

A LOOK AT U.S. SPONSOR-BACKED
GOING PRIVATE
TRANSACTIONS

MAY 2017

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INTRODUCTION

Welcome to the tenth survey of 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.

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RESEARCH METHODOLOGY

We surveyed 22 sponsor-backed going private transactions announced between January 1, 2016 and December 31, 2016 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 22 surveyed transactions were transactions involving the following target companies:

- Apollo Education Group, Inc.
- Blue Nile, Inc.
- Cvent, Inc.
- Diamond Resorts International, Inc.
- Diligent Corporation
- Electro Rent Corporation
- Epiq Systems, Inc.
- ExamWorks Group, Inc.
- Imprivata, Inc.
- Infoblox Inc.
- Inteliquent, Inc.
- Lionbridge Technologies, Inc.
- Marketo, Inc.
- NeuStar, Inc.
- Outerwall Inc.
- Press Ganey Holdings, Inc.
- Qlik Technologies Inc.
- Rackspace Hosting, Inc.
- SciQuest, Inc.
- Team Health Holdings, Inc.
- The ADT Corporation
- The Fresh Market, Inc.

KEY CONCLUSIONS

Key trends for going private transactions in the United States in 2016 included:

- As was the case in 2015 and 2014, none of the surveyed going private transactions in 2016 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 in the event the debt financing is unavailable).
- Specific performance lite continued to be the predominant market remedy with respect to allocating financing failure and closing risk in sponsor-backed going private transactions and was included in 73% (16 of 22) of the surveyed going private transactions in 2016. Full specific performance was available to targets in 27% (6 of 22) of the surveyed going private transactions in 2016. The transactions where full specific performance was available were “all equity” transactions.
- Similarly, the reverse termination fee construct appeared in 73% (16 of 22) of the surveyed going private transactions in 2016 (as compared to 64% (14 of 22) of the surveyed going private transactions in 2016). The increase in the appearance of the reverse termination fee construct was due to the decrease in the number of “all equity” transactions surveyed in 2016.
- The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios was 4.9% as a percentage of the enterprise value of the target, which is a decrease as compared to the 5.7% as a percentage of the enterprise value of the target in 2015. The mean target termination fee was 3.0% as a percentage of enterprise value of the target, which is relatively consistent with the mean target termination fee of 3.2% as a percentage of the enterprise value of the target in 2015.
- Go-shop provisions remain popular, appearing in 50% of the surveyed going private transactions in 2016 as compared to 46% of the surveyed going private transactions in 2015 and 38% of the surveyed going private transactions in 2014. The mean length of the go-shop periods in the surveyed transactions in 2016 was 31 days (a decrease from 38 days in the surveyed going private transactions in 2015).
- 100% of the surveyed going private transactions in 2016 that contained go-shop provisions provided for a two-tier termination fee provision. The reduced termination fee in the surveyed going private transactions in 2016 that contained go-shop provisions ranged from approximately 33% to 62% of the general termination fee, with the mean being 46%.
- Tender offers continue to be a relatively unpopular option for sponsors. Tender offers were used in 18% (4 of 22) of the surveyed going private transactions in 2016, which is an increase as compared with 5% of the surveyed transactions in 2015 and 13% of the surveyed transactions in 2014. 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 2016

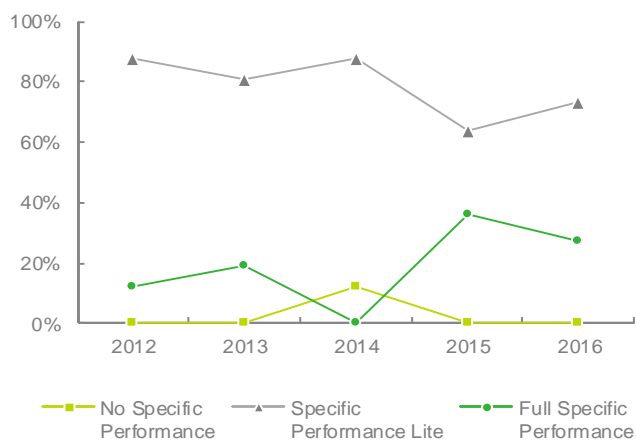
The surveyed going private transactions in 2016 had a lower mean transaction value as compared to the surveyed going private transactions in 2015, 2014 and 2013. The mean transaction value of the surveyed going private transactions in 2016 was \$1.7 billion, as compared to \$2.3 billion in 2015, \$2.1 billion in 2014 and \$2.5 billion in 2013. The transaction values of the surveyed going private transactions in 2016 ranged from \$354 million to \$6.9 billion. In comparison, the transaction values of the surveyed going private transactions in 2015 ranged from \$174 million to \$13.7 billion.

Specific performance lite was included in 73% (16 of 22) of the surveyed going private transactions in 2016 (compared with 64% of the surveyed transactions in 2015, 88% of the surveyed transactions in 2014, 81% of the surveyed transactions in 2013, 88% of the surveyed transactions in 2012 and 74% of the surveyed transactions in 2011). Specific performance lite, whereby the target has the limited right to seek specific performance to force the closing only if all conditions to closing are satisfied and the 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.

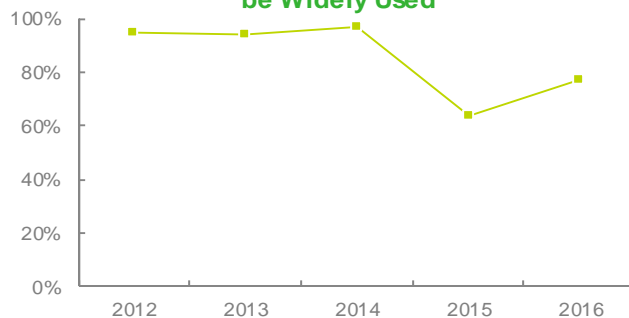
27% (6 of 22) of the surveyed going private transactions in 2016, and 100% of the surveyed going private transactions that were “all equity” transactions, included a full specific performance construct. The percentage of transactions where the target had the right to seek full specific performance increased significantly over the past couple of years due to the increase in the number of “all equity” deals. 50% (3 of 6) of the surveyed going private transactions in 2016 that included a full specific performance construct had a transaction value of in excess of \$1 billion.

Similarly, 73% (16 of 22) of the surveyed going private transactions in 2016 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 5.0% as a percentage of the enterprise value of the target, which is a decrease as compared to the 5.7% as a percentage of the enterprise value of the target in 2015.

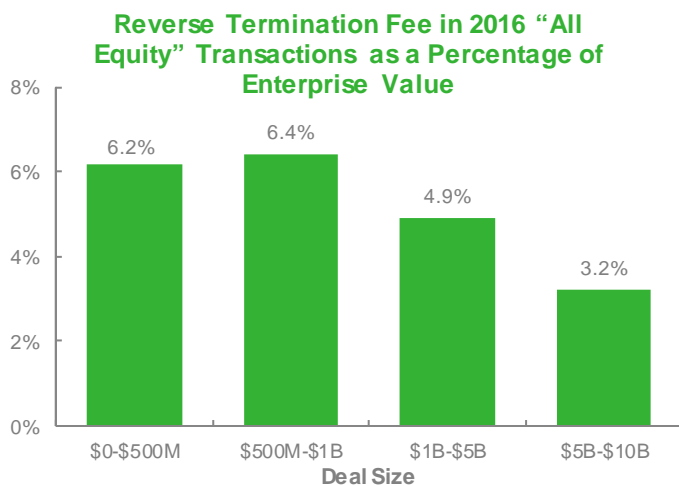
Use of Specific Performance Lite



Reverse Termination Fees Continue to be Widely Used



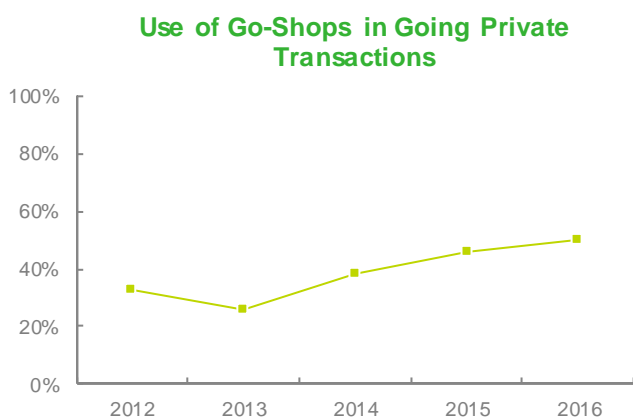
0% of the surveyed going private transactions in 2016 included a two-tier reverse termination fee. The two-tier reverse termination fee, whereby the sponsor would pay a higher reverse termination fee for a willful breach and/or a refusal to close (other than in connection with a financing failure), has been rarely utilized in recent years and was not used in any of the surveyed transactions in 2016, 2015, 2014 or 2013 (it was only used in two of the surveyed transactions in 2012).



The mean target termination fee in the surveyed going private transactions in 2016 was 3.0% as a percentage of enterprise value of the target, which is relatively consistent with the mean target termination fee of 3.2% as a percentage of the enterprise value of the target in 2015. 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 27% (6 of 22) of the surveyed going private transactions in 2016, the target termination fee was set at exactly 50% of the reverse termination fee. In 100%

of the surveyed going private transactions in 2016 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 remains popular. Go-shop provisions that permit the target to canvas the market and solicit other potential bids after a deal is announced were more widely used in 2016 (50% of the surveyed going private transactions in 2016 as compared to 46% of the surveyed going private transactions in 2015, 38% of the surveyed going private transactions in 2014, 26% of the surveyed going private transactions in 2013 and 33% of the surveyed going private transactions in 2012).



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 the transaction. The length of the go-shop periods in the surveyed going private transactions in 2016 ranged from 14 days to 45 days, with the mean being 31 days (a decrease from 38 days in the surveyed going private transactions in 2015). Each of the 11 surveyed transactions containing a go-shop period in the surveyed going private transactions in 2016 closed

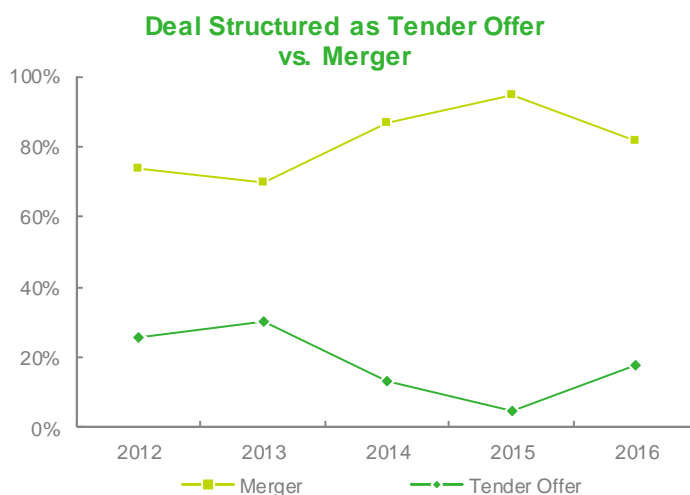
successfully without another bidder emerging, which was also the case in 2015 and 2014. A hard-stop was utilized in 36% of the surveyed going private transactions in 2016 that contained a go-shop period (a decrease from 70% of surveyed going private transactions in 2015). A hard-stop imposes a deadline (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 ranged from 10 days to 30 days in the surveyed going private transactions in 2016.

100% of the surveyed going private transactions in 2016 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 compared to the surveyed going private transactions in previous years, the two-tier termination fee is becoming increasingly more common. The amount of the reduced go-shop termination fee ranged from 33% to 62% of the amount of the general termination fee, with the mean being 46%. Notably, only one of the surveyed going private transactions included a go-shop termination fee in excess of 50% of the general termination fee.

100% of the surveyed going private transactions in 2016 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 signing 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 2016 increased as compared to 2015, 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 18% (4 of 22) of the surveyed going private transactions in 2016 (compared with 5% of the surveyed transactions in 2015, 13% of the surveyed transactions in 2014, 30% of the surveyed transactions in 2013, 26% of the surveyed transactions in 2012 and 29% of the surveyed transactions in 2011).



In addition, all of the surveyed going private transactions in 2016 that utilized tender offers opted into Section 251(h) of the Delaware General Corporation Law. 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 a majority. The 2014 and 2016 amendments, which apply to merger agreements entered into on or after August 1, 2014 and August 1, 2016, respectively, provide acquirers with increased access to the streamlined back-end merger process provided by Section 251(h). 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 in, and broadened the availability of, Section 251(h).

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\$13.9B take-private of Keurig Green Mountain as part of a consortium



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together with Harvest Partners, in the \$1B take-private of Epiq Systems and combination with DTI



PROVIDENCE EQUITY PARTNERS

\$1.77B take-private of Blackboard



PUBLIC SECTOR PENSION INVESTMENT BOARD

Blackstone-led \$6.1B take-private of Team Health Holdings, Inc.

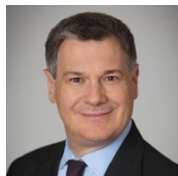


SOFTBANK GROUP

\$3.3B take-private of Fortress Investment Group



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