

MERGERS & ACQUISITIONS

# Dealmaker's Digest

A Top 10 Bulletin

March 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

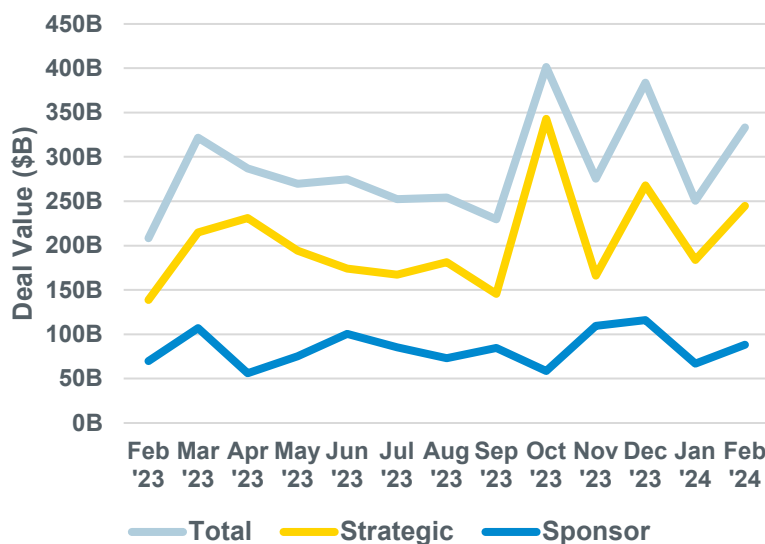
TRACKING EXCLUSIVITY

JUDICIAL DECISIONS

## GLOBAL M&A ACTIVITY UPDATE

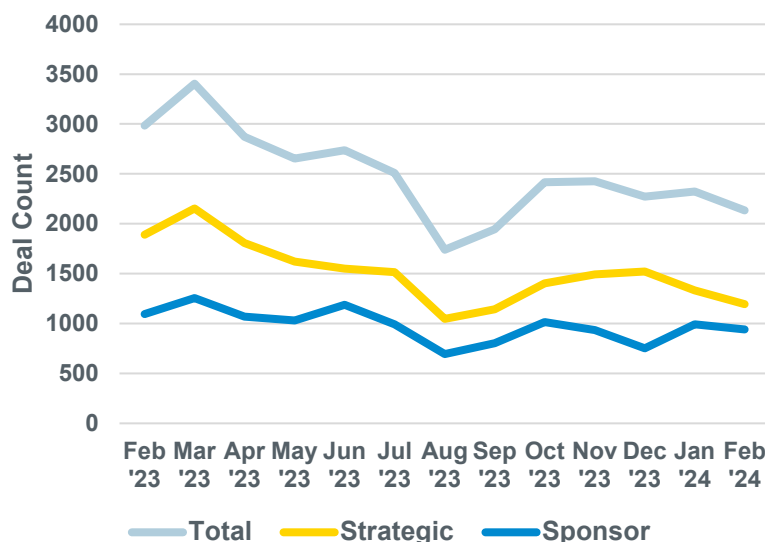
### 1 Deal Value Trends

- ↑ Aggregate global deal value<sup>1</sup> reached \$333 billion in February, up 33% from January and continuing a 6-month trend of month-over-month volatility. Deal value in February was up 60% year-over-year (vs. February 2023).
- ↑ Transactions involving strategic buyers in February increased 33% from January and were up 77% year-over-year (vs. February 2023).
- ↑ Financial, or sponsor, buyer transactions surpassed \$88 billion in February, a 32% increase from January. Deal value was up 27% year-over-year (vs. February 2023).



### 2 Deal Count Trends

- ↓ Global deal count in February decreased modestly (8%) from January. Compared with February 2023, deal count declined by 28%.
- ↓ Strategic buyer deal count in February declined by 10% from January and 37% compared with February 2023.
- ↓ Sponsor buyer deal count in February decreased 5% from January. Compared with February 2023, the number of sponsor buyer deals fell by 14%.



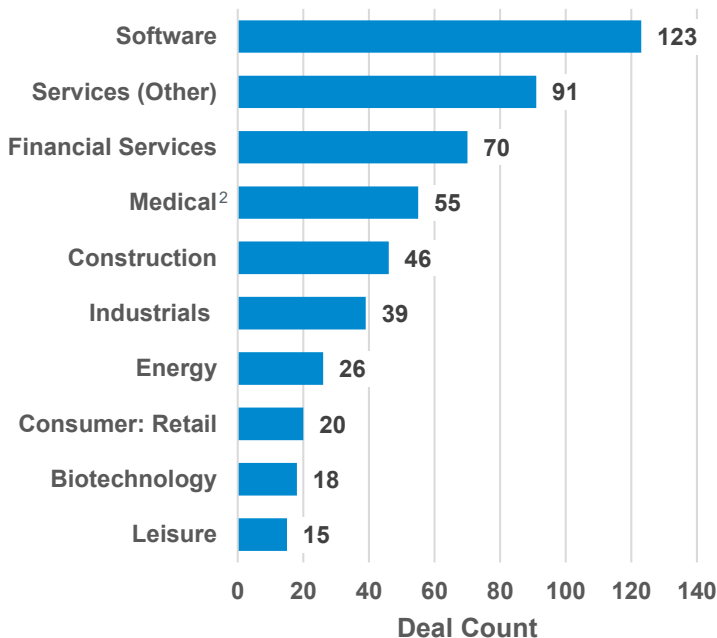
<sup>1</sup> Unless otherwise noted, charts compiled using Mergermarket data for February 2024 as of March 5, 2024. Aggregate deal values by dollar amount are calculated from the subset of deals with disclosed values.

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

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### By Deal Count

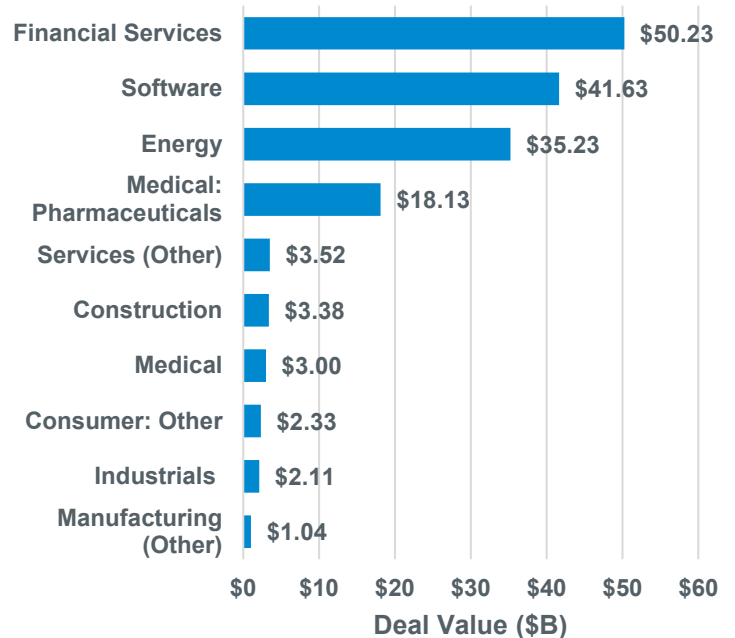
- The software industry once again topped the list of U.S. M&A activity by deal count in February, continuing its streak as the leading industry by volume.
- Services-based industries remain active, with financial and other professional services rounding out the top three sectors in February by deal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



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### By Deal Value

- The financial services industry topped the charts by deal value in February. Acquisitions of financial services targets represented two of the five largest deals for the month.
- The software and energy industries round out the top three sectors by value in February, surpassing \$41 billion and \$35 billion, respectively.



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### Blockbuster Deals

Largest  
Strategic  
Deal

**Capital One**  
agreed to acquire  
**DISCOVER** in an all-  
stock transaction with total  
equity value of approximately  
**\$35 billion.**

**Webull**

entered into a business

combination agreement with

**SK Growth Opportunities** in a de-SPAC

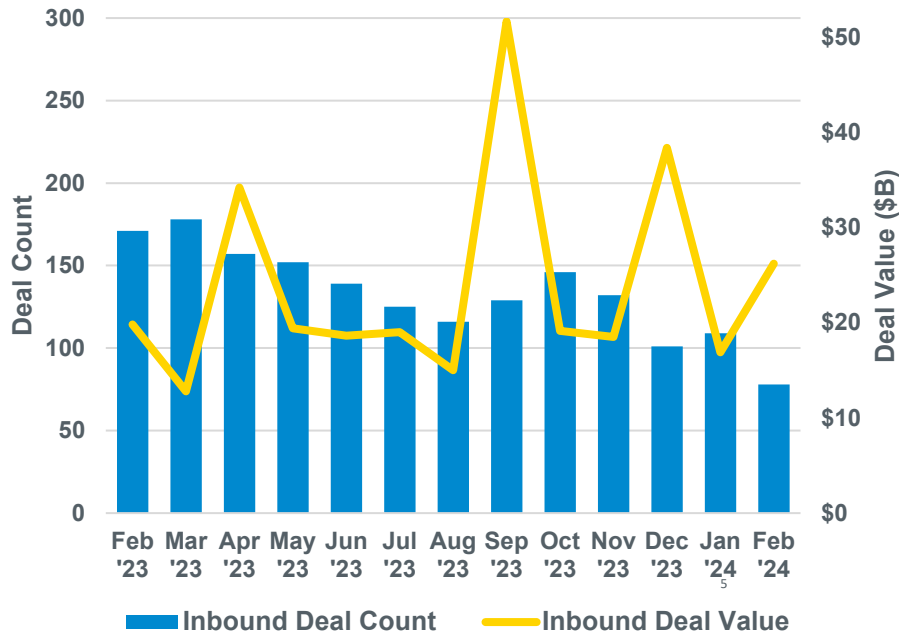
transaction with total equity value  
of approximately **\$7.7 billion.**

Largest  
de-SPAC  
Transaction

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

## CROSSBORDER CORNER

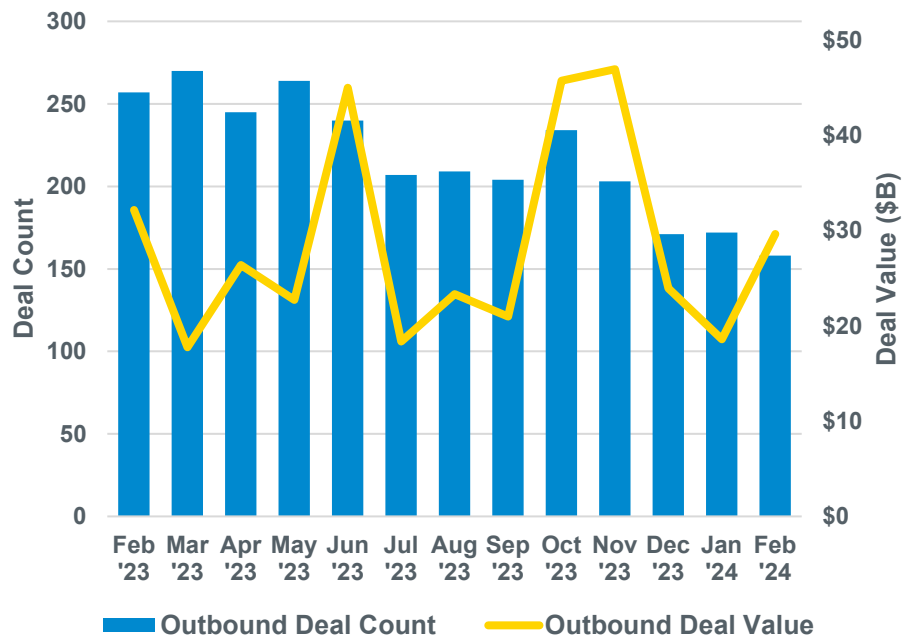
### 6 Inbound U.S. M&A Activity



- Acquisitions of U.S. targets by non-U.S. acquirers decreased 28% by deal count month-over-month. February's 78 inbound deals marked a 14-month low.
- By deal value, however, inbound U.S. activity increased to \$26 billion in February, up 55% from January.
- Canada-based acquirers led the most inbound deals in February (with 11 transactions), followed by the UK (10). Buyers in France, Germany, Japan and Switzerland each drove 6 inbound transactions.

### 7 Outbound U.S. M&A Activity

- By deal count, acquisitions of ex-U.S. targets by U.S. buyers dropped modestly (8%) from January to February.
- By deal value, outbound activity jumped 60% from January to February.
- U.S. acquirers most frequently looked to targets in the UK during February (at 35 transactions), with Germany (20) and Canada (18) rounding out the top three ex-U.S. target countries.





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## Tracking the Market: Exclusivity Becoming More Common in Public Deals

- Prospective buyers often request exclusivity when approaching a public target, but the adoption rate of exclusivity agreements in public deals historically has been low.
- While exclusivity agreements in public deals remain a minority practice, buyers are increasingly (successfully) negotiating for them.
- Among U.S. public deals (\$1 billion+), targets granted exclusivity to buyers in at least 13% of transactions during each of the past two years—a noticeable uptick from 2020 and 2021.
- The median length of exclusivity has also increased, rising from 10 days in 2020 to 15 days in 2023. Deals announced year-to-date continue the upward trend, with the median length nearly doubling to 28.5 days.



## Delaware Court of Chancery Update

The Court issued two noteworthy decisions in February that implicate longstanding market practices.

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### ***West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*<sup>4</sup>**

- Delaware Chancery Court invalidated several provisions in a stockholder agreement that granted a controlling stockholder numerous rights regarding the composition of the company's board and its committees, and to pre-approve certain board actions. The list of such actions was broad and encompassed "virtually everything the Board [could] do."
- The decision was rooted in Section 141(a) of the Delaware General Corporation Law (DGCL), which requires the "business and affairs" of a corporation to be managed by its board. The stockholder agreement's provisions were challenged for improperly ceding board control to the controlling stockholder.
- Moelis* may be appealed, and it is possible the Delaware legislature responds—particularly given the resulting market uncertainty around the validity of provisions that are often included in stockholder agreements with sponsors and other significant stockholders.

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### ***Sjunde AP-fonden v. Activision Blizzard, Inc., et al.*<sup>5</sup>**

- Delaware Chancery Court declined to dismiss claims that certain steps taken to obtain board and stockholder approval of a merger agreement did not comply with DGCL requirements.
- The approval processes at issue reflected common market practice. Chancellor McCormick interpreted applicable DGCL provisions strictly, including Section 251(b)'s requirement that a merging company's board approve an "agreement of merger."
- The defendant-board had approved a draft merger agreement that lacked several terms (largely designated by placeholder) and accompanying documentation—common approaches for practical and confidentiality purposes. The Court interpreted the statute to require, at bare minimum, an "essentially complete" version of the merger agreement, regardless of market practice.
- The decision applied a similarly strict reading of Section 251(c)'s requirements for notices to stockholders in connection with merger approvals.
- Pending further developments from the Delaware courts or legislature, practitioners are modifying practices to adhere to the decision's strict statutory interpretations.

<sup>3</sup> Chart compiled using Deal Point Data metrics as of March 10, 2024.

<sup>4</sup> C.A. No. 2023-0309-JTL (Del. Ch. Feb. 23, 2024).

<sup>5</sup> C.A. No. 2022-1001-KSJM (Del. Ch. Feb. 29, 2024).

## 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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