

A Look at 2020
U.S. Sponsor-Backed
Going Private
Transactions

November 2021

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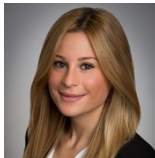
INTRODUCTION

Welcome to the fourteenth survey of U.S. sponsor-backed going private transactions prepared by Weil, Gotshal & Manges LLP. We hope that you will find this information thought-provoking and useful. This survey analyzes and summarizes for the reader the material transaction terms of going private transactions involving private equity sponsors in the United States. We are happy to discuss with clients and friends the detailed findings and analyses underlying this survey.

Doug Warner
Editor



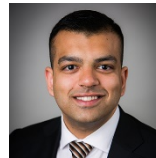
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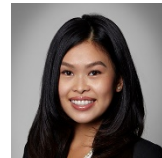
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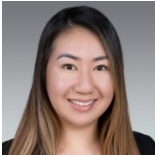
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RESEARCH METHODOLOGY

We surveyed 20 U.S. sponsor-backed going private transactions announced between January 1, 2020 and December 31, 2020 with a transaction value of at least \$100 million.

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. All dollar amounts and percentages referenced in this survey are approximate amounts and percentages.

The 20 surveyed transactions were transactions involving the following target companies:

- AMAG Pharmaceuticals, Inc.
- American Renal Associates Holdings, Inc.
- Benefytt Technologies, Inc.
- Cincinnati Bell Inc.
- Collectors Universe, Inc.
- Dunkin' Brands Group, Inc.
- Endurance International Group Holdings, Inc.
- Forescout Technologies, Inc.
- Foundation Building Materials, Inc.
- Front Yard Residential Corporation
- HMS Holdings Corp.
- Majesco
- MobileIron, Inc.
- Pluralsight, Inc.
- RealPage, Inc.
- Rosetta Stone Inc.
- SEACOR Holdings Inc.
- The Goldfield Corporation
- The Meet Group, Inc.
- Tribune Publishing Company

KEY CONCLUSIONS

Key trends for sponsor-backed going private transactions in the United States in 2020 included:

- As was the case in 2019 and other prior recent years, none of the surveyed going private transactions in 2020 contained a financing out (i.e., a provision that allows the acquirer to get out of the deal without the payment of a fee or other recourse to seller in the event the acquirer's debt financing is unavailable). This type of provision, which first emerged in connection with the financial crisis, was more commonly used in the past. As noted below, specific performance lite continues to be the predominant market remedy with respect to allocating acquirer's financing failure and seller's closing risk.
- While the appearance of the specific performance lite construct decreased from 93% of the surveyed going private transactions in 2019 to 75% (15 of 20) of the surveyed going private transactions in 2020, specific performance lite continued to be the predominant market remedy with respect to allocating acquirer's financing failure and seller's closing risk in sponsor-backed going private transactions. Full specific performance was available to targets in 25% (5 of 20) of the surveyed going private transactions in 2020, which represents an increase as compared to 7% of the surveyed going private transactions in 2019 where full specific performance was available. In the 5 transactions where full specific performance was available, 2 had a full equity backstop.
- The reverse termination fee construct appeared in 85% (17 of 20) of the surveyed going private transactions in 2020 (as compared to 100% of the surveyed going private transactions in 2019).
- The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios was 6.6% as a percentage of the equity value of the target, which represents a slight decrease in the mean single-tier reverse termination fee of 6.7% as a percentage of the equity value of the target in 2019. The mean target termination fee was 3.1% as a percentage of equity value of the target, which is a slight decrease of the mean target termination fee of 3.2% as a percentage of the equity value of the target in 2019.
- The use of go-shop provisions significantly decreased in 2020, appearing in only 10% (2 of 20) of the surveyed going private transactions (as compared to 60% of the surveyed going private transactions in 2019, 33% of the surveyed going private transactions in 2018, 14% of the surveyed going private transactions in 2017 and 50% of the surveyed going private transactions in 2016). The mean length of the go-shop periods in the surveyed transactions in 2020 was 43 days (as compared to 38 days in the surveyed going private transactions in 2019).
- As in 2019 and the past several years, 100% of the surveyed going private transactions in 2020 that contained go-shop provisions provided for a two-tier termination fee provision. The reduced termination fee in the surveyed going private transactions in 2020 that contained go-shop provisions ranged from approximately 32% to 42% of the general termination fee, with the mean being 37% (the mean in 2019 was 46%).
- Tender offers continued to be a relatively unpopular option for sponsors, though the use of tender offers significantly increased in 2020 as compared to other prior recent years. Tender offers were used in 45% of the surveyed going private transactions in 2020 (as compared to 0% of the surveyed going private transactions in 2019 and 18% of the surveyed going private transactions in 2018). From a sponsor's perspective, the tender offer remains a less attractive option compared to a one-step merger unless agreeing to a tender offer improves its position in a competitive bid process.

HIGHLIGHTS OF 2020

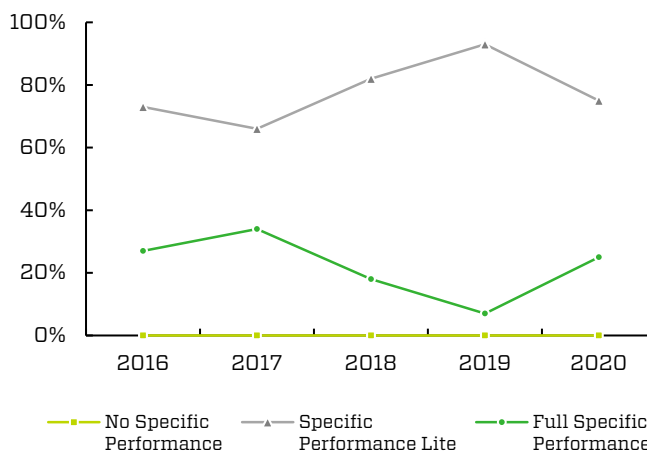
The mean transaction value of the surveyed going private transactions in 2020 was significantly lower than the mean transaction value of the surveyed going private transactions in 2019, but was closer to the mean transaction values in other recent years. The mean transaction value of the surveyed going private transactions in 2020 was approximately \$1.8 billion, as compared to approximately \$3.3 billion in 2019, \$1.7 billion in 2018, \$1.4 billion in 2017 and \$1.7 billion in 2016. The transaction values of the surveyed going private transactions in 2020 ranged from approximately \$172 million to approximately \$9 billion. In comparison, the transaction values of the surveyed going private transactions in 2019 and 2018 ranged from \$634 million to approximately \$10.4 billion and \$173 million to \$5.6 billion, respectively.

Specific performance lite was included in 75% (15 of 20) of the surveyed going private transactions in 2020 (compared to 93% of the surveyed transactions in 2019, 82% of the surveyed transactions in 2018, 66% of the surveyed transactions in 2017 and 73% of the surveyed transactions in 2016).

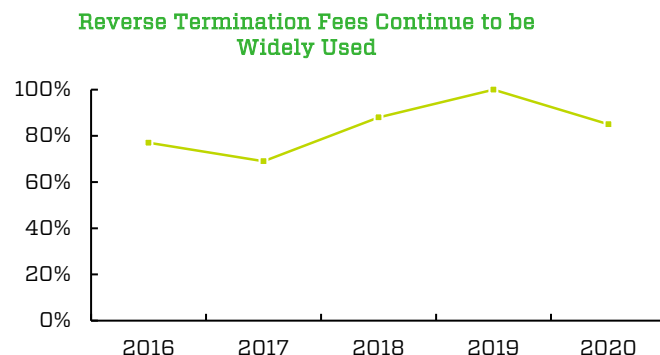
Specific performance lite, whereby the target has the limited right to seek specific performance to force the closing only if all of the acquirer's conditions to closing are satisfied (or waived) and acquirer's debt financing is available and ready to be funded, first emerged after the financial crisis as a compromise between targets, which sought to limit the optionality built into the reverse termination fee structure, and sponsors, which could not accept the risk of being forced to close transactions in the event their lenders failed to fund the debt proceeds.

25% (5 of 20) of the surveyed going private transactions in 2020 included a full specific performance construct. In 2020, the percentage of surveyed going private transactions where target had the right to seek full specific performance (25%) increased substantially from 2019 where such construct was used in only 7% of surveyed going private transactions (though the percentage of surveyed going private transactions that included full specific performance in 2020 more closely resembled the use of such construct in other prior recent years). 40% (2 of 5) of the surveyed going private transactions in 2020 that included a full specific performance construct had a transaction value in excess of \$1 billion (as compared to 100% of the surveyed going private transactions in 2019 and 50% of the surveyed going private transactions in 2018).

Use of Specific Performance Lite



85% (17 of 20) of the surveyed going private transactions in 2020 included a reverse termination fee construct. The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios (e.g., financing failure) was 6.6% as a percentage of the equity value of the target, which represents a slight decrease in the mean single-tier reverse termination fee of 6.7% as a percentage of the equity value of the target in 2019.

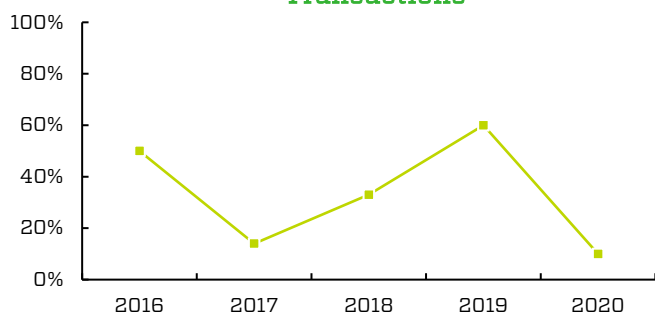


0% (0 of 20) of the surveyed going private transactions in 2020 included a two-tier reverse termination fee. The two-tier reverse termination fee, whereby the sponsor would pay a higher reverse termination fee for certain events, willful breaches and/or refusal to close (other than in connection with a financing failure), has been rarely utilized in recent years and was not used in any of the surveyed transactions in the past years other than 2017 (during which it was only used in 2 of the 35 surveyed transactions).

The mean target termination fee in the surveyed going private transactions in 2020 was 3.1% as a percentage of equity value of the target, which is a slight decrease from the mean target termination fee of 3.2% as a percentage of the equity value of the target in 2019. This target termination fee would have been payable by targets in certain termination scenarios (e.g., entering into an alternative acquisition agreement in connection with a superior proposal). In 15% (3 of 20) of the surveyed going private transactions in 2020, the target termination fee was set at exactly 50% of the reverse termination fee. As further discussed below, in 100% of the surveyed going private transactions in 2020 that contained go-shop provisions, a superior proposal entered into as a result of the go-shop period would have triggered the payment of a reduced target termination fee. Therefore, the target boards took the view that the original target termination fee was inconsistent with the spirit of the go-shop as a true post-signing “test the market” process.

The use of go-shop provisions significantly decreased in 2020. Go-shop provisions that permit the target to canvass the market and solicit other potential bids after a deal is announced were used much less frequently in 2020 than in 2019 and in any of the past several years which had evidenced an upward trend of such provisions (10% of the surveyed going private transactions in 2020 as compared to 60% of the surveyed going private transactions in 2019, 33% of the surveyed going private transactions in 2018, 14% of the surveyed going private transactions in 2017 and 50% of the surveyed going private transactions in 2016).

Use of Go-Shops in Going Private Transactions



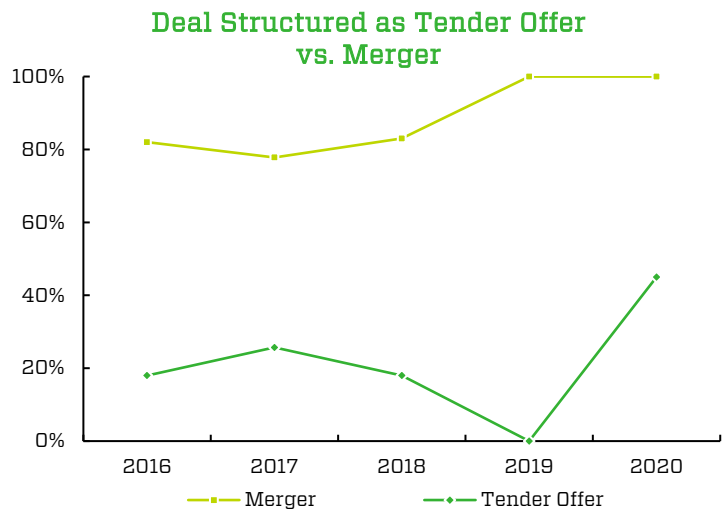
Go-shop provisions are often included as a way to assist a target's board in maximizing shareholder value and are particularly prevalent in transactions where the target's board does not have the opportunity to commence a full sales process or otherwise perform a market check prior to the signing of a transaction. The length of the go-shop periods in the surveyed going private transactions in 2020 ranged from 40 days to 45 days, with the mean being 43 days (slightly higher than the mean of 38 days in

the surveyed going private transactions in 2019). Each of the 2 surveyed transactions containing a go-shop period in the surveyed going private transactions in 2020 closed successfully without another bidder emerging, which was also the case in 2019 and other recent prior years. A hard-stop was utilized in 50% (1 of 2) of the surveyed going private transactions in 2020 that contained a go-shop period (compared to 33% of surveyed going private transactions in 2019). A hard-stop imposes a deadline (often an abbreviated period after the end of the go-shop period) 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 termination fee. The hard-stop in the one applicable transaction in 2020 was the expiration of the go-shop period (such that the reduced termination fee would be payable only to the extent the target entered into an alternative acquisition agreement with a competing bidder prior to the expiration of the go-shop period).

100% of the surveyed going private transactions in 2020 that contained go-shop provisions provided for a two-tier termination fee provision stating that the termination fee payable by the target to the initial bidder would be decreased if the reason for terminating the transaction agreement was a superior proposal. As was the case in the past several years, the 2020 going private transactions that contained go-shop provisions included a two-tier termination fee construct. The amount of the reduced go-shop termination fee ranged from 32% to 42% of the amount of the general termination fee, with the mean being 37% (in 2019, the reduced go-shop termination fee ranged from 33% to 57% and the mean was 46%).

As in the past several years, 100% of the surveyed going private transactions in 2020 allowed the target board to change its recommendation in connection with a superior proposal or an "intervening event". An "intervening event" is typically defined as an event or circumstance unknown or unforeseeable to the target board at the signing of a transaction that later occurring or known would require the target board to change its recommendation in order not to act in a manner inconsistent with its fiduciary duties.














































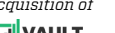




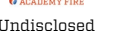




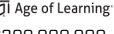



The use of tender offers in 2020 significantly increased as compared to 2019 and the past several years, though tender offers continued to be used in only a minority of sponsor-backed going private transactions. Sponsors utilized the two-step tender offer / back-end merger structure in 45% (9 of 20) of the surveyed going private transactions in 2020 (compared to 0% of the surveyed going private transactions in 2019, 18% of the surveyed going private transactions in 2018, 26% of the surveyed going private transactions in 2017 and 18% of the surveyed transactions in 2016).



In addition, 100% of the surveyed going private transactions in 2020 (compared to 83% of the surveyed going private transactions in 2018, 78% of the surveyed going private transactions in 2017 and 100% of the surveyed transactions in 2016) that utilized tender offers opted into Section 251(h) of the Delaware General Corporation Law.¹

¹ Section 251(h), which became effective on August 1, 2013, was amended on July 15, 2014 and was further amended on June 16, 2016, lowered the ownership threshold at which an acquirer can effect a second-step merger without a vote of the target's stockholders from 90% to generally a majority (unless a higher threshold is specified in the target's organizational documents). The 2014 amendments addressed certain interpretive issues to eliminate certain ambiguities in the statute. The 2016 amendments removed certain ambiguities in a number of the requirements of, and broadened the availability of, Section 251(h).

REPRESENTATIVE PRIVATE EQUITY TRANSACTIONS

<p>Advent International and CPP Investments consortium's take-private of  \$14,000,000,000 November 2021</p>	<p>Advent International merger of  \$3,000,000,000 February 2021</p>	<p>Advent International sale of  \$1,001,000,000 September 2021</p>	<p>Advent International investment in  \$1,075,000,000 October 2021</p>	<p>Advent International ATT's business combination with  \$2,500,000,000 February 2021</p>	<p>Advent International Cobham's sale of Cobham Mission Systems \$2,830,000,000 February 2021</p>	<p>Advent International Culligan's sale of  Undisclosed May 2021</p>
<p>American Securities acquisition of  Undisclosed March 2021</p>	<p>American Securities acquisition of CONAIR Undisclosed July 2021</p>	<p>American Securities sale of Henry \$1,575,000,000 July 2021</p>	<p>American Securities Lasership's acquisition  Undisclosed September 2021</p>	<p>Ardian stake acquisition of  \$1,000,000,000 September 2021</p>	<p>Aterian Investment Partners Pioneer's acquisition  Undisclosed January 2021</p>	<p>Aterian Investment Partners Pioneer's acquisition  Undisclosed February 2021</p>
<p>Bain Capital Kantar's acquisition  Undisclosed April 2021</p>	<p>Berkshire Partners recapitalization of  Undisclosed January 2021</p>	<p>Berkshire Partners acquisition of ZepVehicleCare Undisclosed September 2021</p>	<p>Berkshire Partners majority stake sale  Undisclosed October 2021</p>	<p>Blackstone acquisition of DECA DENTAL GROUP Undisclosed July 2021</p>	<p>Blackstone majority stake acquisition of  Undisclosed July 2021</p>	<p>Blackstone acquisition of  Undisclosed August 2021</p>
<p>Blackstone investment in Hotwire Undisclosed April 2021</p>	<p>Blackstone investment in InCloud Undisclosed October 2021</p>	<p>Charlesbank Capital Partners Bridges' acquisition  Undisclosed January 2021</p>	<p>Clearhaven Partners acquisition of  Undisclosed June 2021</p>	<p>Cornell Capital acquisition of  Undisclosed March 2021</p>	<p>Cornell Capital INW's acquisition  Undisclosed April 2021</p>	<p>CPP Investments investment in  \$2,250,000,000 June 2021</p>
<p>CVC Capital Partners stake acquisition of Corporate Finance Group Inc. \$1,850,000,000 August 2021</p>	<p>CVC Growth Partners stake acquisition of ICARIO Undisclosed May 2021</p>	<p>EQT Partners sale of  \$485,000,000 March 2021</p>	<p>EQT Partners WS Audiology's asset acquisition of  Undisclosed July 2021</p>	<p>Genstar Capital acquisition of  Undisclosed May 2021</p>	<p>Genstar Capital acquisition of  Undisclosed July 2021</p>	<p>Genstar Capital sale of  Undisclosed January 2021</p>
<p>Genstar Capital Arrowhead's acquisition of  Undisclosed September 2021</p>	<p>GHK Capital Partners acquisition of  Undisclosed May 2021</p>	<p>GHK Capital Partners interest sale of  Undisclosed February 2021</p>	<p>Golden Gate Capital formation of  Undisclosed April 2021</p>	<p>GS Acquisition Holdings Corp II business combination of  \$2,600,000,000 June 2021</p>	<p>Gores Guggenheim, Inc. business combination of Polestar \$20,000,000,000 September 2021</p>	<p>Gores Holdings V, Inc. business combination of  \$8,500,000,000 February 2021</p>
<p>Gores Holdings VI, Inc. business combination of  \$1,900,000,000 February 2021</p>	<p>Gores Metropoulos II, Inc. business combination of  \$1,925,000,000 April 2021</p>	<p>J.C. Flowers stake acquisition of  Undisclosed February 2021</p>	<p>Kainos Capital JTM Foods' sale to  \$950,000,000 April 2021</p>	<p>Kainos Capital Olde Thompson's sale to  \$950,000,000 April 2021</p>	<p>Lee Equity Partners acquisition of  Undisclosed September 2021</p>	<p>Montagu Private Equity acquisition of  Undisclosed January 2021</p>
<p>OMERS acquisition of Partners Group Princess Learning IC \$1,586,240,000 May 2021</p>	<p>OTPP stake acquisition of  Undisclosed October 2021</p>	<p>OTPP sale of  \$650,000,000 July 2021</p>	<p>Providence Equity stake acquisition of  Undisclosed October 2021</p>	<p>Providence Equity investment in  Undisclosed June 2021</p>	<p>Providence Equity Blackboard's sale  Undisclosed September 2021</p>	<p>PSG investment in  Undisclosed August 2021</p>
<p>PSG acquisition of  Undisclosed August 2021</p>	<p>PSP Investments consortium sale of  Undisclosed June 2021</p>	<p>PSP Investments investment in  Undisclosed January 2021</p>	<p>PSP Investments minority investor in merger of  Undisclosed March 2021</p>	<p>Searchlight Capital Partners acquisition of  Undisclosed October 2021</p>	<p>Snow Phipps Group acquisition of  Undisclosed February 2021</p>	<p>Sumeru Equity Partners SocialChorus' merger  Undisclosed June 2021</p>
<p>TPG Growth acquisition of  Undisclosed September 2021</p>	<p>TPG Pace Solutions Corp. business combination  \$4,500,000,000 July 2021</p>	<p>TPG Tech Adjacencies stock acquisition of  Undisclosed March 2021</p>	<p>TPG Tech Adjacencies investment in  \$300,000,000 February 2021</p>	<p>TPG Tech Adjacencies investment in  \$550,000,000 May 2021</p>	<p>Trive Capital acquisition of  Undisclosed September 2021</p>	<p>Trive Capital sale of  Undisclosed February 2021</p>

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market knowledge

Deep experience across all of the major
private equity asset classes

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manner

WEIL'S ELITE GLOBAL PRIVATE EQUITY PRACTICE

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- **Depth of Experience.** Our attorneys have significant experience representing private equity firms and their portfolio companies on all aspects of their business and are regularly involved in some of the largest, most high-profile and complex private equity acquisitions and related financings.
- **Range of High Profile Transactions.** Over the last 18 months, we have advised on 100 deals valued at \$1 billion+—representing a wide range of our PE clients on their investments and exits from investments across many sectors.

BY THE NUMBERS

5

Years

1,100+

Deals

More Than

\$1T

In Total Deal
Value

Over

300

Sponsors

Ranked

Tier 1

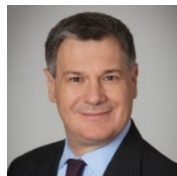
Private Equity in the U.S., U.K,
France, China and Hong Kong
— *IFLR1000*

Advises

80%^{of the} Top 25

largest global private equity funds
— *PEI 300 2021*

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