

A LOOK AT 2019 U.S. SPONSOR-BACKED
GOING PRIVATE
TRANSACTIONS

May 2020

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INTRODUCTION

Welcome to the thirteenth 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.

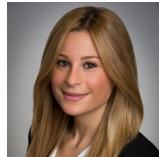
Doug Warner

Editor



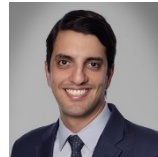
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RESEARCH METHODOLOGY

We surveyed 15 sponsor-backed going private transactions announced between January 1, 2019 and December 31, 2019 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 15 surveyed transactions were transactions involving the following target companies:

- Cambrex Corporation
- Cision Ltd.
- Control4 Corporation
- Electronics For Imaging, Inc.
- Ellie Mae, Inc.
- Genesee & Wyoming Inc.
- LogMeIn, Inc.
- Multi-Color Corporation
- Navigant Consulting, Inc.
- Presidio, Inc.
- Shutterfly, Inc.
- Tech Data Corporation
- The Ultimate Software Group, Inc.
- Wesco Aircraft Holdings, Inc.
- Zayo Group Holdings, Inc.

KEY CONCLUSIONS

Key trends for going private transactions in the United States in 2019 included:

- As was the case in 2018 and 2017, none of the surveyed going private transactions in 2019 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 82% (27 of 33) of the surveyed going private transactions in 2018 to 93% (14 of 15) of the surveyed going private transactions in 2019. Full specific performance was available to targets in 7% (1 of 15) of the surveyed going private transactions in 2019, which represents a decrease as compared to 18% (16 of 33) of the surveyed going private transactions in 2018 where full specific performance was available. The transaction where full specific performance was available had a full equity backstop.
- The reverse termination fee construct appeared in 100% of the surveyed going private transactions in 2019 (as compared to 88% (29 of 33) of the surveyed going private transactions in 2018).
- The mean single-tier reverse termination fee that would have been payable by sponsors in certain termination scenarios was 6.7% as a percentage of the equity value of the target, which represents a slight increase in the mean single-tier reverse termination fee of 6.4% as a percentage of the equity value of the target in 2018. The mean target termination fee was 3.2% as a percentage of equity value of the target, which is a slight decrease of the mean target termination fee of 3.4% as a percentage of the equity value of the target in 2018.
- The use of go-shop provisions increased in 2019, appearing in 60% (9 of 15) of the surveyed going private transactions in 2019 (as compared to 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 2019 was 38 days (substantially similar to the mean of 39 days in the surveyed going private transactions in 2018).
- 100% of the surveyed going private transactions in 2019 that contained go-shop provisions provided for a two-tier termination fee provision. The reduced termination fee in the surveyed going private transactions in 2019 that contained go-shop provisions ranged from approximately 33% to 57% of the general termination fee, with the mean being 46% (the mean in 2018 was 45%).
- Tender offers continued to be a relatively unpopular option for sponsors. Tender offers were used in none of the surveyed going private transactions in 2019, which is a decrease as compared with 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 2019

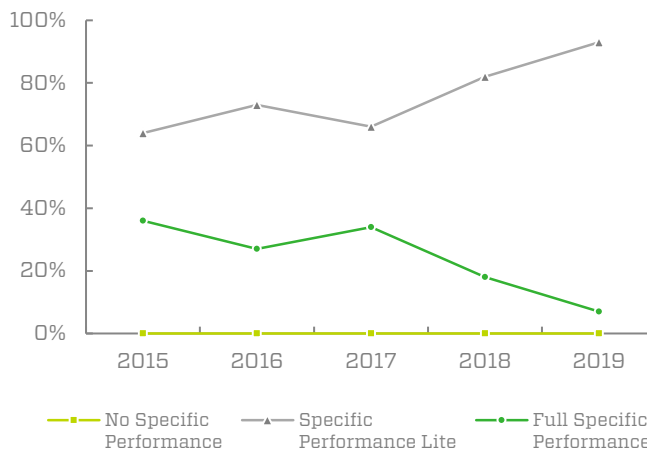
The mean transaction value of the surveyed going private transactions in 2019 was significantly higher than the mean transaction value of the surveyed going private transactions in 2018 and in other recent years. The mean transaction value of the surveyed going private transactions in 2019 was approximately \$3.3 billion, as compared to approximately \$1.7 billion in 2018, \$1.4 billion in 2017, \$1.7 billion in 2016, and \$2.3 billion in 2015. The transaction values of the surveyed going private transactions in 2019 ranged from approximately \$634 million to approximately \$10.4 billion. In comparison, the transaction values of the surveyed going private transactions in 2018 and 2017 ranged from \$173 million to \$5.6 billion and \$122 million to \$7.2 billion, respectively.

Specific performance lite was included in 93% (14 of 15) of the surveyed going private transactions in 2019 (compared with 82% of the surveyed transactions in 2018, 66% of the surveyed transactions in 2017, 73% of the surveyed transactions in 2016, and 64% of the surveyed transactions in 2015).

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.

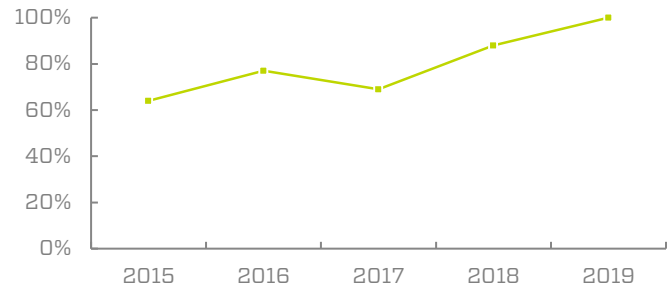
7% (1 of 15) of the surveyed going private transactions in 2019 included a full specific performance construct. In 2019, the percentage of surveyed going private transactions where target had the right to seek full specific performance (7%) decreased substantially (compared to 18% in 2018). 100% (1 of 1) 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 50% of the surveyed going private transactions in 2018).

Use of Specific Performance Lite



100% (15 of 15) of the surveyed going private transactions in 2019 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 6.7% as a percentage of the equity value of the target, which represents a slight increase in the mean single-tier reverse termination fee of 6.4% as a percentage of the equity value of the target in 2018.

Reverse Termination Fees Continue to be Widely Used

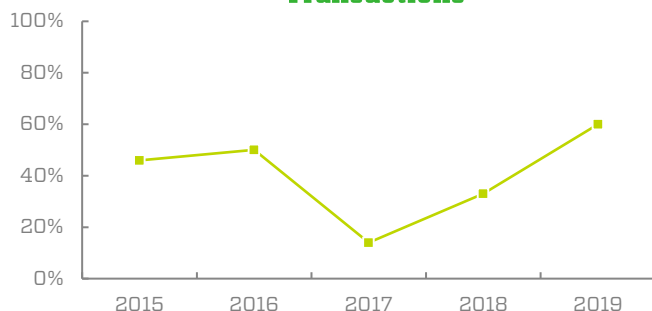


0% (0 of 15) of the surveyed going private transactions in 2019 included a two-tier reverse termination fee. The two-tier reverse termination fee, whereby the sponsor would pay a higher reverse termination fee for certain events, willful breaches and/or refusal to close (other than in connection with 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 2019 was 3.2% as a percentage of equity value of the target, which is a slight decrease from the mean target termination fee of 3.4% as a percentage of the equity value of the target in 2018. 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 40% (6 of 15) of the surveyed going private transactions in 2019, the target termination fee was set at exactly 50% of the reverse termination fee. In 100% of the surveyed going private transactions in 2019 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 2019. Go-shop provisions that permit the target to canvas the market and solicit other potential bids after a deal is announced are increasingly popular and were used more frequently in 2019 than in any of the past several years (60% of the surveyed going private transactions in 2019 as compared to 33% of the surveyed going private transactions in 2018, 14% of the surveyed going private transactions in 2017, 50% of the surveyed going private transactions in 2016, and 46% of the surveyed going private transactions in 2015).

Use of Go-Shops in Going Private Transactions



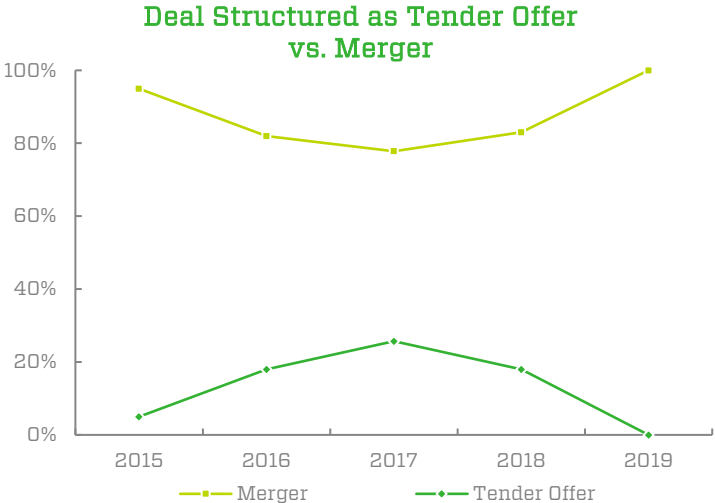
Go-shop provisions are often included as a way to assist a target’s board in maximizing shareholder value and are particularly prevalent in transactions where the target’s board does not have the opportunity to commence a full sales process or otherwise perform a market check prior to the signing of the transaction. The length of the go-shop periods in the surveyed going private transactions in 2019 ranged from 21 days to 50 days, with the median being 40 days and

the mean being 38 days (similar to the mean of 39 days in the surveyed going private transactions in 2018). Each of the 9 surveyed transactions containing a go-shop period in the surveyed going private transactions in 2019 closed successfully without another bidder emerging, which was also the case in 2018, 2017, 2016 and 2015. A hard-stop was utilized in 33% of the surveyed going private transactions in 2019 that contained a go-shop period (an increase from 27% of surveyed going private transactions in 2018). 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 7 days to 15 days in the surveyed going private transactions in 2019.








100% of the surveyed going private transactions in 2019 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 has become typical in going private transactions that contain go-shop provisions. The amount of the reduced go-shop termination fee ranged from 33% to 57% of the amount of the general termination fee, with the mean being 46% (the mean in 2018 was 45%). 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 2017 and 2018, 100% of the surveyed going private transactions in 2019 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 2019 significantly decreased as compared to 2018 and the past several years. Sponsors utilized the two-step tender offer / back-end merger structure in none of the surveyed going private transactions in 2019 (compared with 18% of the surveyed going private transactions in 2018, 26% of the surveyed going private transactions in 2017, 18% of the surveyed transactions in 2016, and 5% of the surveyed transactions in 2015).



REPRESENTATIVE PRIVATE EQUITY TRANSACTIONS

Advent International <i>Sale of</i>  \$700,000,000 January 2019	Advent International <i>Acquisition of</i>  Undisclosed June 2019	Advent International <i>Culligan's acquisition</i>  \$1,100,000,000 March 2020	Advent International <i>Culligan's acquisition</i>  Undisclosed September 2019	American Securities <i>Acquisition of</i>  Undisclosed December 2019	Apax Partners and Fortino Capital <i>Sale of</i>  Undisclosed July 2019	Aquiline Capital Partners <i>Acquisition of</i>  Undisclosed January 2020
Aterian Investment Partners <i>Acquisition of</i>  Undisclosed January 2019	Aterian Investment Partners <i>acquisition of</i> Hain Pure Protein Undisclosed July 2019	Aterian Investment Partners <i>Pioneer's acquisition</i>  Undisclosed February 2020	Berkshire Partners <i>Recapitalization of</i>  Undisclosed June 2019	Berkshire Partners <i>Acquisition of</i> TERACO <small>AFRICA'S DATA CENTRE</small> Undisclosed March 2019	Berkshire Partners <i>Parts Town's acquisition of</i>  Undisclosed October 2019	The Blackstone Group <i>Acquisition of</i> ConcertGolf Partners Undisclosed August 2019
The Blackstone Group <i>Investment in</i>  Undisclosed August 2019	Brookfield Asset Management <i>Stake acquisition</i>  \$4,800,000,000 September 2019	Centerbridge Partners <i>Sale of</i>  Undisclosed June 2019	Centerbridge Partners <i>Sale of</i> P.F. CHANG'S Undisclosed March 2019	Cornell Capital <i>KDC/ONE's acquisition of</i>  Undisclosed Pending	Cornell Capital <i>Merger of</i> kdc/one  Undisclosed Pending	Cornell Capital <i>KDC/ONE's acquisition</i>  Undisclosed November 2019
CPP Investments <i>Majority acquisition</i>  Undisclosed January 2020	CPP Investments <i>Investment round</i>  \$2,250,000,000 March 2020	CPP Investments <i>Member of a consortium in the take-private of</i>  \$11,000,000,000 May 2019	CPP Investments <i>Merger of</i>  \$22,000,000,000 Pending	CPP Investments <i>Minority co-investor in</i>  Undisclosed January 2019	CPP Investments <i>Consortium's sale</i> REFINITIV  \$27,000,000,000 Pending	CPP Investments <i>Consortium's acquisition</i>  \$2,700,000,000 October 2019
CVC Capital Partners <i>sale of</i> PAREX <small>ENERGY SERVICES</small> €2,200,000,000 May 2019	Genstar Capital <i>Acquisition of</i>  Undisclosed April 2019	Genstar <i>Acquisition of</i>  Undisclosed December 2019	Genstar Capital <i>Sale of</i> PRETIUM <small>INDUSTRIAL LIQUIDS & ENERGY SOLUTIONS</small> Undisclosed January 2020	Genstar Capital <i>Acquisition of</i>  Undisclosed April 2019	Genstar Capital <i>Sale of</i> ECM INDUSTRIES Undisclosed December 2019	Gores Holdings III, Inc. <i>Business combination</i> PAE \$1,550,000,000 February 2020
Irving Place Capital <i>UHS' combination with</i>  \$1,740,000,000 January 2019	J.C. Flowers <i>Majority stake acquisition</i>  \$148,750,000 August 2019	J.C. Flowers <i>Jefferson's acquisition</i> Canastream Holdings Ltd. Undisclosed March 2020	Lee Equity Partners <i>Sale of</i>  Undisclosed February 2019	Montagu Private Equity <i>Acquisition of business of</i>  \$490,000,000 Pending	Oak Hill Capital Partners <i>EPIC's acquisition</i>  Undisclosed November 2019	Oak Hill Capital Partners <i>Acquisition of</i>  Undisclosed February 2019
OTPP <i>Consortium member in the take-private bid for</i>  \$3,300,000,000 December 2019	Providence Equity <i>Investment in</i> OUTFRONT  \$400,000,000 Pending	Providence Equity <i>Acquisition of</i>  Undisclosed August 2019	Providence Equity <i>acquisition of</i> GLOBALTRANZ Undisclosed May 2019	Providence Equity <i>Investment in</i> TAIT Undisclosed February 2019	Providence Strategic Growth <i>Stake sale</i>  Undisclosed September 2019	Providence Strategic Growth <i>Acquisition of</i>  Undisclosed January 2019
Providence Strategic Growth <i>Minority investment in</i>  Undisclosed January 2019	Providence Strategic Growth <i>Acquisition of</i>  Undisclosed July 2019	PSP Investments <i>Co-investor in an Onex-led investment in</i>  \$1,800,000,000 April 2019	PSP Investments <i>Minority investment in</i>  Undisclosed January 2019	PSP Investments <i>Together with Lightyear Capital in the sale of</i>  Undisclosed May 2019	PSP Investments <i>Investment round</i>  Undisclosed July 2019	Show Phipps Group <i>Ideal Tridon's Acquisition of</i>  Undisclosed June 2019
Silver Lake Sumeru <i>Sale of</i>  Undisclosed March 2019	Snow Phipps Group <i>Sale of</i>  Undisclosed February 2020	SoftBank Vision Fund <i>Minority investment</i>  Undisclosed May 2019	SoftBank Vision Fund <i>Minority investment</i>  \$500,000,000 February 2019	SoftBank Vision Fund <i>Investment in</i> Uber \$1,000,000,000 July 2019	Susquehanna Growth Equity <i>Acquisition of minority interest in</i>  \$280,000,000 March 2019	TCV <i>Investment in</i>  \$100,000,000 September 2019
TCV <i>Acquisition of a minority stake in</i>  \$200,000,000 January 2019	Thompson Street Capital <i>Growth investment</i>  Undisclosed February 2020	Tower Three Partners <i>Sale of</i>  Undisclosed September 2019	TPG Global <i>Acquisition of</i>  \$884,000,000 November 2019	TPG Growth <i>Preferred stock minority investment in</i>  Undisclosed January 2019	Trive Capital <i>Acquisition of</i>  Undisclosed May 2019	Trive Capital <i>Sale of</i>  Undisclosed June 2019

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market knowledge

Deep experience across all of the major
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financial sponsors and investors in the
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manner

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- **Global and National Footprint.** Weil is a recognized leader in private equity transactions with more than 200 lawyers in the U.S., Europe and Asia representing the top global private equity players. Weil has Private Equity capabilities in New York, Silicon Valley, Boston, and Texas in the U.S.
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- **Range of High Profile Transactions.** Over the last 18 months, we have advised on nearly 50 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

1k+

Deals

More Than

\$700B

In Total Deal
Value

Over

300

Sponsors

Ranked

Tier 1

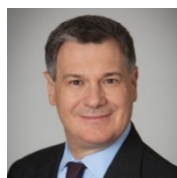
Private Equity in the U.S., U.K,
France, China and Hong Kong
— *IFLR1000*

Advises

9 of 10

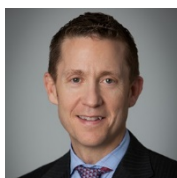
largest global
private equity funds
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