

## SUMMARY

# UPDATING DISCLOSURE SCHEDULES: MARKET TRENDS

### *Updating Disclosure Schedules: Market Trends*

- The 2021 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 2020 and the first quarter of 2021:
    - Updates were expressly permitted or required in 24% of deals;
    - Updates were expressly prohibited in 5% of deals; and
    - The remaining 72% of deals were silent on the point.
- The number of deals allowing updates has been consistently less than half.
  - For example, in the 2018 to 2019 study, this number was 31%, and in 2016 to 2017 it was 28%.
- Of the deals that permitted or required updates in the latest study, there was an increase in those that allowed updates for information occurring both pre- and post-signing, from 51% in the 2019 study to 62% in the 2021 study.
- The buyer had a right to close and seek indemnification for updated matters in 90% of the deals that permitted or required updates.
  - There’s been a steady increase in that number—from 37% of deals in 2014, to 54% in 2016 to 2017, and 64% in 2018 to 2019.
- The buyer’s right to terminate the agreement was not affected by updated disclosure in 62% of the deals in the 2021 study.
  - In 24% of the deals, the buyer could terminate because of the disclosure, but only within a specific time period.
  - In 14%, the buyer had no right to terminate because of the new disclosure.

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.