

MERGERS & ACQUISITIONS

Dealmaker's Digest

A Top 10 Bulletin

February 2024

ROPES & GRAY



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

GLOBAL M&A ACTIVITY

BLOCKBUSTER DEALS

CROSSBORDER ACTIVITY

ACTIVE INDUSTRIES

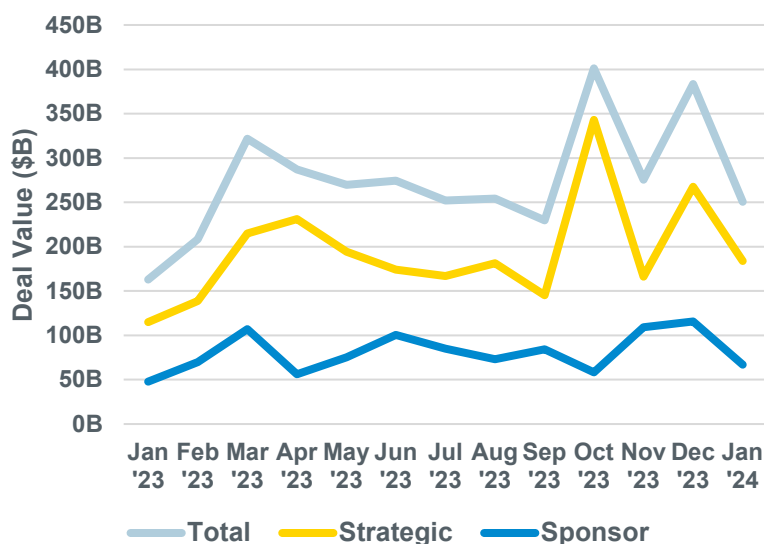
REGULATORY UPDATE

LOST-PREMIUM PROVISIONS

GLOBAL M&A ACTIVITY UPDATE

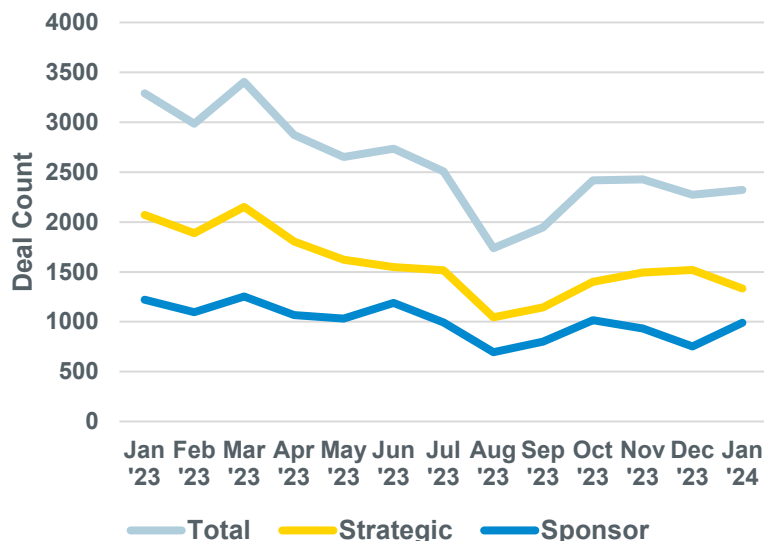
1 Deal Value Trends

- ↓ Aggregate value of global transactions¹ declined in January, down 35% from December. Despite the month-over-month slowdown, M&A value in the first month of 2024 exceeded January 2023 deal value by 54%.
- ↓ Transactions involving strategic buyers in January declined 31% from December 2023 but surpassed January 2023 strategic deal value by 60%.
- ↓ Financial, or sponsor, buyer transactions registered \$67 billion in January, a 42% decrease from December 2023. Compared with January 2023, sponsor buyer value increased 39%.



2 Deal Count Trends

- ↑ Despite the decline in global transaction value, global deal count in January edged up 2% from December. Compared with January 2023, deal count decreased by 29%.
- ↓ Strategic buyer deal count in January declined by 12% from the prior month, halting the upward trend in monthly deal count that began in August 2023.
- ↑ Sponsor buyer deal count in January increased 32% from December. Compared with January 2023, the number of sponsor buyer deals fell 19%.



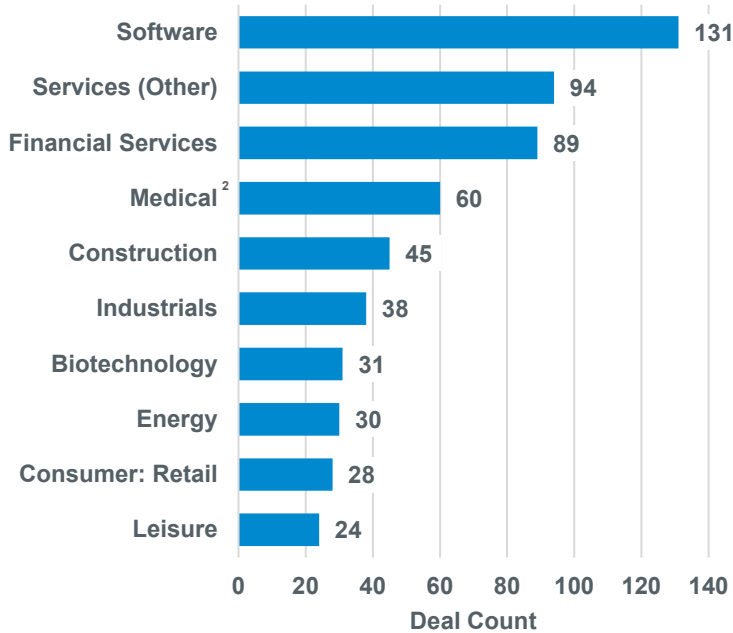
¹ Unless otherwise noted, charts compiled using Mergermarket data for January 2024 as of February 5, 2024. Aggregate deal values by dollar amount are calculated from the subset of deals with disclosed values.

ACTIVE M&A INDUSTRIES (U.S. TARGETS)

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By Deal Count

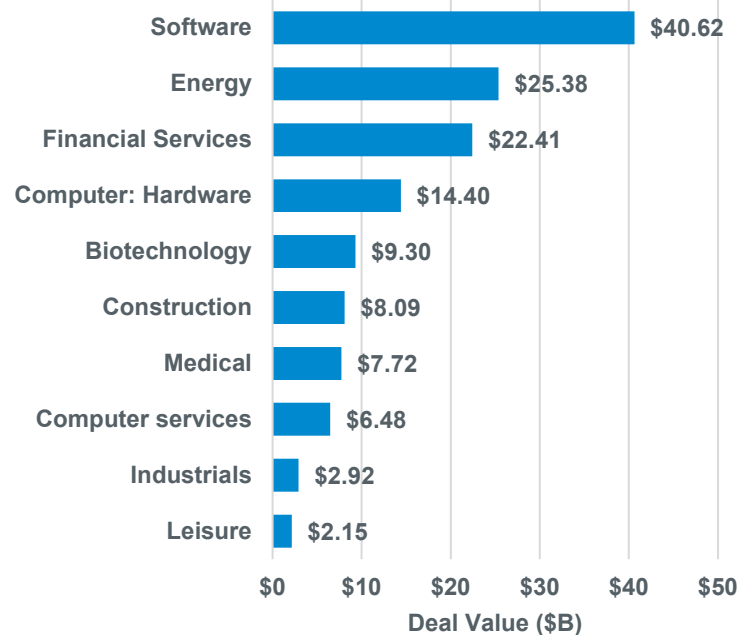
- The software industry once again topped the list of U.S. M&A activity by deal count in January, continuing its streak as the leading industry by volume.
- Services-based industries continue to dominate as well, with financial and other services rounding out the top three sectors in January.



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By Deal Value

- The software industry was also the most active by deal value in January. Acquisitions of targets in the energy sector remain a top driver of U.S. M&A activity, with more than \$25 billion aggregate value during January.
- The biotechnology industry, which has been among the top three industries by value since October, slid to fifth place in January.



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Blockbuster Deals

Largest
U.S.
Technology
Deal

SYNOPSYS
agreed to acquire **Ansys**
for a mixture of cash and
stock consideration valued at
\$33.85 billion.

BlackRock

agreed to acquire



for a mixture of cash and stock
consideration valued at

\$12.51 billion.

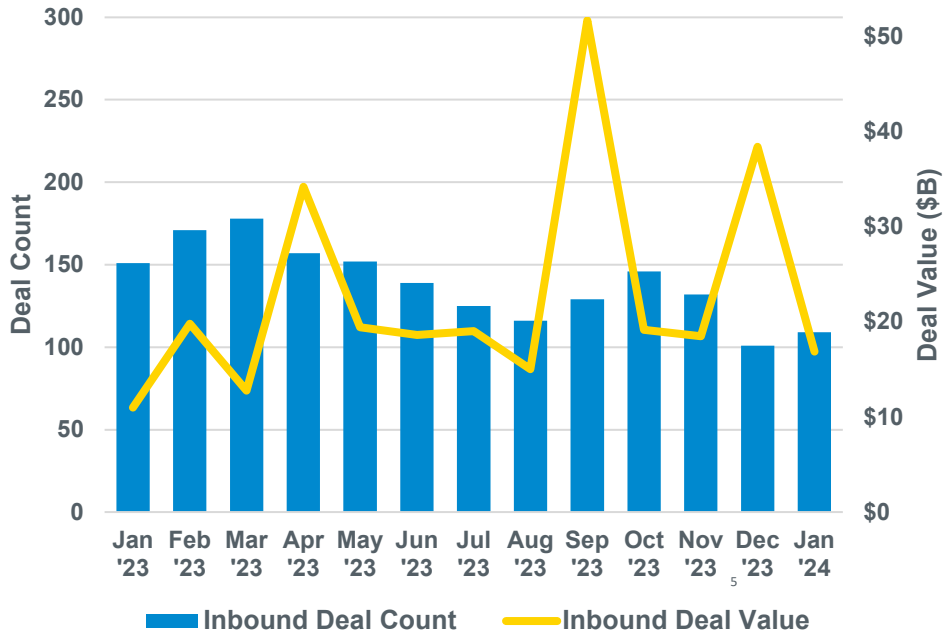
Largest
U.S.
**Financial
Services**
Deal

² Medical industry classification principally includes medical devices/services, excluding biotech and pharmaceutical deals.

CROSSBORDER CORNER

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Inbound U.S. M&A Activity

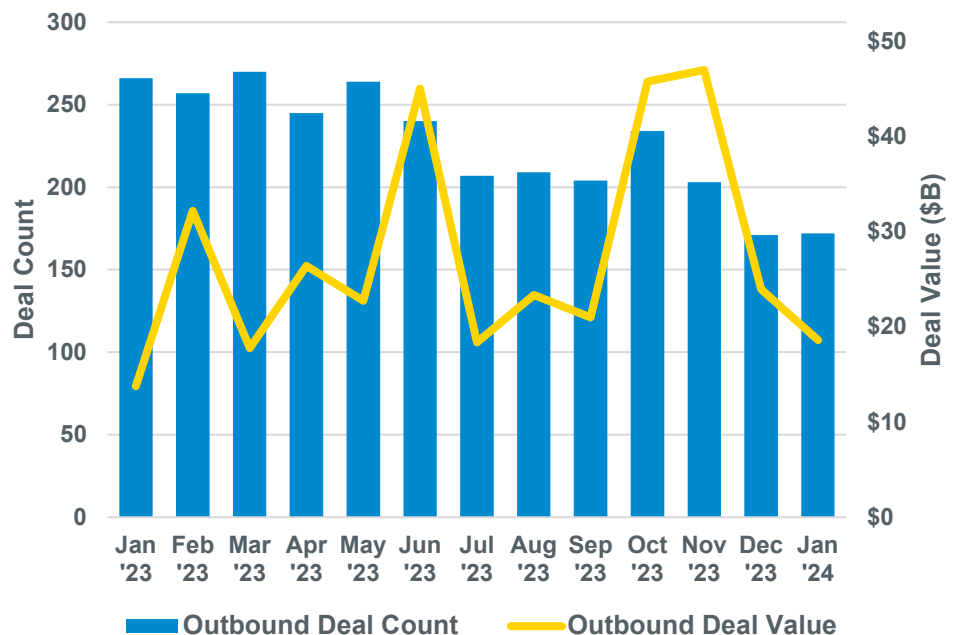


- Acquisitions of U.S. targets by non-U.S. acquirers increased by deal count (8%) from December to January.
- By deal value, inbound U.S. activity decreased 56% from December to January.
- Canada-based acquirers led the most inbound deals in January (with 23 transactions), followed by UK (12) and Japan (10).
- Inbound deal value spikes in September and December were driven by a spate of \$10 billion+ acquisitions in the manufacturing and energy sectors.

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Outbound U.S. M&A Activity

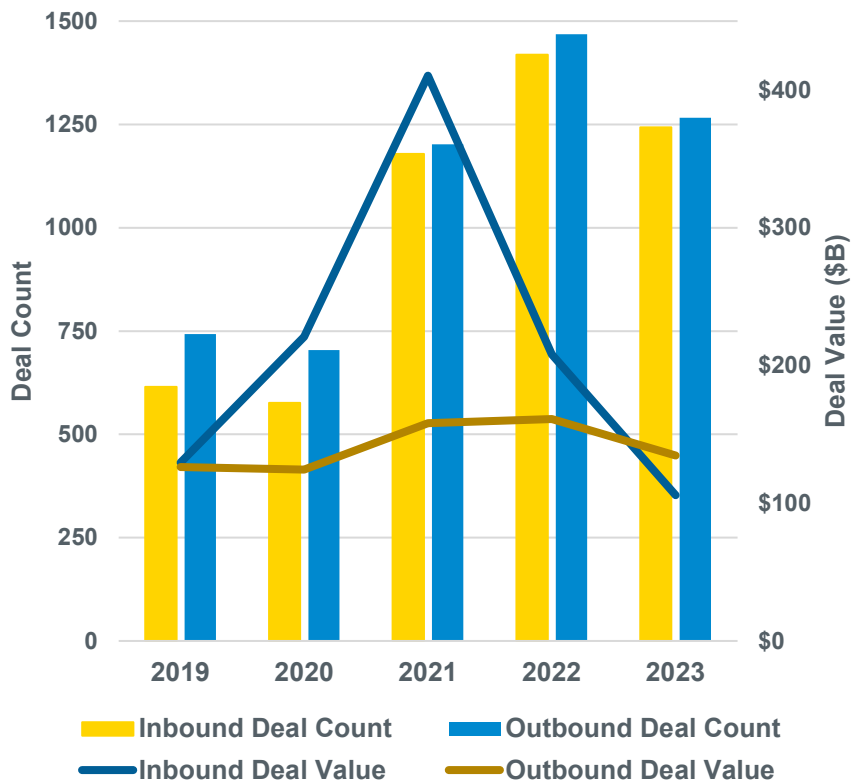
- By deal count, acquisitions of ex-U.S. targets by U.S. buyers remained steady from December (171 deals) to January (172 deals).
- By deal value, outbound activity decreased 22% from December to January.
- U.S. acquirers most frequently looked to targets in the UK during January (at 43 transactions), with Canada (24) and Germany (12) rounding out the top three ex-U.S. target countries.



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UK Spotlight

- 2023 inbound UK M&A activity declined 12% from 2022 by deal count, and declined significantly by deal value, down 49% year-over-year. Among the past five years, 2023 was the only year in which outbound transactions exceeded inbound transactions by value.
- UK outbound activity in 2023 also fell short of 2022 deal count by 13%. By deal value, outbound UK transactions in 2023 declined 16% from 2022.
- UK acquirers in 2023 most frequently looked to targets in the U.S. by a wide margin (254 outbound transactions), followed by Ireland (99) and Germany (92).
- During 2023, UK companies were most frequently acquired by U.S. buyers by a wide margin (541 inbound transactions), trailed by France (84). Acquirers from Sweden and Germany tied for third with 58 transactions each.



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Regulatory Update: Special Purpose Acquisition Companies ("SPACs")

- While the SPAC boom may have passed, the Securities and Exchange Commission ("SEC") continues to clarify its regulatory approach. On January 24, 2024, the SEC adopted final [rules](#) and issued guidance addressing SPAC initial public offerings ("SPAC IPOs") as well as business combinations between SPACs and target companies ("de-SPACs"). The rules will become effective 125 days after publication in the *Federal Register*.
- For SPAC IPOs, the final rules are substantively similar to rules previously proposed by the SEC and are broadly consistent with recent market practice. The rules will require additional disclosure in SPAC IPO registration statements, including information regarding the SPAC sponsor, controlling persons, lock-up agreements and conflicts of interest between SPAC sponsors and public investors.
- The rules also mandate additional disclosure in de-SPAC registration statements. Among other changes, the rules will require information with respect to: compensation to be paid to the SPAC sponsor, its affiliates and any promoters; any agreements regarding the redemption of SPAC shares; and reasons for engaging in the de-SPAC, its proposed structure and timing.
- The rules also change the requirements with respect to projections (for both SPAC IPOs and de-SPACs) and provide guidance on underwriter liability and Investment Company Act status, among other updates.
- Ropes & Gray recently published a Client Alert regarding the final rules, available [here](#).

- In late October, the Delaware Court of Chancery narrowed the ability of targets to deploy “lost-premium provisions” (“LPPs”), which specify that a breaching buyer’s liability would include the premium that would have been paid by the buyer had the deal closed.
- The court determined³ that a stockholder must be considered a third-party beneficiary for purposes of the LPP for the provision to be enforceable in Delaware.
- Deal parties are reluctant to confer third-party beneficiary status upon stockholders for several reasons, including buyers’ unwillingness to face individual stockholder claims and targets’ interests in retaining control over deal-related litigation strategies.
- We analyzed 57 U.S. public-target acquisitions⁴ that have been announced in the three months following the decision to determine the degree and manner in which parties have adopted LPPs, post-*Crispo*.
- Among these deals, **28%** included some form of an LPP, providing targets the right to pursue damages for lost economic benefits to stockholders in broken deals.
 - In comparison, a study of public target deals that closed in 2021 by the American Bar Association found that **23%** of transactions included a similar provision.
 - The consistency (and slight increase) in the adoption of LPPs following *Crispo* is notable, demonstrating the importance of the provision even in the face of uncertain enforcement mechanisms.

Although recently adopted LPPs do not differ significantly from those typically adopted prior to *Crispo*, we note several key takeaways below.

Third-Party Beneficiary Provisions

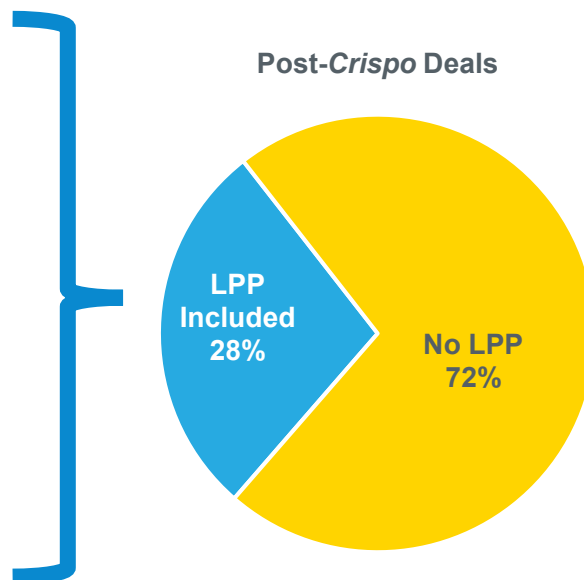
- Nearly all (15/16) recently adopted LPPs were included in the provision regarding third-party beneficiaries, which is not the case for the subject agreement in *Crispo*.
- More than one-third (6/16) explicitly confer third-party beneficiary status upon stockholders for purposes of the LPP, often limited “to the extent required for [the LPP] to be enforceable.”

Enforcement

- All (16/16) limit enforcement of the LPP to the target company “on behalf of” or “as agent for” its stockholders.
- Most (12/16) specify that enforcement of the LPP is subject to the sole and absolute discretion of the target.

Charter Amendment

- In dicta, Chancellor McCormick questioned the ability of a company to unilaterally appoint itself as agent for stockholders in an acquisition agreement. A charter amendment – which the decision referenced by footnote – could address this agency issue.
- We identified one target that has publicly disclosed its intention to seek stockholder approval for a charter amendment in response to *Crispo*. The amendment would designate the company as the stockholders’ agent to pursue damages in connection with its merger agreement.



Whether these LPP approaches prove enforceable in Delaware remains to be seen.

Because specific performance is typically a target’s desired remedy in a busted deal – and *Crispo* precludes stockholders from seeking a claim for lost-premium damages while a target pursues specific performance – it may be some time before a Delaware court is positioned to revisit the issue.

About our M&A Practice

Ropes & Gray's award-winning M&A practice is regularly ranked among the world's leading practices by *Chambers*, *The Legal 500* and *U.S. News*, among others. With over 250 M&A attorneys located in the United States, Europe and Asia, our practice offers global scope and on-the-ground service where and when needed. In 2022-2023, Ropes & Gray navigated more than 600 M&A transactions with an aggregate deal value of \$340+ billion.

RECENT RECOGNITION

THE
AMERICAN LAWYER

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



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



Law360
Eight-time winner of "Private Equity Group of the Year"

Chambers
AND PARTNERS

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



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

DEPTH OF EXPERIENCE

600+

Signed transactions in 2022–2023

\$340b+

in total transaction value in 2022–2023

80+

Industries and sectors

Our Commitment

350+
Specialty-support lawyers

250+
M&A lawyers

150+
Years of practice history

14
Offices to support deals

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