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Reverse Break-Up Fees and Specific Performance

A Survey of Remedies for Financing and
Antitrust Failure (2016 Edition)

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STUDY OVERVIEW

SUMMARY

This is the seventh edition of Practical Law's survey of reverse break-up fees and specific performance in public M&A deals. The study examines the remedies available to public target companies in leveraged deals for a buyer's failure to close the transaction due to a breach of the agreement or a financing failure. This edition, for the first time since 2013, expands its scope to a review of other techniques for allocating risk in debt-financed transactions, including financing covenants and "Xerox" provisions.

2015 was a historic year for M&A. According to data provided by our colleagues at Thomson Reuters, worldwide M&A activity rose in 2015 by 42 percent in dollar value over the previous year. Driven by 71 announced deals valued at over \$10 billion each, worldwide M&A totaled \$4.7 trillion—the strongest annual period for worldwide deal-making since Thomson Reuters began record-keeping in 1980.

Much of the rise in global M&A activity was attributable to a year-long procession of mega-sized, US-based M&A deals. US activity accounted for \$2.34 trillion in deal value in 2015, nearly half the total deal value for worldwide M&A. The lion's share of that deal activity came from strategic buyers, who for the second year in a row dominated the M&A landscape, while private equity buyers largely stayed on the sidelines.

Owing to the prevalence of strategic M&A activity, the 2015 study sample provides a unique opportunity to observe how strategic buyers negotiate remedies for breach in debt-financed deals. The study sample consists of 85 leveraged public deals with an equity value of \$100 million or more, compared to 75 deals in 2014, 59 in 2013, and 68 in 2012. Of the 85 deals, 67 were entered into with strategic buyers. That figure represents the largest number of strategic leveraged deals ever available for study in a given year, up from 60 in 2014, only 29 in 2013, 45 in 2012, and 55 in 2011. The large sample of strategic deals allows for more precise analysis of strategic-buyer market practice, and indeed produced results that confirm the

study's observations for 2014, the previous record-holder for most strategic-buyer leveraged deal activity.

Previous editions of the study observed consolidation in the market around the terms for allocating financing risk. For the most part, buyers would agree to one of two general models for remedies for buyer breach:

- A pre-termination right of the target company to enforce the buyer's obligations unconditionally, combined with damages that survive termination for willful breach. The study refers to this combination of remedies as the "Strategic model."
- A pre-termination enforcement right to cause the buyer to close that is conditioned on the availability of the debt financing, combined with a reverse break-up fee that caps damages for willful breach in the event that the buyer fails to close because of a breach or financing failure. The study refers to this combination of remedies as the "Private Equity model."

In 2013, when strategic-buyer leveraged deal activity was at an ebb, the study found that strategic buyers had negotiated a Strategic model agreement in only 62 percent of their leveraged transactions. In 2014, however, that number rose to 80 percent, similar to the 78 percent of strategic deals in 2011. This year's study found a similar, higher rate, with 82 percent of strategic buyers agreeing to the Strategic model of remedies in leveraged deals.

With only 18 public deals with financial buyers valued at \$100 million or more in 2015, the data for financial deals is more scattered. Financial buyers agreed to a specific-performance remedy not conditioned on the availability of the debt-financing proceeds in three of those 18 deals, a relatively high 17 percent of the time. With those three buyers also foregoing a cap on damages in the form of a reverse break-up fee in favor of uncapped damages in the event of a willful breach, 17 percent of the surveyed financial deals in 2015 contained the Strategic model set of remedies, higher than the seven percent observed in 2013 and 2014.

The decline in overall activity among financial buyers meant that only 21 deals in 2015 contained a reverse break-up fee that acts as an ultimate cap on the buyer's damages—the same number as in 2014 (out of a larger sample set) and down from 33 in 2013. The average size of these 21 fees was 6.07% of the deal's equity value, up from 5.91% in 2014, but still down from 6.51% in 2013. The median reverse break-up fee size in 2015 was exactly 6.00%. Thirteen of the 21 fees were at least double the size of the target company's corresponding break-up fee—well above the eight of 21 fees in 2014, but still lower than the 23 of 33 in 2013.

The 2013 and 2012 editions of the study examined the frequency of inclusion of “Xerox” provisions in merger agreements (so named for the 2009 *Xerox/Affiliated Computer Services* merger agreement in which they were introduced). These are the provisions that parties include for the benefit of (and often at the behest of) the lenders and limit the target company's recourse to them in the event of a financing failure. The 2013 study observed increasing consolidation around these terms, with nearly three quarters of merger agreements for leveraged deals providing for a New York exclusive forum and waiver of a jury trial for litigation brought against the lenders. At the same time, the 2013 study found that only a small majority of agreements in leveraged deals included an explicit non-recourse provision that provides that the target company does not have contractual privity to the lenders.

This year's edition of the study renewed the analysis of “Xerox” provisions and found them to be significantly more common than they had been in the past. Nearly three quarters of the study sample contained all the typical “Xerox” provisions, including a non-recourse provision and a provision capping the lenders' potential liability to the payment of the reverse break-up fee, when applicable. Practitioners have also become more careful about bootstrapping these provisions. Ninety-one percent of agreements containing any “Xerox” provision clarified that the lenders must consent to any amendment to the

merger agreement that would adversely affect those provisions, and all agreements with “Xerox” provisions stated that the lenders are third-party beneficiaries of those provisions. *Table C* in the Appendix to this study details the “Xerox” provisions of each surveyed agreement.

Although the remedies for breach, the financing covenants, and the “Xerox” provisions are the primary mechanisms for allocating the risk of financing failure, other provisions throughout the merger agreement bear on financing risk as well. Examples include the target company's financial-condition representations, the bring-down closing condition, and the definition of “Material Adverse Effect,” all of which should be given appropriate consideration when drafting and negotiating the merger agreement for a debt-financed transaction. In that vein, *Table B* contains survey results for three ancillary issues:

- *Does the merger agreement contain any financial-metric closing conditions?* These can include minimum cash, minimum EBITDA, or solvency, in addition to pure financing outs. This year's study found few agreements with any such conditions, which is not unusual in public M&A deals.
- *In agreements where a remedy is keyed off of a financing failure, is the concept of a “financing failure” further defined?* For example, with objective criteria such as the credit rating for the financing. In spite of their intuitive appeal, the study continues to find few agreements that contain this degree of specificity.
- *Does the merger agreement contemplate a marketing period in which the lenders syndicate the debt financing before the buyer can be required to close?* The study included for the first time selected elements of the definition of the term “Marketing Period,” which appeared in 33 of the surveyed merger agreements.

In merger agreements that do not contemplate the payment of a reverse break-up fee, the parties must decide to what extent liability for breach of the merger agreement survives termination. Much of the time, the parties make do with a standard of willful breach—a term

that most of the time goes undefined. Increasingly, however, the parties make explicit that a party can only be held to have willfully breached the agreement if it understood at the time of its action or omission that the consequence of its action or omission would be a breach of the agreement. On the other hand, other agreements make a pro-target exception, stating that the buyer's failure to close when otherwise required is deemed to be a willful breach of the agreement. *Table D* captures the various formulations for post-termination liability.

New this year, the study contains a supplement analyzing antitrust-triggered reverse break-up fees and other mechanisms for allocating the risk of antitrust failure. For this inquiry, the study surveyed all 49 agreements in Practical Law's What's Market M&A database for 2015 that contained a reverse break-up fee payable for antitrust failure, which included:

- Twenty-seven agreements for the acquisition of a US reporting company in deals valued at \$100 million or more. These arguments are summarized in *Table E*.
- Twenty-two publicly filed agreements for private M&A deals involving the acquisition of a US company or business valued at \$25 million or more. These arguments are summarized in *Table F*.

The study found a total of 12 fees set at six percent of the deal value or higher, including five public deals and seven private deals. Of those fees, ten were priced at over seven percent, including in four public deals and six private deals. Thirty-five of the 49 deals included a covenant requiring the buyer to litigate antitrust issues, including four deals with hell-or-high-water provisions and four with specified limitations on the litigation obligation. Thirty-two of the deals, also including the hell-or-high-water deals, contained some form of divestiture obligation.

STUDY SAMPLE

This year's study sample consists of all merger agreements for debt-financed acquisitions of US reporting companies (excluding REITs and debt-only issuers) in deals with an equity value of \$100 million or more, entered into in the calendar year 2015. The determination of whether an acquisition was supported with debt financing is based on a review of the buyer's representations and covenants in the merger agreement as well as statements and disclosures made in other publicly filed documents. The study categorizes deals as debt-financed if the buyer entered into new financing arrangements to finance the acquisition or represented (whether in the merger agreement or in other public filings related to the transaction) that it intended to raise new debt to finance the acquisition. *Table A* in the Appendix describes other criteria for inclusion in the study sample. The Table provides the relevant data for every surveyed agreement.

STUDY SAMPLE AT A GLANCE: 85 MERGER AGREEMENTS

67 with Strategic Buyers

- 13 in Q1 '15, 12 in Q2 '15, 24 in Q3 '15, 18 in Q4 '15.
- Two of the buyers are portfolio companies of private equity sponsors. These buyers received new equity financing from their sponsors as part of the acquisition financing. Two other strategic buyers also received new equity financing from co-investors.
- Thirty-five buyers offered all-cash consideration, 21 offered a mix of cash and stock, eight offered a cash/stock election, three offered all-stock consideration and raised new debt financing to refinance the target company's existing debt.
- Two buyers offered contingent value rights in addition to the cash consideration.
- Eighteen agreements were structured as front-end tender offers.
- Two agreements were terminated before closing in favor of topping bids for the target company and a third in favor of a topping bid for the buyer. A fourth agreement was terminated because the buyer failed to close.
- Two agreements were themselves superior offers to agreements that were subsequently terminated.

18 with Financial/Private Equity Buyers

- 3 in Q1 '15, 7 in Q2 '15, 3 in Q3 '15, 5 in Q4 '15.
- Four deals included a rollover with existing stockholders.
- One agreement was terminated and the reverse break-up fee paid by the buyer.

THE REMEDY CATEGORIES

Each agreement in the study is analyzed for two sets of remedies: the pre-termination equitable remedy available to the target company to enforce the buyer's obligations; and the post-termination fee or damages payable to the target company by the buyer for breach or failure to close.

The pre-termination equitable remedies are classified into the following categories:

- **Full Specific Performance.** The target company has an unconditioned remedy of specific performance to enforce all of the buyer's obligations under all circumstances. This includes enforcement of the buyer's obligations to draw down the debt financing (and equity financing, when applicable) and close the transaction.
- **Conditional Specific Performance.** The target company can enforce the buyer's obligations to fund the financing and close the transaction, but with a condition that the proceeds of the debt financing are available. For further discussion of the variations of this remedy, see *page 7*.
- **No Specific Performance.** The target company has no right of specific performance. If the buyer does not close, the target company's only recourse is to terminate the agreement and either accept payment of a reverse break-up fee or sue for damages, depending on the agreement's post-termination remedy.

The post-termination monetary remedies are classified into the following categories:

- **No Reverse Break-up Fee (RBF), Full Damages.** The agreement does not specify any predetermined fee that the buyer must pay for breach or financing failure. Instead, liability survives termination for any breach or failure to close, without any limitation for the buyer's knowledge or intent. The buyer can be sued for damages even if its breach was not willful. For further discussion of this remedy, see *page 15*.

- **No RBF, Damages for Willful Breach.** The agreement does not specify any predetermined fee that the buyer must pay for breach or financing failure. Liability survives termination for any "willful," "knowing," or "intentional" breach, but does not survive if the breach was not willful. For further discussion of this remedy, see *page 16*.
- **RBF, Uncapped Damages for Willful Breach.** The buyer pays a reverse break-up fee or expense reimbursement if it breaches the agreement or fails to close. The fee caps the buyer's damages for non-willful breach or a financing failure that it did not cause, but the buyer remains exposed to unlimited damages for its willful breach of the agreement. For further discussion of this remedy, see *page 17*.
- **RBF, Cap on Damages.** The buyer pays a reverse break-up fee for breach or failure to close. The fee caps the buyer's damages in all instances, including if the buyer willfully breached the agreement. For further discussion of this remedy, see *page 18*.
- **Two-Tier Reverse Break-up Fee.** The buyer pays a lower reverse break-up fee for non-willful breaches or financing failure and a higher fee for willful breaches or when it fails to close despite the availability of the debt financing. The higher fee functions as an ultimate cap on damages. For further discussion of this remedy, see *page 18*.



PRE-TERMINATION ENFORCEMENT

FULL SPECIFIC PERFORMANCE

The “Full Specific Performance” category of pre-termination enforcement captures agreements that provide the target company with a right to enforce all of the buyer’s obligations, including the buyer’s financing covenants regarding the debt financing, the obligation to draw down the equity financing (when applicable), and the obligation to close the transaction when the closing conditions have been satisfied. In these agreements, the target company’s enforcement right is unconditioned; even if the debt financing is not available, the target company can still enforce the buyer’s obligation to close if the closing conditions have otherwise been satisfied.

EXAMPLE

Merger agreement between Anthem Inc. and Cigna Corporation, dated July 23, 2015

Section 8.12. Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity. The parties further agree that (i) by seeking the remedies provided for in this Section 8.12, a party shall not in any respect waive its right to seek any other form of relief that may be available to a party under this Agreement, including monetary damages or in the event that the remedies provided for in this Section 8.12 are not available or otherwise are not granted and (ii) nothing contained in this Section 8.12 shall require any party to institute any proceeding for (or limit any party’s right to institute any proceeding for) specific performance under this Section 8.12 before exercising any termination right under Section 7.1 (and pursuing damages after such termination) nor shall the commencement of any action pursuant to this Section 8.12 or anything contained in this Section 8.12 restrict or limit any party’s right to terminate this Agreement in accordance with the terms of Section 7.1 or pursue any other remedies under this Agreement that may be available then or thereafter.

CONDITIONAL SPECIFIC PERFORMANCE

The “Conditional Specific Performance” category of pre-termination enforcement refers to agreements that provide the target company with a right to enforce all of the buyer’s obligations, including the obligation to close when required, on the condition that the proceeds of the debt financing are available.

EXAMPLE

Merger agreement for the buyout of Quality Distribution, Inc. by affiliates of Apax Partners, dated May 6, 2015

Section 9.5. Specific Enforcement... (c) (i) The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder in order to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. The parties acknowledge and agree that the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at Law or in equity. The parties explicitly agree that the Company shall be entitled to specific performance as a third party beneficiary under the Parent Fee Commitment Letter, subject to the terms thereof, and to specific performance of the Buyer Parties’ obligation hereunder to cause the Termination Obligations to be funded to fund the payment of the Parent Fee, the indemnification and reimbursement obligations of Parent under Section 6.13(f) hereof and any monetary obligations of Parent under clause (ii) of Section 8.5(a) hereof, when and if due and payable.

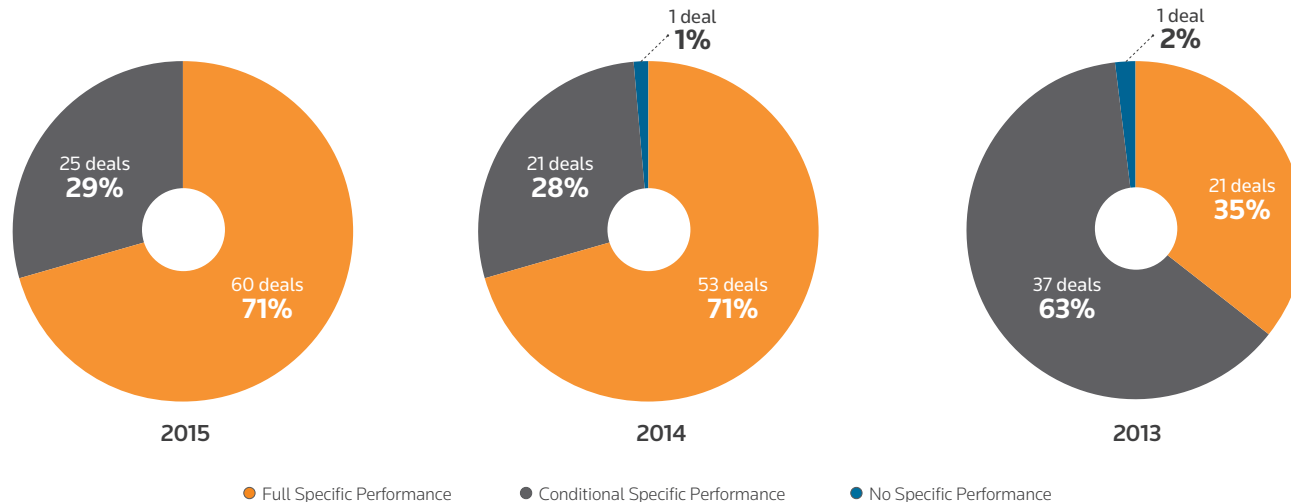
(ii) **Notwithstanding Section 9.5(c)(i)**, it is explicitly agreed that the Company shall be entitled to seek specific performance as a third party beneficiary under the Equity Financing Commitments, subject to the terms thereof, and **to seek specific performance of the Buyer Parties’ obligation hereunder to cause the Equity Financing to be funded to fund the Merger and to cause Parent and/or Merger Sub to consummate the transactions contemplated hereby, including to effect the Closing in accordance with Section 1.2**, on the terms

and subject to the conditions in this Agreement, **if and only if (A)** all conditions in Sections 7.1 and 7.2 have been satisfied (other than those conditions that, by their nature, are to be satisfied at the Closing (provided such conditions would be satisfied as of such date)), **(B)** the Debt Financing has been funded or will be funded at the Closing if the Equity Financing is funded at the Closing and **(C)** the Company has irrevocably confirmed in writing to Parent that if the Equity Financing and Debt Financing are funded, then the Closing pursuant to Article II will occur; provided, that while the Company may pursue both a grant of specific performance in accordance with Section 9.5(c) and the payment of Parent Fee, under no circumstances shall the Company be permitted or entitled to receive both (1) a grant of specific performance of the Equity Financing to be funded and/or the consummation of the Merger (which specific performance grant is satisfied) and (2) the payment of Parent Fee; provided, further, that, in no event shall the Company or any Affiliate of the Company seek to recover any money damages in excess of the Parent Fee and the indemnification and reimbursement provisions of Section 6.13(f).

Figure A: Equitable Remedies Across All Transactions, 2013–2015 illustrates the frequency with which parties agree to Full Specific Performance or Conditional Specific Performance across the entire study sample in each of the last three years.

Previous years' studies have observed that Full Specific Performance is the most common equitable remedy, even among debt-financed deals. The 2014 study, which analyzed 59 leveraged deals from 2013, noted that the Full Specific Performance category had become progressively less common in leveraged deals since 2011 and by 2013 had constituted a minority of the equitable remedies in leveraged deals. However, the trend reversed itself in 2014, with the Full Specific Performance remedy becoming the predominant equitable remedy in leveraged deals. In part, the turnaround stemmed from the change in profile of buyer from 2013 to 2014: in 2013, deals with financial buyers comprised a majority of the year's leveraged transactions (30 out of 59 deals). But in 2014, strategic buyers entered into 80 percent of the year's public leveraged deals.

FIGURE A Equitable Remedies Across All Transactions, 2013–2015



This trend was confirmed last year. In 2015, a large sample size of 67 leveraged deals were reached with strategic buyers. Of those, 71 percent—the exact same percentage of strategic deals that contained the Full Specific Performance remedy in 2014—contemplated the Full Specific Performance remedy.

Figure A also illustrates that in 2015, no leveraged deals provided that the target company should have no right of specific performance against the buyer. The “No Specific Performance” approach had already been in decline, with only one deal taking that approach in each of 2014, 2013, and 2012. 2015 is the first year in which not a single deal provided that the target company cannot enforce the buyer’s obligations.

FORMULATIONS OF CONDITIONAL SPECIFIC PERFORMANCE

The drafting of the conditions to enforcement in the Conditional Specific Performance category varies among the agreements in this group, but typically turns on two issues:

Which obligations can the target company enforce unconditionally and which are conditioned on the funding of the debt financing?	How broadly is the condition of the availability of the debt financing drafted?
<ul style="list-style-type: none"> ■ In the excerpt on page 7, enforcement of both the equity financing and the closing is conditioned on the availability of the debt financing. ■ In other agreements, only enforcement of the equity financing is explicitly conditioned, while enforcement of the closing is not. ■ Some agreements separately condition the obligation to draw down the debt financing on the availability of the equity financing. 	<ul style="list-style-type: none"> ■ Some agreements simply state that the debt financing must be available. ■ Others list out three conditions: satisfaction of the buyer’s closing conditions, availability of the debt financing, and confirmation from the target company of its readiness to close.

The practical result of the conditionality to specific performance is that the target company can only get to the closing if the debt-financing proceeds are funded. On the basis of these drafting distinctions, the agreements in the Conditional Specific Performance category are divided into the five variations detailed below under the headings “Conditional Specific Performance v1” through “Conditional Specific Performance v5.” The variations are also identified with each relevant agreement in Table A. All these variations are categorized as Conditional Specific Performance throughout the body of the study. Notably, previous editions of the study found seven different variations of Conditional Specific Performance, but as the market has consolidated around the most typical contractual approaches, the two least common variations have fallen out of usage.

CONDITIONAL SPECIFIC PERFORMANCE v1

Enforcement Right	<p>The target company retains a right to specific performance to enforce the financing and closing, with a caveat that enforcement of the funding of the equity financing is only available if:</p> <ul style="list-style-type: none"> ■ The buyer's closing conditions have been satisfied. ■ The debt financing has been funded or will be funded if the equity financing is funded. ■ The target company confirms that it is ready to proceed to the closing if the debt and equity financing are funded.
Discussion	<p>This is the most target-friendly variation of Conditional Specific Performance, because enforcement of the closing is not explicitly conditioned. Only enforcement of the equity financing is conditioned on the availability of the debt financing. This arguably means that the target company can enforce the closing even if the debt financing is unavailable. As a practical matter, though, if the debt financing is genuinely unavailable, the target company will have to settle for a reverse break-up fee.</p>
The Buyers	<p>Four private equity buyers in the 2015 study sample.</p> <p>This is a somewhat common variation of the remedy. In the 2014 study sample, only two buyers, both financial, negotiated this variation. However, seven buyers agreed to it in each of the 2013 and 2012 study samples.</p>

CONDITIONAL SPECIFIC PERFORMANCE v2

Enforcement Right	<p>The target company retains a right to specific performance to enforce the financing and closing, with a caveat that enforcement of the closing of the merger (and the funding of the equity financing, where there is equity financing) is conditioned on the availability of the debt financing.</p>
Discussion	<p>This variation is more buyer-friendly than Conditional Specific Performance v1 because enforcement of the closing is explicitly conditioned. However, this version and Conditional Specific Performance v3 are more target-friendly than Conditional Specific Performance v4 and Conditional Specific Performance v5 because enforcement of the debt financing is not itself conditioned.</p>
The Buyers	<p>Four deals, three with strategic buyers and one management buyout.</p>

CONDITIONAL SPECIFIC PERFORMANCE v3

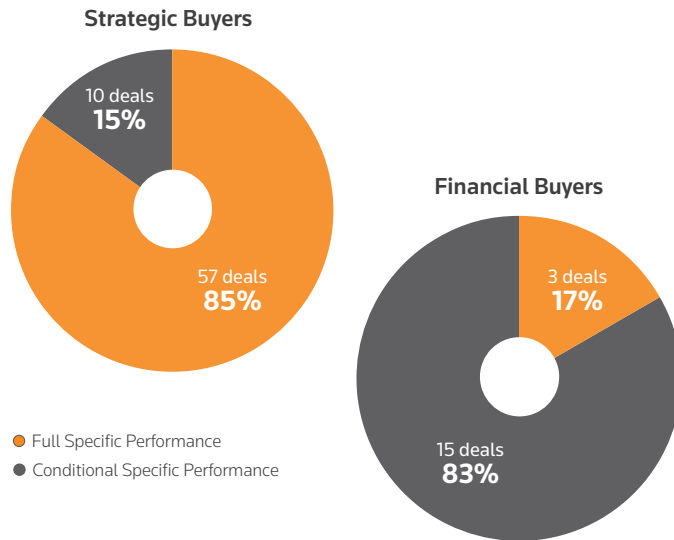
Enforcement Right	<p>The target company retains a right to specific performance to enforce the financing and closing, with a caveat that enforcement of the closing of the merger (and the funding of the equity financing, where there is equity financing) is only available if:</p> <ul style="list-style-type: none"> ■ The buyer's closing conditions have been satisfied. ■ The debt financing has been funded or will be funded if the equity financing is funded (where applicable). ■ The target company confirms that it is ready to proceed to the closing if the debt (and equity) financing are funded.
Discussion	<p>This is the most common variation of the Conditional Specific Performance remedy, especially among financial buyers. It is essentially a more detailed version of Conditional Specific Performance v2. Enforcement of the debt financing itself is not conditioned, while enforcement of the equity financing and the closing is conditioned in detail.</p>
The Buyers	<p>Fourteen buyers agreed to this variation, including nine of the 18 financial buyers in the 2015 study sample. One of the strategic-buyer deals to use this approach was the <i>Dell/EMC</i> deal, essentially a collaboration between a corporate buyer and its private equity backers.</p> <p>Fifteen buyers agreed to this variation in the 2014 study sample, following 20, 17, and 18 in the three previous years.</p>

CONDITIONAL SPECIFIC PERFORMANCE v4

Enforcement Right	<p>The target company retains a right to specific performance to enforce the financing and closing, with a caveat that enforcement of the closing of the merger (and equity financing, if applicable) and the funding of the debt financing is only available if:</p> <ul style="list-style-type: none"> ■ The buyer's closing conditions have been satisfied. ■ The debt financing has been funded or will be funded if the equity financing is funded. ■ The target company confirms that it is ready to proceed to the closing if the debt (and equity) financing are funded.
Discussion	<p>This is the first variation in which enforcement of the debt financing is conditional, which makes it more buyer-friendly than Conditional Specific Performance v1 through v3.</p>
The Buyers	<p>Two buyers, one strategic and one financial, agreed to this variation in both the 2015 and 2014 study samples.</p>

CONDITIONAL SPECIFIC PERFORMANCE v5

Enforcement Right	<p>In this variation, the target company retains a right to specific performance to enforce the financing and closing, with caveats that:</p> <ul style="list-style-type: none"> ■ It can only enforce the equity financing if: <ul style="list-style-type: none"> • the buyer's closing conditions have been satisfied; • the debt financing has been funded or will be funded if the equity financing is funded; and • the target company confirms that it is ready to proceed to the closing if the debt and equity financing are funded. ■ It can only enforce the debt financing if: <ul style="list-style-type: none"> • the buyer's closing conditions have been satisfied; • the equity financing will be funded; and • the target company confirms that it is ready to proceed to the closing if the debt and equity financing are funded.
Discussion	<p>This variation is more buyer-friendly than Conditional Specific Performance v4 because enforcement of the debt financing is separately conditioned on the target company's readiness to close. Enforcement of the closing is not explicitly conditioned the way it is in Conditional Specific Performance v4, but this is not a meaningful distinction as a practical matter if the buyer will not be able to close without the financing. This seems to be the target company's implicit understanding when it makes enforcement of the debt financing conditioned on the satisfaction of the buyer's closing conditions.</p>
The Buyers	<p>In the 2015 study sample, only one agreement used this approach to specific performance (<i>Leyard Optoelectronic Co./Planar Systems</i>). This variation did not appear in the 2014 study sample. Three financial buyers agreed to this variation in the 2013 study sample.</p> <p>Agreements that used this approach in the past contained an equity-financing component and conditioned the debt-financing obligation on the availability of the equity financing. The <i>Leyard Optoelectronic Co./Planar Systems</i> agreement does not contemplate equity financing. To maintain consistency and comparison with previous editions of the study, the agreement is categorized in Conditional Specific Performance v5.</p>

FIGURE B Equitable Remedies by Buyer Type, 2015

ANALYSIS OF EQUITABLE REMEDIES

Figure B: *Equitable Remedies by Buyer Type, 2015* illustrates the sharp divergence between strategic and financial buyers on the terms of specific performance that they will agree to in leveraged deals. Strategic buyers agreed to Full Specific Performance in 85 percent of their deals, with only ten strategic buyers negotiating some form of conditionality. In two of those ten deals, the strategic buyer received new equity financing to fund the merger consideration (*Dell/EMC* and *Altice/Cablevision Systems*).

Financial buyers, by contrast, rarely commit themselves to Full Specific Performance in leveraged deals. In 2015, three deals with financial buyers contemplated Full Specific Performance: *Vector Capital/Saba Software*, *NRD Capital/Frisch's Restaurants*, and *JAB Holding Company/Keurig Green Mountain*. The *NRD Capital/Frisch's Restaurants* agreement is unique because it contains a modified form of financing out, as described in *Table B*.

Figure C: *Equitable Remedies by Buyer Type, 2013–2015* highlights the historical distinction in practice between strategic and financial buyers. Strategic buyers have traditionally been more willing than financial buyers to agree to close the transaction even if the lenders fail to fund. This willingness fell somewhat from 2011 through 2013, when only 80 percent, 76 percent, and 62 percent of strategic buyers, respectively, agreed to Full Specific Performance. However, that trend reversed itself in 2014, with 85 percent of strategic buyers agreeing to Full Specific Performance. That percentage maintained in 2015.

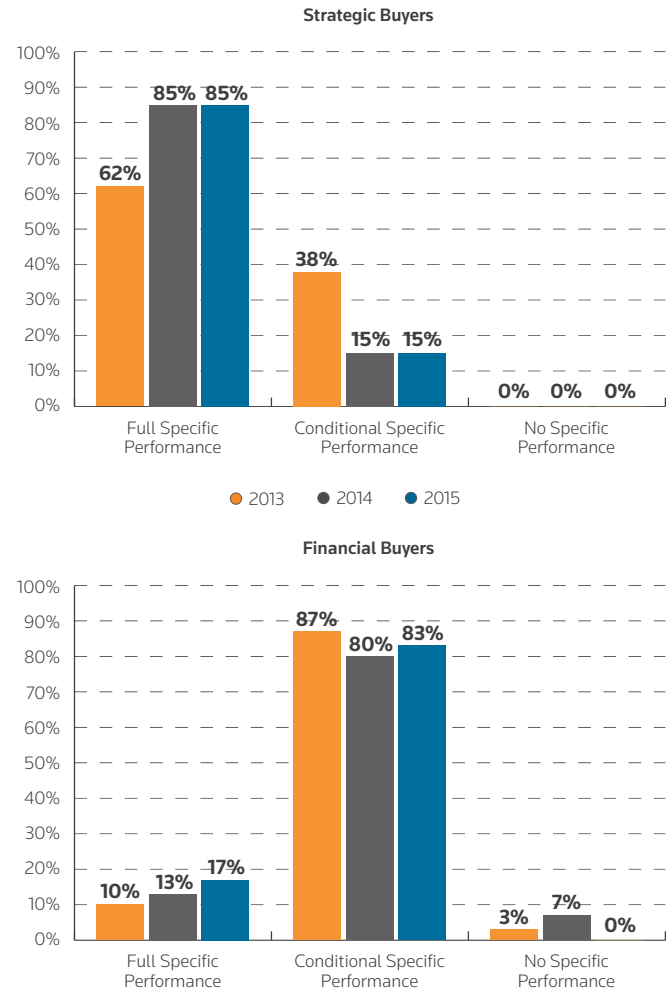
The explanation for the recent high rate of strategic buyers agreeing to Full Specific Performance might be a simple matter of statistical significance. Strategic buyers reached 60 and 67 leveraged public M&A deals in 2014 and 2015, respectively, compared to 29 in 2013, 45 in 2012, and 55 in 2011. Rather than concluding that underlying economic or market conditions drove the fluctuation in choice of enforcement remedy, the best explanation may be that the more leveraged deals strategic buyers agree to in a given year, the more frequently the Full Specific Performance remedy is likely to appear.

Financial buyers in 2015 maintained their traditional approach to specific performance. Eighty-three percent of financial buyers agreed to Conditional Specific Performance, squarely between the 80 percent in 2014 and 87 percent in 2013. With only 18 financial-buyer deals in 2015, each outlier deal had an outsized effect on the percentages.

Consequently, the 17 percent of financial deals that contemplated Full Specific Performance is attributable to only three deals.

As discussed, no leveraged deals in 2015 contemplated that the target company should have no right of specific performance against the buyer. As *Figure C* illustrates, this ends a dwindling trend in which at least one buyout by a financial buyer could be counted on to contemplate no right of specific performance for the target company.

FIGURE C Equitable Remedies by Buyer Type, 2013–2015





POST-TERMINATION MONETARY REMEDIES

DAMAGES REMEDIES

When the buyer either fails to close the transaction despite satisfaction of its closing conditions or breaches the agreement so materially as to cause a failure of a closing condition, the target company can forego specific performance and terminate the agreement. In that instance, the agreement might obligate the buyer to pay a reverse break-up fee. While the fee sets a floor for the target company's compensation, it also usually acts as a cap on damages. In many deals, however, the agreement does not provide for payment of a fee, which leaves the target company with a remedy to bring suit for uncapped damages. Whether a damages remedy is available therefore turns on whether liability for breaches survives termination of the agreement. Some agreements provide that liability survives for any breach, but far more provide that liability survives only for willful breaches.

This may not be a serious issue in transactions that do not involve debt financing. In those deals, because the buyer is not relying on the actions of third parties to provide the funds for the acquisition, its failure to close in spite of satisfaction of the closing conditions can be considered willful.

In debt-financed acquisitions, however, the buyer can argue in good faith that its breach was not willful if a financing failure occurred in spite of its best efforts to cause the lenders to fund. The target company may counter that the buyer's argument only proves that its motives were pure, but that its intent was still to breach the agreement if it did not close. But at a minimum, the buyer will have staked out a plausible position for litigation. If the buyer argues the point successfully and the merger agreement provides that liability survives only for willful breach, the target company may be left with no remedy in the event of a financing failure. While the target company will often have an unconditional right to enforce the buyer's obligations before terminating the agreement (which is especially common when the agreement does not limit damages with a reverse break-up fee), as a practical matter this may not hold much value if the buyer simply does not have the funds to pay the merger consideration.

To distinguish along these lines, this study divides all agreements that do not provide for a reverse break-up fee into two categories: "No Reverse Break-Up Fee, Full Damages" and "No Reverse Break-Up Fee, Damages for Willful Breach."

NO REVERSE BREAK-UP FEE, FULL DAMAGES

There are two general ways in which merger agreements can provide that uncapped damages are available post-termination for any breach, including non-willful breaches. The first approach is to state in the "Effect of Termination" section of the merger agreement that liability survives for all breaches or all material breaches, without including any willfulness component. This form of the remedy is identified in *Table A* as "No RBF, Full Damages v1." Five agreements in this year's study, four of them with strategic buyers, used this approach, compared to four in 2014 and three in 2013. In one of the five agreements, the buyer would pay a reverse break-up fee triggered by failure to obtain antitrust approval. Transactions with antitrust-triggered reverse break-up fees are discussed separately in the *Remedies for Antitrust Failure* section of this study.

EXAMPLE

Merger agreement between Ascena Retail Group Inc. and ANN Inc., dated May 17, 2015

Section 7.2. Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 7.1, written notice thereof shall be given to the other party or parties, specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail, and this Agreement shall become void and of no further force or effect without liability or obligation on the part of Parent, Merger Sub or the Company or their respective Subsidiaries, affiliates, officers or directors; provided, that (i) no such termination shall relieve the Company of its obligation to pay the Termination Fee or Expense Reimbursement if, as and when required pursuant to Section 7.3 (which Section 7.3 shall survive any such termination); (ii) **no such termination shall relieve any party for liability for such party's breach of this Agreement prior to its termination** or for fraud...

The second approach reflects an explicit effort to answer the question of whether the buyer’s failure to close because of a lack of financing should be considered a willful breach. In agreements following this approach, the “Effect of Termination” section provides explicitly that the buyer’s liability for failure to close when the closing conditions are otherwise satisfied survives termination, regardless of the buyer’s subjective, good-faith efforts to close. This form of the remedy is identified in *Table A* as “No RBF, Full Damages v2.”

EXAMPLE

Merger agreement between SunEdison, Inc. and Vivint Solar, Inc., dated July 20, 2015

Section 7.02. Effect of Termination. In the event of the termination and abandonment of this Agreement pursuant to Section 7.01, this Agreement shall become void and have no effect with no liability to any person on the part of any party hereto (or any of its Representatives, Joint Ventures or affiliates), except that... (b) **the termination of this Agreement shall not relieve any party from any liability or damages** (which the parties acknowledge and agree, in the case of liabilities or damages payable by Parent or Merger Sub, would include the benefits of the transactions contemplated by this Agreement lost by the Company’s stockholders which shall be deemed to be damages of the Company) **for any Willful Breach.**

Section 8.03. Definitions. For purposes of this Agreement: ...(xx) “Willful Breach” means a material breach that is a consequence of an act or a failure to act of an executive officer of the party taking such act or failing to take such act with the actual knowledge that the taking of such act or the failure to take such act would cause, or would reasonably be expected to cause, a breach of any representation, warranty, agreement or covenant of the breaching party contained in this Agreement. **For the avoidance of doubt, a failure of a party to consummate the Merger when required pursuant to Section 1.02 and the other terms of this Agreement (and, in the case of Parent, regardless of whether Parent has obtained or received the proceeds of the Debt Financing) shall be deemed a “Willful Breach.”**

This formulation of the damages remedy rose sharply in 2015. Nine agreements in this year’s study sample, all with strategic buyers, used a “No RBF, Full Damages v2” remedy, compared to two agreements in 2014 and one in 2013. Five of the nine agreements contemplate a reverse break-up fee payable either for antitrust failure or for fiduciary triggers reciprocal to those of the target company’s break-up fee. Fiduciary-triggered reverse break-up fees are not the subject of this study, but each agreement with such a fee is identified in *Table A*.

The *SunEdison/Vivint Solar* agreement excerpted above provides a useful example of the advantage to a target company of negotiating a “No RBF, Full Damages” remedy. Vivint Solar terminated the merger agreement on March 8, 2016, claiming that SunEdison had failed to close the merger when required under the merger agreement. Strictly on the basis of the language of the agreement, Vivint Solar would be entitled to a damages remedy, as SunEdison’s failure to close when required is deemed willful, regardless of its subjective intent.

One agreement that the study categorizes as “No RBF, Full Damages v1” took a unique approach to the wording of the remedy. In the *Solvay/Cytec Industries* agreement, the parties specified that a “knowing and intentional breach” includes any deliberate act or omission, even if breaching was not the conscious object of the act or omission. This is the mirror image of agreements with a “No RBF, Damages for Willful Breach” remedy, many of which provide that breaching the agreement does have to be the conscious object of the act or omission to qualify as a willful breach. The *Solvay/Cytec Industries* agreement, by contrast, requires only that the act or omission have been taken knowingly. In essence, this preserves post-termination liability for any breach, which is why the remedy is categorized as “No RBF, Full Damages v1.”

NO REVERSE BREAK-UP FEE, DAMAGES FOR WILLFUL BREACH

The remedy of damages for willful breach, the most common monetary remedy in agreements that do not contemplate debt financing, is also observed in many debt-financed acquisitions.

EXAMPLE

Merger agreement between Pinnacle Foods Inc. and Boulder Brands, Inc., dated November 24, 2015

Section 7.5. Effect of Termination. If this Agreement is terminated pursuant to this Article VII, written notice thereof shall be given to the other party or parties, as the case may be, specifying the provision hereof pursuant to which such termination is made and, except as set forth in this Section 7.5, this Agreement shall become void and of no further force and effect, with no liability (other than as provided in Section 7.6) on the part of any party to this Agreement (or any stockholder or Representative of such party); **provided that no such termination shall relieve any party hereto of any liability or damages resulting from fraud or the Willful and Material Breach** by such party of its representations, warranties, covenants, obligations or agreements set forth in this Agreement. The provisions of Section 5.3(c), Section 5.10, this Section 7.5, Section 7.6, Article VIII and the Confidentiality Agreement shall survive any termination of this Agreement. **“Willful and Material Breach” means a material breach, or a material failure to perform, in each case that is the consequence of an act or omission by a party with the actual knowledge that the taking of such act or failure to take such act would cause a breach of this Agreement.**

Thirty-eight agreements in this year’s study, similar to the 40 agreements the year before, gave the target company the right to pursue damages for willful breach only, with no reverse break-up fee payable. Another agreement (*Spark Orange Limited/Coca-Cola Enterprises*), which is categorized as “No RBF, Damages for Willful Breach” for purposes of this study, provided that damages survive termination only for fraud. The formulation of the standard for liability for each agreement with a damages remedy is recorded in *Table D: Post-Termination Liability in Leveraged Deals*.

All but two of the 39 agreements were with strategic buyers. Of the 37 strategic buyers who agreed to this remedy:

- Nine agreed to pay a reverse break-up fee in the event of a failure to obtain antitrust or other regulatory approval.

- Six agreed to pay a fiduciary reverse break-up fee under circumstances reciprocal to the triggers for the target company’s break-up fee (including four that also provided for an antitrust-triggered reverse break-up fee).

Transactions with reverse break-up fees payable for antitrust failure are discussed separately in the *Remedies for Antitrust Failure* section of this study.

REVERSE BREAK-UP FEES

The study divides all agreements that provide for a reverse break-up fee into one of two general categories, based on whether the fee functions as an ultimate cap on the damages payable by the buyer. All references to reverse break-up fees throughout the main portion of the study are to fees that are payable for breach, financing failure, or other failure to close when the closing conditions have been met. Fiduciary and antitrust-triggered reverse break-up fees are not discussed in this section of the study in depth, but are noted when payable for each applicable agreement in *Table A*. Reverse break-up fees payable for antitrust failure are discussed separately in the *Remedies for Antitrust Failure* section.

REVERSE BREAK-UP FEE, UNCAPPED DAMAGES FOR WILLFUL BREACH

In the first general category, the buyer must pay a fee under certain delineated circumstances, yet it remains liable for willful breach over and above the amount of the fee. This remedy can be expressed in one of two ways. In some agreements, the buyer pays a reverse break-up fee or reimburses the target company’s expenses up to a negotiated amount when the buyer commits any breach or otherwise fails to close, but the payment does not cap the buyer’s damages if it willfully breached the agreement. These agreements are categorized in *Table A* as “RBF Uncapped v1.” Other agreements specify that the fee is payable in the specific instance of a financing failure, but that damages remain uncapped for willful breach. These agreements are categorized in *Table A* as “RBF Uncapped v2.”

A total of 11 buyers in the 2015 study sample agreed to pay a reverse break-up fee that does not cap damages for willful breach, five using the “RBF Uncapped v1” remedy formulation and six using “RBF Uncapped v2.” The 11 agreements amount to 13 percent of the full study sample (up from nine percent in 2014 and 12 percent in 2013) and 34 percent of the agreements that contained any form of reverse break-up fee (up from 25 percent in 2014 and 17.5% in 2013). Ten out of the 11 buyers were strategic buyers. The one financial-buyer agreement, which used an “RBF Uncapped v1” formulation, was from the *American Securities and P2 Capital Partners/Blount International* club deal.

REVERSE BREAK-UP FEE, CAP ON DAMAGES

In the second general category, the buyer pays a reverse break-up that caps its damages in all instances, including if the buyer willfully breached the agreement.

This category also comes in two variations. In the rarer form, the fee is payable only in the specific event of a financing failure. Once paid, however, the fee caps the buyer’s damages even if it has committed a willful breach. These agreements are categorized in *Table A* as “RBF Cap v1.” In the 2015 study sample, only one agreement contained this remedy formulation. In the *Snyder’s-Lance/Diamond Foods* agreement, a reverse break-up fee is payable in the event of a financing failure. The agreement provides that Diamond Foods has the right to refund the fee and pursue damages or specific performance instead. If it chooses not to, however, the fee caps Snyder’s-Lance’s damages.

In the more common variation, the buyer pays the fee for any breach that is material enough to cause a failure of a closing condition or if it fails to close the merger when the closing conditions have otherwise been satisfied. Most important for the buyer, the agreement explicitly characterizes the fee as the target company’s sole and exclusive remedy. Nineteen agreements in this year’s study took this approach. These agreements are categorized in *Table A* as “RBF Cap v2.” Four of the 19 agreements also provided for a reverse break-up fee payable for antitrust failure.

TWO-TIER REVERSE BREAK-UP FEE

In this category, the buyer pays a lower reverse break-up fee for non-willful breaches or financing failure and a higher fee that caps the buyer’s damages for willful breach or when it does not close even though the financing is available. This approach continues to occupy a shrinking portion of the overall remedy landscape. The study covering 2010 saw 11 agreements use this approach, followed by six in 2011, four in 2012, three in 2013, and, for the first time in any given year, none in 2014. In 2015, one agreement, for the *Dell/EMC* transaction, contemplated a two-tier reverse break-up fee. That agreement contains several conditions for the payment of the higher fee, as described in *Table A*.

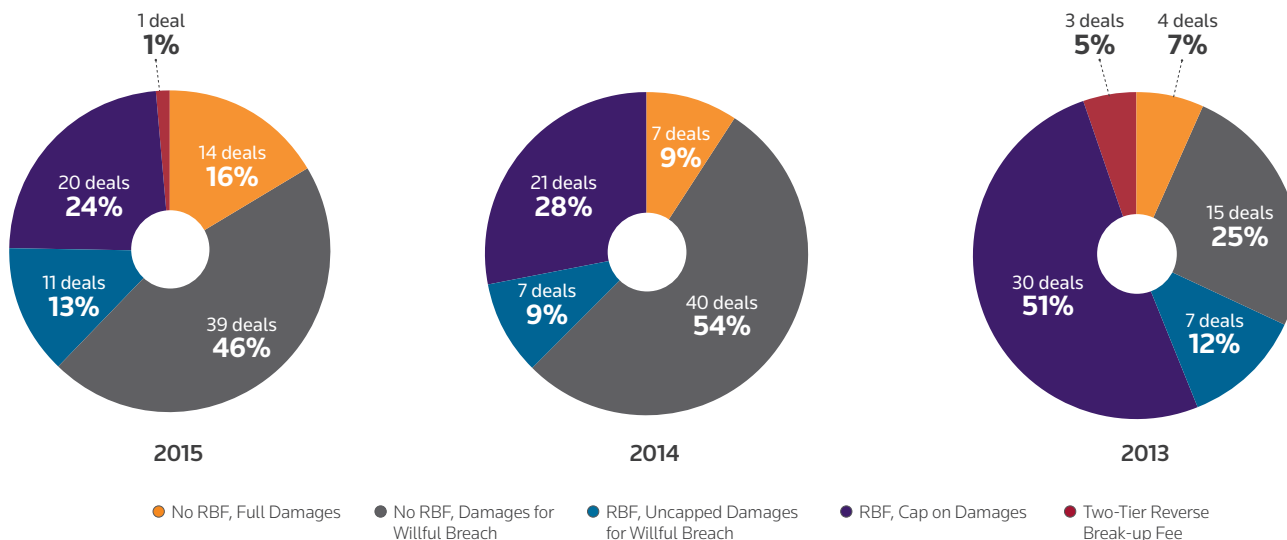
As always, the category of Two-Tier Reverse Break-up Fee does not refer to agreements with two fees where one of the two fees is a fiduciary break-up fee payable by the buyer or a fee payable for antitrust failure. All deals with a fiduciary, antitrust, or other regulatory reverse break-up fee are noted in *Table A*.

ANALYSIS OF MONETARY REMEDIES

Similar to the study’s observations about pre-termination equitable remedies, post-termination damages remedies in 2015 maintained the return to historical practice begun in 2014, following a rare year in 2013 in which reverse break-up fees were seen in a majority of deals. The “No RBF, Damages for Willful Breach” remedy, which is always the most common monetary remedy for buyer breach in non-leveraged deals, was agreed to in more leveraged deals in 2015 than any other form of remedy. The 46-percent share, though down from the 54 percent observed in 2014, comprises a larger portion of the overall study sample than the 25 percent observed in 2013, 40 percent in 2012, and 35 percent in 2011. As with equitable remedies, the shift is largely attributable to the fact that deals with strategic buyers comprised a significant majority of the study sample.

The most significant change observed in 2015 was the frequency with which parties agreed to the most target-friendly remedy. Sixteen percent of the surveyed agreements used the “No RBF,

FIGURE D Damages Remedies Across All Transactions, 2013–2015



Full Damages” approach, a greater share than the nine percent of leveraged deals containing the remedy in 2014, seven percent in 2013 and 2012, and 12 percent in 2011. This could be due to the fact that the busy deal environment in 2015 made for a seller’s market, or that more practitioners are noticing the full-damages approach.

The rise in proportion of agreements using either the “No RBF, Damages for Willful Breach” or “No RBF, Full Damages” remedy has coincided with a drop in agreements that provide for a reverse break-up fee that caps the buyer’s damages. The number of agreements using the “RBF, Cap on Damages” remedy has been steadily dropping, falling to 24 percent of the study sample in 2015 compared to 28 percent in 2014 and 51 percent in 2013. Though 2013

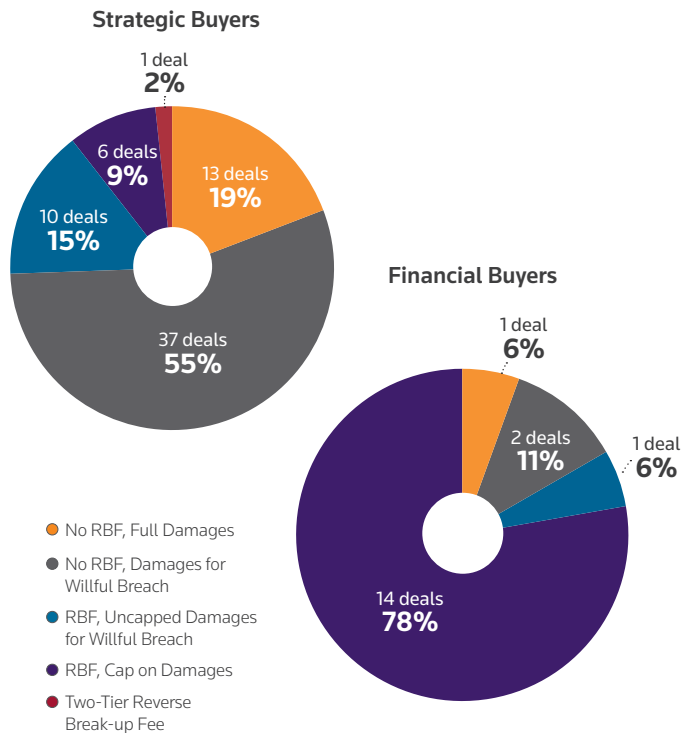
was somewhat of an outlier in that a majority of leveraged deals contemplated a reverse break-up fee that year, the two previous years saw a cap on damages in 40 percent and 33 percent of leveraged deals, still higher than the share of deals in 2015.

The “RBF, Uncapped Damages for Willful Breach” remedy was observed within historical norms: 13 percent in 2015, compared to nine percent in 2014, 12 percent in 2013, seven percent in 2012, and 14 percent in 2011.

The “Two-Tier Reverse Break-Up Fee” remedy, though intuitively appealing, has been negotiated in progressively fewer deals each year. The study covering 2010 saw 11 agreements use this approach, followed by six in 2011, four in 2012, three in 2013, and, for the first

time in any given year, none in 2014. In 2015, one agreement for a leveraged deal, the *Dell/EMC* transaction, contemplated a two-tier reverse break-up fee.

FIGURE E Damages Remedies by Buyer Type, 2015



Financial buyers relying on debt financing usually negotiate for a cap on damages. In 2015, a larger than usual number of financial buyers

agreed to uncapped damages in the event of a willful breach. In one agreement (*Vector Capital/Saba Software*), the buyer agreed to a “No RBF, Full Damages” remedy, and in two others, the buyer agreed to “No RBF, Damages for Willful Breach” (*JAB Holding Company/Keurig Green Mountain* and *NRD Capital/Frisch’s Restaurants*). The one deal with a financial buyer to use the “RBF, Uncapped Damages for Willful Breach” remedy was *American Securities and P2 Capital Partners/Blount International*. Given that the study sample only consisted of 18 deals with financial buyers, any conclusions about financial buyers easing off of the practice of negotiating caps on damages are likely premature.

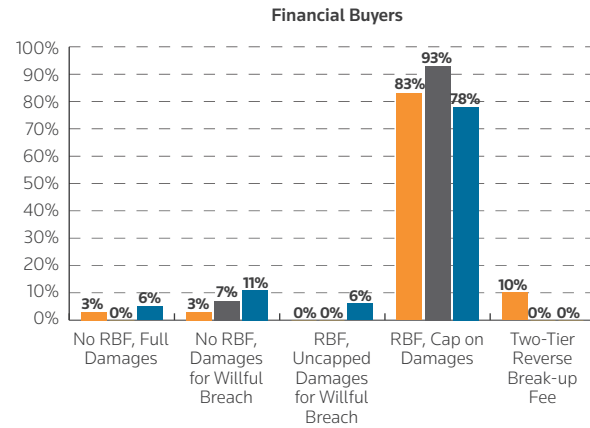
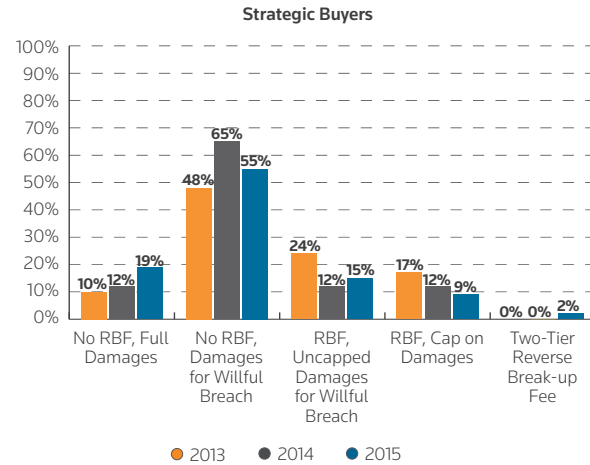
Even in leveraged deals, strategic buyers in leveraged acquisitions usually do not negotiate for any reverse break-up fee, particularly for a reverse break-up fee that would cap its damages. Sixty out of 67 strategic buyers in this year’s study sample (90 percent) did not negotiate a cap on damages, instead agreeing either to damages for any breach (19 percent overall), damages only for willful breach (55 percent), or a reverse break-up fee that does not cap damages for willful breach (15 percent).

Seven strategic buyers negotiated a reverse break-up fee that caps their damages for willful breach, including one that negotiated a two-tier fee arrangement. In one of those deals, the reverse break-up fee is triggered by the specific event of a financing failure (the *Snyder’s-Lance/Diamond Foods* agreement). However, the agreement provides that *Diamond Foods* has the right to refund the fee and pursue damages or specific performance instead, and that if it foregoes those choices, the fee caps *Snyder’s-Lance’s* damages.

Figure F: Damages Remedies by Buyer Type, 2013–2015 demonstrates market practice for strategic and financial buyers over the last three years. The 90 percent of strategic buyers who did not negotiate any cap on damages in the form of a reverse break-up fee represents a small increase from 2014 and 2013, when 88 percent and 83 percent of strategic buyers, respectively, did not negotiate a cap.

Fewer financial buyers negotiated a cap on damages in 2015 than in either of the previous two years. This may evidence that financial buyers are sometimes pressured to negotiate strategic-buyer-type remedies in markets in which strategic buyers are most active—or it may only reflect statistical noise resulting from a small sample size.

FIGURE F Damages Remedies by Buyer Type, 2013–2015





REMEDY
MODELS

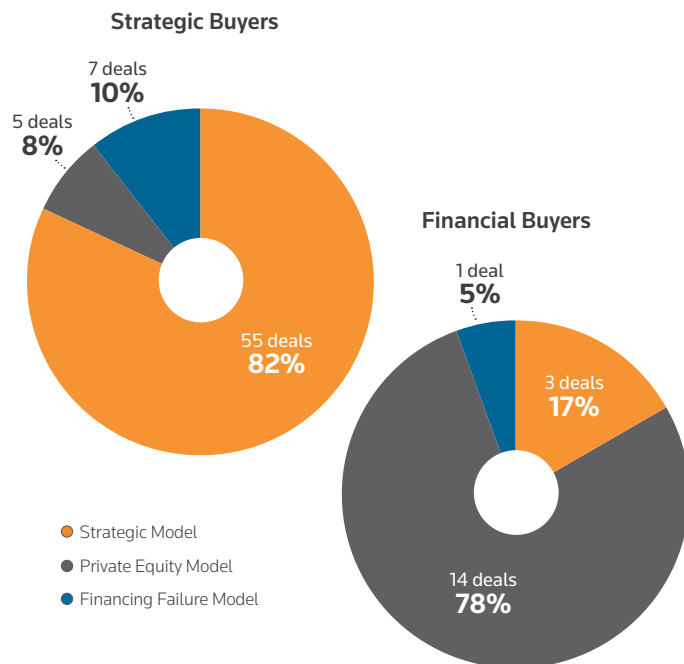
REMEDY MODELS OVERVIEW

The remedy categories reviewed above separately analyze the target company's right to enforce the buyer's obligations and its entitlement to monetary damages. But parties and their counsel often negotiate a remedies package that incorporates elements of both pre-termination enforcement and post-termination damages. These remedy models can be categorized as follows:

- **Strategic model.** The target company has a right to specific performance and a right to damages that at a minimum are uncapped for willful breach, if not for all breaches. This combination of remedies is typical for non-leveraged deals and is expected for deals with strategic buyers, even those relying on debt financing. This model includes all agreements using "No RBF, Full Damages" and "No RBF, Damages for Willful Breach" post-termination remedies. As a review of *Table A* demonstrates, all of these agreements also provide for pre-termination Full Specific Performance. There has never been an agreement in the study's history that had a Conditional Specific Performance pre-termination remedy but no reverse break-up fee.

 - The Strategic model also includes five agreements in this year's study that have a Full Specific Performance pre-termination remedy combined with an "RBF, Uncapped Damages for Willful Breach" post-termination monetary remedy. Although the buyer's damages are capped for non-willful breach, the fact that the target company has an unconditional right to specific performance should incentivize the buyer to be certain that it can pay the merger consideration on its own if the financing fails. Agreements with unusual combinations of pre-termination and post-termination remedies are noted in red in *Table A*.
- **Private Equity model.** The buyer's payment of a reverse break-up fee for breach or failure to close caps its damages, even if the breach was committed willfully. But before terminating the agreement, the target company has a conditional right of specific performance. Its right to enforce the buyer's obligations is essentially conditioned on the availability of the debt financing. This model includes all agreements that have an "RBF, Cap on Damages" post-termination remedy, as long as the target company has some right to specific performance.
- **Pure Option model.** The reverse break-up fee is the target company's sole and exclusive remedy in all circumstances. Payment of the fee caps the buyer's damages for any breach, even if committed willfully. Pre-termination, the target company has no right to specific performance. The buyer has complete certainty of its exposure to both damages (the amount of the fee) and equitable remedies (none). It effectively has the option to choose whether to close.
- **Financing Failure model.** The buyer pays a reverse break-up fee for breach, failure to close, or a financing failure, but damages remain uncapped for willful breach. This model includes all agreements with a post-termination "RBF, Uncapped Damages for Willful Breach" remedy when combined with Conditional Specific Performance.

 - The Financing Failure model also includes two agreements in this year's study in which the buyer is subject to Full Specific Performance but the buyer's damages are limited to the amount of the reverse break-up fee. One of these two agreements levies the fee only in the specific event of a financing failure (the *Snyder's-Lance/Diamond Foods* agreement discussed previously); a combination of this remedy, "RBF Cap v1," with Full Specific Performance has been observed in the study in previous years. The other agreement (*Konecranes/Terex*) combines Full Specific Performance with an "RBF Cap v2," a fee that is payable for any breach or failure to close and that caps the buyer's damages when paid. This combination was observed for the first time in last year's study, in three agreements. Agreements with unusual combinations of pre-termination and post-termination remedies are noted in red in *Table A*.

FIGURE G Remedy Models by Buyer Type, 2015

ANALYSIS OF REMEDY MODELS

Not surprisingly, strategic buyers agreed to a Strategic model agreement in 82 percent of their leveraged deals. Of the five strategic deals with a Private Equity model agreement, one was the *Dell/EMC* deal, which was essentially an acquisition by a private equity portfolio company.

Most financial and private equity buyers in 2015 negotiated Private Equity model agreements in their leveraged deals. Three deals with

financial buyers contemplated a Strategic model agreement: the aforementioned *Vector Capital/Saba Software*, *JAB Holding Company/Keurig Green Mountain*, and *NRD Capital/Frisch's Restaurants* agreements.

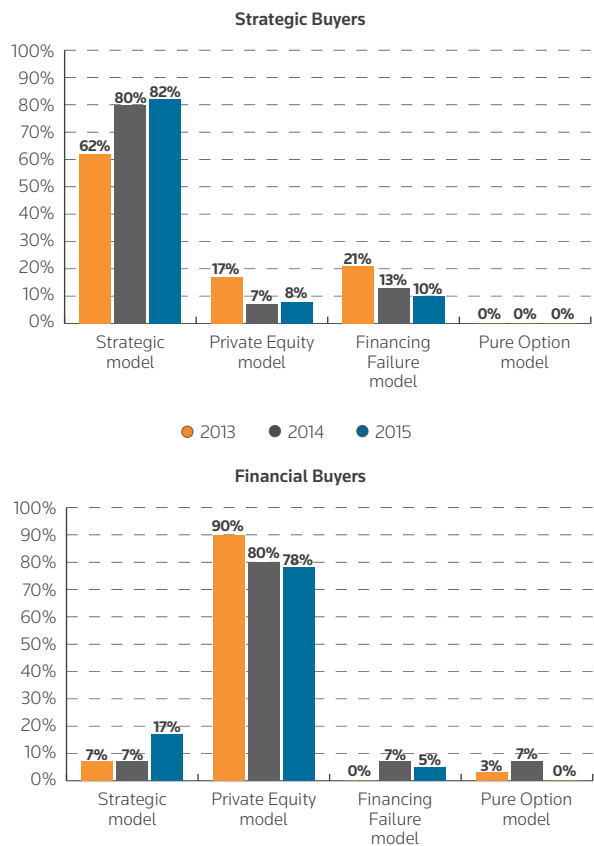
Eight agreements used the Financing Failure model in 2015, similar to the nine agreements in 2014. In six of the eight agreements, the buyer agreed to Conditional Specific Performance and a reverse break-up fee that only caps its damages for non-willful breach or a financing failure. This approach reflects the parties' agreement to obligate the buyer to close if the financing is available, hold it liable for damages if it does not, but give the buyer risk certainty for the event that it cannot close because of a financing failure through no fault of its own.

The other two agreements categorized in the Financing Failure model, however, arrived at a somewhat confusing compromise on pre-termination and post-termination remedies. One agreement combined a Full Specific Performance remedy with a reverse break-up fee triggered only by a financing failure that caps the buyer's damages for any breach when paid (*Snyder's-Lance/Diamond Foods*). In that agreement, *Diamond Foods* has the right to refund the fee and pursue damages or specific performance instead. If it chooses not to, the fee caps *Snyder's-Lance's* damages. A more surprising remedy package is found when an agreement combines a Full Specific Performance remedy with a reverse break-up fee triggered by any breach or failure to close that caps the buyer's damages for willful breach. That combination was observed in three deals in the 2014 study sample and one last year (*Konecranes/Terex*).

Previous years' studies have consistently observed that the Pure Option model is generally an outlier. In 2015, no agreements provided for a Pure Option deal.

Figure H: Remedy Models by Buyer Type, 2013–2015 confirms the study's previous observations about enforcement and monetary remedies over the last two years in strategic deals. While strategic buyers had

FIGURE H Remedy Models by Buyer Type, 2013–2015



increasingly demanded to negotiate Private Equity model agreements in the years leading up to 2014, that trend ended in 2014 and 2015. In 2011, strategic buyers negotiated Strategic model agreements in 78 percent of their leveraged deals, a share that dropped to 71 percent in 2012 and 62 percent in 2013. However, that trend reversed itself in 2014, with strategic buyers negotiating a Strategic model agreement in 80 percent of their leveraged deals, increasing slightly to 82 percent in 2015. The reversal of the trend observed in 2011–2013 may reflect a seller’s market in the busy M&A environment of the last two years—or it may be a function of the larger sample of leveraged strategic agreements agreed to in 2015 and 2014.

In the same vein, the fact that 17 percent of financial buyers negotiated a Strategic model agreement may mean that private equity firms are increasingly being forced to agree to close in spite of a financing failure and without the safety net of a cap on damages, or it may simply mean that three agreements comprise an outsized share of a total set of 18 deals.

The image features a large, stylized letter 'C' on the left side, composed of several concentric, broken arcs. The arcs are in shades of orange and dark grey, creating a sense of depth and movement. The text 'REMEDY TRENDS' is centered within the 'C' in a white, sans-serif font.

REMEDY
TRENDS

IMPACT OF DEAL VALUE ON CHOICE OF REMEDY

The 2015 study sample included 63 deals with an equity value of \$1 billion or more, well more than in any previous year. The distribution of equitable remedies by deal value, as illustrated in *Figure I*, reflects the fact that strategic buyers dominated the M&A landscape in 2015, particularly among billion-dollar deals.

Regardless of the deal-size category, strategic buyers frequently agree to Full Specific Performance. As observed in years past, the fact that a deal is particularly large does not lead to an expectation that the target company will bear the risk of financing failure. Of the ten largest leveraged deals of the year, only one (Dell/EMC, the largest one of them) provided for Conditional Specific Performance.

The remaining nine all provided for Full Specific Performance. The four deals valued at \$5 billion or more that, per *Figure I*, provided for Conditional Specific Performance were *Dell/EMC*, *Permira Funds and Canada Pension Plan Investment Board/Informatica*, *Altice/Cablevision Systems*, and *Newell Rubbermaid/Jarden*.

Conditional Specific Performance was more common among smaller deals in 2015, where private equity buyers conducted most of their public M&A activity.

As *Figure J* illustrates, the “No RBF, Damages for Willful Breach” remedy is consistently observed at every deal-size category, but especially among the largest deals, which are the purview of strategic buyers. The “RBF, Uncapped Damages for Willful Breach” remedy,

FIGURE I Pre-Termination Equitable Remedies by Deal Value, 2015

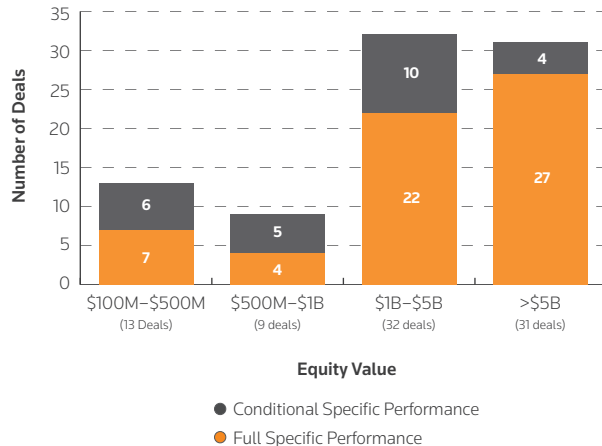
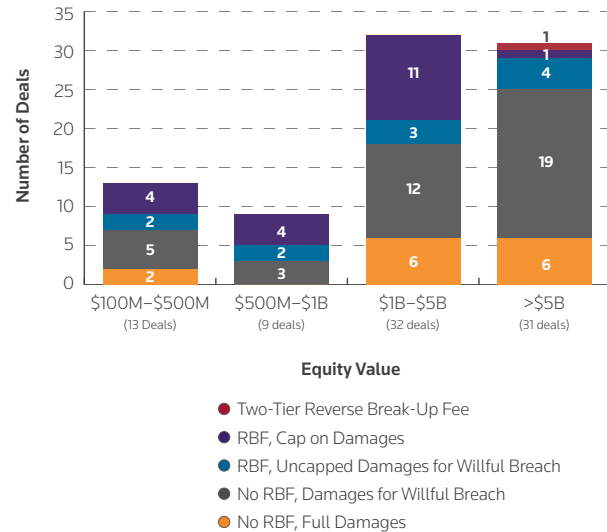


FIGURE J Post-Termination Monetary Remedies by Deal Value, 2015



which is also most common among strategic buyers (see *Figure E*), is also distributed evenly throughout the study sample, regardless of deal size.

A reverse break-up fee that caps the buyer's damages was most frequently observed in the \$1 billion–\$5 billion deal-size category and evenly distributed among the smaller deal-size categories as well. The largest deal with a single-tier reverse break-up fee that caps the buyer's damages was the *Permira Funds and Canada Pension Plan Investment Board/Informatica* club deal, valued at \$5.3 billion, followed by another club deal, *Silver Lake Partners and Thoma Bravo/SolarWinds*, valued at \$4.5 billion. The *Dell/EMC* deal provided for a two-tier reverse break-up fee structure.

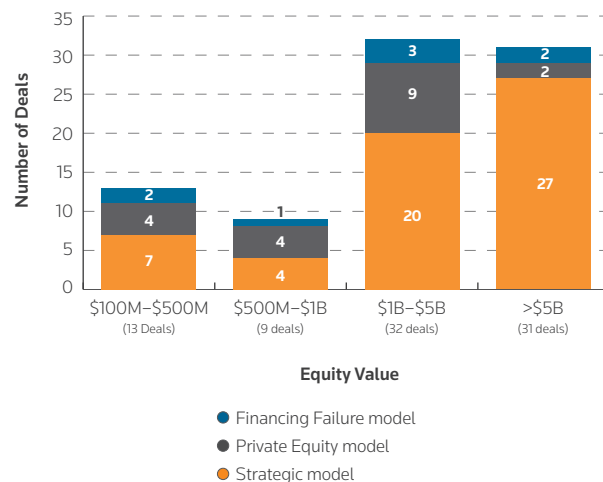
Notably, the “No RBF, Full Damages” remedy is observed most frequently among the largest deals, with 12 of the 14 deals with that remedy valued at \$1 billion or higher. This evidences that target companies entering into large deals, likely with the most sophisticated counsel, demand the tightest terms for post-closing remedy, with certainty that a failure to close on the part of the buyer will produce a remedy for the target company.

In general, the distribution of remedy models does not change meaningfully as deal sizes change, as shown in *Figure K*. In deal-size categories where strategic and financial buyers are equally active, the Strategic and Private Equity models predominate proportionately. At deal sizes where strategic buyers are more active, the Strategic model becomes more common.

This held true in 2015. Strategic buyers dominated the largest deals of the year, and as a result, the Strategic model prevailed in deals above \$5 billion. The fact that failure to close a large deal could conceivably lead to large damages for the buyer has never made for a compelling argument for strategic buyers to cap their damages with a reverse break-up fee.

Seventeen of the 19 deals that used the Private Equity model came in deals valued below \$5 billion, a reflection of the lull in private equity

FIGURE K Remedy Models by Deal Value, 2015



buyouts in 2015. The two agreements with a Private Equity model in deals valued over \$5 billion were the EMC and Informatica merger agreements.

SIZE OF REVERSE BREAK-UP FEES

Figure L and *Figure M* analyze the sizes of the reverse break-up fees in the study along two lines:

- As percentages of the respective equity values.
- As multiples of the corresponding target companies' break-up fees in the relevant deals.

Figure L focuses on the reverse break-up fees in the “RBF, Cap on Damages” category. *Figure M* focuses on the reverse break-up fees in the “RBF, Uncapped Damages for Willful Breach” category. For purposes of this analysis, each of the two fees in the deal with a two-

tier reverse break-up fee structure is counted separately. The lower fee is counted among “RBF, Uncapped Damages for Willful Breach,” as that fee functions as a cap on damages for non-willful breach while leaving the liability for willful breach to the higher fee. The higher fee is included in *Figure L* for “RBF, Cap on Damages.”

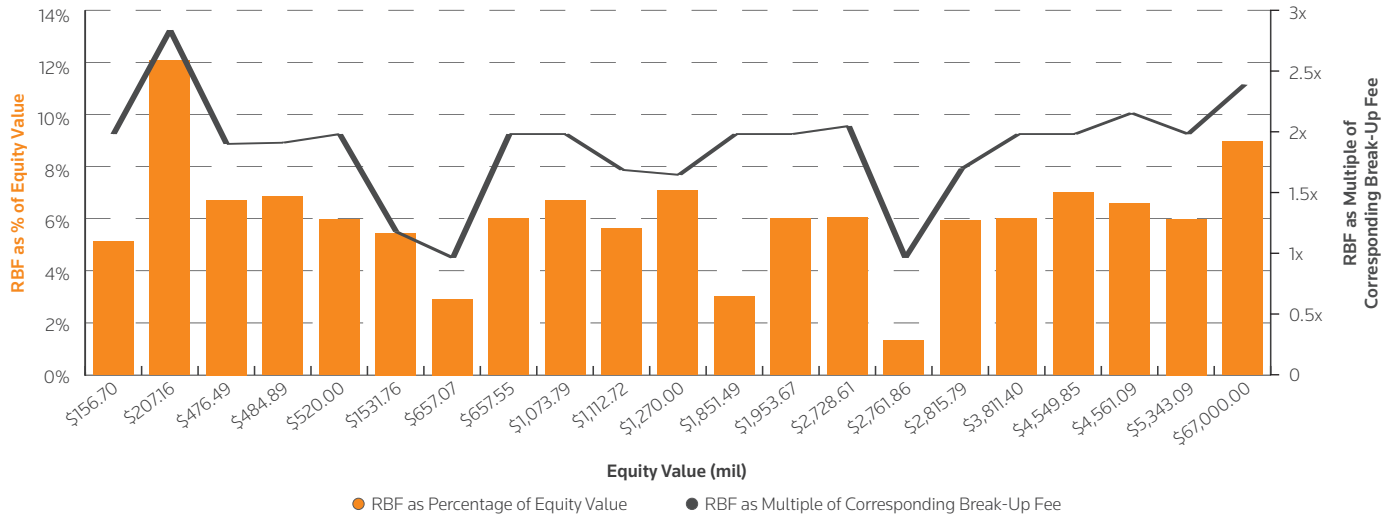
CAP ON DAMAGES

Figure L includes information for 21 deals, reflecting the one fee in the “RBF Cap v1” category (which is triggered only by a financing failure but caps all damages once paid), the 19 fees in the “RBF Cap v2” category (which are the sole monetary remedy for all breaches and failures to close), and the higher fee from the two-tier deal.

The largest reverse break-up fee in 2015 on a percentage basis was 12.07%, from the *Shenandoah Telecommunications Company/ NTELOS Holdings* deal. (As always, this does not include fees payable for antitrust failure, which are discussed separately in the *Remedies for Antitrust Failure* section of the study.) Notably, that agreement also requires the buyer to pay an expense reimbursement up to \$2.5 million (1.21% of the equity value) if the reverse break-up fee becomes payable. This arrangement, though common when the target company must pay a fiduciary break-up fee, is rare for reverse break-up fees.

The average size of the 21 fees was 6.07% of the deal’s equity value, up from 5.91% in 2014, but still down from 6.51% in 2013. The median reverse break-up fee size in 2015 was exactly 6.00%. Twelve of

FIGURE L Size of Reverse Break-Up Fees: Cap on Damages



the fees were priced at 6.00% or higher, with another three priced between 5.90% and 6.00%.

Thirteen of the 21 reverse break-up fees were at least double the size of the target company’s corresponding break-up fee—well above the eight of 21 fees in 2014, but still lower than the 23 of 33 in 2013. Nine of the 21 fees were exactly double the size of the target company’s corresponding break-up fee. None of the reverse break-up fees went as far as to triple the size of the target company’s break-up fee, but two of them were priced at the same amount as the break-up fee.

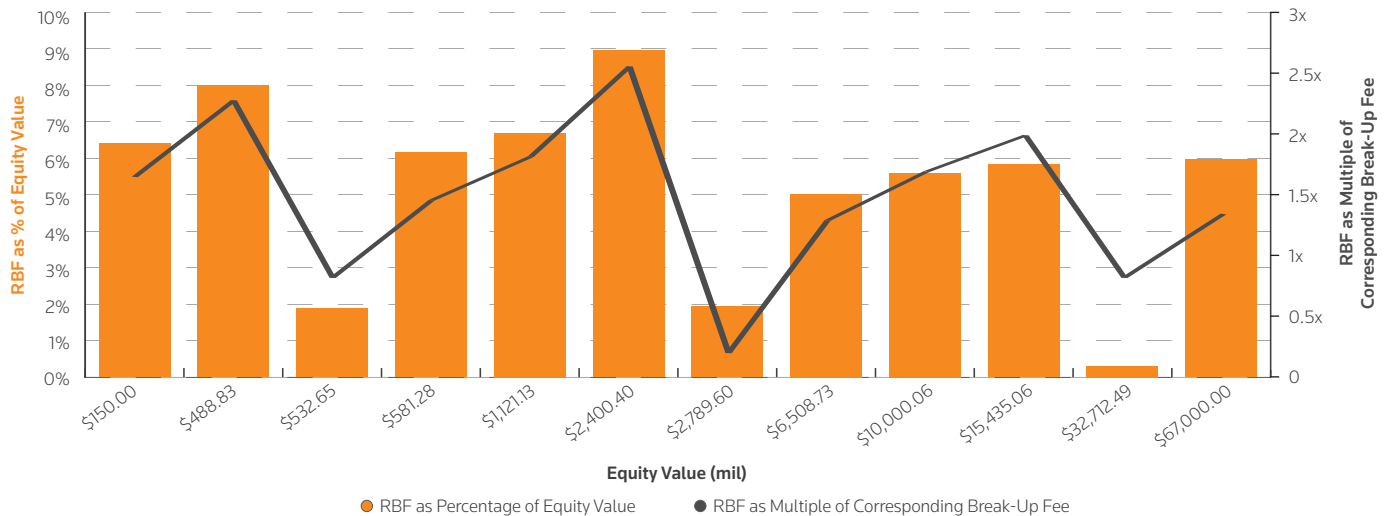
One observation that has remained constant is that the size of the deal does not impact the size of the reverse break-up fee. Fees set at over six or seven percent of the deal’s equity value were observed in deals valued at over \$4 billion and under \$300 million.

UNCAPPED FOR WILLFUL BREACH

Figure M includes information for 12 deals, reflecting five fees categorized as “RBF Uncapped v1” (the buyer pays a fee or reimburses the target company’s expenses up to a negotiated amount when the buyer commits a breach or otherwise fails to close, but the payment does not cap the buyer’s damages if it willfully breached the agreement), six fees categorized as “RBF Uncapped v2” (the fee is payable in the specific instance of a financing failure; damages remain uncapped for willful breach), and the lower fee from the *Dell/EMC* deal, which had a two-tier fee structure.

The largest of these reverse break-up fees was 8.96% of the deal’s equity value, observed in the *ON Semiconductor/Fairchild Semiconductor International* deal. The fee in that agreement is triple

FIGURE M Size of Reverse Break-Up Fees: Non-Willful Breach



the size of the target company's break-up fee. One reverse break-up fee that does not cap damages for willful breach was priced at exactly 8.00%, in the *American Securities and P2 Capital Partners/Blount International* agreement.

Six of the 12 reverse break-up fees were priced at double or more the target company's break-up fee, with the average size of the 12 fees set at 5.23% of the deal's equity value. Nine of the 12 fees were priced at 5.00% or higher, five of them at 6.00% or higher.

Although the size of reverse break-up fees that do not cap damages for willful breach has steadily crept upward over the years, there is still a lingering practice among some dealmakers to treat the reverse break-up fee as little more than an expense reimbursement, pricing it at the same level as the target company's own expense reimbursement for breach but substantially below the break-up fee payable for fiduciary triggers. In those deals, the parties do not differentiate between a breach by the buyer and a breach by the target company, even though the buyer was relying on debt financing for the deal. In that respect, these deals essentially use a common template for non-leveraged deals, in which the parties remain liable for willful breach but negotiate an expense reimbursement for non-willful breach. However, this arrangement leaves unanswered the question of how the agreement would treat a failure to close due to a financing failure if the buyer's subjective intent was to close as long as the financing proceeds were available.



ALLOCATING FINANCING RISK

THE BUYER'S FINANCING COVENANTS

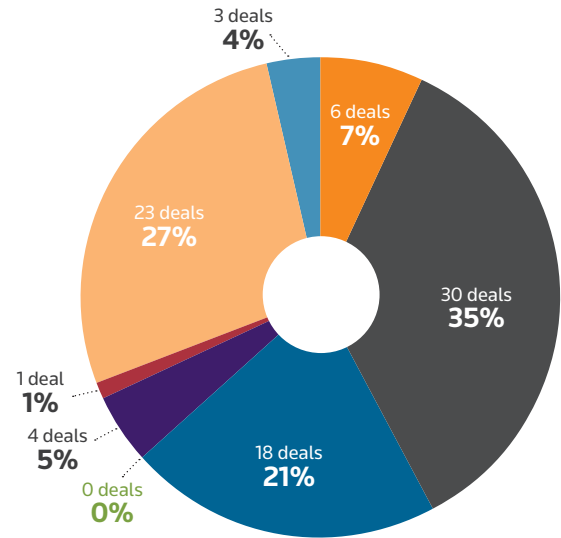
In agreements for debt-financed acquisitions, target companies can increase certainty of closing by negotiating detailed financing covenants with strong efforts standards and precise obligations that the buyer must undertake to consummate the financing. However, depending on the remedies available to the target company for breach, the significance of the financing covenants can vary. For example, if the target company has a Full Specific Performance remedy, the obligations described in the financing covenants are less important, because the target company can enforce the closing unconditionally. By contrast, if the target company's enforcement of the closing is conditioned on the availability of the debt financing, then the target company should negotiate covenants that require the buyer to take as much action as possible to cause the debt financing to be funded.

Most financing covenants include many similar provisions, such as obligations to negotiate definitive agreements based on the debt-commitment letter, maintain the debt-commitment letter in effect, pursue alternative financing (if necessary), and satisfy the conditions to the financing. Some provisions that tend to vary across agreements are:

- The buyer's efforts standard.
- The presence or absence of an obligation on the buyer to "cause the lenders to fund" and/or "enforce its rights" under the debt commitment letter.
- An explicit obligation, beyond a commitment by the buyer to enforce its rights, to pursue litigation against the lenders if they refuse to lend.

The next two figures examine the frequency of these provisions in all debt-financed deals and in subsets of debt-financed deals in which the target company's equitable remedy renders the covenants either more or less critical.

FIGURE N Financing Covenants in Leveraged Transactions



- Reasonable Best Efforts with Obligation to Enforce Rights and Explicit Obligation to Litigate Against the Lenders
- Reasonable Best Efforts with Obligation to Enforce Rights, but No Explicit Obligation to Litigate Against the Lenders
- Reasonable Best Efforts with No Obligation to Enforce Rights and No Explicit Obligation to Litigate Against the Lenders
- Commercially Reasonable Efforts with Obligation to Enforce Rights and Explicit Obligation to Litigate Against the Lenders
- Commercially Reasonable Efforts with Obligation to Enforce Rights, but No Explicit Obligation to Litigate Against the Lenders
- Commercially Reasonable Efforts with No Obligation to Enforce Rights and No Explicit Obligation to Litigate Against the Lenders
- No Covenant, Just a Representation of Sufficient Funds
- Best Efforts/All Actions Necessary

Although there is significant variation within the study sample, *Figure N* demonstrates that the most common approach in financing covenants is for a “reasonable best efforts” standard with an obligation to cause the lenders to fund or enforce the buyer’s rights, but without specifying an explicit obligation to pursue litigation against the lenders. A significant portion of agreements do not contain any financing covenant at all; rather, the buyer simply represents that it will have sufficient funds to close.

In six deals, the agreement made explicit that that the buyer is not obligated to bring any enforcement action against the lenders. A seventh agreement specified that the buyer is not obligated to enforce any of the lenders’ commitments. In another six agreements, the buyer committed to not agree to any modifications or waivers that would adversely impact its ability to enforce its rights against the lenders. Nevertheless, the covenant does not contain an explicit obligation for the buyer to enforce its rights against the lenders.

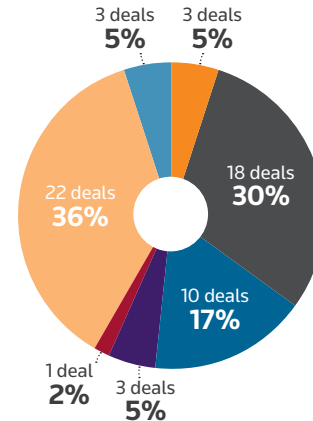
Previous editions of the study had found agreements with a “commercially reasonable efforts” standard—assumed by many (rightly or wrongly) to be a less onerous standard than “reasonable best efforts”—that also included an explicit obligation to litigate against the lenders. That combination was not observed in the 2015 study sample.

Figure O distinguishes between agreements with a Full Specific Performance remedy and agreements with a Conditional Specific Performance remedy. The financing covenants in the Full Specific Performance bucket are more varied, with all seven variations represented. Twenty-two of the 23 agreements with no financing covenant and just a representation of sufficient funds contemplated Full Specific Performance. In these agreements, because the target company can enforce the buyer’s obligation to close without condition, it is not important for the target company to negotiate financing covenants with the buyer.

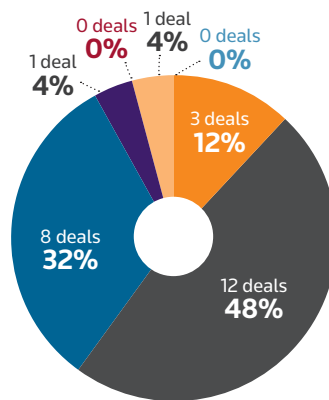
Among the deals with Conditional Specific Performance, no agreements provided for the “all things necessary” efforts

FIGURE O Financing Covenants by Enforcement Remedy

Full Specific Performance



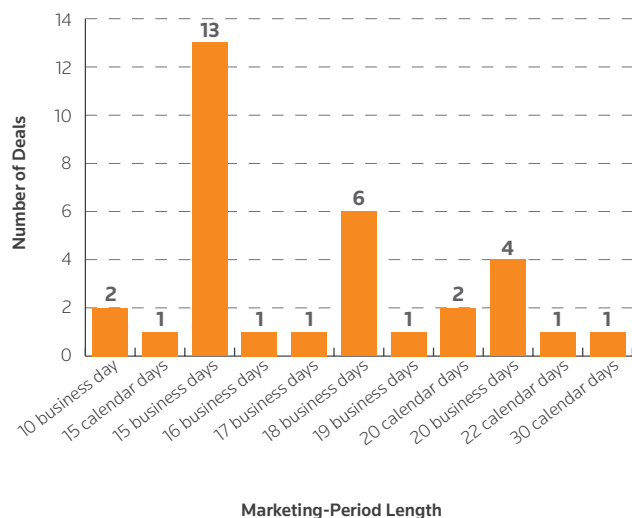
Conditional Specific Performance



formulation and only one agreement used a “commercially reasonable efforts” standard (*CECO Environmental/PMFG*). In that agreement, the reverse break-up fee is payable if there is a failure to close because the buyer either (i) breaches any of its financing-related representations or covenants, or (ii) willfully breaches or breaches in bad faith any other representation or covenant.

One agreement with Conditional Specific Performance did not contain a financing covenant at all. That combination came in Robert

FIGURE P Marketing-Period Length (33 Merger Agreements)



F.X. Sillerman’s attempted buyout of SFX Entertainment, Inc. In that agreement, Sillerman agreed to pay a reverse break-up fee that would fluctuate depending on when he delivered final financing commitments. The buyer ultimately paid the higher fee when the agreement was terminated.

Beyond the two outliers, agreements with a “reasonable best efforts” covenant and no explicit obligation to litigate made up 80 percent of the agreements with Conditional Specific Performance.

THE MARKETING PERIOD

Many agreements for leveraged transactions provide for a period of time before closing in which the lenders can market and syndicate the debt financing. This marketing period is typically defined as the number of days (or business days) that must elapse before closing but

after certain events have occurred. The typical range for a marketing period is ten to 20 calendar days or business days. Counsel for the buyer must be certain that the marketing period as defined in the merger agreement matches the syndication period in the debt-commitment letter. Mismatched marketing and syndication periods may require the buyer to close before the lenders are required to fund.

Certain issues tend to arise in the definition of the marketing period, such as whether to delay the start of the marketing period until the proxy statement has been mailed, whether to exclude holiday and summer periods, and under what conditions the marketing period is suspended if there are compliance issues with the target company’s financial statements. *Table B: Financing Covenants in Leveraged Deals* notes some of the salient points for each agreement with a marketing-period concept.

Figure P illustrates the lengths of marketing periods in the 33 merger agreements in the study sample that provided for a marketing period. The most common length was 15 business days.

“XEROX” PROVISIONS

In addition to the target company’s remedies for breach and the language of the financing covenant, other provisions in the merger agreement impact the allocation of financing risk. “Xerox” provisions, so named for their introduction in the 2009 acquisition of Affiliated Computer Services, Inc. by Xerox Corporation, limit the lenders’ liability in the event of a financing failure and address the lenders’ litigation concerns. *Table C: “Xerox” Provisions in Leveraged Deals* lists for every agreement in this year’s study sample the inclusion of the provisions described below for liability limitation, recourse to the lenders, litigation forum, and contractual protection of those provisions.

LIMITATION OF LENDERS’ LIABILITY

In agreements with a reverse break-up fee, a liability limitation constitutes an explicit acknowledgement from the target company that the reverse break-up fee, when paid, is the target company’s sole

and exclusive remedy against not only the buyer and its affiliates, but the lenders as well.

EXAMPLE

Merger agreement for the buyout of Zep Inc. by affiliates of New Mountain Capital, dated April 7, 2015

Section 11.04. Expenses; Termination Fees... (f) **If the Parent Termination Fee is payable and paid to the Company** pursuant to Section 11.04(b)(iii), the Company agrees that (i) the Company's right to receive the Parent Termination Fee plus any amounts owed pursuant to Section 8.03(d) and Section 11.04(d) (the "Recoverable Amounts") from Parent (or from Investor pursuant to the Limited Guaranty) shall be **the Company's sole and exclusive remedy against** Parent, Investor, **any Financing Source**, and their respective Representatives relating to or arising out of this Agreement and the transactions contemplated hereby, (ii) upon payment of the Recoverable Amounts, none of Parent, Investor nor any Financing Source, nor any of their respective Representatives, shall have any further liability or obligation to the Company, the Company's stockholders, or any of their respective Representatives relating to or arising out of this Agreement or the transactions contemplated hereby, including for (A) any loss suffered as a result of any breach of any covenant or agreement in this Agreement or the failure of the transactions contemplated by this Agreement to be consummated and (B) any consequential, special, indirect or punitive damages...

Of the 32 agreements in this year's study sample with a reverse break-up fee of any form (see *Figure D*), 23 (72 percent) included this liability limitation. Of the remaining nine agreements, eight included a non-recourse provision of the type described below, which the parties likely intended to capture the liability-limitation concept.

NON-RECOURSE PROVISION

Under this provision, the target company has no direct recourse against the lenders under the merger agreement. The lenders' only

contractual privity is with the buyer under the debt-commitment letter or definitive credit agreement.

EXAMPLE

Merger agreement between Horizon Pharma, Inc. and Hyperion Therapeutics, Inc., dated March 29, 2015

Section 7.3. Termination Fee... (h) Notwithstanding anything to the contrary in this Agreement, (i) **none of the Company Related Parties shall have any rights or claims for any type of damages against any Financing Sources in connection with this Agreement, the Debt Financing or the transactions contemplated hereby or thereby, whether at law, in contract, in tort or otherwise;** and (ii) subject to the rights of the parties to the Debt Commitment Letters and any Financing Agreements under the terms thereof, **none of the parties hereto, nor or any of their respective Affiliates, solely in their respective capacities as parties to this Agreement, shall have any rights or claims for any type of damages against any Financing Source or any Affiliate thereof (collectively, the "Debt Financing Sources"),** solely in their respective capacities as agents, lenders or arrangers in connection with this Agreement, the Debt Financing or the transactions contemplated hereby or thereby, whether at law or equity, in contract, in tort or otherwise, and the Debt Financing Sources, solely in their respective capacities as lenders or arrangers, shall not have any rights or claims against any party hereto or any related person thereof, in connection with this Agreement or the Debt Financing, whether at law or equity, in contract, in tort or otherwise; provided, that the foregoing will not limit the rights of the parties to the Debt Financing under the Financing Agreements related thereto.

Sixty-two out of 85 agreements (73 percent) in the 2015 study sample included a non-recourse provision. One agreement, for the *Apax Partners/Quality Distribution* buyout, specified that the target company cannot seek specific performance against the lenders. This implies that the company could have recourse to the lenders for legal remedies, and for that reason, the agreement is not categorized as having a non-recourse provision.

EXCLUSIVE FORUM AND WAIVER OF JURY TRIAL

To avoid a jury trial in an unfamiliar jurisdiction, lenders also increasingly demand the following provisions:

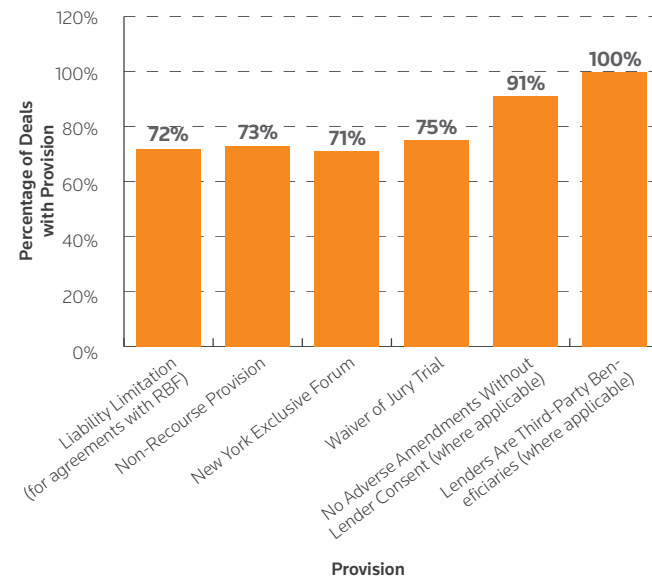
- **Exclusive forum.** Any litigation relating to the debt financing must be brought in a predetermined forum, usually New York. Out of the study's 85 agreements, 60 designated New York as the exclusive forum for litigation against the lenders (71 percent). One other agreement named Paris as the exclusive forum.
- **Waiver of jury trial.** The waiver of trial by jury, already common in most public merger agreements, applies equally to litigation against the lenders. Sixty-four out of 85 surveyed agreements (75 percent), including every agreement with an exclusive-forum provision) included a waiver of jury trials to the benefit of the lenders.

CONTRACTUAL PROTECTIONS

Because the lenders are not party to the merger agreement, they also require the following contractual protections to enforce their third-party rights:

- **No adverse amendments.** The provisions included for the lenders' benefit cannot be amended to their detriment without their consent. Sixty-two out of the 68 agreements that included any of the above provisions included this restriction on amendments.
- **Third-party beneficiaries.** The lenders must be made explicit third-party beneficiaries of the provisions that are included for their benefit. In this year's study sample, every single agreement with any "Xerox" provision properly made the lenders third-party beneficiaries of the relevant provisions.

FIGURE Q Provisions for the Lenders' Benefit





REMEDIES FOR ANTITRUST FAILURE

OVERVIEW

In M&A transactions with foreseeable risk that the buyer will be unable to close, buyers and sellers often negotiate for the possible payment of a reverse break-up fee. Antitrust-related reverse break-up fees are termination fees payable by the buyer to the seller (in a private acquisition deal) or the target company (in a public merger) if the deal cannot close because of either:

- A failure to obtain antitrust approvals required for the deal, including under the Hart-Scott-Rodino (HSR) Act.
- A governmental authority enjoining the transaction under the antitrust laws.

Reverse break-up fees are a primary way to allocate antitrust risk in an acquisition agreement where the parties are particularly concerned about obtaining antitrust approval, usually because the parties are competitors. If one of the antitrust agencies investigates or challenges a deal, the risk of not closing lies with the seller if there is no reverse break-up fee. This is because the seller may experience pre-closing losses during the investigation or litigation period, including:

- Loss of customers.
- Decline in valuation.
- Departure of employees.

By charging the buyer a reverse break-up fee, the parties attempt to quantify these losses and allocate them to the buyer while also incentivizing the buyer to exert maximal efforts to obtain antitrust approval for the transaction.

Practical Law's What's Market Antitrust Risk-Shifting Database gathers and summarizes both private acquisition agreements and public merger agreements that contemplate a reverse break-up fee payable for antitrust failure. The Antitrust Risk-Shifting Database covers:

- all public merger agreements for the acquisition of US reporting companies valued at \$100 million or more and entered into since November 1, 2012; and

- all publicly filed acquisition agreements entered into since June 1, 2012, valued at \$25 million and involving the acquisition of (i) all or substantially all of the assets of private US companies, (ii) at least a majority of the outstanding stock of private US companies, or (iii) business units of US companies;

in each case where an HSR or other premerger filing is required and the agreement specifies the parties' efforts to get antitrust approval.

In 2015, the database included 49 deals that contained antitrust-related reverse break-up fees. This section of the study reviews and discusses, for each of those 49 deals, the size of the fees and the industries in which deals with antitrust-triggered fees are found.

Additional information for every deal discussed in this section of the study, including hell-or-high-water covenants, litigation covenants, and divestiture obligations, is provided in Table E: Public Mergers with Antitrust-Triggered Reverse Break-Up Fees and Table F: Private Acquisitions with Antitrust-Triggered Reverse Break-Up Fees.

SIZE OF ANTITRUST-RELATED REVERSE BREAK-UP FEES

Figure R illustrates the value of the antitrust-related reverse break-up fees for all 49 public and private deals covered in the Antitrust Risk-Shifting Database in 2015. The figure shows that of those fees:

- Twelve were set at six percent of the deal value or higher, including five public deals and seven private deals. Of those fees, ten were over seven percent, including in four public deals and six private deals.
- Twenty-one were set between four percent and up to six percent of the deal value, including ten public deals and 11 private deals.
- Ten were set between three percent and four percent of the deal value, including eight public deals and two private deals.
- Eight were set at less than three percent of the deal value, including five public deals and three private deals.

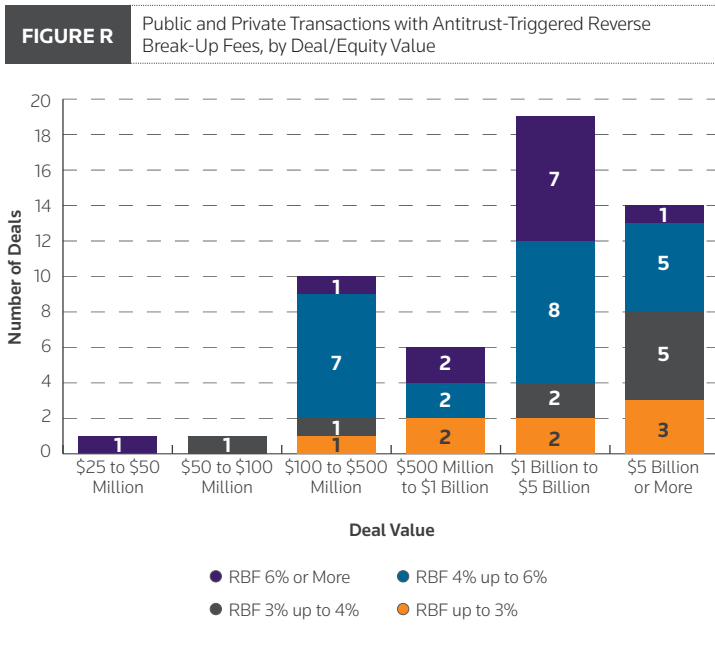


Figure R shows that the size of the deal does not impact the size of the reverse break-up fee. Fees set at over six percent of the deal value were observed in deals valued at over \$8 billion (the *Endo International/Par Pharmaceutical Holdings* deal) and under \$50 million (the *Ecolab/Swisher Hygiene* deal).

Two deals are included twice in Figure R (resulting in a total of 51 entries) because they contained two separate antitrust-related reverse break-up fees. These deals were:

- The *Sensata Technologies Holding/Custom Sensors & Technologies* deal, which had two potential antitrust-related fees: \$55 million (5.5 percent of the deal value) or \$80 million (8 percent of the deal value), the latter fee payable if the drop-dead date has been extended. This deal is counted twice in the \$1 billion–\$5 billion

category as both a fee of six percent or more and a fee between four percent and six percent.

- The *Shenandoah Telecommunications Company/NTELOS Holdings* deal, which included two potential antitrust-related fees: \$8.8 million (4.23% of the equity value) or \$25 million (12.02% of the equity value). This deal is counted twice in the \$100 million–\$500 million category as a fee six percent or more and a fee between three percent and four percent.

The largest antitrust-related reverse break-up fees in 2015 on a dollar basis were in:

- The *Charter Communications/Time Warner Cable* deal, with a fee of \$2 billion.
- The *Anthem/Cigna* deal, with a fee of \$1.85 billion.

The largest antitrust-related fees in terms of the percentage of the total deal value were in:

- The *Intercontinental Exchange/Trayport and GFI TP* deal, with a fee of 11.54%.
- The *Shenandoah Telecommunications Company/NTELOS Holdings* deal, with a fee of 12.02%.

The average amount of all 2015 antitrust-related fees was approximately 5.05% of the respective deal value. A total of 12 out of the year’s 51 reverse break-up fees payable for antitrust failure were set at six percent or more of the respective deal value.

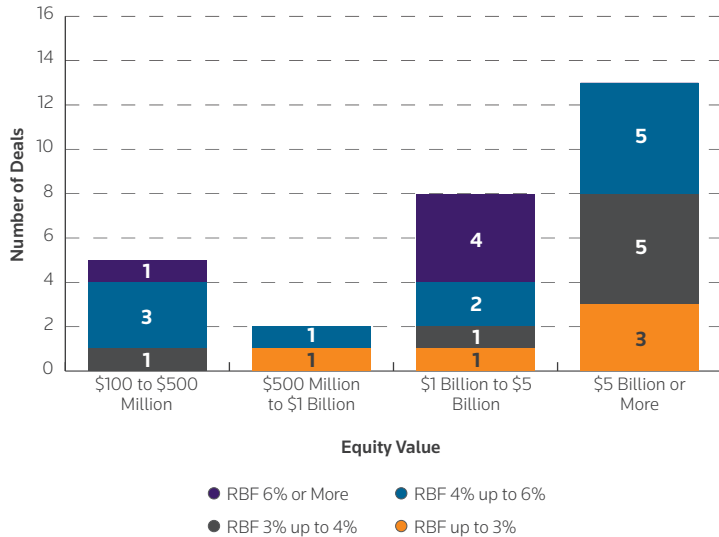
PUBLIC MERGER AGREEMENTS

Figure S illustrates the value of the antitrust-related reverse break-up fees in the 27 public mergers covered in the Antitrust Risk-Shifting Database in 2015. Of these:

- Thirteen deals were valued at \$5 billion or more.
- Eight deals were valued from \$1 billion to \$5 billion.
- Two deals were valued from \$500 million to \$1 billion.
- Four deals were valued from \$100 million to \$500 million (the

FIGURE S

Public Merger Agreements with Antitrust-Triggered Reverse Break-Up Fees, by Equity Value



Shenandoah Telecommunications Company/NTELOS Holdings deal appears twice in this column because the agreement provided for two antitrust-related reverse break-up fees).

Of the 27 public M&A deals containing antitrust-related reverse break-up fees:

- The largest deal was *Charter Communications/Time Warner Cable*, valued at \$56.7 billion.
- The largest antitrust-related reverse break-up fee by dollar value was the \$2 billion fee payable in the *Charter Communications/Time Warner* deal.

- The largest antitrust-related reverse break-up fee payable by percentage of equity value was 12.02%, in the *Shenandoah Telecommunications Company/NTELOS Holdings* deal.

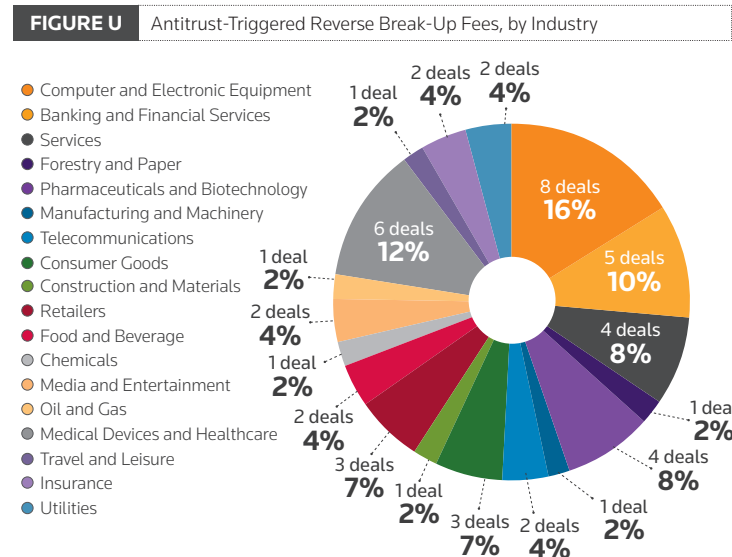
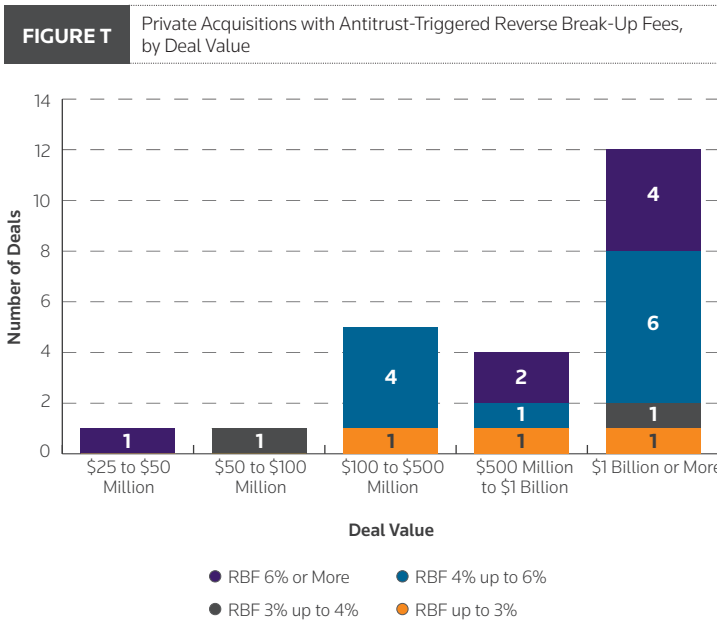
Figure S indicates that while fees of all percentage amounts are observed in deals large and small, once deals reach the mega-sized bracket of \$5 billion or more, reverse break-up fees payable for antitrust failure level off as a percentage of equity value. No fees valued at six percent of equity value or higher were observed in deals valued at \$5 billion or more. In the \$1 billion–\$5 billion category, by contrast, half of the eight reverse break-up fees payable for antitrust failure were priced at six percent or more of the deal’s equity value.

In smaller public deals, buyers and target companies do not bother with small antitrust-triggered reverse break-up fees. No fees valued below three percent of equity value were observed in either the \$100 million–\$500 million or \$500 million–\$1 billion equity-value brackets.

PRIVATE ACQUISITION AGREEMENTS

Figure T includes the value of the antitrust-related reverse break-up fees in the 22 private deals covered in the Antitrust Risk-Shifting Database in 2015. Of these:

- Eleven deals were valued at \$1 billion or more, only one of which was valued at greater than \$5 billion. (The *Sensata Technologies Holding/Custom Sensors & Technologies* deal’s fees appear twice in the far-right column because the agreement provided for two antitrust-related reverse break-up fees).
- Four deals were valued from \$500 million to \$1 billion.
- Five deals were valued from \$100 million to \$500 million.
- One deal was valued from \$50 million to \$100 million.
- One deal was valued from \$25 million to \$50 million.



Of the 22 private deals containing antitrust-related reverse break-up fees:

- The largest deal was *Endo International/Par Pharmaceutical Holdings*, valued at \$8.050 billion.
- The largest antitrust-related reverse break-up fee in terms of dollar value was the \$750 million fee in the *Endo/Par* deal.
- The largest fee payable as a percentage of deal value was 11.54%, observed in the *Intercontinental Exchange/Trayport* and *GFI TP* deal.

The spread of reverse break-up fees across deal-size brackets in private acquisition agreements resembles the distribution in public M&A deals. Fees priced below three percent of deal value were not

observed in the smallest deal-size brackets. Seven of the 22 private deals contained fees priced at six percent of the deal value or higher, with only one of those deals valued over \$5 billion (the *Endo/Par* deal, whose fee was priced at 9.32% of deal value). The remaining six deals were valued from \$40 million at the lowest to \$2.2 billion at the highest.

INDUSTRY COMPARISON

Figure U illustrates, for the 49 deals covered in the Antitrust Risk-Shifting Database that contained antitrust-related reverse break-up fees, the target company’s industry.

Within the Antitrust Risk-Shifting Database, those deals in 2015 that contained antitrust-related reverse break-up fees fell mainly within the following industries:

- Computer and electronic equipment, which includes IT management software, data storage and management solutions, and other technological products (8 deals).
- Medical devices and healthcare, which includes medical and dental devices, laboratory testing services, hospitals, and other healthcare providers (6 deals).
- Banking and financial services, which includes banking software, banks, financial planning products, investment advisory solutions, and other financial products (5 deals).
- Services, which includes online travel companies, shipping technologies and solutions, caller authentication assets, and ambulance transportation and fire protection services (4 deals).
- Pharmaceuticals and biotechnology, which includes brand name and generic pharmaceutical products and pharmaceutical development, production, and marketing products (4 deals).

The remainder of deals that contained antitrust-related reverse break-up fees were spread across a wide variety of industries in 2015.

More information about antitrust remedies in 2015 is available on our website. Search for “Antitrust-Related Reverse Break-Up Fees in 2015.”



APPENDIX

Table A: Remedies for Buyer Breach in Leveraged Public Deals (Chronological Order)

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
AmerisourceBergen Corporation/MWI Veterinary Supply, Inc.	Strategic	\$2,455.99 million	All cash; front-end tender offer	Full specific performance	No RBF, full damages v2	N/A	Strategic model
Shire plc/NPS Pharmaceuticals, Inc.	Strategic	\$5,198.70 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Lattice Semiconductor Corporation/Silicon Image, Inc.	Strategic	\$602.05 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
SS&C Technologies Holdings, Inc./Advent Software, Inc.	Strategic	\$2,502.35 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Staples, Inc./Office Depot, Inc.	Strategic	\$6,250.00 million	Cash and stock (66/34 split); single-step merger	Full specific performance	No RBF, damages for willful breach ^A	N/A	Strategic model
Harris Corporation/Exelis, Inc.	Strategic	\$4,561.09 million	Cash and stock (70/30 split); single-step merger	Conditional specific performance v2	\$300 million (6.58%) RBF Cap v2	2.17x	Private Equity model
Pfizer Inc./Hospira, Inc.	Strategic	\$16,005.39 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Vector Capital/Saba Software, Inc.	Financial	\$268.07 million	All cash; single-step merger	Full specific performance	No RBF, full damages v1	N/A	Strategic model
Valeant Pharmaceuticals International, Inc./Salix Pharmaceuticals, Ltd.	Strategic	\$10,383.02 million initially, \$11,368.75 million as amended	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Asahi Kasei Corporation/Polypore International, Inc.	Strategic	\$2,919.69 million	All cash; single-step merger	Full specific performance	No RBF, full damages v2	N/A	Strategic model
Mitel Networks Corporation/Mavenir Systems, Inc.	Strategic	\$581.28 million	Cash/stock election (62/38 split); front-end tender offer	Conditional specific performance v4	\$35.75 million (6.15%) RBF Uncapped v2	1.73x	Financing Failure model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
AbbVie Inc./Pharmacyclics, Inc.	Strategic	\$20,737.20 million	Cash/stock/mix election (58/42 split); front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
SummitView Capital, eTown MemTek Ltd, Hua Capital, Huaqing Jiye Investment Management Co., Ltd./ Integrated Silicon Solution, Inc.	Financial	\$657.07 million initially, \$794.29 million as finally amended	All cash; single-step merger	Conditional specific performance v1	\$19,168,150 (2.92% initially, 2.41% as finally amended) RBF Cap v2 ^A	1x	Private Equity model
Leonard Green, TPG Capital, LNK Partners, Mr. Bahram Akradi/Life Time Fitness, Inc.	Financial	\$2,815.79 million	All cash and a rollover; single-step merger	Conditional specific performance v3	\$167 million (5.93%) RBF Cap v2	1.72x	Private Equity model
Microsemi Corporation/Vitesse Semiconductor Corporation	Strategic	\$401.24 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Horizon Pharma plc/Hyperion Therapeutics, Inc.	Strategic	\$1,121.13 million	All cash; front-end tender offer	Conditional specific performance v3	\$75 million (6.69%) RBF Uncapped v2	2.14x	Financing Failure model
Permira Funds and Canada Pension Plan Investment Board/Informatica Corporation	Financial	\$5,343.09 million	All cash; single-step merger	Conditional specific performance v1	\$320 million (5.99%) RBF Cap v2 ^B	2x	Private Equity model
New Mountain Capital/ Zep Inc.	Financial	\$484.89 million	All cash; single-step merger	Conditional specific performance v3	\$33.75 million (6.96%) RBF Cap v2	1.93x	Private Equity model
Capgemini North America, Inc./IGATE Corporation	Strategic	\$4,079.42 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Hua Capital Management Co., Ltd., CITIC Capital Holdings Limited, GoldStone Investment Co., Ltd./OmniVision Technologies, Inc.	Financial	\$1,851.49 million	All cash; single-step merger	Conditional specific performance v1	\$56 million (3.02%) RBF Cap v2	2x	Private Equity model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
CECO Environmental Corp./ PMFG, Inc.	Strategic	\$150 million	Cash/stock/mix election (45/55 split); single-step merger followed by upstream merger	Conditional specific performance v3	\$9.6 million (6.40%) RBF Uncapped v1 ^{C D}	2x	Financing Failure model
Alexion Pharmaceuticals, Inc./ Syngeva BioPharma Corp.	Strategic	\$8,869.34 million	Cash and stock (51/49 split); front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Apax Partners/Quality Distribution, Inc.	Financial	\$476.49 million	All cash; single-step merger	Conditional specific performance v3	\$32 million (6.72%) RBF Cap v2	1.92x	Private Equity model
Danaher Corporation/Pall Corporation	Strategic	\$13,970.47 million	All cash; single-step merger	Full specific performance	No RBF, full damages v2	N/A	Strategic model
Ascena Retail Group, Inc./ ANN INC.	Strategic	\$2,197.15 million	Cash and stock (80/20 split); single-step merger	Full specific performance	No RBF, full damages v1	N/A	Strategic model
CVS Health Corporation/Omnicare, Inc.	Strategic	\$9,575.96 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
NRD Capital/Frisch's Restaurants, Inc.	Financial	\$174.73 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Charter Communications, Inc./ Time Warner Cable Inc.	Strategic	\$55,637.71 million	Cash and stock (59/41 split); mergers under Newco	Full specific performance	No RBF, damages for willful breach ^{A D}	N/A	Strategic model
Mr. Robert F.X. Sillerman/SFX Entertainment, Inc. (terminated; RBF paid)	Financial	\$520 million	Cash/rollover election; single-step merger	Conditional specific performance v2 ^E	\$31 million (5.96%) RBF Cap v2 ^F	2x	Private Equity model
Avago Technologies Limited/Broadcom Corporation	Strategic	\$37,849.12 million	Cash/stock/mix election (46/54 split); scheme of arrangement	Full specific performance	No RBF, damages for willful breach ^{A D}	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Apollo Global Management and Platform Specialty Products Corporation/OM Group, Inc.	Financial	\$1,112.72 million	All cash; single-step merger with Apollo and carve-out sale to PSPC	Conditional specific performance v4	\$62.7 million (5.63%) RBF Cap v2 ^{A G}	1.71x	Private Equity model
Tokio Marine Holdings, Inc./ HCC Insurance Holdings, Inc.	Strategic	\$7,499.93 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Cox Automotive, Inc./ Dealertrack Technologies, Inc.	Strategic ^H	\$3,726.81 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach ^A	N/A	Strategic model
Sequential Brands Group, Inc./Martha Stewart Living Omnimedia, Inc.	Strategic ^I	\$360.91 million	Cash/stock/mix election (50/50 split); double-dummy merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
ACE Limited/The Chubb Corporation	Strategic	\$28,300 million	Cash and stock (51/49 split); single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Aetna Inc./Humana Inc.	Strategic	\$34,580.32 million	Cash and stock (54/46 split); single-step merger followed by upstream merger	Full specific performance	No RBF, full damages v2 ^{A D}	N/A	Strategic model
Centene Corporation/Health Net, Inc.	Strategic	\$6,149.64 million	Cash and stock (35/65 split); single-step reverse triangular merger followed by forward triangular merger	Full specific performance	No RBF, damages for willful breach ^{A D}	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Coty Inc./The Procter & Gamble Company split-off	Strategic	\$12,500 million	All stock; Reverse Morris Trust (Coty merges with SplitCo; new debt for refinancing)	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Celgene Corporation/ Receptos, Inc.	Strategic	\$7,561.57 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach ^A	N/A	Strategic model
SunEdison, Inc./Vivint Solar, Inc. (terminated; VSI seeking damages)	Strategic	\$2,200 million initially, \$1,757.18 million as amended	Cash and stock (56/24 split); single-step merger and carve-out sale	Full specific performance	No RBF, full damages v2	N/A	Strategic model
Gaming and Leisure Properties, Inc./Pinnacle Entertainment, Inc.	Strategic	\$4,750 million transaction value	All stock; Morris Trust transaction; new debt for refinancing	Full specific performance	No RBF, damages for willful breach ^A	N/A	Strategic model
St. Jude Medical, Inc./Thoratec Corporation	Strategic	\$3,683.28 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Anthem, Inc./Cigna Corporation	Strategic	\$49,383.20 million	Cash and stock (55/45 split); single-step merger followed by forward merger	Full specific performance	No RBF, full damages v2 ^{A D}	N/A	Strategic model
Columbus McKinnon Corporation/Magnetek, Inc.	Strategic	\$191.63 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Solvay SA/Cytec Industries Inc.	Strategic	\$5,599.16 million	All cash; single-step merger	Full specific performance	No RBF, full damages v1	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Team Health Holdings, Inc./ IPC Healthcare, Inc.	Strategic	\$1,494.62 million	All cash; single-step merger	Full specific performance ^J	No RBF, damages for willful breach	N/A	Strategic model
Spark Orange Limited/Coca-Cola Enterprises, Inc.	Strategic	\$3,207.77 million	Cash and stock of Newco; single-step forward triangular merger ^K	Full specific performance	No RBF, damages for fraud	N/A	Strategic model
CVR Partners, LP/Rentech Nitrogen Partners, L.P.	Strategic	\$532.65 million	Cash and units (19/81 split); single-step mergers of RNP and its general partner, and carve-out sale	Full specific performance	\$10 million (1.88%) RBF Uncapped v1	1x ^L	Strategic model
Investnet, Inc./Yodlee, Inc.	Strategic	\$660 million	Cash and stock (62/38 split); single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	Strategic	\$207.16 million	All cash; single-step merger	Conditional specific performance v3	\$25 million (12.07%) and expenses up to \$2.5 million (1.21%) RBF Cap v2 ^A	2.84x	Private Equity model
Konecranes Plc/Terex Corporation	Strategic	\$2,761.86 million	All stock; single-step merger; new debt for refinancing	Full specific performance	\$37 million (1.34%) RBF Cap v2 ^D	1x	Financing Failure model
Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.	Strategic	\$156.70 million	All cash; single-step merger	Conditional specific performance v5 ^M	\$8 million (5.11%) RBF Cap v2	2x	Private Equity model
The Southern Company/AGL Resources Inc.	Strategic	\$7,915.55 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Sycamore Partners/Belk, Inc.	Financial	\$2,728.61 million	All cash and a rollover; single-step merger	Conditional specific performance v1	\$165 million (6.05%) RBF Cap v2	2.0625x	Private Equity model
Emera Inc./TECO Energy, Inc.	Strategic	\$6,508.73 million	All cash; single-step merger	Full specific performance	\$326.9 million (5.02%) RBF Uncapped v2 ^A	1.54x	Strategic model
Media General, Inc./Meredith Corporation (terminated; fiduciary RBF paid)	Strategic	\$2,400 million	Cash and stock (64/36 split); double-dummy merger	Full specific performance	No RBF, full damages v2 ^D	N/A	Strategic model
XPO Logistics, Inc./Con-way Inc.	Strategic	\$2,789.60 million	All cash; front-end tender offer	Full specific performance ^J	\$54.137 million (1.94%) RBF Uncapped v1	1x ^N	Strategic model
Siris Capital Group, LLC/Premiere Global Services, Inc.	Financial	\$657.55 million	All cash; single-step merger	Conditional specific performance v3	\$39,485,684 (6.00%) RBF Cap v2	2x	Private Equity model
Vista Equity Partners/Solera Holdings, Inc.	Financial	\$3,811.40 million	All cash; single-step merger	Conditional specific performance v3	\$228.75 million (6.00%) RBF Cap v2	2x	Private Equity model
Altice N.V./Cablevision Systems Corporation	Strategic ^O	\$10,000.06 million	All cash; single-step merger	Conditional specific performance v2 ^P	\$560 million (5.60%) RBF Uncapped v2 ^Q	2x	Financing Failure model
Dialog Semiconductor/Atmel Corporation (terminated; break-up fee paid)	Strategic	\$4,600 million	Cash and stock (45/55 split); single-step merger	Full specific performance	No RBF, damages for willful breach ^D	N/A	Strategic model
Energy Transfer Equity, L.P./The Williams Companies, Inc.	Strategic	\$32,712.49 million	Cash/stock/mix election and CVR (16/72/11 split); single-step forward merger and asset contribution	Full specific performance	Up to \$100 million (0.31%) RBF Uncapped v1	1x ^R	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Skyworks Solutions, Inc./PMC-Sierra, Inc. (terminated; break-up fee paid)	Strategic	\$2,055 million initially, \$2,270 million as amended	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Dell Inc./EMC Corporation	Strategic ^S	\$67,000 million	Cash and tracking stock; single-step merger and contribution	Conditional specific performance v3	Two-Tier RBF: \$4 billion (5.97%) or \$6 billion (8.96%) ^T	1.6x/2.4x ^U	Private Equity model
Lam Research Corporation/ KLA-Tencor Corporation	Strategic	\$10,600 million	Cash/stock/mix election (48/52 split); single-step reverse triangular merger followed by forward triangular merger	Full specific performance	No RBF, damages for willful breach ^D	N/A	Strategic model
Silver Lake Partners and Thoma Bravo, LLC/ SolarWinds, Inc.	Financial	\$4,549.85 million	All cash; single-step merger	Conditional specific performance v3	\$318 million (6.99%) RBF Cap v2	2x	Private Equity model
Western Digital Corporation/ SanDisk Corporation	Strategic	\$19,000 million	Cash and stock (98/2 or 78/22 split, subject to further adjustment); single-step merger	Full specific performance	No RBF, damages for willful breach ^{AD}	N/A	Strategic model
Duke Energy Corporation/ Piedmont Natural Gas Company, Inc.	Strategic	\$4,886.75 million	All cash; single-step merger	Full specific performance	No RBF, full damages v2 ^A	N/A	Strategic model
Snyder's-Lance, Inc./Diamond Foods, Inc.	Strategic	\$1,270 million	Cash and stock (31/69 split); single-step merger followed by upstream merger	Full specific performance	\$90 million (7.09%) RBF Cap v1 ^{ADV}	1.67x	Financing Failure model
Walgreens Boots Alliance, Inc./Rite Aid Corporation	Strategic	\$9,757.79 million	All cash; single-step merger	Full specific performance	No RBF, full damages v2 ^A	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
Endurance International Group Holdings, Inc./Constant Contact, Inc.	Strategic	\$1,073.79 million	All cash; single-step merger	Conditional specific performance v3	\$72 million (6.71%) RBF Cap v2	2x	Private Equity model
Pamplona Capital Management LLP/MedAssets, Inc.	Financial	\$1,953.67 million	All cash; single-step merger	Conditional specific performance v3	\$117.213 million (6.00%) RBF Cap v2 ^A	2x	Private Equity model
Shire plc/Dyax Corp.	Strategic	\$6,557.20 million	All cash and CVR; single-step merger	Full specific performance	No RBF, full damages v1 ^A	N/A	Strategic model
Rizvi Traverse Management, LLC/RealD Inc.	Financial	\$531.76 million	All cash and a rollover; single-step merger	Conditional specific performance v3	\$29 million (5.45%) RBF Cap v2	1.21x	Private Equity model
The Kroger Co./Roundy's, Inc.	Strategic	\$188.50 million	All cash; front-end tender offer	Full specific performance	No RBF, full damages v1	N/A	Strategic model
L'Air Liquide, S.A./Airgas, Inc.	Strategic	\$10,637.45 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach ^A	N/A	Strategic model
ON Semiconductor Corporation/Fairchild Semiconductor International Inc.	Strategic	\$2,400.40 million	All cash; front-end tender offer	Full specific performance	\$215 million (8.96%) RBF Uncapped v2 ^A	2.99x	Strategic model
Comtech Telecommunications Corp./TeleCommunication Systems, Inc.	Strategic	\$363.21 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Microsemi Corporation/PMC-Sierra, Inc.	Strategic	\$2,576.00 million	Cash and stock (76/24 split); front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Pinnacle Foods Inc./Boulder Brands, Inc.	Strategic	\$789.12 million	All cash; front-end tender offer	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
JAB Holding Company/Keurig Green Mountain, Inc.	Financial	\$13,915.00 million	All cash; single-step merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model

Parties (Buyer/Target Company)	Buyer Type	Equity Value	Consideration; Structure	Pre-Termination Enforcement	Post-Termination Remedy	RBF as Multiple of Target Company's Break-Up Fee	Buyer-Breach Remedy Model
American Securities LLC and P2 Capital Partners, LLC/ Blount International, Inc.	Financial	\$488.83 million	All cash and a rollover; single-step merger	Conditional specific performance v3	\$39.1 million (8.00%) RBF Uncapped v1	2.67x	Financing Failure model
Newell Rubbermaid Inc./ Jarden Corporation	Strategic	\$15,435.06 million	Cash and stock (35/65 split); single-step reverse triangular merger followed by forward triangular merger	Conditional specific performance v2	\$900 million (5.83%) RBF Uncapped v2 ^D	2.34x	Financing Failure model
Global Payments Inc./ Heartland Payment Systems, Inc.	Strategic	\$3,709.03 million	Cash and stock (53/47 split); single-step merger followed by upstream merger	Full specific performance	No RBF, damages for willful breach	N/A	Strategic model
Western Refining, Inc./ Northern Tier Energy LP	Strategic	\$1,490.93 million	Cash/stock/mix election (53/47 split); single-step merger	Full specific performance	No RBF, damages for willful breach ^W	N/A	Strategic model

Notes:

Equity value is calculated by multiplying the actual number of target shares outstanding by the price per share, plus the cost to acquire convertible securities. The study uses the equity value for a transaction as disclosed by the parties, when available. When the parties have not disclosed an equity value (such as if they have disclosed a general transaction value or an enterprise value), the study relies on the equity value provided by Thomson Reuters.

The deal structure "single-step merger" means a reverse triangular merger, unless otherwise indicated. All front-end tender offers are followed by a second-step squeeze-out merger.

Deals are categorized as debt-financed if the buyer has entered into new financing arrangements to finance the acquisition, or has represented (whether in the merger agreement or in other public filings related to the transaction) that it intends to raise new debt to

finance the acquisition. Transactions are not categorized as debt-financed if: (i) the buyer has represented (whether in the merger agreement or in other public filings related to the transaction) that it will rely on existing borrowing resources (such as "available" or "existing" lines of credit) to finance the transaction; (ii) the buyer represents that it will finance the acquisition by selling debt securities on the capital markets and is not separately negotiating a loan with specific lenders; or (iii) the deal is financed with a loan from the buyer's parent company or other affiliate.

The categorization "Strategic" when italicized indicates that the buyer is a portfolio company of a private equity sponsor.

Remedy models written in **red font** indicate an unusual combination of pre-termination and post-termination remedies, as further described in the study.

^A The buyer must pay a reverse break-up fee triggered by failure to obtain antitrust or other regulatory approval. Transactions with antitrust-triggered reverse break-up fees are discussed in the study separately.

^B The reverse break-up fee payable in the *Permira Fund and Canada Pension Plan Investment Board/Informatica Corporation* agreement does not cap damages for fraud.

^C In the *CECO Environmental Corp./PMFG, Inc.* agreement, the reverse break-up fee is payable if there is a failure to close because CECO either (i) breaches any of its financing-related representations or covenants or (ii) willfully breaches or breaches in bad faith any other representation or covenant.

^D The buyer must pay a fiduciary break-up fee triggered by events similar to the target company's break-up fee.

^E The *Mr. Robert F.X. Sillerman/SFX Entertainment, Inc.* agreement provides that specific performance of all covenants is contingent on delivery by the buyer of financing commitments.

^F The *Mr. Robert F.X. Sillerman/SFX Entertainment, Inc.* agreement provides for a \$7.8 million fee if the agreement is terminated before the buyer delivers final financing commitments. The buyer ultimately delivered a commitment and paid the \$31 million fee when the agreement was terminated.

^G The *Apollo Global Management and Platform Specialty Products Corporation/OM Group, Inc.* agreement provides that before paying the reverse break-up fee, the buyers must provide OM Group with notice of their intention to pay the fee. OM Group must confirm that it intends either to accept payment of the fee or forego the fee entirely and pursue an award of damages for fraud. Notwithstanding that process, the buyers' damages, even for fraud, are capped at the amount of the fee.

^H The buyer received a new \$750 million equity investment from its sponsor BDT Capital Partners.

^I The buyer received a \$10 million equity commitment from GSO Capital Partners, an affiliate of Blackstone Group.

^J Enforcement of the closing is conditioned, but only on satisfaction of the buyer's closing conditions, not on the availability of the debt financing. The remedy is therefore categorized as "Full specific performance," not "Conditional specific performance."

^K Coca-Cola Enterprises, Inc.'s merger with Spark Orange is part of a broader inversion transaction involving two other European Coca-Cola bottlers pursuant to a master agreement.

^L In the *CVR Partners, LP/Rentech Nitrogen Partners, L.P.* agreement, Rentech must pay a \$10 million fee in the event of a shareholder no-vote, its own breach, and in other circumstances. A \$31.2 million fee is payable for change of recommendation, acceptance of a superior proposal and a tail transaction.

^M In the *Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.* agreement, the only obligation whose enforcement is conditional is the obligation to cause the lender to fund the debt financing. This obligation is conditional on satisfaction of Leyard's closing conditions and confirmation from Planar that the closing will occur if the debt financing is funded. Enforcement of the closing itself is not explicitly conditional. In past years' studies, agreements with this remedy structure also contained an equity-financing component whose enforcement is conditional. The *Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.* agreement does not contemplate separate equity financing.

^N In the *XPO Logistics, Inc./Con-way Inc.* agreement, Con-way must pay a \$54.137 million fee in the event of breach. A \$102.861 million fee is payable for change of recommendation, acceptance of a superior proposal and a tail transaction.

^O The buyer received a \$1 billion equity commitment from BC Partners and Canada Pension Plan Investment Board.

^P In the *Altice N.V./Cablevision Systems Corporation* agreement, enforcement of the closing is conditioned on the availability of both the debt and the equity financing.

^Q In the *Altice N.V./Cablevision Systems Corporation* agreement, payment of the fee does not cap damages for a knowing and intentional breach. "Knowing and intentional breach" is defined as any deliberate act, even if breaching was not its conscious object. By that definition, the failure to close when required could be considered a knowing and intentional breach, even if there has been a financing failure. If so, damages should be uncapped even in the event of a financing failure. Nevertheless, the presumed intention is that payment of the fee caps the buyer's damages in the specific event of a financing failure beyond the buyer's control.

^R In the *Energy Transfer Equity, L.P./The Williams Companies, Inc.* agreement, The Williams Companies must pay an expense reimbursement of up to \$100 million in the event of a breach. A \$1.48 billion fee is payable for change of recommendation, acceptance of a superior proposal and a tail transaction.

^S The buyer received an equity-financing commitment of up to \$4.25 billion from its sponsors Michael Dell (and affiliates) and Silver Lake Partners.

^T The reverse break-up fee is \$4 billion if Dell breaches or fails to close. The fee rises to \$6 billion if Dell fails to close in spite of the availability of the debt financing and EMC's compliance with its financing covenants (including having \$4.75 billion in cash on hand), while Dell does not make available \$2.95 billion for purposes of the financing.

^U EMC agreed to a \$2.5 billion break-up fee (\$2 billion for accepting a superior proposal during the go-shop period). However, EMC can be liable for damages of up to \$4 billion for willful and material breach.

^V In the *Snyder's-Lance, Inc./Diamond Foods, Inc.* agreement, a reverse break-up fee is payable in the event of a financing failure. Diamond Foods has the right to refund the fee and pursue damages or specific performance instead. If it chooses not to, the fee caps Snyder's-Lance's damages.

^W The *Western Refining, Inc./Northern Tier Energy LP* agreement requires reimbursement of reasonable expenses in the event of breach. The reimbursement is not capped at any dollar figure. Damages are not limited to the target company's expenses in the event of willful breach.

Table B: Financing Covenants in Leveraged Deals (Chronological Order)

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
AmerisourceBergen Corporation/MWI Veterinary Supply, Inc.	Full specific performance; no RBF, full damages v2	Commercially reasonable efforts	Yes	None	None	N/A	None
Shire plc/NPS Pharmaceuticals, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Lattice Semiconductor Corporation/Silicon Image, Inc.	Full specific performance; no RBF, damages for willful breach	Commercially reasonable efforts	Yes	None	None	N/A	15-business-day period in which LSC has compliant financial information, ending earlier if the financing is funded. Tender offer conditioned on three business days passing after completion of marketing period.
SS&C Technologies Holdings, Inc./Advent Software, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	20-business-day period in which SS&C has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after end of summer (Aug. 21-Sept. 8). Period must commence by 10-month anniversary of merger agreement.
Staples, Inc./Office Depot, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None
Harris Corporation/Exelis, Inc.	6.58% RBF Cap v2; conditional specific performance v2	Reasonable best efforts	Yes	None	None	None	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Pfizer Inc./Hospira, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Vector Capital/Saba Software, Inc.	Full specific performance; no RBF, full damages v1	Commercially reasonable efforts	Yes	None	None	N/A	None
Valeant Pharmaceuticals International, Inc./Salix Pharmaceuticals, Ltd.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None ^A	None	N/A	20-business-day period in which Valeant has compliant financial information, ending earlier if the financing is funded. Period must commence by one-month anniversary of merger agreement. Tender offer conditioned on five business days passing after completion of marketing period.
Asahi Kasei Corporation/Polypore International, Inc.	Full specific performance; no RBF, full damages v2	No covenant, just a representation of sufficient funds	N/A	N/A	None. Closing is conditioned on the closing of a separate carve-out transaction.	N/A	None
Mitel Networks Corporation/Mavenir Systems, Inc.	6.15% RBF Uncapped v2; conditional specific performance v4	Reasonable best efforts	Yes	None	None	The financing is "not available" and the failure to receive the financing is not attributable to a breach of any covenant or obligation of Mavenir Systems.	15-business-day period in which Mitel has compliant financial information, ending earlier if the financing is funded.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
AbbVie Inc./Pharmacyclics, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
SummitView Capital, eTown MemTek Ltd, Hua Capital, Huaqing Jiye Investment Management Co., Ltd./Integrated Silicon Solution, Inc.	2.92% RBF Cap v2; conditional specific performance v1	Reasonable best efforts	Yes	Yes	None	None	None
Leonard Green, TPG Capital, LNK Partners, Mr. Bahram Akradi/Life Time Fitness, Inc.	5.93% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	Yes	None	None	15-business-day period in which the buyer group has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after end of summer (Aug. 16-Sept. 8). Period does not commence until later of the day the proxy statement is mailed and the 45th day after the date of the agreement.
Microsemi Corporation/Vitesse Semiconductor Corporation	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None ^A	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Horizon Pharma plc/ Hyperion Therapeutics, Inc.	6.69% RBF Uncapped v2; conditional specific performance v3	Reasonable best efforts	Yes	None ^A	None	Failure to receive the proceeds of the debt financing and the lenders fail to definitively and irrevocably confirm in writing that the proceeds of the debt financing will be available, not directly attributable to breach by Hyperion of its financing-assistance covenant.	15-business-day period in which Horizon Pharma has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after end of summer (Aug. 21-Sept. 8). Period does not commence until commencement of the tender offer.
Permira Funds and Canada Pension Plan Investment Board/ Informatica Corporation	5.99% RBF Cap v2; conditional specific performance v1	Reasonable best efforts	Yes	None	Receipt of payoff letter	N/A	15-business-day period in which the buyer group has compliant financial information. Period must end before or begin after end of summer (Aug. 21-Sept. 8). Period does not commence until shareholder vote and expiration of HSR waiting period.
New Mountain Capital/ Zep Inc.	6.96% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	None ^B	None	None	N/A	15-business-day period in which New Mountain has the company financial information. Period must end before or begin after end of summer (Aug. 21-Sept. 8).
Capgemini North America, Inc./IGATE Corporation	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/ or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Hua Capital Management Co., Ltd., CITIC Capital Holdings Limited, GoldStone Investment Co., Ltd./OmniVision Technologies, Inc.	3.02% RBF Cap v2; conditional specific performance v1	Reasonable best efforts	None	None ^A	None	N/A	None
CECO Environmental Corp./PMFG, Inc.	6.40% RBF Uncapped v1; conditional specific performance v3	Commercially reasonable efforts	Yes	None	None	A breach of the financing representations or covenants that is not cured by the earlier of the drop-dead date and 20 days after written notice from PMFG.	None
Alexion Pharmaceuticals, Inc./Synageva BioPharma Corp.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None
Apax Partners/Quality Distribution, Inc.	6.72% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	None	None	None	N/A	18-business-day period in which Apax has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after end of summer (Aug. 19-Sept. 8).
Danaher Corporation/Pall Corporation	Full specific performance; no RBF, full damages v2	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Ascena Retail Group, Inc./ ANN INC.	Full specific performance; no RBF, full damages v1	Reasonable best efforts	Yes	None	None	N/A	15-business-day period in which ARG has compliant financial information. Period must end before or begin after end of summer (Aug. 17-Sept. 8) and holidays (Dec. 18-Jan. 4).
CVS Health Corporation/ Omnicare, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
NRD Capital/Frisch's Restaurants, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	Financing condition ^c	N/A	None
Charter Communications, Inc./Time Warner Cable Inc.	Full specific performance; no RBF, damages for willful breach	No covenant other than to refrain from any modifications or waivers that would impair the financing	None ^B	None	None	N/A	None
Mr. Robert F.X. Sillerman/ SFX Entertainment, Inc.	5.96% RBF Cap v2; conditional specific performance v2	No covenant other than to deliver a financing commitment	None	None	None	None	None
Avago Technologies Limited/Broadcom Corporation	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	15-business-day period in which Avago has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after end of summer (Aug. 21-Sept. 8) and holidays (Dec. 21-Jan. 4).

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Apollo Global Management and Platform Specialty Products Corporation/OM Group, Inc.	5.63% RBF Cap v2; conditional specific performance v4	Reasonable best efforts	Yes	None	Receipt of payoff letter	None	20-calendar-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period does not commence until the buyers' closing conditions are satisfied. Period must end before or begin after end of summer (Aug. 22-Sept. 8) and holidays (Dec. 18-Jan. 4).
Tokio Marine Holdings, Inc./HCC Insurance Holdings, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Cox Automotive, Inc./ Dealertrack Technologies, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Sequential Brands Group, Inc./Martha Stewart Living Omnimedia, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None
ACE Limited/The Chubb Corporation	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Aetna Inc./Humana Inc.	Full specific performance; no RBF, full damages v2	All things necessary ^D	Yes	None	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Centene Corporation/ Health Net, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None ^B	None	None	N/A	15-business-day period in which Centene has compliant financial information, ending earlier if the financing is funded. Period does not commence until the buyers' closing conditions are satisfied. Period does not commence if any restatement of material financial information is under consideration or may be a possibility. Period does not commence if Health Net is late filing any material report with the SEC until the delinquency is cured. Period must end before or begin after end of summer (Aug. 21-Sept. 8) and holidays (Dec. 22-Jan. 4). Period must end by the third business day before the outside date (July 2, 2016).
Coty Inc./The Procter & Gamble Company split-off	Full specific performance; no RBF, damages for willful breach	Commercially reasonable efforts	None	None ^E	None	N/A	None
Celgene Corporation/ Receptos, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
SunEdison, Inc./Vivint Solar, Inc.	Full specific performance; no RBF, full damages v2	Reasonable best efforts	Yes	None	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Gaming and Leisure Properties, Inc./Pinnacle Entertainment, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	20-day period in which GLP has compliant financial information, ending earlier if the financing is funded. Period must end before or begin after the holidays (Dec. 19-Jan. 3). Period cannot end later than the outside date (March 31, 2016), as may be extended.
St. Jude Medical, Inc./Thoratec Corporation	Full specific performance; no RBF, damages for willful breach	All things necessary ^F	Yes	None	None	N/A ^G	None
Anthem, Inc./Cigna Corporation	Full specific performance; no RBF, full damages v2	Reasonable best efforts	Yes	None	None	N/A	None
Columbus McKinnon Corporation/Magnetek, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None	None	None	N/A	Under the debt commitment letter: 15-business-day period. Period must end before or begin after end of summer (Aug. 21-Sept. 8).
Solvay SA/Cytex Industries Inc.	Full specific performance; no RBF, full damages v1	Reasonable best efforts	None	None	None	N/A	None
Team Health Holdings, Inc./IPC Healthcare, Inc.	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	15-business-day period in which THH has compliant financial information, ending earlier if the financing is funded. THH's closing conditions must be satisfied by 5 business days before the end of the period. Period commences after end of summer (Sept. 8). Period must end before or begin after the holidays (Dec. 18-Jan. 4).

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Spark Orange Limited/ Coca-Cola Enterprises, Inc.	Full specific performance; no RBF, damages for fraud	No covenant	N/A	N/A	None	N/A	None
CVR Partners, LP/Rentech Nitrogen Partners, L.P.	1.88% RBF Uncapped v1; full specific performance	No covenant, just a representation of sufficient funds	N/A	N/A	No default under existing indenture	N/A	None
Envestnet, Inc./Yodlee, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	Yes	None	N/A	None
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	12.07% and expenses up to 1.21% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	None	None	N/A ^H	None
Konecranes Plc/Terex Corporation	1.34% RBF Cap v2; full specific performance	No covenant	N/A	N/A	None	N/A	None
Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.	5.11% RBF Cap v2; conditional specific performance v5	Reasonable best efforts	None	None ^A	None	N/A	None
The Southern Company/ AGL Resources Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None	None	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Sycamore Partners/Belk, Inc.	6.05% RBF Cap v2; conditional specific performance v1	Reasonable best efforts	Yes	None	None	N/A	<p>17-business-day period in which Sycamore has compliant financial information, ending earlier if the financing is funded. Period does not commence until Sycamore's closing conditions are satisfied, HSR approval is obtained and Belk's shareholders have approved the merger. Period does not commence if any restatement of material financial information is under consideration or may be a possibility.</p> <p>Period does not commence if Sycamore is late filing any material report with the SEC until the delinquency is cured. Period commences after end of summer (Sept. 8). Period must end before or begin after the holidays (Dec. 18-Jan. 4).</p>
Emera Inc./TECO Energy, Inc.	5.02% RBF Uncapped v2; full specific performance	All things necessary	Yes	Yes	Yes	A refusal, for any reason, of the lenders to provide the financing in full, or any other failure, for any reason, of the financing to be provided in full.	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Media General, Inc./Meredith Corporation	Full specific performance; no RBF, full damages v2	Reasonable best efforts	None	None	None	N/A	15-business-day period in which MGI has compliant financial information, ending earlier if the financing is funded. Period does not commence until MGI's closing conditions are satisfied.
XPO Logistics, Inc./Con-way Inc.	1.94% RBF Uncapped v1; full specific performance	Reasonable best efforts	None ¹	None ^A	None	N/A	10-business-day period in which XPO has compliant financial information, ending earlier if the financing is funded. Period does not commence until XPO's closing conditions are satisfied. Period must end before or begin after the holidays (Dec. 18-Jan. 4). If the Period has not ended by February 12, it does not commence until the provision of audited financial statements for the fiscal year ended December 31, 2015.
Siris Capital Group, LLC/Premiere Global Services, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	None	None	N/A	15-business-day period in which Siris has compliant financial information. Period does not commence until Siris's closing conditions are satisfied. Period must end before or begin after the holidays (Dec. 18-Jan. 4). Specific performance of the equity financing is unavailable until the third business day after the end of the Marketing Period.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/ or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Vista Equity Partners/ Solera Holdings, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	None	None ^J	N/A	18-business-day period in which Vista has compliant financial information, ending earlier if the financing is funded. Period does not commence until Vista's closing conditions are satisfied. Period does not commence if any restatement of material financial information is under consideration or may be a possibility. Period must end before or begin after the holidays (Dec. 18-Jan. 5).
Altice N.V./Cablevision Systems Corporation	5.60% RBF Uncapped v2; conditional specific performance v2	Reasonable best efforts	None	None	None	The full proceeds to be provided by the debt financing are not available.	None
Dialog Semiconductor/ Atmel Corporation	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	15-calendar-day period after Form F-4 declared effective. Period must end before or begin after the holidays (Dec. 18-Jan. 4).
Energy Transfer Equity, L.P./The Williams Companies, Inc.	Up to 0.31% RBF Uncapped v1; full specific performance	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Skyworks Solutions, Inc./ PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Dell Inc./EMC Corporation	Two-Tier RBF: 5.97%/8.96%; conditional specific performance v3	Reasonable best efforts	Yes	Yes	None, but the financing is contingent on Dell and EMC having specified amounts of cash on hand.	The larger fee is payable if the lenders have confirmed that the debt financing will be funded if the equity financing and cash on hand are available.	20-business-day period in which Dell has compliant financial information, ending earlier if the financing is funded. Period does not commence until Dell's closing conditions are satisfied, except that by 30 business days before the outside date, a lack of antitrust and other approvals does not hold up the marketing period. Period only occurs during seven specified date ranges and not during end of summer (Aug. 19-Sept. 6).
Lam Research Corporation/KLA-Tencor Corporation	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None
Silver Lake Partners and Thoma Bravo, LLC/ SolarWinds, Inc.	6.99% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	None	None ^J	N/A	18-business-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period commences after Jan. 4. Period does not commence if any restatement of material financial information is under consideration or may be a possibility.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Western Digital Corporation/SanDisk Corporation	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	30-calendar-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period does not commence until either WDC's closing conditions are satisfied or the date that is 25 business days before the outside date. Period must end before or begin after 2016 and 2017 end-of-summer periods and 2016 holidays. Period must end by Feb. 9 or begin after the 10-K for fiscal year 2015 is filed.
Duke Energy Corporation/Piedmont Natural Gas Company, Inc.	Full specific performance; no RBF, full damages v2	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Snyder's-Lance, Inc./Diamond Foods, Inc.	7.09% RBF Cap v1; full specific performance	Reasonable best efforts	Yes	Yes	None	The buyer does not have readily available the required amount, or a failure to close due to breach of the buyer's financing representation or covenant.	Defined in debt-commitment letter (unfiled)
Walgreens Boots Alliance, Inc./Rite Aid Corporation	Full specific performance; no RBF, full damages v2	Reasonable best efforts	None ^B	None	None	N/A	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
Endurance International Group Holdings, Inc./ Constant Contact, Inc.	6.71% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	None	None	None	N/A	18-business-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period does not commence until EIGHI's closing conditions are satisfied. Period does not commence until the proxy statement has been mailed. Period does not commence if any restatement of material financial information is under consideration or may be a possibility. Period must end before or begin after the holidays (Dec. 18-Jan. 4).
Pamplona Capital Management LLP/ MedAssets, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	Yes	None	None	N/A	16-business-day period in which the buyer has compliant financial information. Period does not commence until five business days after the proxy statement has been mailed. Period does not commence until after the holidays (Jan. 4).
Shire plc/Dyax Corp.	Full specific performance; no RBF, full damages v1	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
Rizvi Traverse Management, LLC/RealD Inc.	5.45% RBF Cap v2; conditional specific performance v3	Reasonable best efforts	None ^B	None	None	N/A	18-business-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period does not commence until Rizvi Traverse's closing conditions are satisfied.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
The Kroger Co./Roundy's, Inc.	Full specific performance; no RBF, full damages v1	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None
L'Air Liquide, S.A./Airgas, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None ^B	None	None	N/A	None
ON Semiconductor Corporation/Fairchild Semiconductor International Inc.	8.96% RBF Uncapped v2; full specific performance	Reasonable best efforts	Yes	Yes	None	See footnote ^K	None
Comtech Telecommunications Corp./Telecommunication Systems, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	19-business-day period in which CTC has compliant financial information. Period does not commence until after the holidays (Jan. 4). Period cannot extend beyond the second business day before the end date.
Microsemi Corporation/PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	None
Pinnacle Foods Inc./Boulder Brands, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	Yes	None	None	N/A	10-business-day period in which PFI has the required information. Period does not commence until after the holidays (Jan. 4).
JAB Holding Company/Keurig Green Mountain, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None	None	None	N/A	20-business-day period in which JAB has compliant financial information. Period does not commence until after the holidays (Jan. 5). Period does not commence until JAB's closing conditions are satisfied and the proxy statement has been mailed.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Efforts Standard in Covenant	Obligation to Enforce Rights and/or Cause Lenders to Fund	Explicit Obligation to Litigate Against the Lenders	Financing Out or Financial-Metric Closing Condition	Criteria for a Finding of Financing Failure	Marketing Period
American Securities LLC and P2 Capital Partners, LLC/Blount International, Inc.	8.00% RBF Uncapped v1; conditional specific performance v3	Reasonable best efforts	Yes, using commercially reasonable efforts	None	None	N/A	18-business-day period in which the buyers have compliant financial information, ending earlier if the financing is funded. Period does not commence until the proxy statement has been mailed. Period does not commence until after the holidays (Jan. 3).
Newell Rubbermaid Inc./ Jarden Corporation	5.83% RBF Uncapped v2; conditional specific performance v2	Reasonable best efforts	None	None	None	See footnote ¹	None
Global Payments Inc./ Heartland Payment Systems, Inc.	Full specific performance; no RBF, damages for willful breach	Reasonable best efforts	None	None	None	N/A	22-calendar-day period in which GPI has compliant financial information, ending earlier if the financing is funded. Period does not commence until GPI's closing conditions are satisfied. Period does not commence if any restatement of historical financial information is under consideration. Period only occurs during four specified date ranges and after the holidays (Jan. 4).
Western Refining, Inc./ Northern Tier Energy LP	Full specific performance; no RBF, damages for willful breach	No covenant, just a representation of sufficient funds	N/A	N/A	None	N/A	None

Notes:

See the footnotes in *Table A* for descriptions of deal-specific remedies.

The “Explicit Obligation to Litigate Against the Lenders” column indicates whether the agreement makes explicit, over and above the formulation that the buyer must “enforce its rights” against the lenders or “cause the lenders to fund,” an obligation to pursue litigation against the lenders in order to enforce the debt financing. An example of this formulation: “Parent shall cause the Debt Providers to comply with their respective obligations, including to fund the Debt Financing required to consummate the Transactions on the Closing Date, including to pay the aggregate Offer Price at the Acceptance Time and the aggregate Merger Consideration on the Closing Date (including by promptly commencing a litigation proceeding against any breaching Debt Provider to compel such Debt Provider to provide its portion of the Debt Financing or otherwise comply with its obligations under the Debt Commitment Letter or Definitive Financing Agreements).”

The “Financing Out or Financial-Metric Closing Condition” column indicates whether the agreement explicitly makes receipt of the financing proceeds or the satisfaction of a financial metric (such as minimum cash on hand) a condition of the buyer’s obligation to close. This column does not record whether the target company has made a finance-related representation (such as solvency) or covenant (such as payoff of indebtedness), even though the representation or covenant must be brought down to closing in material respects, if the underlying metric is not expressed explicitly as a closing condition.

The “Criteria for a Finding of Financing Failure” column indicates whether and how the agreement defines the occurrence of a financing failure, when a financing failure triggers payment of a reverse break-up fee.

The “Marketing Period” column highlights common timing issues that are negotiated in the definition of the term “Marketing Period” for purposes of the lenders’ syndication of the debt financing.

^A The agreement specifically states that the buyer is not obligated to bring any enforcement action against the lenders.

^B The buyer committed to not agree to any modifications or waivers that would adversely impact its ability to enforce its rights against the lenders. But the covenant does not contain an explicit obligation for the buyer to enforce its rights against the lenders.

^C The *NRD Capital/Frisch’s Restaurants, Inc.* agreement contains the following closing condition in NRD Capital’s favor: “No Financing Source has terminated its Financing Commitment (i) on the grounds that a representation or warranty made by Parent and/or Merger Sub as to the condition, quality, sufficiency or title of any real property assets of the Company is not true and complete in all material respects, or (ii) as a result of any other Lien on the real property assets of the Company that was not disclosed in the Company Disclosure Schedules.” In circumstances where the financing is unavailable other than for these delineated reasons, NRD Capital represents in the agreement that the lack of financing is not a condition to its obligation to close.

^D The *Aetna Inc./Humana Inc.* agreement requires Aetna’s reasonable best efforts to enforce its rights and obtain alternative financing. The covenant uses an “all things necessary” standard for the covenant’s other obligations.

^E In the *Coty Inc./The Procter & Gamble Company* agreement, “Commercially Reasonable Efforts” is a defined term. The definition excludes the necessity to initiate litigation, except in the case of the financing. The implication is that litigation is a requirement, but the agreement does not say so explicitly.

^F The *St. Jude Medical, Inc./Thoratec Corporation* agreement requires St. Jude’s commercially reasonable efforts to obtain alternative financing. The covenant uses an “all things necessary” standard for the covenant’s other obligations.

^G The *St. Jude Medical, Inc./Thoratec Corporation* agreement defines a financing failure for purposes of the obligation to obtain alternative financing, but there is no reverse break-up fee triggered by a financing failure.

^H In addition to being triggered by a breach or failure to close, the reverse break-up fee is triggered if the buyer fails to obtain certain state regulatory approvals for the debt financing.

^I The *XPO Logistics, Inc./Con-way Inc. agreement* specifically states that XPO Logistics is not obligated to enforce any of the lenders’ commitments.

^J The bring-down closing condition in the *Vista Equity Partners/Solera Holdings, Inc.* agreement is quantified at inaccuracies causing losses of \$3 million in the aggregate. The bring-down closing condition in the *Silver Lake Partners and Thoma Bravo, LLC/SolarWinds, Inc.* agreement is quantified at inaccuracies in the capitalization representation causing losses of \$10 million in the aggregate.

^K In the *ON Semiconductor Corporation/Fairchild Semiconductor International Inc.* agreement, the reverse break-up fee is payable if ON either: (i) fails to accept all the tendered common stock for payment; or (ii) has complied in all material respects with its financing covenants, and (x) ON is unable to obtain the debt financing; (y) ON has delivered notice solely to extend the tender offer to obtain the debt financing; and (z) the merger agreement is then terminated for any reason (other than by mutual agreement or if Fairchild itself willfully breached any of its covenants after ON delivered the extension notice).

^L In the *Newell Rubbermaid Inc./Jarden Corporation* agreement, the reverse break-up fee is payable if the proceeds to be provided under the bridge credit facility are not available, whether as a result of a breach by the lenders or otherwise, and the only alternative financing has not been assigned by any two of the three rating agencies a credit rating of BBB- or higher in the case of S&P and Fitch or Baa3 or higher in the case of Moody’s.

Table C: “Xerox” Provisions in Leveraged Deals (Chronological Order)

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
AmerisourceBergen Corporation/MWI Veterinary Supply, Inc.	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes ^A	Yes	Yes
Shire plc/NPS Pharmaceuticals, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Lattice Semiconductor Corporation/Silicon Image, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
SS&C Technologies Holdings, Inc./Advent Software, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Staples, Inc./Office Depot, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Harris Corporation/Exelis, Inc.	6.58% RBF Cap v2; conditional specific performance v2	None	Yes	New York	Yes	Yes	Yes
Pfizer Inc./Hospira, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Vector Capital/Saba Software, Inc.	Full specific performance; no RBF, full damages v1	N/A	Yes	New York	Yes	Yes	Yes
Valeant Pharmaceuticals International, Inc./Salix Pharmaceuticals, Ltd.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Asahi Kasei Corporation/Polypore International, Inc.	Full specific performance; no RBF, full damages v2	N/A	None	None	None	N/A	N/A
Mitel Networks Corporation/Mavenir Systems, Inc.	6.15% RBF Uncapped v2; conditional specific performance v4	None	Yes	New York	Yes	Yes	Yes

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
AbbVie Inc./Pharmacyclics, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
SummitView Capital, eTown MemTek Ltd, Hua Capital, Huaqing Jiye Investment Management Co., Ltd./ Integrated Silicon Solution, Inc.	2.92% RBF Cap v2; conditional specific performance v1	Yes	None	None	Yes	None	Yes
Leonard Green, TPG Capital, LNK Partners, Mr. Bahram Akradi/Life Time Fitness, Inc.	5.93% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Microsemi Corporation/ Vitesse Semiconductor Corporation	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Horizon Pharma plc/ Hyperion Therapeutics, Inc.	6.69% RBF Uncapped v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Permira Funds and Canada Pension Plan Investment Board/Informatica Corporation	5.99% RBF Cap v2; conditional specific performance v1	Yes	Yes	New York	Yes	Yes	Yes
New Mountain Capital/Zep Inc.	6.96% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Capgemini North America, Inc./IGATE Corporation	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Hua Capital Management Co., Ltd., CITIC Capital Holdings Limited, GoldStone Investment Co., Ltd./OmniVision Technologies, Inc.	3.02% RBF Cap v2; conditional specific performance v1	Yes	Yes	New York	Yes	Yes	Yes
CECO Environmental Corp./PMFG, Inc.	6.40% RBF Uncapped v1; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Alexion Pharmaceuticals, Inc./Synageva BioPharma Corp.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Apax Partners/Quality Distribution, Inc.	6.72% RBF Cap v2; conditional specific performance v3	Yes	No ^B	New York	Yes	Yes	Yes
Danaher Corporation/Pall Corporation	Full specific performance; no RBF, full damages v2	N/A	None	None	None	N/A	N/A
Ascena Retail Group, Inc./ANN INC.	Full specific performance; no RBF, full damages v1	N/A	Yes	New York	Yes	Yes	Yes
CVS Health Corporation/Omnicare, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
NRD Capital/Frisch's Restaurants, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Charter Communications, Inc./Time Warner Cable Inc.	Full specific performance; no RBF, damages for willful breach	N/A ^C	None	New York	Yes	None	Yes
Mr. Robert F.X. Sillerman/SFX Entertainment, Inc.	5.96% RBF Cap v2; conditional specific performance v2	Yes	None	New York	Yes	Yes	Yes

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Avago Technologies Limited/ Broadcom Corporation	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Apollo Global Management and Platform Specialty Products Corporation/OM Group, Inc.	5.63% RBF Cap v2; conditional specific performance v4	Yes	Yes	New York	Yes	Yes	Yes
Tokio Marine Holdings, Inc./ HCC Insurance Holdings, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Cox Automotive, Inc./ Dealertrack Technologies, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Sequential Brands Group, Inc./Martha Stewart Living Omnimedia, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	New York	Yes	Yes	Yes
ACE Limited/The Chubb Corporation	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Aetna Inc./Humana Inc.	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes	Yes	Yes
Centene Corporation/Health Net, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes ^A	Yes	Yes
Coty Inc./The Procter & Gamble Company split-off	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Celgene Corporation/ Receptos, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
SunEdison, Inc./Vivint Solar, Inc.	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes	Yes	Yes, except for amendment provision

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Gaming and Leisure Properties, Inc./Pinnacle Entertainment, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
St. Jude Medical, Inc./Thoratec Corporation	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Anthem, Inc./Cigna Corporation	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes	Yes	Yes
Columbus McKinnon Corporation/Magnetek, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	None	Yes
Solvay SA/Cytec Industries Inc.	Full specific performance; no RBF, full damages v1	N/A	Yes	New York	Yes	Yes	Yes
Team Health Holdings, Inc./IPC Healthcare, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes, with respect to monetary damages	New York	Yes	Yes	Yes
Spark Orange Limited/Coca-Cola Enterprises, Inc.	Full specific performance; no RBF, damages for fraud	N/A	None	None	None	N/A	N/A
CVR Partners, LP/Rentech Nitrogen Partners, L.P.	1.88% RBF Uncapped v1; full specific performance	None	Yes	None	None	None	Yes
Envestnet, Inc./Yodlee, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	12.07% and expenses up to 1.21% RBF Cap v2; conditional specific performance v3	Yes	Yes	None	Yes	Yes	Yes
Konecranes Plc/Terex Corporation	1.34% RBF Cap v2; full specific performance	None	None	None	None	N/A	N/A

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.	5.11% RBF Cap v2; conditional specific performance v5	Yes	None	None	None	None	Yes
The Southern Company/AGL Resources Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Sycamore Partners/Belk, Inc.	6.05% RBF Cap v2; conditional specific performance v1	Yes	Yes	New York	Yes	Yes	Yes
Emera Inc./TECO Energy, Inc.	5.02% RBF Uncapped v2; full specific performance	Yes	Yes	New York	Yes	Yes	Yes
Media General, Inc./Meredith Corporation	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes	Yes	Yes
XPO Logistics, Inc./Con-way Inc.	1.94% RBF Uncapped v1; full specific performance	None	Yes	New York	Yes	Yes	Yes, except for amendment provision
Siris Capital Group, LLC/ Premiere Global Services, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Vista Equity Partners/Solera Holdings, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Altice N.V./Cablevision Systems Corporation	5.60% RBF Uncapped v2; conditional specific performance v2	None	Yes	None	None	None	Yes
Dialog Semiconductor/Atmel Corporation	Full specific performance; no RBF, damages for willful breach	N/A ^c	Yes	New York	Yes	Yes	Yes
Energy Transfer Equity, L.P./ The Williams Companies, Inc.	Up to 0.31% RBF Uncapped v1; full specific performance	None	Yes	None ^d	None	Yes	Yes
Skyworks Solutions, Inc./ PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Dell Inc./EMC Corporation	Two-Tier RBF: 5.97%/8.96%; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Lam Research Corporation/ KLA-Tencor Corporation	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Silver Lake Partners and Thoma Bravo, LLC/ SolarWinds, Inc.	6.99% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Western Digital Corporation/ SanDisk Corporation	Full specific performance; no RBF, damages for willful breach	N/A ^c	Yes	New York	Yes	Yes	Yes
Duke Energy Corporation/ Piedmont Natural Gas Company, Inc.	Full specific performance; no RBF, full damages v2	N/A ^c	None	None	None	N/A	N/A
Snyder's-Lance, Inc./ Diamond Foods, Inc.	7.09% RBF Cap v1; full specific performance	None	Yes	None (New York governing law, but New York is not specified as the venue)	Yes	Yes	Yes, except for jury-waiver provision
Walgreens Boots Alliance, Inc./Rite Aid Corporation	Full specific performance; no RBF, full damages v2	N/A	Yes	New York	Yes	Yes	Yes
Endurance International Group Holdings, Inc./ Constant Contact, Inc.	6.71% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Pamplona Capital Management LLP/ MedAssets, Inc.	6.00% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Shire plc/Dyax Corp.	Full specific performance; no RBF, full damages v1	N/A	None	None	None	N/A	N/A

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Rizvi Traverse Management, LLC/RealD Inc.	5.45% RBF Cap v2; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
The Kroger Co./Roundy's, Inc.	Full specific performance; no RBF, full damages v1	N/A	None	None	None	N/A	N/A
L'Air Liquide, S.A./Airgas, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	Paris	Yes	Yes	Yes
ON Semiconductor Corporation/Fairchild Semiconductor International Inc.	8.96% RBF Uncapped v2; full specific performance	None	Yes	New York	Yes	Yes	Yes
Comtech Telecommunications Corp./TeleCommunication Systems, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Microsemi Corporation/PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
Pinnacle Foods Inc./Boulder Brands, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes
JAB Holding Company/Keurig Green Mountain, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes ^	Yes	Yes, except for amendment provision
American Securities LLC and P2 Capital Partners, LLC/Blount International, Inc.	8.00% RBF Uncapped v1; conditional specific performance v3	Yes	Yes	New York	Yes	Yes	Yes
Newell Rubbermaid Inc./Jarden Corporation	5.83% RBF Uncapped v2; conditional specific performance v2	Yes, but the fee does not cap damages for willful breach	Yes	New York	Yes	Yes	Yes

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Lenders' Liability Limited to RBF	Provision for No Recourse to the Lenders Under the Merger Agreement	Exclusive Forum for Disputes with the Lenders	Waiver of Jury Trial in Disputes with the Lenders	No Amendments Adverse to the Lenders Without Their Consent	Lenders Are Third-Party Beneficiaries of the Relevant Provisions
Global Payments Inc./ Heartland Payment Systems, Inc.	Full specific performance; no RBF, damages for willful breach	N/A	Yes	New York	Yes	Yes	Yes, except for jury-waiver provision
Western Refining, Inc./ Northern Tier Energy LP	Full specific performance; no RBF, damages for willful breach	N/A	None	None	None	N/A	N/A

Notes:

See the footnotes in Table A for descriptions of deal-specific remedies.

^a The provision is drafted only with respect to the parties to the merger agreement, yet the agreement explicitly makes the lenders third-party beneficiaries of the provision. The presumed intention is that the lenders can enforce the provision to their benefit.

^b The *Apax Partners/Quality Distribution, Inc.* agreement provides that QDI cannot seek specific performance against the lenders. This implies that QDI could have recourse to the lenders for legal remedies. (The agreement states that QDI is a third-party beneficiary of the equity commitment letter and fee-commitment letter, but not the debt-financing commitment.)

^c The lenders' liability is limited to the buyer's fiduciary/antitrust reverse break-up fee when paid, but the fee does not cap damages for willful breach.

^d The *Energy Transfer Equity, L.P./The Williams Companies, Inc.* agreement states that the non-recourse provision will be governed by New York law, but the agreement does not address venue for that issue or any other disputes with the lenders.

Table D: Post-Termination Liability in Leveraged Deals (Chronological Order)

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
AmerisourceBergen Corporation/MWI Veterinary Supply, Inc.	Full specific performance; no RBF, full damages v2	Fraud or willful breach	An intentional and willful material breach or failure to perform that is the consequence of an act or omission taken with the actual knowledge that such act or omission would cause a breach of the agreement. A willful breach expressly includes the failure to pay for any shares of common stock when required.
Shire plc/NPS Pharmaceuticals, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or intentional and willful failure to perform	None
Lattice Semiconductor Corporation/Silicon Image, Inc.	Full specific performance; no RBF, damages for willful breach	Willful or intentional breach, or fraud	None
SS&C Technologies Holdings, Inc./Advent Software, Inc.	Full specific performance; no RBF, damages for willful breach	Intentional failure to fulfill a condition or to perform	None
Staples, Inc./Office Depot, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or any willful or intentional breach	None
Harris Corporation/Exelis, Inc.	6.58% RBF Cap v2; conditional specific performance v2	None	N/A
Pfizer Inc./Hospira, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or intentional breach	An action or omission taken or omitted to be taken that the breaching person intentionally takes (or fails to take) and knows (or should reasonably have known) would, or would reasonably be expected to, cause a material breach.
Vector Capital/Saba Software, Inc.	Full specific performance; no RBF, full damages v1	Any breach	N/A
Valeant Pharmaceuticals International, Inc./Salix Pharmaceuticals, Ltd.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	None
Asahi Kasei Corporation/Polypore International, Inc.	Full specific performance; no RBF, full damages v2	Intentional and material breach	A material breach that is a consequence of an act undertaken with the knowledge (actual or constructive) that the act would, or would be reasonably expected to, cause a breach (it being understood that the failure to consummate the transactions when known to be or should be known to be required constitutes an intentional and material breach).

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Mitel Networks Corporation/Mavenir Systems, Inc.	6.15% RBF Uncapped v2; conditional specific performance v4	"Intentional fraud" or willful and material breach	None
AbbVie Inc./Pharmacyclics, Inc.	Full specific performance; no RBF, damages for willful breach	Willful breach	A deliberate act or a deliberate failure to act, taken or not taken with the actual knowledge that such act or failure to act constitutes in and of itself a material breach, regardless of whether breaching was the object of the act or failure to act.
SummitView Capital, eTown MemTek Ltd, Hua Capital, Huaqing Jiye Investment Management Co., Ltd./Integrated Silicon Solution, Inc.	2.92% RBF Cap v2; conditional specific performance v1	None	N/A
Leonard Green, TPG Capital, LNK Partners, Mr. Bahram Akradi/Life Time Fitness, Inc.	5.93% RBF Cap v2; conditional specific performance v3	None	N/A
Microsemi Corporation/Vitesse Semiconductor Corporation	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	None
Horizon Pharma plc/Hyperion Therapeutics, Inc.	6.69% RBF Uncapped v2; conditional specific performance v3	"Common law fraud" or willful breach	None
Permira Funds and Canada Pension Plan Investment Board/Informatica Corporation	5.99% RBF Cap v2; conditional specific performance v1	Fraud	N/A
New Mountain Capital/Zep Inc.	6.96% RBF Cap v2; conditional specific performance v3	None	N/A
Cappgemini North America, Inc./IGATE Corporation	Full specific performance; no RBF, damages for willful breach	Fraud or willful and material breach	An intentional and willful material breach or failure to perform that is the consequence of an act or omission with the actual knowledge that the act or failure to act would cause a breach.
Hua Capital Management Co., Ltd., CITIC Capital Holdings Limited, GoldStone Investment Co., Ltd./OmniVision Technologies, Inc.	3.02% RBF Cap v2; conditional specific performance v1	None	N/A
CECO Environmental Corp./PMFG, Inc.	6.40% RBF Uncapped v1; conditional specific performance v3	Fraud or willful breach	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Alexion Pharmaceuticals, Inc./Synageva BioPharma Corp.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	A material breach that is a consequence of an act or failure to act with the knowledge that the act or failure to act would cause a material breach.
Apax Partners/Quality Distribution, Inc.	6.72% RBF Cap v2; conditional specific performance v3	Fraud	N/A
Danaher Corporation/Pall Corporation	Full specific performance; no RBF, full damages v2	Intentional breach	An action or omission taken or omitted to be taken that the party knows (or should reasonably have known) would, or would reasonably be expected to, cause a material breach. The failure to close once the closing conditions are satisfied is deemed an "intentional breach."
Ascena Retail Group, Inc./ANN INC.	Full specific performance; no RBF, full damages v1	Breach or fraud	N/A
CVS Health Corporation/Omnicare, Inc.	Full specific performance; no RBF, damages for willful breach	Willful or intentional breach	None
NRD Capital/Frisch's Restaurants, Inc.	Full specific performance; no RBF, damages for willful breach	Willful breach or fraud	None
Charter Communications, Inc./Time Warner Cable Inc.	Full specific performance; no RBF, damages for willful breach	Willful breach	An intentional and willful breach or failure to perform that is the consequence of an act or omission with the actual knowledge that the act or failure to act would cause a material breach.
Mr. Robert F.X. Sillerman/SFX Entertainment, Inc.	5.96% RBF Cap v2; conditional specific performance v2	None	N/A
Avago Technologies Limited/Broadcom Corporation	Full specific performance; no RBF, damages for willful breach	Fraud or knowing and intentional material breach	A material breach that is a consequence of a deliberate act or deliberate omission to act undertaken with the actual knowledge of the board of directors or executive officers that the act or failure to act would, or would be reasonably expected to, result in a material breach.
Apollo Global Management and Platform Specialty Products Corporation/OM Group, Inc.	5.63% RBF Cap v2; conditional specific performance v4	None	N/A

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Tokio Marine Holdings, Inc./HCC Insurance Holdings, Inc.	Full specific performance; no RBF, damages for willful breach	Willful or intentional material breach	None
Cox Automotive, Inc./Dealertrack Technologies, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	None
Sequential Brands Group, Inc./Martha Stewart Living Omnimedia, Inc.	Full specific performance; no RBF, damages for willful breach	Intentional and material breach	A material breach that is a consequence of an act or failure to act undertaken with the knowledge (actual or constructive) that the act or failure to act would, or would be reasonably expected to, cause a breach.
ACE Limited/The Chubb Corporation	Full specific performance; no RBF, damages for willful breach	Willful and material breach	None
Aetna Inc./Humana Inc.	Full specific performance; no RBF, full damages v2	Fraud or willful breach	A material breach that is the consequence of an act or omission with the actual knowledge that such act or failure to act would be a material breach. The failure, for any reason other than as a result of a material breach by Humana, of Aetna to have sufficient cash available or to pay the cash consideration on the closing date constitutes a willful breach.
Centene Corporation/Health Net, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	With respect to a breach of a representation or warranty, a material breach made with Knowledge (defined as the knowledge of the scheduled individuals, including the knowledge that any such individuals would reasonably be expected to discover or become aware of in the course of the reasonable conduct of his or her duties), and with respect to a breach of or failure to perform a covenant, a material breach or failure to perform that is a consequence of an act or omission undertaken with the Knowledge that the act or failure to act would, or would be reasonably expected to, cause a material breach.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Coty Inc./The Procter & Gamble Company split-off	Full specific performance; no RBF, damages for willful breach	Deliberate breach	A material breach of a representation that the party making the representation had Knowledge (the knowledge of scheduled individuals after inquiry deemed reasonable) was false when made, or a material breach of a covenant where the party had Knowledge at the time that the action taken or omitted to be taken constituted a breach.
Celgene Corporation/Receptos, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful or intentional breach	None
SunEdison, Inc./Vivint Solar, Inc.	Full specific performance; no RBF, full damages v2	Willful breach	A material breach that is a consequence of an act or a failure to act of an executive officer of with the actual knowledge that the act or failure to act would cause, or would reasonably be expected to cause, a breach of any representation, warranty, or covenant. A failure to consummate the merger when required (and, in the case of SunEdison, regardless of whether it has obtained or received the proceeds of the debt financing) is deemed a willful breach.
Gaming and Leisure Properties, Inc./Pinnacle Entertainment, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful and material breach	A material breach that is a consequence of an act or failure to act undertaken with the knowledge that the act or failure to act would cause a material breach.
St. Jude Medical, Inc./Thoratec Corporation	Full specific performance; no RBF, damages for willful breach	Willful and material breach	None
Anthem, Inc./Cigna Corporation	Full specific performance; no RBF, full damages v2	Fraud or willful breach	A material breach that is the consequence of an act or omission taken with the actual knowledge that the act or failure to act would be a material breach. The failure of Anthem to have sufficient cash available or to pay the aggregate cash consideration on the closing, for any reason other than material breach by Cigna, constitutes a willful breach by Anthem.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Columbus McKinnon Corporation/ Magnetek, Inc.	Full specific performance; no RBF, damages for willful breach	Willful and material breach	None
Solvay SA/Cytec Industries Inc.	Full specific performance; no RBF, full damages v1	Knowing and intentional breach	With respect to any breach, the taking of a deliberate act, or omission, which act or omission constitutes in and of itself a breach, even if breaching was not the conscious object of the act or omission.
Team Health Holdings, Inc./IPC Healthcare, Inc.	Full specific performance; no RBF, damages for willful breach	Willful breach	A material breach that is a consequence of an act taken, or the failure to take a required act, with actual knowledge that the taking of, or the failure to take, the act would, or would be reasonably expected to, cause a breach.
Spark Orange Limited/Coca-Cola Enterprises, Inc.	Full specific performance; no RBF, damages for fraud	Fraud	N/A
CVR Partners, LP/Rentech Nitrogen Partners, L.P.	1.88% RBF Uncapped v1; full specific performance	Fraud or willful breach	A material breach that is the consequence of an act or omission with the actual knowledge that the act or failure to act would, or would be reasonably expected to, cause a material breach.
Envestnet, Inc./Yodlee, Inc.	Full specific performance; no RBF, damages for willful breach	Willful and material breach	None
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	12.07% and expenses up to 1.21% RBF Cap v2; conditional specific performance v3	None	N/A
Konecranes Plc/Terex Corporation	1.34% RBF Cap v2; full specific performance	None	N/A
Leyard Optoelectronic Co., Ltd./Planar Systems, Inc.	5.11% RBF Cap v2; conditional specific performance v5	None	N/A
The Southern Company/AGL Resources Inc.	Full specific performance; no RBF, damages for willful breach	Intentional breach	None
Sycamore Partners/Belk, Inc.	6.05% RBF Cap v2; conditional specific performance v1	None	N/A

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Emera Inc./TECO Energy, Inc.	5.02% RBF Uncapped v2; full specific performance	Willful breach	A breach that is a consequence of an act or omission undertaken with the Knowledge (the actual knowledge of its executive officers) that the act or omission would, or would reasonably be expected to, cause or constitute a material breach.
Media General, Inc./Meredith Corporation	Full specific performance; no RBF, full damages v2	Common law fraud or intentional breach	An action or omission (including a failure to cure circumstances) taken or omitted to be taken that the breaching person intentionally takes (or fails to take) and knows would, or would reasonably be expected to, cause a material breach. Any failure to consummate the closing when required is an intentional breach.
XPO Logistics, Inc./Con-way Inc.	1.94% RBF Uncapped v1; full specific performance	Fraud or willful and material breach	A material breach that is a consequence of an act or inaction taken with the knowledge that the act or inaction would, or would reasonably be expected to, constitute or cause a material breach. The failure of XPO to consummate the tender offer or merger closing when required is deemed a willful and material breach.
Siris Capital Group, LLC/Premiere Global Services, Inc.	6.00% RBF Cap v2; conditional specific performance v3	None	N/A
Vista Equity Partners/Solera Holdings, Inc.	6.00% RBF Cap v2; conditional specific performance v3	None	N/A
Altice N.V./Cablevision Systems Corporation	5.60% RBF Uncapped v2; conditional specific performance v2	Knowing and intentional breach	With respect to any act or omission, the taking of a deliberate act, or omission, which act constitutes in and of itself a breach, even if breaching was not the conscious object of the act or omission.
Dialog Semiconductor/Atmel Corporation	Full specific performance; no RBF, damages for willful breach	Willful breach	Any willful action or omission undertaken with the Knowledge (the actual knowledge of scheduled individuals) that the act or failure to act would result in a breach.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Energy Transfer Equity, L.P./The Williams Companies, Inc.	Up to 0.31% RBF Uncapped v1; full specific performance	Willful and material breach	None
Skyworks Solutions, Inc./PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or knowing and intentional breach	A material breach that is a consequence of an act undertaken with the knowledge that the act or failure to act would, or would be reasonably expected to, result in a breach.
Dell Inc./EMC Corporation	Two-Tier RBF: 5.97%/8.96%; conditional specific performance v3	None	N/A
Lam Research Corporation/KLA-Tencor Corporation	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	None
Silver Lake Partners and Thoma Bravo, LLC/SolarWinds, Inc.	6.99% RBF Cap v2; conditional specific performance v3	None	N/A
Western Digital Corporation/SanDisk Corporation	Full specific performance; no RBF, damages for willful breach	Fraud or knowing and intentional breach	A material breach that is a consequence of an act undertaken with the Knowledge (the actual knowledge, after reasonable inquiry, of scheduled individuals) that the act would, or would be reasonably expected to, cause a material breach.
Duke Energy Corporation/Piedmont Natural Gas Company, Inc.	Full specific performance; no RBF, full damages v2	Willful and material breach	Any failure to consummate the merger after the closing conditions are satisfied constitutes a willful and material breach.
Snyder's-Lance, Inc./Diamond Foods, Inc.	7.09% RBF Cap v1; full specific performance	Intentional breach (if Diamond Foods refunds the reverse break-up fee)	An act or omission taken with the knowledge that such action or omission constitutes, or would reasonably be expected to result in, a material breach.
Walgreens Boots Alliance, Inc./Rite Aid Corporation	Full specific performance; no RBF, full damages v2	Willful breach	A material breach of, or failure to perform, any covenant that is a consequence of an act or failure to act with actual knowledge, or knowledge that a Person acting reasonably under the circumstances should have, that the act or failure to act would, or would be reasonably expected to, result in or constitute a breach. The failure, for any reason, of WBAI to consummate the merger when the closing is required constitutes a willful breach.

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
Endurance International Group Holdings, Inc./Constant Contact, Inc.	6.71% RBF Cap v2; conditional specific performance v3	None	N/A
Pamplona Capital Management LLP/MedAssets, Inc.	6.00% RBF Cap v2; conditional specific performance v3	None	N/A
Shire plc/Dyax Corp.	Full specific performance; no RBF, full damages v1	Fraud or any breach	N/A
Rizvi Traverse Management, LLC/RealD Inc.	5.45% RBF Cap v2; conditional specific performance v3	None	N/A
The Kroger Co./Roundy's, Inc.	Full specific performance; no RBF, full damages v1	Any breach	N/A
L'Air Liquide, S.A./Airgas, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	An action or omission where the breaching party knows such action or omission is, or would reasonably be expected to result in, a breach.
ON Semiconductor Corporation/Fairchild Semiconductor International Inc.	8.96% RBF Uncapped v2; full specific performance	Willful breach of the financing covenant is a material cause of the financing failure	A deliberate act or a deliberate failure to act, taken or not taken with the actual knowledge that such act or failure to act constitutes in and of itself a material breach, regardless of whether breaching was the object of the act or failure to act.
Comtech Telecommunications Corp./TeleCommunication Systems, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful and material breach	None
Microsemi Corporation/PMC-Sierra, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or knowing and intentional breach	A material breach that is a consequence of an act undertaken with the knowledge that the act or failure to act would, or would be reasonably expected to, result in a breach.
Pinnacle Foods Inc./Boulder Brands, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful and material breach	A material breach or failure to perform that is the consequence of an act or omission with the actual knowledge that the act or failure to act would cause a breach.
JAB Holding Company/Keurig Green Mountain, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful and material breach	None

Parties (Buyer/Target Company)	Remedy for Buyer Breach	Standard for Buyer's Continuing Post-Termination Liability, Beyond Payment of Reverse Break-Up Fee	Definition of Willfulness for Post-Termination Liability
American Securities LLC and P2 Capital Partners, LLC/Blount International, Inc.	8.00% RBF Uncapped v1; conditional specific performance v3	Fraud or intentional breach	None
Newell Rubbermaid Inc./Jarden Corporation	5.83% RBF Uncapped v2; conditional specific performance v2	Fraud or willful breach	A material breach that is the consequence of an act or omission taken with the actual knowledge that the act or failure to act would be a material breach.
Global Payments Inc./Heartland Payment Systems, Inc.	Full specific performance; no RBF, damages for willful breach	Fraud or willful breach	A material breach that is a consequence of an act or failure to act undertaken with actual knowledge, or knowledge that a Person acting reasonably under the circumstances should have, that such party's act or failure to act would, or would reasonably be expected to, result in or constitute a breach.
Western Refining, Inc./Northern Tier Energy LP	Full specific performance; no RBF, damages for willful breach	Fraud or willful misconduct	None

Notes:

See the footnotes in *Table A* for descriptions of deal-specific remedies.

The "Definition of Willfulness for Post-Termination Liability" column summarizes the merger agreement's definition of willfulness in agreements where the buyer remains liable post-termination for willful breach, either where the buyer pays no reverse break-up fee at all or the reverse break-up fee does not cap the buyer's damages for willful breach. If the agreement caps the buyer's damages with the payment of a fee, this column states "None" for the definition of willfulness, even if the agreement does define the concept of willful breach for other purposes (such as the target company's liability for breach).

Table E: Public Mergers with Antitrust-Triggered Reverse Break-Up Fees

Deals with a Reverse Break-Up Fee of 6% or more

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Expedia, Inc./Orbitz Worldwide, Inc.	Services	\$1,600 million	\$115 million (7.19%)	No	Expedia's assets: Not specified Orbitz's assets: No obligation if MAE	Yes, with no express limitations
Apollo Global Management/OM Group, Inc. ^A	Manufacturing and machinery	\$1,000 million	\$62.7 million (6.27%)	No	No obligation	No obligation
Gaming and Leisure Properties, Inc./Pinnacle Entertainment, Inc.	Travel and leisure	\$2,072 million	\$150 million (7.24%)	No	Specified divestiture obligations Divestiture cap	Yes, with no express limitations
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	Telecommunications	\$207.161 million	\$8.8 million (4.23%) or \$25 million (12.02%). The reverse break-up fee also includes an expense reimbursement for up to \$2.5 million for all fees, costs, and expenses incurred by NTELOS in connection with the transaction.	No	No obligation if materially adverse	Yes, with no express limitations
ON Semiconductor Corporation/Fairchild Semiconductor International Inc.	Computer and electronic equipment	\$2,400 million	\$180 million (7.50%)	No	ON Semiconductor's assets: Divestiture cap Fairchild Semiconductor's assets: No obligation if MAE	Yes, with no express limitations

Deals with a Reverse Break-Up Fee of 4% Up to 6%

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
R.R. Donnelley & Sons Company/ Courier Corporation	Media and entertainment	\$261 million	\$12 million (4.60%)	No	Divestiture cap	Yes, with no express limitations
Centene Corporation/Health Net, Inc.	Medical devices and healthcare	\$6,149 million	\$250 million (4.07%)	No	No obligation if burdensome	Yes, with no express limitations
Celgene Corporation/ Receptos, Inc.	Pharmaceuticals and biotechnology	\$7,200 million	\$400 million (5.56%) ^B	No	Celgene's assets: No obligation Receptos' assets: Not specified	No obligation
Shenandoah Telecommunications Company/NTELOS Holdings Corp.	Telecommunications	\$207.161 million	\$8.8 million (4.23%) or \$25 million (12.02%). The reverse break-up fee also includes an expense reimbursement for up to \$2.5 million for all fees, costs, and expenses incurred by NTELOS in connection with the transaction.	No	No obligation if materially adverse	Yes, with no express limitations
Emera Inc./TECO Energy, Inc.	Utilities	\$6,500 million	\$326.9 million (5.02%)	Yes	Unconditional	Yes, with no express limitations
SCA Americas Inc./Wausau Paper Corp.	Forestry and paper	\$513 million	\$26 million (5.07%)	No	No obligation	Yes, with no express limitations
Western Digital Corporation/ SanDisk Corporation	Computer and electronic equipment	\$19,000 million	\$1,060,420,000 (5.58%)	No	Western Digital's assets: No obligation SanDisk's assets: Divestiture cap	Yes, with no express limitations

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Duke Energy Corporation/ Piedmont Natural Gas Company, Inc.	Utilities	\$4,900 million	\$250 million (5.10%)	No	No obligation if burdensome No obligation if MAE	Yes, with no express limitations
Endologix, Inc./ TriVascular Technologies, Inc.	Medical devices and healthcare	\$211 million	\$9,495 million (4.50%)	No	No obligation	No obligation
Pamplona Capital Management LLP/ MedAssets, Inc. ^A	Computer and electronic equipment	\$2,700 million	\$117.213 million (4.34%)	No	Specified divestiture obligations	Yes, with no express limitations
Shire plc/Dyax Corp.	Pharmaceuticals and biotechnology	\$5,900 million ^C	\$280 million (4.75%)	No	Divestiture cap	Yes, with no express limitations

Deals with a Reverse Break-Up Fee of 3% Up to 4%

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Staples, Inc./ Office Depot, Inc.	Retailers	\$6,300 million	\$250 million (3.97%)	No	Staples' assets: No obligation Office Depot's US assets: Divestiture cap Office Depot's Non-US assets: No obligation if MAE	Yes, with no express limitations
Charter Communications, Inc./ Time Warner Cable Inc.	Telecommunications	\$56,700 million	\$2,000 million (3.53%)	No	No obligation if burdensome	Not specified

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Anthem, Inc./Cigna Corporation	Insurance	\$49,383 million	\$1,850 million (3.75%)	No	No obligation if MAE No obligation if burdensome	Yes, with no express limitations
TDK Corporation/Hutchinson Technology Incorporated	Computer and electronic equipment	\$126 million ^D	\$4.2 million (3.00%)	No	No obligation	No obligation
Snyder's-Lance, Inc./Diamond Foods, Inc.	Food and beverage	\$1,270 million	\$50 million (3.93%)	No	Snyder's-Lance's assets: No obligation Diamond Food's assets: Not specified	Yes, with no express limitations
Walgreens Boots Alliance, Inc./Rite Aid Corporation	Retailers	\$9,757.79 million	\$325 million (3.3%)	No	Divestiture cap	Yes, with no express limitations
L'Air Liquide, S.A./Airgas, Inc.	Chemicals	\$10,300 million	\$400 million (3.89%)	No	Divestiture cap	Yes, with no express limitations

Deals with a Reverse Break-Up Fee of Less than 3%

Parties (Buyer/Target)	Industry	Equity Value	Reverse Break-Up Fee and Fee as a % Of Equity Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Intel Corporation/ Altera Corporation	Computer and electronic equipment	\$16,700 million	\$500 million (2.99%)	No	No obligation	Yes, with no express limitations
SummitView Capital and eTown MemTek Ltd and Hua Capital and Huaqing Jiye Investment Management Co., Ltd./Integrated Silicon Solution, Inc. ^A	Computer and electronic equipment	\$639.5 million initially; \$764 million as amended	\$9,585,545 (1.50%) or \$19,171,090 (3.00%) initially; \$19,171,090 (2.50%) as amended	No	Taiwan: Specified divestiture obligations Other approvals: No obligation	Not specified
Cox Automotive, Inc./Dealertrack Technologies, Inc.	Computer and electronic equipment	\$4,000 million	\$118 million (2.95%)	No	Divestiture cap	Yes, with no express limitations
Aetna Inc./Humana Inc.	Insurance	\$37,000 million	\$1,000 million (2.70%)	No	No obligation if MAE	Yes, with express limitations ^E
Energy Transfer Equity, L.P./ The Williams Companies, Inc.	Oil and gas	\$32,712.49 million	\$410 million (1.25%) ^F	No	Energy Transfer Equity's assets: Unconditional The Williams Companies' assets: Specified divestiture obligations	Yes, with no express limitations

Notes:

^A Financial buyer.

^B In addition, at Receptos' election, Receptos will receive a loan of up to \$350 million upon payment of the reverse break-up fee.

^C The value does not include \$646 million in contingent value rights.

^D The value does not include up to \$14 million in additional consideration depending on Hutchinson Technology Incorporated's net cash before closing.

^E Aetna must litigate unless it would reasonably be expected to have a material adverse effect on the financial condition, business revenue, or EBITDA of either party and its subsidiaries.

^F If Energy Transfer Equity fails to promptly pay the reverse break-up fee, and The Williams Companies initiates a lawsuit resulting in a judgment against Energy Transfer Equity for payment of that fee, there is an expense reimbursement of up to \$100 million of The Williams Companies' costs and expenses.

Table F: Private Acquisitions with Antitrust-Triggered Reverse Break-Up Fees

Deals with a Reverse Break-Up Fee of 6% or more

Parties (Buyer/Seller)	Industry	Consideration; Deal Type	Deal Value	Reverse Break-Up Fee and Fee as a % of Deal Value	Hell or High Water ProvisiON	Obligation to Divest	Obligation to Litigate
Endo International plc/Par Pharmaceutical Holdings, Inc.	Pharmaceuticals and biotechnology	Cash and stock; merger	\$8,050 million ^A	\$750 million (9.32%)	Yes	Unconditional	Yes, with no express limitations
CVS Pharmacy, Inc./Target Corporation	Retailers	Cash; asset acquisition	\$1,890 million	\$150 million (7.94%)	No	CVS Pharmacy's assets: Specified divestiture obligations Target Corporation's assets: Specified divestiture obligations	Yes, with express limitations ^B
McGraw Hill Financial, Inc./SNL Financial LC	Banking and financial services	Cash; merger	\$2,225 million	\$133.5 million (6%)	No	Specified divestiture obligations	Yes, with no express limitations
Sensata Technologies Holding N.V./ Custom Sensors & Technologies, Inc.	Computer and electronic equipment	Cash; asset and equity acquisition	\$1,000 million	\$55 million (5.5%) or, if Sensata extends the drop-dead date, \$80 million (8%)	No	No obligation	No obligation
Ecolab Inc./ Swisher Hygiene Inc.	Consumer goods	Cash; asset and stock acquisition	\$40 million	\$3 million (7.5%) ^C	No	No obligation	Not specified
B&G Foods, Inc./ General Mills, Inc.	Food and beverage	Cash; asset acquisition	\$765 million	\$57.375 million (7.5%)	Yes	Unconditional	Yes, with no express limitations
Intercontinental Exchange, Inc./ Trayport, Inc. and GFI TP Ltd.	Banking and financial services	Cash/stock election; equity acquisition	\$650 million	\$75 million (11.54%) ^D	No	Intercontinental Exchange assets: No obligation Trayport's assets: Divestiture cap	No obligation

Deals with a Reverse Break-Up Fee of 4% Up to 6%

Parties (Buyer/Seller)	Industry	Consideration; Deal Type	Deal Value	Reverse Break-Up Fee and Fee as a % of Deal Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Springleaf Holdings, Inc./ OneMain Financial Holdings, Inc. ^E	Banking and financial services	Cash; stock acquisition	\$4,250 million	\$212.5 million (5%)	No	Specified divestiture obligation	Yes, with express limitations ^F
Select Medical Corporation and Welsh, Carson, Anderson & Stowe XII, L.P./Concentra Inc. ^E	Medical devices and healthcare	Cash; stock acquisition	\$1,055 million	\$60 million (5.69%)	Yes	Unconditional	Yes, with no express limitations
Stamps.com Inc./ PSI Systems, Inc. d/b/a Endicia	Services	Cash; stock acquisition	\$215 million	\$10.75 million (5%)	No	No obligation	Yes, with no express limitations
Builders FirstSource, Inc./ ProBuild Holdings LLC	Construction and materials	Cash; equity acquisition	\$1,625 million	\$81.25 million (5%)	No	No obligation if materially adverse	Yes, with no express limitations
Matthews International Corporation/ Aurora Casket Company	Consumer goods	Cash; equity acquisition	\$214 million ^G	\$10 million (4.67%)	No	No obligation if burdensome	Yes, with no express limitations
HealthSouth Corporation/ Reliant Hospital Partners, LLC	Medical devices and healthcare	Cash; asset and equity acquisition	\$730 million	\$40 million (5.48%)	No	No obligation	Not specified
Jarden Corporation/ Waddington Group, Inc.	Consumer goods	Cash; merger	\$1,350 million	\$54 million (4%)	No	No obligation	Not specified

Parties (Buyer/Seller)	Industry	Consideration; Deal Type	Deal Value	Reverse Break-Up Fee and Fee as a % of Deal Value	Hell or High Water ProvisiON	Obligation to Divest	Obligation to Litigate
Sensata Technologies Holding N.V./ Custom Sensors & Technologies, Inc.	Computer and electronic equipment	Cash; asset and equity acquisition	\$1,000 million	\$55 million (5.5%) or, if Sensata extends the drop-dead date, \$80 million (8%)	No	No obligation	No obligation
NeuStar, Inc./ Transaction Network Services, Inc.	Services	Cash; asset acquisition	\$220 million	\$13 million (5.91%)	No	No obligation	Yes, with no express limitations
WEX Inc./ Electronic Funds Source LLC	Banking and financial services	Cash and stock; equity acquisition	\$1,470 million ^H	\$70 million (4.76%)	No	No obligation	Not specified
NeoGenomics, Inc./Clariant, Inc.	Medical devices and healthcare	Cash and stock; stock acquisition	\$275.2 million ^I	\$15 million (5.45%)	No	No obligation	Yes, with express limitations ^J

Deals with a Reverse Break-Up Fee of 3% Up to 4%

Parties (Buyer/Seller)	Industry	Consideration; Deal Type	Deal Value	Reverse Break-Up Fee and Fee as a % of Deal Value	Hell or High Water ProvisiON	Obligation to Divest	Obligation to Litigate
Rite Aid Corporation/ Envision Topco Holdings, LLC	Medical devices and healthcare	Cash and stock; merger	\$2,000 million ^K	\$60 million (3%)	No	No obligation if MAE	Not specified
Berkshire Hills Bancorp, Inc./ Firestone Financial Corp.	Banking and financial services	Cash and stock; merger	\$53 million	\$2 million (3.77%)	No	No obligation if MAE	Yes, with no express limitations

Deals with a Reverse Break-Up Fee of Less than 3%

Parties (Buyer/Seller)	Industry	Consideration; Deal Type	Deal Value	Reverse Break-Up Fee and Fee as a % of Deal Value	Hell or High Water Provision	Obligation to Divest	Obligation to Litigate
Cardinal Health, Inc./Johnson & Johnson	Pharmaceuticals and biotechnology	Cash; asset and equity acquisition	\$1,944 million	\$38.88 million (2%)	No	No obligation if MAE	Not specified
Envision Healthcare Holdings, Inc./Rural/Metro Corporation	Services	Cash; merger	\$620 million	\$10 million (1.61%)	No	Not specified	Yes, with no express limitations
Gray Television Group, Inc./Schurz Communications, Inc.	Media and entertainment	Cash; asset acquisition	\$442.5 million	\$10 million (2.26%)	No	Not specified	Not specified

Notes:

^A The approximate deal value is based on the 10-day volume weighted average share price of Endo's common stock ending on May 15, 2015.

^B The parties must use best efforts to litigate up to the drop-dead date.

^C The reverse break-up fee is \$3 million minus Ecolab's reasonable, out-of-pocket expenses, if at the time of termination, Ecolab had the right to terminate the agreement because either party received a material production request, such as a Second Request, and the agreement was terminated by (i) Ecolab for failure to close by the drop-dead date solely due to a pending action by a governmental authority reviewing or investigating the deal and the parties cooperated or (ii) either party because of the issuance of a final non-appealable order under an antitrust law making the acquisition illegal or prohibited.

^D This fee includes \$25 million in cash and \$50 million in Intercontinental Exchange common stock, unless a specified fee has been paid in connection with Intercontinental Exchange's election to extend the drop-dead date, in which case the reverse break-up fee will be deemed paid at the time of termination.

^E Financial buyer.

^F Springleaf Holdings is obligated to litigate any request for divestiture of either party's assets that generated more than \$677 million in revenue for the year ended December 31, 2014 if Springleaf refuses to consent to that demand, unless the parties agree in writing that opposition to that request does not have a likelihood of success on the merits.

^G The deal value is subject to an additional earn-out payment.

^H The approximate deal value is based on the price of WEX's common stock on October 16, 2015.

^I The approximate deal value is based on the price of NeoGenomics, Inc.'s common stock on signing date and press release.

^J NeoGenomics Laboratories, Inc. is not obligated to agree to or to implement any divestiture of assets or operations, or any restraint on NeoGenomics Laboratories, Inc.'s, NeoGenomic's, Clariant's, Clariant Diagnostic Services, Inc.'s, or GE Medical Holding AB's operations.

^K The approximate deal value is based on the price of Rite Aid Corporation's common stock on the signing date.

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