

M&A Update

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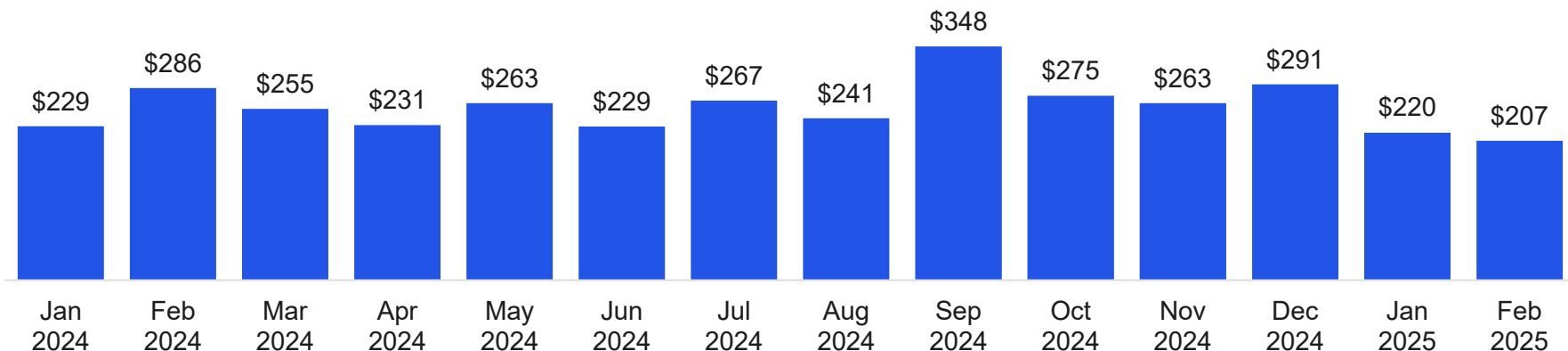
Early 2025 M&A Activity Fell Short of Expectations ...

Dealmakers headed into 2025 with optimism based on the election outcome, expectations of more accommodating antitrust enforcement, pent-up deal demand and solid macroeconomic conditions

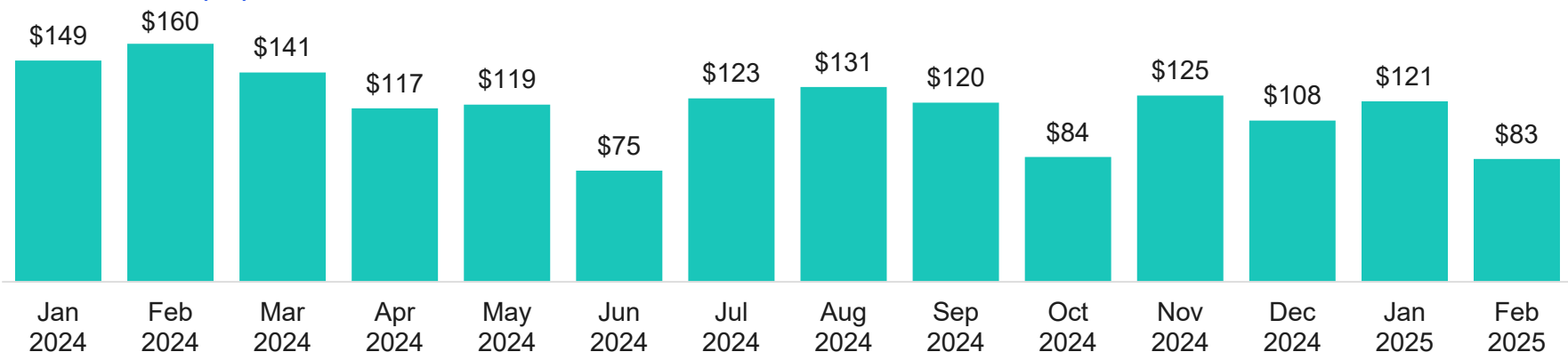
However, while early January M&A activity started strong, with large deals like Constellation / Calpine (\$16.4B*) and J&J / Intra-Cellular (\$14.6B*), momentum slowed as the deal environment was challenged by mixed economic data and more recent U.S. trade policy developments that have increased uncertainty

That said, market participants remain cautiously optimistic for a jump in deal activity in 2025 driven by moderating inflation, constructive debt markets, narrowing bid-ask spreads, the return of strategic buyers, pressure in the PE industry to deploy dry powder and return capital to LPs, and a more favorable regulatory environment

GLOBAL M&A DEALS (\$B)



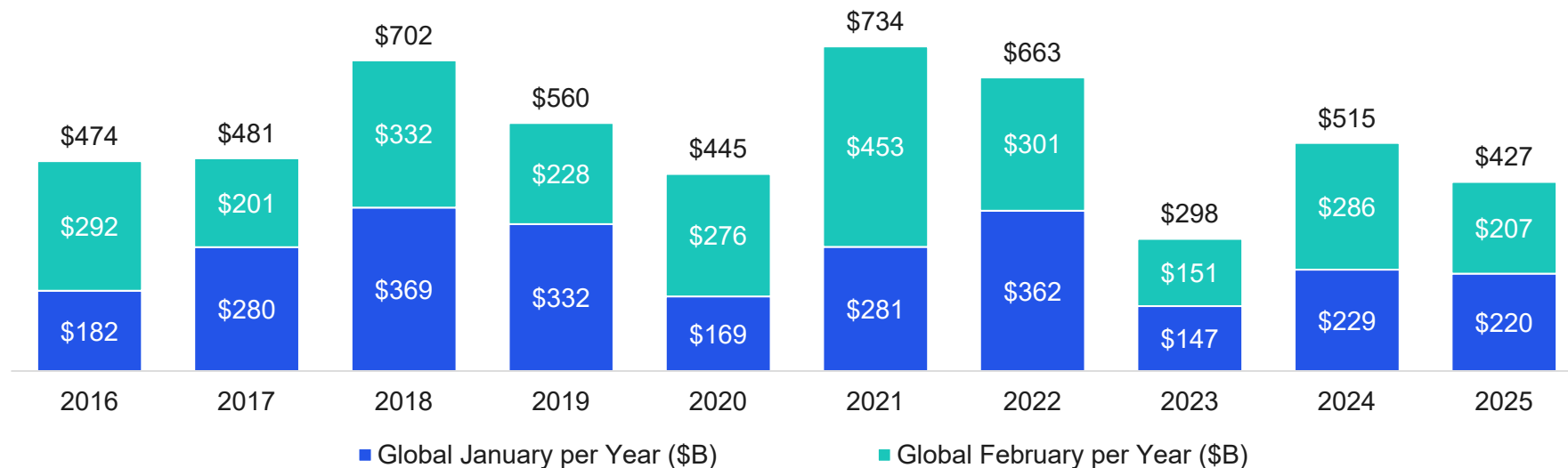
U.S. M&A DEALS (\$B)



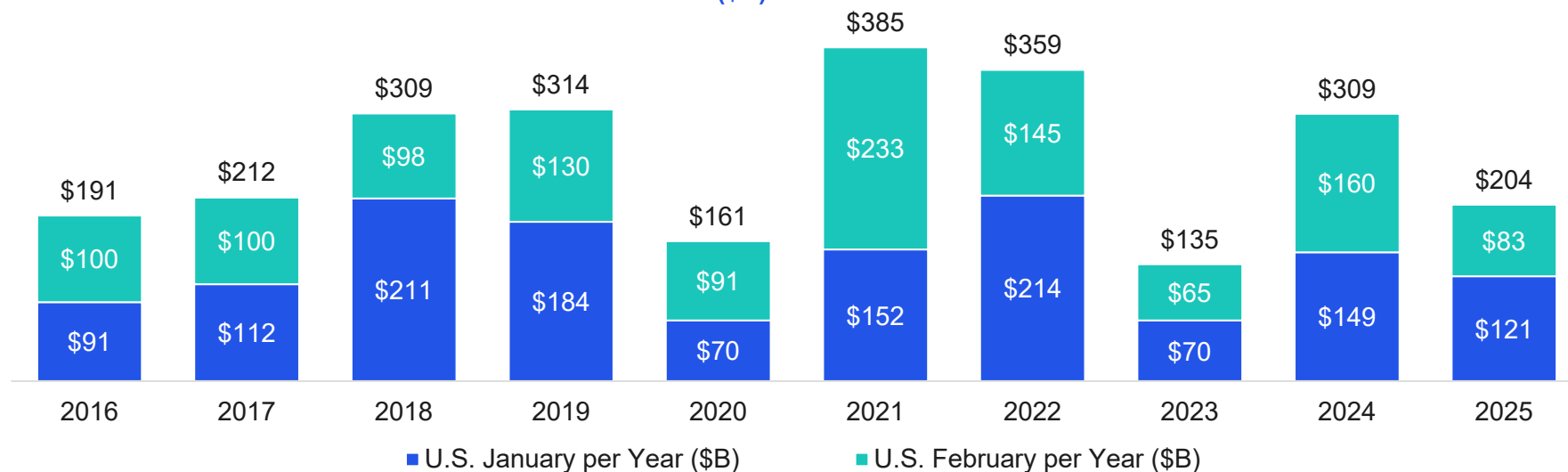
Source: LSEG, excludes withdrawn deals. * Based on equity value

... With Combined January / February Activity Below Most Recent Years

GLOBAL M&A DEALS – JANUARY AND FEBRUARY PER YEAR (\$B)



U.S. M&A DEALS – JANUARY AND FEBRUARY PER YEAR (\$B)



Source: LSEG, excludes withdrawn deals

Private Equity as “White Squire” for Activist Targets: Case Study



In late 2024 and January 2025, news reports indicated that activist hedge fund Anonym Capital (led by Charlie Penner, formerly of JANA and Engine No. 1) had planned a proxy fight to replace up to 6 members of the Henry Schein Board

- ▶ Anonym had been pushing for CEO succession, Board refreshment, cost cuts and optimization of capital allocation
- ▶ Prior to these new reports, KKR began opportunistically acquiring derivative interests in Henry Schein on the open market

On January 29, 2025, Henry Schein announced a strategic partnership with KKR, leading Anonym to drop its campaign

- ▶ KKR agreed to make a \$250M common stock investment in Henry Schein, which together with its existing holdings, will result in KKR becoming a 12% holder and the largest non-index fund shareholder in the company
- ▶ Two KKR representatives with deep sector experience will join Henry Schein’s Board as independent directors, along with a third independent director identified by Henry Schein
- ▶ KKR to partner with Henry Schein on a range of value creation initiatives, including succession planning and broad-based employee ownership program to underpin operational efforts
- ▶ The transaction is pending, subject to satisfaction of customary closing conditions, including receipt of regulatory approvals

KKR open to comparable investments in the future

- ▶ In its public statements, KKR expressed an openness to making similar investments in companies beset by activists if KKR has a good relationship with management and can secure formal governance rights

“If you’re a public company under attack give us a call!”

— PETE STAVROS
KKR CO-HEAD OF GLOBAL PRIVATE EQUITY

What is a “White Squire”?

- ▶ In a “white squire” investment, a company facing activist pressure sells a minority equity stake to an investor (vs. a “white knight” that acquires a company facing a hostile bid)
- ▶ Approach allows a company to gain operational expertise and market confidence through an investment from a well-regarded investor (sometimes also called “validation capital”)
- ▶ PE sponsors are able to acquire a minority stake without paying a control premium (in contrast to a take-private), while also gaining industry insights
- ▶ Sponsors may also opportunistically acquire minority stakes in the open market (including through derivative instruments)

White Squire Investments are Not New But Also Not Common

Company	Year	Investor	Investment	Activist
 HUDSON'S BAY	2017	R H Ô N E	\$500M	 L&B LANDandBUILDINGS
 cornerstone	2017	SILVERLAKE	\$300M	 PRÆSIDIUM INVESTMENT MANAGEMENT  EMINENCE CAPITAL
AVON	2016	cerberus	\$435M	 BARINGTON BARINGTON CAPITAL GROUP, L.P.
 NCR	2015	Blackstone	\$820M	PSAM

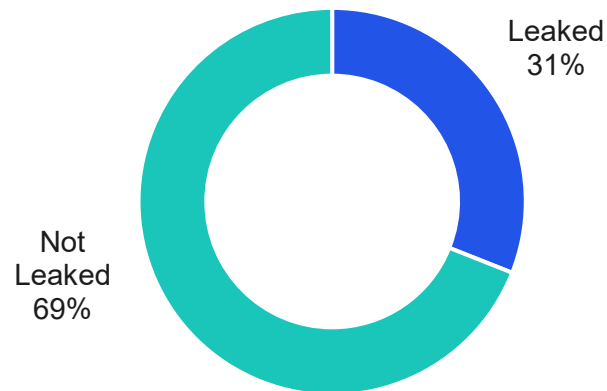
Funds or public companies considering similar white squire investments should carefully weigh a variety of factors with counsel (including disclosure obligations, fiduciary duties, antitrust, FDI and litigation risk)

M&A Deal Leaks Trends (1/2)

H/Advisors recently released an analysis of leak prevalence in ~500 M&A transactions of at least \$1B in 2024

31% OF ALL DEALS LEAKED, BUT LEAKS ARE MORE THAN TWICE AS PREVALENT IN LARGER DEALS, WITH ~2/3 OF DEALS >\$10B LEAKED

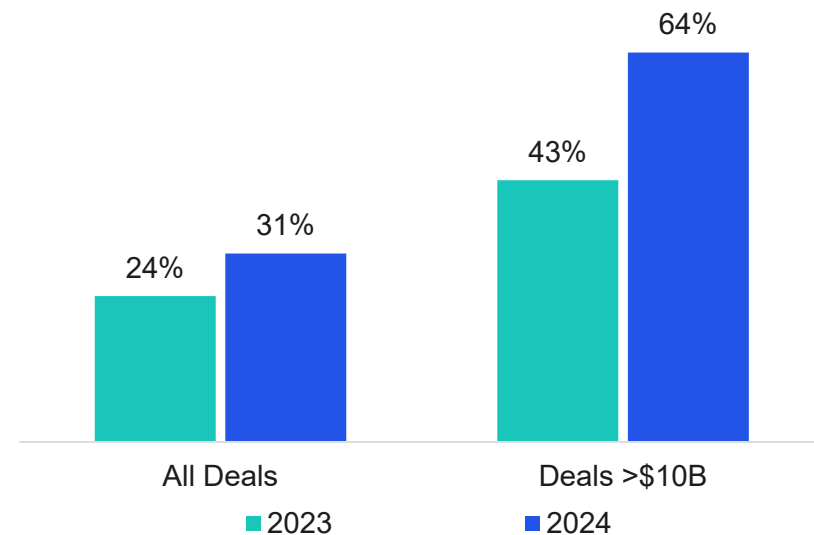
ALL DEALS



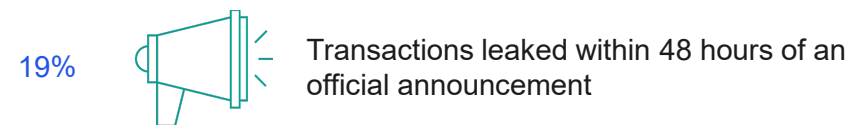
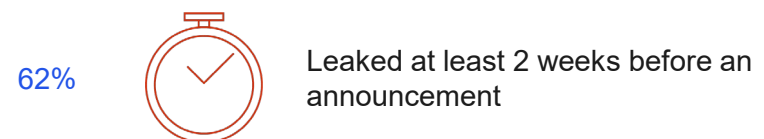
DEALS >\$10B



PREVALENCE OF LEAKS INCREASED Y-O-Y, ESPECIALLY FOR LARGER DEALS



THE MAJORITY OF DEAL LEAKS OCCUR MORE THAN 2 WEEKS BEFORE ANNOUNCEMENT

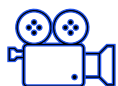


Source: H/Advisors. Data set includes transactions where at least one party (buyer or target) is based in the U.S.

M&A Deal Leaks Trends (2/2)

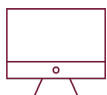
LEAKS ARE MORE PREVALENT IN HIGHLY VISIBLE SECTORS

62%



Media, Entertainment & Leisure

46%



Technology

46%



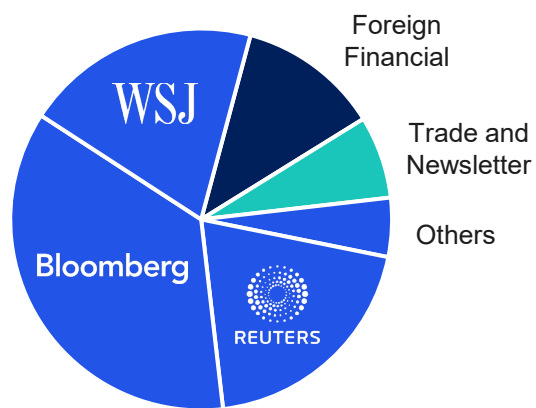
Telecom

36%



Consumer Retail

THE MOST PROMINENT FINANCIAL OUTLETS CONTINUE TO DRIVE THE MAJORITY OF LEAKS, YET DEAL REPORTING CAN COME FROM A VARIETY OF SOURCES



2024 LARGEST DEAL LEAKS

TARGET	ACQUIROR	\$B	OUTLET	LEAK TIME PRIOR TO ANNOUNCE
Kellanova	MARS	\$36.1	REUTERS	>1 Week
DISCOVER	CapitalOne	\$35.3	Bloomberg	Same Day
Ansys	SYNOPSYS	\$33.6	Bloomberg	1 Month
Endeavor Energy Resources	DIAMONDBACK ENERGY	\$28.1	REUTERS	2 Months
MarathonOil	ConocoPhillips	\$22.0	FT	Same Day
FRONTIER	verizon	\$20.3	WSJ	1 Day
IPG	Omnicom	\$16.5	Betaville	9 Months
AIRTRUNK	Blackstone	\$16.1	Bloomberg	1 Year
SHOCKWAVE MEDICAL	J&J	\$14.8	WSJ	>1 Week
NORD ANGLIA EDUCATION	NEUBERGER BERMAN CPP Investments IEQT	\$14.5	Bloomberg	8 Months

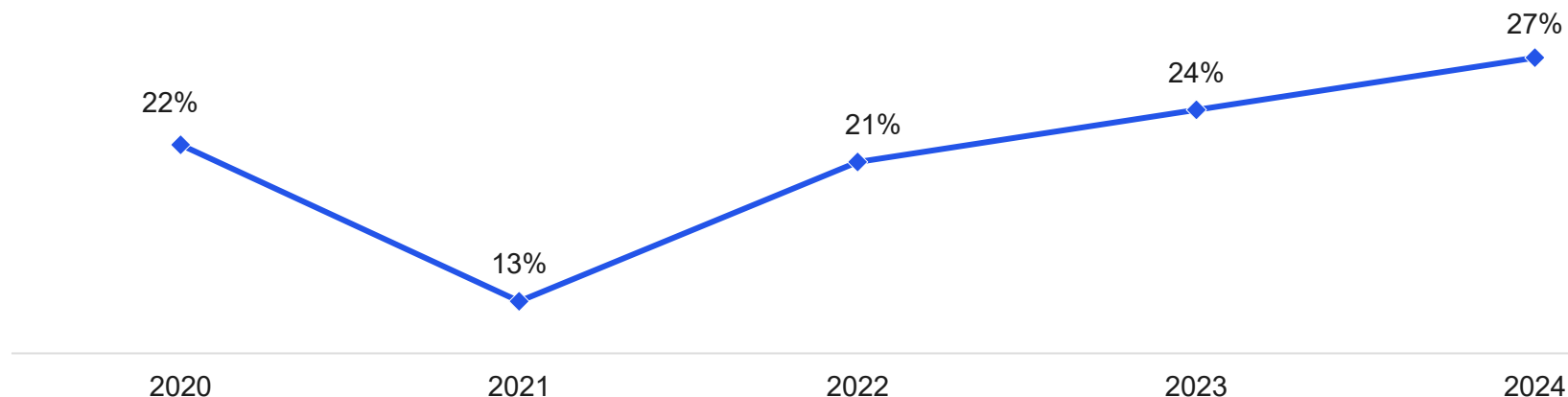
Source: H/Advisors. Data set includes transactions where at least one party (buyer or target) is based in the U.S.

Earn-Outs Remain Prevalent in the Current Market ...

Featured Kirkland Data

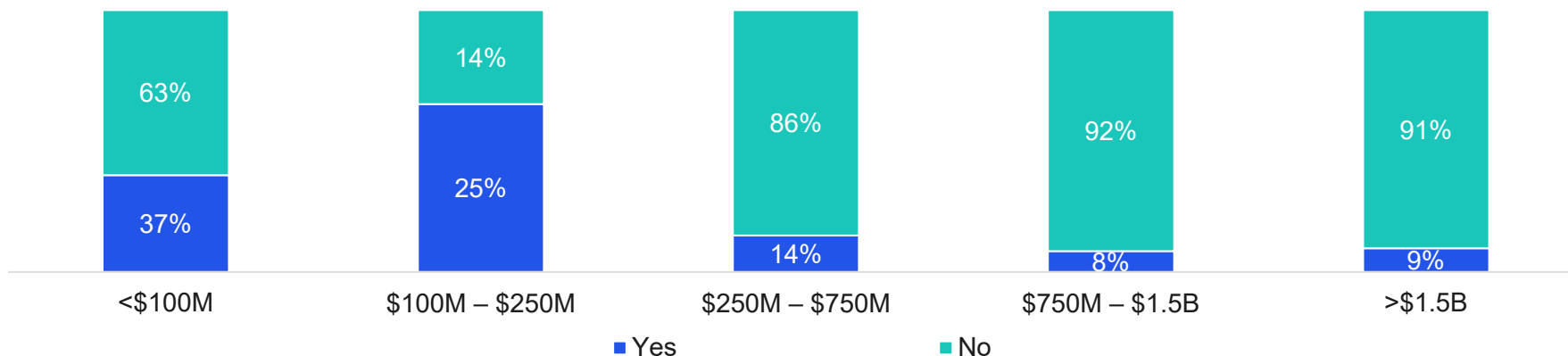
Usage of earn-outs started increasing in mid-2022 and have remained elevated in 2023 and 2024. The COVID-induced deal doldrums of H1 2020 saw a similar phenomena in earn-out usage that quickly abated as market conditions improved

EARN-OUT USAGE*



... But are More Common in Smaller Deals

EARN-OUT INCLUDED – BY DEAL SIZE**

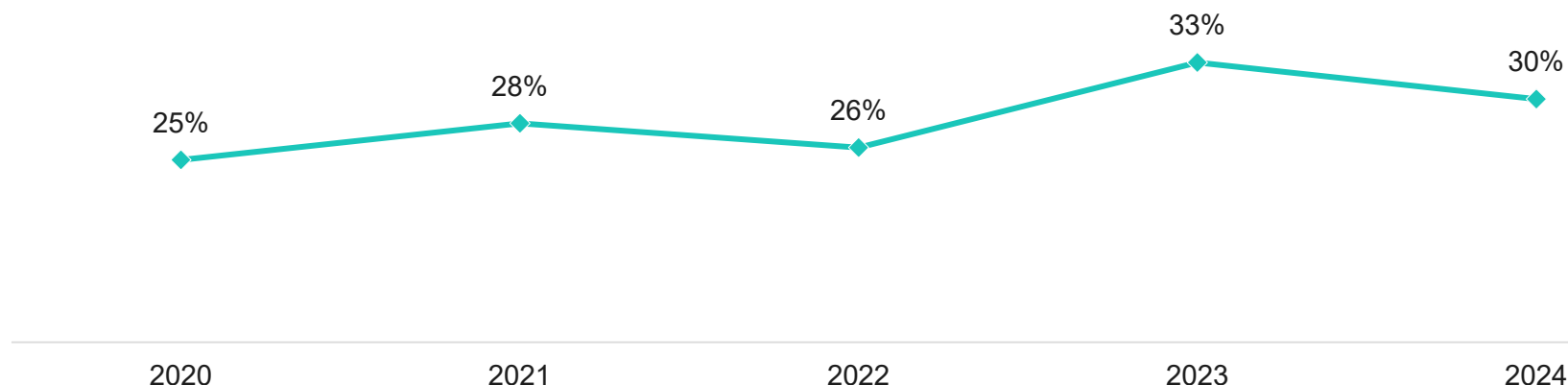


Source: CTRAN, Kirkland's proprietary deal database. * Based on ~1,600 private target deals since 2020 ** Based on ~900 private target deals over the last 3 years

... While Remaining Larger Overall (as a % of Deal Value) *Featured Kirkland Data*

Average earn-out amounts are consistently 20% - 30% of potential deal value, but slightly higher in the last 2 years than historically

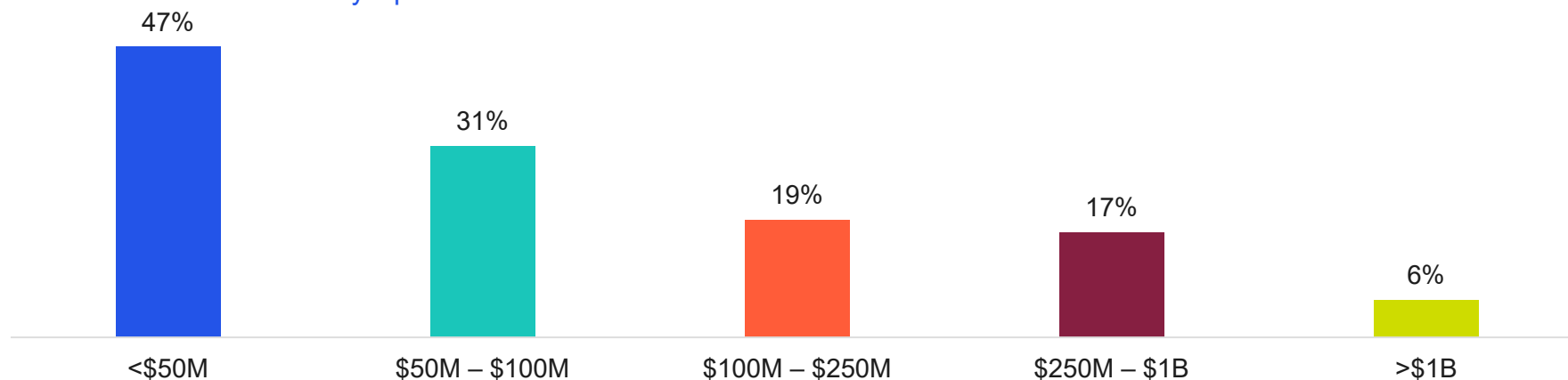
EARN-OUT SIZE (Average: % of Maximum Earn-out ÷ by Upfront Purchase Price)



... But Are Larger (as a % of Deal Value) in Smaller Deals

EARN-OUT SIZE (AVERAGE) – BY DEAL SIZE*

Maximum Earn-out Divided by Upfront Purchase Price



Source: CTRAN. *Based on ~200 private target deals with earn-outs in the last 3 years

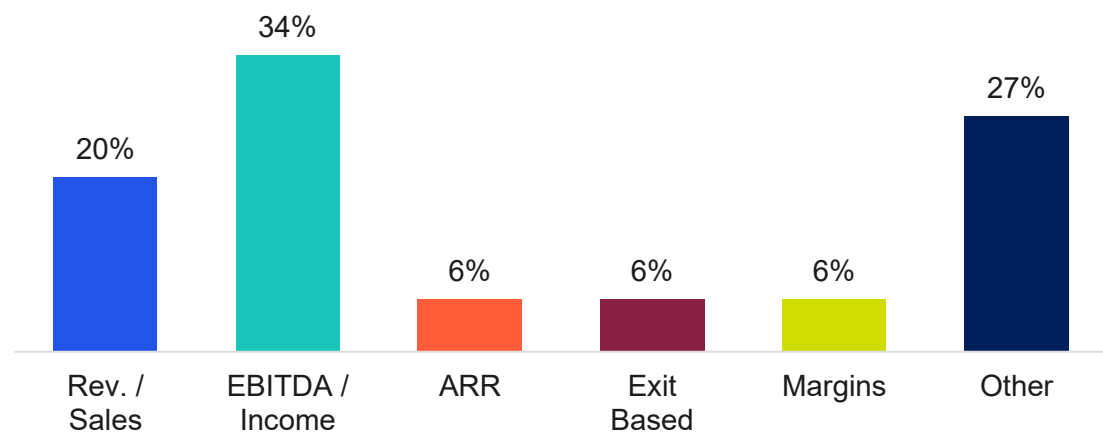
Earn-Outs: Trigger Criteria

Featured Kirkland Data

Common Earn-out Criteria		
Financial-Based Triggers	<ul style="list-style-type: none"> ▶ Revenue / Earnings / EBITDA ▶ Company or product-based 	<ul style="list-style-type: none"> ▶ Consider: <ul style="list-style-type: none"> – Tying to historical audited financials or scheduling accounting principles (e.g., revenue recognition) – Any complexities involved in defining the scope (e.g., which business lines, entities, etc.) – Complexity, and likelihood for a dispute, increases as earn-out metric moves further down the P&L (e.g., EBITDA is more complex than revenue)
Exit-Based Triggers	<ul style="list-style-type: none"> ▶ Net Proceeds on Exit <ul style="list-style-type: none"> – MOIC / IRR 	<ul style="list-style-type: none"> ▶ Consider appropriate treatment of inflows from/outflows to the buyer <ul style="list-style-type: none"> – Consider whether tax distributions should be excluded – May need to consider MOIC and IRR to address timing differences in cash flows
Milestone-Based Triggers	<ul style="list-style-type: none"> ▶ Regulatory Approval ▶ Product Development ▶ Customer Acquisition 	<ul style="list-style-type: none"> ▶ Seek to avoid ambiguous language <ul style="list-style-type: none"> – Use of colloquial or imprecise terms in defining milestones can invite misinterpretation and/or revisionist history if disputed years later – Courts may apply dictionary terms to cure ambiguity if precise definitions are not used – We are happy to provide lessons learned from recent cases

EARN-OUT – TRIGGER CRITERIA
% of Earn-out Deals with Listed Criteria

- ▶ Earn-outs are most often tied to either revenue or EBITDA targets
- ▶ We occasionally see private equity buyers using exit-based targets, for which payouts are tied to the sponsor investment performance on sale
- ▶ Regulatory approval targets are more common in life science deals, which are less represented in this data set
- ▶ Transaction parties use a wide variety of other earn-out targets, including ARR, margins, contract renewal, employee retention, etc.



Source: CTRAN. Based on ~200 private target deals with earn-outs in the last 3 years

Earn-Out Achievement / Dispute Prevalence

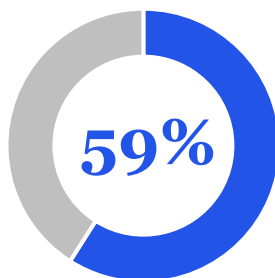
SRS Acquiom recently released a [report](#) assessing the degree to which earn-outs are achieved, and the prevalence of disputes, in 100 recent non-life science deals

A majority of deals with an earn-out due saw at least partial payment, but only 21% saw the maximum earn-out amount paid

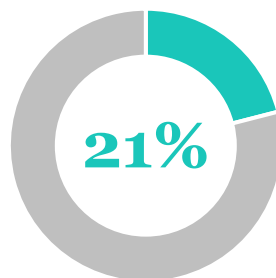
Earn-outs were contested in over 25% of deals, but less than 20% of those led to an increase in the earn-out payment

AGGREGATE EARN-OUT ACHIEVEMENT

Paid Out on Earn-out
(Partial or Full)



Aggregate Maximum Earn-out
Potential Paid



EARN-OUT DISPUTE PREVALENCE

28%

Sellers contested
the earn-out

17%

Contested earn-out
where sellers were
successful (payment
increased)

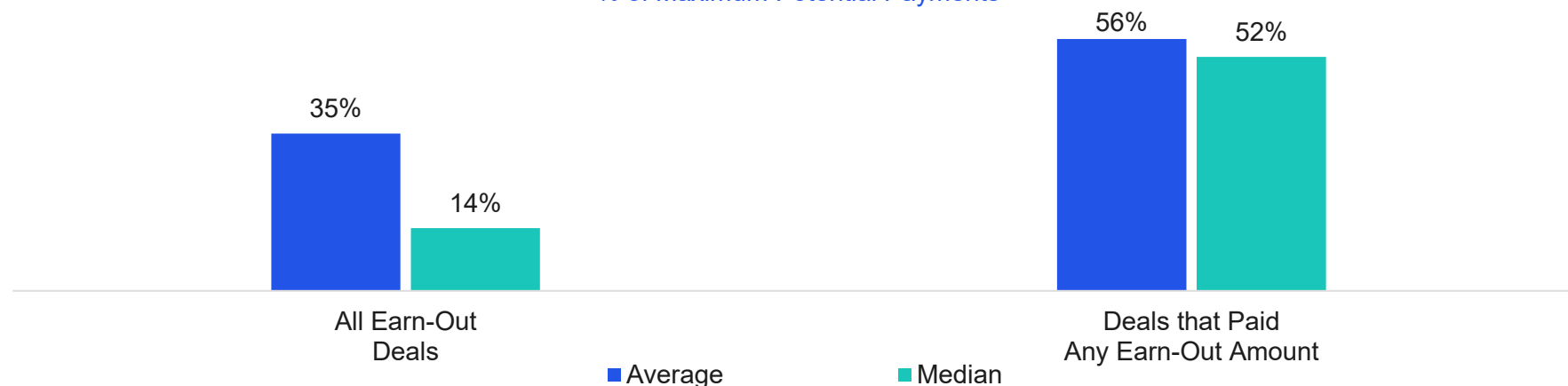
3%

Earn-out was
disputed and
resolved via
litigation or
arbitration

Median payout across all deals was 14%, while median payout for deals with at least some earn-out payment was 52%

EARN-OUT ACHIEVEMENT DETAILS

% of Maximum Potential Payments





Source: SRS Acquiom. Dataset excludes pending earn-outs, such as contested earn-outs that are not yet resolved

Final Outbound Investment Controls on U.S. Investment in China

The U.S. Department of the Treasury (“Treasury”) [released](#) final regulations on October 28, 2024 (the “Final Rule”), which took effect on January 2, 2025, implementing the Biden EO1 on outbound investment. Since the release of the Final Rule, Treasury has held meetings with key stakeholders and issued responses to “Frequently Asked Questions,” providing further clarity into how it will administer and enforce the Final Rule

- ▶ The Final Rule imposes obligations on “U.S. persons” to notify Treasury concerning certain transactions (“covered transactions”) or refrain from / take actions to prohibit covered transactions related to Chinese and Chinese-owned or -affiliated companies engaged in specified activities in three specified sectors:
 - Semiconductors and microelectronics
 - Quantum information technologies
 - Artificial intelligence
- ▶ [Covered transactions](#) include: (i) acquisition of an equity interest or contingent equity interest in a covered foreign person; (ii) provision of debt financing to a covered foreign person, where such debt financing affords the U.S. person certain financial or governance rights characteristic of an equity investment; (iii) certain acquisitions, leasing or other development of operations, land, property or other assets in a country of concern; (iv) entrance into a joint venture with a person of a country of concern wherein the JV will engage in a covered activity; and (v) acquisition of a limited partner or equivalent interest in a fund, that a U.S. person knows at the time of the acquisition likely will invest in a person of a country of concern engaged in a covered sector
 - U.S. persons’ obligations extend to actions concerning their “controlled foreign entities” (i.e., offshore funds) – it is not possible to avoid application for the rule based on use of a non-U.S. investment vehicle
- ▶ The Trump Administration has indicated it will maintain, and likely expand, these outbound investment controls

KEY TAKEAWAYS





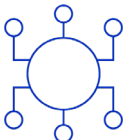
Due Diligence		▶ U.S. persons should undertake what Treasury calls a reasonable and diligent inquiry to verify that their capital will not be used for prohibited transactions, or that they are aware of notifiable transactions, including (i) seek representations and warranties from an investment target concerning whether it engages in activities that would be captured by the Final Rule, (ii) insist on written responses to targeted diligence questions concerning the investment target’s involvement in any covered activities and (iii) carefully review public information about the investment target
Potential Penalties		▶ The Final Rule outlines both civil and criminal penalties for parties that fail to comply and grants Treasury the authority to nullify, void, or otherwise compel the divestment of any prohibited transaction, and can refer divestment actions to the Department of Justice for enforcement

¹ On August 9, 2023, President Biden [issued](#) Executive Order 14105, “Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern” (the “EO”), pursuant to the *International Emergency Economic Powers Act* (“IEEPA”)

“America First Investment Policy” Expected to Further Enhance Foreign Investment Restrictions

On February 21, 2025, President Trump signed a National Security Presidential Memorandum detailing his administration’s “[America First Investment Policy](#),” which signals heightened focus on PRC investments and tightening of CFIUS and outbound investment controls

- ▶ The Policy directs the U.S. government (USG) to implement new measures to protect America’s national security interests from threats posed by “foreign adversaries” (which are defined as the PRC, Cuba, Iran, the DPRK, Russia and Venezuela)

Key Elements of the Policy		
Targeting Chinese Investments		<ul style="list-style-type: none">▶ Proposing enhancements to CFIUS’ legal authority to target Chinese investments in sensitive sectors<ul style="list-style-type: none">— The Policy directs the USG to use all available legal tools, including CFIUS, to restrict investments by PRC-affiliated persons in identified “critical” sectors (including technology, critical infrastructure, healthcare, agriculture, energy and raw materials)
Focus on “Third Country” Risks		<ul style="list-style-type: none">▶ Highlighting the PRC’s efforts to use investments in third-country investment funds to gain indirect access to U.S. IP and technology and the corresponding risks
Changes to CFIUS Mitigation Practices		<ul style="list-style-type: none">▶ Indicating that CFIUS will decrease its use of mitigation agreements to address national security risks arising from investments from foreign adversary countries<ul style="list-style-type: none">— This is presumably because CFIUS will simply decline to approve such investments
CFIUS “Fast Track” Approval		<ul style="list-style-type: none">▶ Previewing the creation of a new (and yet undefined) “fast track” process to facilitate increased investment from allied and partner countries in U.S. advanced technologies and similar sensitive sectors
Expanding Outbound Investment Controls		<ul style="list-style-type: none">▶ Expanding outbound investment restrictions to cover (i) investments by U.S. pension funds and university endowments and (ii) certain investments in biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy and other areas implicated by the PRC’s national Military-Civil Fusion strategy (in addition to currently-covered sectors, semiconductors, artificial intelligence and quantum)