

## SUMMARY

# UPDATING DISCLOSURE SCHEDULES: MARKET TRENDS

### *Updating Disclosure Schedules: Market Trends*

- The 2023 ABA M&A Committee's Private Target Deal Points Study looked at how often parties allow updates to a seller's disclosure schedules between signing and closing.
  - The study found that in 2022 and the first quarter of 2023:
    - Updates were expressly permitted or required in 14% of deals;
    - Updates were expressly prohibited in 5% of deals; and
    - The remaining 81% of deals were silent on the point.
- Over the years, the number of deals allowing updates has been consistently less than half.
  - 14% in 2022 to 2023;
  - 24% in 2020 to 2021;
  - 31% in 2018 to 2019; and
  - 28% in 2016 to 2017.
- Of the deals that permitted or required updates in the latest study, there was a decrease in those that allowed updates for information occurring both pre- and post-signing, from 62% in the 2021 study to 60% in the 2023 study.
- The buyer had a right to close and seek indemnification for updated matters in 67% of the deals that permitted or required updates.
  - This marks a significant decrease from the last study, where it was 90%.
- The buyer's right to terminate the agreement was not affected by updated disclosure in 80% of the deals in the 2023 study.
  - In 20% of the deals, the buyer could terminate because of the disclosure, but only within a specific time period.

The rest of the video includes interviews with ABA M&A Committee members John F. Clifford from McMillan LLP and Ann Beth Stebbins from Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates.