WEIL GOTSHAL

WEIL, GOTSHAL & MANGES PRIVATE EQUITY GROUP SURVEY

SPONSOR-BACKED GOING PRIVATE TRANSACTIONS

MARCH 2009

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Introduction

Welcome to our third annual survey of sponsor-backed going private transactions prepared by the Private Equity Group of Weil, Gotshal & Manges LLP. We hope that you will find this information thought-provoking and useful.

We believe this survey is unique in that it analyzes and summarizes for the reader the material transaction terms of going private transactions involving a private equity sponsor in the United States, Europe and Asia-Pacific. We believe Weil Gotshal is uniquely positioned to perform this survey given our international private equity platform and network of offices throughout the United States, Europe and Asia-Pacific.

We are happy to discuss with clients and friends the detailed findings and analysis underlying this survey.

We want to pay special thanks to the many attorneys and consultants at Weil Gotshal who contributed to this survey, including Joshua Peck, Jeffrey Friedman, Frank Martire, Jamie Pierre-Louis, Andrew Arons, Tracy Bookspan, Brett Bush, Daniel Chin, Stephanie Da, Connie Dong, Christopher Gruszcynski, Nadia Karkar, Cassie Kimmelman, Thomas Kretchmar, Peter McRae, Megan Pendleton, Damali Peterman, Alex Radetsky, Jonathan Sagot, Jenna Schaeffer, Joshua Senavoe, Samuel Spector, Matthew Speiser and Ryan Taylor.

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Research Methodology

The Private Equity Group of Weil Gotshal surveyed 39 sponsor-backed public-to-private transactions announced from January 1, 2008 through December 31, 2008 with a transaction value (i.e., enterprise value) of at least $100 million (excluding target companies that were real estate investment trusts). Given the state of the global credit markets throughout 2008, we lowered the transaction value threshold for inclusion in our survey from $250 million last year to $100 million this year. This change should be kept in mind when reviewing the year-over-year comparisons throughout this survey.

Fifteen of this year's surveyed transactions involved a target company in the United States, 13 involved a target company in Europe and 11 involved a target company in Asia-Pacific. The publicly available information for certain surveyed transactions did not disclose all data points covered by our survey; therefore, the charts and graphs in this survey may not reflect information from all surveyed transactions.

The 39 surveyed transactions included the following target companies:

Akindo Shushiro Co. Ltd.

Alta Fides AG

Angelica Corporation

Apria Healthcare Group Inc.

AsiaPharm Group

Biffa plc

Bravura Solutions Ltd.

Bright Horizons Family Solutions, Inc.

CAM Commerce Solutions, Inc.

Centerplate, Inc.

Civica plc

Clayton Holdings, Inc.

D&M Holdings Inc.

eTelecare Global Solutions, Inc.

Expro International Group plc

Getty Images, Inc.

Greenfield Online, Inc.

Guala Closures s.p.a.

Gunnebo Indstrier AB

HireRight, Inc.

Industrial Distribution Group, Inc.

Lifecore Biomedical, Inc.

Macquarie Capital Alliance Group

Macquarie Private Capital Group

Marazzi Group s.p.a.

MYOB Ltd.

Natural Beauty Bio-Technology Limited

NDS Group plc

Neochimiki L.V. Lavrentiadis S.A.

Nord Anglia Education plc

NuCo2 Inc.

Performance Food Group Company

Petron Corp.

Premier Research Group plc

Q-MED AB

SM&A, Inc.

SSP Holdings plc

The TriZetto Group, Inc.

Unisteel Technology Ltd.

United States

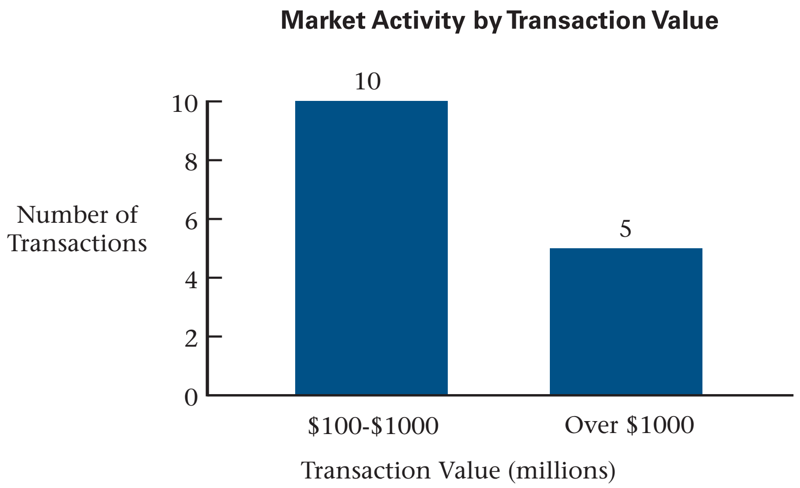
Key Conclusions

2008 was a difficult year for sponsor-backed going private transactions in the United States with only 15 deals being announced. In the first half of the year, despite the constraints of the credit markets, activity was steady with 13 deals being announced. However, activity collapsed in the second half of the year with only two deals being announced.

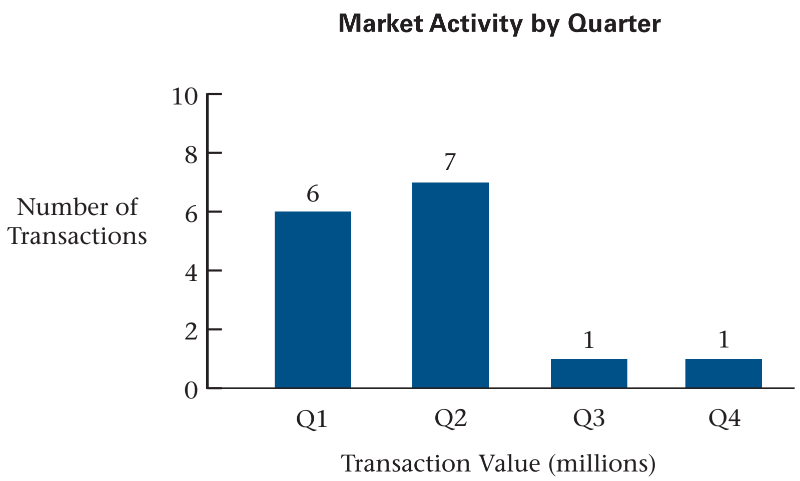
While the limited data points render it difficult to generalize, a number of market and legal trends are identifiable based on this survey. These include:

- 2008 witnessed a 97% collapse in aggregate transaction value for sponsor-backed going private transactions when compared to 2007. The largest transaction announced in 2008 had a transaction value of approximately $2.1 billion, a 95% decline from the largest transaction announced in 2007. There was also a 76% decline in transaction volume when compared to 2007.
- The percentage of club deals involving two or more private equity sponsors declined significantly in all transaction sizes in 2008. Only 7% of the 2008 transactions constituted a club deal whereas 37% of the 2007 transactions did so.
- The tender offer again made an appearance in 2008, continuing a trend that started in 2006. The same cannot be said for stub equity. There was no transaction in 2008 in which the sponsor offered stub equity to the target's public shareholders.
- Not surprisingly, the credit crisis continued to adversely impact the debt-to-equity ratios of sponsor-backed going private transactions. Equity accounted for an average of 64% of acquiror capitalization for transactions between $100 million and $1 billion in value and 51% of acquiror capitalization for transactions greater than $1 billion in value.
- The credit crisis has forced sponsors to tap alternative financing sources, including traditional mezzanine lenders and hedge funds.
- The go-shop provision continued to be a common feature of going private transactions in 2008 with 53% of surveyed transactions including this form of post-signing market check. Interestingly, sponsors were more resistant this year to giving a significantly reduced go-shop break-up fee (only one transaction had a go-shop break-up fee of less than 50% of the normal break-up fee).
- Although far from the norm, there was an increase in 2008 in sponsor-backed going private transactions with a financing out (20% in 2008 compared to 3% in 2007).
- When compared to pre-credit crunch transactions, the 2008 transactions reveal a material decrease in the number of MAE exceptions.
- Reverse break-up fees were again the norm in 2008, appearing in 87% of all surveyed transactions (a slight increase from 84% in 2007). In an effort to limit the optionality built-in to the reverse break-up fee structure and incentivize sponsors to consummate the transaction, target boards in a significant minority of surveyed transactions negotiated for a higher second-tier reverse break-up fee or a higher cap on monetary damages.
- Interestingly, specific performance provisions enforceable against the buyer were very rare in 2008. Only 7% of the 2008 transactions permitted the seller to seek specific performance against the buyer rather than be limited to a reverse break-up fee or monetary damages (whereas 33% of the surveyed transactions in 2007 allowed the seller to seek specific performance).

Market Information

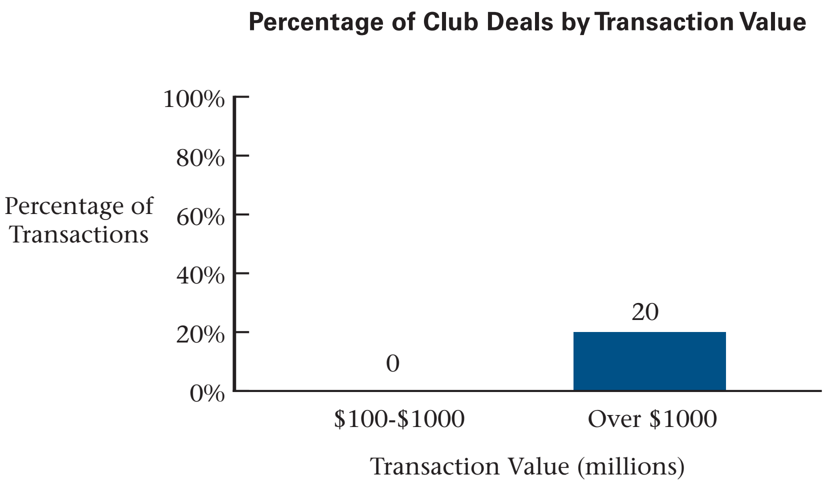


Transaction values in our study range from $111.7 million to $2.1 billion. The volume of surveyed transactions significantly decreased from 63 in 2007 to 15 in 2008. The 15 going private transactions represent an aggregate transaction value equal to approximately $9.5 billion, signifying an approximate 97% collapse in the aggregate transaction value of such transactions from 2007. Only two of the surveyed transactions were announced in the second half of 2008 (one in Q3 and one in Q4).

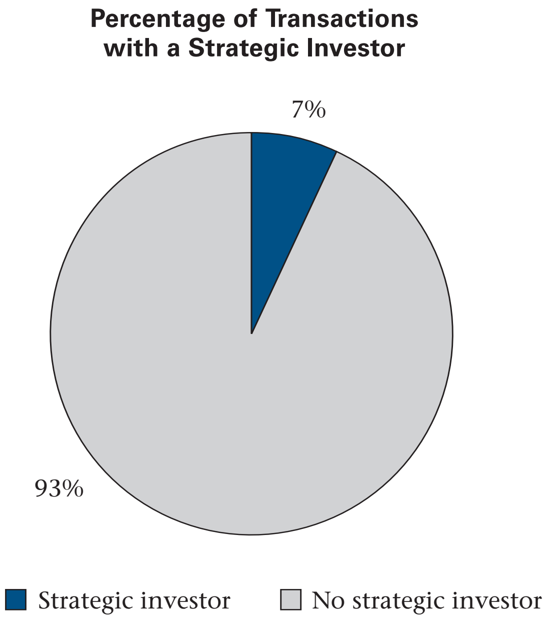


The deal environment for sponsors became increasingly competitive throughout 2008. For the moment, sponsors have lost much of their competitive advantage against strategic investors as their cost of capital has increased, available leverage has decreased and they have suffered negative publicity from busted deals.

Club Deals



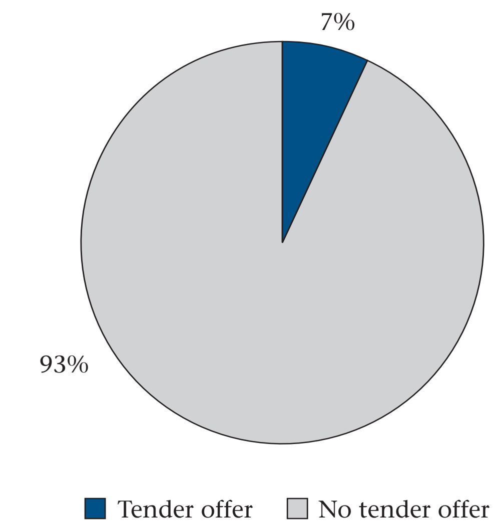
Not surprisingly, with the dramatic decrease in transaction values in 2008, there was also a material decrease in the percentage of "club deals" involving two or more private equity sponsors. Another potential future obstacle for club deals is the recent *Dahl* decision in federal district court in Massachusetts. The *Dahl* court refused to dismiss a class action lawsuit brought by various shareholders against a number of private equity firms claiming that the firms violated US antitrust laws in connection with various club deals. The *Dahl* class action suit is now being litigated and the outcome of the trial may provide guidance to sponsors as to what behavior, if any, in future club deals may violate the antitrust laws.



A private equity sponsor partnered with a strategic investor in one transaction in 2008. There may be an increase in 2009 of transactions in which a sponsor and a strategic investor partner in order to bridge a funding gap. In addition to enhancing their access to whatever leverage is available, a sponsor may want to partner with a strategic investor to gain further operational expertise with respect to the target's industry.

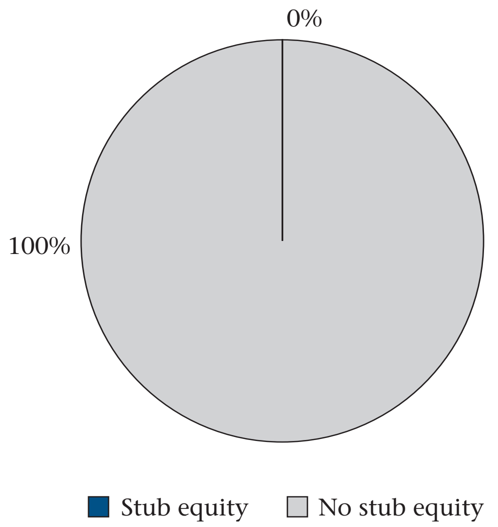
Alternative Transaction Structures

Percentage of Transactions with a Tender Offer



In 2008, one transaction utilized a tender offer in order to address certain transaction-specific issues. Tender offers have certain strategic advantages in transactions where there is shareholder resistance to the buyout price or the sponsor wants to limit the risk of a topping bid emerging. However, tender offers can be more difficult to finance than the typical merger structure due to the impact of the margin regulations limiting the amount banks can lend against "margin" stock and related collateral considerations.

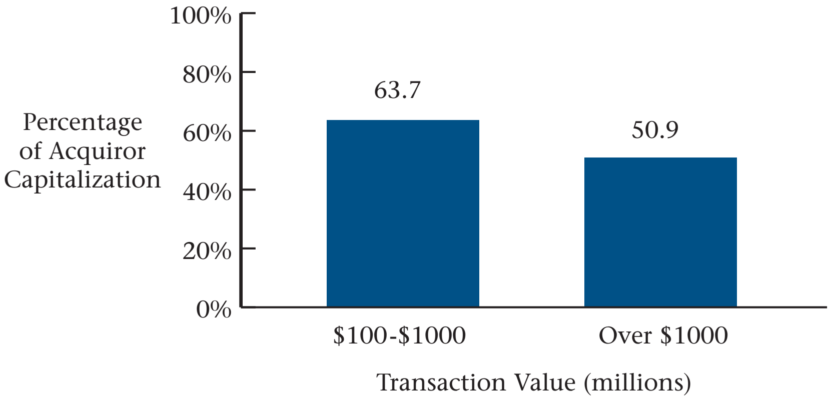
Percentage of Transactions with Stub Equity



No sponsor-backed going private transaction in 2008 employed a stub equity structure. A stub equity structure gives target shareholders the opportunity to retain a minority stake in the newly private company and thereby participate in its future growth.

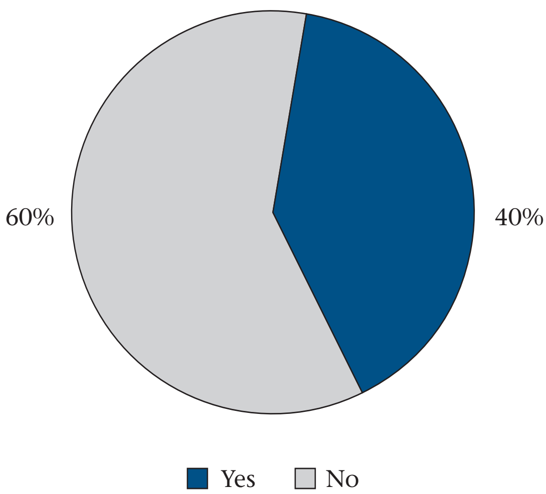
Financing

Equity Invested by Transaction Value



As leveraged lending was largely non-existent throughout 2008, it should be no surprise that 2008 transactions, like the post-credit crunch transactions in the second half of 2007, were typically financed with at least a majority of equity (average of 53% of acquiror capitalization).

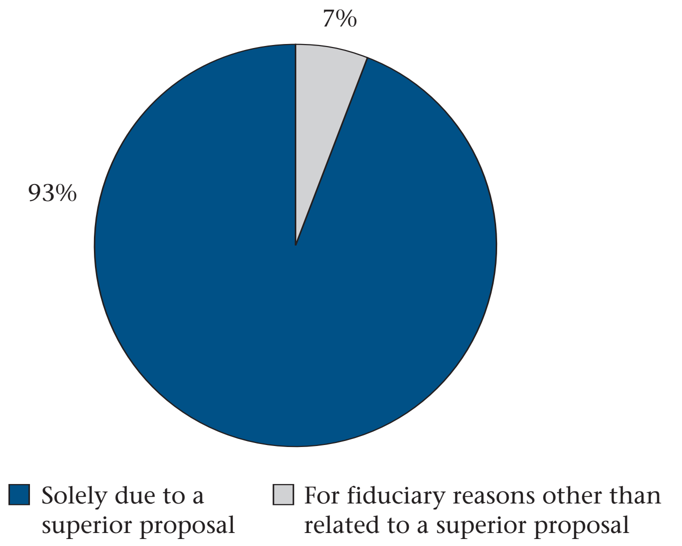
Percentage of Transactions with a Tranche of Debt Financing Provided by a Hedge Fund



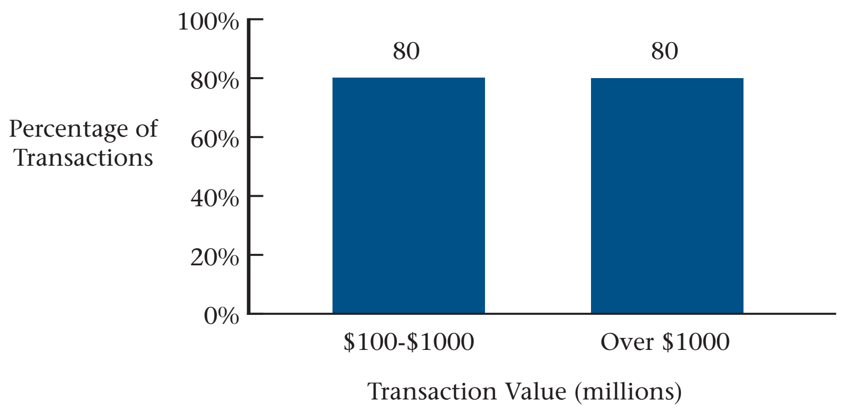
In 2008, debt financing continued to be a differentiating ability among sponsors instead of the commodity it had become pre-credit crunch. Investment banks still remain largely unwilling to originate new leveraged loans. This has resulted in sponsors tapping alternative financing sources, including hedge funds.

Fiduciary Out / Matching Rights

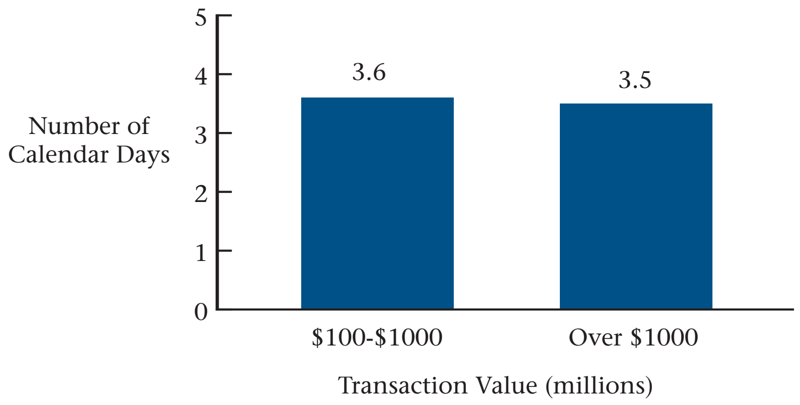
Percentage of Transactions Permitting the Board to Terminate for Fiduciary Reasons Other than Related to a Superior Proposal



Right to Match Competing Offer by Transaction Size



Time Period to Match Competing Offer by Transaction Size



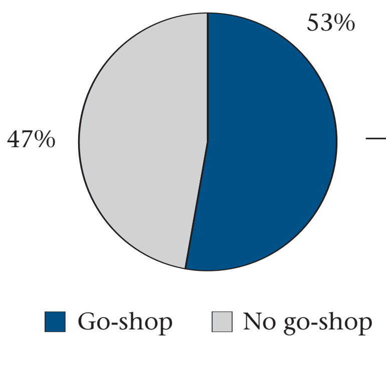
Only a small minority of transactions permitted the target company to terminate the agreement for reasons other than a "superior proposal" (e.g., the target company discovers "gold" or its prospects improve materially from the date the merger agreement was signed).

The number of surveyed transactions over $1 billion in which private equity sponsors had the right to match a competing offer was slightly higher this year than last year (80% vs. 72%).

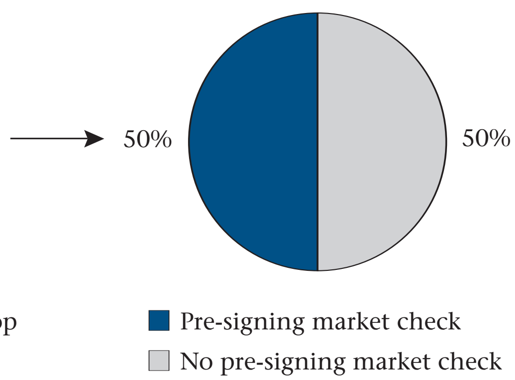
Similarly, the time period for private equity sponsors to match a competing offer in these larger deals was significantly lower this year than two years ago (3.5 vs. 4.8 days). This may be partially attributed to certain decisions by the Delaware Court of Chancery, which focused on whether the target board acted reasonably in going private transactions in terms of process and the structural protections afforded the buyer.

Go-Shops

Percentage of Transactions with a Go-Shop

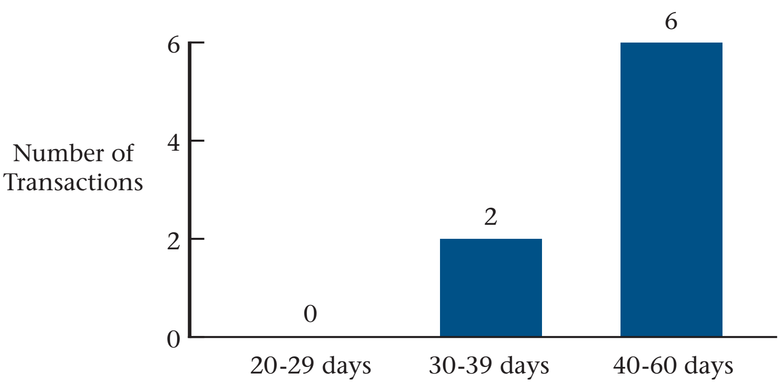


Percentage of Those Transactions with a Pre-Signing Market Check



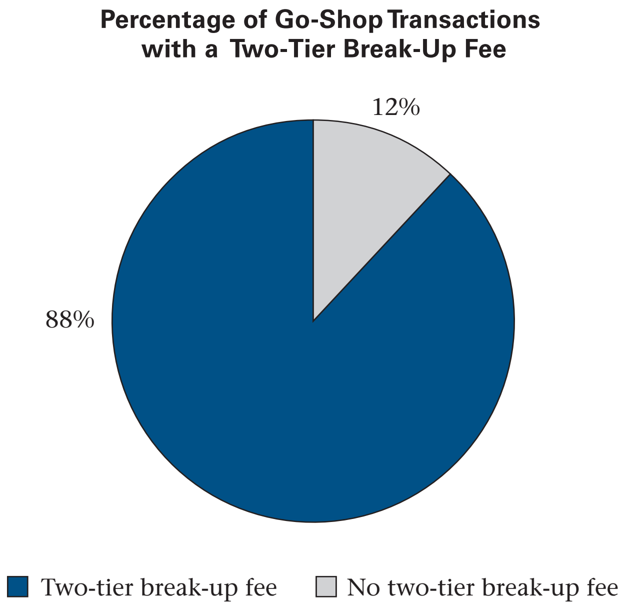
The go-shop provision continued to be a common feature of going private transactions in 2008 with 53% of surveyed transactions including this form of post-signing market check. Surprisingly, 50% of the transactions with a go-shop had some form of pre-signing market check. Although sponsors in the past may have viewed a go-shop provision as an easy give as the provision has been criticized as simple window dressing that seldom results in a better offer, sponsors may want to reconsider this strategy as four sponsor-backed transactions in 2007 and two in 2008 were broken up by bidders who came in through the go-shop period.

Length of Go-Shop

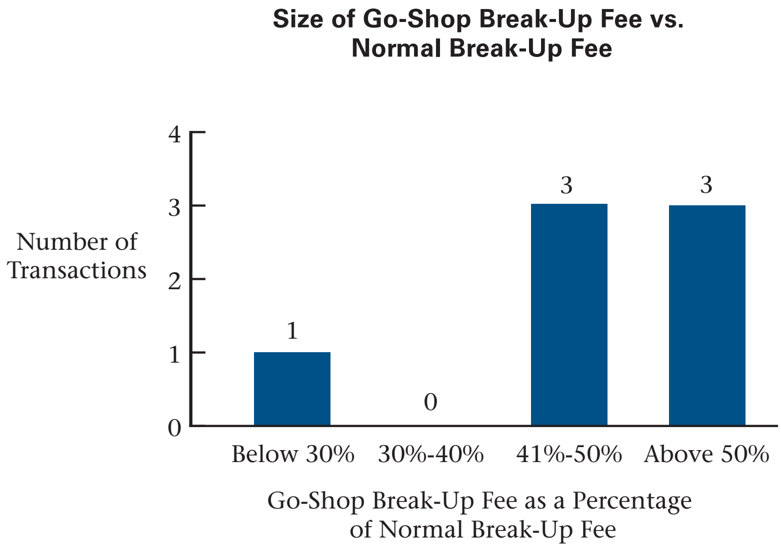


The length of the go-shop period in sponsor-backed transactions in 2008 ranged from 30 to 60 days. When compared to 2006 (50% of go-shop periods were between 20-29 days), go-shop periods continue to be much longer despite 50% of the 2008 go-shop transactions having some form of pre-signing market check. The longer the duration of the go-shop period, the less scrutiny a court will give to whether the duration was sufficient to satisfy a board's fiduciary duties. However, the breadth of any pre-signing market check should be taken into account when determining go-shop duration.

Go-Shops



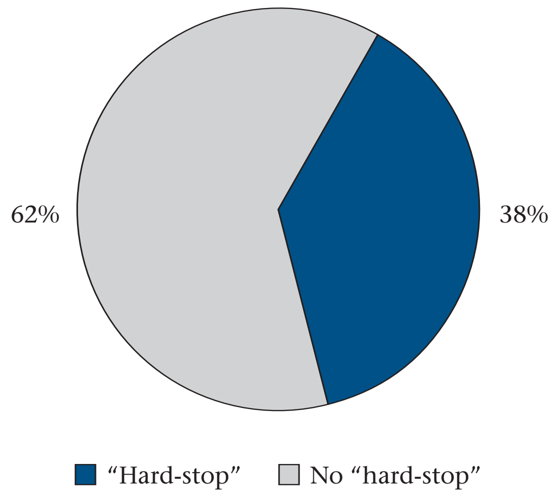
In 88% of the surveyed transactions, a superior proposal entered into as a result of the go-shop triggered the payment of a reduced break-up fee as target boards took the view that the traditional 2% to 4% of equity value break-up fee is inconsistent with the spirit of the go-shop as a true post-signing "test the market" process.



The reduced go-shop break-up fee ranged from 28% to 75% of the normal break-up fee in 2008. 57% of go-shops had a break-up fee between 50% to 60% of the normal break-up fee. Unlike 2007, there was not a significant minority of reduced go-shop break-up fees below 40% of the normal break-up fee. The hesitation to give a significant discount to the normal break-up fee may be a result of the topping bids that have emerged by way of the go-shop period over the course of the last two years.

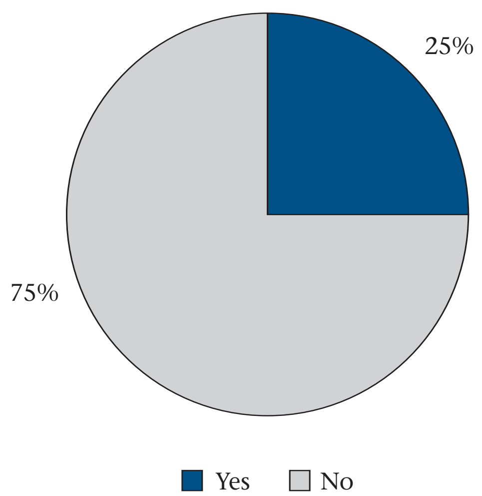
Go-Shops

Percentage of Go-Shop Transactions with a "Hard-Stop" on any Reduced Break-Up Fee for Competing Proposals Solicited During the Go-Shop Period



In 2008, a "hard-stop" was utilized in 38% of the surveyed transactions. A hard-stop imposes a deadline on the target board to negotiate a definitive agreement with a competing bidder solicited during the go-shop period in order for the target to benefit from the reduced go-shop break-up fee. A go-shop provision with a hard-stop is more likely to draw scrutiny from Delaware courts as to its reasonableness (especially if the duration of the go-shop period is shorter than customary). For example, in *Lear*, the Delaware Chancery Court noted that the 45-day go-shop period was of little practical benefit because it "essentially required the bidder to get the whole shebang done within the 45-day window."

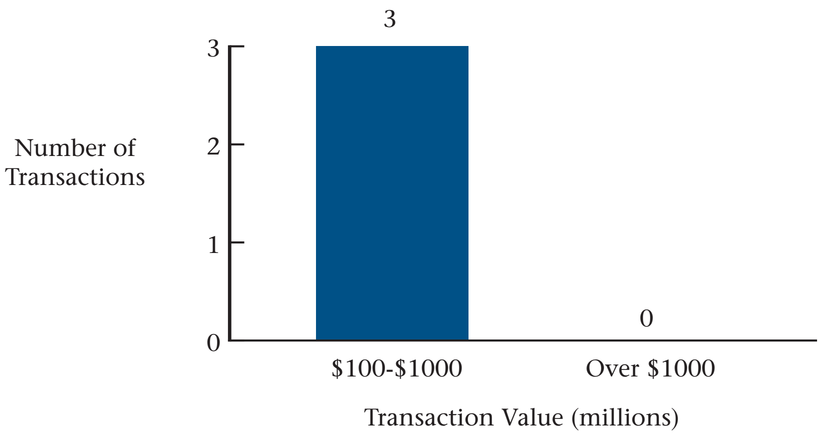
Percentage of Go-Shop Transactions that Eliminate a Matching Right During the Go-Shop Period



In 2008, 25% of the surveyed transactions with a go-shop provision eliminated the matching right during the go-shop period, down from 43% of such transactions in 2007.

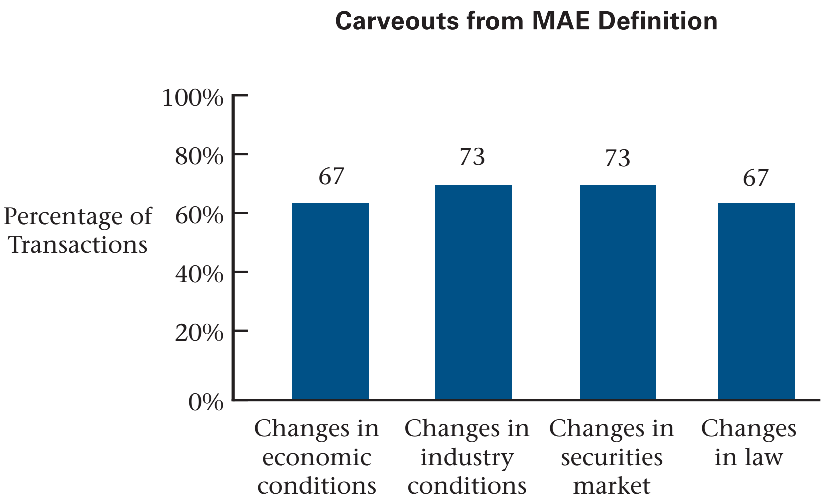
Financing Outs

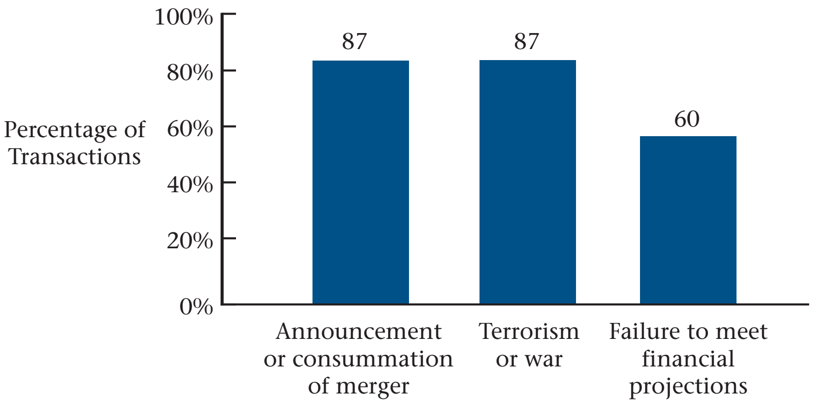
Financing Outs by Transaction Value



Although not the material increase many expected, there was an increase in 2008 in sponsor-backed going private transactions with a financing out (20% in 2008 compared to 3% in 2007). The three surveyed transactions that included a financing out all had a transaction value below $500 million.

Material Adverse Effect

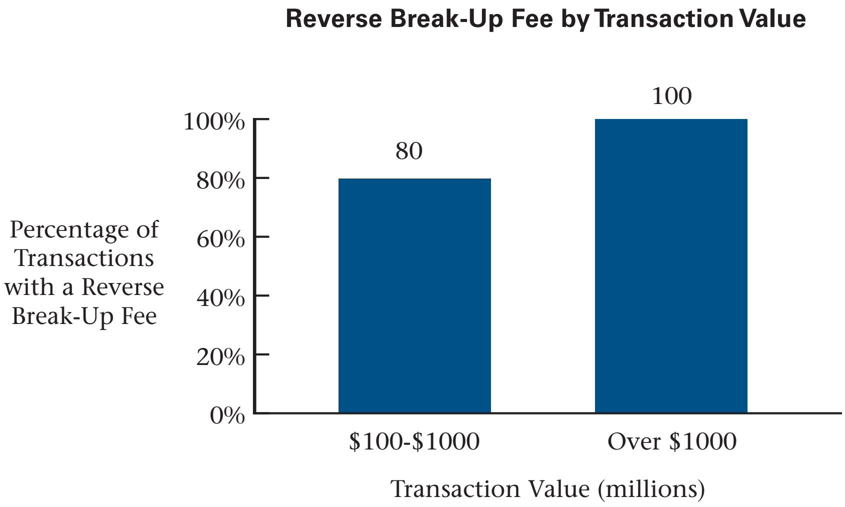




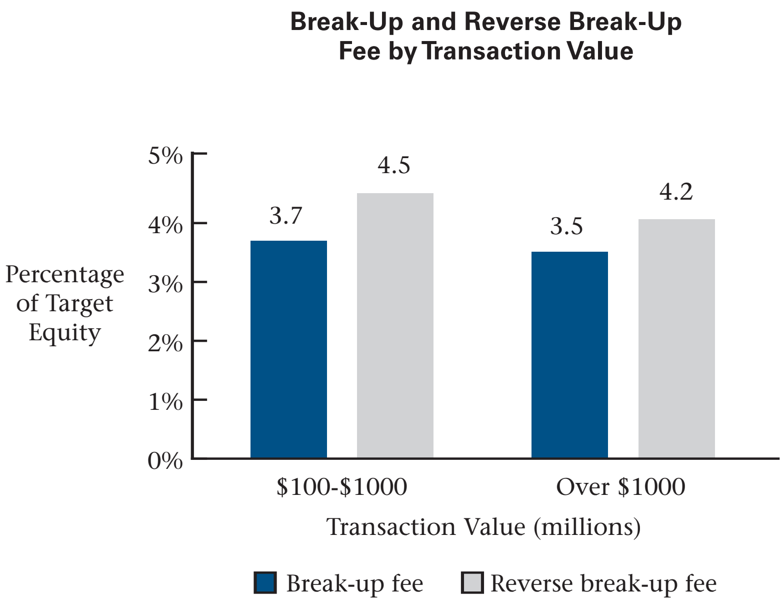
When compared to pre-credit crunch transactions, the surveyed transactions reveal a material decrease in the number of MAE exceptions. Buyers should try to limit these MAE exceptions either by excluding a given exception altogether or qualifying such exclusion so that it only applies to the extent the event in question disproportionately affected the target. In *Huntsman*, the Delaware Chancery Court confirmed that establishing an MAE under Delaware law is a very high hurdle. As a result, it remains dangerous to rely on a general MAE clause to walk away from an acquisition agreement and it may make sense to negotiate an objective MAE test, such as a failure to achieve a certain financial metric or the loss of a key customer.

Additionally, the percentage of surveyed transactions that included an adverse change in the target's prospects in the definition of an MAE increased from 2% in 2007 to 7% in 2008.

Break-Up Fees and Reverse Break-Up Fees



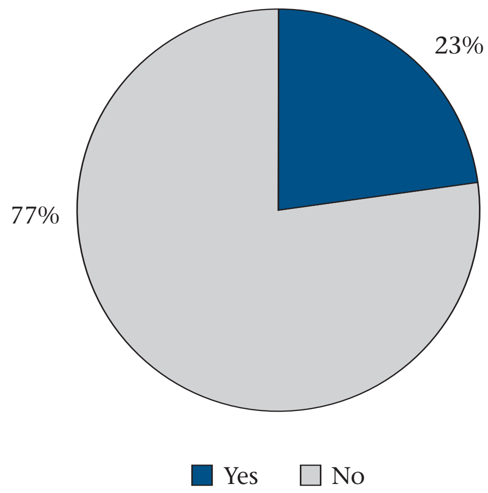
Reverse break-up fees were again the norm in 2008, appearing in 87% of all surveyed transactions (a slight increase from 84% in 2007).



The payment of a reverse break-up fee is often triggered by either a lack of financing or a breach by the buyer.

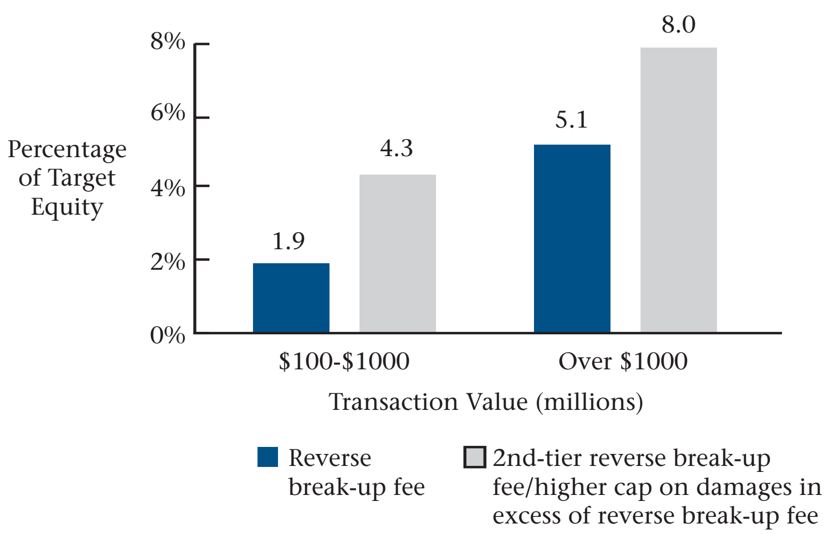
Break-Up Fees and Reverse Break-Up Fees

Percentage of Transactions with a 2nd-Tier Reverse Break-Up Fee/Higher Cap on Damages in Excess of Reverse Break-Up Fee



Target boards in a significant minority of surveyed transactions negotiated for monetary remedies in addition to the reverse break-up fee. This was either implemented through a higher second-tier reverse break-up fee or a higher cap on damages, which was typically available to the seller only in circumstances where the buyer intentionally breached its obligation to consummate the transaction despite the availability of financing. To the extent there are second-tier damages for an intentional breach, sponsors should ensure the acquisition agreement has a strict cap on these damages.

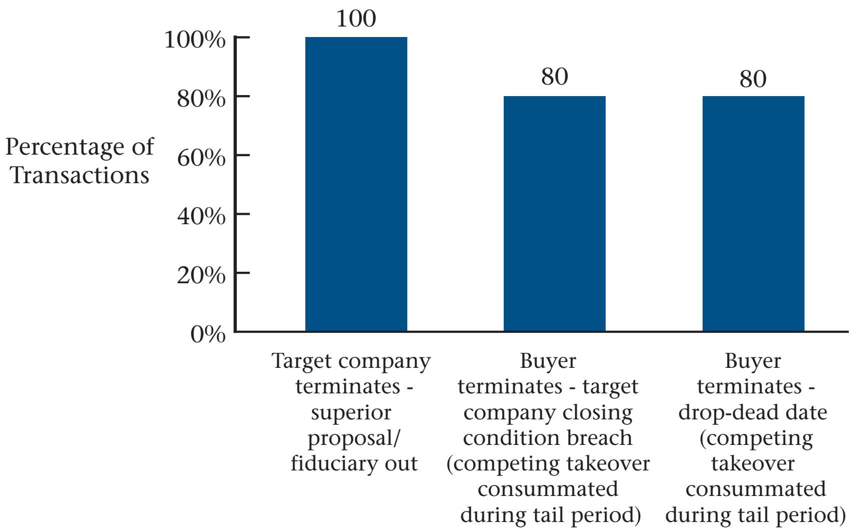
Size of Reverse Break-Up Fee vs. 2nd-Tier Reverse Break-Up Fee/ Higher Cap on Damages in Excess of Reverse Break-Up Fee

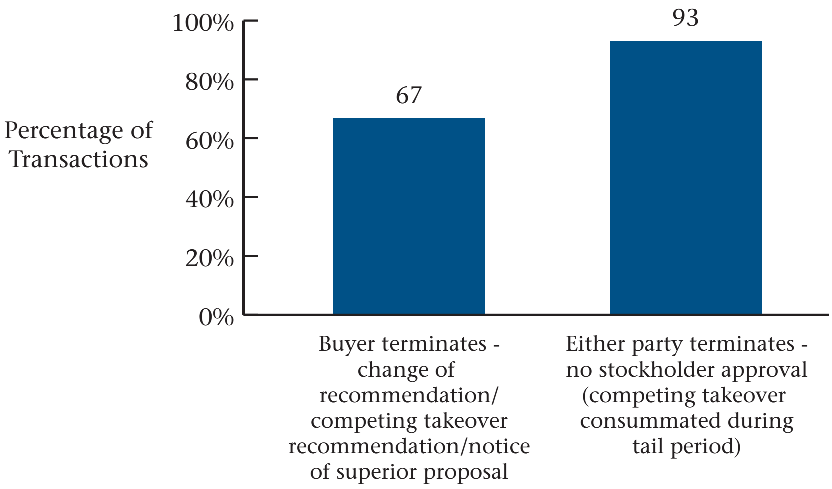


The second-tier reverse break-up fee or higher cap on damages is designed to cut-back the optionality of the reverse break-up fee structure by incentivizing the buyer to close the transaction rather than paying the fee to walk away. The average spread between the first-tier and second-tier reverse break-up fee/higher cap on damages was 2.4% of the target's equity value for transactions between $100 million and $1 billion and 2.9% of the target's equity value for transactions over $1 billion.

Break-Up Fees and Reverse Break-Up Fees

Termination Scenarios Where Buyer Receives a Break-Up Fee



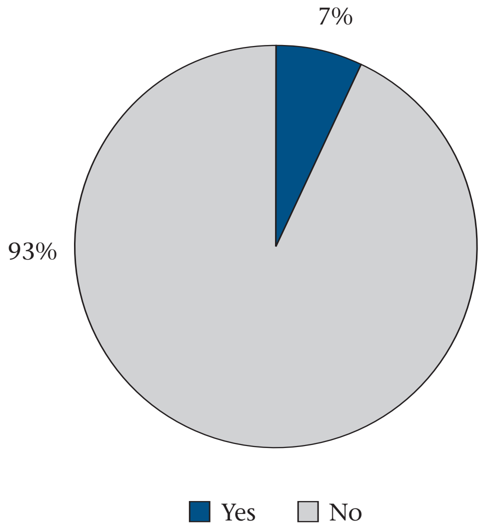


The five scenarios listed on the charts on this page are the most common scenarios in which a break-up fee must be paid. In addition to payment of a break-up fee, several transactions included target reimbursement of buyer's transaction expenses (usually subject to a cap) when the agreement is terminated due to a failure to get stockholder approval, a target company breach leading to the failure of a closing condition or the passage of the drop-dead date.

Interestingly, in an effort to secure shareholder support for the proposed merger between Lear Corporation and an entity controlled by Carl Icahn, Icahn agreed to a $100 million increase in the merger consideration but conditioned such increase upon the addition of a naked no-vote termination fee in an amount equal to $25 million. The disinterested members of the Lear board approved these terms. Following the stockholders' rejection of the merger, shareholder plaintiffs amended an existing complaint to add derivative claims against the Lear directors for, among other things, breach of fiduciary duty for granting Icahn the naked no-vote termination fee. The *Lear* court dismissed all claims, rejecting the plaintiffs' argument that the Lear directors acted in bad faith by agreeing to the $25 million naked no-vote termination fee.

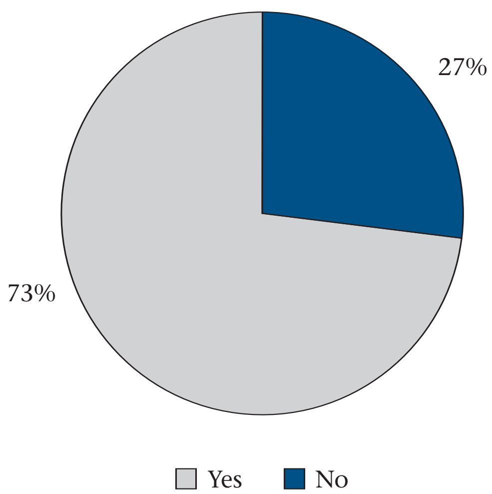
Target Company Remedies

Percentage of Transactions with a Specific Performance Provision Enforceable against the Sponsor



Partly due to the spotlight certain busted deals of the last 18 months placed on the specific performance provision, only 7% of the surveyed transactions permitted the seller to seek specific performance against the buyer rather than be limited to a reverse break-up fee or monetary damages (whereas 33% of the surveyed transactions in 2007 allowed the seller to seek performance). From *United Rentals* to *Huntsman*, Delaware courts have made it clear that the language of the specific performance provision should be unambiguous as to the intent of the parties and should be drafted in conjunction with the reverse break-up fee provision.

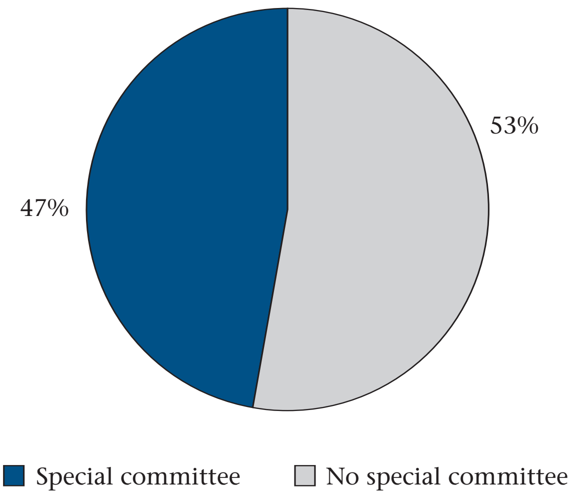
Percentage of Transactions with Non-Recourse Language with respect to a Target's Directors, Shareholders and Affiliates



The *Huntsman* case also highlighted the importance of drafting a tight "non-recourse" provision. As a buyer, sponsors should seek to ensure that the merger agreement specifically protects directors, officers, stockholders and affiliates of the buyer from litigation without any carveouts.

Special Committees

Percentage of Transactions with a Special Committee



In 47% of the surveyed transactions, the target's board of directors did not form a special committee to evaluate, negotiate and approve the proposed transaction. The use of special committees will of course be most prevalent in those transactions where either directors are either part of, or closely affiliated with, the buyout group. A private equity sponsor should keep in mind that it is normally "buying" the shareholder litigation that will often accompany a going private transaction. Accordingly, it is in the interest of the private equity sponsor to ensure that the target is following a defensible sale process in selling the company to reduce the settlement value of any shareholder litigation. Sponsors will also want to run a defensible sale process in order to minimize the risk of increased disclosure in the proxy that could raise red flags for target shareholders and thereby threaten shareholder approval of the transaction.

Europe

Key Conclusions

As has been noted in previous surveys, the going private market varies widely across Europe[1] as a result of the differing rules applied to takeovers across the relevant jurisdictions and the various stages of maturity of the private equity market across the continent.

In our survey there were a total of 13[2] going private transactions across Europe in 2008, with an aggregate transaction value equal to approximately $12.2 billion. Unsurprisingly, given the prevailing economic climate, this was significantly lower than 2007's total of $70.6 billion.

Seven transactions were announced in the first half of 2008 with an aggregate transaction value equal to approximately $8.6 billion. In the second half of 2008, six transactions were announced with an aggregate transaction value of approximately $3.6 billion. The difference in aggregate transaction value, as well as lower volumes for the year as a whole (as compared to 2007), highlights the continued contraction of credit availability. Following the bankruptcy of Lehman Brothers on September 15, 2008 only one transaction was announced – the offer (which was not recommended) for Q-Med in Sweden which was subsequently withdrawn.

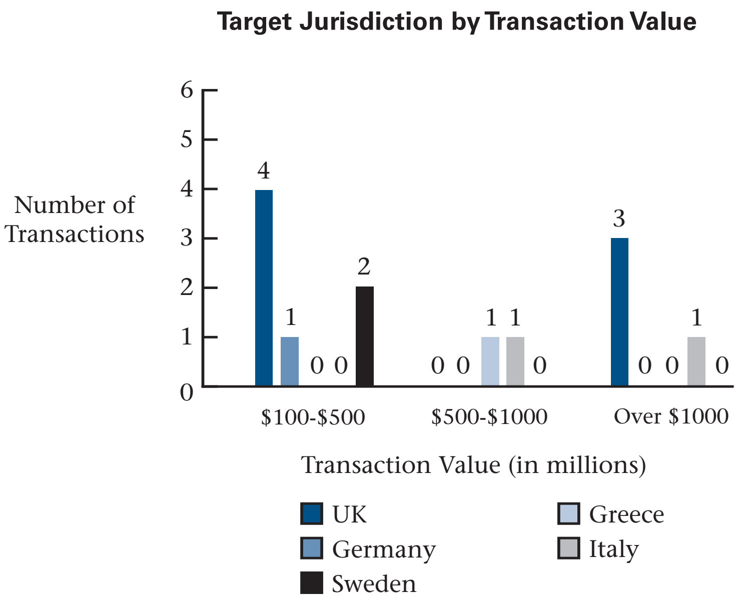
For both value and volume, the UK continued to be the most active European market with seven transactions having an aggregate value of $8.2 billion. The largest UK transaction (also the largest transaction across Europe) was the take-private of Expro International Group plc, announced in April 2008.

As with last year's survey, we have tried to highlight those points that reflect both the similarities and differences between the market across Europe and in the United States. As a whole, the regime for takeovers in Europe continues to be somewhat more restrictive than in the United States.

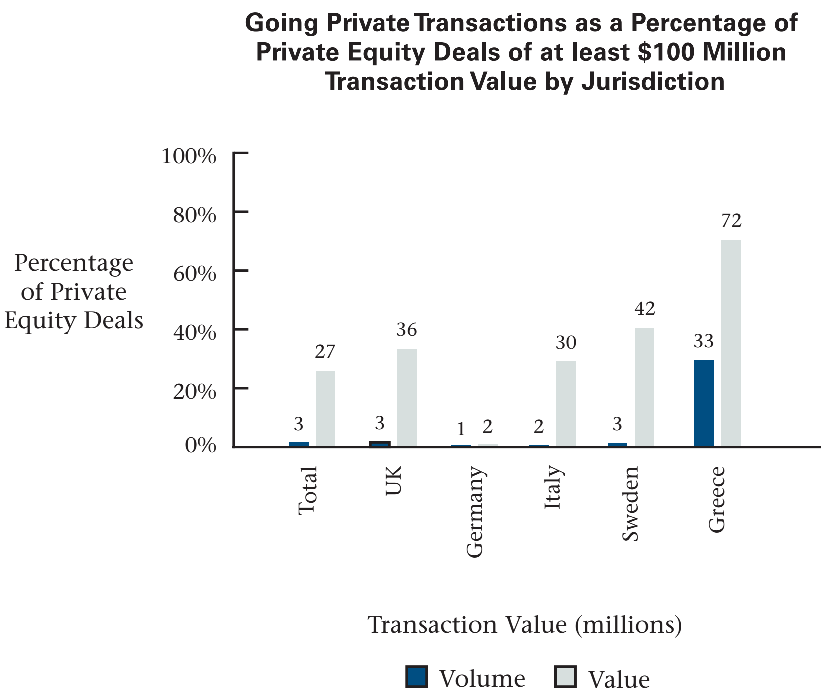
1 Information regarding market activity is based on publicly available information and has not been independently verified.

2 Survey includes sponsor-backed going private transactions greater than $100 million.

Jurisdiction



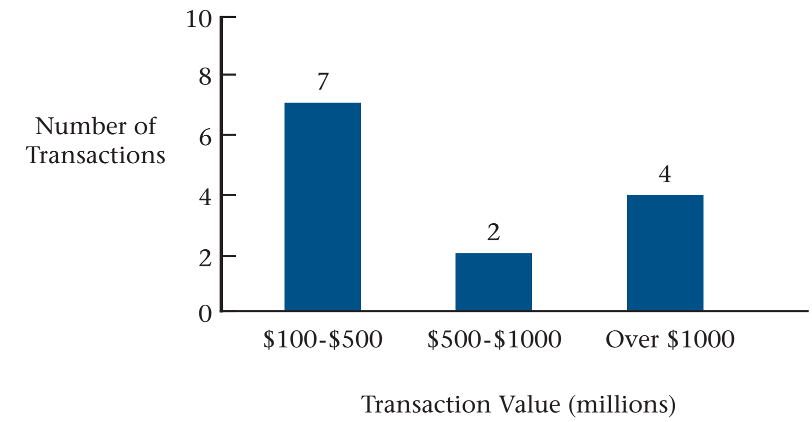
The UK continued to be the most active European market for relevant transactions although deal size and volume were both significantly lower as a result of the worsening of credit availability. The largest announced transaction was the Candover led £1.9 billion take-private of Expro International Group Plc.



Going private transactions made up a smaller percentage of total private equity transactions in 2008 than in 2007, particularly by volume. The percentages were, however, higher when analyzed by value, which is unsurprising given the higher average transaction values usually seen in going private transactions as compared to other private equity transactions.

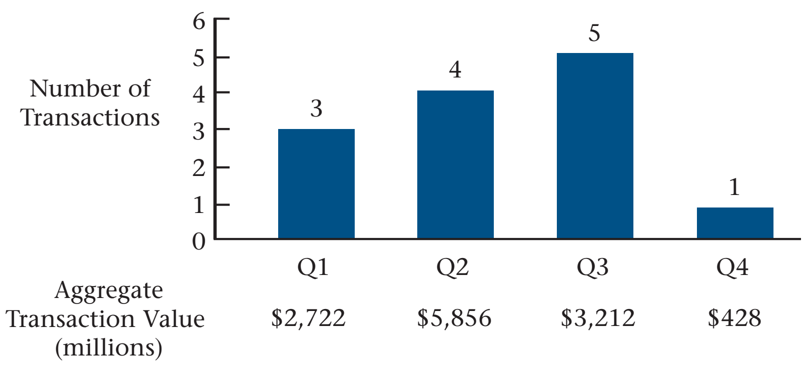
Market Information

Market Activity by Transaction Value



Transaction values ranged from $144 million to $2.8 billion, significantly lower than the previous year's range of $309 million to $22 billion. This year's survey included transactions over $100 million as opposed to the 2007 survey's floor of $250 million. There was a lower average deal value of $940 million in 2008 versus $3.1 billion in 2007. More than half of deal volume was accounted for in the lowest transaction value range of between $100 and $500 million (although only one transaction was below the previous year's floor of $250 million) and, in comparison to 2007, no transaction had a value of $5 billion or greater.

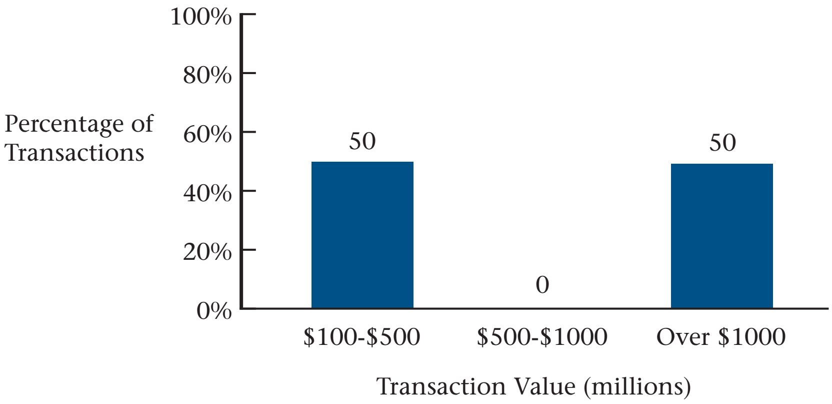
Market Activity by Quarter



Available data indicates a correlation between deteriorating credit markets and deal flow during 2008. All but one of the transactions in 2008 occurred in the first three quarters of the year. Further, all but one of the year's transactions was announced prior to September 15, 2008, the date when Lehman Brothers Holdings, Inc. filed for bankruptcy protection.

Club Deals

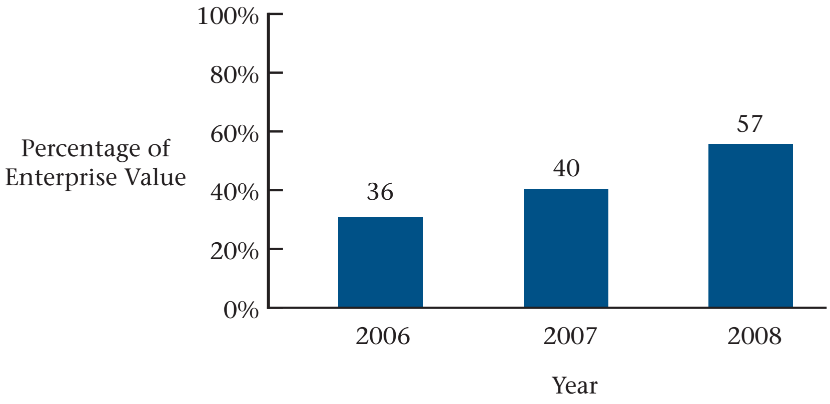
Percentage of Club Deals by Transaction Value



Club deals accounted for 31% of sponsor-backed going private transactions announced in 2008, half of which were for transactions with a value of greater than $1 billion. The transaction with the lowest value in our survey ($144 million) was also a club deal – the take-private of Premier Research Group Plc by funds advised by ECI Partners LLP & Indigo Capital Ltd. With credit markets continuing to deteriorate through 2008, raising debt finance proved increasingly difficult, with sponsors more likely to club together to spread both the risk and cost of the increased equity finance component.

Financing & Break-Up Fees

Equity Invested by Transaction Value

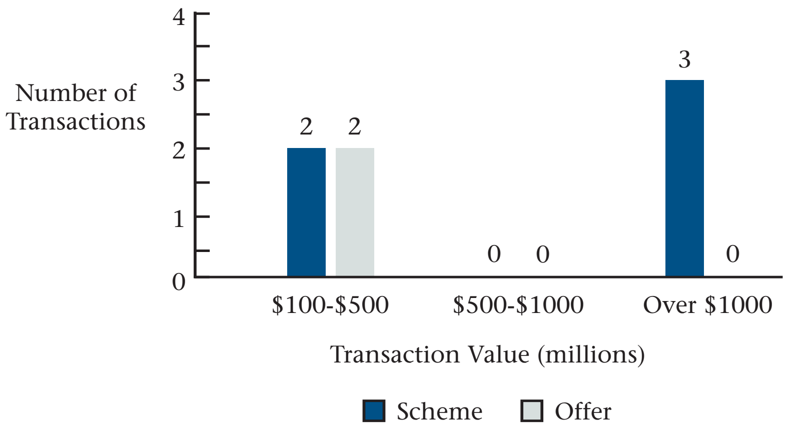


As would be expected, the worsening economic environment and the contraction of credit being made available to sponsors in 2008, whether at all or on suitable terms, meant sponsors/acquirors used higher proportions of their own equity to complete going private transactions. The available data supports this with equity as a percentage of acquiror capitalization averaging over 50% as opposed to an average of 40% in 2007.

As seen in previous surveys, break-up fees, where payable, never amounted to greater than 1% of the equity value of the particular transaction. For example, all but one of the UK transactions featured break-up fees, with the amount set at 1% of equity value, being the maximum amount permissible under the UK Takeover Code. The use of reverse break-up fees continues to be uncommon in Europe.

UK Transactions – Type of Offer

Type of Offer (UK Transactions Only)



There are two ways in which a going private transaction can be structured in the UK – either by way of an offer made to all shareholders or using a technique known as a scheme of arrangement, whereby all the shares of the target are cancelled and new shares are issued to the bidder in exchange for the payment of consideration to the target company's shareholders.

The scheme of arrangement method has the advantage both that no stamp duty (at a rate of 0.5% of the value of the transaction) is paid and also that once the threshold for the scheme is reached (75% of shares voted, excluding shares held by the bidder and its associates) 100% control is obtained.

Under an offer, the bidder will set the threshold for acceptances for the offer to become unconditional (usually set at 90% but often later relaxed to a lower level). Statutory provisions apply under which the bidder can squeeze out minority shareholders if 90% of the shares are acquired, but if this threshold is not reached, the bidder will have to deal with any remaining minority shareholders who have not accepted the offer.

For these reasons, a scheme is generally the most popular route for bidders – in 2008 5 out of the 7 UK transactions made use of a scheme.

Asia-Pacific

Key Conclusions

Total private equity activity in Asia-Pacific[1] declined approximately 38% in 2008 as compared to 2007. This decline is also reflected in the number of sponsor-backed going private transactions in the region. In 2008, not a single completed going private transaction[2] in the region had a deal value over $1 billion (as compared to five in 2007) and only three managed to reach $500 million (as compared to 11 in 2007). Despite the lower $100 million threshold (as compared to $250 million for 2007), only 11 going private transactions met the survey criteria this year.

Some conclusions and trends for going private transactions in the region for 2008 include:

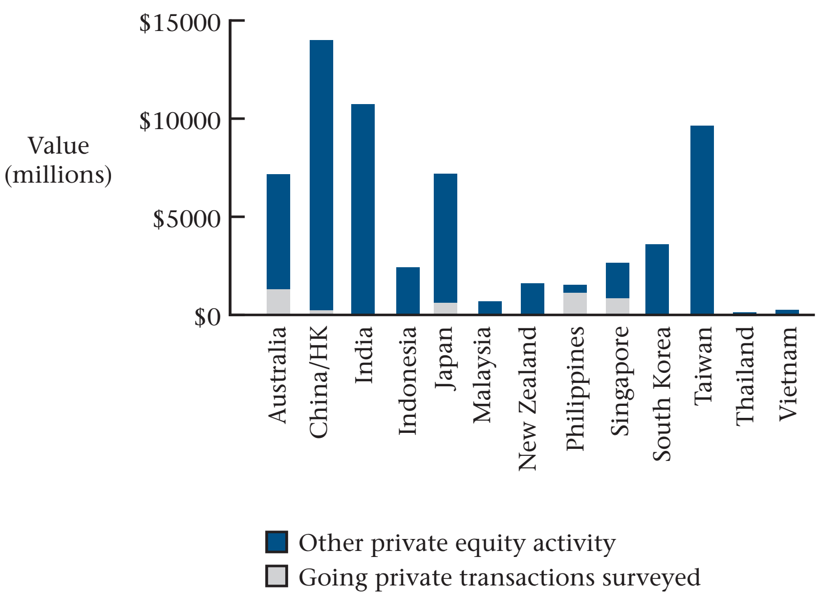
- The 11 surveyed Asia-Pacific going private transactions represent an aggregate transaction value of approximately $4.8 billion, constituting about 9% of private equity activity, by deal value, in the region (as compared to about a quarter in 2007).
- Australia was again the top Asia-Pacific market for going private transactions. As with last year's survey, going private transactions tend to occur primarily in more mature markets in the region.
- Both the number of surveyed transactions and the transaction values reflected the deepening global credit crunch in 2008: Almost two-thirds of the surveyed transactions were announced in the first half of the year and such transactions represented about 78% of the aggregate transaction value.
- Acquirors in the surveyed transactions frequently teamed up with other parties, including other private equity firms, strategic investors and target management.
- Schemes of arrangement and tender offers continued to be the two main forms used in takeover bids in the region.
- Break-up fee provisions were common in the surveyed transactions, particularly those effected through a scheme of arrangement. However, reverse break-up fees remained a rarity in the region with only one surveyed transaction including such a provision in 2008.
- As with last year's survey, a number of sponsor-backed going private "indicative proposals" in the region were either rejected by the target or withdrawn, or otherwise did not result in a definitive agreement or memorandum of terms with the target or its shareholders. As a result, these "indicative proposals" are not reflected in the survey.

1 For the purposes of this survey, the Asia-Pacific region includes Australia, China (as used in this survey, including Hong Kong), India, Indonesia, Japan, South Korea, Malaysia, New Zealand, Philippines, Singapore, Taiwan, Thailand and Vietnam. Information regarding market activity is based on publicly available information and has not been independently verified.

2 The only surveyed transaction above $1 billion, which started as a take-private transaction, did not in fact take the company private (only 51% of target shares were tendered).

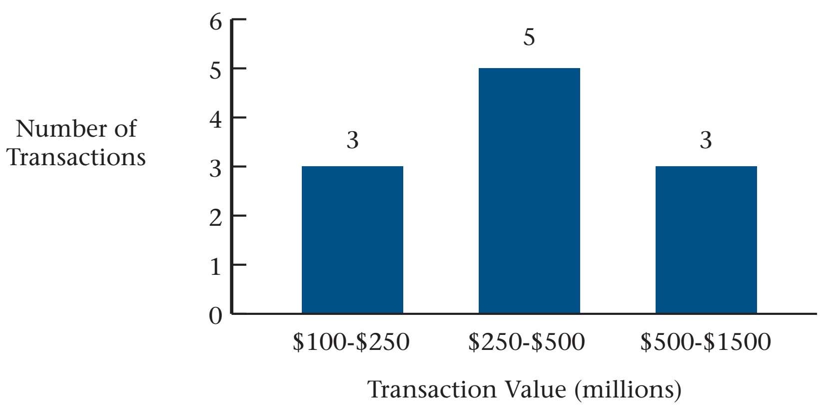
Market Information

Sponsor-Backed Going Private Transactions Surveyed as a Portion of Total Private Equity Activity



The surveyed going private transactions (totaling about $4.8 billion) accounted for approximately 9% of private equity activity, by deal value, in the Asia-Pacific region in 2008 as compared to about a quarter in 2007. Other types of transactions in the region included private buyouts and PIPEs (both of which declined significantly in 2008), expansion/growth capital (which declined moderately) and turnaround/restructuring (which expanded significantly).

Market Activity by Transaction Value

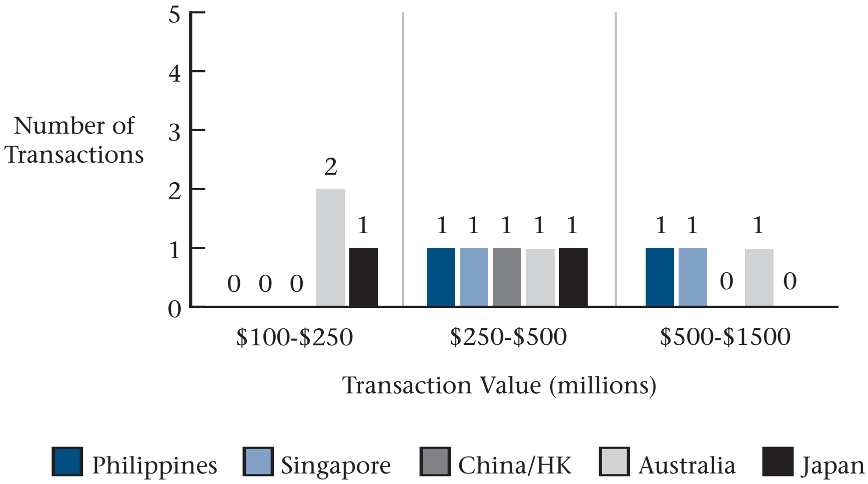


There were 11 transactions in 2008 meeting the survey criteria. Transaction values in the survey ranged from $105 million to $1.4 million, with most below $500 million.

Similar to last year, in 2008 there were quite a number of sponsor-backed going private "indicative proposals" that were "announced" before any deal was struck between buyer and target and/or with the deal subsequently rejected or withdrawn prior to any definitive transaction document or formal offer to shareholders. Such "possible" transactions do not form part of the survey.

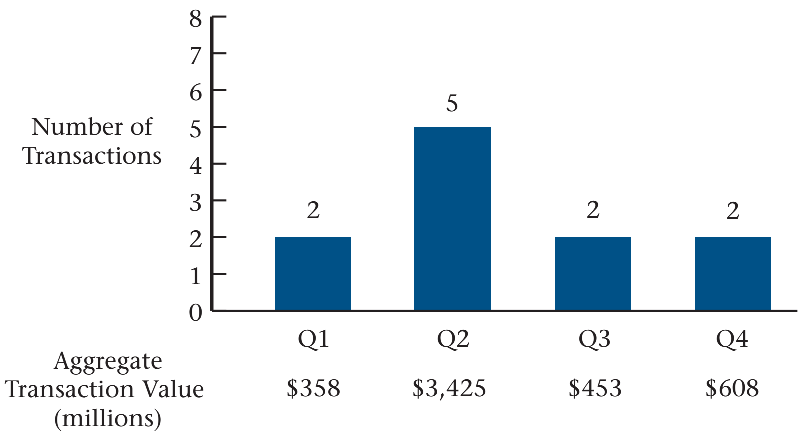
Market Information

Target Jurisdiction by Transaction Value



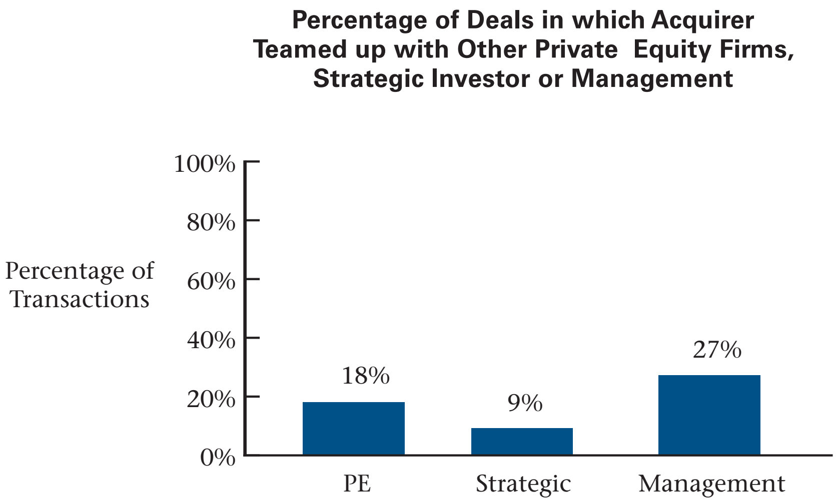
Typically, more mature markets in Asia-Pacific see more sponsor-backed going private transactions. This year Australia continued to have the most sponsor-backed going private transactions that met the survey criteria and we continued to see transactions coming out of Japan and Singapore in 2008. Notably, Philippines had two relatively large-sized transactions. However, no deal from Taiwan (an active market in 2007) met the survey criteria for 2008, where private equity activitiy was down more than 60% from the year before.

Market Activity by Quarter

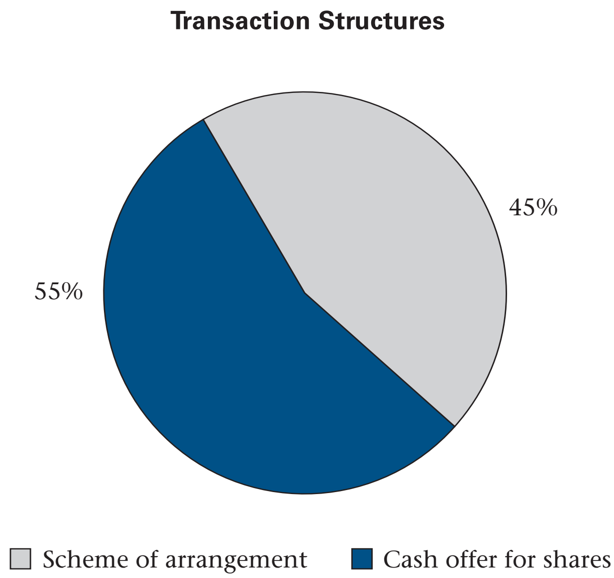


In 2008, there were fewer surveyed transactions than in 2007, even with the lower $100 million threshold. The data revealed the deepening of the credit crisis: almost two-thirds of the transactions were announced in the first half of 2008, and these transactions represented about 78% of the aggregate transaction values for 2008.

Transaction Structures

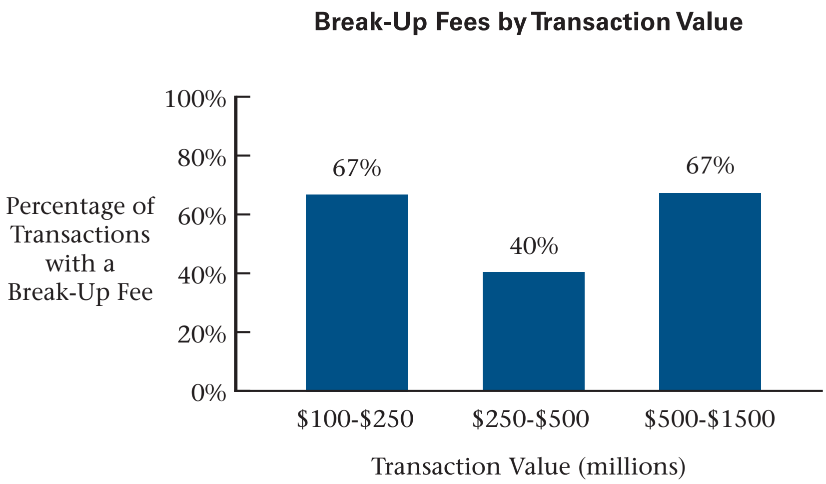


Private equity sponsors have been teaming up with other parties in effecting going private transactions in the region. Approximately 27% of this year's surveyed transactions were effected by two or more buyers (18% teaming up with other private equity sponsors, 9% teaming up with strategics). Similarly, 27% of the transactions were effected by teaming with target company's management.



As would be expected, the legal regimes applicable to public takeovers in the jurisdiction of the target company determine the form of the transaction. All the transactions surveyed were accomplished by either (i) a cash offer for shares or (ii) a scheme of arrangement. As with last year's survey, in a few of the takeover offers, sponsors enticed stockholders to tender their shares by offering a higher price if the sponsor received a higher percentage of shares (e.g., 90% of the outstanding shares) in a specific time period to enhance deal certainty.

Break-Up Fees



Over half the transactions surveyed included some version of a break-up fee if the transaction was not completed, particularly in transactions effected through a scheme of arrangement. Consistent with 2007 findings, reverse break-up fee provisions appear to be less common in Asia-Pacific markets than in the United States. Only one transaction had a reverse break-up fee in 2008 and the fee was equal to the break-up fee.

About the Weil Gotshal Private Equity Group

Weil Gotshal provides private equity clients with one-stop, global service for both fund formation and transactional work. With over 200 private equity lawyers worldwide, including a number of Chambers Global's highest ranking lawyers, we represent private equity sponsors and investors on the full range of private equity matters.

We represent a number of first-tier private equity sponsors in establishing a wide variety of funds, including buyout, infrastructure, distressed debt, mezzanine, real estate opportunity, venture and hedge funds. We design structures and terms to facilitate fundraising on a tax-efficient basis and to withstand the challenges of difficult economic and regulatory environments. Our experience is enhanced by extensive representations of large institutional investors.

On the transactional side, our integrated international experience covers the entire range of legal areas relevant to the successful completion of complex regional and cross-border transactions, including corporate/commercial, banking and finance, tax structuring, structured finance, capital markets, executive compensation and benefits, ownership incentives, regulatory, intellectual property, corporate governance and restructuring.

We understand the changing environment of the private equity market and can respond quickly with innovative structuring and financing for all types of transactions. Our lawyers have extensive experience with acquisitions and financings of, and investments in, public and private companies and with a variety of exit strategies, including spin-offs, divestitures, recapitalizations, mergers and IPOs. We also have extensive experience with representing stressed and distressed portfolio companies of private equity sponsors, including in court and out of court restructurings and workouts, and representing private equity sponsors in acquisitions of distressed target companies.

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