WHITE PAPER | VENUE DEAL SOLUTIONS

Navigating the Modern Deal Process: Closing

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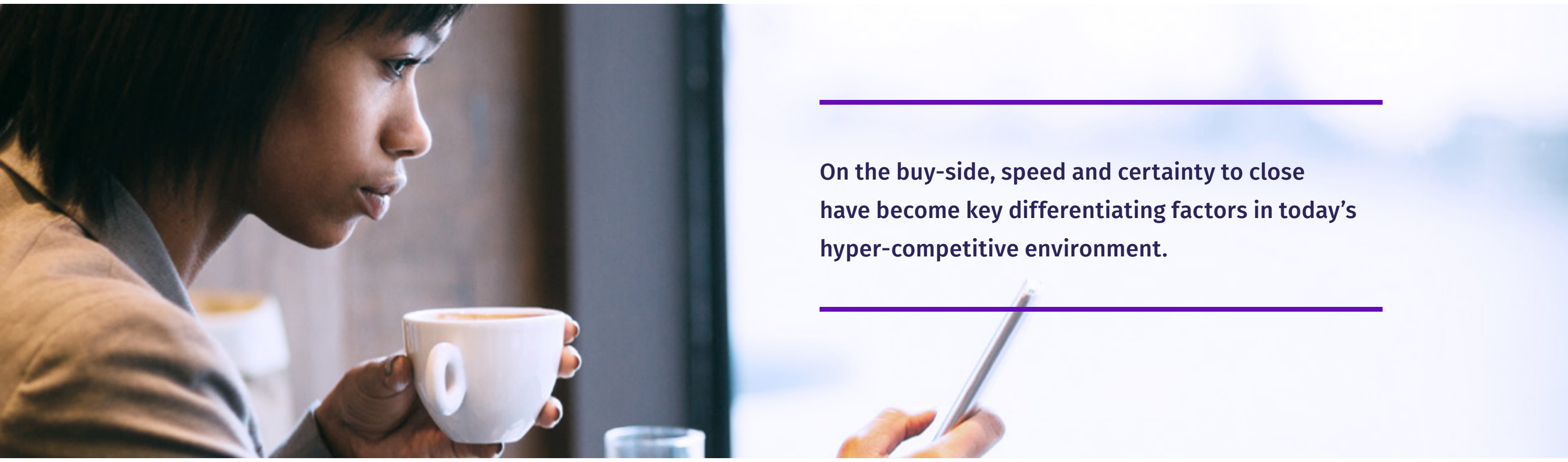
METHODOLOGY

Mergermarket surveyed 50 senior global executives to learn about their strategy and views regarding M&A closing on the sell-side. Respondents were split geographically across North America (34 percent), EMEA (34 percent), and Asia-Pacific (32 percent), as well as divided among financial advisors (66 percent) and private equity executives (34 percent).

Introduction



On the buy-side, speed and certainty to close have become key differentiating factors in today's hyper-competitive environment.

When Verizon announced that it would acquire troubled internet company Yahoo! for $4.8 billion — a deal that many considered a victory for the seller. But just two months later, the offer came into question when Yahoo! admitted that over 500 million of its user accounts had been breached. The fortuitous sale to Verizon seemed to be in jeopardy.

The hacking scandal faced by Yahoo! is just one example of a disruption that can take place before a proposed transaction closes. In megadeals and mid-market deals alike, due diligence can uncover skeletons in the closet; regulatory approvals can stall the process; and disagreements over the deal terms can sour the relationship between the two sides, among other scenarios.

Sellers have tools at their disposal to make it through to closing, however. In the case of Yahoo!, the two sides agreed to a discount of around $350 million as a result of the data breaches. Indeed, lowering the valuation is one of the main ways a seller can rescue a deal that comes under threat.

On the buy-side, speed and certainty to close have become key differentiating factors in winning deals in today's hyper-competitive environment. Many sellers have a broad choice of bidders to pick from, and a comprehensive offer that comes in faster than the competition often has an advantage.

In order to better understand the most pressing issues related to the closing stage of M&A deals, Donnelley Financial Solutions (DFIN) commissioned Mergermarket to conduct interviews with 50 deal advisors and private equity executives. Respondents explained that deft navigation of the closing phase is critical to M&A success. A more in-depth interview after Part 2 of the report with Mike Siska, managing director at investment bank William Blair, reveals insights regarding the role of emotion in deal closing and the potential pitfalls between signing and closing.

KEY FINDINGS FROM THE SURVEY INCLUDE:

- Speed to close is a priority for sellers. Nearly two-thirds of our respondents said that speed to close has become one of the most important factors (16 percent) or a highly important factor (48 percent) on the sell-side of a deal.
- Value transfer is the most effective means of securing a buyer. Higher breakup fees (36 percent) and discounts to the purchase price (30 percent) are viewed as the best ways to achieve faster closing.
- Sellers often make concessions in exchange for a faster close. Forty-six percent of respondents said they had worked on a deal in which the seller agreed to additional terms due to "seller fatigue" and 62 percent had seen sellers agree to a lower valuation.

PART ONE:

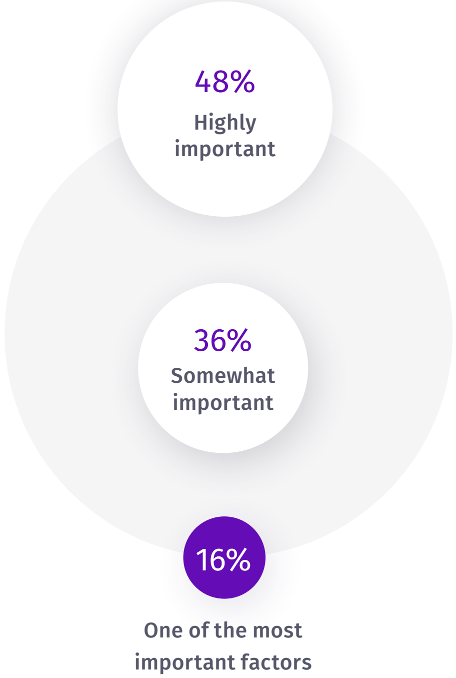
The value of prompt closing

A swift pace can make all the difference

UK-based education company Thomas International put itself up for sale in November 2017. In just a few weeks' time, the provider of cognitive tests and business training solutions planned to have first-round bids in hand, according to a Mergermarket intelligence report. A source familiar with the situation said private equity houses were predicted to "line up for the business."

Such is the ultra-fast-paced world of modern M&A: a company can announce its availability to sellers and reasonably expect to receive initial offers in a matter of weeks. In this competitive environment, speed and certainty to close have become critical to winning deals.

On the sell-side of a typical M&A deal, how important a factor is the speed to close?



In our survey, 16 percent of dealmakers said that speed to close had become one of the most important factors in a typical M&A deal, while 48 percent called it a highly important factor. Just over one-third (36 percent) said the speed variable is only somewhat important.

However, it should be said that the views of some of our respondents were nearly diametrically opposed on the issue of closing speed. A partner at a Dutch mid-market investment bank said it was highly important: “You have to make it like a pressure cooker to achieve the best deal in my experience. Once there are delays, you have price negotiations, doubts, and potentially other roadblocks.”

Meanwhile, the Director of Investment at a Swedish private equity firm took the opposite side of the argument: “The most appropriate buyer prepared to pay the most is not necessarily the fastest one.”

Of course, the relative importance of closing speed depends partly on the industry, the target size, and the deal environment at a given time. As a rule of thumb, venture investor Fred Wilson has suggested[1] that completing a transaction within six weeks is a good goal, while “anything longer that three months is likely to be problematic.”

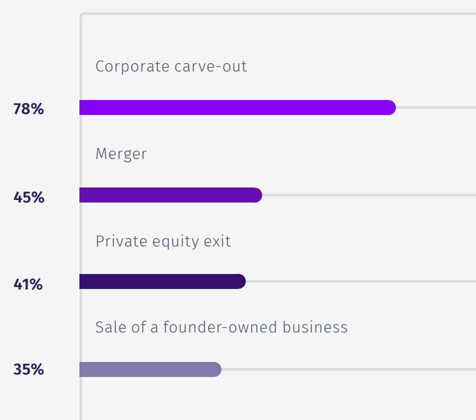
Dependence on deal type

Our respondents indicated that corporate carve-outs in particular demand a swift pace. Seventy-eight percent called speed to close important in carve-out situations, while 45 percent said speed was critical in merger processes.

The experience of a former unit of DuPont demonstrates the value of acting fast in corporate carve-outs especially. DuPont spun off part of its chemicals business, known as Chemours, in June 2015, and many were skeptical about its potential to succeed. One of the spun-off company’s priorities was “speed in execution,” according to finance head Mark Newman[2] — including carving out three businesses within a year for a total of $695 million, helping it chip away at a $3.7 billion pile of debt. As of mid-November, after the swiftly executed carve-outs, Chemours’ stock price had grown more than three-fold and become a darling of investors.

A director at a South Korean investment bank argued that speed is critical in carve-outs because the assets being sold are not getting attention from the seller, and buyers want to move in to make changes immediately. “When a company is carved out of an existing business, there are challenges that come along with that company that only multiply if not dealt with in a timely manner,” the banker said. “Sellers are not focusing on the long-term profitability of the carved-out asset. Buyers know that.”

On the sell-side, for which of the following deal types is speed to close typically most important?



1 http://avc.com/2011/03/ma-issues-timing/

2 https://www.wsj.com/articles/how-a-dupont-carve-out-made-a-comeback-1509722998

A tactical approach

Three methods stood out for respondents when it came to convincing a buyer to close more quickly: tolerating a higher break-up fee (36 percent), accepting a discount to the valuation (30 percent), and negotiating an earn-out (28 percent). Slim minorities said competitive pressure (4 percent) and giving the buyer the perception of exclusivity and being the frontrunner (2 percent) were effective tactics.

Break-up fees have become a widespread component of M&A contracts, for both sellers and buyers. A potential fee imposed on the seller serves as a useful disincentive to the seller and as a carrot to a buyer — making it less likely that either side will back away. "A high break-up fee would mean that the seller is positive about moving forward with the deal," said a managing director at a US mid-market-focused investment bank. "That allows the deal to progress to the closing stage faster."

The impact of such compensation could be seen in Canadian mining company Eldorado Gold's $345 million acquisition of smaller rival Integra Gold in May 2017. The deal contract included an approximately $14 million break-up fee as well as the right for Eldorado to match any competing offer, which were deemed "strong terms to keep the deal from getting trumped," according to a mining sector banker who spoke with the Mergermarket intelligence service.

On the sell-side, which of the following tactics do you find to be most effective in getting a buyer to close quickly?

36%	**Higher break-up fee**
30%	**Accepting a discount to the valuation**
28%	**Earn-out**
4%	**Competitive pressure**
2%	**Perception of frontrunner and exclusivity, access to management**

The personal touch

The issue of closing a deal in person versus remotely is a divisive one. Some consider it vitally important to close a deal in person — while others believe it to be a useless ritual from a bygone era.

In our survey, the average percentage of deals closed in-person among our respondents over the last three years was 71 percent, leaving an average of 29 percent closed electronically/remotely. Nine executives said they had closed 100 percent of their deals in person, compared to just two who said they had closed all of theirs remotely.

Many respondents who said they valued closing a deal in person said it helped strengthen the bond between the two sides ahead of integration if the teams needed to form a collaborative relationship.

"Closing a deal in person makes sense for deals that are going to lead to both the companies and their management teams working together," said a managing director at a Hong Kong-based investment bank. "When two companies come together, there are always going to be differences, and it's better to achieve clarity by meeting in person for the closing."

Another respondent, an associate director at a French investment bank, said some founders like to close in person in order to celebrate the moment.

The director of investment at a PE firm in Northern Europe took the opposite side of the argument: "Over the last three years, the deals I have been involved with were all 100 percent remotely closed. I don't find a reason why closing in person would really be necessary."

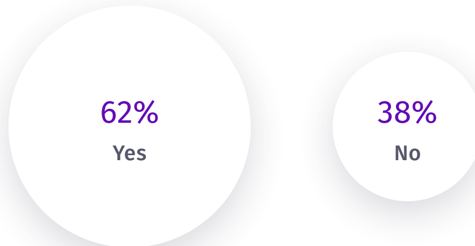
Over the past three years, approximately what percentage of M&A deals that you've worked on were closed in-person vs. electronically/remotely?

71% **Electronic/remote closings**

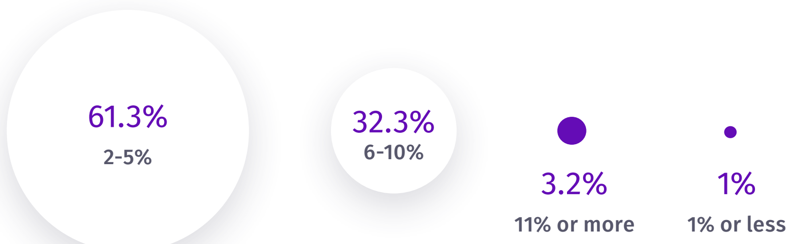
29% **In-person closings**

On the sell-side, have you ever worked on a deal in which the seller agreed to additional buyer terms due to “seller fatigue,” i.e., impatience with the speed to close?

Have you ever seen a seller agree to a lower valuation in exchange for faster closing speed?



If yes, what is the largest discount you have seen a seller agree to?



Weary of waiting

In mid-November, ride-sharing giant Uber announced monumental changes to its corporate governance. The measures were meant to limit the influence of controversial former CEO Travis Kalanick. What was the main impetus for the actions? A proposed investment of up to $10 billion by acquisitive Japanese conglomerate SoftBank — Uber agreed to adjust its governance structure as a condition of the deal.[3]

The concession was not unusual in the context of M&A. Indeed, 46 percent of our survey respondents said they had worked on a sell-side deal in which they or their client had agreed to additional buyer terms due to “seller fatigue,” or impatience with the speed to close. What’s more, nearly two-thirds (62 percent) said they had seen a seller accept a lower valuation for faster closing.

3 https://www.wsj.com/articles/uber-set-to-announce-softbank-deal-after-kalanick-benchmark-reach-terms-1510516418

The reasons for this "fatigue" vary from deal to deal, but there are certain situations in which it occurs more commonly than others. One such situation described by a respondent involved a demand from shareholders.

"Not only have sellers agreed to a lower price but also to different terms laid out by the buyer, from different methods of payment to certain contract conditions," said a managing director at a US mid-market-focused investment bank. "The sellers we were advising wanted to raise capital fast through the asset sales to be able to make payments back to investors."

Another deal type in which the seller may be especially motivated to sell is private equity exits, which often must be timed precisely in order to close a fund and make payouts to limited partners.

Of the respondents who had seen sellers lower their valuation to close a deal, 61.3 percent said the largest discount they'd seen was 2-5 percent. Nearly a third (32.3 percent) said they had seen discounts of 6-10 percent.

A managing director at a Beijing-based PE firm said he had seen a seller drop their asking price after direct competitors entered the market, eating into their sales. In April 2017, a similar set of circumstances caused South Korean mobile-commerce company Ticket Monster to accept a $1.3 billion valuation in a new round of funding after previously being valued at $1.5 billion, due to the presence of two aggressive competitors in the same space.[4]

Cross-border challenges

An overwhelming majority of our respondents said closing a cross-border deal was either much more complicated (40 percent) or somewhat more complicated (52% percent) than closing a domestic transaction. Perhaps this should come as little surprise, given the differences in regulatory regimes and cultural practices across geographies.

"Due to the operational, cultural and communication differences, cross-border deals turn out to be more complicated than domestic deals," said a managing director at an Australian boutique investment bank. "That's exactly why the failure rate is higher for cross-border deals when compared to domestic ones."

The differences can be especially pronounced between certain regions, such as China and the West. For instance, in China it is not unusual for points of negotiation to be re-opened even after a deal is signed.[5] In addition, advisors are often not brought in until late in the process, which can cause further delays to closing.

Is it more complicated to close a cross-border deal than a domestic deal?

40% **Yes, much more complicated**

52% **Yes, somewhat more complicated**

8% **No, not really more complicated**

4 https://www.wsj.com/articles/ticket-monster-raises-115-million-capital-as-technology-companies-face-funding-challenges-1493207153

5 https://www.nkf.ch/wAssets-nkf2/docs/publikationen/philippe_a_weber/Completing-M-A-Transactions-Successfully-with-Chinese-Companies-in-a-Swiss-Context.pdf

PART TWO:

When deals get derailed

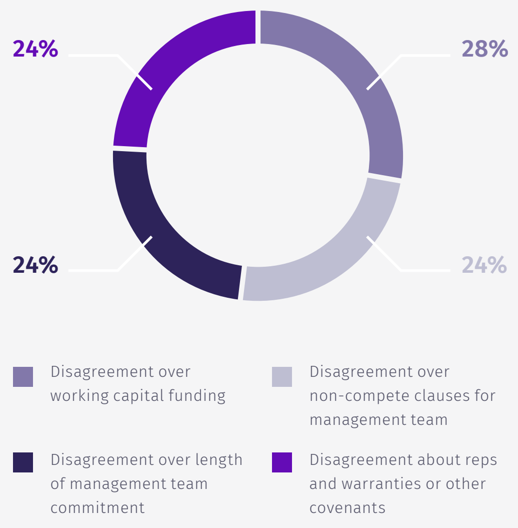
Diagnosing the causes of failure

The two sides of a potential deal often go to great lengths to assure its completion. But disputes do occasionally derail a transaction before the finish line.

Our survey results indicated that, besides the issue of purchase price, no single problem tends to spoil deals more often than others right before closing. Roughly one-quarter of respondents cited the issues of working capital disagreements (28 percent); disputes over the length of a management team commitment (24 percent); disagreements about non-compete clauses for the management team (24 percent); and disagreements about reps and warranties or other covenants (24 percent) as being the most common culprits in cancelled deals.

"We've seen a lot of deals that met with an abrupt ending mostly because of the lack of future commitments from the management team," said a managing director at a US investment bank in the top 15 on the North America league tables through the first 10 months of 2017. "A management team is a vital part of the structure of a business, and the deal is affected if there's disagreement over the team's future commitment."

In your experience, which of the following issues not related to purchase price most often derails a deal before closing?



So big they fail

Chip maker Qualcomm made a splash in October 2016 when it agreed to pay $45.8 billion for Dutch rival NXP Semiconductors. The deal would give Qualcomm pole position among producers of hardware for driverless cars. However, the acquisition came under question a year later: suddenly, a new NXP shareholder, activist hedge fund Elliott Management, said the company's stock was undervalued. What's more, the deal had become mired in European antitrust review.[6]

The complications of the Qualcomm-NXP deal are two of the most common seen in large-scale tie-ups, according to our survey respondents. Forty-two percent said they are most concerned about regulatory approval problems in deals worth $1 billion or more, and 38 percent said lack of shareholder approval worried them most.

A notable minority (18 percent) said lobbying against a deal by peer companies — as in Boeing's objections to United Technologies' proposed $23 billion acquisition of Rockwell Collins in the aerospace sector in September 2017[7] — posed the biggest problem.

Interestingly, one respondent said he thought cybersecurity had now become the top cause of concern in deals valued at $1 billion+. "One of the big reasons behind the failure of a deal these days is security — or, you could say, lack of a secure infrastructure," said a managing director at a UK-based investment bank. "With every sector being digitalized and the rapid pace at which cyber-crime is evolving, it is a threat that could lead to the failure of a lot of large-scale deals now."

Which of the following causes of deal failure are you typically most concerned about in a large-scale deal (US$1bn+ in value)?

42%	**Antitrust/regulatory approval problems**
38%	**Lack of approval by buyer shareholders**
18%	**Lobbying against the deal by peer companies in the sector**
2%	**Cybersecurity concerns**

6 https://www.wsj.com/articles/qualcomm-says-nxp-deal-on-track-as-it-accelerates-in-driverless-tech-1508284183

7 https://www.wsj.com/articles/united-tech-ceo-defends-rockwell-deal-1504620748

To IPO or not to IPO

Once the presumed form of exit for high-growth companies, IPOs have acquired a mixed reputation in recent years, as some debutants have underperformed. Nearly half our respondents (48 percent) said they most commonly see companies abandon a planned initial offering due to receiving a more attractive M&A bid, while 40 percent more often see companies switch tacks due to concerns about the stock performance.

The so-called “dual track” process of both pursuing an IPO and fielding M&A bids has become increasingly popular. Some targets receive acquisition offers without even driving on both tracks. Such was the case with app monitoring company AppDynamics, which had been putting the finishing touches on its IPO when it received a $3.7 billion unsolicited bid from Cisco in January 2017.[8]

“If you have a very good company that you can market well, I think an M&A bid will be higher than the IPO price, along with more benefits for management,” said a partner at a Dutch investment bank. “You can get a highly competitive package with fewer required disclosures.”

In your experience, what is the most common reason at present that companies abandon a planned IPO?

48%	**Receiving a more attractive M&A bid**
40%	**Concerns about market performance of the stock**
12%	**Not receiving sufficient orders from investors**

8 https://techcrunch.com/2017/01/24/why-the-3-7-billion-appdynamics-acquisition-happened-right-before-ipo/

On the sell-side, do you always prefer simultaneous signing and closing to a deferred closing?

48% Yes

52% No

On the sell-side, have you ever had a deal fall through after signing but before a deferred closing?

54% Yes

46% No

In approximately what percentage of deals do you use a simultaneous signing and closing vs. a deferred closing? (Average percentage for each)

70% Deferred closing

30% Simultaneous signing and closing

When patience is a virtue

Our respondents said that deferred closing is more common than a simultaneous sign and close. On average, respondents said approximately 7 percent of the deals they do have a deferred closing, compared to 30 percent that close immediately after signing. Various aspects of a deal can determine which road is taken, they explained.

In a private equity transaction, for instance, drawing funds from investors can take some time after closing, said the director of investment at a European PE firm specializing in growth equity. Regulatory approvals and other preconditions may need to be met as well, said a partner at a Spanish investment bank.

Just over half of respondents (52 percent) said they do not prefer simultaneous signing and closing — often because it means they cannot shop around for a better deal in the interim. This has become a widespread practice. In just one recent example, music-streaming company Pandora Media backed out of a $150 million investment from PE firm KKR in order to take a $480 million infusion from satellite radio operator Sirius XM in June 2017. Pandora paid a $22.5 million termination fee to KKR as a result.[9]

9 https://www.wsj.com/articles/sirius-xm-to-invest-480-million-in-pandora-knocking-off-kkr-deal-1497014022

A managing director at an Italian investment bank described a similar situation his firm had faced: “One deal we worked on didn’t go through because during the gap period our market value increased and we got a better offer. The termination penalty was easily covered in the new offer. The deal failed only because we had a better opportunity waiting for us.”

Indeed, 54 percent of respondents said they had experienced a deal falling through after signing but before a deferred closing on the sell-side.

The role of emotion

In May 2017, the head of the European Council, Donald Tusk, issued a warning to UK Prime Minister Theresa May regarding the impending Brexit negotiations. He said the two sides would never be able to make a deal if they let “emotions get out of hand.” [10]

Similarly, many M&A deals come under threat by emotions on the two sides. Two-thirds of our survey respondents (66 percent) said they had seen emotion or personal politics prevent a deal from closing in at least 10 percent of deals that did not go through despite being close to the finish line. Of that group, nearly a third (30 percent) said they had seen it happen 25 percent of the time or more.

A managing director at a Chinese investment bank said that, in his experience, emotions between dealmakers could typically be managed in a deal — but differences between management and workers were a potential roadblock. “Even if there are differences, they are usually sorted out eventually,” he said. “The only time a deal didn’t work out for us was when the target company and its employees and management just weren’t okay with the policies the buyer wanted to introduce and were planning to leave. That’s when the target company walked out of the deal and chose to pay the break-up fee.”

When a deal does not close despite being close to the finish line, how often would you say the reason is related to emotion or personal politics between the two sides?

36%	**Occasionally (10-24% of the time)**
34%	**Not often (1-9% of the time)**
26%	**Somewhat often (25-49% of the time)**
4%	**Very often (50-100% of the time)**

10 https://www.wsj.com/articles/eu-warns-emotions-getting-out-of-hand-on-brexit-1493917708

Material adverse changes

The “material adverse changes” clause is common in M&A contracts, but our respondents said it is only occasionally triggered to cancel a deal. Twenty-six percent of our survey pool said they had worked on a transaction in which the buyer did not close due to the clause.

In 2016, observers speculated that Verizon may use the clause to walk away from its $4.8 billion offer for Yahoo!, after the fallen internet giant revealed that a security breach had exposed the details of 500 million customer accounts. The two sides ended up reducing the sale price to $4.48 billion as a result of the hack.

Lisa Stark, a partner at law firm K&L Gates, told the Wall Street Journal last year that courts have discouraged the use of the clause except in the case of truly significant events.[11]

Have you ever worked on a deal that the buyer did not close on due to “material adverse changes”?

74%	**No**
26%	**Yes**

11 https://www.wsj.com/articles/material-adverse-change-clause-is-rarely-triggered-1476402532

Dealmaker Q&A

Mike Siska
Managing director, William Blair

Mergermarket: In your dealmaking career, have you faced any major challenges in the closing phase of a deal or deals (e.g., related to valuation, shareholder resistance, legal/regulatory complications)? If yes, what were they? And did the deal(s) go through in the end?

I would say I've closed over 75 M&A deals in my 19-year career, and challenges in the closing phase happen all the time. It's the nature of our business. What may feel like a minor issue in the heat of the moment may become a potential deal breaker three to six months after signing. Problems that arise at closing are a real factor because there is always emotion in M&A deals, though we try our best to remove it as much as possible. But these are major moments for companies and executives on both sides of the transaction. So, I would say it's very rare we find a deal that closes without any bumps in the road along the way.

To your question about the challenges we see, there are several issues we come across often. We're in a very competitive M&A market right now, and in the vast majority of transactions we work on, there are multiple parties fighting to win the deal. That competition often drives challenges or friction points at the end. Sometimes we find ourselves shuttle-negotiating between two or three final buyers and you may have a situation in which, for example, Buyer A is willing to accept an economic point but Buyer B is not, and that can cause friction, because Buyer B may be frustrated that we're trying to get them to accept this point Buyer A has already agreed to. That's very common.

Another potential cause of friction is customer calls or vendor calls, which a buyer may want to make prior to closing. As you can imagine, a seller may not want key vendors and clients knowing that a transaction is imminent, but they have to balance that with a buyer's need to perform their diligence and have comfort around certain issues. The seller is also trying to prevent the calls from becoming a risk to the deal closing, either due to the content of them or to the fact that some piece of information is taken out of context.

We spend an enormous amount of time up-front thinking through these issues with our clients before we launch a deal. We ask questions like, "What do your contracts look like? When was the last time they were renewed? How high up in your customer or vendor's organization is your relationship? And what are those relationships like?" We want to know all that ahead of time so that if we know this call from the buyer has to happen, we've already preplanned it.

I do a lot of work in retail, and landlord consents often become a point of friction. A landlord may have to consent to a change of control in a lease, and you have to gauge the probability of a landlord removing a tenant if they're upset about a deal. After all, just because they have the ability to do so doesn't mean they will. Working capital is another area that often leads to negotiation at the end. Sellers want to make sure they're receiving the right level of value, while a buyer needs to know they are getting a properly capitalized business.

Mergermarket: Three in ten of our survey respondents said that emotion or personal politics acted as a barrier to deal closing in at least a quarter of all deals they had participated in that did not go through. Have you seen personal politics play a role in deals not getting done? If yes, were there any lessons you took from the situation that helped you address the issue in the future?

It's difficult to remove emotion when you're dealing with hundreds of millions of dollars, and a deal that may make or break someone's career, or set a legacy for a family-owned business. But we do try to remove emotion from the deal process as much as possible, and one way to do that is to be very transparent when we start to work with a new client, particularly on the sell-side, and when we pitch a business to potential buyers.

We want to use the pre-marketing phase and the diligence phase to say, "Let's get all the items out in the open. Let's have the tough discussions up front. Let's build the analysis that we may not need for three or six months. Let's do that all now before we are 'in market.'" Having a clear understanding of those things helps us run a competitive process and drive negotiations with full vision.

If there is a particular "sticky" item within a business — whether it's customer concentration, or a contract that's about to expire, or the loss of a certain part of the business — we try to figure out how to communicate that early, to make sure there's no "gotcha" moment with buyers at the end. We never want to see that, because it can disrupt the negotiation and turn it into something more contentious than just a business transaction. I think that's where emotion can become outsized, if one party feels that the other party wasn't up front about something, that comes out later in a process.

Mergermarket: Are there particular types of deals or situations in which speed to close is especially important?

We often say there are three factors a buyer can affect in trying to win a deal: valuation, speed and certainty. As I mentioned, transactions are very competitive in this environment, and the speed and certainty components can be highly differentiating factors that allow a buyer to beat out the competition for a deal.

As an example, a buyer can use that speed and certainty to take a deal off the table before a definitive bid date. They tell the seller, "Listen, I'm going to do a lot more work up front. So instead of just a letter of intent, I'm going to deliver you a marked purchase agreement, with all my diligence complete, and I'm going to deliver financing to you" by a certain date. And they may not be the highest bidder on value, but they can deliver that speed and certainty to close. What we often see is that time creates uncertainty — time can allow sellers to change their minds. So, speed and certainty can become very differentiating and competitive factors.

On the subject of value discovery, in nearly all of our sell-side M&A processes, we find ourselves having a three-tiered approach. First, depending on the sellers' goals, we'll go out to a number of buyers with preliminary information and ask for a nonbinding indication of interest. From there, we'll narrow the field down, select certain parties, meet with management, do more diligence, and so on. And then after that management presentation phase, we'll often ask for a rebid — which may not be a definitive LOI, but we do ask for a reaffirmation of value in light of the information they gleaned in due diligence. Did they learn anything new? Are they able to increase their value from the initial indication to rebid? Or, on the contrary, did they find something in diligence that made them want to lower their offer?

"A bidder may not be the highest on value, but they can deliver that speed and certainty to close. What we often see is that time creates uncertainty — time can allow sellers to change their minds. So, speed and certainty can become very differentiating and competitive factors."

That rebid process gives us insight into which buyers are more competitive than others, and we're actually seeing a good number of our deals get taken off the table at that rebid stage, rather than waiting until the third phase, which would be letters of intent with much more diligence. One factor driving this trend is that private equity firms are being thoughtful about spending third-party dollars on diligence, lawyers, accountants and so on. And then there's just the time value of money — the time value of chasing a lot of deals if they're not sure they're going to win them. From the buyer's perspective, preempting in this way also allows them to prioritize their situations and spend the time and resources where they think they can win.

Mergermarket: Have you ever seen a deal fall through after signing but before a deferred closing? If yes, could you explain what happened?

In my experience, this is a very, very rare occurrence. I would say the primary factor that would make a deal fall apart between signing and closing is business performance. If the selling company misses numbers, or loses a key contract, or doesn't win a piece of business that they told the buyer they were highly confident about, it can make a deal fail. A change in the market that impacts their near-term viability of a business would also fall under that same umbrella.

These are obviously unfortunate situations, but it's logical that if a company has to tell the buyer that they're going to miss their financial projections, it changes the equation from the buyer's perspective. Some of them can look past it, and some will say they will do more diligence to make sure it's only a shorter-term blip. But if a key customer is lost or, say, there's a product recall at a food or consumer package company, those can be very disjointing factors for a buyer.

On the other side of the deal, a buyer may decide not to move forward with an acquisition due to a dislocation in their business. There was a situation around five years ago in which a public company recognized they were going to come in light on earnings guidance. And the CEO just said, "Listen, I cannot move forward with this deal because it's not going to be received well by the shareholder base. We're seeing real headwinds in our core business, and if we do this, it could really take the business off track." That was a case where it was no fault of the seller at all.

One thing we are very focused on in the pre-planning stage is breakup fees or reverse breakup fees, depending on what side of the process we're on, to protect our client. We are very strong advocates of these provisions. If something happens between signing and closing, we want to make sure that the party at fault has to bear some economic cost.

Those become key tools for keeping both sides focused on a transaction. On the sell-side, we're going to hold competitive buyers' feet to the fire, so to speak, to make sure they can't have a free option. Whether it's reverse breakup fees, or the need to have financing committed, they need to deliver that certainty, even if it costs them some money.

The last thing I'd say is that there are a lot of challenges that come up at the end of a deal, and often value transfer between a buyer and seller can prevent a deal from falling apart completely.

Mergermarket: In our survey, respondents said they closed deals in person 71 percent of the time on average, with the remaining 29 percent of deals being closed electronically/remotely. In your experience, what is the value of closing a deal in person? Does it really matter anymore?

I honestly don't think this really matters anymore. The last deal I closed in person was in 1999. Often, we'll do massive conference calls at the end of a deal where you walk through the final details, but in this day and age, it's not important to do it in person. The reality is that M&A is a global business now. Your client may be headquartered in North Carolina, but the lawyer is in San Francisco because they have a relationship with the private equity buyer that has an office there, or whatever it might be.

What you will see sometimes is two sides wanting some last-minute in-person interaction before a deal reaches closing. We were just in a process over the summer in which we were down to two final buyers, and we brought the executive team to do meetings with those two final buyers in person to deal with the final remaining economic and business issues of the deal. That also allowed the selling shareholders to evaluate an apples-to-apples proposal.

We have had situations in which buyers have said they want to fly to the company and have one last dinner with the management team, to use that personal connection and the power of conversation to see if they have the right alignment. We're always thinking about how we can use those meetings in our processes, and to make sure those face-to-face connections are useful for both sides.

So, I would say we still fully believe that face-to-face meetings at critical junctures, even toward the end, are necessary to deal with business and economic issues. But the perfunctory aspect of actually signing or closing a deal very rarely happens in person, because it just involves making sure all the necessary documents and items are in order.

Conclusion

Sellers and buyers alike have come to appreciate the importance of the closing phase in the M&A deal process. Even after both sides agree to a set of terms in principle, a number of key issues can throw an acquisition off course. As a result, paying close attention to the final stage can make the difference between an almost-was deal and a completed transaction.

Here are three key takeaways to keep in mind when approaching M&A closing:

- Ignore the variable of "speed to close" at your own peril. For both sellers and buyers, the more time it takes before a deal closes, the higher the risk that the transaction won't go through. Wield this knowledge to steer the process in your favor.
- Even a small discount can help close a deal. Decreasing one's valuation by 2-5 percent is often enough to secure an M&A offer when a buyer is stalling. Weigh the variablesof speed versus value accordingly.
- A flexible stance can reap rewards. As competition for deals rises, it can pay off for sellers to keep their options open as long as possible. When waiting is an option, shopping around for the best offer is a sound strategy.

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