

MERGERS & ACQUISITIONS

# Dealmaker's Digest

A Top 10 Bulletin

December 2023

**ROPES & GRAY**



In this month's edition of *Dealmaker's Digest*, we bring you the latest transactional developments to keep you in the know.

GLOBAL M&A ACTIVITY

BLOCKBUSTER DEALS

SPOTLIGHT ON CANADA

ACTIVE INDUSTRIES

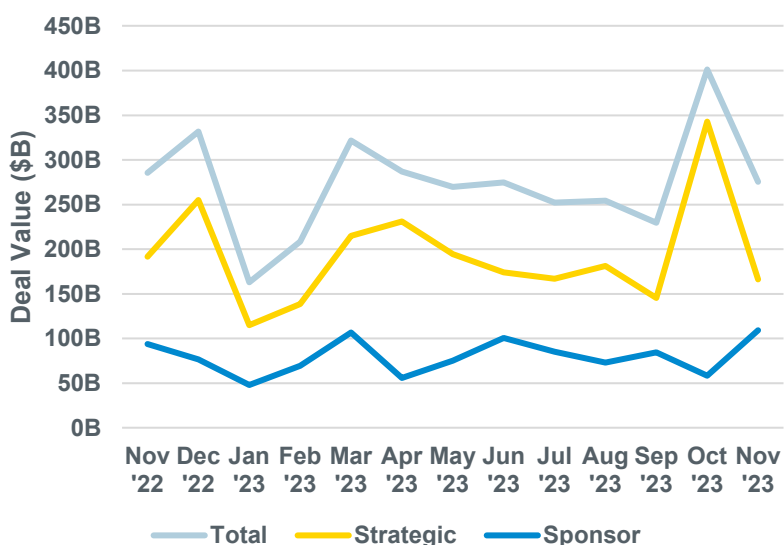
U.S. CROSSBORDER UPDATE

EARNOUT TRENDS

## GLOBAL M&A ACTIVITY UPDATE

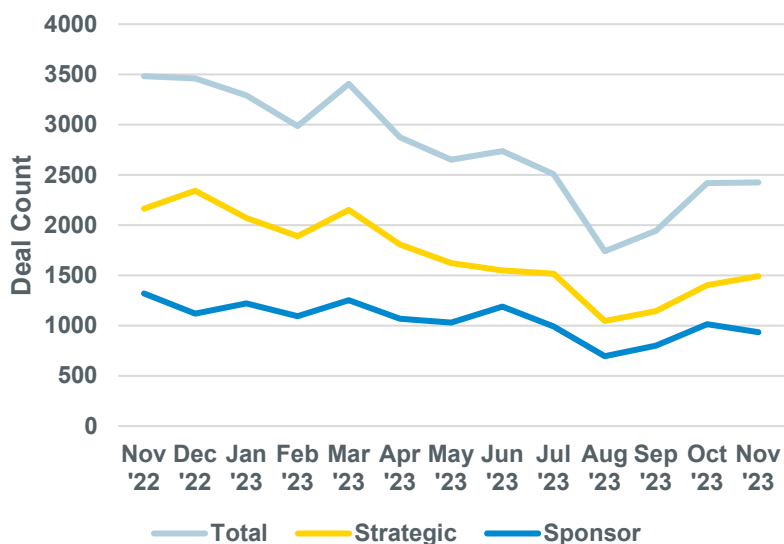
### 1 Deal Value Trends

- ▼ Following an October peak, the aggregate value of global transactions<sup>1</sup> decreased in November, falling 31% from October. Aggregate deal value in November was consistent with November 2022, each just shy of \$300 billion.
- ▼ Transactions involving strategic buyers fell by 52% from the October high and 13% from November 2022.
- ▲ Financial, or sponsor, buyer transactions rose to \$109 billion, increasing 87% month-over-month and 16% from November 2022.



### 2 Deal Count Trends

- ◀ Global deal count in November remained steady month-over-month, narrowly surpassing October by nine transactions. Monthly volume fell 30% compared with November 2022.
- ▲ Strategic buyer deal count in November increased modestly (6%) from October, continuing an upward trend in monthly deal count since August.
- ▼ Sponsor buyer deal count decreased by 8% month-over-month and 29% from November 2022. Despite decreasing in volume, the spike in sponsor deal value depicted above was driven by several large-cap acquisitions of ex-U.S. targets, including EU-based telecommunications and software targets.



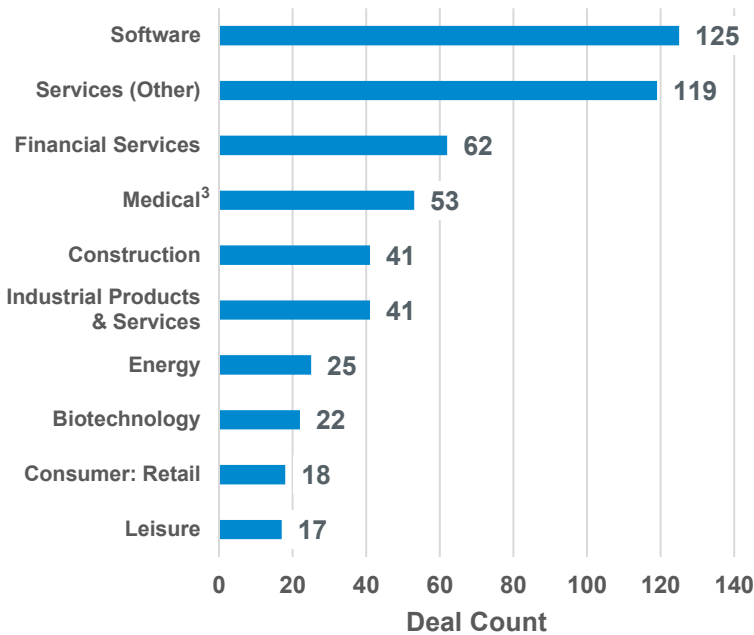
<sup>1</sup> Charts compiled using Mergermarket data for November 2023 as of December 5, 2023. Aggregate deal values by dollar amount are calculated from the subset of deals with disclosed values.

### Active M&A Industries (U.S. Targets)<sup>2</sup>

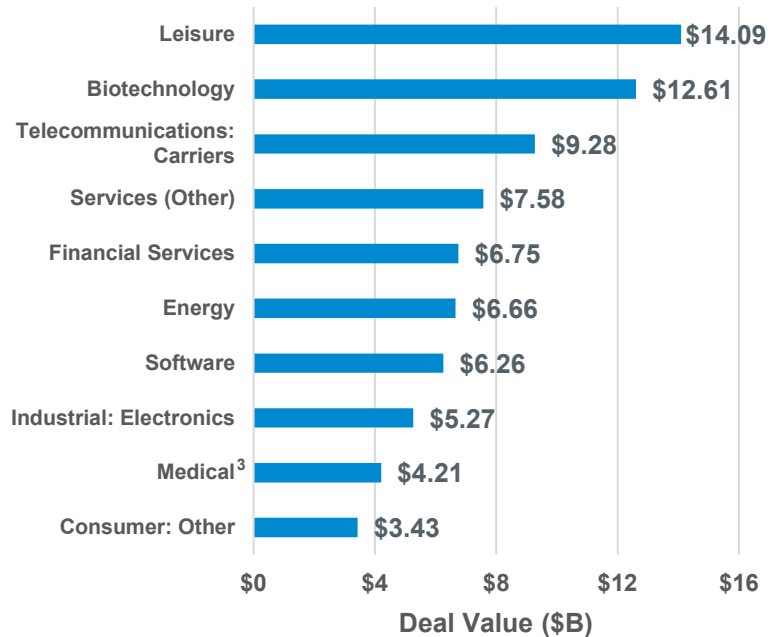
- The software industry topped the list of U.S. M&A activity by deal count in November 2023, continuing a monthlong streak as the most active sector with 125 transactions.
- Financial and other professional services round out the top three sectors by deal count.

- With five separate transactions exceeding one billion dollars, the leisure sector was the most active by deal value in November 2023.
- The biotechnology industry was the second most active in November, driven by the \$10 billion sale of ImmunoGen to Abbvie.

#### 3 Top 10 Industries (by deal count)



#### 4 Top 10 Industries (by deal value)



#### 5 Select Blockbusters<sup>2</sup>

Largest U.S. **Strategic Deal**

**abbvie** agreed to acquire **immunogen** in a cash transaction with total equity value of approximately **\$10.1 billion.**

**BainCapital** PRIVATE EQUITY agreed to acquire **Guidehouse** in a cash transaction with total equity value of approximately **\$5.3 billion.**

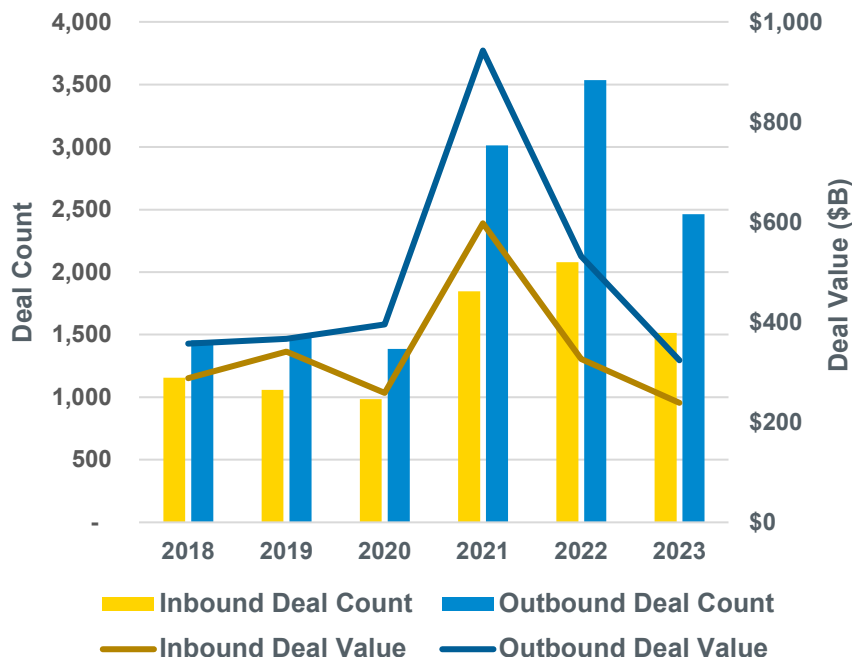
Largest U.S. **Sponsor Deal**

<sup>2</sup> Rankings compiled using Mergermarket data for November 2023 as of December 5, 2023.

<sup>3</sup> Medical industry classification principally includes medical devices/services, excluding biotech and pharmaceutical deals.

## CROSSBORDER M&A UPDATE<sup>4</sup>

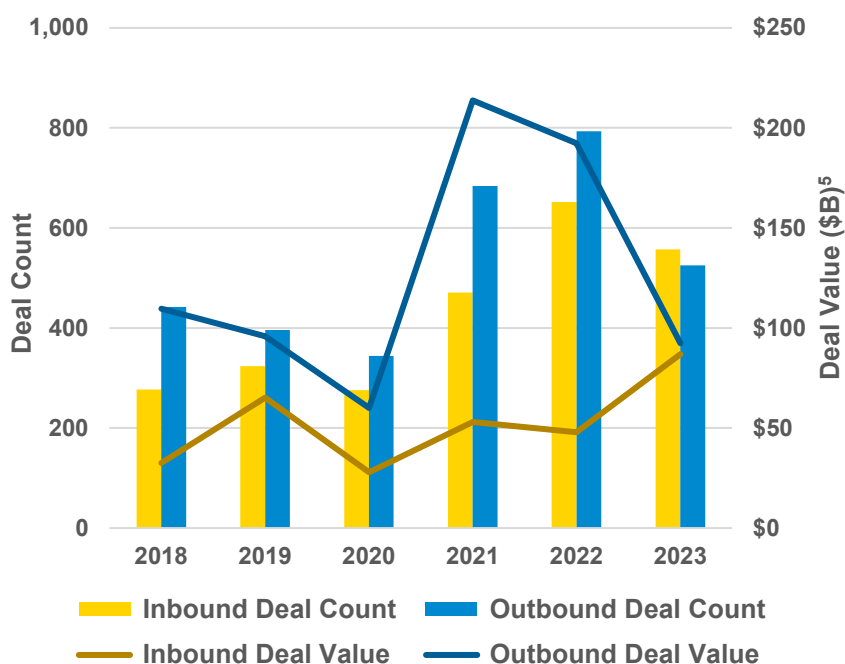
### 6 Crossborder U.S. Activity



- YTD inbound U.S. activity this year is down 21% from 2022 by deal count, and 20% by deal value.
- Similarly, outbound activity in 2023 has fallen short of 2022 deal value by 36% YTD. By deal count, outbound transactions declined 26%.
- Canada-based acquirers drove the most inbound deals in November 2023 (with 17), followed by U.K. (15) and German (8) buyers.
- Demonstrating the robustness of U.S.-Canada M&A, U.S. acquirers most frequently looked to targets in Canada during November 2023 (at 19 deals), with Germany (10) and India (9) rounding out the top three ex-U.S. target countries.

### 7 Spotlight on Canada

- YTD inbound Canadian M&A activity declined 8% from 2022 by deal count while increasing 99% by deal value, with the significant uptick in value driven by acquisitions of large Canadian targets in the mining and energy sectors.
- Canadian outbound activity in 2023 has fallen short of 2022 deal value by 51% YTD. By deal count, outbound Canadian transactions have declined 28% from 2022 levels.
- Canadian acquirers most frequently looked to targets in the U.S. during November (17 outbound transactions), with U.K. targets trailing at three transactions in the month.
- November inbound activity in Canada was also driven by U.S. acquirers (leading with 19 transactions), followed by U.K. buyers, with six transactions.



<sup>4</sup> Charts compiled using Mergermarket data as of December 7, 2023. Percentage YTD comparisons with prior-year metrics based on activity from Jan. 1 through Nov. 30 in each of 2022 and 2023.

<sup>5</sup> Deal value in U.S. dollars.



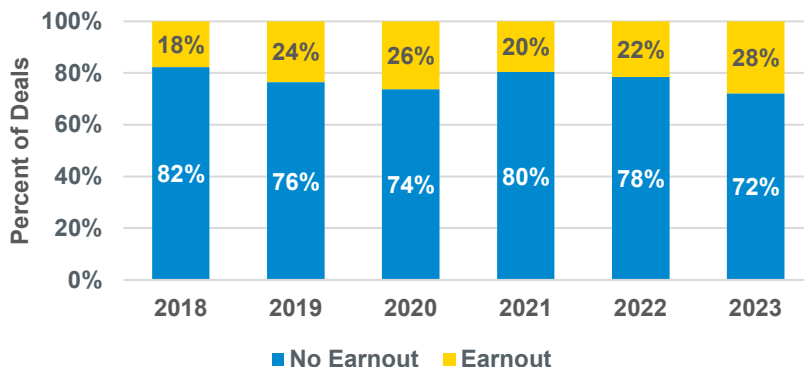
## EARNOUT TRENDS

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### Prevalence of Earnouts

- Earnouts continue to serve as a useful mechanic to facilitate dealmaking in the face of market uncertainty. Earnouts can bridge valuation gaps and allocate risk driven by new or unproven technologies or products.
- In private-target North American deals this year (excluding life sciences transactions)<sup>6</sup>, more than one-quarter have included an earnout.
- Earnout trends have remained relatively steady over the past five years, with relative peaks in 2020 and 2023 coinciding with relatively difficult periods for dealmaking.

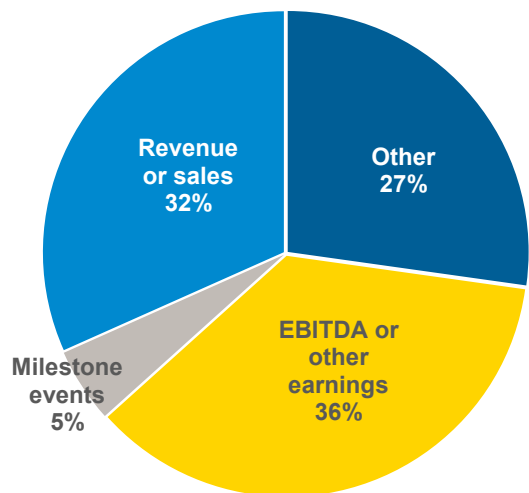
Private Target North American Transactions  
(Non-Life Sciences Targets)



### Impact on Select Deal Terms

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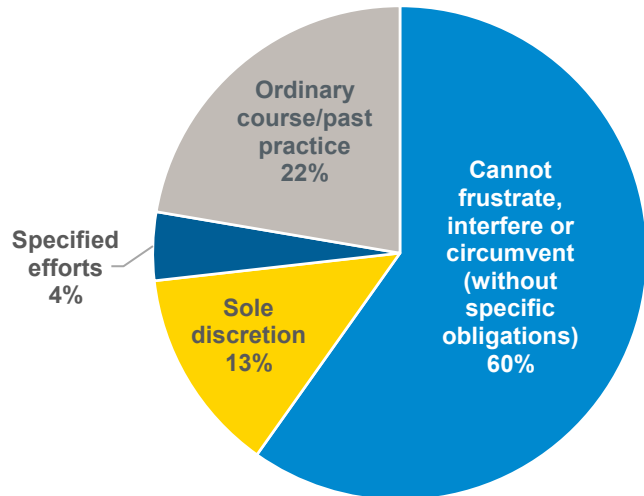
#### Earnout Triggers



- Among deals with earnouts, EBITDA or other earnings-based metrics remain the most common “trigger,” followed by revenue or sales-based metrics and more rarely (excluding life sciences transactions), milestone events.
- Other triggers that we observe include deal-specific objectives, such as high-multiple exits, closing of add-on acquisitions and technology-focused metrics (e.g., subscription counts).

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#### Standard for Operation of Business Subject to Earnout



- Where earnouts are utilized, covenants and other guardrails regarding the standard of operation during the earnout period are often heavily negotiated. The vast majority of earnout deals include a covenant that the buyer not frustrate or interfere with satisfaction of the earnout, either in conjunction with specific covenants or as the sole standard.
- More specific covenants – such as a mandate for the buyer to operate in the ordinary course or consistent with past practices and/or to devote specified efforts (such as “commercially reasonable” efforts) – are also frequently utilized.

Ropes & Gray maintains a proprietary database in which we collect and organize data from M&A transactions that we work on. Our database (which was used to compile charts on this page) includes information on more than 2,500 closed M&A transactions across all deal size ranges and sectors.

Our ability to provide market and industry insights based on this data gives Ropes & Gray clients the advantage of unsurpassed visibility into the M&A transaction landscape, market standards and developing trends, all of which allow our lawyers and clients to stay a step ahead.

<sup>6</sup> Transactions in the life sciences sector have been excluded to better represent the prevalence of earnouts and related standards across all industries. Life sciences transactions have traditionally utilized earnouts or CVRs at higher rates and incorporate tailored milestone events (such as regulatory approvals or commercial viability standards); recent data suggests the use of earnouts and CVRs outside of life sciences is increasing.

## About our M&A Practice

Ropes & Gray's award-winning M&A practice is regularly ranked among the world's leading practices by *Chambers*, *The Legal 500* and *U.S. News*, among others. With over 250 M&A attorneys located in the United States, Europe and Asia, our practice offers global scope and on-the-ground service where and when needed. In 2021-2022, Ropes & Gray navigated more than 470 M&A transactions with an aggregate deal value of \$390+ billion.

## RECENT RECOGNITION

THE  
AMERICAN LAWYER

**The American Lawyer**  
"Law Firm of the Year" (2022)



**U.S. News and World Report**  
"Law Firm of the Year" for private funds, leveraged buyouts and private equity (2023)



**Law360**  
Seven-time winner of "Private Equity Group of the Year"

**Chambers**  
AND PARTNERS

**Chambers USA 2023**  
Nationwide Band 1 Private Equity Buyouts, Mid-Market Ranking  
New York Band 1 Corporate / M&A Highly Regarded Ranking  
Massachusetts Band 1 Corporate / M&A Ranking



**LMG Life Sciences**  
2022 Impact Deal of the Year (Pfizer's \$11.6b acquisition of Biohaven Pharmaceuticals)  
2022 M&A Firm of the Year

## DEPTH OF EXPERIENCE

**470+**

Signed transactions in 2021–2022

**\$390b+**

in total transaction deal value in 2021–2022

**80+**

Industries and sectors

## Our Commitment

**350+**  
Specialty-support lawyers

**250+**  
M&A lawyers

**150+**  
Years of practice history

**13**  
Offices to support deals

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