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

July 2019

2019
Private Equity
Surveys

TABLE OF CONTENTS

INTRODUCTION

Welcome to the twelfth 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 33 sponsor-backed going private transactions announced between January 1, 2018 and December 31, 2018 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 33 surveyed transactions were transactions involving the following target companies:

- American Railcar Industries, Inc.
- Analogic Corporation
- Apptio, Inc.
- Aspen Insurance Holdings Limited
- Athenahealth, Inc.
- Blackhawk Network Holdings, Inc.
- Bojangles', Inc.
- Cambium Learning Group, Inc.
- Civitas Solutions, Inc.
- CommerceHub, Inc.
- ConvergeOne Holdings, Inc.
- Corium International, Inc.
- Cotiviti Holdings, Inc.
- Envision Healthcare Corporation
- Essendant Inc.
- Financial Engines, Inc.
- Fogo de Chao, Inc.
- Imperva, Inc.
- Jamba, Inc.
- Key Technology, Inc.
- LifePoint Health, Inc.
- Mindbody Inc.
- Mitel Networks Corporation
- Perry Ellis International, Inc.
- Ply Gem Holdings, Inc.
- RPX Corporation
- Sonic Corp.
- Sparton Corporation
- The Dun & Bradstreet Corporation
- Travelport Worldwide Limited
- VeriFone Systems, Inc.
- Web.com Group, Inc.
- XO Group Inc.

KEY CONCLUSIONS

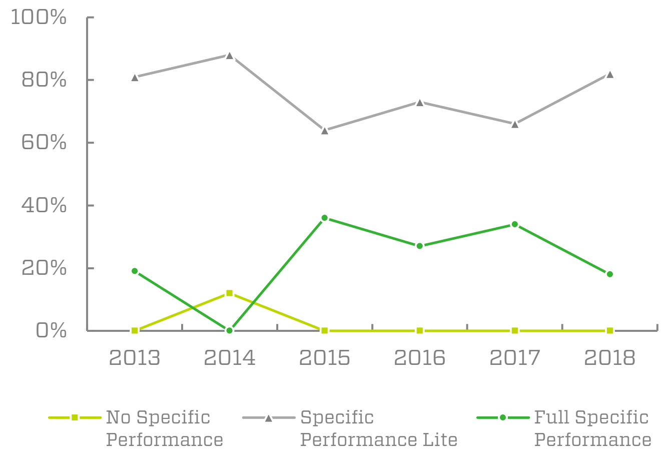
Key trends for going private transactions in the United States in 2018 included:

- As was the case in 2017 and 2016, none of the surveyed going private transactions in 2018 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 the appearance of the specific performance lite construct increased from 66% (23 of 35) of the surveyed going private transactions in 2017 to 82% (27 of 33) of the surveyed going private transactions in 2018. Full specific performance was available to targets in 18% (6 of 33) of the surveyed going private transactions in 2018, which represents a decrease as compared to 34% (12 of 35) of the surveyed going private transactions in 2017 where full specific performance was available. The transactions where full specific performance was available generally had full equity backstops.
- The reverse termination fee construct appeared in 88% (29 of 33) of the surveyed going private transactions in 2018 (as compared to 69% (24 of 35) of the surveyed going private transactions in 2017). The transactions where the reverse termination fee construct did not appear were generally "all equity" transactions.
- The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios was 6.4% as a percentage of the equity value of the target, which represents the same percentage of the equity value of the target in 2017. The mean target termination fee was 3.4% as a percentage of equity value of the target, which is a slight decrease of the mean target termination fee of 3.5% as a percentage of the equity value of the target in 2017.
- The use of go-shop provisions increased in 2018, appearing in 33% of the surveyed going private transactions in 2018 (as compared to 14% of the surveyed going private transactions in 2017 but is still less than 50% of the surveyed going private transactions in 2016 and 46% of the surveyed going private transactions in 2015). The mean length of the go-shop periods in the surveyed transactions in 2018 was 39 days (substantially similar to the mean of 40 days in the surveyed going private transactions in 2017).
- 100% of the surveyed going private transactions in 2018 that contained go-shop provisions provided for a two-tier termination fee provision. The reduced termination fee in the surveyed going private transactions in 2018 that contained go-shop provisions ranged from approximately 33% to 75% of the general termination fee, with the mean being 46% (a slight decrease from the 2017 mean of 48%).
- Tender offers continue to be a relatively unpopular option for sponsors. Tender offers were used in approximately 18% (6 of 33) of the surveyed going private transactions in 2018, which is a decrease as compared with 26% of the surveyed going private transactions in 2017. 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 2018

The surveyed going private transactions in 2018 had a slightly higher mean transaction value as compared to the surveyed going private transactions in 2017, but generally lower than the surveyed going private transactions in other recent years. The mean transaction value of the surveyed going private transactions in 2018 was approximately $1.7 billion, as compared to approximately $1.4 billion in 2017, $1.7 billion in 2016, $2.3 billion in 2015, and $2.1 billion in 2014. The transaction values of the surveyed going private transactions in 2018 ranged from approximately $173 million to approximately $5.6 billion. In comparison, the transaction values of the surveyed going private transactions in 2017 and 2016 ranged from $122 million to $7.2 billion and $354 million to $6.9 billion, respectively.

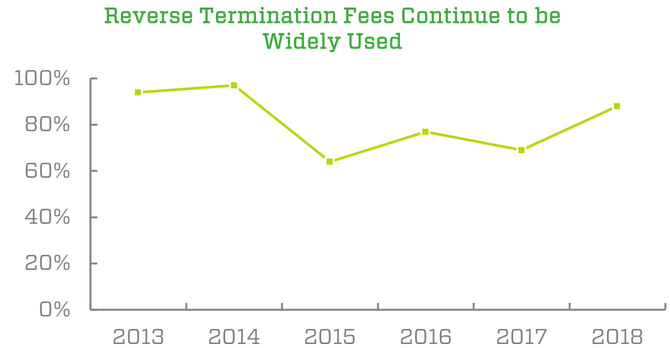
Use of Specific Performance Lite



Specific performance lite was included in 82% (27 of 33) of the surveyed going private transactions in 2018 (compared with 66% of the surveyed transactions in 2017, 73% of the surveyed transactions in 2016, 64% of the surveyed transactions in 2015, and 88% of the surveyed transactions in 2014). 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.

18% (6 of 33) of the surveyed going private transactions in 2018 included a full specific performance construct. In 2018, the percentage of surveyed going private transactions where target had the right to seek full specific performance (18%) decreased substantially (compared to 34% in 2017). 50% (3 of 6) of the surveyed going private transactions that included a full specific performance construct had a transaction value in excess of $1 billion (as compared to 8% of the surveyed going private transactions in 2017).

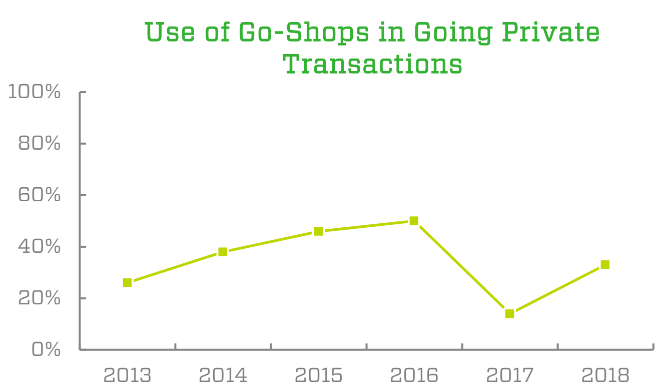
88% (29 of 33) of the surveyed going private transactions in 2018 included a reverse termination fee construct. The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios (e.g., financing failure) was 6.4% as a percentage of the equity value of the target, which represents the same mean percentage of the equity value of the target in 2017.



0% (0 of 33) of the surveyed going private transactions in 2018 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 two of the 35 surveyed transactions).

The mean target termination fee in the surveyed going private transactions in 2018 was 3.4% as a percentage of equity value of the target, which is a slight decrease from the mean target termination fee of 3.5% as a percentage of the equity value of the target in 2017. 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 18% (6 of 33) of the surveyed going private transactions in 2018, the target termination fee was set at exactly 50% of the reverse termination fee. In 100% of the surveyed going private transactions in 2018 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 increased in 2018. Go-shop provisions that permit the target to canvas the market and solicit other potential bids after a deal is announced were used more frequently in 2018 after a sharp decline in 2017 (33% of the survey going private transactions in 2018 as compared to 14% of the surveyed going private transactions in 2017). Prior to 2017, go-shop provisions had been increasingly popular (included in 50% of the surveyed going private transactions in 2016, 46% of the surveyed going private transactions in 2015, and 38% of the surveyed going private transactions in 2014).

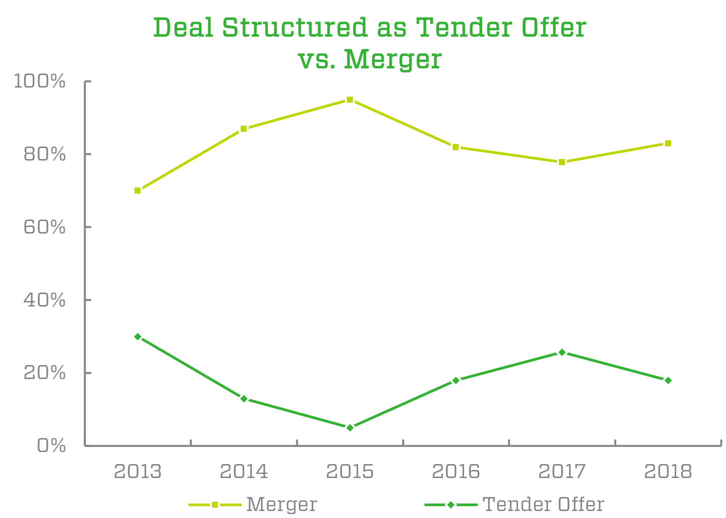


Go-shop provisions are often included as a way to assist a target's board in maximizing shareholder value and are particularly prevalent in transactions where the target's board does not have the opportunity to commence a full sales process or otherwise perform a market check prior to the signing of the transaction. The length of the go-shop periods in the surveyed going private transactions in 2018 ranged from 25 days to 45 days, with the median being 45 days and the mean being 39 days (similar to the mean of 40 days in the surveyed going private transactions in 2017). Each of the 11 surveyed transactions containing a go-shop period in the surveyed going private transactions in 2018 closed successfully without another bidder emerging, which was also the case in 2017, 2016, 2015 and 2014. A hard-stop was utilized in 27% of the surveyed going private transactions in 2018 that contained a go-shop period (a significant decrease from 80% of surveyed going private transactions in 2017). 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 60 days in the surveyed going private transactions in 2018.

100% of the surveyed going private transactions in 2018 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. The two-tier termination fee is becoming typical in going private transactions that contain go-shop provisions. The amount of the reduced go-shop termination fee ranged from 33% to 75% of the amount of the general termination fee, with the mean being 45% (the mean in 2017 was 48%). Notably, only one of the surveyed going private transactions included a go-shop termination fee in excess of 50% of the general termination fee.

As in 2016 and 2017, 100% of the surveyed going private transactions in 2018 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 2018 decreased as compared to 2017, and 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 approximately 18% (6 of 33) of the surveyed going private transactions in 2018 (compared with 26% of the surveyed going private transactions in 2017, 18% of the surveyed transactions in 2016, 5% of the surveyed transactions in 2015, and 13% of the surveyed transactions in 2014 .



In addition, 83% (5 of 6) of the surveyed going private transactions in 2018 (compared with 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 in, and broadened the availability of, Section 251(h).

REPRESENTATIVE PRIVATE EQUITY TRANSACTIONS

Advent International *Sale of* MORSCO $1,440,000,000 July 2018	**Advent International** *Sale of* Bojangles' $700,000,000 January 2019	**Advent International** *Acquisition of* DEFINITIVE HEALTHCARE Pending	**American Securities** *Acquisition of* FleetPride Undisclosed December 2018	**American Securities** *Acquisition of* CPM Undisclosed November 2018	**Antin Infrastructure Partners** *Acquisition of* FirstLight Undisclosed July 2018	**Apax Partners** and **Fortino Capital** *Sale of* melita Undisclosed Pending
Aterian Investment Partners *Acquisition of* Xpress Global Systems Undisclosed December 2018	**Aterian Investment Partners** *Acquisition of* Pioneer Undisclosed July 2018	**Aterian Investment Partners** *Acquisition of* Undisclosed January 2019	**Aterian Investment Partners** acquisition of **Hain Pure Protein** Undisclosed July 2019	**Aurora Resurgence Management Partners** and **EGI** *Sale of* SIRVA Undisclosed August 2018	**Avista Capital Partners** *Sale of* MPI Research $800,000,000 April 2018	**Avista Healthcare Public Acquisition Corp.** *Acquisition of* Organogenesis $673,000,000 December 2018
Berkshire Partners *Sale of* SRS Distribution Undisclosed May 2018	**Berkshire Partners** *Recapitalization of* CPP Undisclosed June 2019	**Berkshire Partners** *Acquisition of* TERACO Undisclosed Pending	**Blackstone and GS Merchant Banking Division** *Sale of* IPREO $1,855,000,000 August 2018	**Brookfield Asset Management** *Stake acquisition* OAKTREE $4,800,000,000 Pending	**CPPIB** *Stake acquisition* REFINITIV $20,000,000,000 October 2018	**CPPIB** *Member of a consortium in the take-private of* Ultimate $11,000,000,000 May 2019
CPPIB *Minority co-investor in* veeam Undisclosed January 2019	**Centerbridge Partners** *Sale of* PEI WEI Undisclosed June 2019	**Centerbridge Partners** *Sale of* P.F. CHANG'S Undisclosed March 2019	**Cornell Capital Partners** *Acquisition of* kdc/one Undisclosed December 2018	**Cornell Capital Partners** *Acquisition of* PureStar Undisclosed June 2018	**CVC Capital Partners** *sale of* PAREX €2,200,000,000 Pending	**EQT Partners** *Acquisition of* SHOEBOX Undisclosed December 2018
EQT Partners *Acquisition of* TruHearing Undisclosed April 2018	**Genstar Capital** *Sale of* Power Products $910,000,000 August 2018	**Genstar Capital** *Acquisition of* otp industrial solutions Undisclosed April 2019	**GS Merchant Banking Division** *Acquisition of* Restaurant Technologies Undisclosed October 2018	**GS Merchant Banking Division** *Sale of* Drayer Undisclosed January 2018	**Goldman Sachs** and **Olympus Partners** *Sale of* PSAV Undisclosed August 2018	**Gores Holdings II** *Transaction with* VERRA MOBILITY $2,400,000,000 October 2018
The Gores Group *Sale of* elo Undisclosed December 2018	**Irving Place Capital** *UHS' combination with* agiliti $1,740,000,000 January 2019	**Kainos Capital** *Acquisition of* good2grow Undisclosed November 2018	**Kainos Capital** *Acquisition of* Olde Thompson since 1911 Undisclosed May 2018	**Lee Equity Partners** *Sale of* Aimbridge Hospitality Undisclosed February 2019	**Lindsay Goldberg** *Sale of* DealerTire Undisclosed December 2018	**Oak Hill Capital Partners** *Acquisition of* integro Undisclosed February 2019
OMERS Private Equity *Acquisition of* Premise Health Undisclosed July 2018	**OTPP** *Consortium member in the take-private bid for* inmarsat $3,300,000,000 Pending	**Providence Equity Partners** *Sale of* VECTOR SOLUTIONS Undisclosed November 2018	**Providence Strategic Growth Partners** *Sale of* GLOBALTRANZ Undisclosed July 2018	**Providence Strategic Growth Partners** *Sale of* THERAPYBRANDS Undisclosed July 2018	**Providence Strategic Growth Partners** *Acquisition of* BOLD LEADS Undisclosed January 2019	**Providence Strategic Growth Partners** *Minority investment in* impact Undisclosed January 2019
PSP Investments *Consortium member in the take-private of* Kindred $4,100,000,000 July 2018	**PSP Investments** *Co-investor in an Onex-led investment in* convex $1,800,000,000 April 2019	**PSP Investments** *Minority investment in* Alliant Undisclosed January 2019	**PSP Investments** *Together with Lightyear Capital in the sale of* Advisor Group Undisclosed May 2019	**Silver Lake Sumeru** *Sale of* ForeFlight Undisclosed March 2019	**Snow Phipps Group** *Acquisition of* Prime Package & Label Undisclosed November 2018	**SoftBank Vision Fund** *Minority investment* cruise $2,250,000,000 June 2018
SoftBank Vision Fund *Minority investment* CAMBRIDGE MOBILE TELEMATICS $500,000,000 February 2019	**SoftBank Vision Fund** *Investment in* Uber $1,000,000,000 Pending	**Sumeru Equity Partners** *Acquisition of* actian $330,000,000 July 2018	**Susquehanna Growth Equity** *Acquisition of minority interest in* workfront $280,000,000 March 2019	**TCV** *Financing round* PELOTON $550,000,000 August 2018	**TCV** *Lead investor in a Series E financing round* toast Undisclosed March 2019	**TCV** *Acquisition of a minority stake in* RELEX $200,000,000 January 2019
Thomas H. Lee Partners *Take-private sale of* FOGO DE CHÃO BRAZILIAN STEAKHOUSE $560,000,000 April 2018	**TPG Growth** *Series C Preferred financing round for* EXPANSE Undisclosed April 2019	**TPG Growth** *Preferred stock minority investment in* Calm Undisclosed January 2019	**TPG Pace Holdings Corp.** *Acquisition of* Accel Entertainment $884,000,000 Pending	**Trive Capital** *Acquisition of* STC Undisclosed May 2019	**Trive Capital** *Sale of* EarthLink $330,000,000 December 2018	**Trive Capital** *Acquisition of* Undisclosed August 2018

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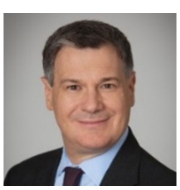
KEY CONTACTS



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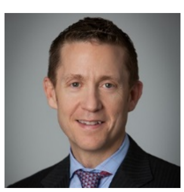

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