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Public M&A Year in Review: Trends and Highlights from 2014

February 10, 2015

Presenter:

Daniel Rubin, *Practical Law Corporate and M&A*

About Practical Law

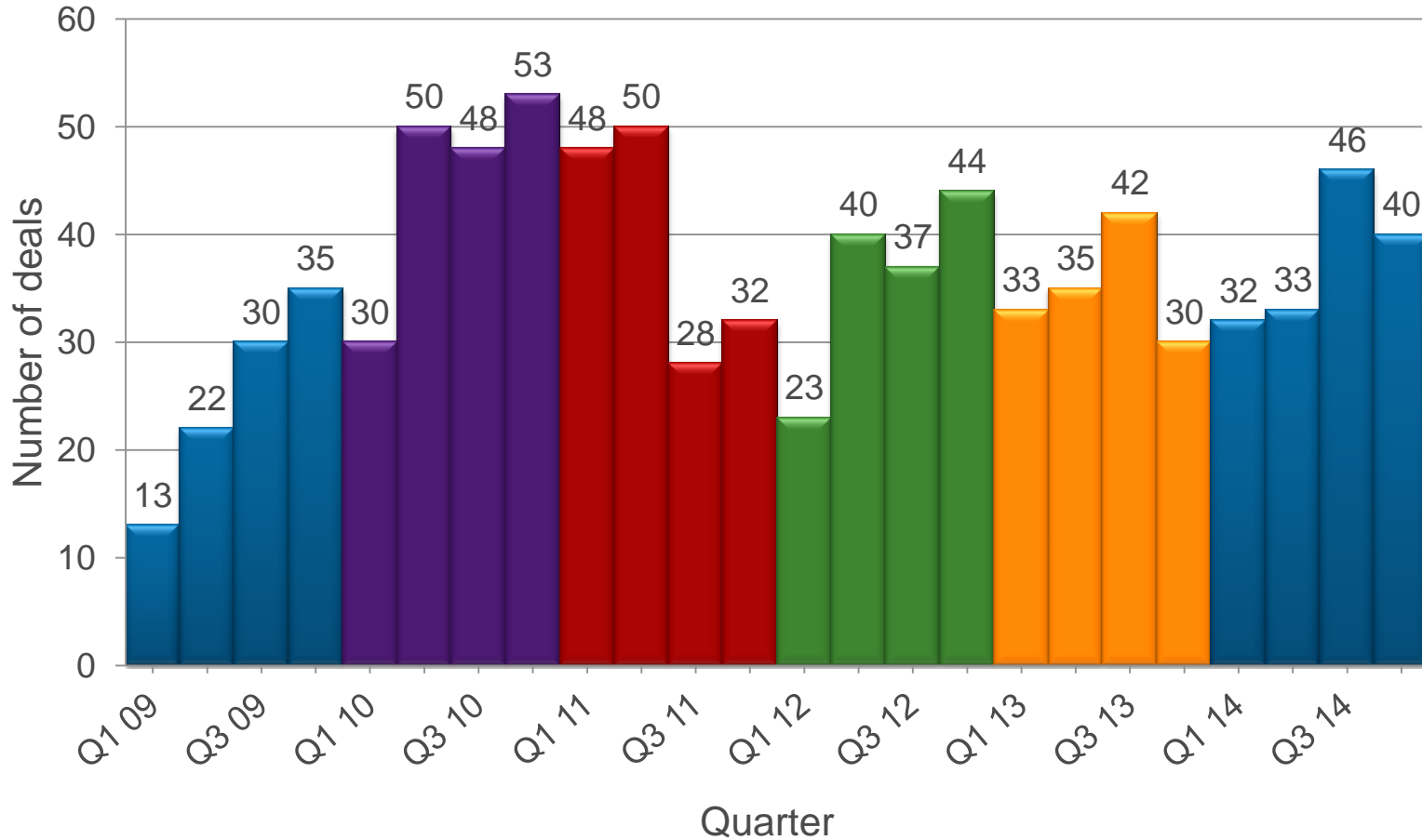
- Practical resources covering all major practice areas.
- Overviews, model documents, trend articles and more created by our expert attorneys.
- Dedicated areas for law firms and law departments.
- Practice centers for specialists
- What's Market for public and private merger agreements, spin-offs and more.
- Updates on the latest legal and market developments.
- *Practical Law The Journal* magazine covering today's transactional and compliance topics as well as key issues and developments in litigation practice and procedure.

The screenshot shows the Practical Law website homepage. At the top, there is a navigation bar with 'US' and 'Change country' on the left, and 'Login' on the right. The main header features the 'Practical Law' logo with the tagline 'A THOMSON REUTERS LEGAL SOLUTION'. Below the logo are navigation links for 'Practice Areas', 'Resources', 'International', and 'My Practical Law'. A search bar is located below the navigation, with 'SEARCH IN All US' and a search icon. A dark blue banner below the search bar contains the text 'New to Practical Law? We offer lawyers a better place to start.' and a green button that says 'Sign Up for a Free Trial'. Below the banner, there is a testimonial section featuring a quote from Eric Lee, a Practical Law Intellectual Property & Technology expert, with a 'Read more' button and a photo of him. To the right of the testimonial is a 'What Are You Working On?' section with a 'Get Started Now' button. Below the testimonial is a 'Browse our Content' section with a list of practice areas: Antitrust, Arbitration: International, Bankruptcy, Capital Markets & Securities, Commercial, Corporate and M&A, Employee Benefits & Executive Compensation, Finance, Intellectual Property & Technology, Labor & Employment, Litigation: Federal, Real Estate, and Tax. To the right of the content list is a 'Testimonials' section featuring a quote from Alan Berkeley, a Partner at K&L Gates LLP, with a 'View More' button.

Global M&A Activity

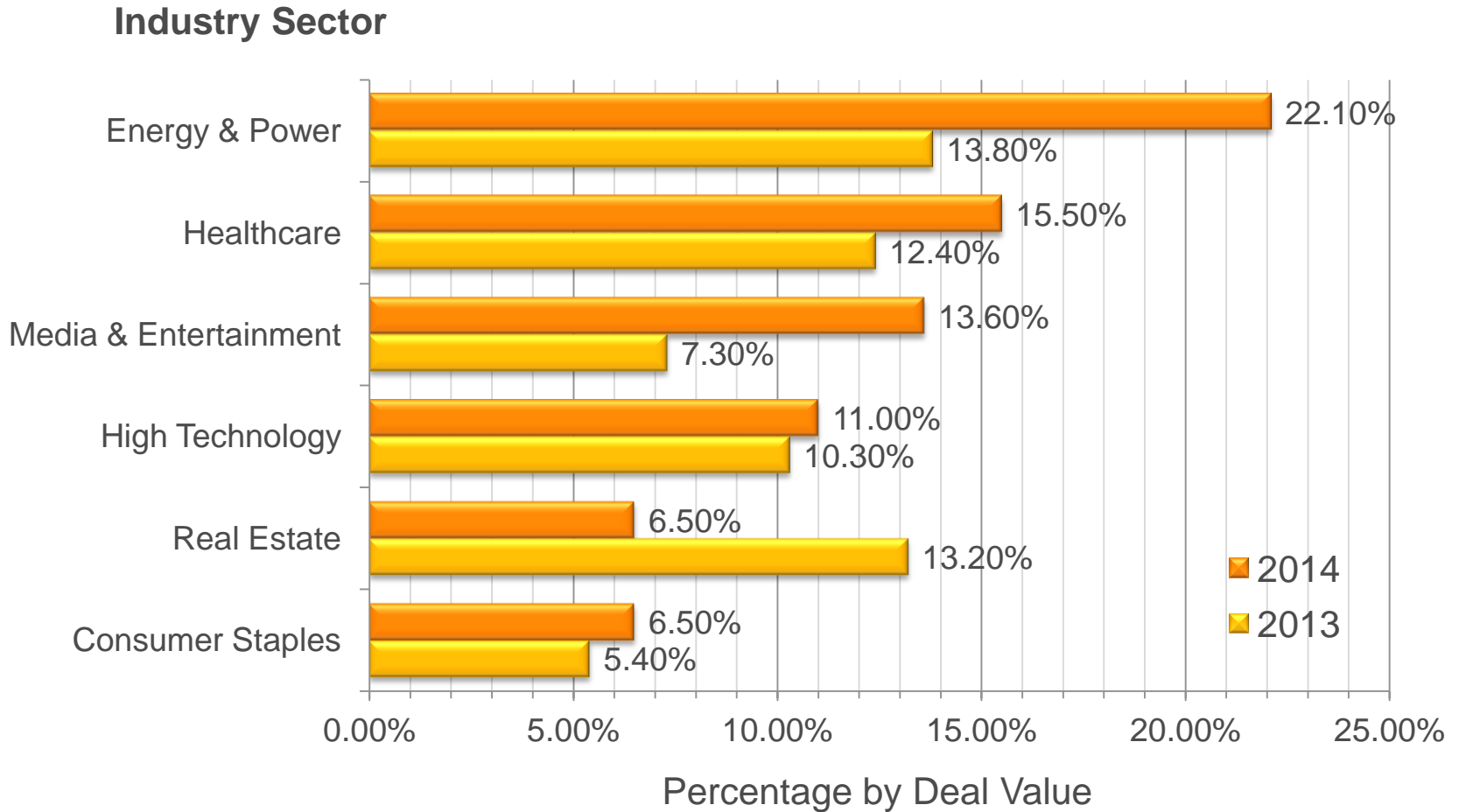
- Global and US public M&A rebounded dramatically in 2014.
- According to data provided by Thomson Reuters, worldwide M&A activity totaled \$3.5 trillion in 2014, an increase of 47% over 2013; the largest volume by dollar value since 2007.
- 95 deals worldwide with a value greater than \$5 billion announced during in 2014, more than double the value and number of large-cap deals announced in 2013.
- The rebound was also felt in the US, with 9,814 announced M&A deals for US-based target companies accruing a total of \$1.5 trillion in deal value in 2014, an increase of 51.5% over 2013.
- However, the overall surge in dollar value of total M&A activity and volume of high-profile deals was not felt in all corners of the deal economy.

US Public M&A Activity by Quarter



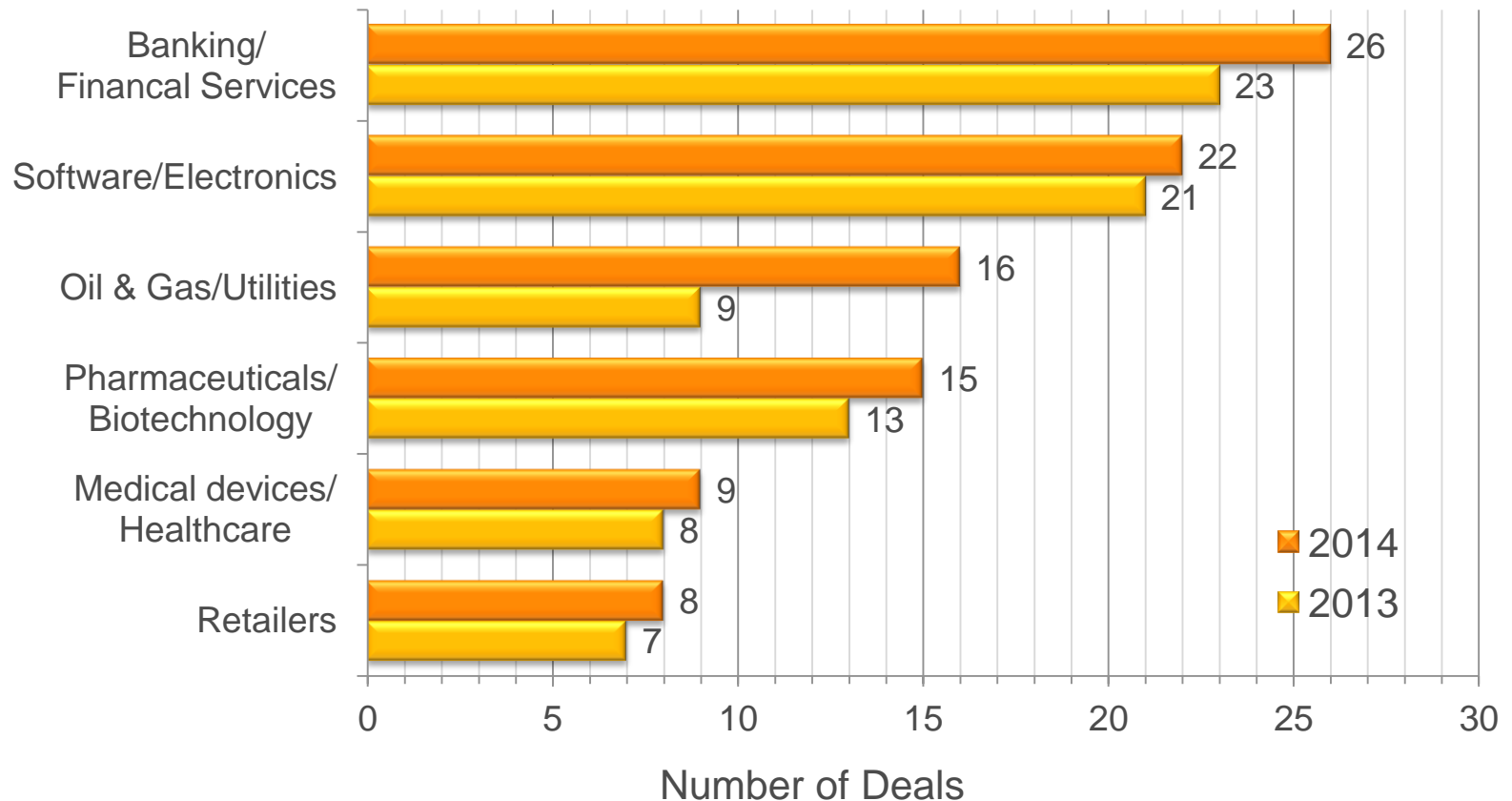
What's Market tracks acquisitions of US publicly traded companies valued over \$100 million.

Most Active Industries (US Target Announced M&A)



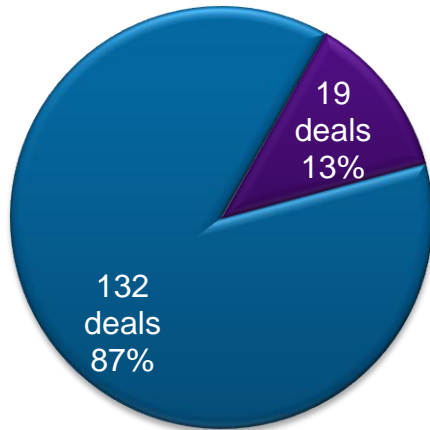
Most Active Industries (US Public Target, Signed Deals, >\$100M)

Industry Sector



Strategic vs. Financial Buyer Activity

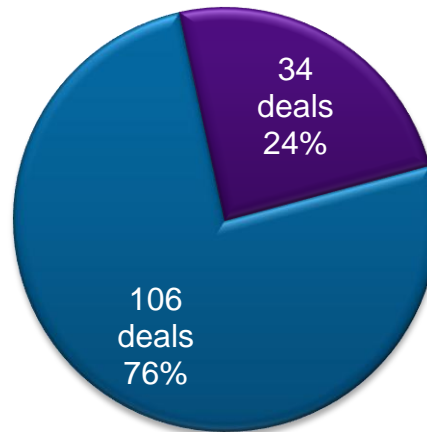
2014



151 Total Deals

34 deals (23%) were structured as front-end tender offers.

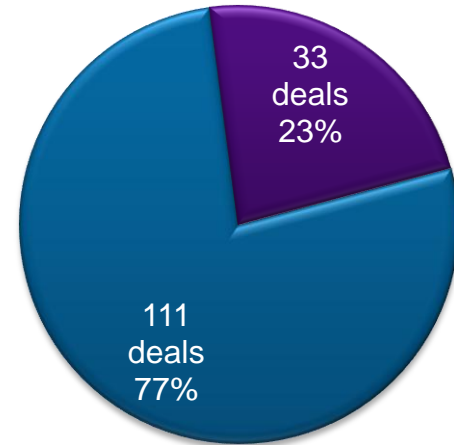
2013



140 Total Deals

36 deals (26%) were structured as front-end tender offers.

2012

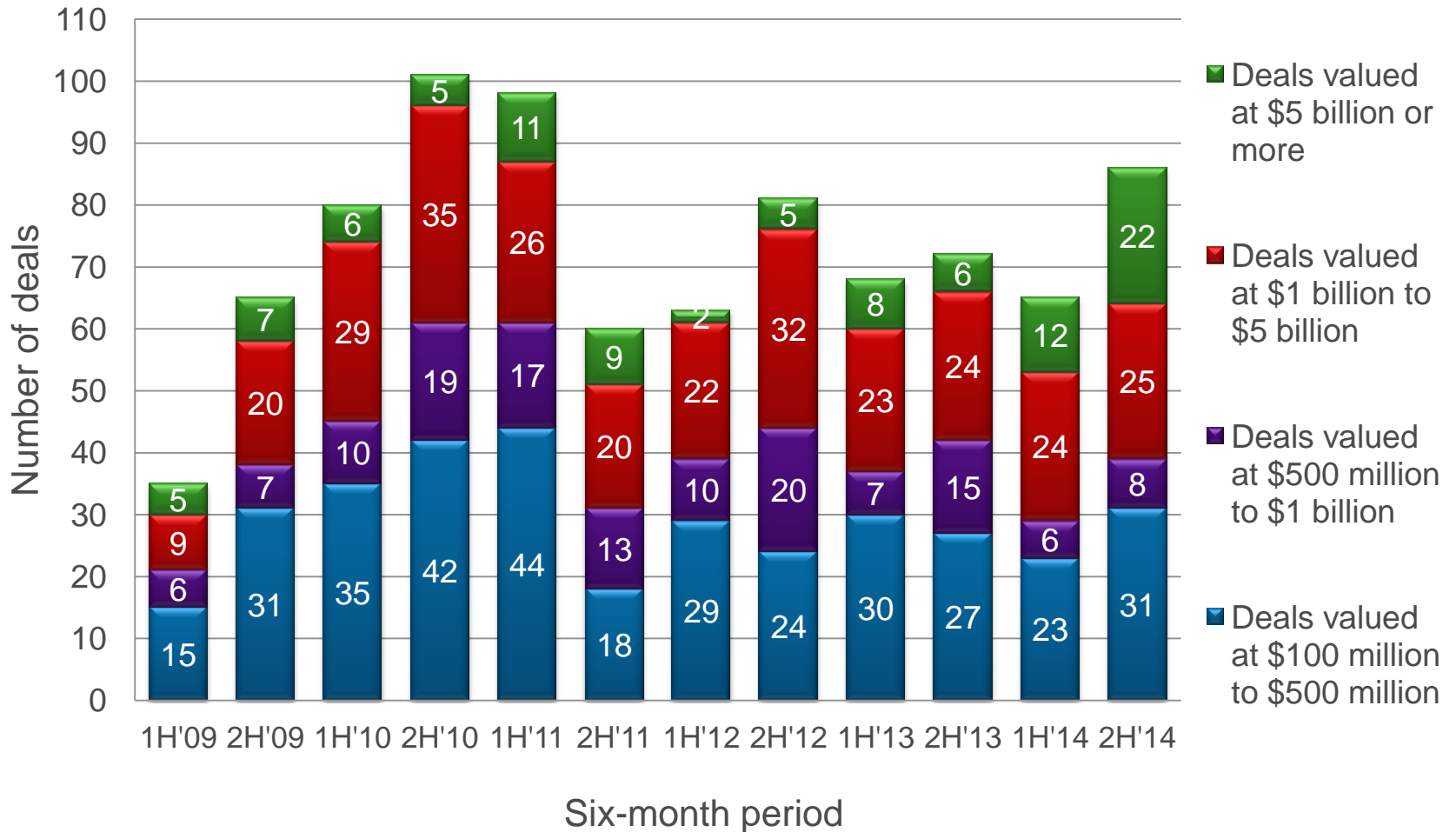


144 Total Deals

40 deals (28%) were structured as front-end tender offers.

■ Strategic ■ Financial

US Public M&A by Deal Value



Largest Strategic Deals

Acquiror/Target (<i>Signing Date</i>)	Industry	Deal Value	Consideration
Comcast Corporation/ Time Warner Cable Inc. (<i>February 12, 2014</i>)	Media and entertainment	\$70.7 billion	All stock
AT&T Inc./ DIRECTV (<i>May 18, 2014</i>)	Media and entertainment	\$67.2 billion	Cash and stock
Actavis plc/ Allergan, Inc. (<i>November 16, 2014</i>)	Pharmaceuticals and biotechnology	\$66.4 billion	Cash and stock
Kinder Morgan/ Kinder Morgan Energy Partners (<i>August 9, 2014</i>)	Oil and gas	\$58.6 billion	Cash/stock/mix election
Halliburton Company/ Baker Hughes Incorporated (<i>November 16, 2014</i>)	Oil and gas	\$38.5 billion	Cash and stock

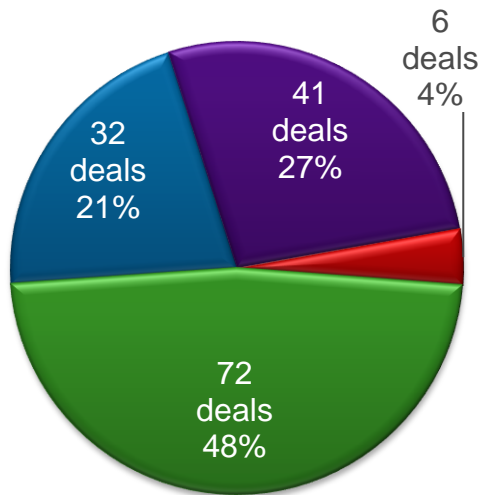
Of the 34 deals valued at over \$5 billion in 2014, 32 (94%) were with strategic buyers (not including Safeway).

Largest Financial Deals

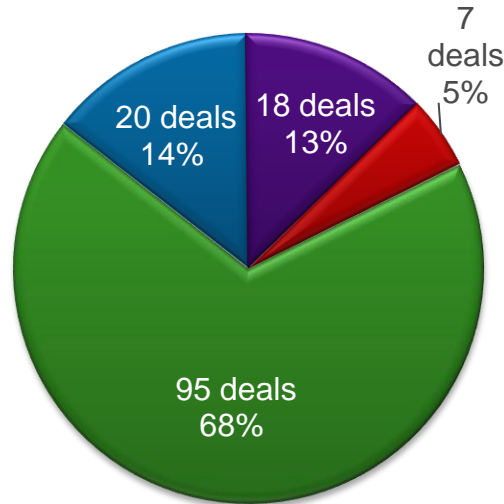
Acquiror/Target (<i>Signing Date</i>)	Industry	Deal Value	Consideration
Cerberus, Albertson's, Kimco Realty, Klaff Realty, Lubert-Adler Partners, Schottenstein Stores Corporation/ Safeway Inc. (<i>March 6, 2014</i>)	Retailers	\$9.4 billion (including certain spin-off proceeds)	All cash, plus additional spin-off distributions.
BC Partners, La Caisse (Quebec), StepStone, GIC (Singapore), Longview Asset Management/ PetSmart, Inc. merger (<i>December 14, 2014</i>)	Retailers	\$8.7 billion	All cash
Macquarie Infrastructure and Real Assets, British Columbia Investment Management, John Hancock Financial/ Cleco Corporation (<i>October 17, 2014</i>)	Utilities	\$4.7 billion	All cash
Vista Equity Partners/ TIBCO Software Inc. (<i>September 27, 2014</i>)	Computer and electronic equipment	\$4.0 billion	All cash
Thoma Bravo, LLC and Ontario Teachers' Pension Plan/ Riverbed Technology, Inc. (<i>December 14, 2014</i>)	Computer and electronic equipment	\$3.6 billion	All cash

Type of Consideration

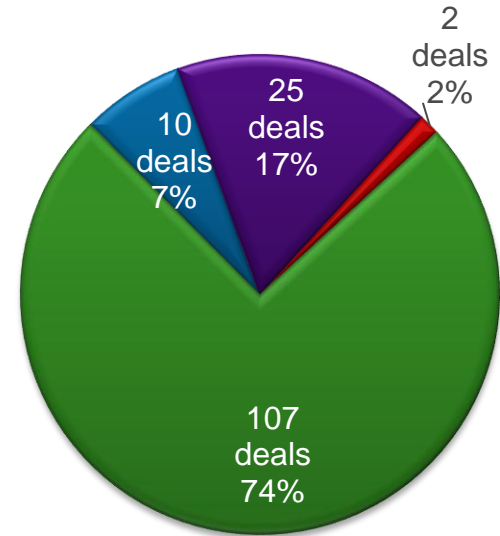
2014



2013



2012



■ All Stock

■ Cash and/or Stock

■ Contingent Value Rights

■ All Cash

151 Total Deals

140 Total Deals

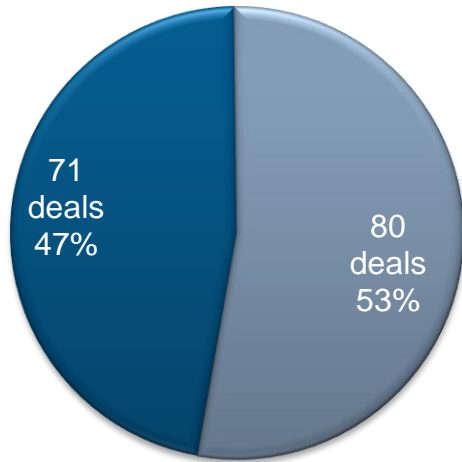
144 Total Deals

Pricing Collars

- Eleven deals signed in 2014 used a collar, compared to eight in 2013, four in 2012, none in 2011 and three in 2010:
 - Five of the 11 deals were all-stock; six were mixed-consideration.
 - Seven deals with fixed value and floating exchange ratio.
 - Three deals with a fixed exchange ratio.
 - One deal in which the cash portion of the merger consideration was subject to a 10% symmetrical collar.
- Most commonly seen in Banking and Financial Services industry sector:
 - Six of the 11 deals in 2014.
 - Fourteen of the 26 deals with pricing collars since 2010.
 - Twelve of 19 since the beginning of 2013.
- In all deals with pricing collars in 2014 that have closed, the buyer's stock price at closing was within the negotiated range.

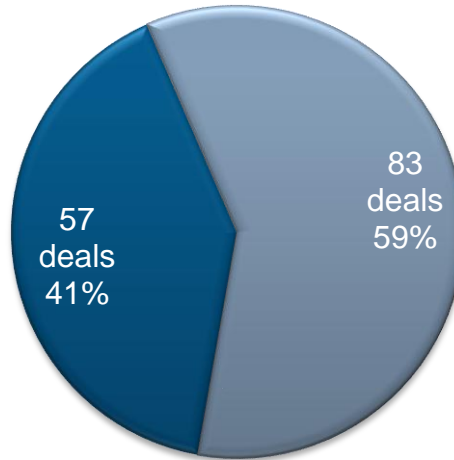
Leveraged vs. Unleveraged Transactions

2014



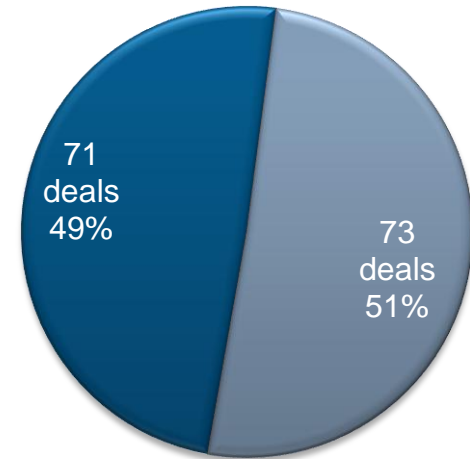
151 Total Deals

2013



140 Total Deals

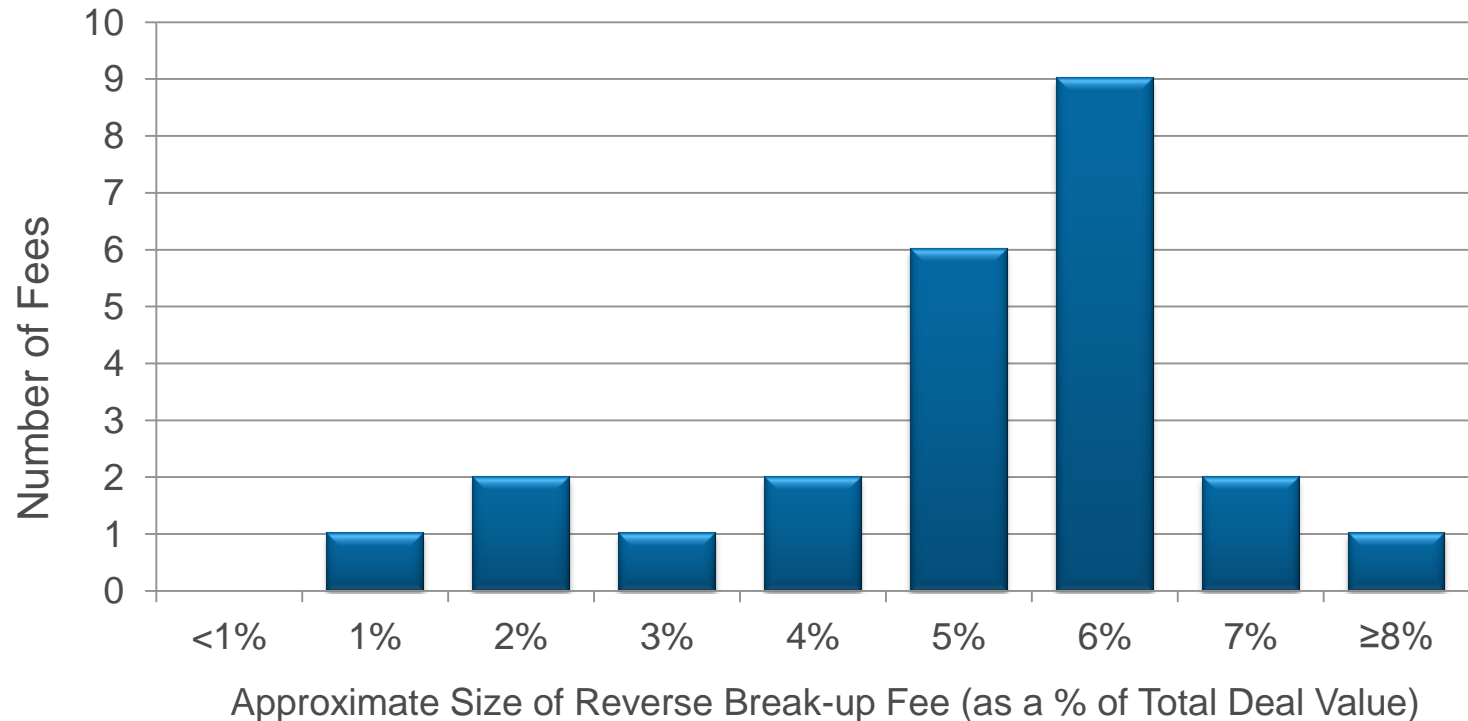
2012



144 Total Deals

■ Debt ■ Non-debt

Reverse Break-up Fees in Debt-financed Deals



- Only 24 deals (34% of all leveraged deals in 2014) were structured to have a reverse break-up fee payable for a financing failure or other material breach by the buyer or failure to otherwise close the deal (not including for antitrust failure or fiduciary triggers). Compare 68% in 2013.
- 12 leveraged deals (50% of leveraged deals in 2014) contained this type of reverse break-up fee priced at 6% or more of the total deal value.

The Rise and Fall of Inversions

- Inversions through mergers allow US companies to redomicile in countries with low corporate tax rates.
- Inversions helped boost cross-border M&A volume, which surged to \$1.3 trillion in 2014, a 78% increase over 2013. Cross-border M&A accounted for 37% of total global deal activity, up from 31% in 2013.
- Notable inversion deals involving US targets in 2014 included:
 - Nabors Industries Ltd. and **C&J Energy Services, Inc.** Reverse Morris Trust deal (pending).
 - QLT Inc. and **Auxilium Pharmaceuticals, Inc.**'s merger (terminated due to topping bid).
 - Actavis plc and **Forest Laboratories, Inc.**'s merger (closed).
 - **Burger King Worldwide Inc.**'s agreement to acquire Canadian fast-food chain Tim Hortons Inc. (closed).
 - **AbbVie Inc.**'s \$53.6 billion takeover of Shire plc (terminated due to new tax rules).
 - **Salix Pharmaceuticals, Ltd.**'s agreement to acquire Cosmo Technologies Limited (terminated due to new tax rules).
 - **Medtronic Inc.**'s acquisition of Covidien plc in a \$42.9 billion cash-and-stock deal (closed).
 - **Mylan Inc.**'s purchase of Abbott Laboratories' generic drug business for \$5.3 billion in stock (pending, with amendments).
- In September 2014, the Treasury Department and Internal Revenue Service announced new rules aimed at reducing the financial benefits of tax inversions for US companies.

Shareholder Activism

- Thomson Reuters: Shareholder activism campaigns decreased for the second consecutive year.
 - 177 campaigns in 2014; 241 in 2013; 345 in 2012.
 - Same trend among companies >\$10B: 16 campaigns in 2014; 21 in 2013; 22 in 2012.
- However, 2014 saw higher success rates compared to 2013, with a larger percentage of outright victories (32% vs. 27%), partial victories (13% vs. 10%) and settlements (30% vs. 7%), according to data provided by Thomson Reuters.
- The most targeted sector in 2014 was “Cyclical Consumer Goods & Services,” which comprised 22% of the market, followed by Technology with a 17% share and both Industrials and Finance, each with 14% of market share.

TOP US ACTIVISM CAMPAIGNS BY TARGET SIZE

Target Name (<i>Announcement Date</i>)	Activist Name	Target Market Cap	Demand	Status
Amgen Inc. (<i>October 21, 2014</i>)	Third Point LLC	\$116.31B	Spin-off	Pending
eBay Inc. (<i>January 22, 2014</i>)	Icahn Partners LP	\$68.36B	Spin-off; board representation	Dissident victory
DuPont (<i>September 17, 2014</i>)	Triam Fund Management LP	\$64.42B	Spin-off/Break-up	Pending
Allergan Inc. (<i>May 19, 2014</i>)	Pershing Square Capital Mgmt	\$62.37B	Hostile acquisition	White-Knight transaction
EMC Corp. (<i>July 21, 2014</i>)	Elliott Management	\$58.36B	Spin-off/Break-up	Pending
The Dow Chemical Co. (<i>January 21, 2014</i>)	Third Point LLC	\$51.23B	Spin-off	Withdrawn
Yahoo! Inc. (<i>September 26, 2014</i>)	Starboard Value LP	\$46.62B	Merger; Spin-off	Dissident victory

Shareholder Activism and Hostile M&A

- Notable activist campaigns in 2014 that spurred M&A deals included:
 - Jana Partners/PetSmart, Inc.
 - Elliott Management/Riverbed Technology, Inc.
 - Starboard Value/MeadWestvaco Corp.
- Notable topping-bid situations in 2014 included:
 - Dollar Tree, Inc./Family Dollar Stores, Inc./Dollar General Corporation (unsuccessful)
 - Chiquita Brands International, Inc./Fyffes plc /Cutrale Group & Safra Group (successful; inversion disrupted)
 - GFI Group Inc./ CME Group Inc./BGC Partners (?)
 - QLT Inc. /Auxilium Pharmaceuticals, Inc./Endo International plc (successful; inversion disrupted)
 - The Hillshire Brands Company (Pinnacle Foods Inc.)/Tyson Foods, Inc./Pilgrim's Pride Corporation (successful)

Spin-offs

- Spin-off transactions have become an increasingly popular tool for investors, boards and management to maximize enterprise value.
- In 2014, spin-offs became a far more common feature of the public M&A landscape than ever before. According to the What's Market spin-offs database, initial filings for 65 spin-offs of US public companies were made in 2014, compared to 31 in 2013.
- Notable spin-offs in 2014 included:
 - Hewlett-Packard Company's spin-off of its printing and personal systems businesses, HP Inc.
 - eBay Inc.'s spin-off of its PayPal business
 - Energizer Holdings, Inc.'s spin-off of its personal-care products businesses.

Trends for 2015

- Emphasis on process, avoiding conflicts—with less emphasis on running market checks?
- DGCL amendment on fee-shifting bylaws
- Appraisal litigation (early 2015 Chancery Court decisions pull in different directions)
- Financial investor/strategic buyer partnerships for hostile bids (or lack thereof)
- Inversions (or lack thereof)

What We Talked About Last Year

- Tender offers and DGCL Section 251(h)
 - 2014: Further, clarifying amendments to the statute. 34 deals (23%) structured as front-end tender offers.
 - 36 deals (26%) in 2013 structured as front-end tender offers.
- Contingent Value Rights
 - 2013: seven out of 140 (5%).
 - 2014: six out of 151 (4%).
- Go-shops
 - 13 deals in 2014. 8.6% of total.
 - 7 with financial buyers (including “Safeway” deal), 6 with strategic buyers.
 - 4.5% of deals with strategic buyers.

What We Talked About Last Year

- Reverse break-up fees for antitrust failure
 - 19 deals in 2014. 14 in 2013, 15 in 2012.
 - Signet Jewelers/Zale: 7.74%
 - Halliburton/Baker Hughes: 10.12%
 - TTM Technologies/Viasystems Group: 10.87%
 - No ticking fees.

Questions

Relevant Practical Law Resources Available with a *Free Trial* to Practical Law

- Public Mergers: Overview
- Spin-offs: Overview
- Appraisal Rights

About the Speaker

Daniel Rubin, Senior Legal Editor, *Practical Law Corporate and M&A*

Daniel joined Practical Law from O'Melveny & Myers LLP, where he was counsel in the M&A group. Previously he was a corporate associate at Fried, Frank, Harris, Shriver & Jacobson LLP.