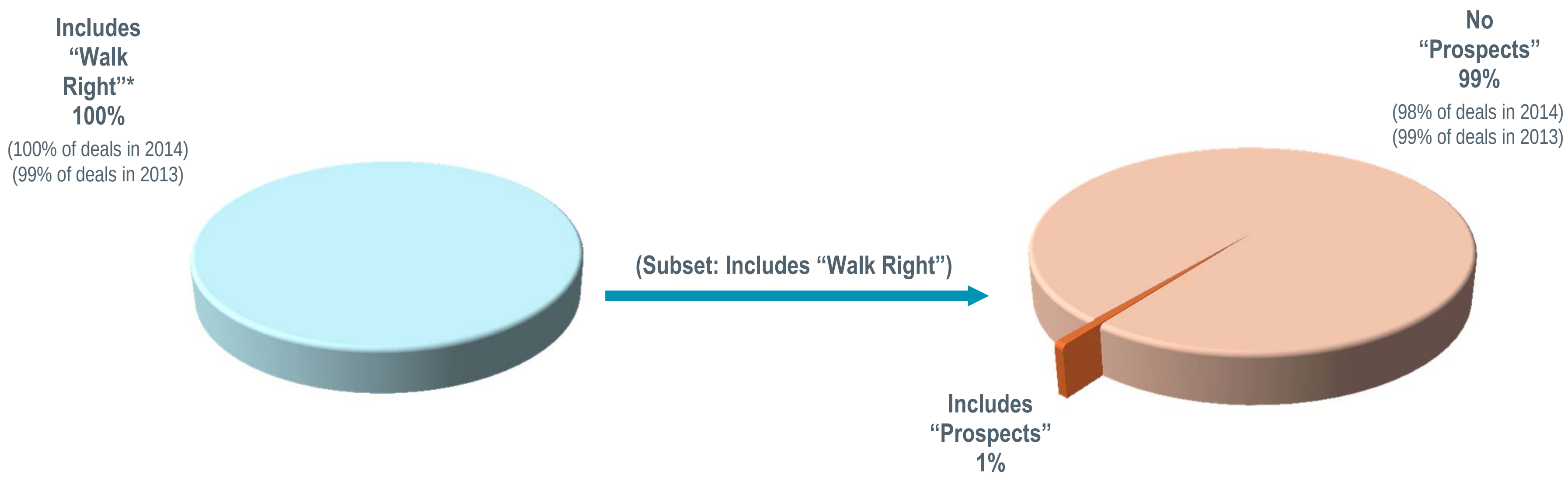
COMPLIANCE WITH ALL COVENANTS

Target shall have performed in all material respects ***all of the*** obligations required to be performed by it under this Agreement.



BUYER'S MAE "WALK RIGHT"

Since the date of this Agreement, there has not been any material adverse effect on the business, ***[prospects,]*** financial condition or results of operations of Target.

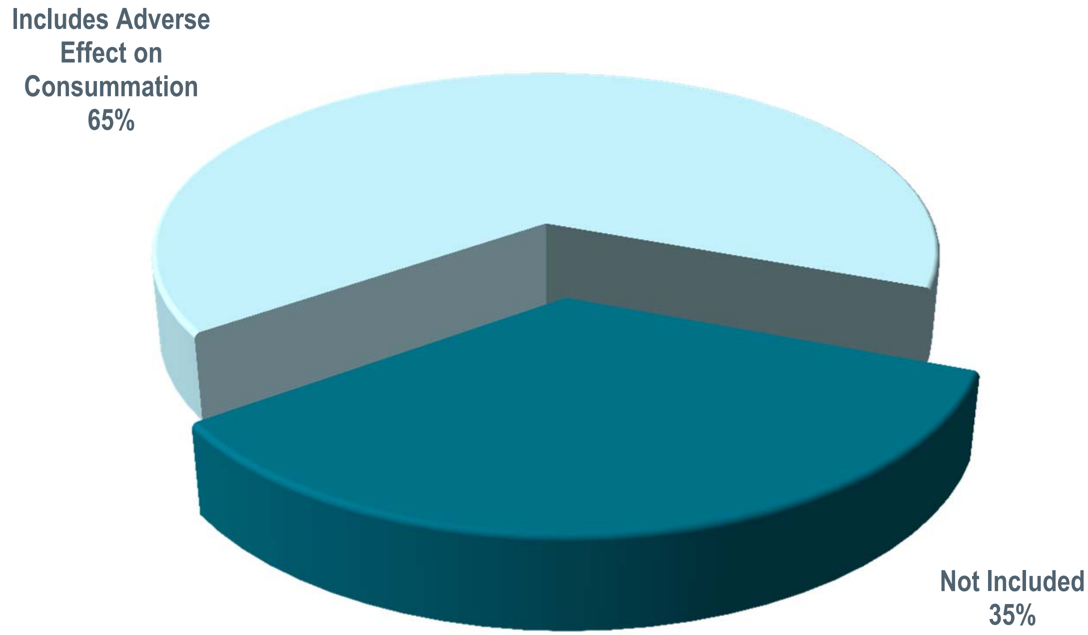


* MAE "walk right" includes closing condition, specific termination right in termination section or "back door" MAE (i.e., MAE closing condition or termination right through bring down of MAE representation). Approximately 7% of deals included a standalone MAE termination right. Approximately 29% of deals only included a "back door" MAE with no standalone MAE closing condition.

MAE DEFINITION

Adverse Effect on Target's Ability to Consummate Deal

"Material Adverse Effect" means, when used in connection with Target, any change, event, violation, inaccuracy, circumstance or effect that is materially adverse to the business, financial condition or results of operations of Target, ***or any event that would create a prohibition, material impediment, or material delay in the consummation by Target of the Merger***.



MAE CARVEOUTS

"Material Adverse Effect" means, when used in connection with Target, any change, event, violation, inaccuracy, circumstance or effect that is materially adverse to the business, financial condition or results of operations of Target, ***other than as a result of:***

(i) changes adversely affecting the United States economy (so long as Target is not disproportionately affected thereby);

(ii) changes adversely affecting the industry in which Target operates (so long as Target is not disproportionately affected thereby);

(iii) changes in laws;

(iv) the announcement or pendency of the transactions contemplated by this Agreement;

(v) changes in accounting principles;

(vi) the failure to meet analyst projections, in and of itself;

(vii) acts of war or terrorism;

(viii) changes in the market price or trading volume of Target's securities, in and of themselves;

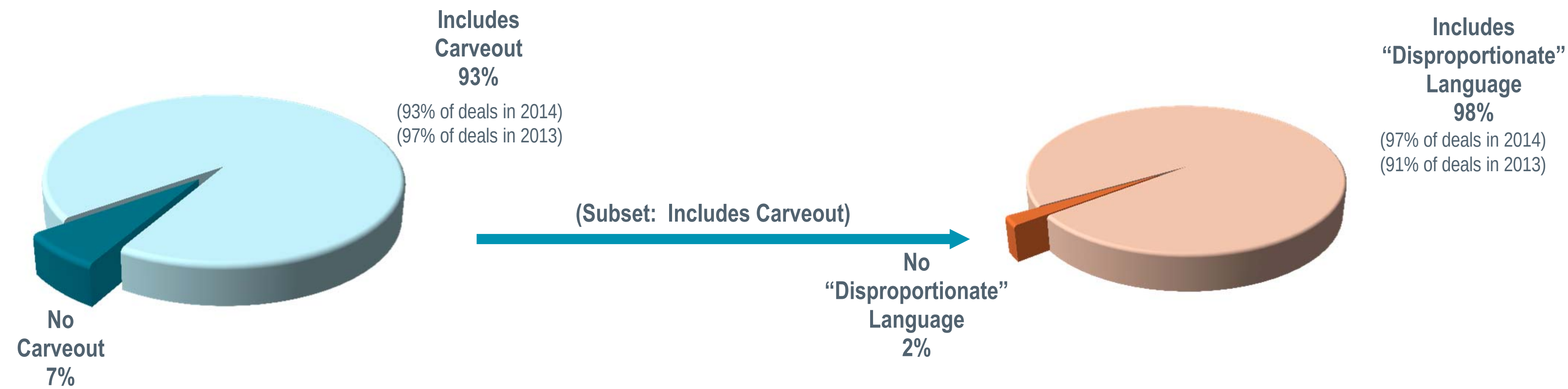
(ix) compliance by Target with the terms of this Agreement;

(x) actions taken, or not taken, with the express prior written consent of Buyer; or

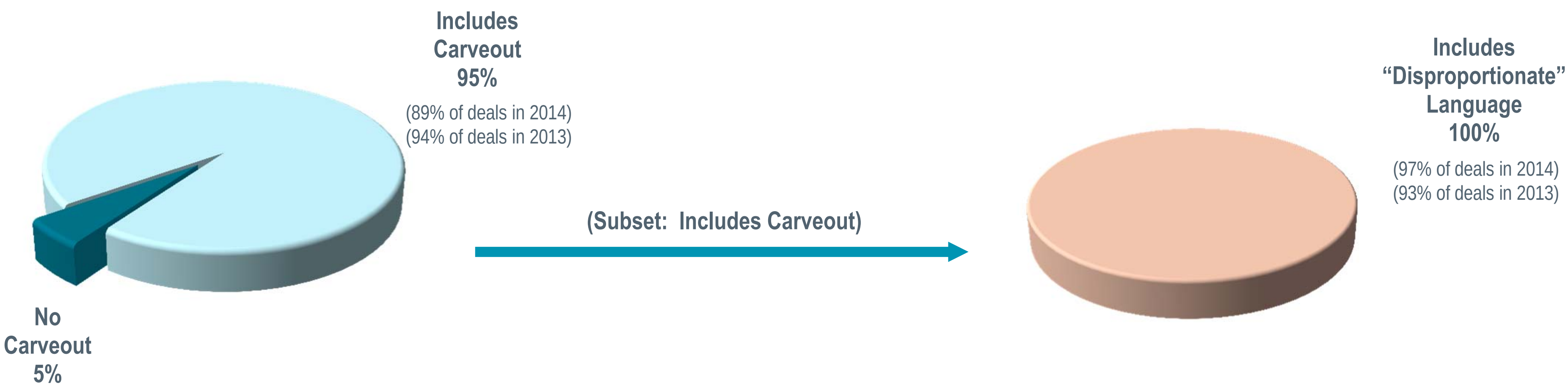
(xi) any legal action commenced on behalf of Target's stockholders and arising from this Agreement or the transactions contemplated hereby (except as it relates to breaches by Target).

MAE CARVEOUTS

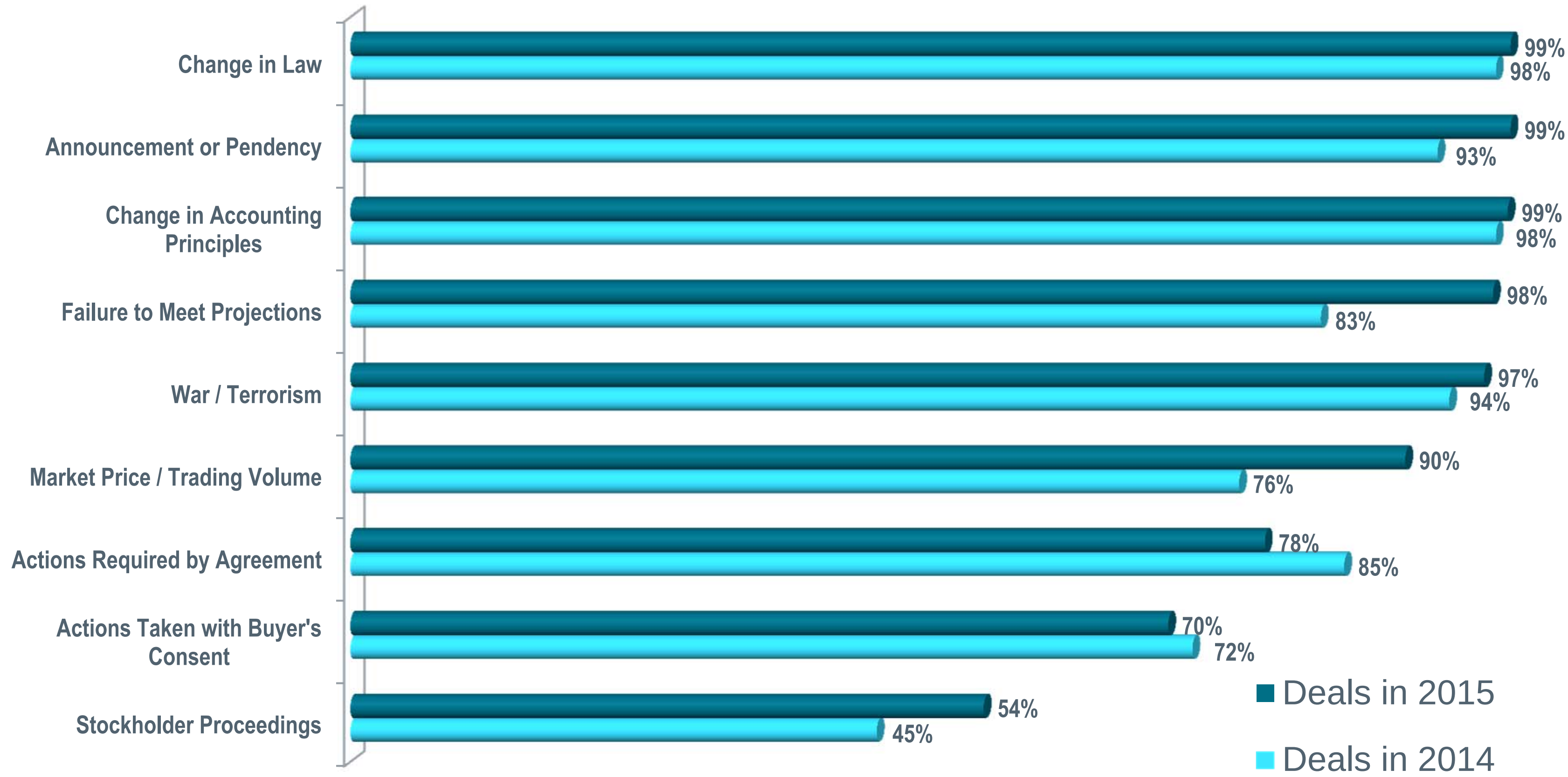
GENERAL ECONOMY



INDUSTRY

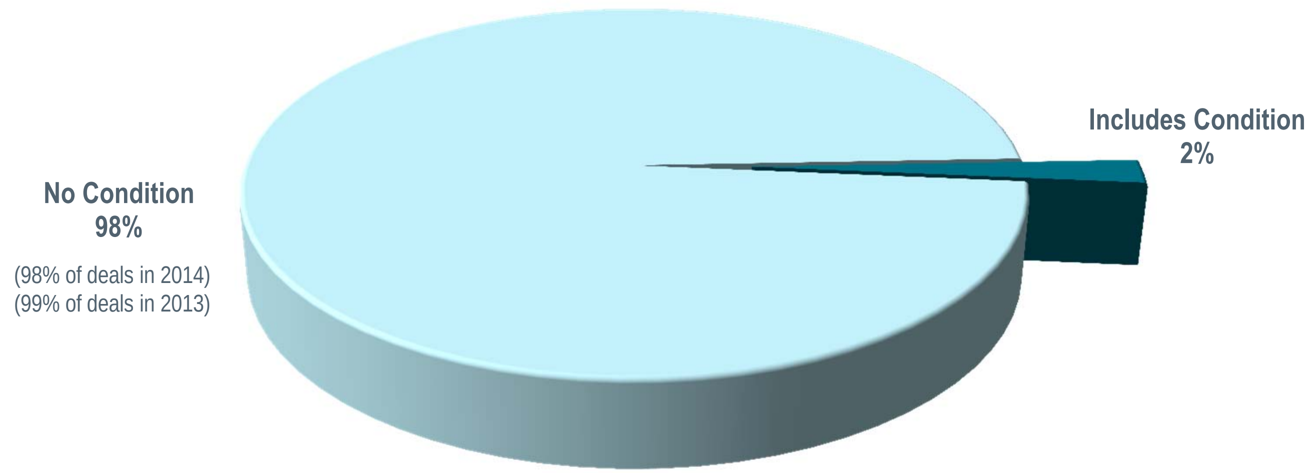


OTHER POPULAR MAE CARVEOUTS



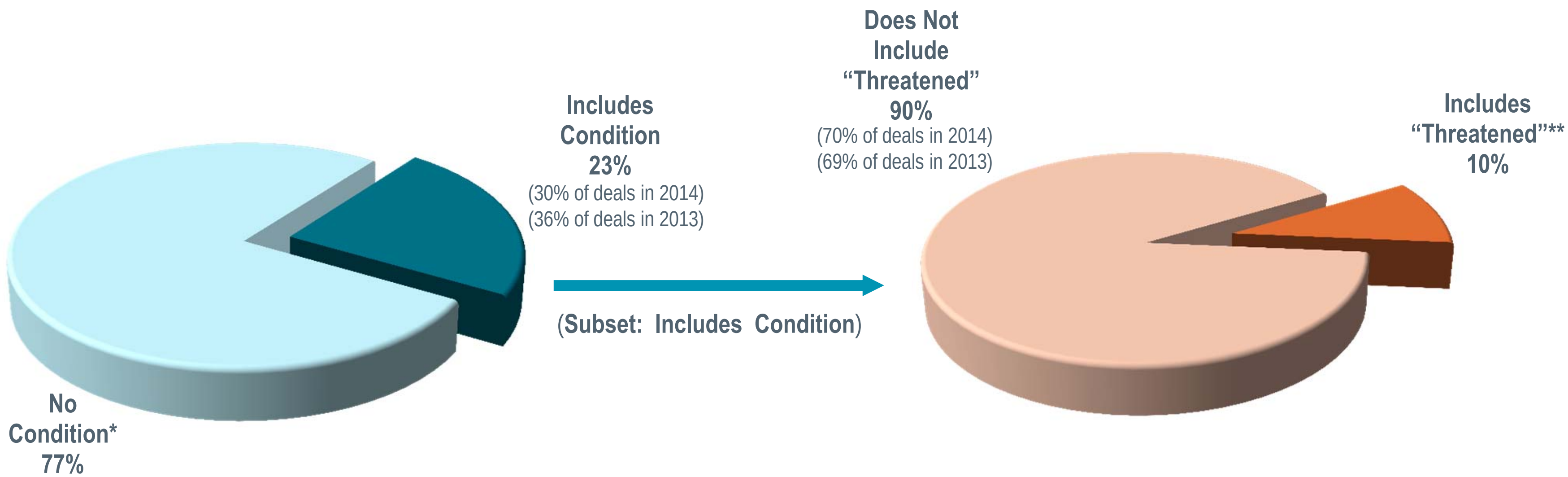
RETENTION OF SPECIFIED EMPLOYEES OF TARGET

None of the individuals identified on Schedule __ shall have ceased to be employed by Target, or shall have expressed an intention to terminate his or her employment with Target or to decline to accept employment with Buyer.



NO GOVERNMENTAL LITIGATION CHALLENGING THE TRANSACTION

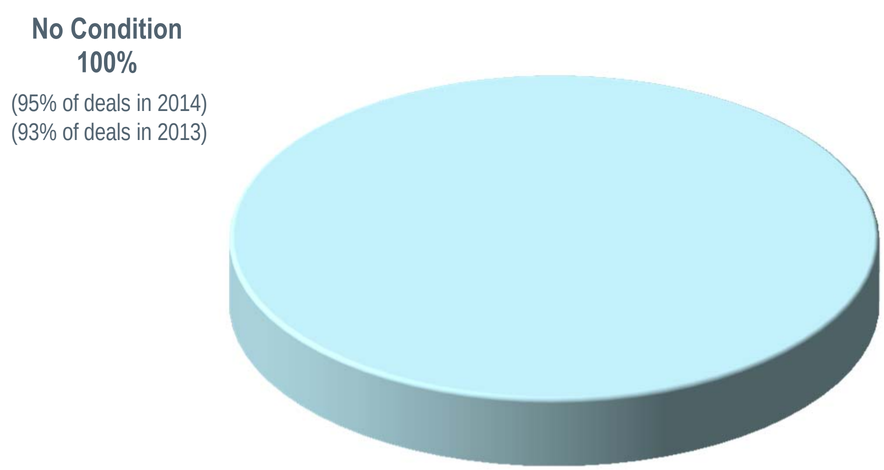
There shall not be ***pending*** or ***threatened*** any Legal Proceeding in which a ***Governmental Body*** is or has threatened to become a party: (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement; (ii) seeking to prohibit or limit in any material respect Buyer's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of Target; or (iii) seeking to compel Target, Buyer or any Subsidiary of Buyer to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.



* Provisions requiring that a governmental authority shall not have entered or threatened an order prohibiting the consummation of the transaction are excluded.
** Of the deals that included threatened governmental litigation, approximately 66% also included that the threat must be in writing.

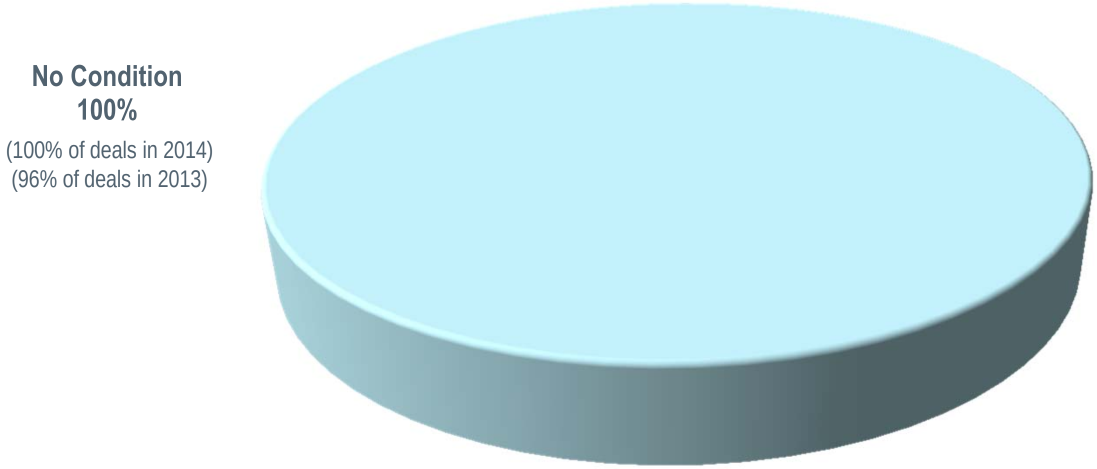
NO NON-GOVERNMENTAL LITIGATION CHALLENGING THE TRANSACTION

There shall not be ***pending*** or ***threatened*** any Legal Proceeding in which ***any Person*** is or has threatened to become a party: (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement; (ii) seeking to prohibit or limit in any material respect Buyer's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of Target; or (iii) seeking to compel Target, Buyer or any Subsidiary of Buyer to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.



AVAILABILITY OF FINANCING*

Buyer shall have obtained the financing described in the Commitment Letters on the terms set forth in the Commitment Letters and on such other terms as are reasonably satisfactory to Buyer.

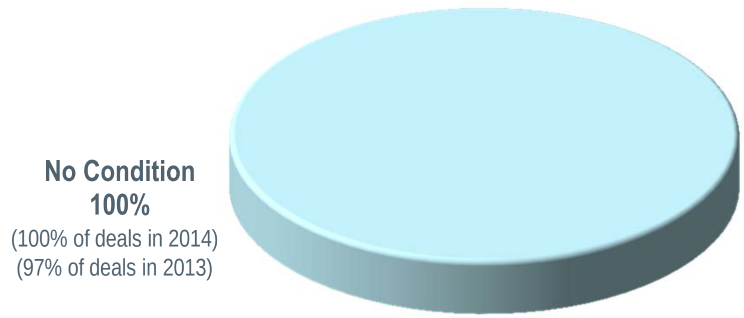


* Represents 63 deals in 2015 in which cash was included as consideration and where Buyer contemplated obtaining financing for the acquisition. For purposes of the data set, deals that included (i) representations by Buyer regarding commitment letters (or similar obligations) with respect to obtaining financing, or (ii) covenants on behalf of Buyer to use specified efforts to obtain referenced financing before closing were deemed deals where Buyer contemplated obtaining financing for the acquisition. Deals that contained Buyer representations generally providing that Buyer would have "funds available at closing" were not deemed deals where Buyer contemplated obtaining financing for the acquisition.

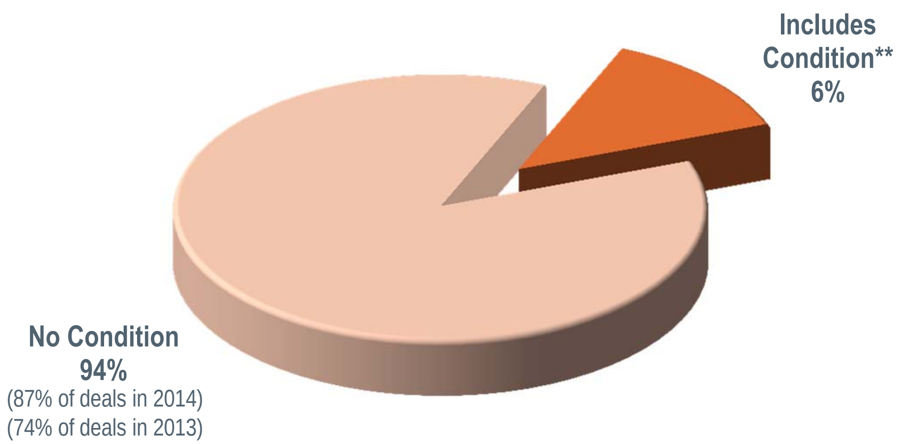
APPRAISAL RIGHTS*

The aggregate number of shares of Common Stock at the Effective Time, the holders of which have demanded purchase of their shares of Common Stock in accordance with the provisions of Section 262 of the DGCL, shall not equal ***[10%]*** or more of the shares of Common Stock outstanding as of the record date for the Target Stockholders Meeting.

All Cash Deals



Mixed Consideration Deals



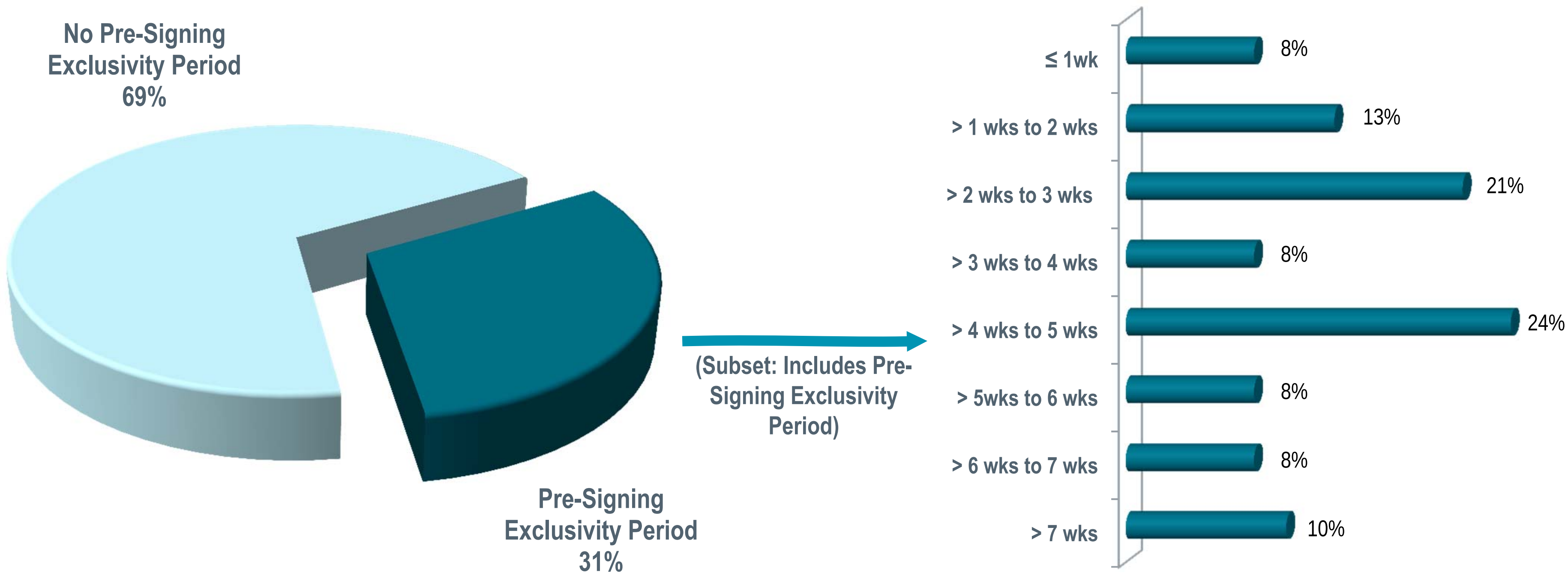
* Stock-for-stock deals are excluded, as appraisal rights are generally not available in stock-for-stock deals between two public companies due to the “market out” exception in Section 262 of the Delaware General Corporation Law. Other jurisdictions have similar statutory provisions.

** Represents three deals in which the appraisal rights cap was 10%.

DEAL PROTECTION AND RELATED PROVISIONS

PRE-SIGNING EXCLUSIVITY PERIOD

DO SEC FILINGS DISCLOSE A PRE-SIGNING EXCLUSIVITY PERIOD?



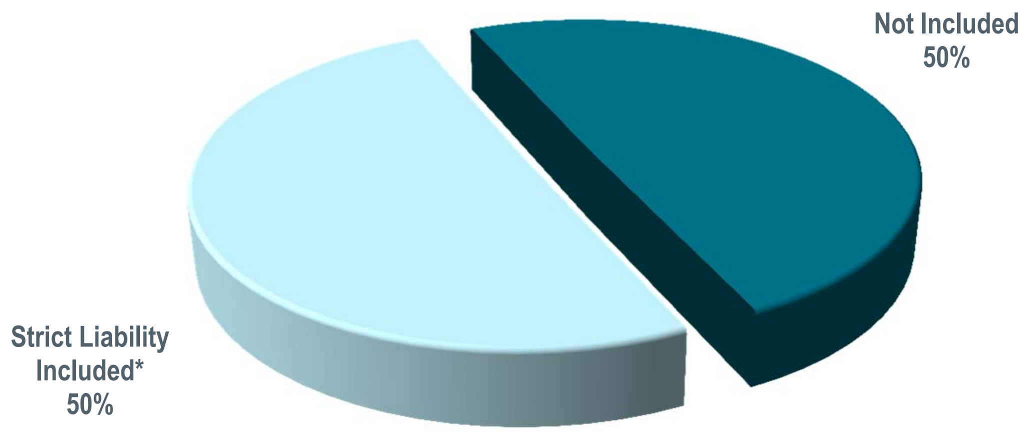
Mean: 28.66 days Median: 27 days

TARGET NO-SHOP:
STRICT LIABILITY FOR BREACHES BY TARGET'S REPRESENTATIVES

NO SOLICITATION | Target shall not directly or indirectly, and shall not authorize or permit any Representative of Target, directly or indirectly to: (i) solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any Acquisition Proposal; or (ii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal.

STRICT LIABILITY FOR BREACHES BY REPRESENTATIVES | Target agrees that any violation of the restrictions set forth in the No-Shop Provision by any Representative of Target or any of its Affiliates shall be deemed a breach of the No-Shop Provision by Target.

“REPRESENTATIVES” | Any officer, director, employee, investment banker, attorney, accountant, consultant or other agent or advisor employed by Target or that provides services in connection with the Merger.

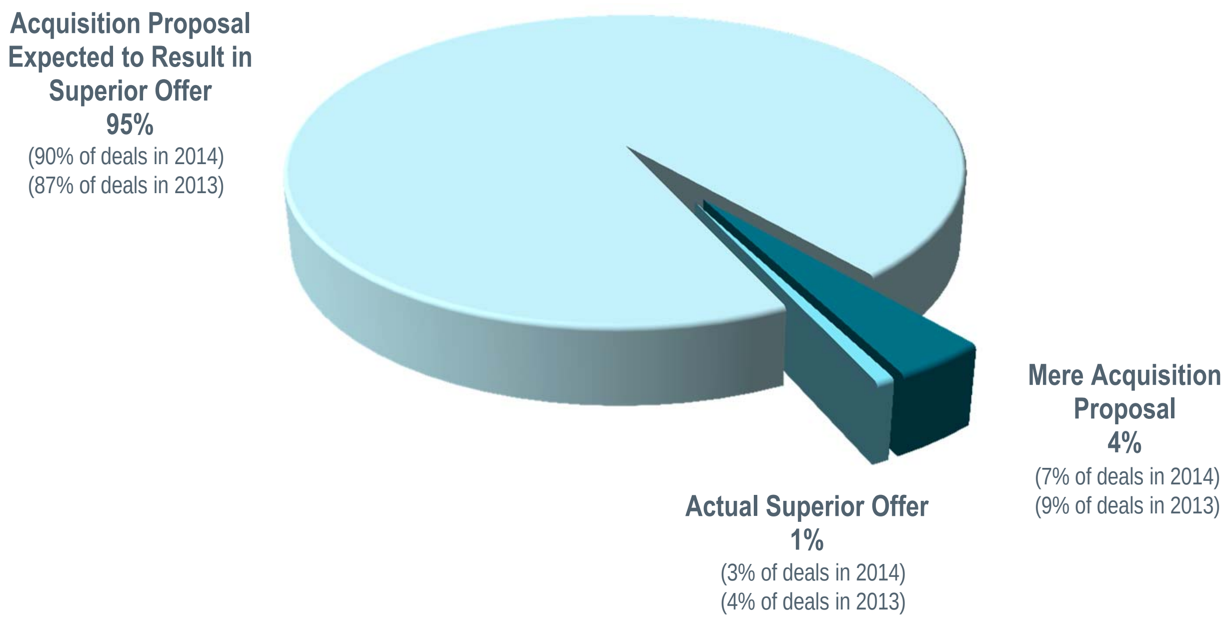


* Includes three deals that limited strict liability to "material" breaches of the no- shop, breaches by "internal" Representatives (*i.e.* directors, officers,and employees of Target) or breaches by Representatives that were either "authorized" or "known" by Target.

FIDUCIARY EXCEPTION TO NO-SHOP

FIDUCIARY EXCEPTION TO NO-SHOP

…*provided*, *however*, that before the approval of this Agreement by the Required Target Stockholder Vote, this Section shall not prohibit Target from entering into discussions with, any Person ***in response to [an Acquisition Proposal] [an Acquisition Proposal that is reasonably likely to result in a Superior Offer] [a Superior Offer]*** that is submitted to Target by such Person (and not withdrawn) if…***[the Target Board concludes in good faith that [the failure to take such action would [constitute a breach of] [be inconsistent with] [be reasonably expected to constitute a breach of] [be reasonably expected to be inconsistent with] its fiduciary duties]/ [such action is necessary or required to comply with its fiduciary duties]]***.



REASON FOR TARGET BOARD FIDUCIARY EXCEPTION TO NO-SHOP

Before the approval of this Agreement by the Required Target Stockholder Vote, this Section shall not prohibit Target from entering into discussions with any Person in response to an Acquisition Proposal that is reasonably likely to result in a Superior Offer that is submitted to Target by such Person (and not withdrawn) if the Target Board concludes in good faith that:

"BREACH" OF FIDUCIARY DUTIES

the failure to take such action would ***constitute a breach*** of its fiduciary duties.

"REASONABLY EXPECTED BREACH" OF FIDUCIARY DUTIES

the failure to take such action would ***reasonably be expected to constitute a breach*** of its fiduciary duties.

"INCONSISTENT" WITH FIDUCIARY DUTIES

the failure to take such action would be ***inconsistent*** with its fiduciary duties.

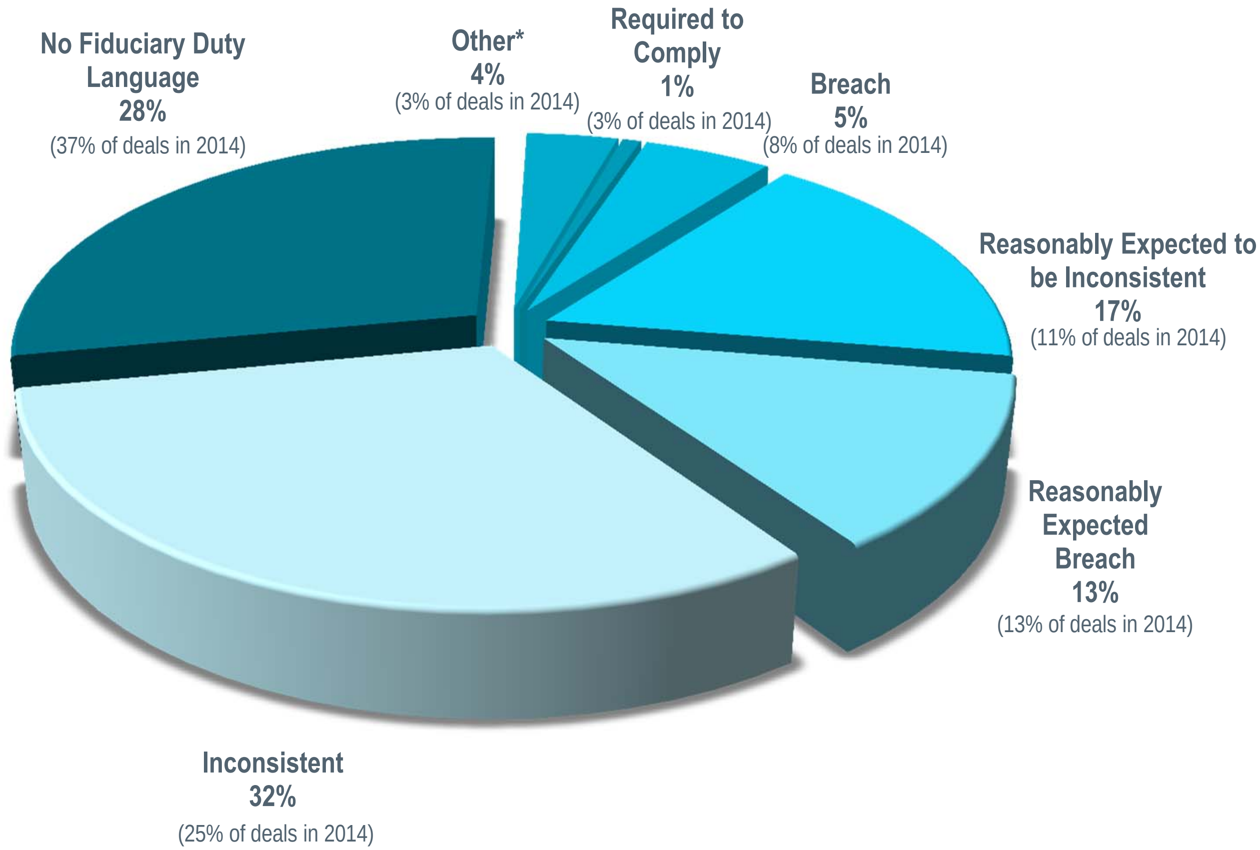
"REASONABLY EXPECTED TO BE INCONSISTENT" WITH FIDUCIARY DUTIES

the failure to take such action would ***reasonably be expected to be inconsistent*** with its fiduciary duties.

"REQUIRED TO COMPLY" WITH FIDUCIARY DUTIES

such action is ***required to comply*** with its fiduciary duties.

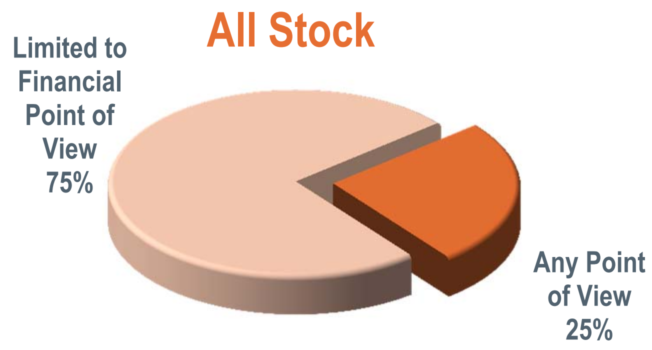
REASON FOR TARGET BOARD FIDUCIARY EXCEPTION TO NO-SHOP

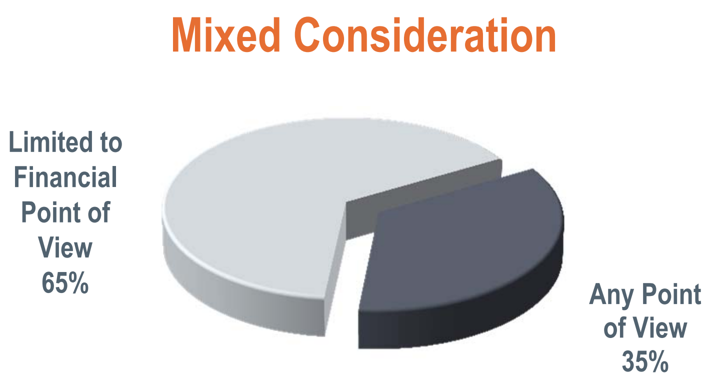


* "Other" includes three deals with a standard of "more likely than not to result in a breach," one deal with a standard of an "action is reasonably likely to be required to comply with fiduciary duties" and one deal with a standard of an "action is reasonably required in order to comply with fiduciary duties."

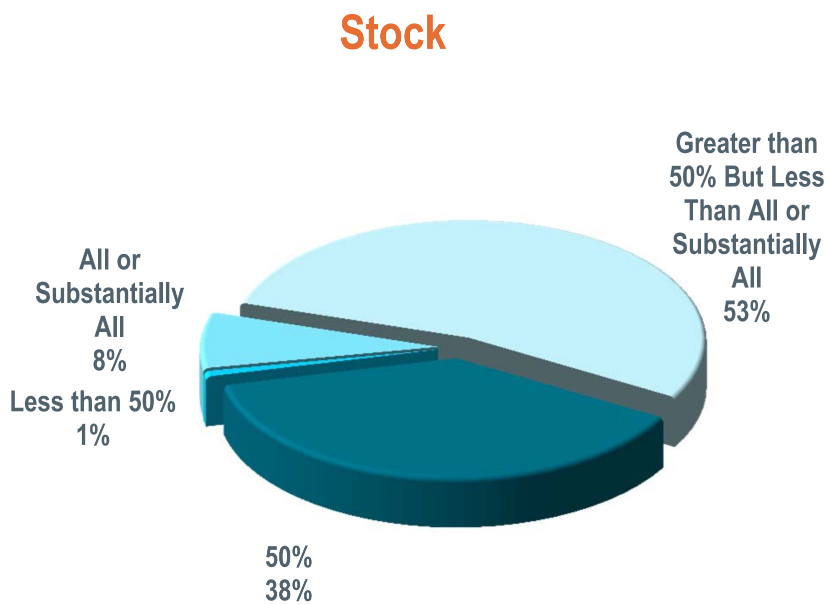
DEFINITION OF SUPERIOR OFFER

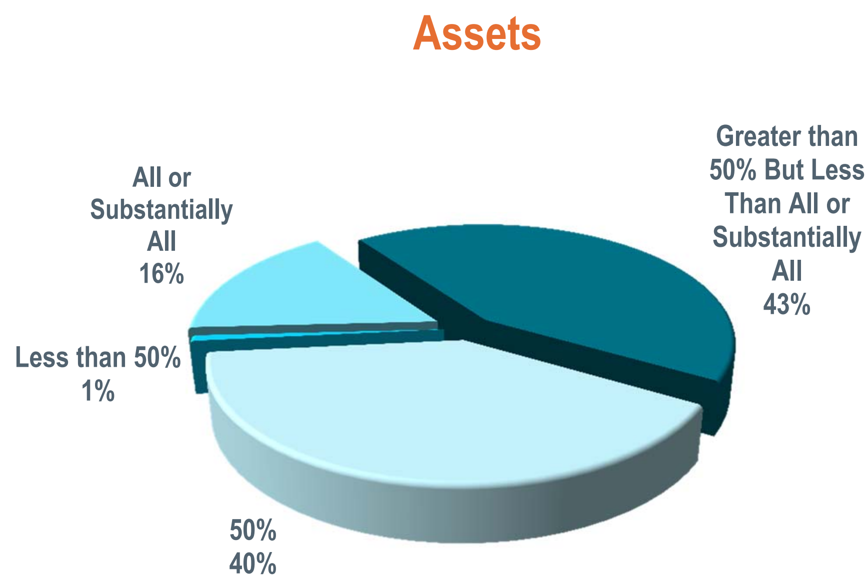
"Superior Offer" means an unsolicited, bona fide written offer made by a third party to acquire, directly or indirectly, by merger or otherwise, ***[all]*** of the outstanding shares of Target Common Stock or ***[all or substantially all]*** of the assets of Target and its Subsidiaries, which the Target Board determines in its reasonable judgment, taking into account, among other things, all legal, financial, regulatory and other aspects of the proposal and the person making the proposal (i) is more favorable ***[from a financial point of view]*** to the Target's stockholders than the terms of the Merger and (ii) is reasonably capable of being consummated.





DEFINITION OF SUPERIOR OFFER: WHAT IS THE MINIMUM PERCENTAGE OF TARGET STOCK AND ASSETS NECESSARY FOR A "SUPERIOR OFFER"?*

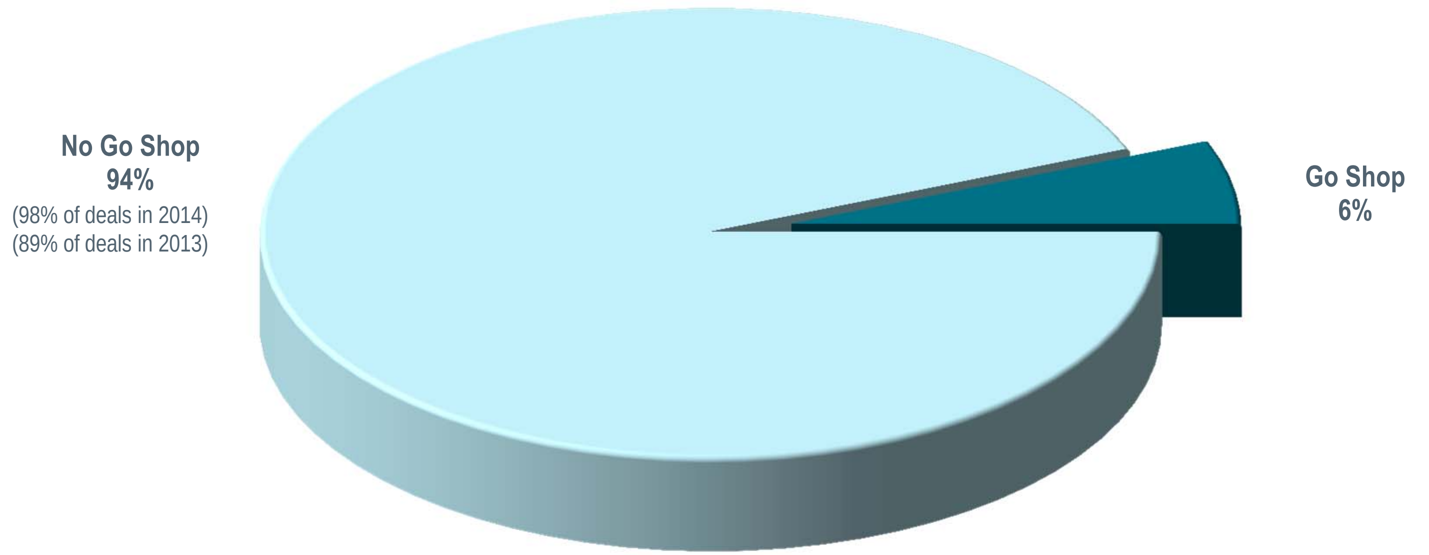




* Excludes four deals that did not include the concept of a Superior Offer (only an Acquisition Proposal).

GO SHOP

During the period beginning on the date of this Agreement and continuing until 1:59 p.m. (EST) on the date that is 30 days after the date hereof, Target shall have the right to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals; and (ii) enter into and maintain discussions or negotiations with respect to potential Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate, any such inquiries, proposals, discussions or negotiations.



DEFINITION OF INTERVENING EVENT

"Intervening Event" means any event, circumstance, change, occurrence, development or effect that ***[materially]*** affects the business, assets or operations of Target which is (i) ***[not known or reasonably foreseeable to the Target Board]*** on or prior to the date of this Agreement, and (ii) which event, circumstance, change, occurrence, development or effect becomes known to the Target Board before receipt of the Target Stockholder Approval; provided, however, that in no event shall the following events constitute an Intervening Event:

(i) changes in GAAP, other applicable accounting rules or Applicable Law;

(ii) changes in the industry in which Target operates;

(iii) changes in the general economic or business conditions within the U.S. or other jurisdictions in which Target has operations;

(iv) changes in the market price or trading volume of the Target Common Stock in and of themselves;

(v) compliance with or performance under this Agreement or the transactions contemplated hereby;

(vi) the fact, in and of itself, that Target exceeds internal or published projections;

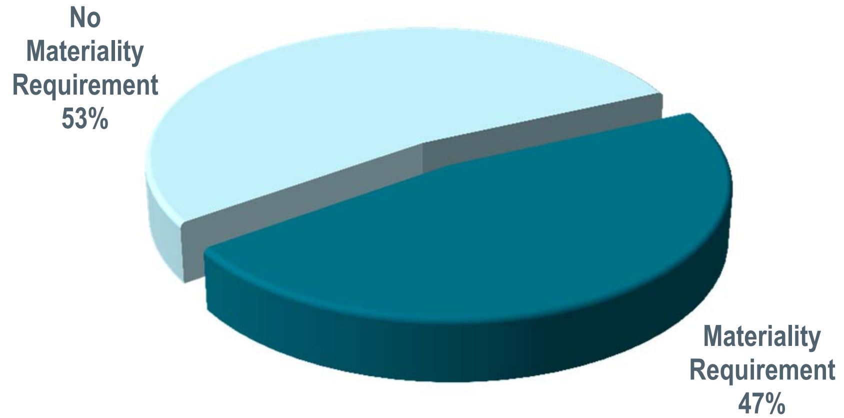
(vii) the fact that Buyer fails to meet or exceed internal or published projections;

(viii) any event relating solely to Buyer or its Affiliates; or

(ix) changes in the market price or trading value of Buyer Common Stock in and of themselves.

DEFINITION OF INTERVENING EVENT

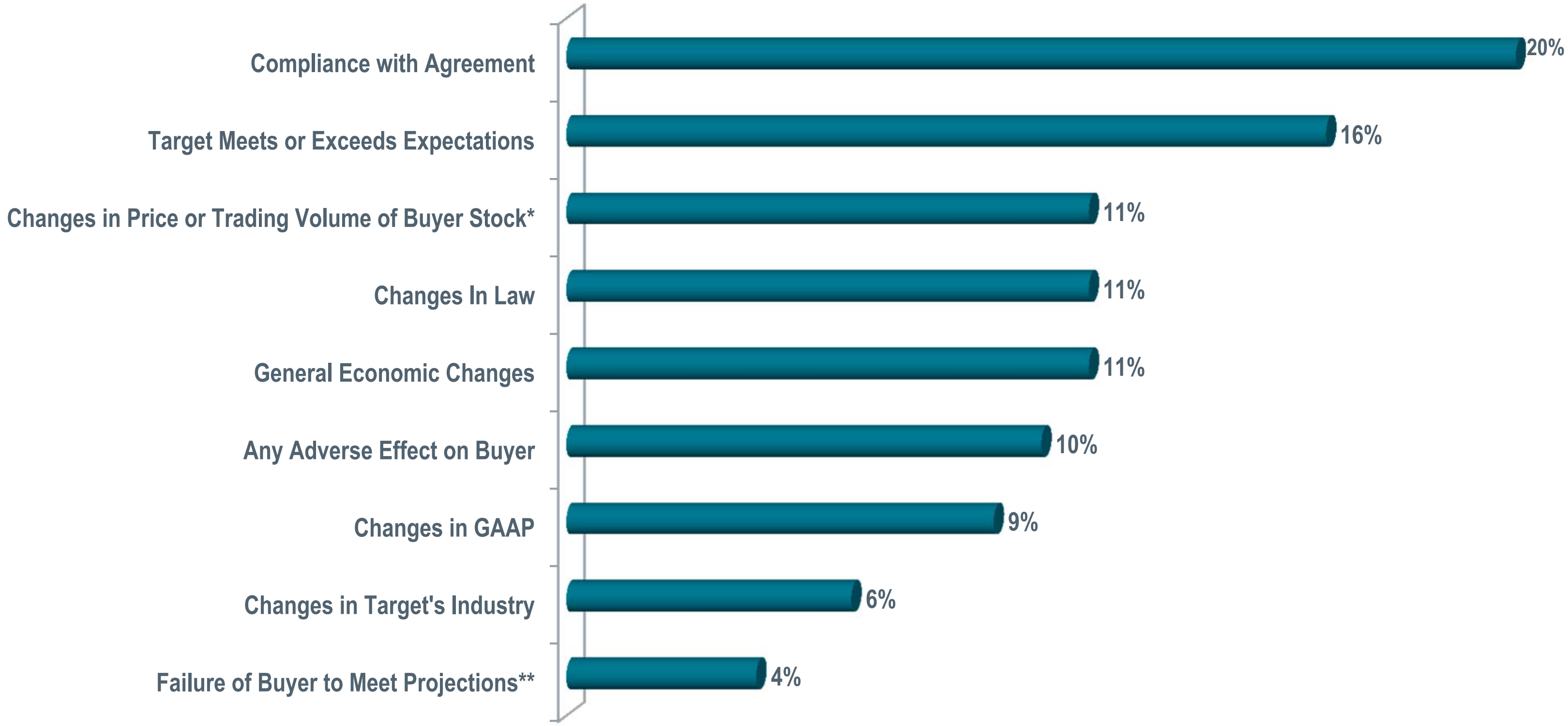
Materiality Requirement



Timing and Knowledge Standard

DEFINITION OF INTERVENING EVENT

Carve-Outs



* This carve-out appears in 20% of all-stock and mixed consideration deals.

** This carve-out appears in 7% of all-stock and mixed consideration deals.

FIDUCIARY EXCEPTION TO TARGET BOARD RECOMMENDATION COVENANT

At any time before the approval of this Agreement by the Required Target Stockholder Vote, the Target Board Recommendation may be withdrawn or modified in a manner adverse to Buyer if:

FIDUCIARY DUTIES

The Target Board determines in good faith that the withdrawal or modification of the Target Board Recommendation is required in order for the Target Board to comply with its fiduciary obligations to Target's stockholders under Applicable Law.

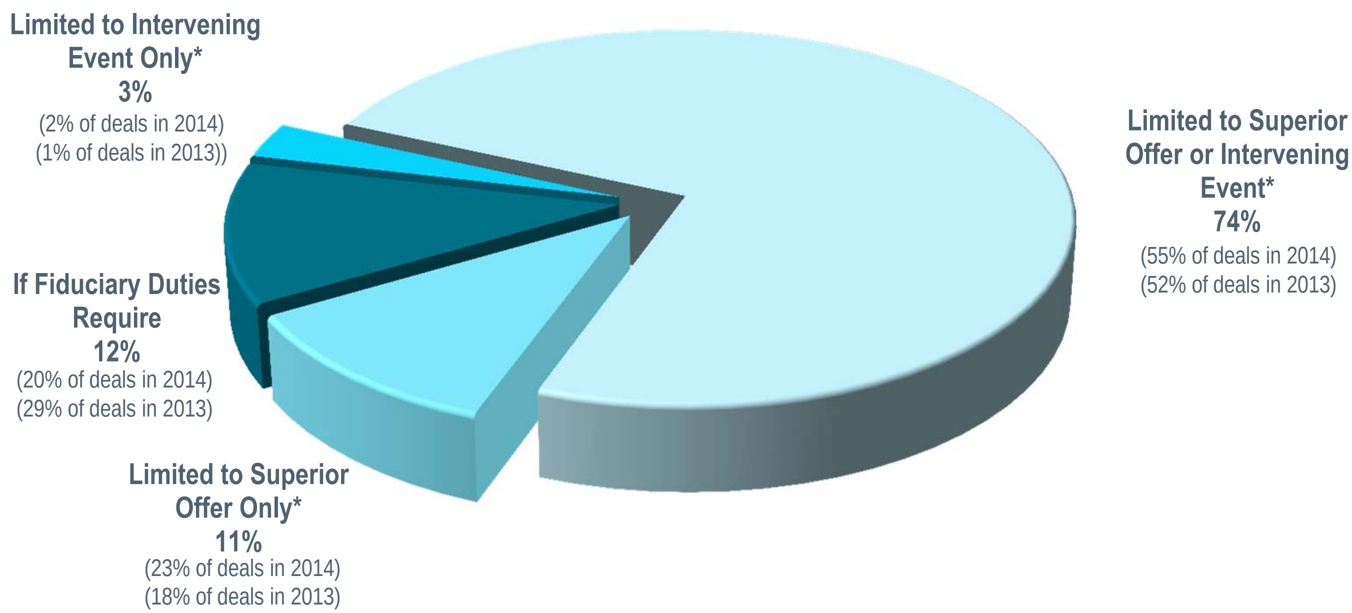
LIMITED TO SUPERIOR OFFER

An unsolicited, bona fide written offer is made to Target and is not withdrawn, and the Target Board determines in good faith (after consultation with its legal and financial advisors) that such offer constitutes a Superior Offer.

LIMITED TO INTERVENING EVENT

An Intervening Event occurs, and the Target Board determines in good faith that, in light of such Intervening Event, the withdrawal of the Target Board Recommendation is required in order for the Target Board to comply with its fiduciary duties under Applicable Law.

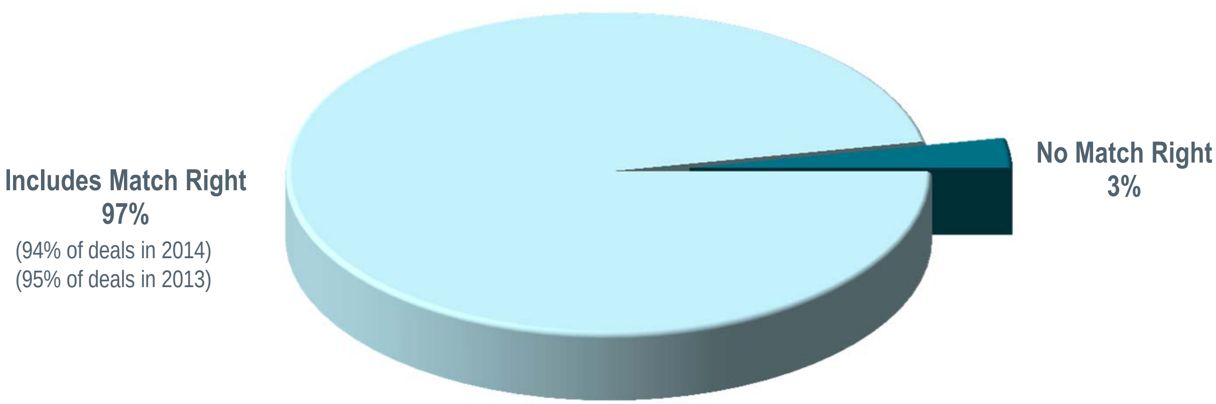
FIDUCIARY EXCEPTION TO TARGET BOARD RECOMMENDATION COVENANT



* Substantially all the deals in which the fiduciary exception was limited to a Superior Offer and/or an Intervening Event also included an additional provision generally requiring the Target Board to determine that, in light of such Superior Proposal or Intervening Event, a change of its recommendation was required by a fiduciary obligation. In addition, approximately 11% of these deals included a "back-door" fiduciary exception to the change in recommendation, which expressly limits the Target Board's ability to change its recommendation to a Superior Offer and/or an Intervening Event, but also expressly allows the Target Board to make any disclosure to Target's stockholders if required by its fiduciary duties under applicable law.

BUYER MATCH RIGHT RELATING TO FIDUCIARY EXCEPTION TO TARGET BOARD RECOMMENDATION COVENANT

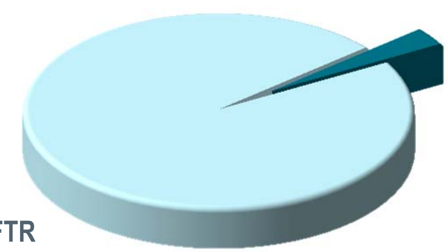
At any time before the approval of this Agreement by the Required Target Stockholder Vote, the Target Board Recommendation may be withdrawn or modified in a manner adverse to Buyer if, in response to an Intervening Event or a Superior Offer, (i) the Target Board has determined in good faith that the withdrawal or modification of the Target Board Recommendation is required in order for the Target Board to comply with its fiduciary obligations to Target's stockholders under applicable law; and (ii) ***at least [four] business days prior to taking such action, Target shall have provided to Buyer notice stating that an Intervening Event or a Superior Offer has occurred and describing such Intervening Event or Superior Offer and given Buyer during such [four] business day period the opportunity to meet or negotiate with the Target Board to enable Buyer and Target to discuss or negotiate in good faith a modification of the terms and conditions of this Agreement so that the Merger may be effected***.



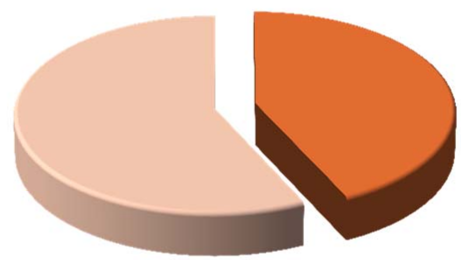
TARGET FIDUCIARY TERMINATION RIGHT ("FTR")

This Agreement may be terminated at any time before the Effective Time by Target if: (i) the Target Stockholder Approval has not been obtained; (ii) the Target Board has determined that an Acquisition Proposal constitutes a Superior Offer ***[(provided that such Acquisition Proposal was not solicited in violation of Section 4.4 (no shop))]; [subject to complying with the terms of Section 6.2(c) (match right)];*** and (iii) concurrently Target enters into a definitive Target Acquisition Agreement providing for the Superior Offer; *provided* that [*first pay break-up fee*].

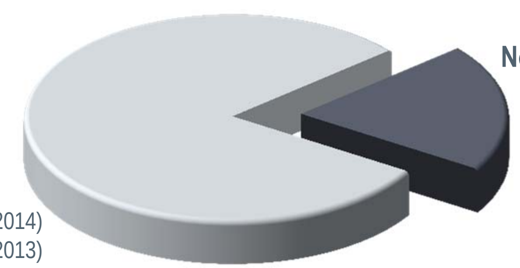
All Cash



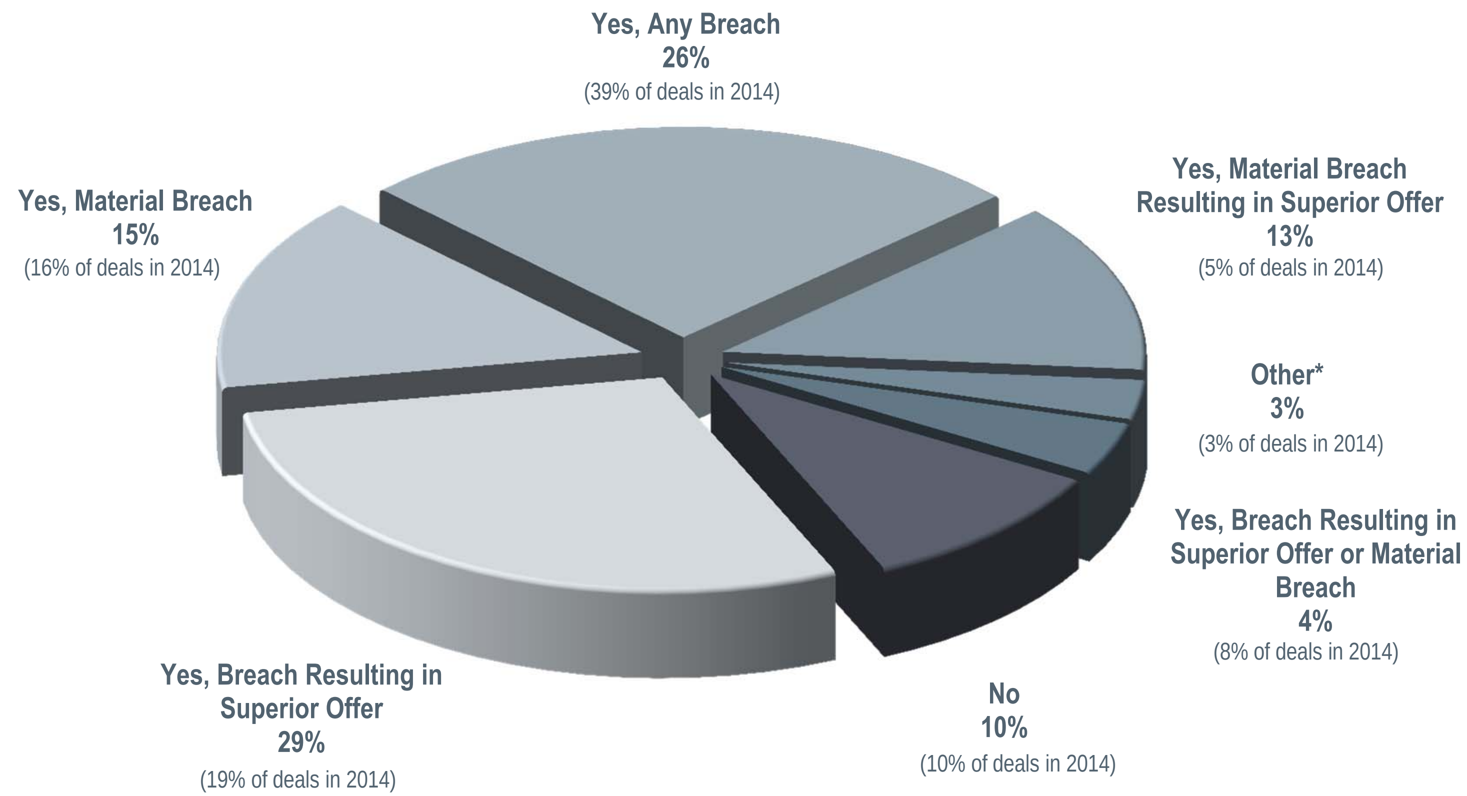
All Stock



Part Cash/Part Stock



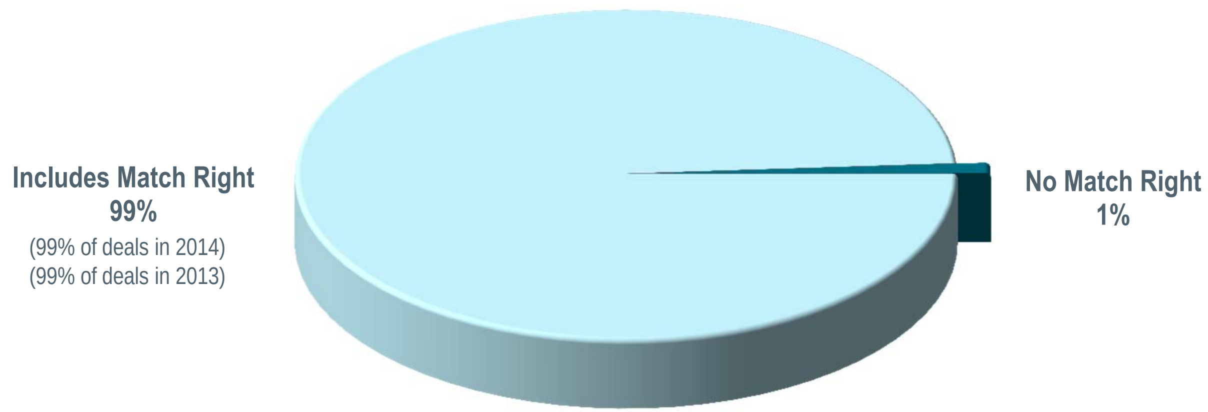
TARGET FIDUCIARY TERMINATION RIGHT: DOES BREACH OF NO-SHOP PRECLUDE EXERCISE OF FTR?



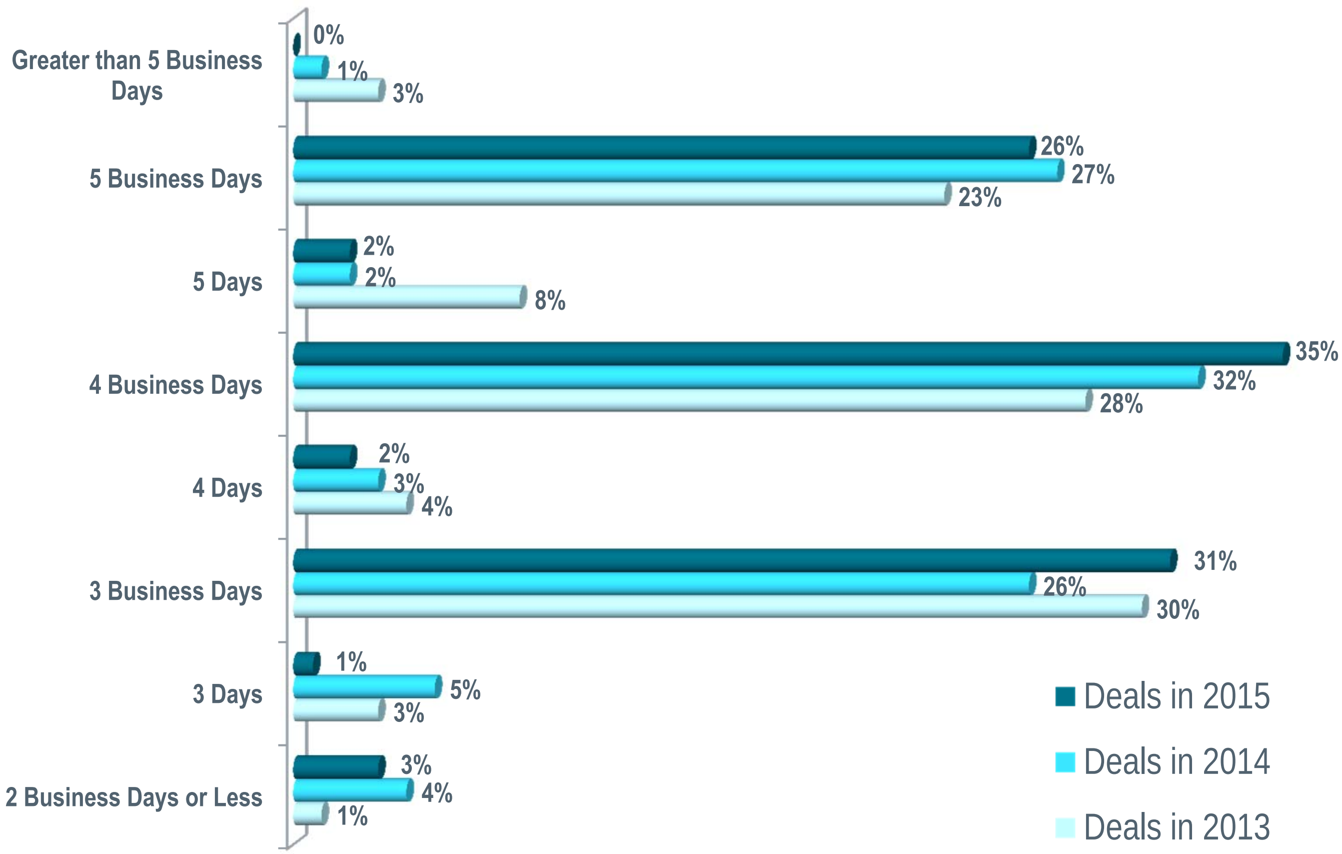
* Includes other standards such as breaches of Buyer's information rights in the no-shop provision.

BUYER MATCH RIGHT RELATING TO TARGET FIDUCIARY TERMINATION RIGHT

This Agreement may be terminated at any time before the Effective Time by Target if: (i) the Target Stockholder Approval has not been obtained; (ii) (a) the Target Board has determined that an Acquisition Proposal constitutes a Superior Offer (provided that such Acquisition Proposal was not solicited in violation of Section 4.4 (*no shop*)), ***(b) Target has provided notice to Buyer of such determination, (c) Target has negotiated in good faith with Buyer to amend the terms of this Agreement so that the Superior Offer would no longer constitute a Superior Offer, (d) [five] business days have elapsed since such notice to Buyer and the Acquisition Proposal remains a Superior Offer (it being understood that any material revision or amendment to the terms of such Acquisition Proposal shall require a new notice to Buyer and, in such case, all references to [five] business days in this section shall be deemed to be [two] business days)***; and (iii) concurrently with the termination hereunder, Target enters into a definitive Target Acquisition Agreement providing for the Superior Offer; *provided* that [*first pay break-up fee*].

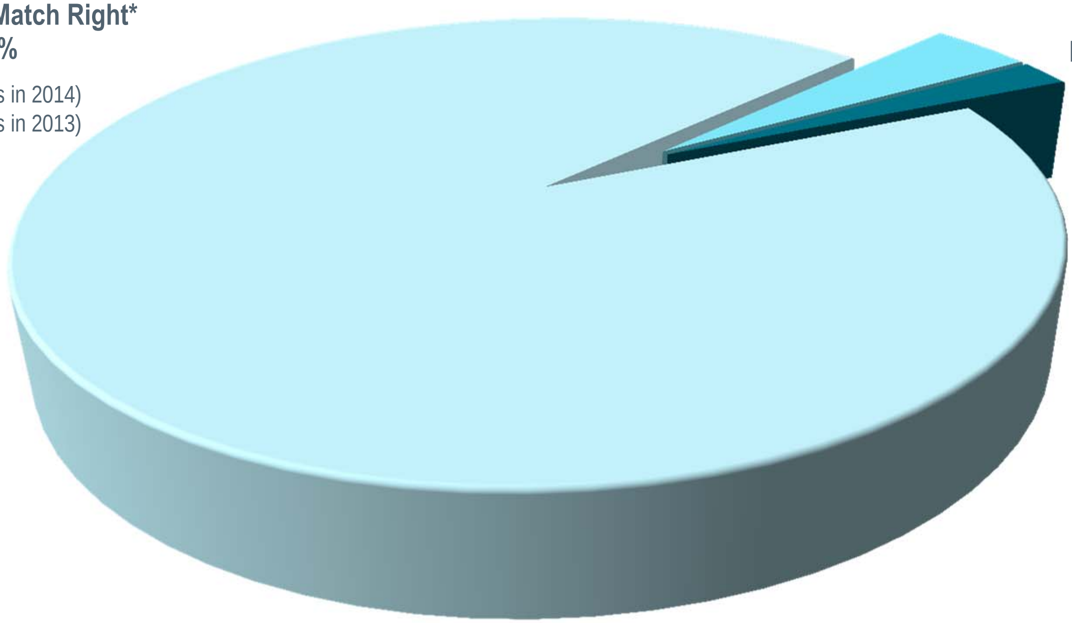


INITIAL MATCH RIGHT PERIOD: SUPERIOR OFFER



MATCH RIGHT PERIOD: SUPERIOR OFFER

CONTINUOUS OR ONE TIME MATCH RIGHT



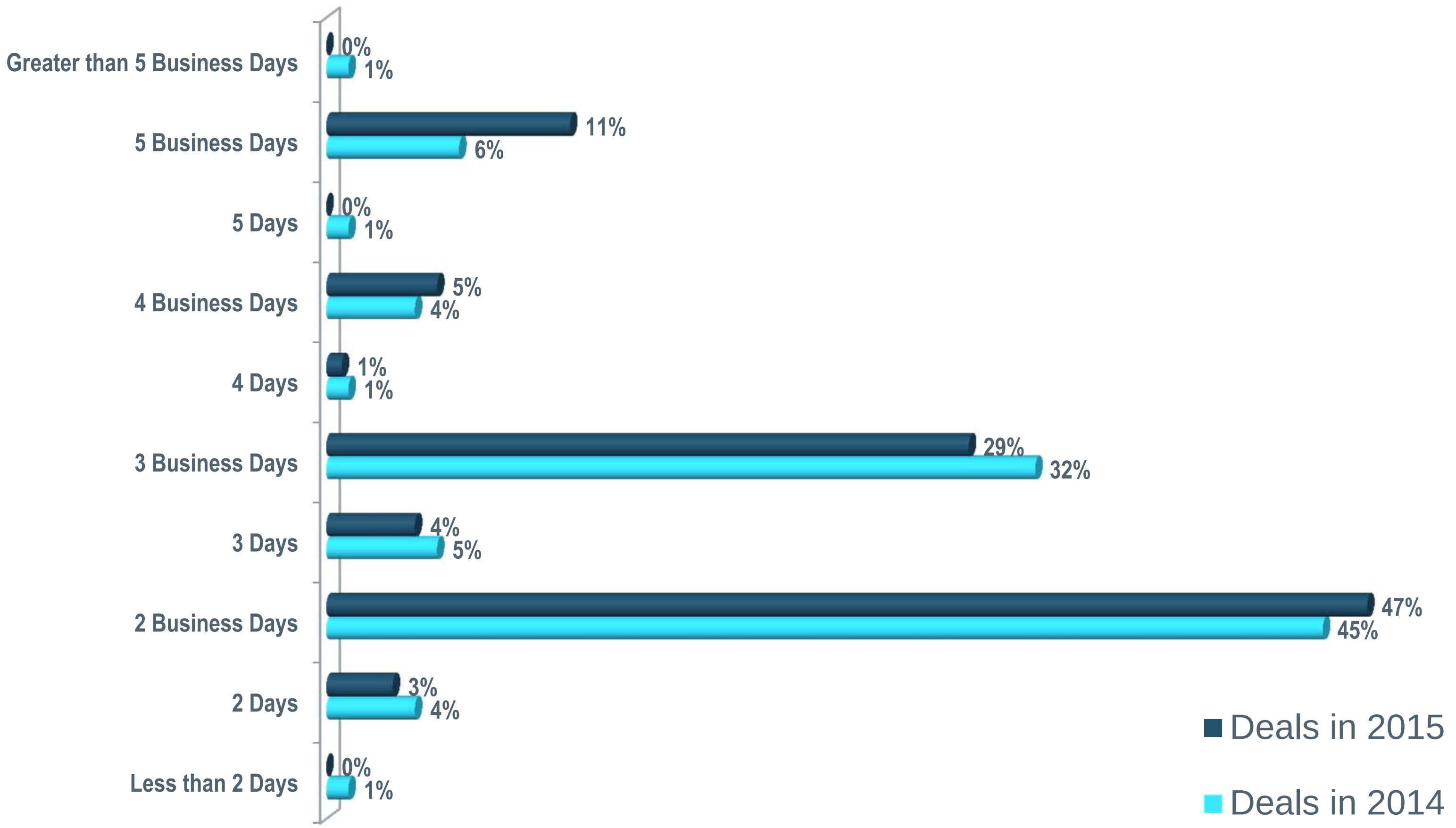
* Includes deals in which Buyer was allowed to match offers by a competing bidder on a continuous basis.

** Includes deals in which Buyer was only given one opportunity to match an offer by a competing bidder.

*** Includes deals in which Buyer was given two or three opportunities to match an offer by a competing bidder.

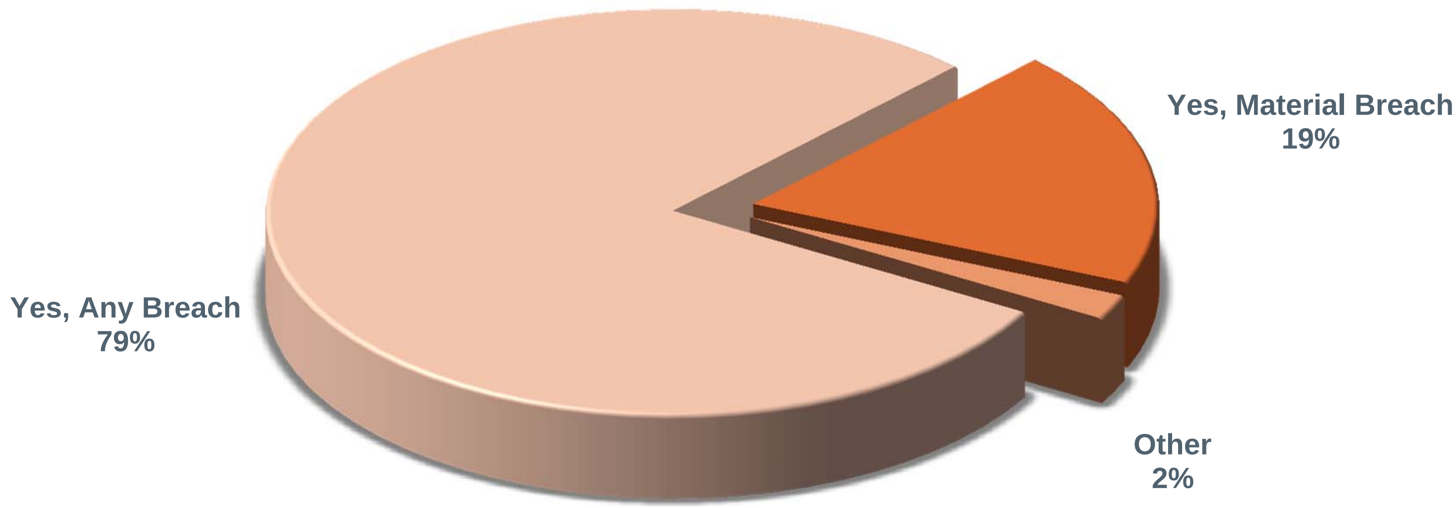
MATCH RIGHT PERIOD FOR MODIFICATIONS: SUPERIOR OFFER

(Subset: Deals that Include a Continuous Match Right)*



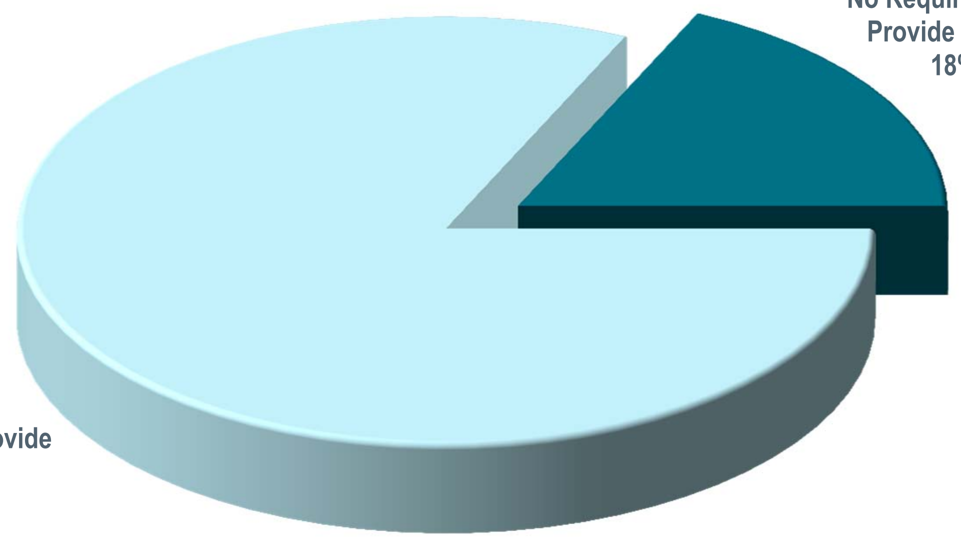
* 70% of deals with a continuous match right include a shorter match right period for modifications compared to the initial match right period. This data set includes 17 deals in which Buyer's match right period for amendments was the longer of (i) the time remaining under the initial match right period and (ii) the shorter time period specified for matching amendments to the competing proposal.

TARGET FIDUCIARY TERMINATION RIGHT:
DOES BREACH OF MATCH RIGHT PRECLUDE EXERCISE OF FTR?



REQUIREMENT FOR COPIES OF ACQUISITION PROPOSALS

In addition to the obligations of Target and Buyer set forth in the No-Shop Provision, Target shall promptly advise Buyer orally and in writing of any inquiries, proposals or offers with respect to a Target Acquisition Proposal that are received by Target and thereafter shall advise and confer with Buyer and keep Buyer reasonably informed, on a prompt basis regarding any material changes to the status and material terms of any such inquiries, proposals or offers [***and provide Buyer with copies of all documents and written or electronic communications relating to any such Acquisition Proposal***].



TARGET BREAK-UP FEE TRIGGERS

"NAKED NO-VOTE" FEE

If this Agreement is terminated by Buyer or Target pursuant to Section 7.1(d) (*no-vote*), then Target shall ***[reimburse Buyer for all expenses incurred by Buyer in connection with the Merger] [pay to Buyer, in cash, a nonrefundable fee in the amount of $__]***.

FEE FOR ACQUISITION PROPOSAL + NO-VOTE, ACQUISITION PROPOSAL + OUTSIDE DATE OR ACQUISITION PROPOSAL + BREACH

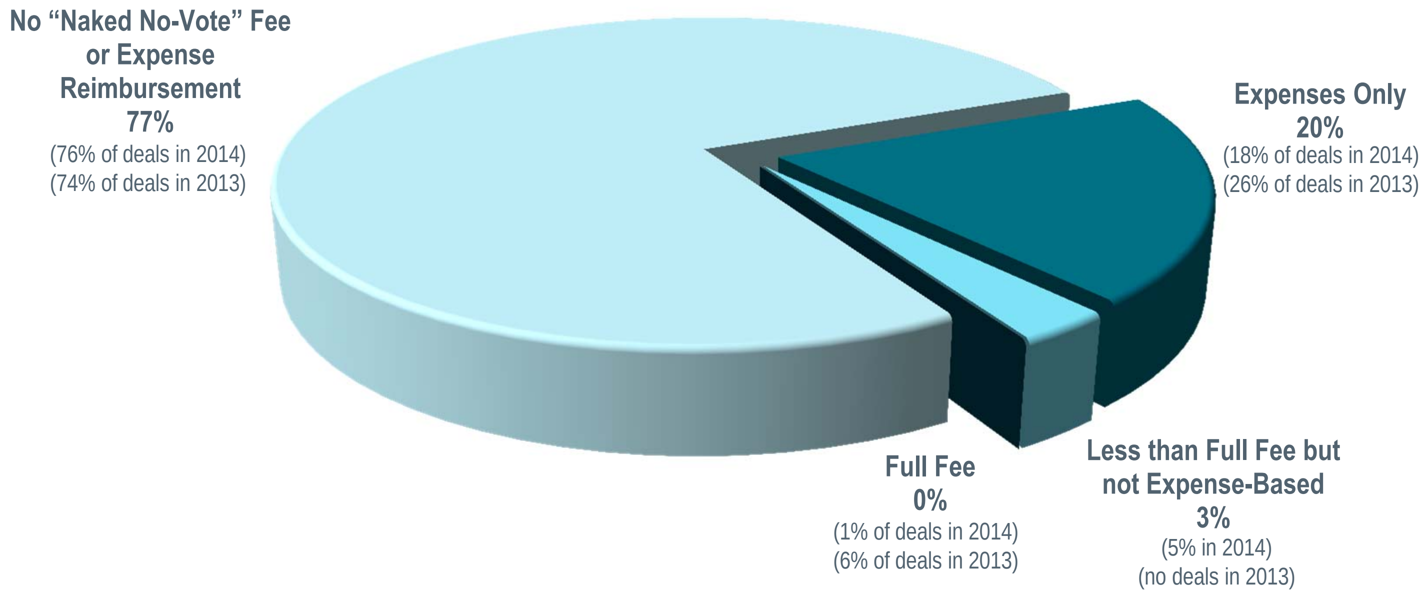
If an Acquisition Proposal shall have become ***[publicly known] [publicly known or delivered to the Target Board] [and not withdrawn]***, (ii) thereafter, this Agreement is terminated pursuant to Section 7.1(d) (*no-vote*), Section 7.1(b) (*outside date*) or Section 7.1(f) (*material uncured breach*), and (iii) within ***[12]*** months after such termination, Target shall have ***[consummated the Acquisition Proposal referred to in the foregoing clause] [entered into a definitive agreement with respect to an Acquisition Proposal], [entered into a definitive agreement with respect to an Acquisition Proposal and an Acquisition Transaction for such Acquisition Proposal is subsequently consummated]***, then Target shall pay to Buyer, in cash, a nonrefundable fee in the amount of $__.

CHANGE IN BOARD RECOMMENDATION; CERTAIN BREACHES

If this Agreement is terminated by Buyer pursuant to Section 7.1(e)(ii) (*change in Target Board Recommendation*), Section 7.1(e)(v) (*breach of no shop or stockholder meeting covenants*) or Section 7.1(f) (*material uncured breach*), then Target shall pay to Buyer, in cash, a nonrefundable fee in the amount of $__.

TARGET BREAK-UP FEE TRIGGERS

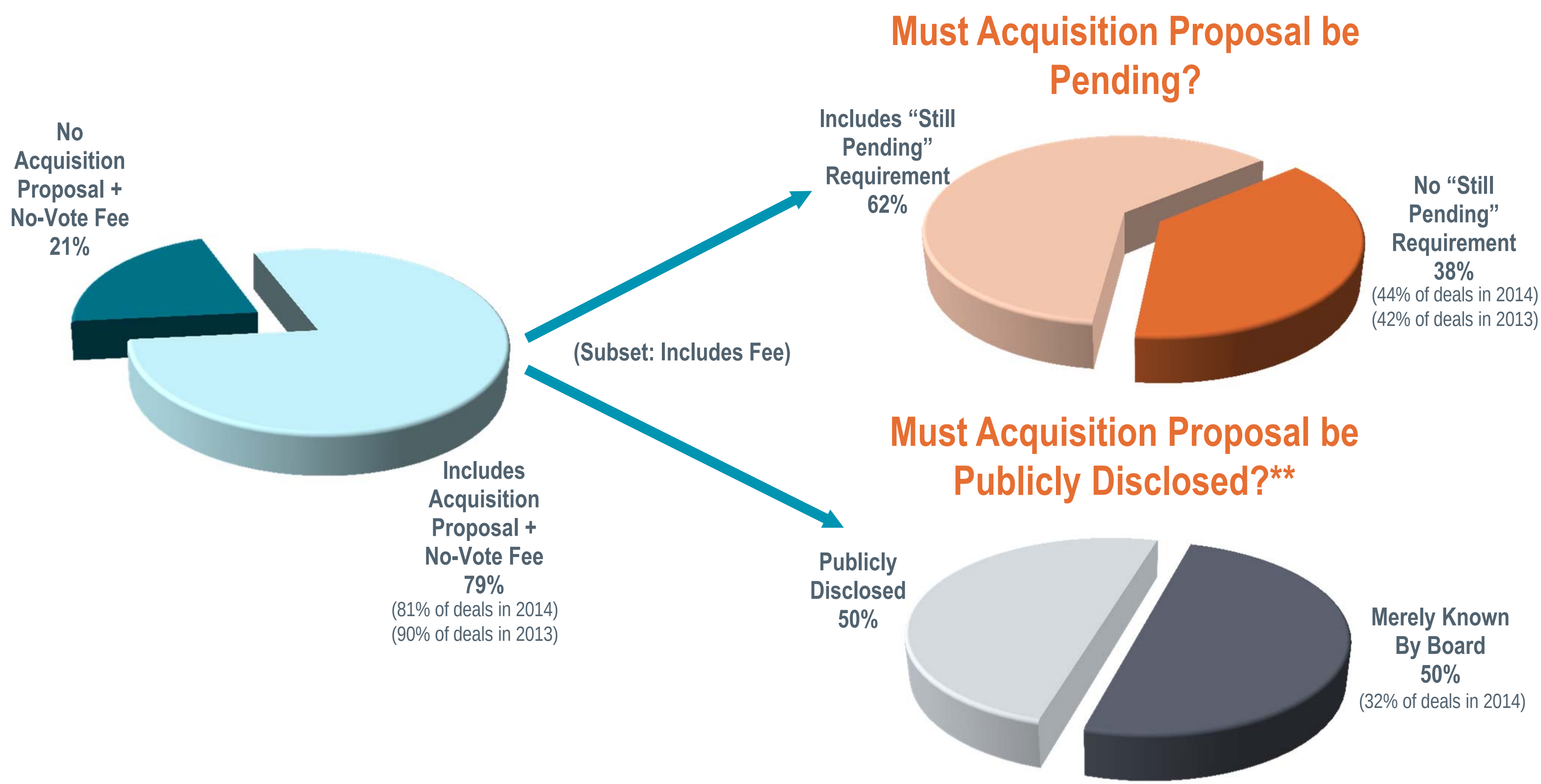
"NAKED NO-VOTE"/FAILURE OF MINIMUM TENDER CONDITION*



* Includes deals structured as mergers or tender offers.

TARGET BREAK-UP FEE TRIGGERS

ACQUISITION PROPOSAL + NO-VOTE*



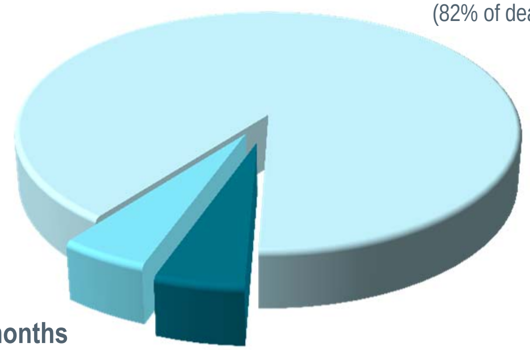
* Includes deals structured as mergers or tender offers (based on a failure to satisfy the minimum condition rather than no-vote).

** The statistics for public disclosure requirements for Acquisition Proposal + Outside Date and Acquisition Proposal + Breach are substantially similar to the statistics for Acquisition Proposal + No-Vote.

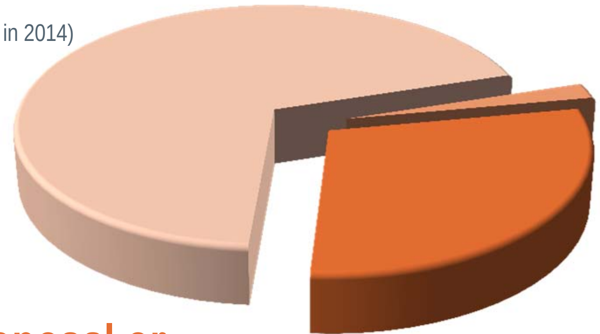
TARGET BREAK-UP FEE TRIGGERS

ACQUISITION PROPOSAL + NO-VOTE*

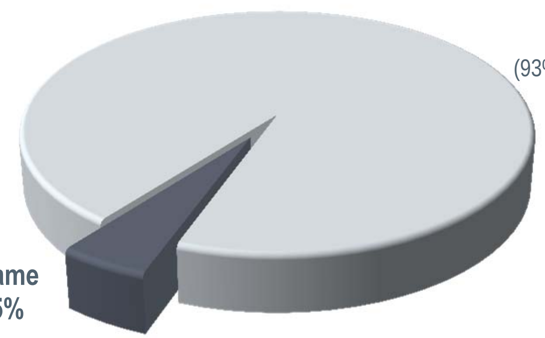
Tail Period?



Must Acquisition Proposal Sign or Close During Tail Period?



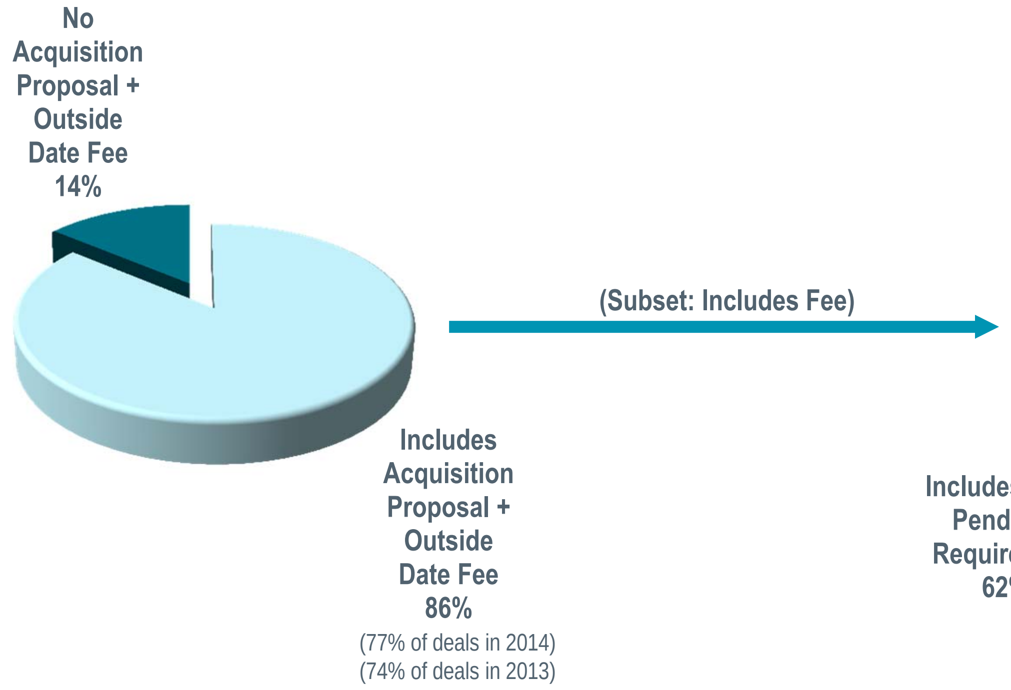
Same Acquisition Proposal or Any Acquisition Proposal?

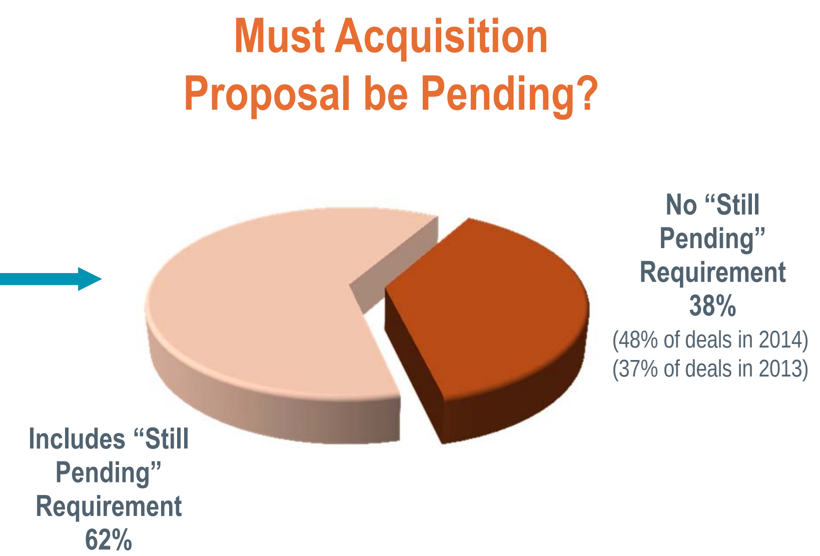


* The statistics for the data points on this slide are substantially similar for Acquisition Proposal + Outside Date and Acquisition Proposal + Breach.

TARGET BREAK-UP FEE TRIGGERS

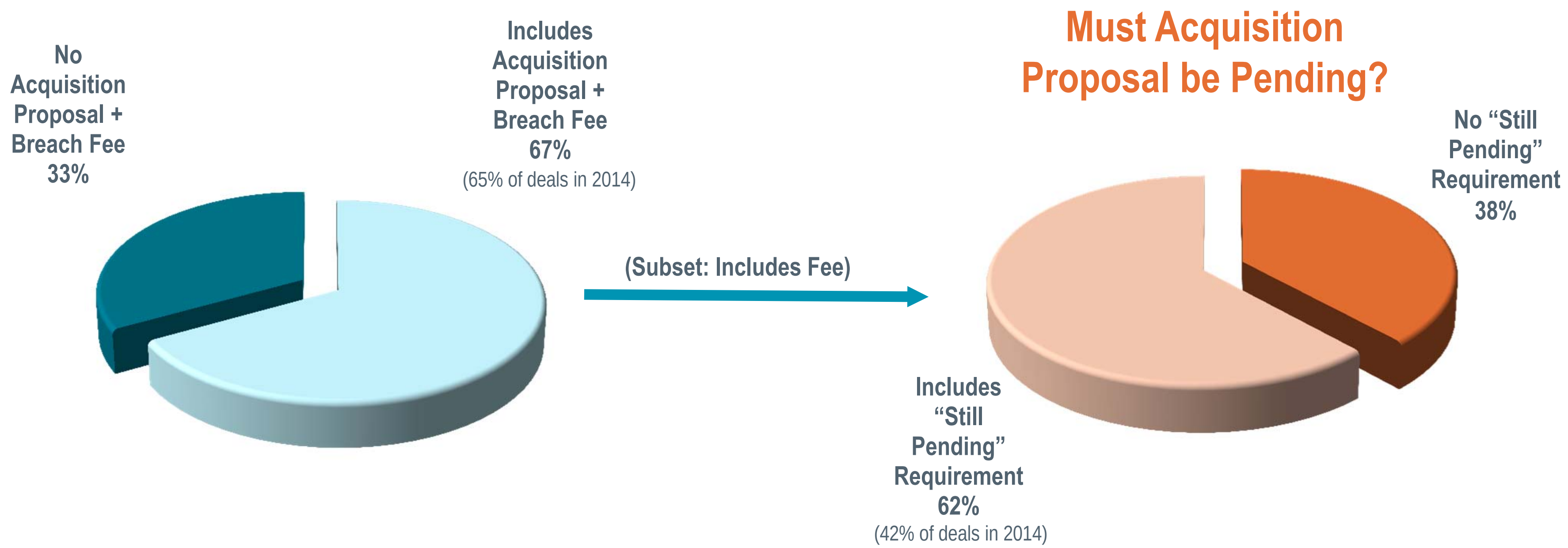
ACQUISITION PROPOSAL + OUTSIDE DATE





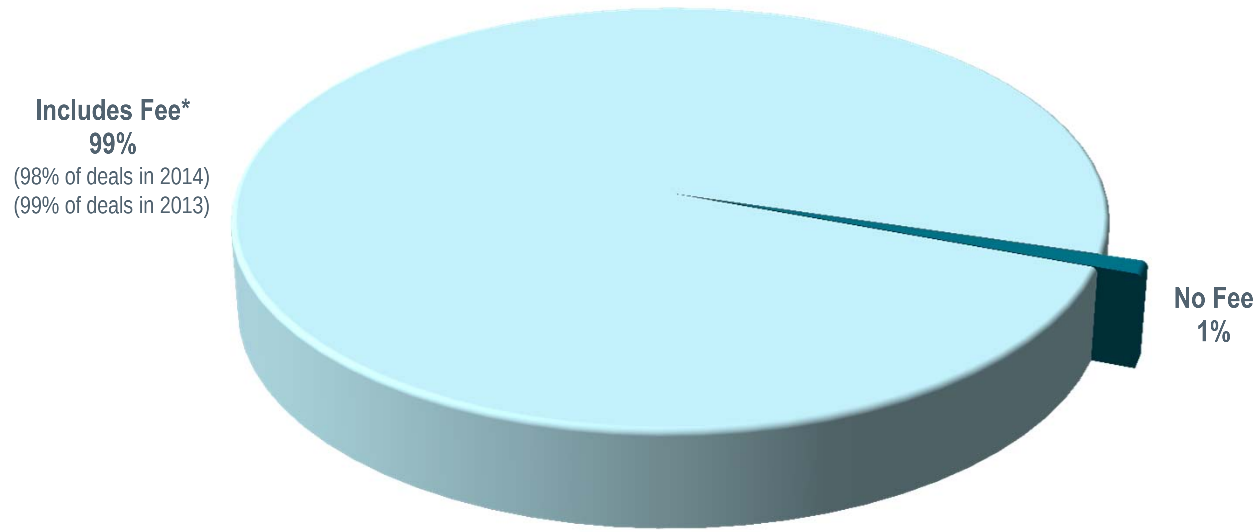
TARGET BREAK-UP FEE TRIGGERS

ACQUISITION PROPOSAL + BREACH



TARGET BREAK-UP FEE TRIGGERS

CHANGE OF BOARD RECOMMENDATION

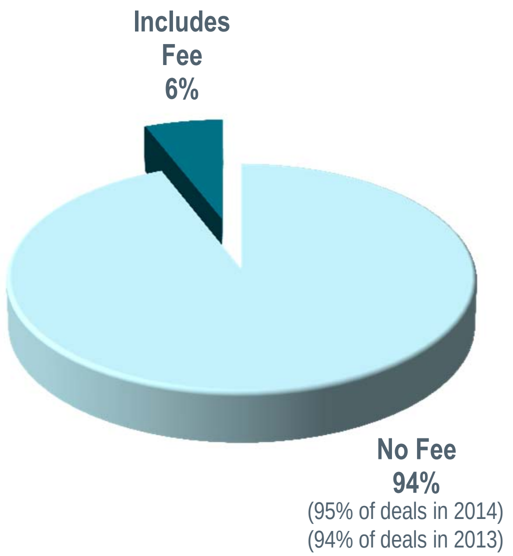


* 5% of the deals in 2015 providing for a fee in this instance contain conditions in addition to mere change or withdrawal of the Target Board Recommendation, such as consummation of a third party deal within a specified period after termination.

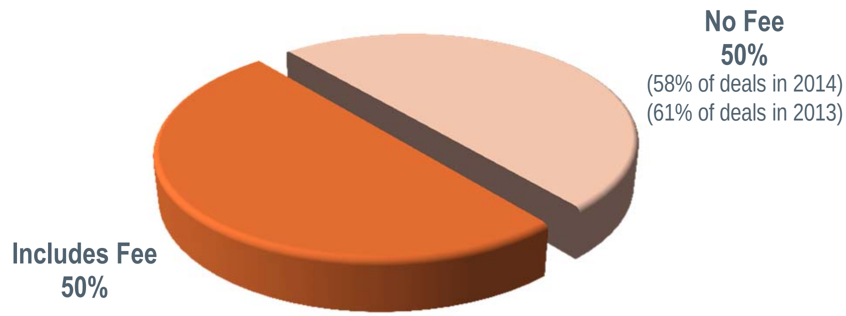
TARGET BREAK-UP FEE TRIGGERS

BREACH OF ACQUISITION AGREEMENT

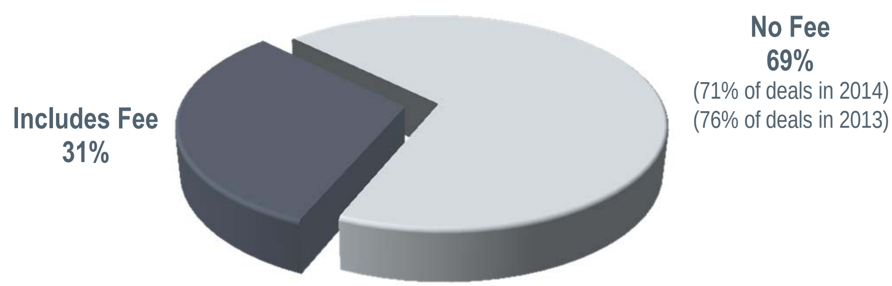
General Breach*



Breach No-Shop**



Breach Stockholder Meeting Covenants***



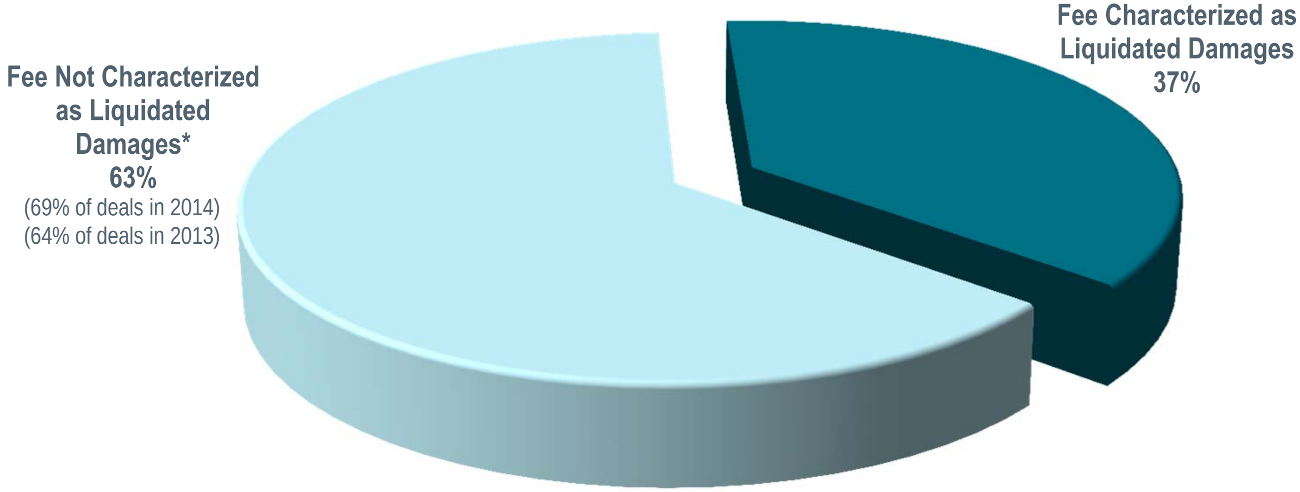
* General breach of representations, warranties and covenants: (i) is limited to deals in which mere breach, without other conditions (such as consummation of a third party bid), triggers a break-up fee; and (ii) does not include deals in which a breach triggers reimbursement of expenses rather than a full break-up fee. Approximately 63% of the deals in 2015 including a fee for general breach required a willful, material or intentional breach.

** Breach of no-shop covenants: (i) does not include general breach of representations, warranties and covenants; and (ii) is limited to deals in which breach, without other conditions, triggers a break-up fee. Approximately 93% of the deals in 2015 including a fee for breach of the no-shop covenants required a willful, material or intentional breach.

*** Breach of stockholder meeting covenants: (i) does not include general breach of representations, warranties and covenants; (ii) is limited to deals in which breach, without other conditions, triggers a break-up fee; and (iii) excludes tender offers. Approximately 84% of the deals in 2015 including a fee for breach of the stockholder meeting covenants required a willful, material or intentional breach.

TARGET BREAK-UP FEE: FEE CHARACTERIZED AS LIQUIDATED DAMAGES

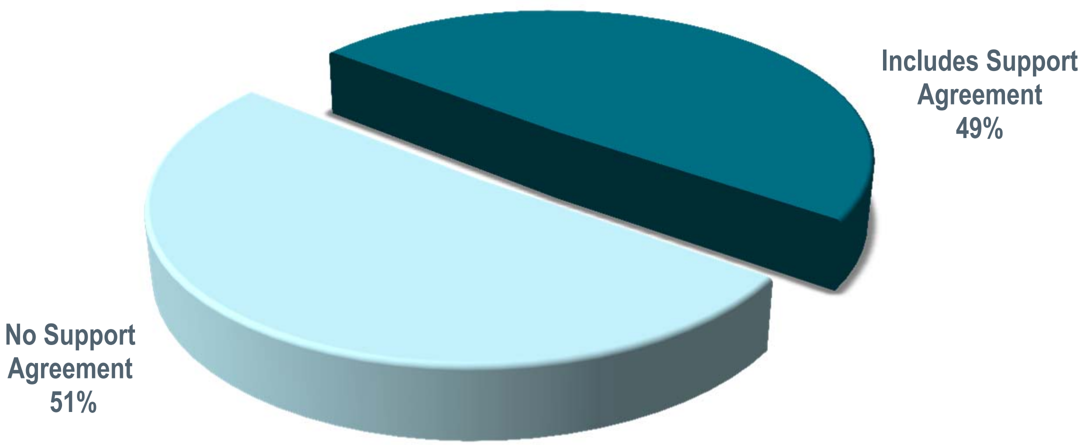
In the event that Buyer shall receive the Termination Fee, the receipt of such fee shall be deemed to be liquidated damages for any and all losses suffered by Buyer, any of its Affiliates or any other Person in connection with this Agreement (and the termination hereof), the transactions contemplated hereby (and the abandonment thereof) or any matter forming the basis for such termination, and none of Buyer, any of its Affiliates or any other Person shall be entitled to bring or maintain any other claim, action or proceeding against Target or any of its Affiliates arising out of this Agreement, any of the transactions contemplated hereby or any matters forming the basis for such termination.



* 14% of the deals in 2015 in which the termination fee was not characterized as liquidated damages explicitly stated that the termination fee was not a penalty.

STOCKHOLDER SUPPORT AGREEMENTS

WHEREAS, as a condition and inducement to the willingness of Buyer and Merger Sub to enter into this Agreement, concurrently with the execution and delivery of this Agreement, certain of the stockholders of Target are entering into [tender and support agreements/voting agreements] with Buyer and Merger Sub pursuant to which such stockholders have agreed, among other things, to tender Shares (totaling, in the aggregate, approximately ***[25%]*** of the outstanding Shares to Merger Sub in the Offer).



STOCKHOLDER SUPPORT AGREEMENTS: TERMINATION RIGHTS

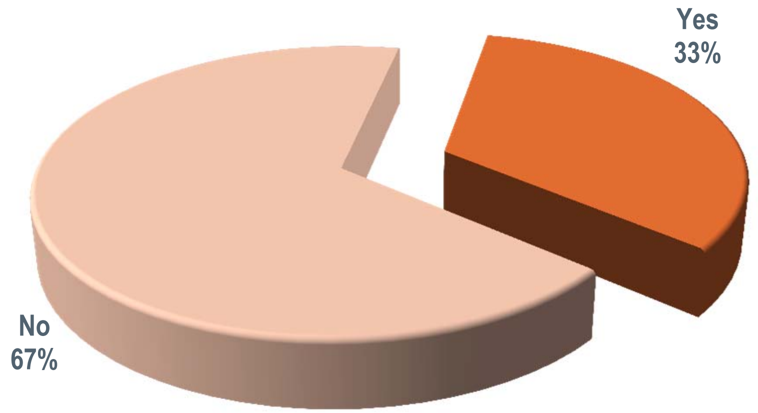
This Support Agreement shall terminate automatically upon the first to occur of (a) ***[18 months (tail) following] [the valid termination of the Merger Agreement in accordance with its terms]***, (b) ***[an Adverse Recommendation Change]***, (c) the Effective Time, (d) ***[the entry without the prior written consent of such Stockholder into any amendment or modification to the Merger Agreement or any waiver of any of Target's rights under the Merger Agreement, in each case, that results in a decrease in the Merger Consideration]*** or (e) the mutual written consent of Buyer and such Stockholder.

Termination of Merger Agmt (No "Tail")	*Drop in Price*	*Change in Recommendation*
100%	**50%**	**17%**

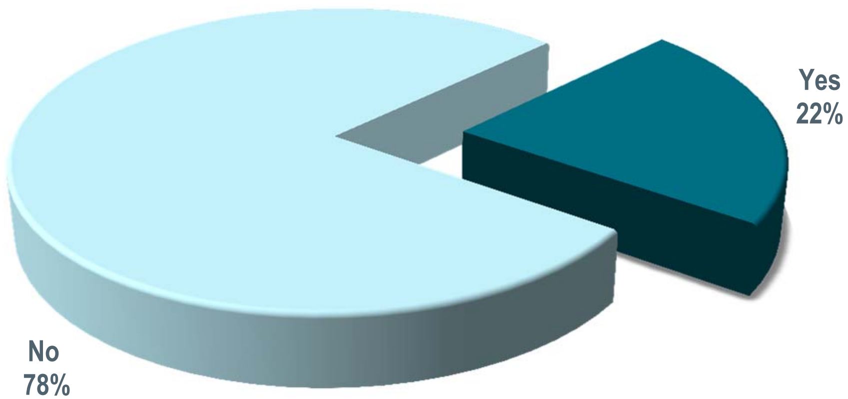
STOCKHOLDER SUPPORT AGREEMENTS: REQUIRED BY ALL DIRECTORS AND EXECUTIVE OFFICERS?

(Subset: Deals that Include Support Agreements)

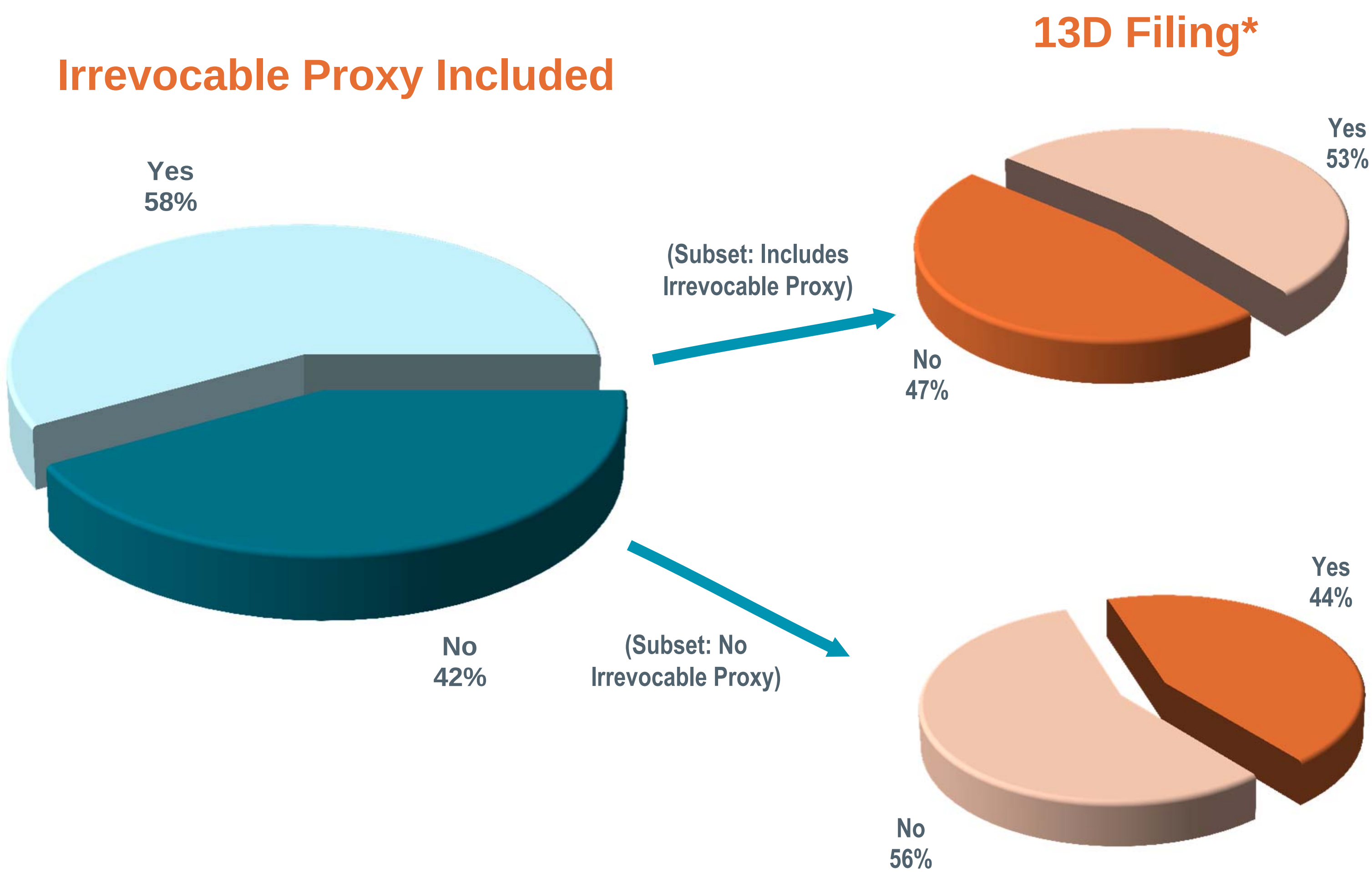
All Directors



All Executive Officers

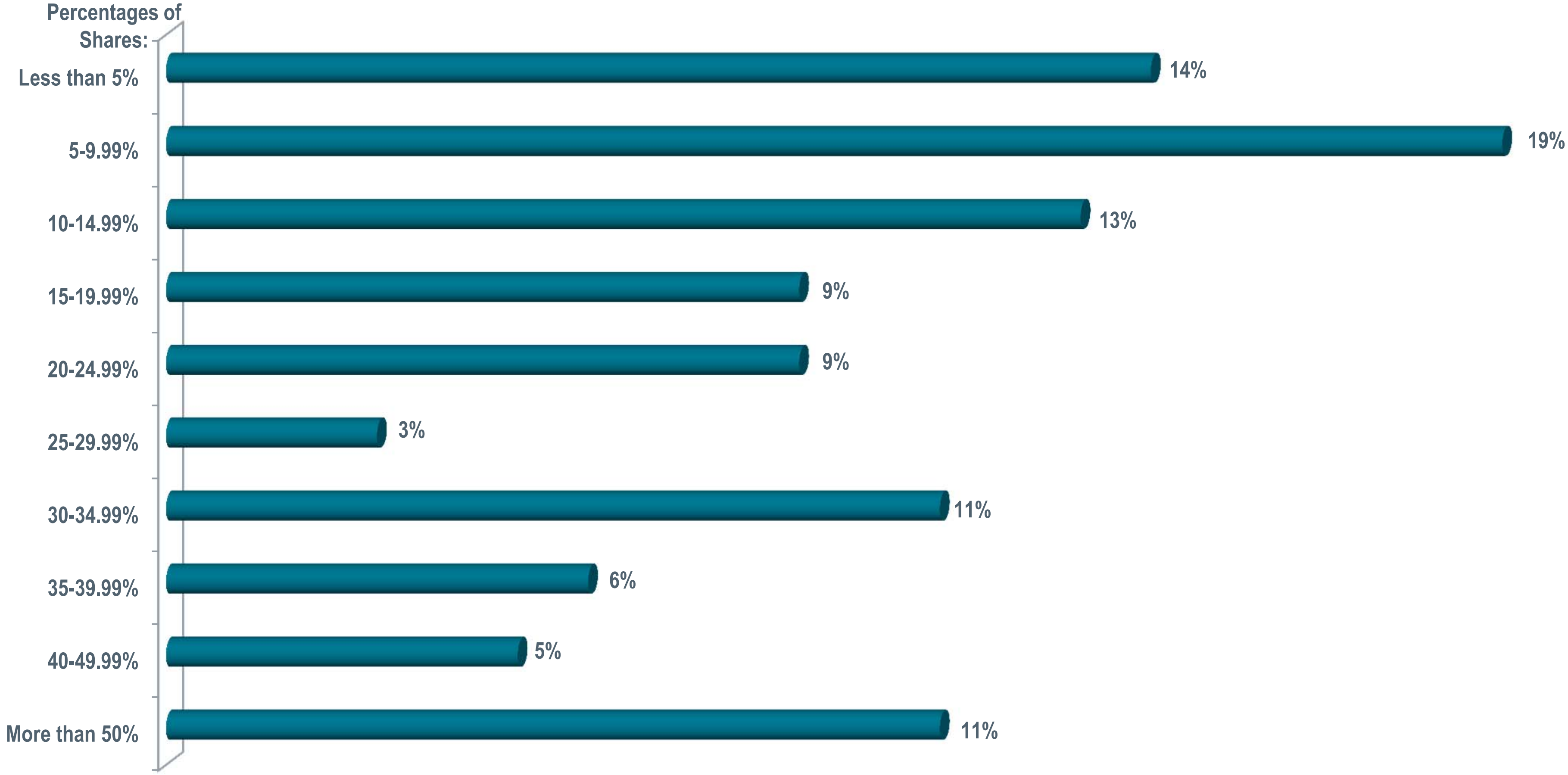


STOCKHOLDER SUPPORT AGREEMENTS: IRREVOCABLE PROXIES/SCHEDULE 13D FILINGS



* Includes only those deals in which support agreements covered more than 5% of Target's shares.

STOCKHOLDER SUPPORT AGREEMENTS: PERCENTAGE OF SHARES COVERED

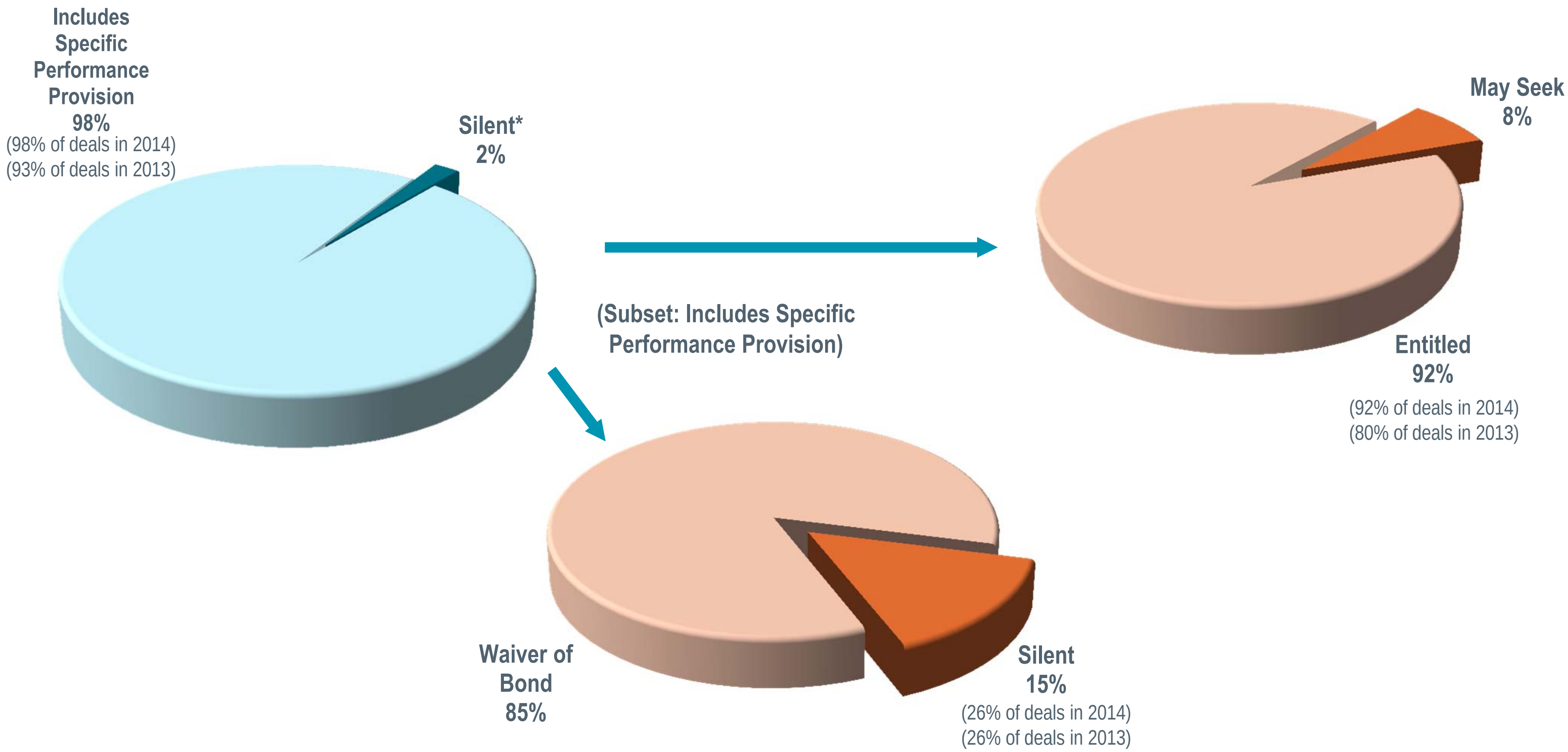


Mean: 22.7% **Median: 15.2%**

REMEDIES

SPECIFIC PERFORMANCE

The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement. Before termination of this Agreement pursuant to Article 7, the Parties shall be ***entitled to [seek] specific performance*** and injunctive relief as a remedy for any such breach and to enforce compliance with the covenants of the Parties set forth herein, ***[without posting any bond or other undertaking]***.

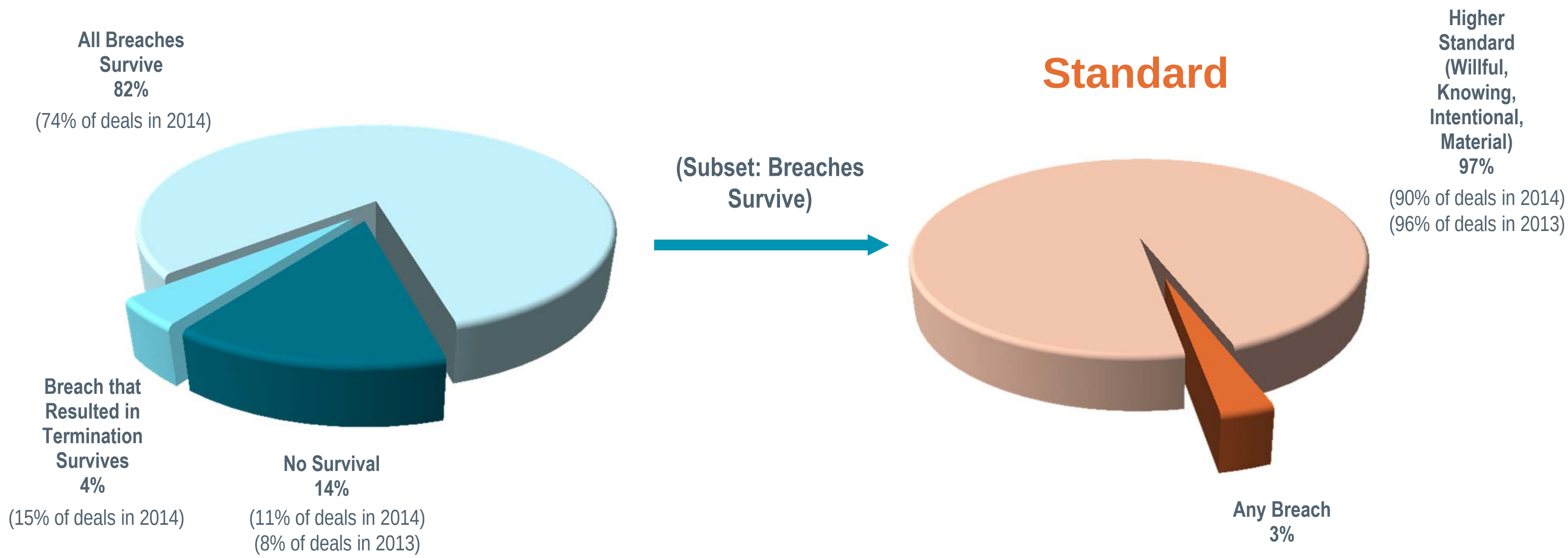


* None of the deals that were silent on specific performance were governed by Delaware law.

EFFECT OF TERMINATION: SURVIVAL OF BREACHES

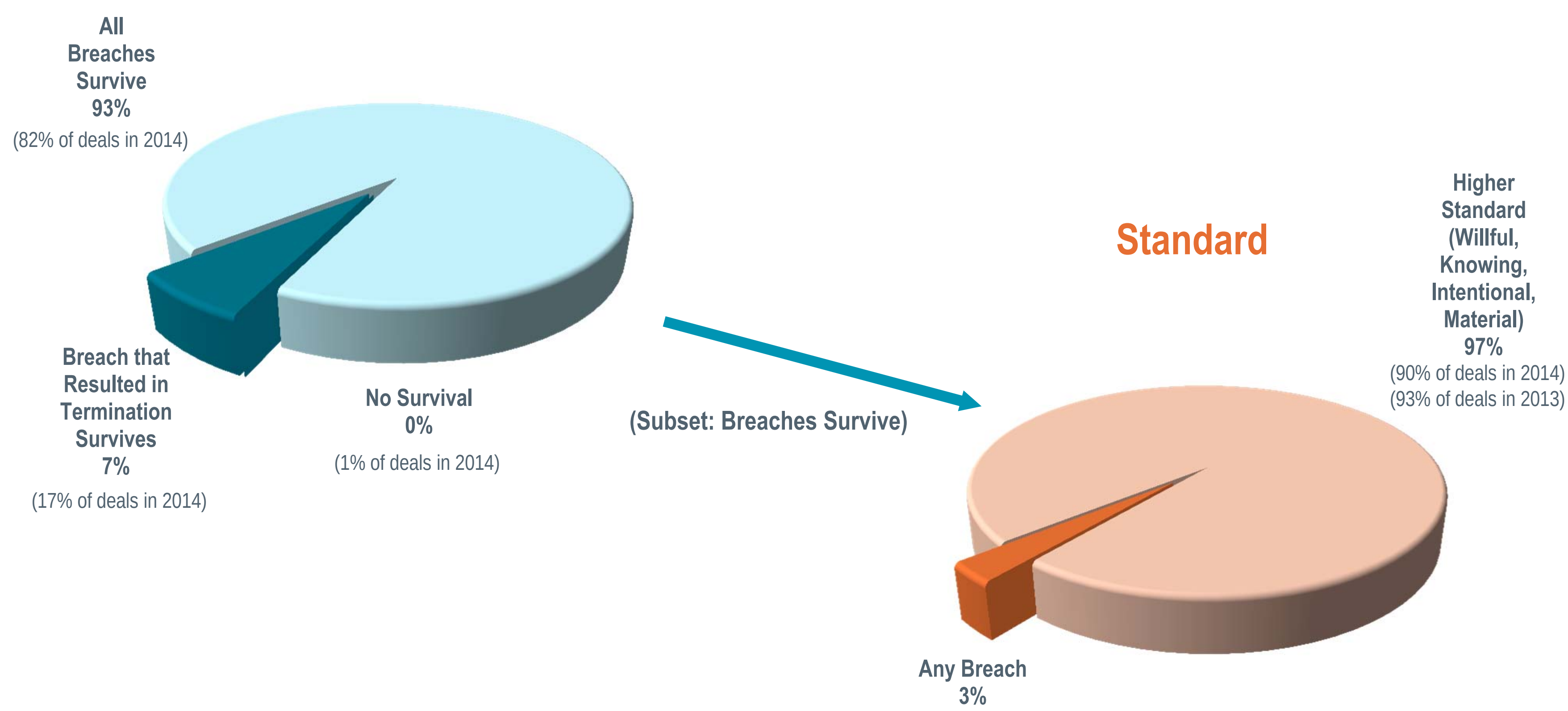
REPRESENTATIONS AND WARRANTIES

In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article, this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or their respective officers, directors, stockholders, Affiliates or Representatives); provided, however, ***[no such termination shall relieve any party of any liability or damages to the other hereto resulting from any willful, knowing, intentional or material breach of this Agreement [if such termination results from a breach by any party of its representations, warranties or covenants contained in this Agreement]]***.



EFFECT OF TERMINATION: SURVIVAL OF BREACHES

COVENANTS



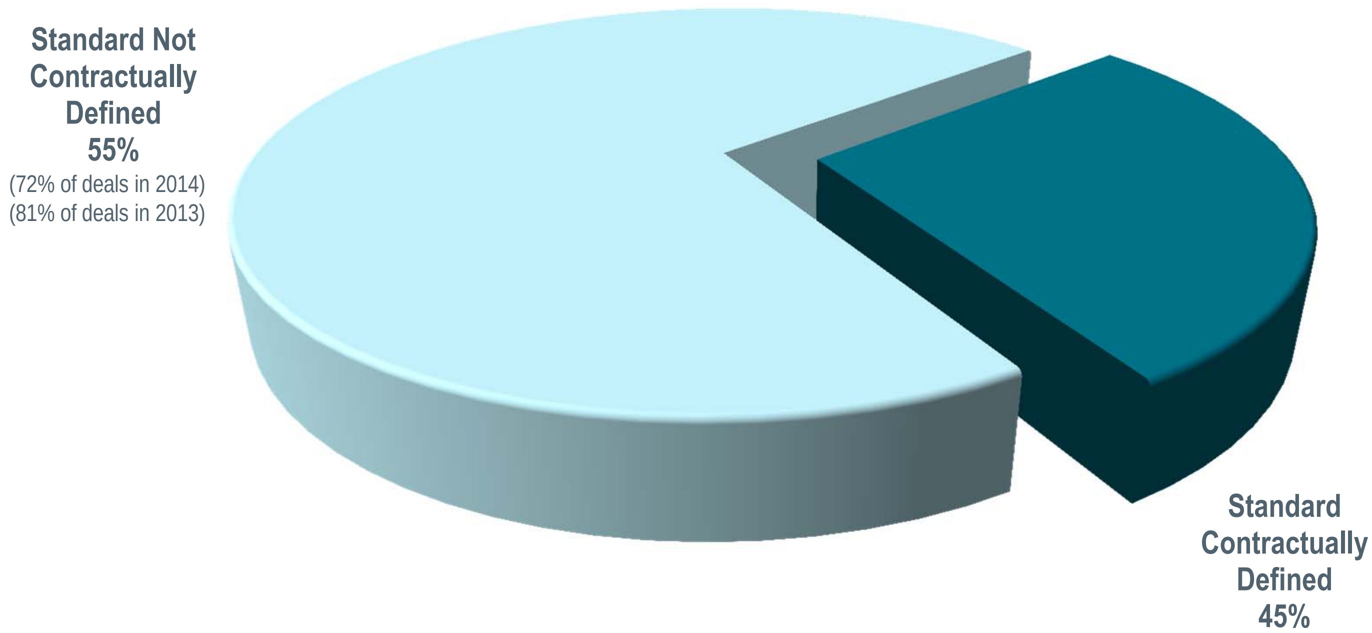
"WILLFUL, KNOWING, INTENTIONAL" DEFINED?

WILLFUL BREACH DEFINED | "Willful Breach" means a material breach that is a consequence of an act undertaken by the breaching party with the actual knowledge that the taking of such act would, or would be reasonably expected to, cause a breach of this Agreement.

WILLFUL BREACH OF A REPRESENTATION OR WARRANTY | There shall be deemed to be a "Willful Breach" by Buyer of a representation or warranty made by Buyer only if: (i) such representation or warranty is material to Target and was materially inaccurate when made by Buyer; (ii) the material inaccuracy in such representation or warranty has a material adverse effect on the ability of Buyer to consummate the Merger; (iii) the material inaccuracy in such representation or warranty shall not have been cured in all material respects; and (iv) when such representation or warranty was made by Buyer, Buyer's chief financial officer or treasurer had actual knowledge that such representation or warranty was materially inaccurate and specifically intended to defraud Target.

WILLFUL BREACH OF A COVENANT OR OBLIGATION | There shall be deemed to be a "Willful Breach" by Buyer of a covenant or obligation of Buyer only if: (i) such covenant or obligation is material to Target; (ii) Buyer shall have materially and willfully breached such covenant or obligation; (iii) the breach of such covenant or obligation has a material adverse effect on the ability of Buyer to consummate the Merger; (iv) the breach of such covenant or obligation shall not have been cured in all material respects; and (v) Buyer's chief financial officer or treasurer had actual knowledge, at the time of Buyer's breach of such covenant or obligation, (a) that Buyer was breaching such covenant or obligation and (b) of the consequences of such breach under the Agreement.

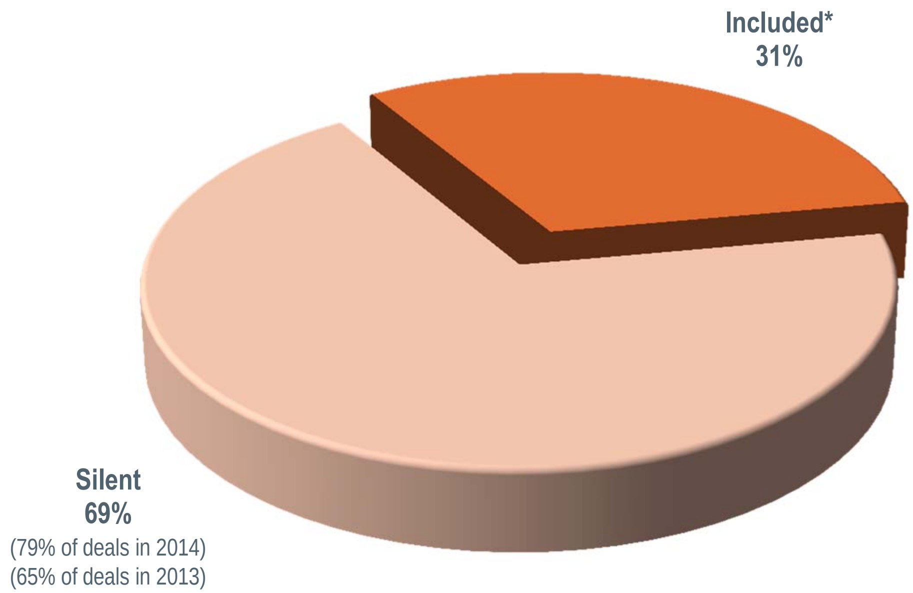
"WILLFUL, KNOWING, INTENTIONAL" DEFINED?*



* "Willful, Knowing, Intentional" and similar language may be utilized in different contexts in an acquisition agreement. This data set reflects the frequency in which such language was contractually defined, regardless of context.

EXPRESS TARGET RIGHT TO PURSUE DAMAGES ON BEHALF OF STOCKHOLDERS

Except for: (i) the right of the Indemnified Parties to enforce the provisions of Section 4.17 *(Indemnification; Directors' and Officers' Insurance*), and (ii) ***the right of Target on behalf of its stockholders to pursue damages [(including claims for damages based on loss of the economic benefits of the transaction to Target's stockholders)] in the event of Buyer's breach of this Agreement***, which right is hereby expressly acknowledged and agreed by Buyer, this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.



* Includes three categories of provisions: (i) Provisions that state that Target may bring an action to seek damages on behalf of stockholders on an agency theory of recovery; (ii) provisions that expressly state that damages include the loss of deal premium to stockholders; and (iii) provisions that state that damages include benefit of bargain to stockholders.

TERMINATION FEE PAYABLE BY BUYER

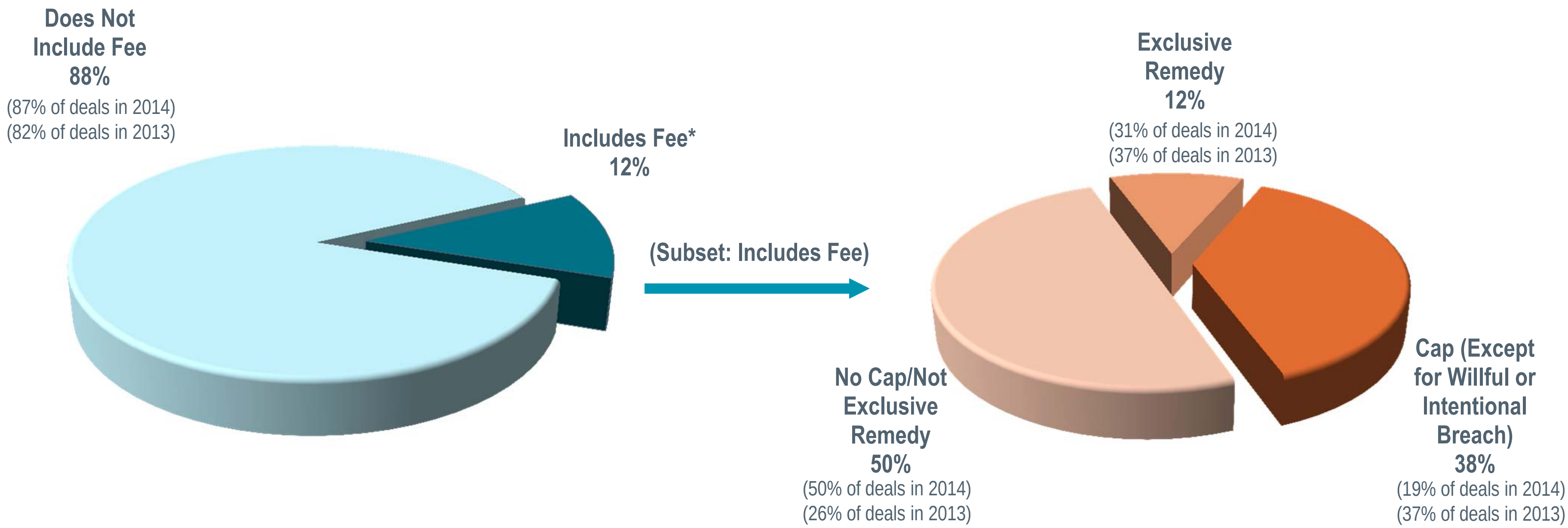
FOR GENERAL BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS

In the event this Agreement is terminated by Target pursuant to Section 7.1(g) *(Buyer's uncured material breach)* (if at the time of such termination there is no state of facts or circumstances (other than a state of facts or circumstances caused by or arising out of a breach of Buyer's representations, warranties, covenants or other agreements set forth in this Agreement) that would reasonably be expected to cause the conditions set forth in Section 6.1 and Section 6.2 not to be satisfied on or before the Termination Date), then in the case of such termination, Buyer shall pay Target $__ (the "Reverse Termination Fee").

Target's right to receive payment of the Reverse Termination Fee shall be the sole and exclusive remedy of Target and its Affiliates against Buyer, Merger Sub or any of their respective Affiliates for any loss suffered as a result of the failure of the Merger to be consummated or for a breach or failure to perform under this Agreement or otherwise ***[provided, that the foregoing limitation shall not apply in the event of any liabilities or damages incurred or suffered by Target in the case of a breach of this Agreement involving fraud or willful or intentional misconduct]***.

TERMINATION FEE PAYABLE BY BUYER

FOR GENERAL BREACHES OF REPRESENTATIONS, WARRANTIES AND COVENANTS



* Includes seven deals in which Buyer is required to pay a full termination fee, as well as eight deals in which Buyer is only required to pay expenses.

TERMINATION FEE PAYABLE BY BUYER

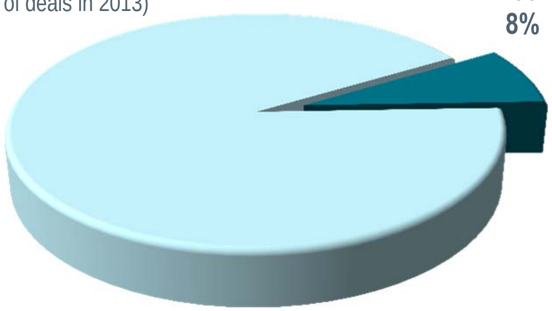
FOR FAILURE TO OBTAIN FINANCING

Buyer agrees that, if Target shall terminate this Agreement pursuant to (i) Section 7.1(g) (*Buyer breach*), (ii) Section 7.1(b) (*outside date*) and, at the time of such termination, the conditions set forth in Article 5 have been satisfied; or (iii) Section __ (*conditions satisfied and Merger not consummated*), then Buyer shall pay to Target a fee of $__ (the "Buyer Termination Fee") in immediately available funds no later than two business days after such termination by Target.

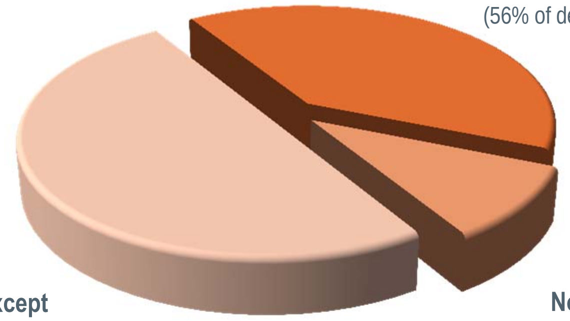
The payment of the Buyer Termination Fee shall be the sole and exclusive remedy available to Target with respect to this Agreement and the transactions in the event of termination of this Agreement as provided in this Section and, upon payment of the Buyer Termination Fee, Buyer shall have no further liability to Target hereunder ***[provided, that the foregoing limitation shall not apply in the event of any liabilities or damages incurred or suffered by Target in the case of a breach of this Agreement involving fraud or willful or intentional misconduct]***.

TERMINATION FEE PAYABLE BY BUYER

FOR FAILURE TO OBTAIN FINANCING



(Subset: Includes Fee)



* In all 10 deals, Buyer was required to pay a full termination fee (rather than just expenses).

TERMINATION FEE PAYABLE BY BUYER

FOR FAILURE TO OBTAIN ANTITRUST CLEARANCE

If Target or Buyer terminates this Agreement pursuant to (i) Section 7.1(b) (*outside date*) (but only in the event that all of the closing conditions set forth in Articles 5 and 6 have been satisfied or waived (other than the conditions set forth in Sections 5.8 and 6.7 (*antitrust clearance*)) or those conditions that by their nature can only be satisfied on the Closing Date) or (ii) Section 7.1(c) (*governmental order*) arising under the HSR Act and Target is not otherwise in material breach of this Agreement, then Buyer shall pay to Target the Buyer Termination Fee within one business day after such termination.

Payment of the Buyer Termination Fee shall be the sole and exclusive remedy available to Target with respect to this Agreement and the transactions in the event of termination of this Agreement as provided in this Section and, upon payment of the Buyer Termination Fee, Buyer shall have no further liability to Target hereunder ***[provided, that the foregoing limitation shall not apply in the event of any liabilities or damages incurred or suffered by Target in the case of a breach of this Agreement involving fraud or willful or intentional misconduct]***.

TERMINATION FEE PAYABLE BY BUYER

FOR FAILURE TO OBTAIN ANTITRUST CLEARANCE

BREAK–UP FEES*

Type	Metric	2015	2014	2013
Target Break-Up Fee	Mean	3.51%	3.40%	3.73%
	Median	3.45%	3.42%	3.58%
Reverse Break-Up Fee: Financing Failure	Mean	7.59%	5.39%	6.30%
	Median	6.94%	5.23%	6.63%
	Ratio**	2.09	1.76	1.92
Reverse Break-Up Fee: General Breach	Mean	4.56%	4.32%	4.76%
	Median	2.00%	3.63%	4.15%
	Ratio**	1.05	1.38	1.31
Reverse Break-Up Fee: Antitrust Failure	Mean	4.90%	4.55%	—
	Median	4.30%	3.63%	—
	Ratio**	1.35	1.27	—

* Expressed as a percentage of Equity Value.
** Average ratio of Buyer's Reverse Break-Up Fee to Target's Break-Up Fee.

EMPLOYEE BENEFIT MATTERS

TREATMENT OF TARGET EQUITY AWARDS

AWARDS CASHED OUT OR ASSUMED BY BUYER

CASHED OUT | Each Target Option that is outstanding immediately prior to the Effective Time will be ***canceled and converted into the right to receive [the merger consideration less the exercise price]***.

ASSUMED/SUBSTITUTED | At the Effective Time, each Target Option that is outstanding immediately prior to the Effective Time will be ***converted into an option to acquire shares of Buyer Common Stock***….

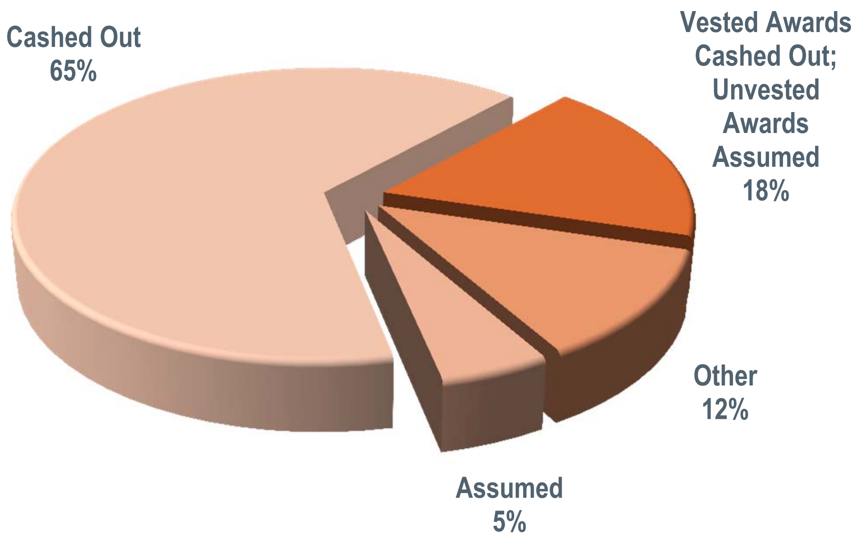
VESTED AWARDS CASHED OUT; UNVESTED AWARDS ASSUMED/SUBSTITUTED | At the Effective Time, each ***vested Target Option that is outstanding immediately prior to the Effective Time will be canceled and converted into the right to receive [the merger consideration less the exercise price***]; each ***unvested Target Option that is outstanding immediately prior to the Effective Time will be converted into an option to acquire shares of Buyer Common Stock***….

OTHER (e.g. restricted units assumed, options cashed out) | At the Effective Time, each award of ***performance share units*** that is outstanding immediately prior to the Effective Time ***will be assumed by Buyer*** and converted into an award of restricted stock units by Buyer; each ***Target Option*** that is outstanding immediately prior to the Effective Time ***will be canceled and converted into the right to receive [the merger consideration less the exercise price]***.

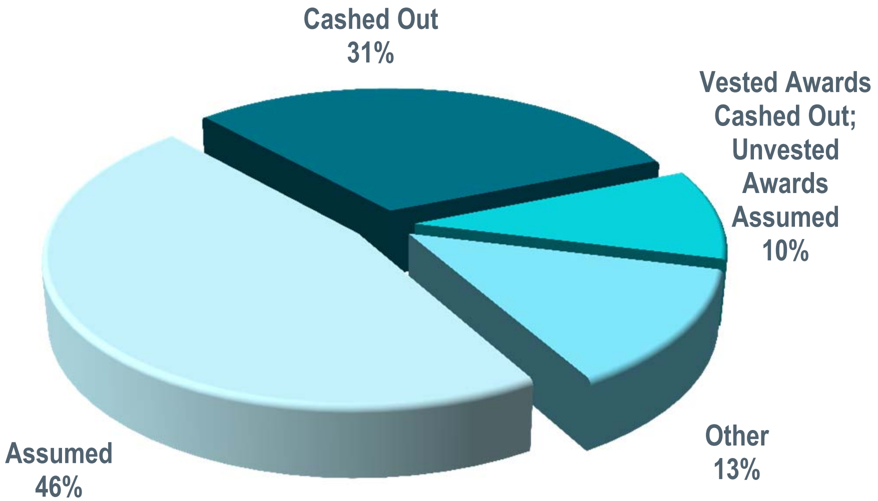
TREATMENT OF TARGET EQUITY AWARDS

AWARDS CASHED OUT OR ASSUMED BY BUYER

All Cash



All Stock & Mixed Consideration



TREATMENT OF TARGET EQUITY AWARDS

AWARDS VESTING AT CLOSING

ACCELERATED | Each ***unvested Target Option*** that is outstanding immediately prior to the Effective Time will ***automatically become vested***.

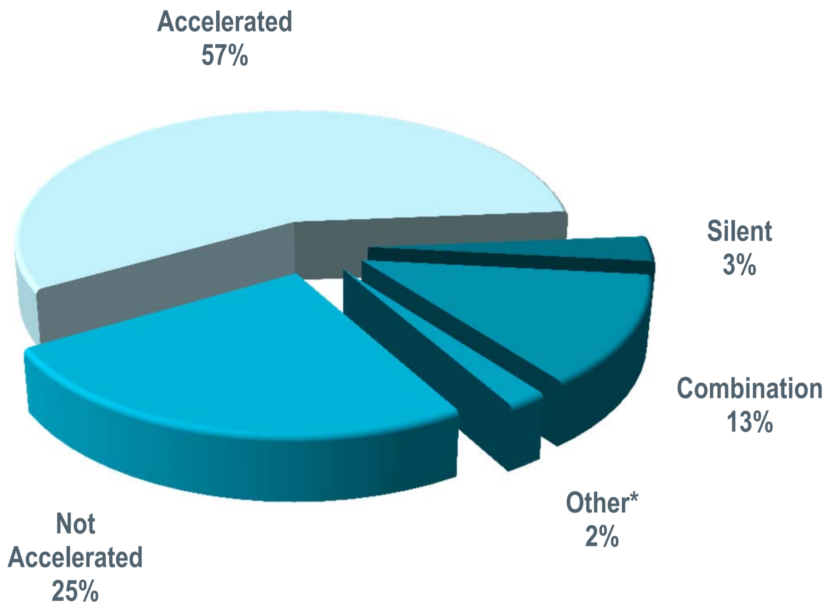
NOT ACCELERATED | At the Effective Time, each ***unvested Target Option*** that is outstanding immediately prior to the Effective Time shall be converted into and become an option to purchase Buyer Common Stock, ***subject to vesting under the same time period*** as was applicable under such unvested Target Option immediately prior to the Effective Time.

COMBINATION (e.g. vesting of options accelerated, performance share units assumed without accelerated vesting) | Each ***performance share unit award*** that is outstanding immediately prior to the Effective Time, ***whether vested or unvested***, shall be assumed by Buyer and ***converted into an award of performance share units by Buyer subject to vesting under the same time period*** as was applicable under such performance share unit awards immediately prior to the Effective Time; each ***unvested Target Option*** that is outstanding immediately prior to the Effective Time ***will automatically become vested*** and be converted into the right to receive an amount in cash equal to ***[the merger consideration less the exercise price]***.

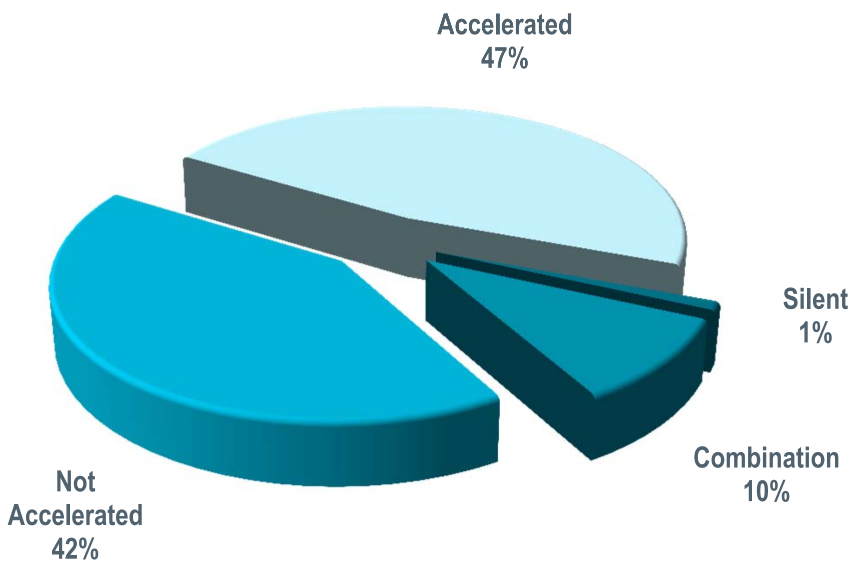
TREATMENT OF TARGET EQUITY AWARDS

AWARDS VESTING AT CLOSING

All Cash



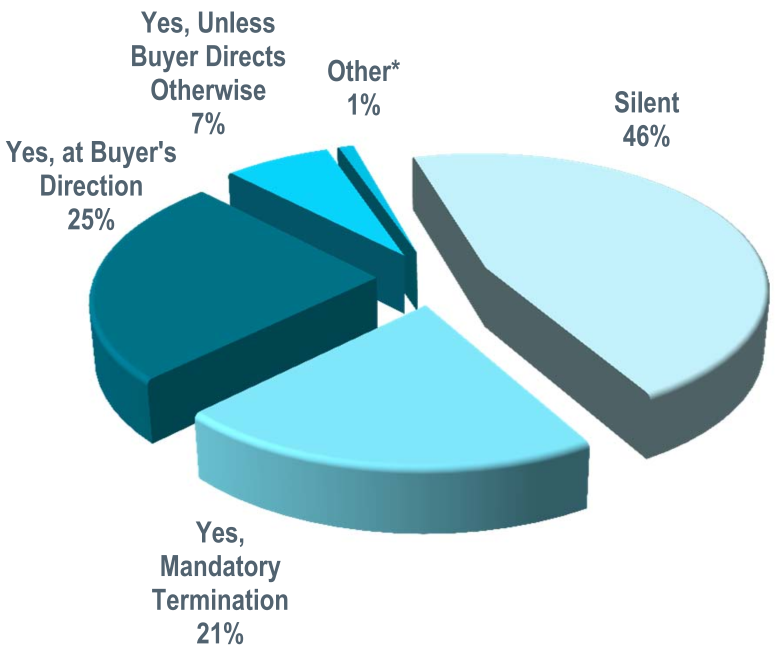
All Stock & Mixed Consideration



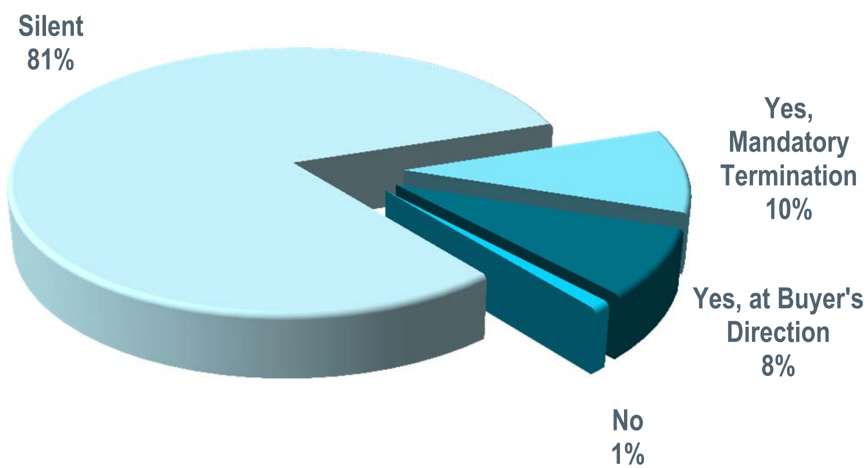
* Includes one deal in which awards vested one year after closing for employees who remain in service with Target.

TERMINATION OF 401(K) AND BENEFIT PLANS

IS TARGET REQUIRED TO TERMINATE ITS 401(K) PLAN?



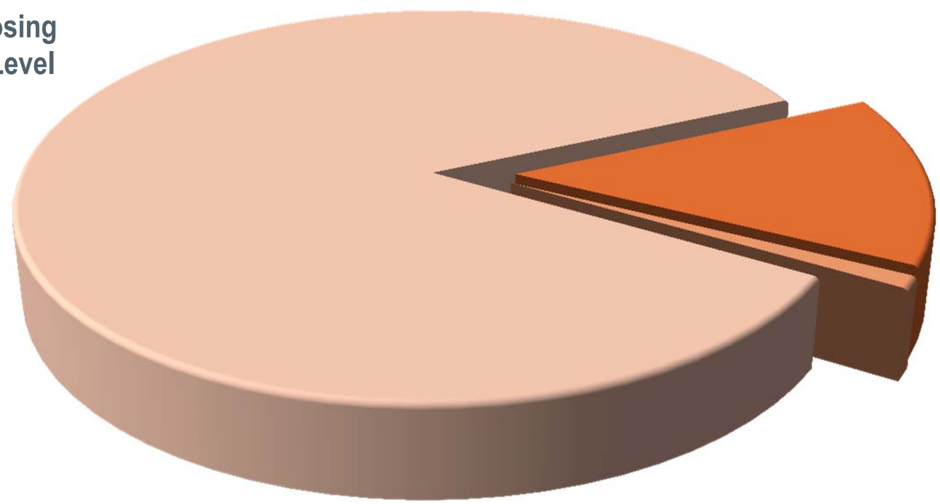
IS TARGET REQUIRED TO TERMINATE OTHER BENEFIT PLANS?



* Includes one deal that provided that Target's 401(k) Plan would be merged with Buyer's 401(k) Plan.

POST-CLOSING CASH COMPENSATION LEVEL

SAME AS PRE-CLOSING COMPENSATION LEVEL | Buyer will provide, or will cause to be provided, to all Continuing Employees who remain employed by Buyer or any Subsidiary of Buyer, ***cash compensation as favorable as that provided*** to such Continuing Employees immediately prior to the Effective Time.



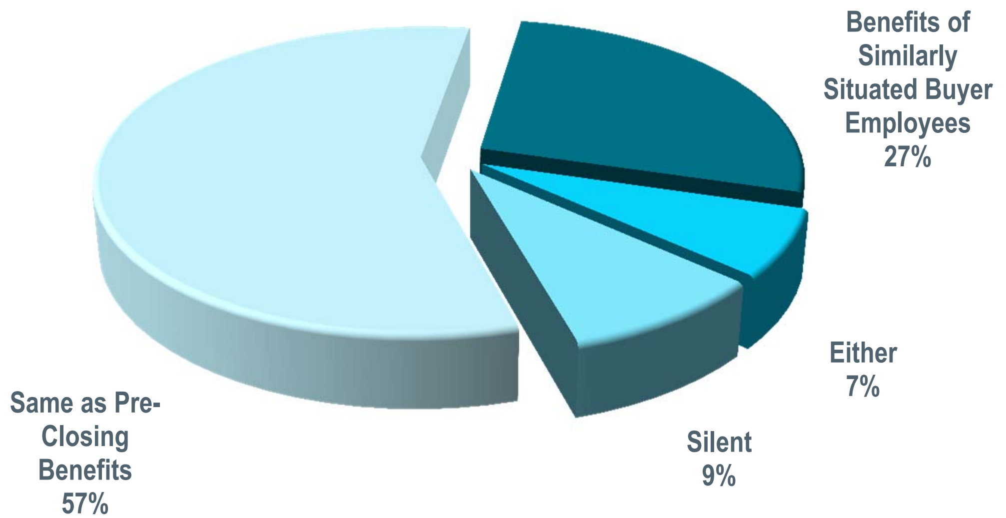
* Includes one deal that provided for the same base salary, but incentive compensation comparable to that provided to similarly situated employees of Buyer.

POST-CLOSING BENEFITS

BENEFITS OF SIMILARLY SITUATED BUYER EMPLOYEES | Buyer shall ***maintain employee benefits that are no less favorable than the benefits provided in the aggregate to similarly situated employees*** of Buyer.

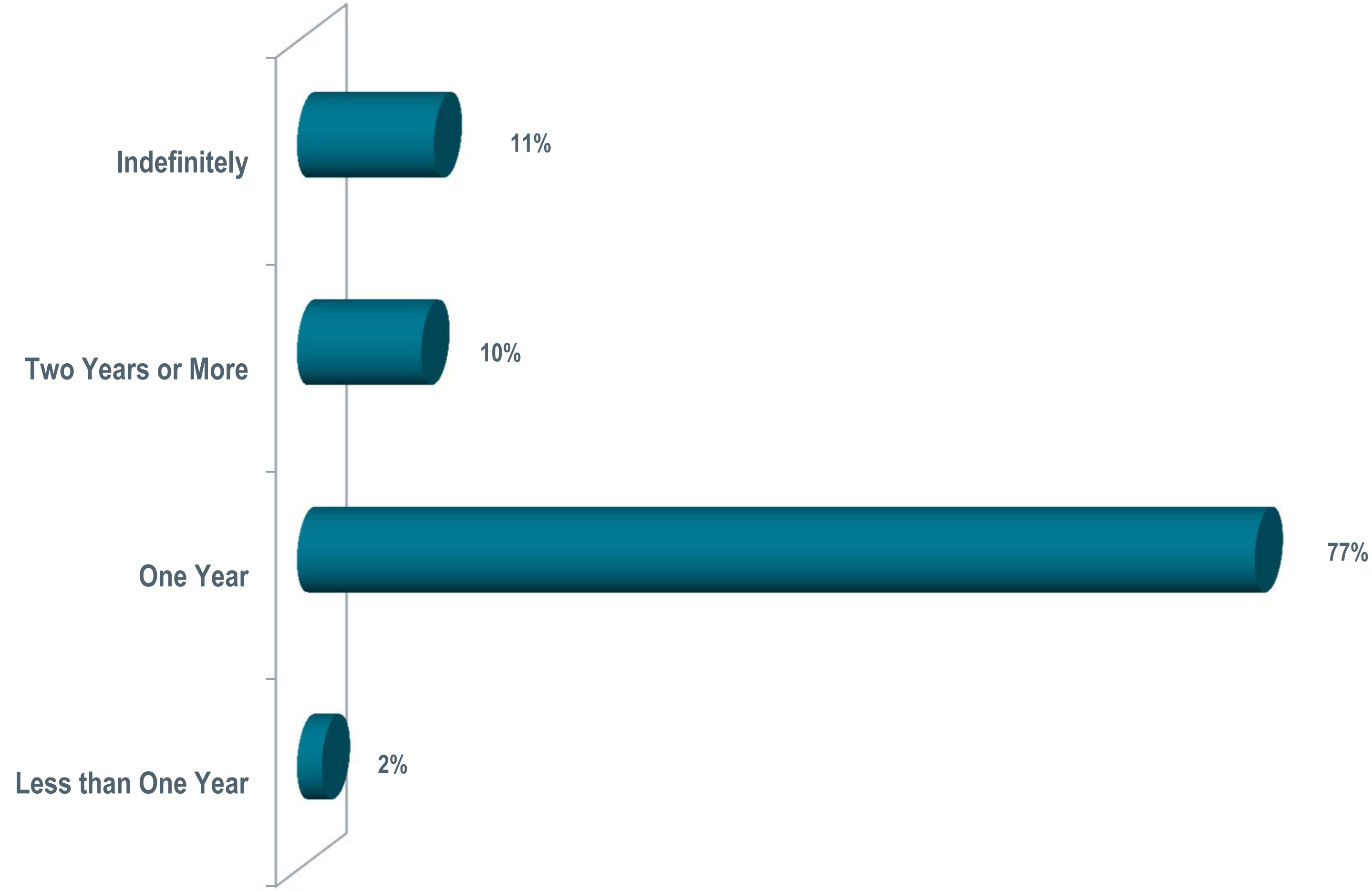
SAME AS PRE-CLOSING BENEFITS | Buyer will provide Continuing Employees ***with employee benefits on terms at least as favorable, in the aggregate, as the employee benefits provided to such Continuing Employee by Target*** immediately prior to the Effective Time.

EITHER | Buyer agrees to provide Continuing Employees with ***employee benefits that are at least as favorable in the aggregate to those benefits provided to such employees*** immediately prior to the Effective Time ***or that Buyer provides to its similarly situated employees*** as of the Effective Time.



POST-CLOSING COMPENSATION AND BENEFITS

DURATION OF GUARANTEED COMPENSATION AND BENEFITS*



* Includes only those deals that provided for post-closing compensation and benefits.

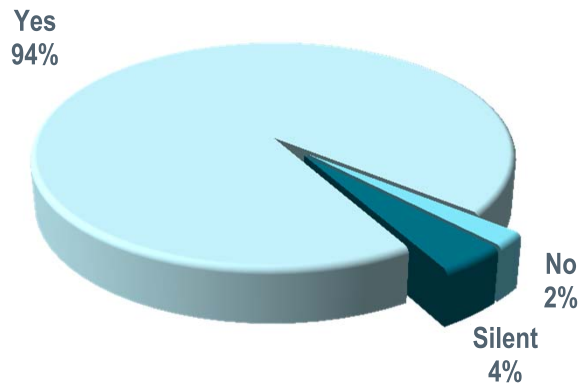
POST-CLOSING COMPENSATION AND BENEFITS

SERVICE CREDIT

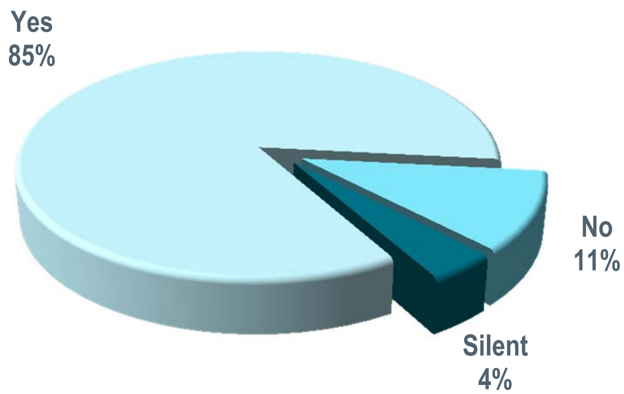
SERVICE CREDIT FOR BENEFIT VESTING AND ELIGIBILITY | Buyer shall recognize the service of Continuing Employees with Target and its Subsidiaries prior to the Effective Time for purposes of eligibility to participate, vesting, vacation entitlement and severance benefits to the same extent such service was recognized by Target and its Subsidiaries under any similar Company Benefit Plan in which such Continuing Employee participated immediately prior to the Effective Time.

SERVICE CREDIT FOR DEDUCTIBLES AND COPAYS | Buyer shall provide each such employee with credit for any co-payments and deductible paid prior to the Effective Time (to the same extent such credit was given under the analogous Company Benefit Plan prior to the Effective Time) in satisfying any applicable deductible requirements.

Service Credit for Benefit Vesting and Eligibility



Service Credit for Deductibles and Copays



OTHER ACQUISITION AGREEMENT DATA POINTS

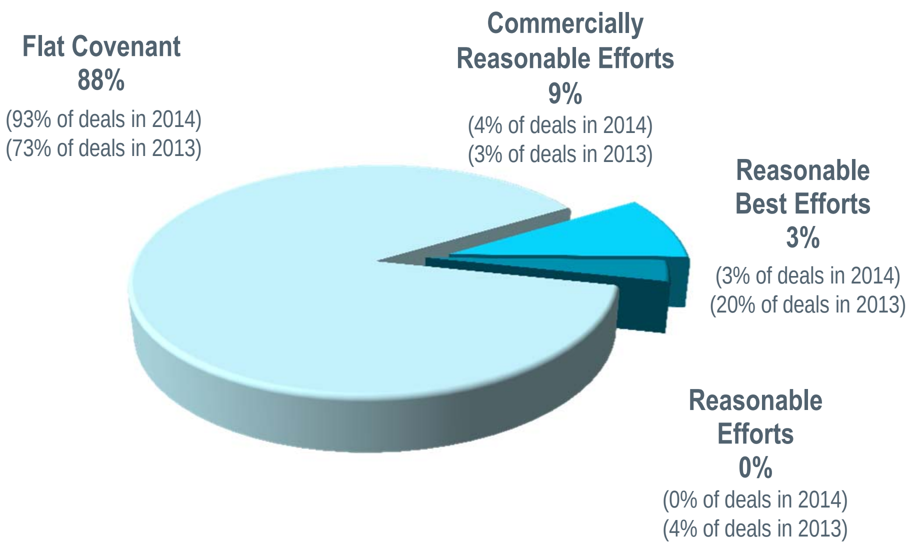
OPERATING COVENANTS:
AFFIRMATIVE COVENANT – OPERATE IN ORDINARY COURSE

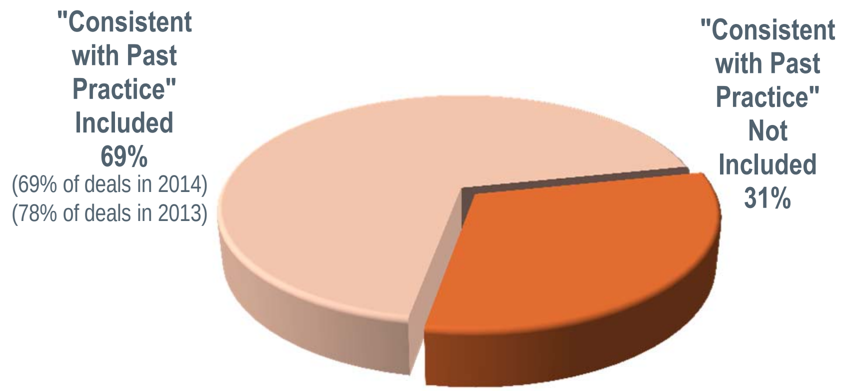
FLAT COVENANT

Target shall *conduct its business in the ordinary course [consistent with past practice]*.

COVENANT MODIFIED BY EFFORTS

Target shall use its *[reasonable best/commercially reasonable] efforts* to conduct its business in the ordinary course *[consistent with past practice]*.





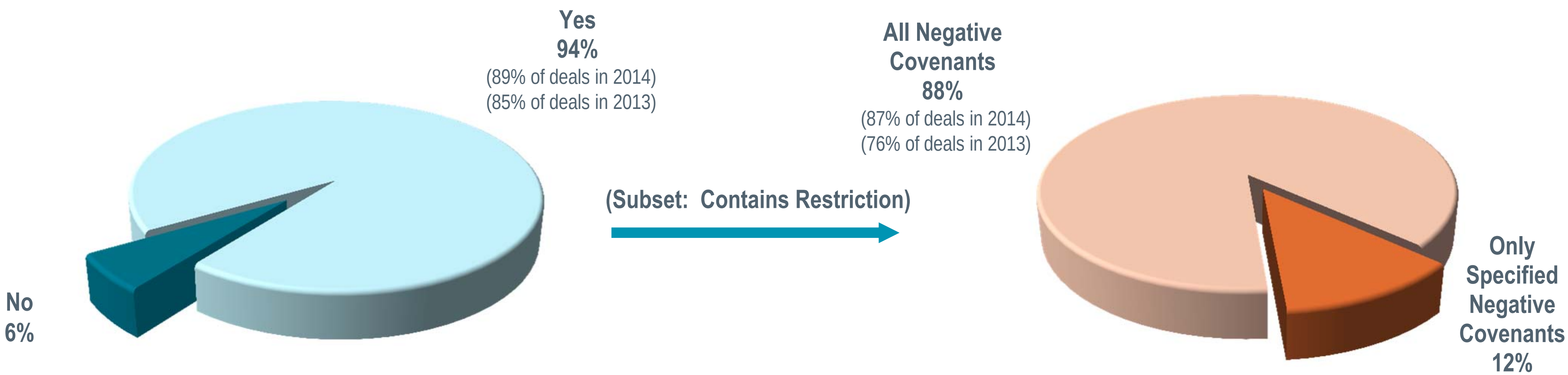
OPERATING COVENANTS:
NEGATIVE COVENANT – BUYER CONSENT REQUIREMENT

FLAT CONSENT

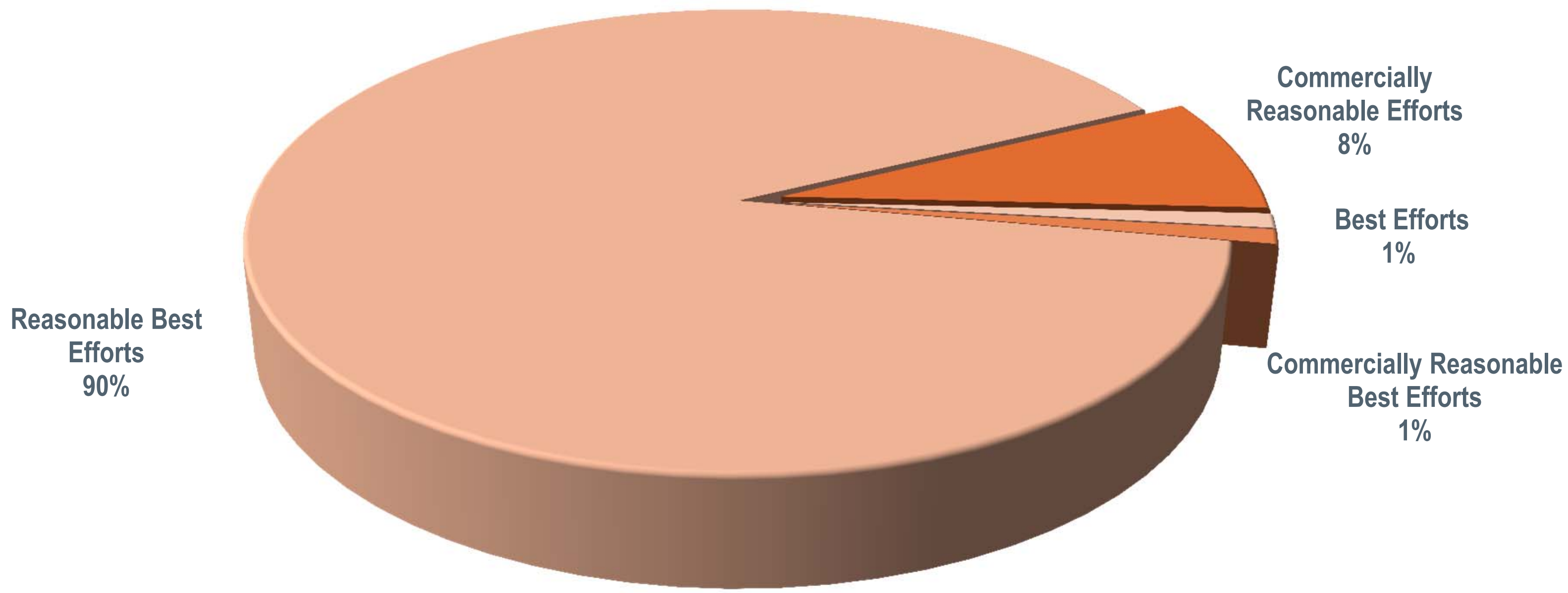
During the period from the date of this Agreement and continuing until the Effective Time, Target shall not, ***without the prior written consent of Buyer***…

CONSENT NOT UNREASONABLY WITHHELD

During the period from the date of this Agreement, and continuing until the Effective Time, Target shall not, without the prior written consent of Buyer ***(which consent shall not be unreasonably withheld)***…

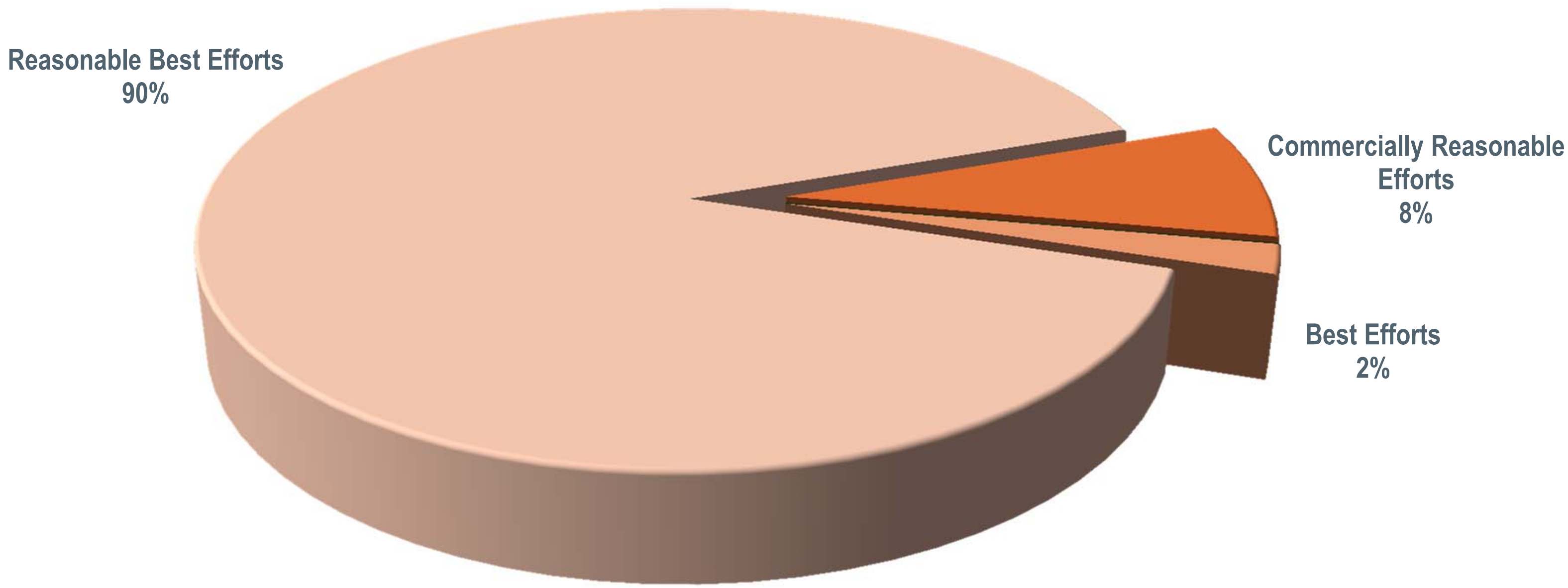


GENERAL EFFORTS STANDARD APPLICABLE TO SATISFACTION OF CLOSING CONDITIONS



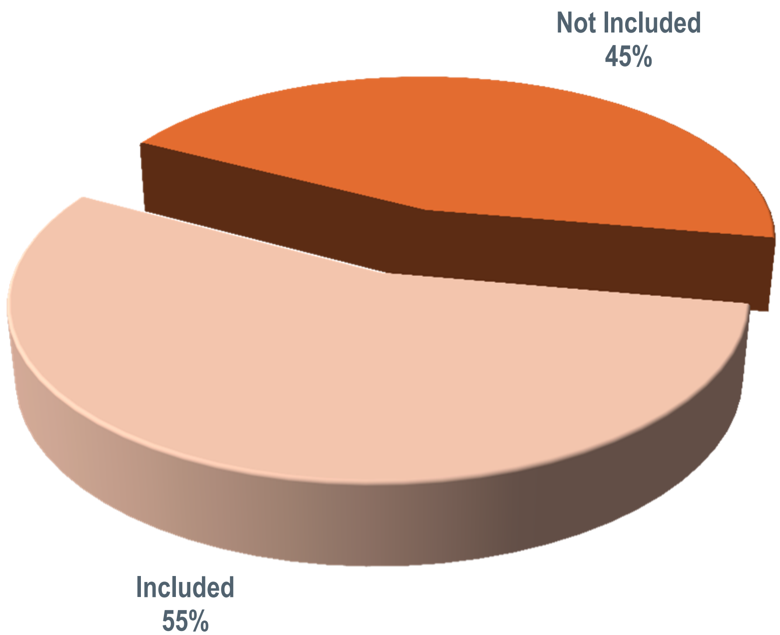
ANTITRUST COVENANTS: GENERAL EFFORTS STANDARD

Each party will cooperate with the other and use ***[best efforts] [reasonable best efforts] [commercially reasonable efforts]*** to promptly prepare all necessary documentation, to effect all necessary filings and to obtain all necessary permits, consents, waivers, approvals and authorizations of any Governmental Bodies necessary to consummate the transactions contemplated by this Agreement.



ANTITRUST COVENANTS: REQUIREMENT TO LITIGATE

In the event that any Legal Proceeding is commenced, threatened or is reasonably foreseeable that seeks to restrict the consummation of the transactions, each of Buyer and Target shall use its reasonable best efforts to take all actions to contest and resist any such Legal Proceeding, including through litigation on the merits and appeal, and to avoid the entry of, or have vacated any Order that is in effect and that restricts or would have the effect of delaying the consummation of the transactions, as promptly as practicable and in any event no later than necessary to satisfy the HSR Condition at least three Business Days prior to the Outside Date.



ANTITRUST COVENANTS: DIVESTITURE LIMITS

Each party agrees to use its reasonable best efforts to do all things necessary, proper or advisable to consummate the Transactions, *provided* that

NO MAE | Neither Buyer nor Target shall be required to offer, negotiate, commit to, effect or accept any action if any such action, individually or collectively, would reasonably be expected to have a ***material adverse effect*** on the business, operations or financial condition of Target and its Subsidiaries, taken as a whole.

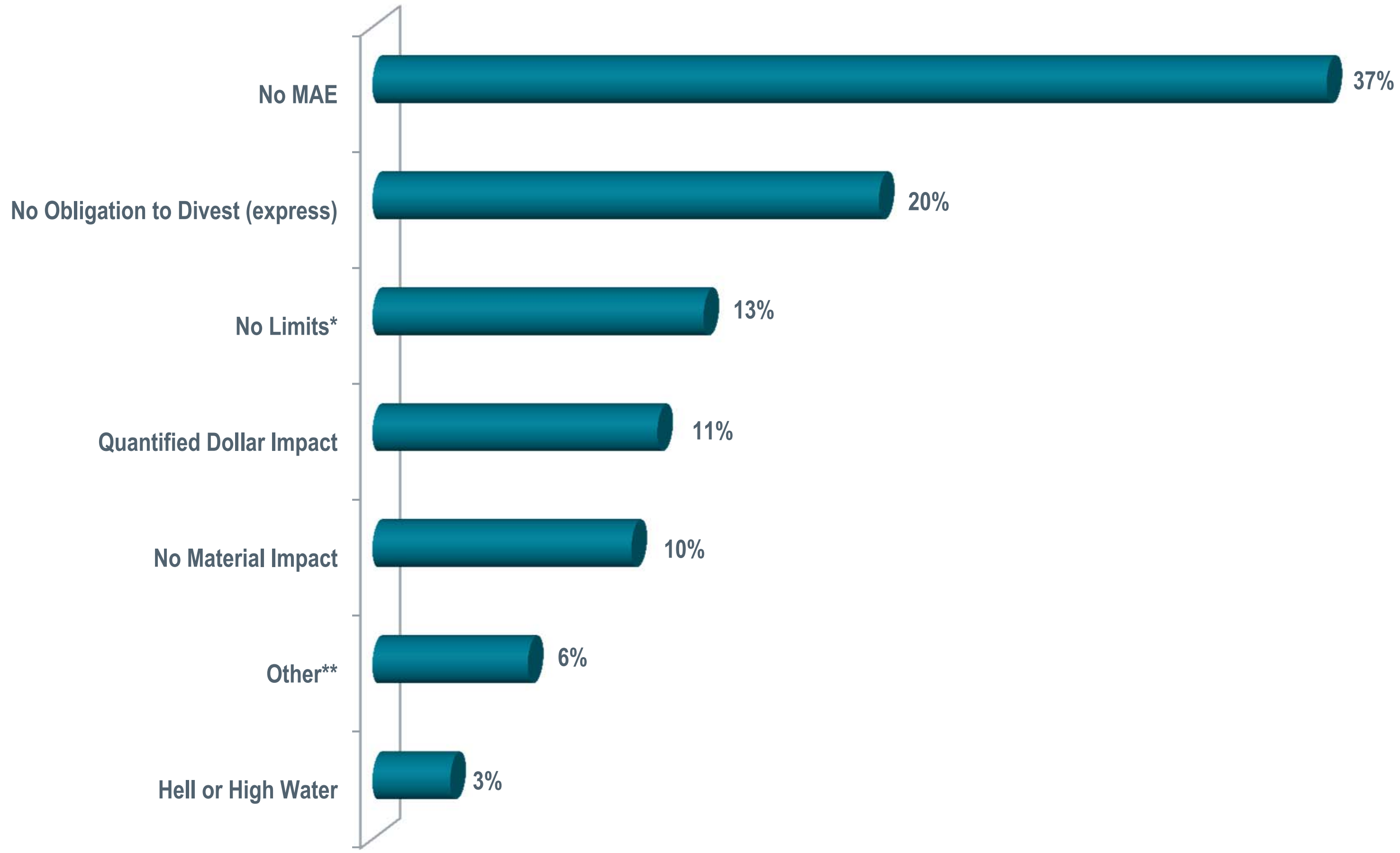
NO OBLIGATION TO DIVEST (EXPRESS) | Neither Buyer nor any of its Affiliates shall be required to agree or consent to ***any structural or conduct remedy***.

QUANTIFIED DOLLAR IMPACT | In no event shall Buyer be required to agree to the divestiture of any Assets other than Assets of Target and its Subsidiaries that collectively generated revenues for the year ended December 31, 2015 ***not in excess of $250 million*** in the aggregate.

NO MATERIAL IMPACT | Neither Buyer nor Target nor any of their respective Subsidiaries and Affiliates shall be required to agree to any sale, transfer, license, separate holding, divestiture or other disposition of any ***material assets or businesses***.

HELL OR HIGH WATER | Buyer shall take ***any and all steps necessary to avoid and eliminate each and every impediment under any antitrust or competition law*** that may be asserted by any Person so as to enable the parties to consummate the transactions as soon as practicable.

ANTITRUST COVENANTS: DIVESTITURE LIMITS

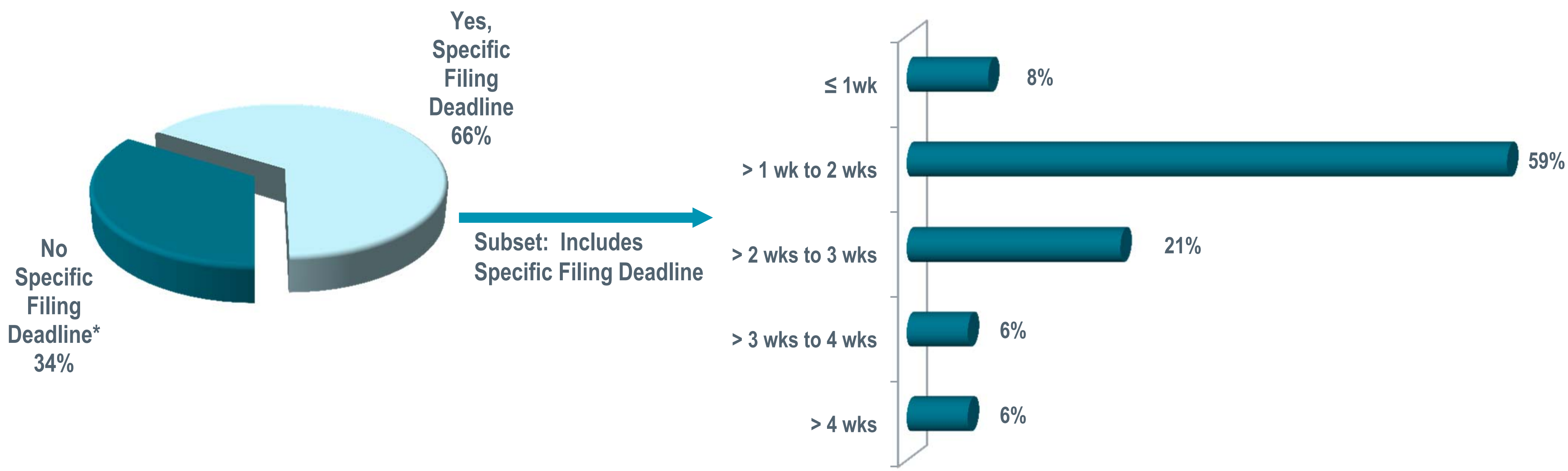


* In all deals without limits on Buyer's covenant, standard of effort to obtain regulatory approval was "reasonable best efforts."

** Includes limits as to number of locations, production capacity, etc.

ANTITRUST COVENANTS: HSR FILING DEADLINE

DOES AGREEMENT INCLUDE A SPECIFIC HSR FILING DEADLINE?

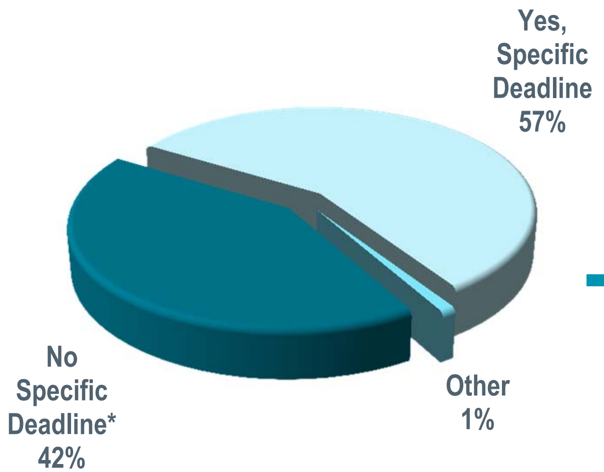


Mean: 2.4 weeks **Median: 2 weeks**

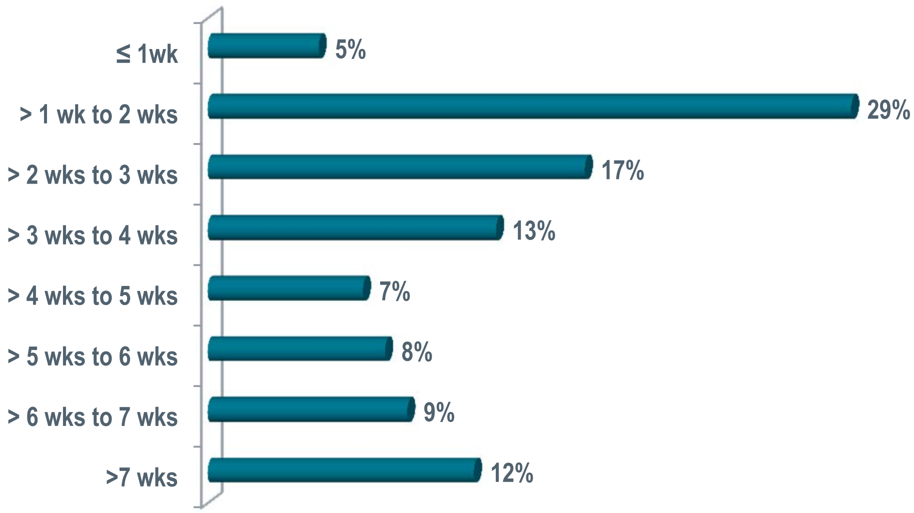
* Includes deals featuring “as soon as reasonably practicable,” “as soon as practicable,” “as promptly as reasonably practicable” and “as promptly as practicable” language.

DEADLINE TO FILE PROXY STATEMENT OR COMMENCE TENDER OFFER

DOES AGREEMENT INCLUDE A SPECIFIC DEADLINE?



Subset: Includes Specific Filing Deadline

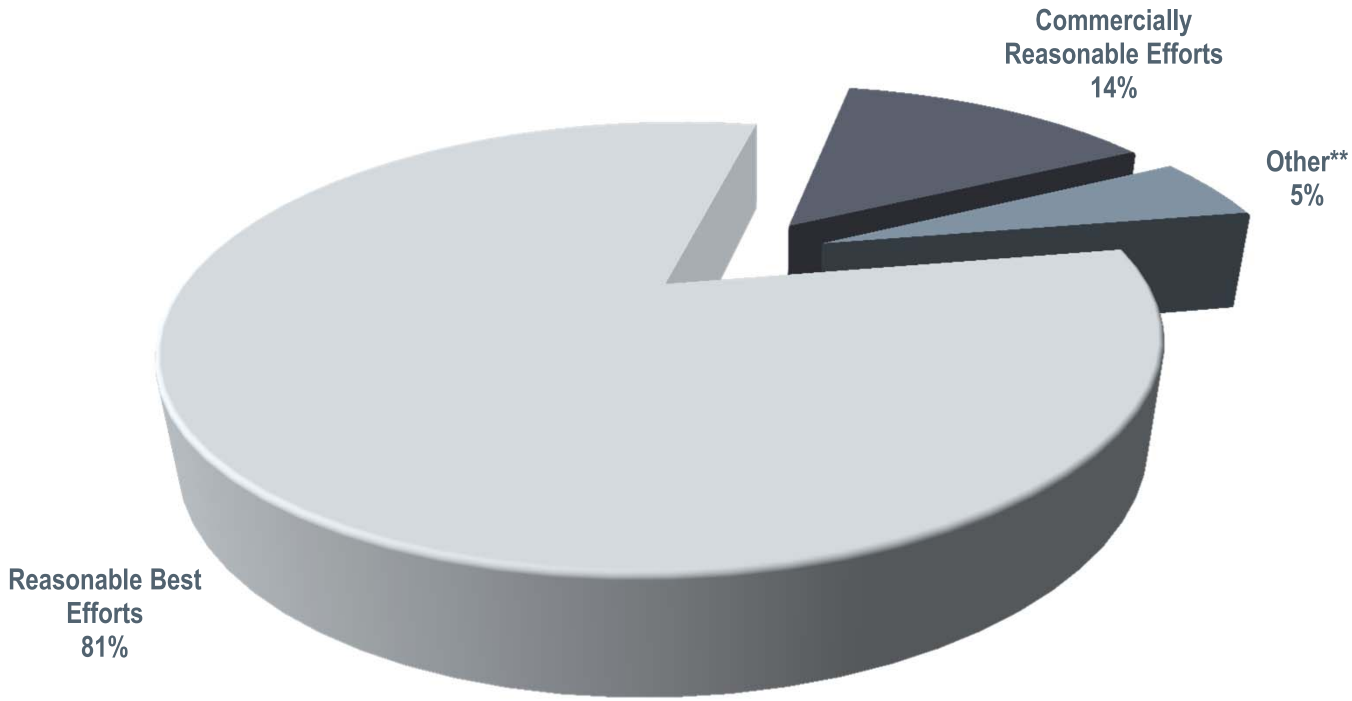


Mean: 3.9 weeks   **Median: 3 weeks**

* Includes deals featuring "as soon as reasonably practicable," "as soon as practicable," "as promptly as reasonably practicable" and "as promptly as practicable" language.

REQUIRED EFFORTS TO OBTAIN FINANCING*

Buyer shall use its ***[reasonable best efforts] [commercially reasonable efforts]*** to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, advisable or proper to arrange and obtain the Financing on the terms and conditions described in the Commitment Letter pursuant to the terms thereof including using its reasonable best efforts to seek to enforce its rights under the Commitment Letter in the event of a breach thereof by the financing provider(s) thereunder.

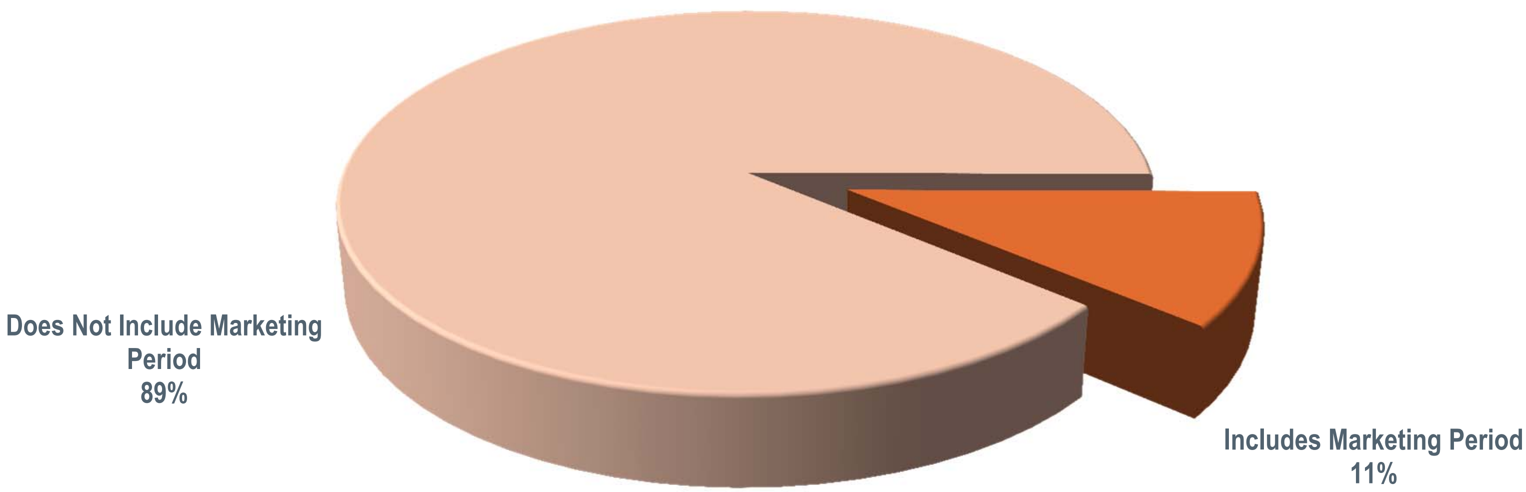


* Includes deals in which cash was included as consideration and where Buyer contemplated obtaining financing.

** Includes standards such as "best efforts" or a standard that requires Buyer to take all actions necessary to secure debt financing.

MARKETING PERIOD REQUIREMENT*

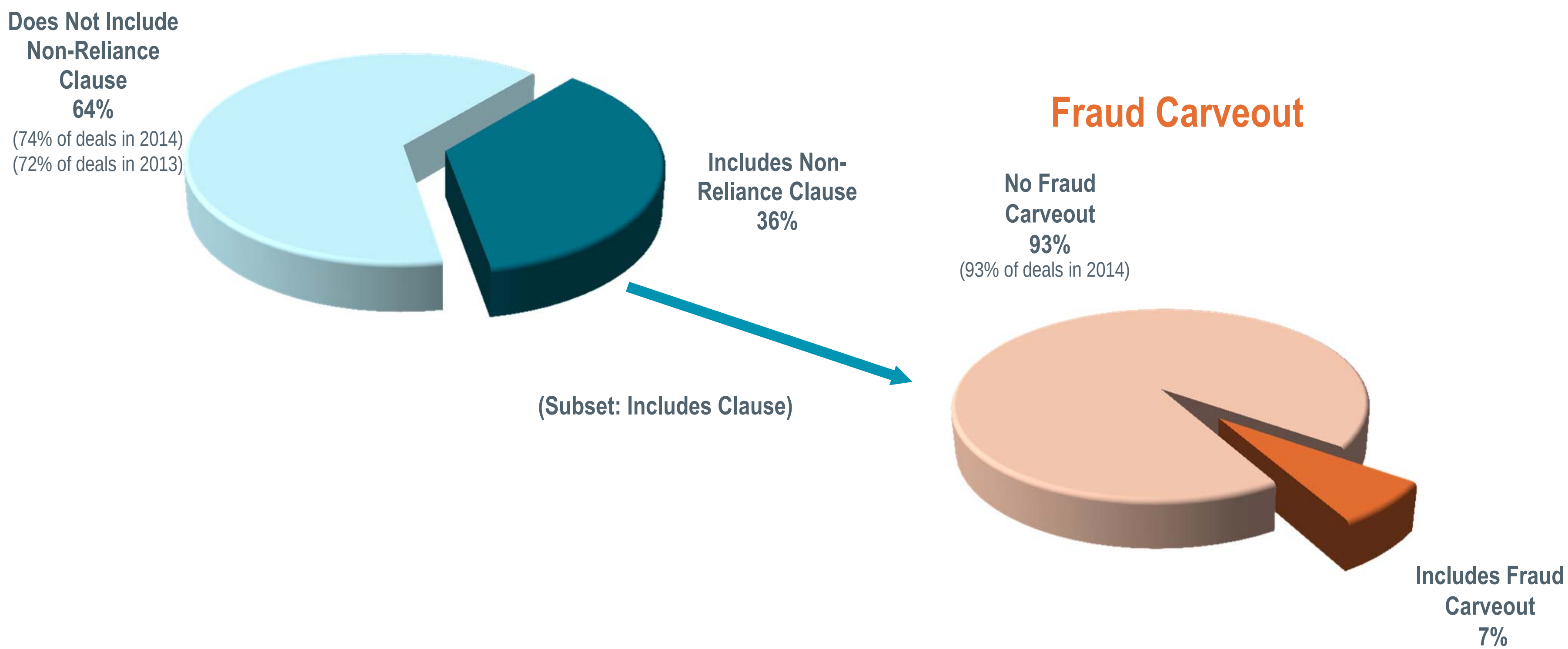
The Closing shall take place on the third Business Day after the date of the satisfaction or waiver of the conditions precedent set forth in Articles 5 and 6, ***provided, however, that if the Marketing Period has not ended at the time of the satisfaction or waiver of such conditions, the Closing shall occur on the earlier of (i) the date during the Marketing Period specified by Buyer on no less than three Business Days' notice to Target and (ii) the Business Day immediately following the final day of the Marketing Period***.



* Includes deals in which cash was included as consideration and where Buyer contemplated obtaining financing.

EXPRESS NON-RELIANCE CLAUSES*

Buyer acknowledges that it is not relying and has not relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in Article 2. ***Notwithstanding the foregoing, nothing set forth herein shall limit or otherwise impair the rights of Buyer under this Agreement or Applicable Law arising out of fraud***.



* Does not include deals with a "no other representations" provision in the absence of an express disclaimer of reliance.

"KNOWLEDGE" DEFINED

ACTUAL KNOWLEDGE

"Knowledge" means ***the actual knowledge of the Knowledge Persons***.

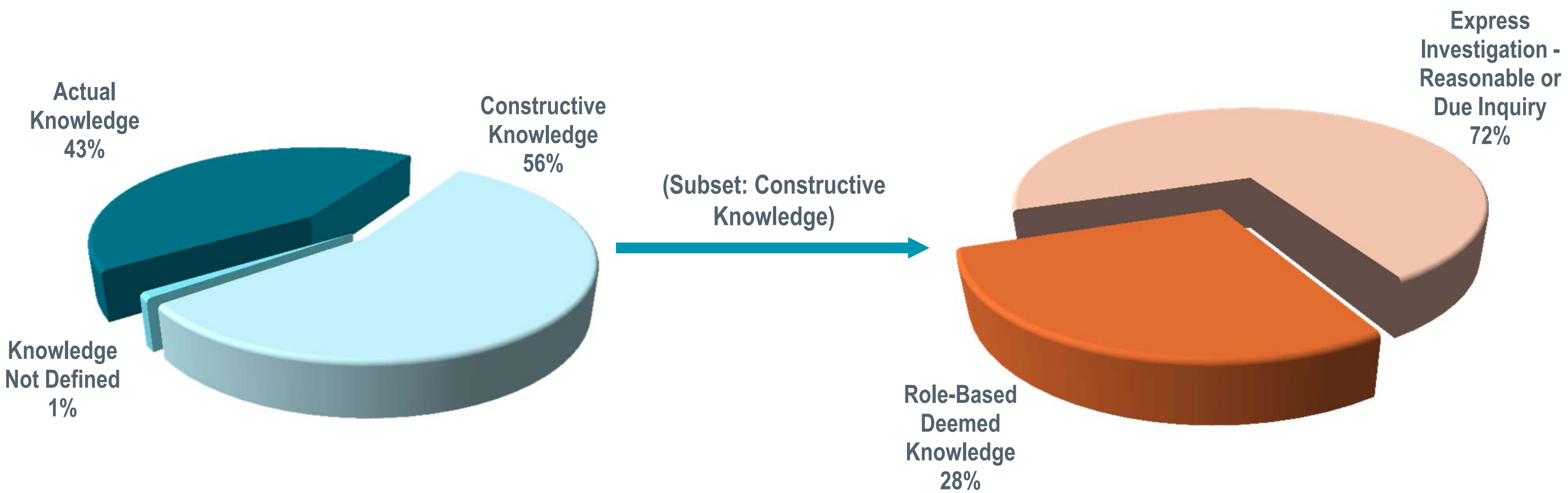
CONSTRUCTIVE KNOWLEDGE

EXPRESS INVESTIGATION – REASONABLE OR DUE INQUIRY

"Knowledge," with respect to Target, means the actual knowledge of any of the Knowledge Persons after ***reasonable inquiry of the employees, consultants or independent contractors of Target and its Subsidiaries*** with the administrative or operational responsibility for such matter in question.

ROLE-BASED DEEMED KNOWLEDGE

"Knowledge," with respect to Target, means the actual knowledge of any of the Knowledge Persons ***and the knowledge that each such person would reasonably be expected to obtain in the course of diligently performing his or her duties for Target***.

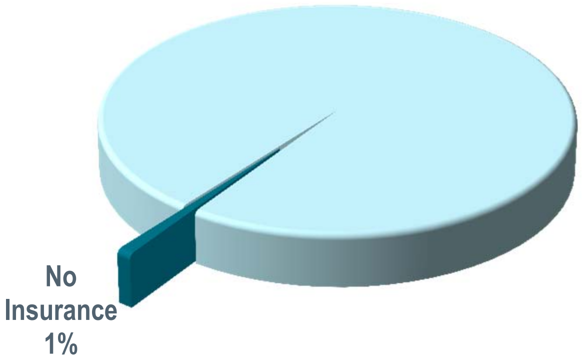


D&O INSURANCE

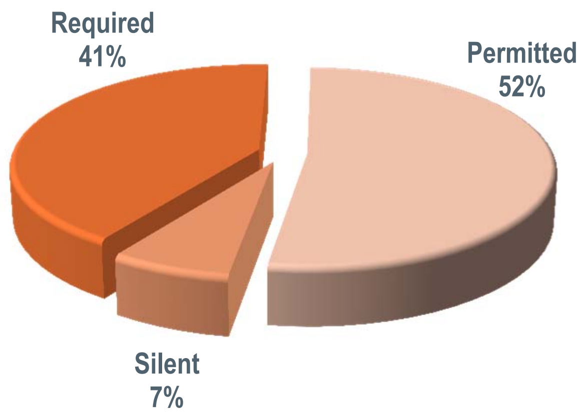
From the Effective Time until the ***[sixth]*** anniversary of the Effective Time, the Surviving Corporation shall maintain in effect, for the benefit of the Indemnified Persons with respect to their acts and omissions occurring before the Effective Time, the existing policy of directors' and officers' liability insurance maintained by Target as of the date of this Agreement in the form disclosed by Target to Buyer before the date of this Agreement (the "Existing Policy"); *provided*, *however*, that: (i) the Surviving Corporation may substitute for the Existing Policy a policy or policies of comparable coverage ***[from an insurance carrier with the same or better credit rating as Target's current insurance carrier]***; (ii) the Surviving Corporation shall not be required to pay annual premiums for the Existing Policy (or for any substitute policies) in excess of $__ in the aggregate [***300%*** of the current premium]; and (iii) ***[provided, further, that Target may prior to the Effective Time substitute for the Existing Policy a single premium tail coverage with an annual cost not in excess of [300%] of the current premium]***.

.

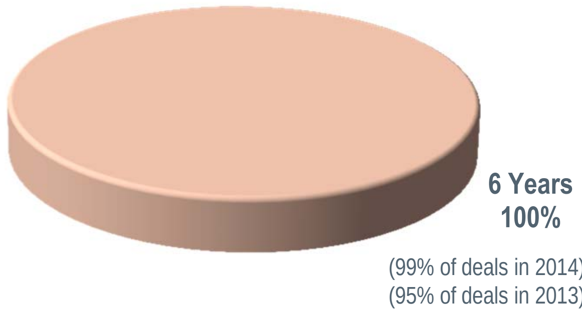
D&O INSURANCE



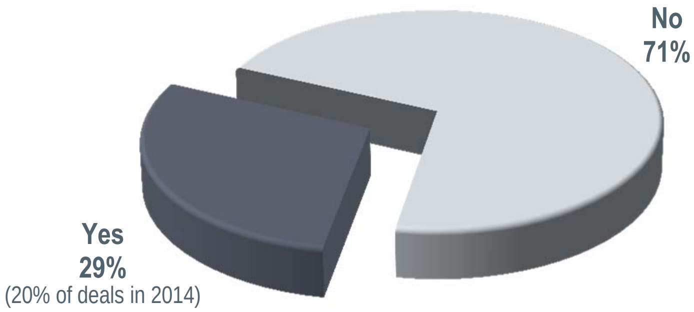
Tail Policy



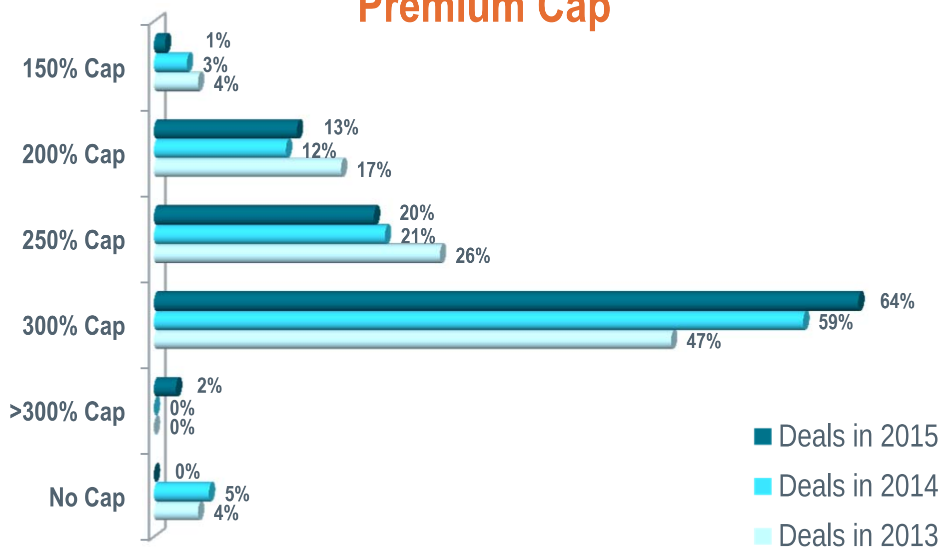
Time Period



Ratings Minimum

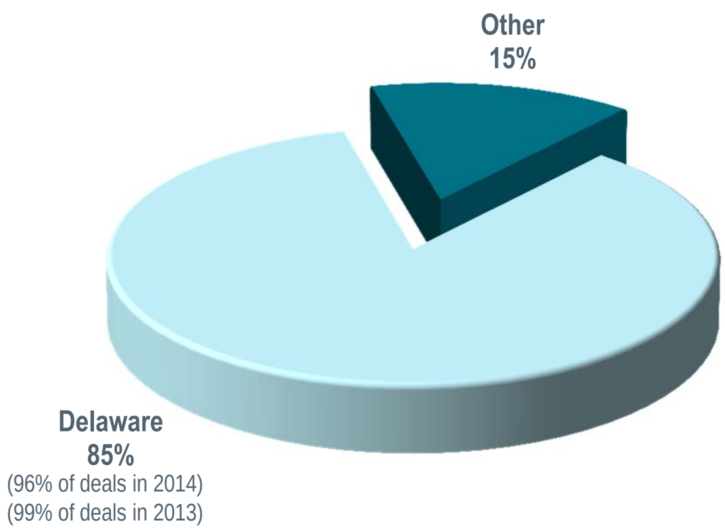


Premium Cap

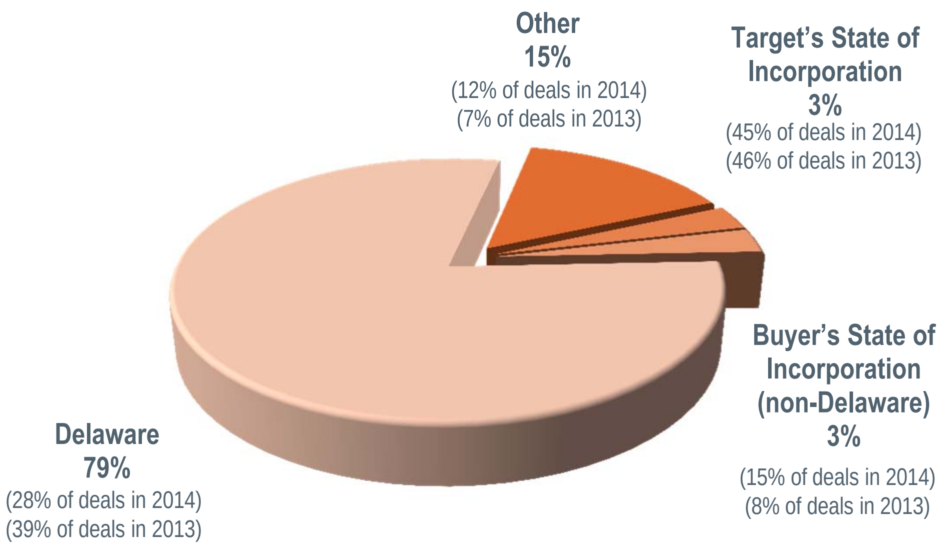


CHOICE OF LAW*

Target Incorporated in Delaware**



Target Not Incorporated in Delaware



* The choice of law identified in these charts refers to the law applicable to matters other than certain matters, such as the merger mechanics that are mandatorily governed by the law of the jurisdiction of incorporation and claims related to financing that are frequently governed by New York law.

** 68% of Targets in the Study were incorporated in Delaware.

ISSUES IN STOCK DEALS

PRICING FORMULATIONS*

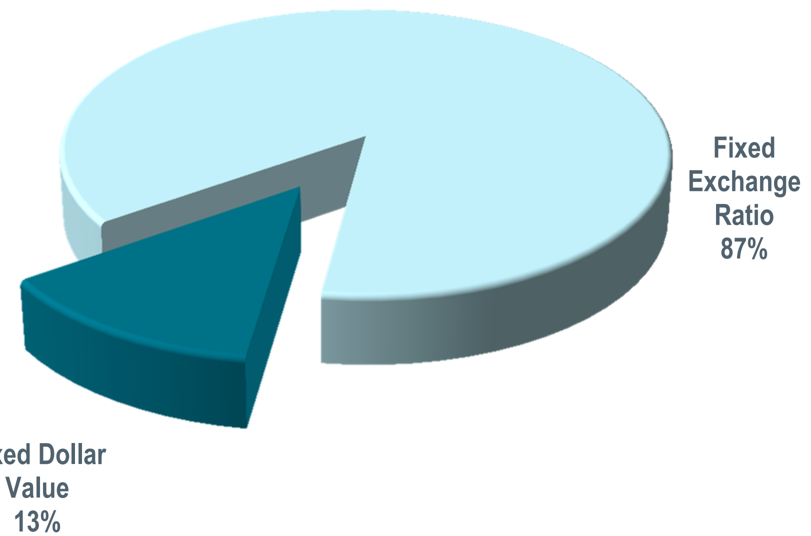
Fixed Exchange Ratio vs. Fixed Dollar Value

FIXED EXCHANGE RATIO

At the Effective Time, each outstanding share of Target stock will be converted into ***2 shares of Buyer stock***.

FIXED DOLLAR VALUE

At the Effective Time, each outstanding share of Target stock will be converted into ***the number of shares of Buyer stock determined by dividing $30 by the Closing Buyer Stock Price***.



* Includes all-stock deals and deals with mixed consideration.

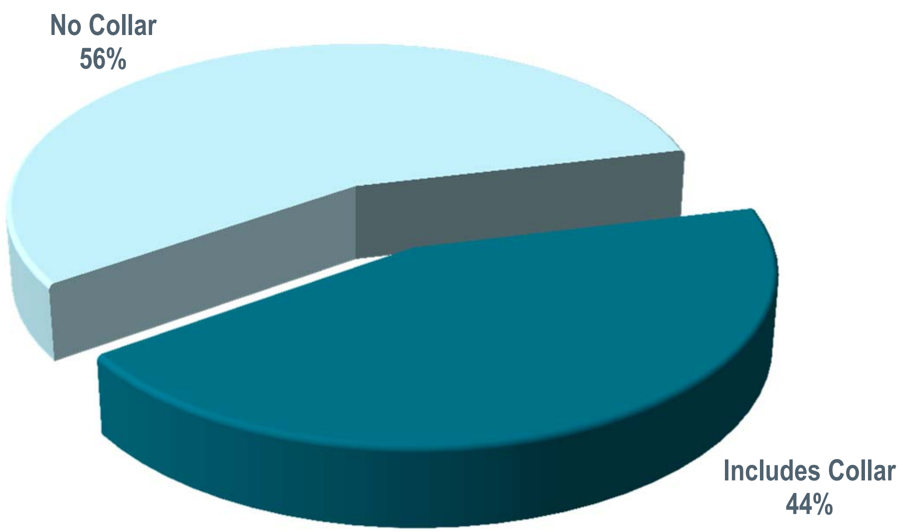
COLLARS

(Subset: Deals with Fixed Dollar Value Pricing Formulation)*

At the Effective Time, each outstanding share of Target stock will be converted into the number of shares of Buyer stock determined by dividing $30 by the Closing Buyer Stock Price; *provided* that

(i) if the Closing Buyer Stock Price is less than $10 per share, then each outstanding share of Target stock will be converted into 3 shares of Buyer stock; and

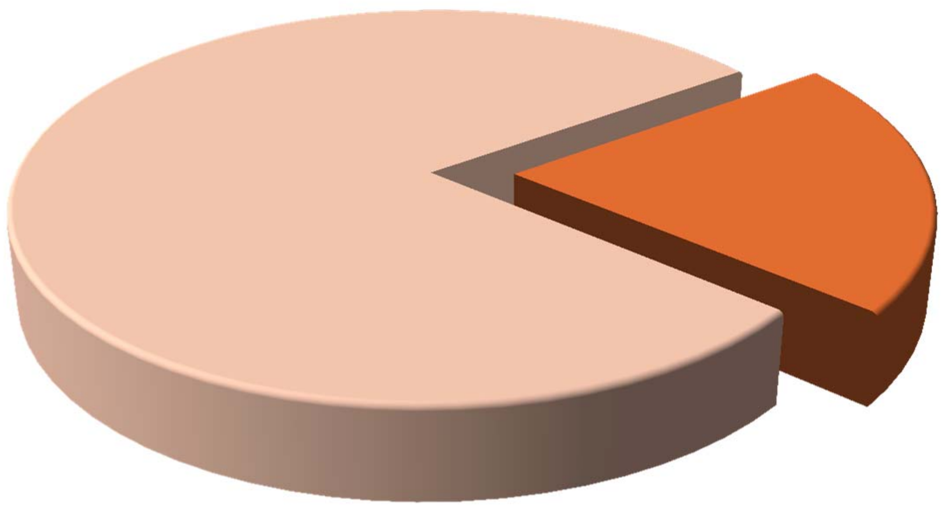
(ii) if the Closing Buyer Stock Price is greater than $20 per share, then each outstanding share of Target stock will be converted into 1.5 shares of Buyer stock.



* No deals with a fixed exchange ratio included a collar.

TAX-FREE REORGANIZATIONS

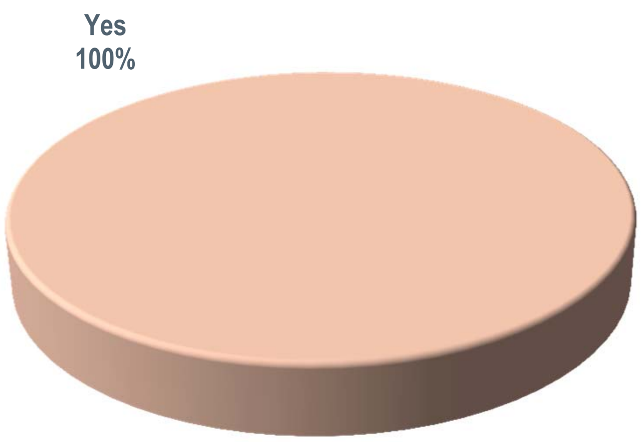
Is Transaction Structured as a Tax-Free Reorganization? (Subset: Mixed Consideration Deals)*



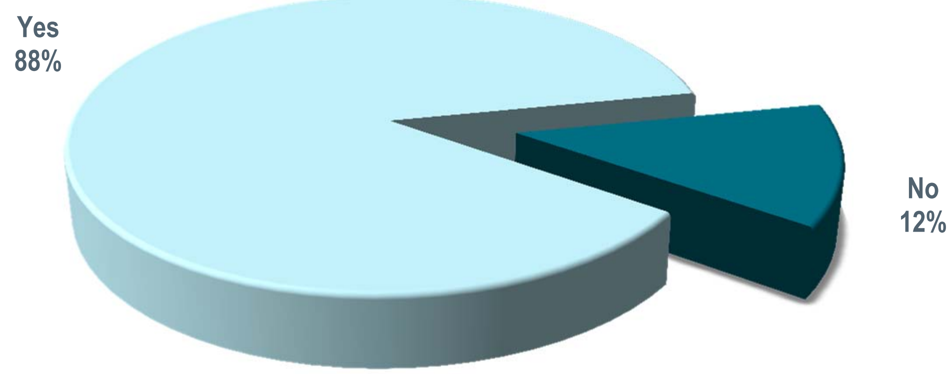
* Excludes deals in which less than 40% of consideration value at signing was stock and deals in which Target was a pass-through entity.

TARGET'S MAE "WALK RIGHT"*

All Stock



Mixed Consideration**

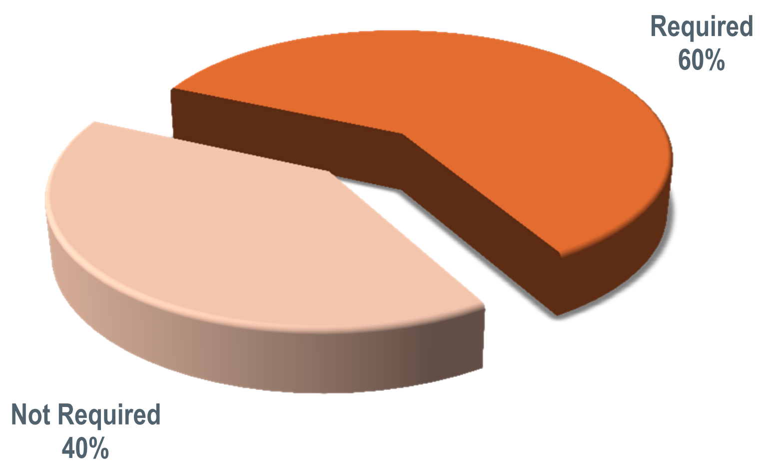


* MAE "walk right" includes closing condition, specific termination right in termination section or "back door" MAE (i.e., MAE closing condition or termination right through bring down of MAE representation). None of the deals included a standalone MAE termination right in Target's favor. Three deals included a "back door" MAE in Target's favor with no standalone MAE closing condition.

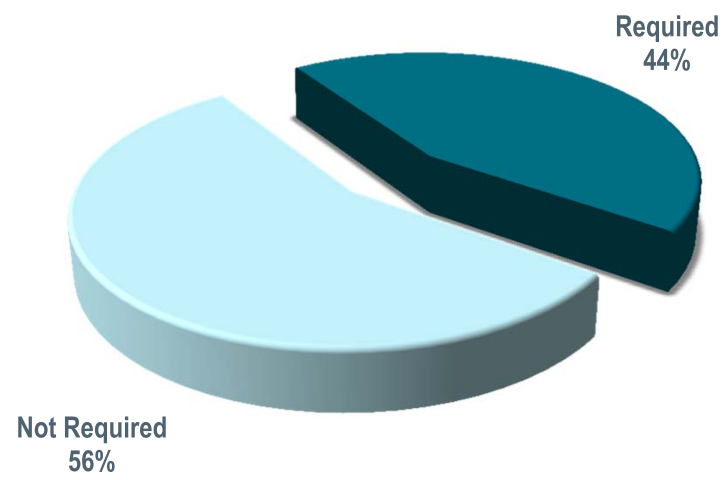
** Includes one deal structured as an exchange offer.

VOTE OF BUYER'S STOCKHOLDERS

All Stock



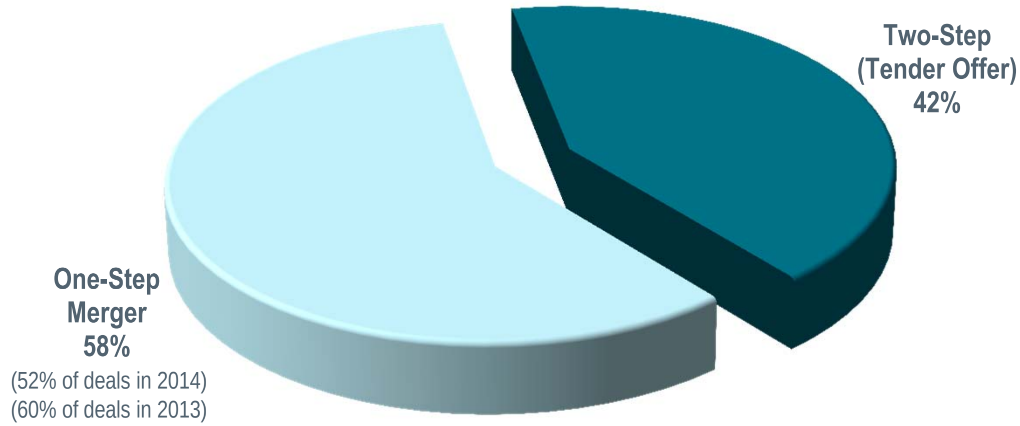
Mixed Consideration



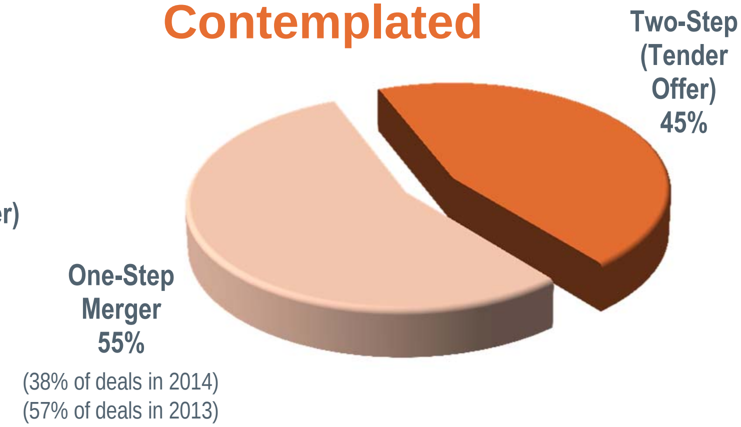
TWO-STEP CASH TRANSACTIONS

STRUCTURE OF CASH DEALS

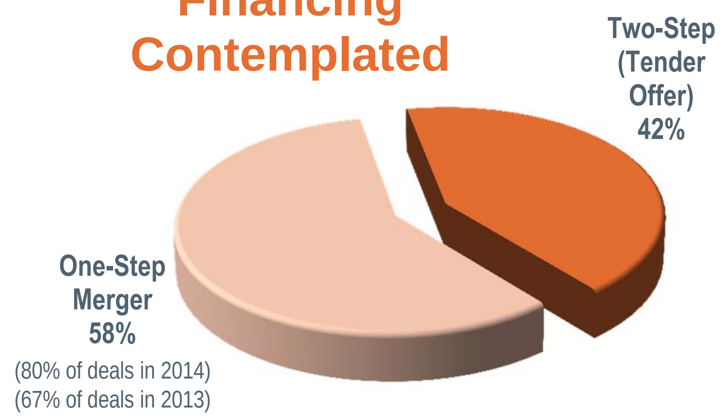
ALL CASH DEALS



No Financing Contemplated



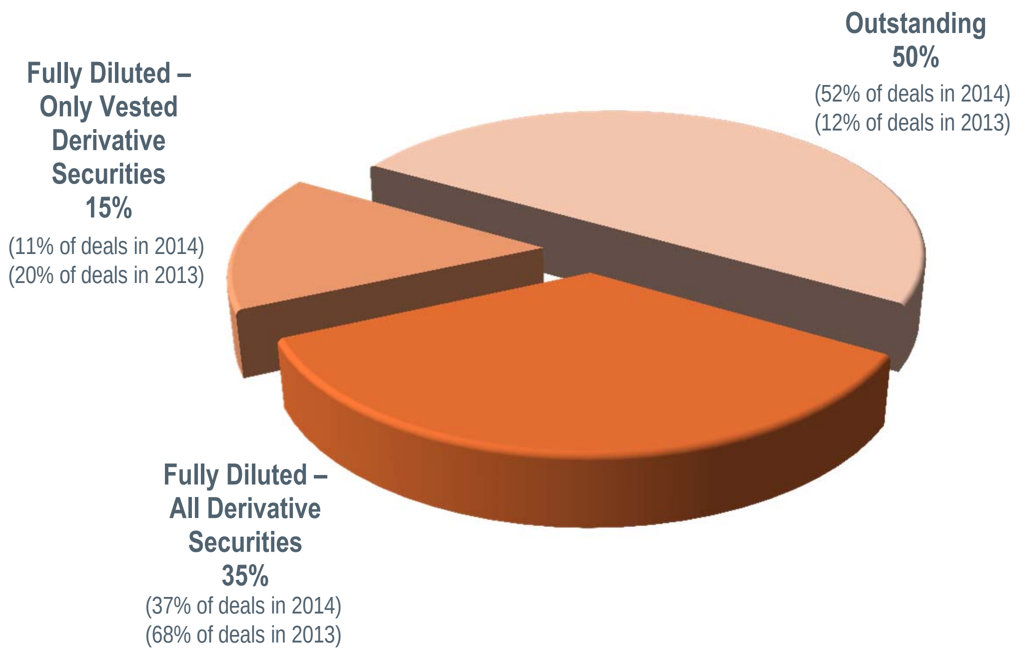
Financing Contemplated



CASH TENDER OFFER MINIMUM CONDITION

FULLY DILUTED SHARES OR OUTSTANDING SHARES*

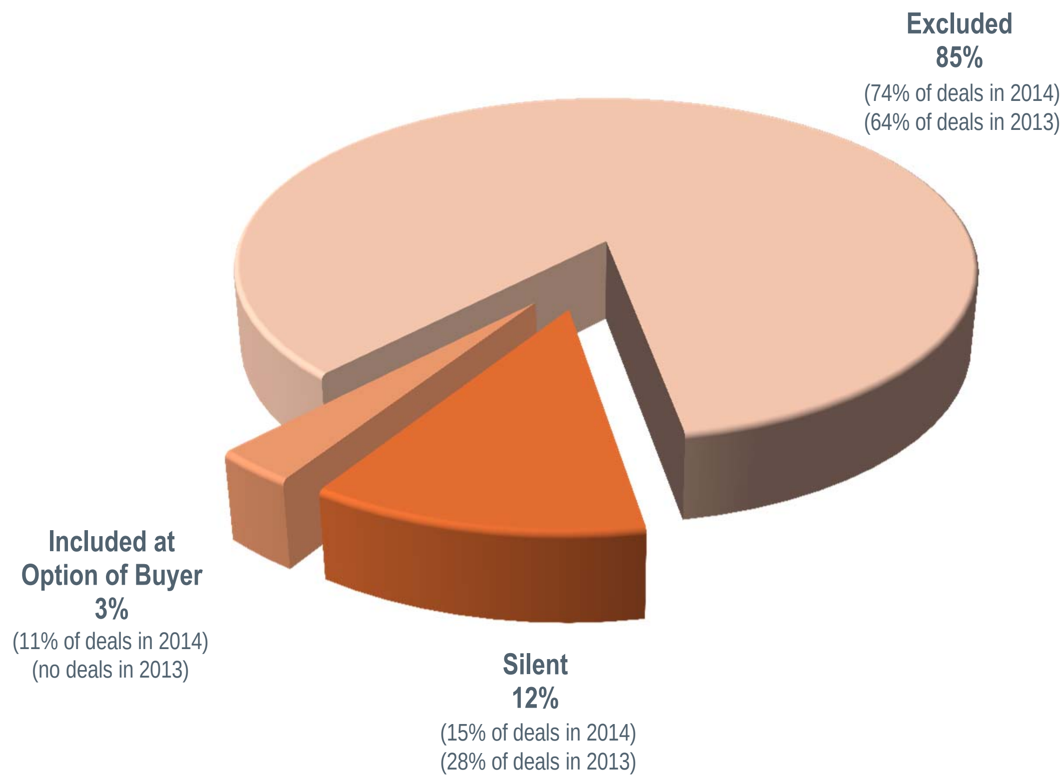
Merger Sub shall not be required to accept for payment any tendered shares of Common Stock if there shall not be validly tendered (and not withdrawn) before the Expiration Date that number of shares of Common Stock that represents at least a majority of the total number of outstanding shares of Common Stock ***[on a fully diluted basis/(assuming conversion or exercise of all derivative securities regardless of the conversion or exercise price, the vesting schedule or other terms and conditions thereof)] [excluding shares tendered by guaranteed delivery for which the underlying shares have not been received]*** on the Expiration Date (the “Minimum Condition”).



* Section 251(h) of the DGCL allows a Buyer to close a back-end merger without a stockholder vote if, among other things, a Buyer acquires in the tender offer that percentage of shares that would have been necessary to adopt the merger agreement (*i.e.* a majority of outstanding stock on an undiluted basis).

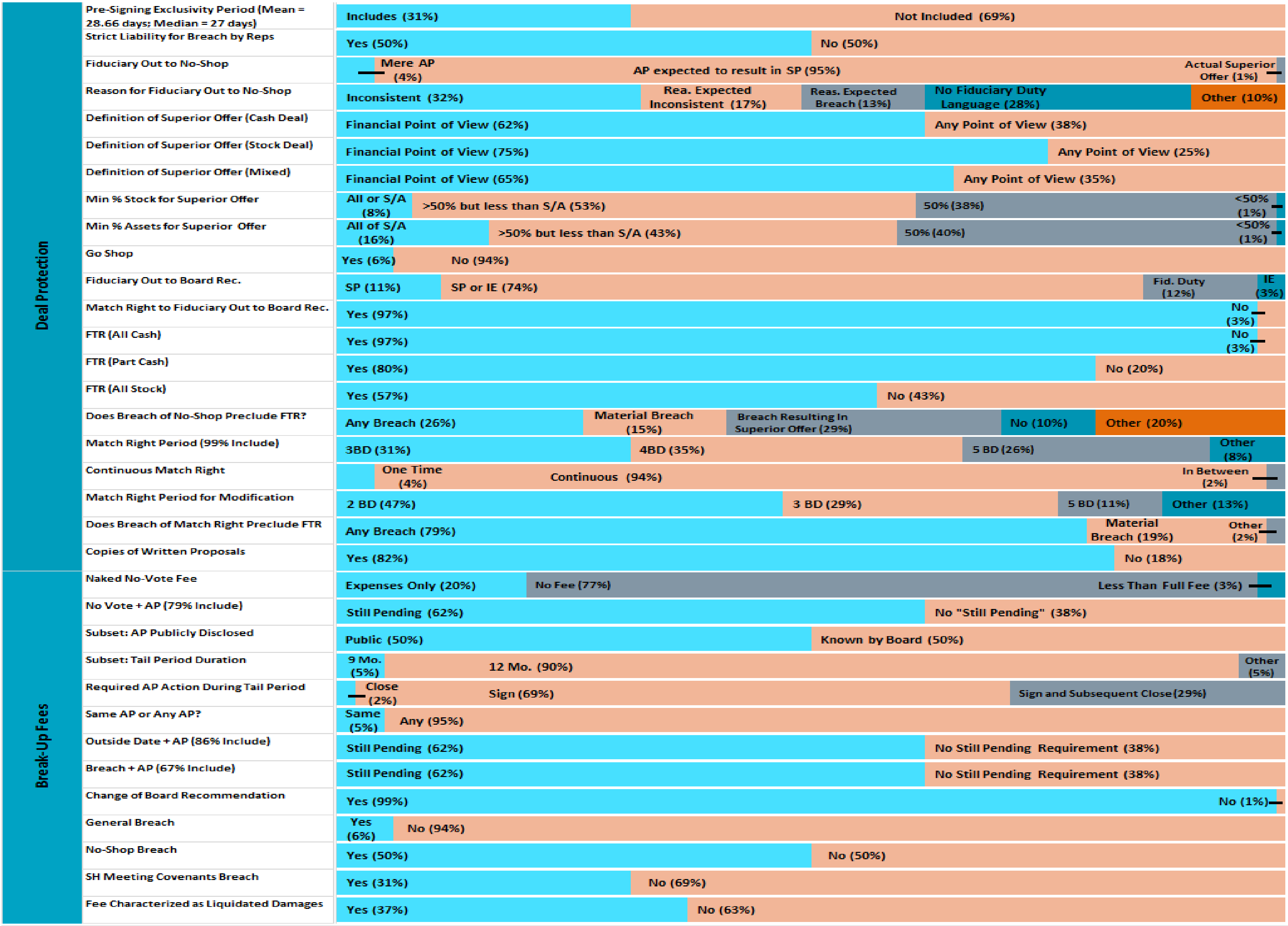
CASH TENDER OFFER MINIMUM CONDITION

GUARANTEED DELIVERIES EXCLUDED FROM MINIMUM CONDITION?

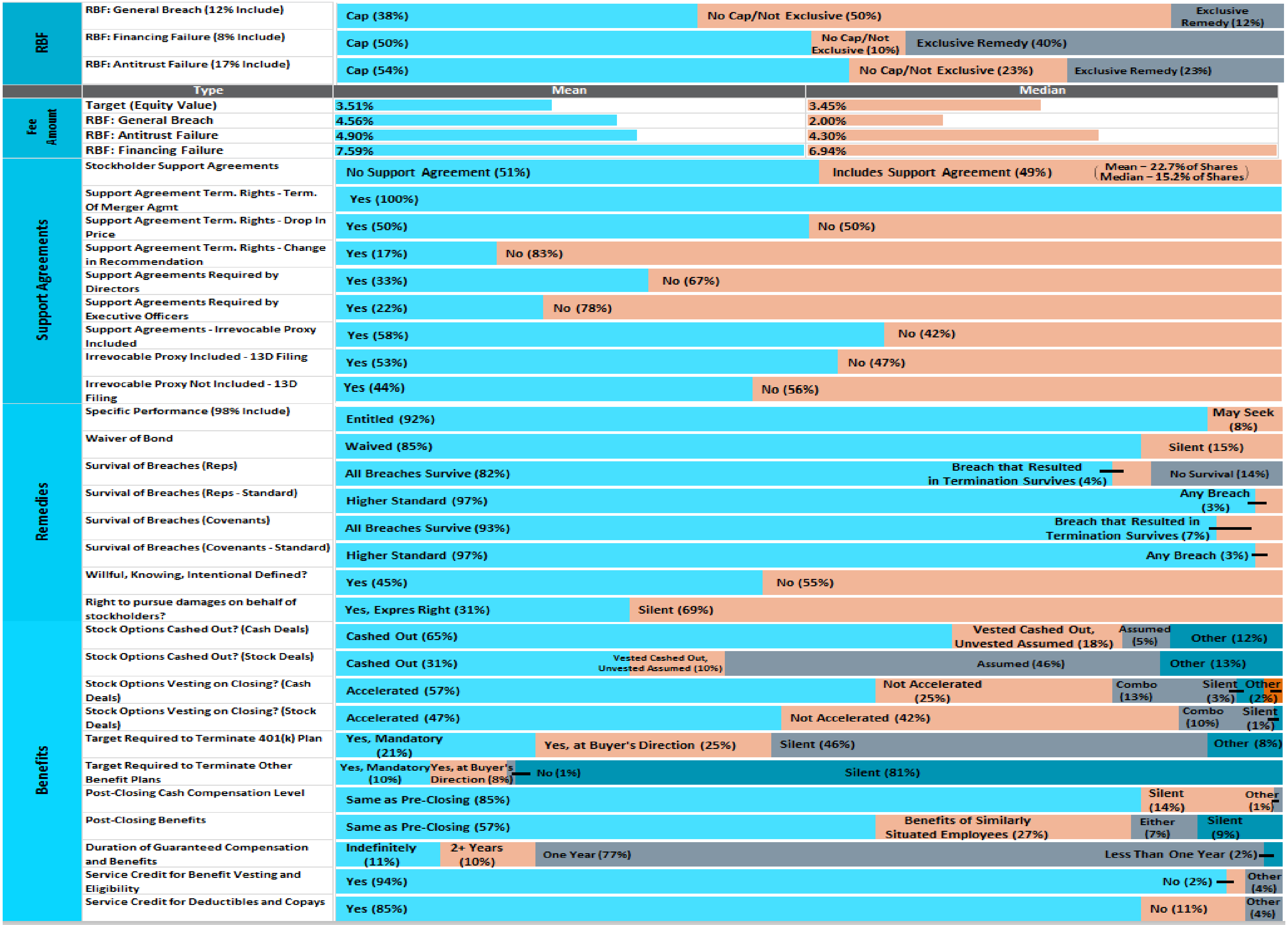


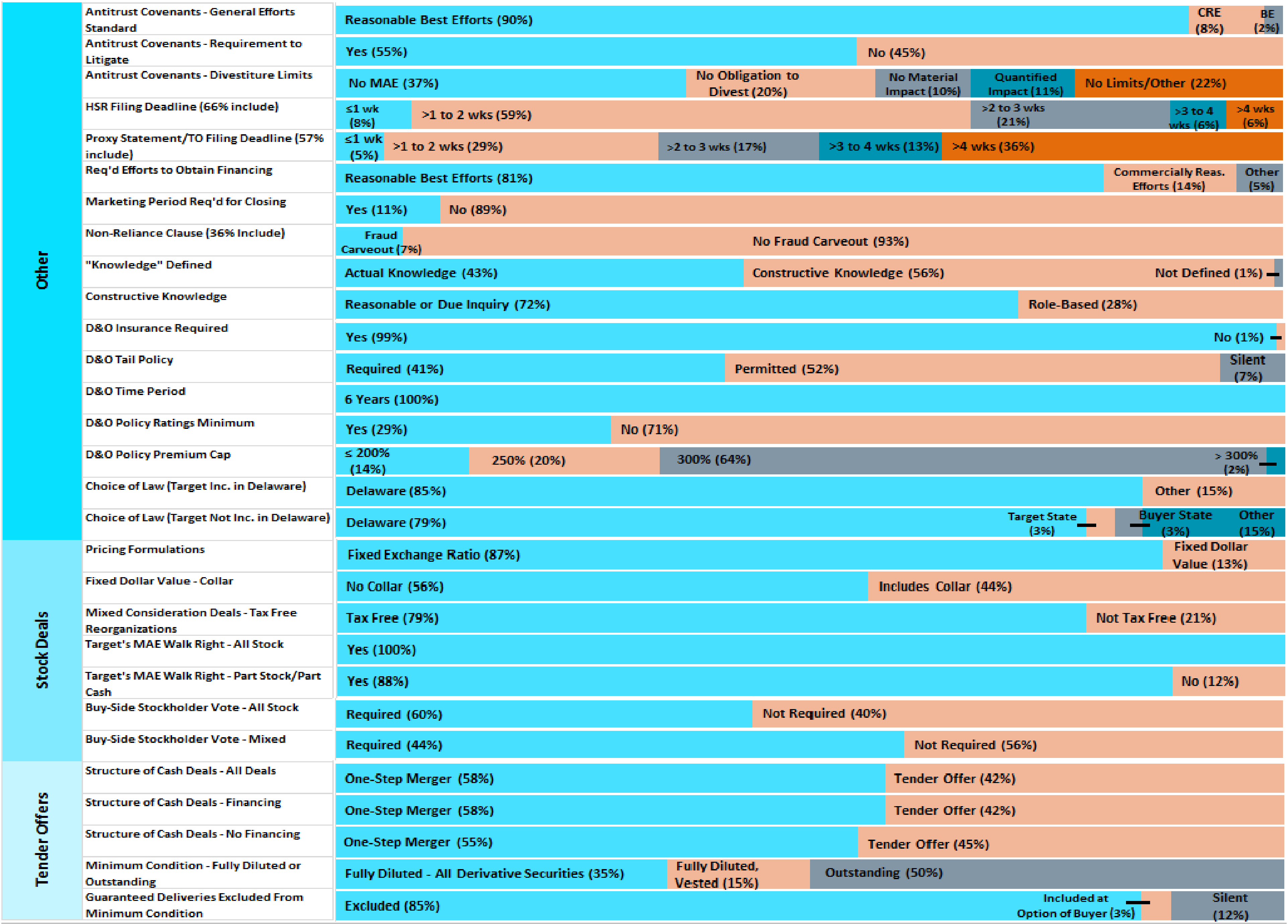
SELECTED DATA POINTS FROM PUBLIC TARGET STUDY

Reps/ Warranties	
Fair Presentation	Not GAAP Qualified (73%); GAAP Qualified (27%)
No Undisclosed Liabilities (99% Include)	All Liabilities (48%); GAAP Liabilities (52%)
Compliance with Law (100% Include)	Current Compliance (22%); Date Restricted (69%); No Limit (9%)
Subset: Notice of Violation	Includes (53%); Excludes (47%)
Subset: Includes Date Restriction	≤ 1 yr (1%); >1 to 2 yrs (12%); >2 to 3 yrs (46%); >3 to 4 yrs (35%); >4 to 5 yrs (6%)
10b-5 Representation	No (100%)
Accuracy of Reps at Signing	Yes (80%); No (20%)
Accuracy of Reps at Closing	Yes (100%)
Conditions	
Materiality Standard in "Bring Down"	Birfurcated (2%); MAE (98%)
Double Materiality Carveout	Yes (95%); No (5%)
Accuracy of Capitalization Rep	All (7%); Other (5%); All but De Minimis (72%); All but Specific (16%); Other (5%)
Target's Covenant Compliance (100% Include)	All Covenants (84%); Each Covenant (16%)
Buyer's MAE "Walk Right" (100% Include)	Includes "Prospects" (1%); No "Prospects" (99%)
MAE Definition - Adverse Effect on Consummation	Includes (65%); Excludes (35%)
MAE Carveouts - General Economy (98% include "disproportionate" language)	Includes (93%); Not Included (7%)
MAE Carveouts - Industry (100% include "disproportionate" language)	Includes (95%); Not Included (5%)
MAE Carveouts - Change in Law	Includes (99%); Not Included (1%)
MAE Carveouts - Announcement or Pendency	Includes (99%); Not Included (1%)
MAE Carveouts - Change in Accounting Principles	Includes (99%); Not Included (1%)
MAE Carveouts - Failure to Meet Projections	Includes (98%); Not Included (2%)
MAE Carveouts - War/Terrorism	Includes (97%); Not Included (3%)
MAE Carveouts - Market Price/Trading Volume	Includes (90%); Not Included (10%)
MAE Carveouts - Actions Required by Agreement	Includes (78%); Not Included (22%)
MAE Carveouts - Actions Taken with Buyer's Consent	Includes (70%); Not Included (30%)
MAE Carveouts - Stockholder Proceedings	Includes (54%); Not Included (46%)
Retention of Employees	No (98%); Yes (2%)
No Governmental Litigation (23% Include)	"Threatened" (10%); No "Threatened" (90%)
No Non-Governmental Litigation	Not Included (100%)
Availability of Financing	Not Included (100%)
Appraisal Rights (Cash Deal)	No (100%)
Appraisal Rights (Mixed)	Yes (6%); No (94%)



Deal Protection
Pre-Signing Exclusivity Period (Mean = 28.66 days; Median = 27 days)
Includes (31%)
Not Included (69%)
Strict Liability for Breach by Reps
Yes (50%)
No (50%)
Fiduciary Out to No-Shop
Mere AP (4%)
AP expected to result in SP (95%)
Actual Superior Offer (1%)
Reason for Fiduciary Out to No-Shop
Inconsistent (32%)
Rea. Expected Inconsistent (17%)
Reas. Expected Breach (13%)
No Fiduciary Duty Language (28%)
Other (10%)
Definition of Superior Offer (Cash Deal)
Financial Point of View (62%)
Any Point of View (38%)
Definition of Superior Offer (Stock Deal)
Financial Point of View (75%)
Any Point of View (25%)
Definition of Superior Offer (Mixed)
Financial Point of View (65%)
Any Point of View (35%)
Min % Stock for Superior Offer
All or S/A (8%)
>50% but less than S/A (53%)
50% (38%)
<50% (1%)
Min % Assets for Superior Offer
All of S/A (16%)
>50% but less than S/A (43%)
50% (40%)
<50% (1%)
Go Shop
Yes (6%)
No (94%)
Fiduciary Out to Board Rec.
SP (11%)
SP or IE (74%)
Fid. Duty (12%)
IE (3%)
Match Right to Fiduciary Out to Board Rec.
Yes (97%)
No (3%)
FTR (All Cash)
Yes (97%)
No (3%)
FTR (Part Cash)
Yes (80%)
No (20%)
FTR (All Stock)
Yes (57%)
No (43%)
Does Breach of No-Shop Preclude FTR?
Any Breach (26%)
Material Breach (15%)
Breach Resulting In Superior Offer (29%)
No (10%)
Other (20%)
Match Right Period (99% Include)
3BD (31%)
4BD (35%)
5 BD (26%)
Other (8%)
Continuous Match Right
One Time (4%)
Continuous (94%)
In Between (2%)
Match Right Period for Modification
2 BD (47%)
3 BD (29%)
5 BD (11%)
Other (13%)
Does Breach of Match Right Preclude FTR
Any Breach (79%)
Material Breach (19%)
Other (2%)
Copies of Written Proposals
Yes (82%)
No (18%)
Break-Up Fees
Naked No-Vote Fee
Expenses Only (20%)
No Fee (77%)
Less Than Full Fee (3%)
No Vote + AP (79% Include)
Still Pending (62%)
No "Still Pending" (38%)
Subset: AP Publicly Disclosed
Public (50%)
Known by Board (50%)
Subset: Tail Period Duration
9 Mo. (5%)
12 Mo. (90%)
Other (5%)
Required AP Action During Tail Period
Close (2%)
Sign (69%)
Sign and Subsequent Close (29%)
Same AP or Any AP?
Same (5%)
Any (95%)
Outside Date + AP (86% Include)
Still Pending (62%)
No Still Pending Requirement (38%)
Breach + AP (67% Include)
Still Pending (62%)
No Still Pending Requirement (38%)
Change of Board Recommendation
Yes (99%)
No (1%)
General Breach
Yes (6%)
No (94%)
No-Shop Breach
Yes (50%)
No (50%)
SH Meeting Covenants Breach
Yes (31%)
No (69%)
Fee Characterized as Liquidated Damages
Yes (37%)
No (63%)


RBF
RBF: General Breach (12% Include)
Cap (38%)
No Cap/Not Exclusive (50%)
Exclusive Remedy (12%)
RBF: Financing Failure (8% Include)
Cap (50%)
No Cap/Not Exclusive (10%)
Exclusive Remedy (40%)
RBF: Antitrust Failure (17% Include)
Cap (54%)
No Cap/Not Exclusive (23%)
Exclusive Remedy (23%)
Fee Amount
Type
Mean
Median
Target (Equity Value)
3.51%
3.45%
RBF: General Breach
4.56%
2.00%
RBF: Antitrust Failure
4.90%
4.30%
RBF: Financing Failure
7.59%
6.94%
Support Agreements
Stockholder Support Agreements
No Support Agreement (51%)
Includes Support Agreement (49%)
(Mean – 22.7% of Shares Median – 15.2% of Shares)
Support Agreement Term. Rights - Term. Of Merger Agmt
Yes (100%)
Support Agreement Term. Rights - Drop In Price
Yes (50%)
No (50%)
Support Agreement Term. Rights - Change in Recommendation
Yes (17%)
No (83%)
Support Agreements Required by Directors
Yes (33%)
No (67%)
Support Agreements Required by Executive Officers
Yes (22%)
No (78%)
Support Agreements - Irrevocable Proxy Included
Yes (58%)
No (42%)
Irrevocable Proxy Included - 13D Filing
Yes (53%)
No (47%)
Irrevocable Proxy Not Included - 13D Filing
Yes (44%)
No (56%)
Remedies
Specific Performance (98% Include)
Entitled (92%)
May Seek (8%)
Waiver of Bond
Waived (85%)
Silent (15%)
Survival of Breaches (Reps)
All Breaches Survive (82%)
Breach that Resulted in Termination Survives (4%)
No Survival (14%)
Survival of Breaches (Reps - Standard)
Higher Standard (97%)
Any Breach (3%)
Survival of Breaches (Covenants)
All Breaches Survive (93%)
Breach that Resulted in Termination Survives (7%)
Survival of Breaches (Covenants - Standard)
Higher Standard (97%)
Any Breach (3%)
Willful, Knowing, Intentional Defined?
Yes (45%)
No (55%)
Right to pursue damages on behalf of stockholders?
Yes, Expres Right (31%)
Silent (69%)
Benefits
Stock Options Cashed Out? (Cash Deals)
Cashed Out (65%)
Vested Cashed Out, Unvested Assumed (18%)
Assumed (5%)
Other (12%)
Stock Options Cashed Out? (Stock Deals)
Cashed Out (31%)
Vested Cashed Out, Unvested Assumed (10%)
Assumed (46%)
Other (13%)
Stock Options Vesting on Closing? (Cash Deals)
Accelerated (57%)
Not Accelerated (25%)
Combo (13%)
Silent (3%)
Other (2%)
Stock Options Vesting on Closing? (Stock Deals)
Accelerated (47%)
Not Accelerated (42%)
Combo (10%)
Silent (1%)
Target Required to Terminate 401(k) Plan
Yes, Mandatory (21%)
Yes, at Buyer's Direction (25%)
Silent (46%)
Other (8%)
Target Required to Terminate Other Benefit Plans
Yes, Mandatory (10%)
Yes, at Buyer's Direction (8%)
No (1%)
Silent (81%)
Post-Closing Cash Compensation Level
Same as Pre-Closing (85%)
Silent (14%)
Other (1%)
Post-Closing Benefits
Same as Pre-Closing (57%)
Benefits of Similarly Situated Employees (27%)
Either (7%)
Silent (9%)
Duration of Guaranteed Compensation and Benefits
Indefinitely (11%)
2+ Years (10%)
One Year (77%)
Less Than One Year (2%)
Service Credit for Benefit Vesting and Eligibility
Yes (94%)
No (2%)
Other (4%)
Service Credit for Deductibles and Copays
Yes (85%)
No (11%)
Other (4%)


Other
Antitrust Covenants - General Efforts Standard
Reasonable Best Efforts (90%)
CRE (8%)
BE (2%)
Antitrust Covenants - Requirement to Litigate
Yes (55%)
No (45%)
Antitrust Covenants - Divestiture Limits
No MAE (37%)
No Obligation to Divest (20%)
No Material Impact (10%)
Quantified Impact (11%)
No Limits/Other (22%)
HSR Filing Deadline (66% include)
≤1 wk (8%)
>1 to 2 wks (59%)
>2 to 3 wks (21%)
>3 to 4 wks (6%)
>4 wks (6%)
Proxy Statement/TO Filing Deadline (57% include)
≤1 wk (5%)
>1 to 2 wks (29%)
>2 to 3 wks (17%)
>3 to 4 wks (13%)
>4 wks (36%)
Req'd Efforts to Obtain Financing
Reasonable Best Efforts (81%)
Commercially Reas. Efforts (14%)
Other (5%)
Marketing Period Req'd for Closing
Yes (11%)
No (89%)
Non-Reliance Clause (36% Include)
Fraud Carveout (7%)
No Fraud Carveout (93%)
"Knowledge" Defined
Actual Knowledge (43%)
Constructive Knowledge (56%)
Not Defined (1%)
Constructive Knowledge
Reasonable or Due Inquiry (72%)
Role-Based (28%)
D&O Insurance Required
Yes (99%)
No (1%)
D&O Tail Policy
Required (41%)
Permitted (52%)
Silent (7%)
D&O Time Period
6 Years (100%)
D&O Policy Ratings Minimum
Yes (29%)
No (71%)
D&O Policy Premium Cap
≤ 200% (14%)
250% (20%)
300% (64%)
> 300% (2%)
Choice of Law (Target Inc. in Delaware)
Delaware (85%)
Other (15%)
Choice of Law (Target Not Inc. in Delaware)
Delaware (79%)
Target State (3%)
Buyer State (3%)
Other (15%)
Stock Deals
Pricing Formulations
Fixed Exchange Ratio (87%)
Fixed Dollar Value (13%)
Fixed Dollar Value - Collar
No Collar (56%)
Includes Collar (44%)
Mixed Consideration Deals - Tax Free Reorganizations
Tax Free (79%)
Not Tax Free (21%)
Target's MAE Walk Right - All Stock
Yes (100%)
Target's MAE Walk Right - Part Stock/Part Cash
Yes (88%)
No (12%)
Buy-Side Stockholder Vote - All Stock
Required (60%)
Not Required (40%)
Buy-Side Stockholder Vote - Mixed
Required (44%)
Not Required (56%)
Tender Offers
Structure of Cash Deals - All Deals
One-Step Merger (58%)
Tender Offer (42%)
Structure of Cash Deals - Financing
One-Step Merger (58%)
Tender Offer (42%)
Structure of Cash Deals - No Financing
One-Step Merger (55%)
Tender Offer (45%)
Minimum Condition - Fully Diluted or Outstanding
Fully Diluted - All Derivative Securities (35%)
Fully Diluted, Vested (15%)
Outstanding (50%)
Guaranteed Deliveries Excluded From Minimum Condition
Excluded (85%)
Included at Option of Buyer (3%)
Silent (12%)

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The Mergers & Acquisitions Committee was founded in the late 1980s and has over 4,000 members, including practitioners from all 50 states, five Canadian provinces and more than 53 different countries on five continents. The Committee is home to the world's leading merger and acquisition (M&A) attorneys and many other deal professionals such as investment bankers, accountants, and consultants. In addition, over ten percent of committee membership includes in-house counsel.

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