

MERGERS & ACQUISITIONS

Dealmaker's Digest

A Top 10 Bulletin

April 2024

ROPES & GRAY



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

GLOBAL M&A ACTIVITY

QUARTERLY REVIEW

BLOCKBUSTER DEALS

CROSSBORDER UPDATE

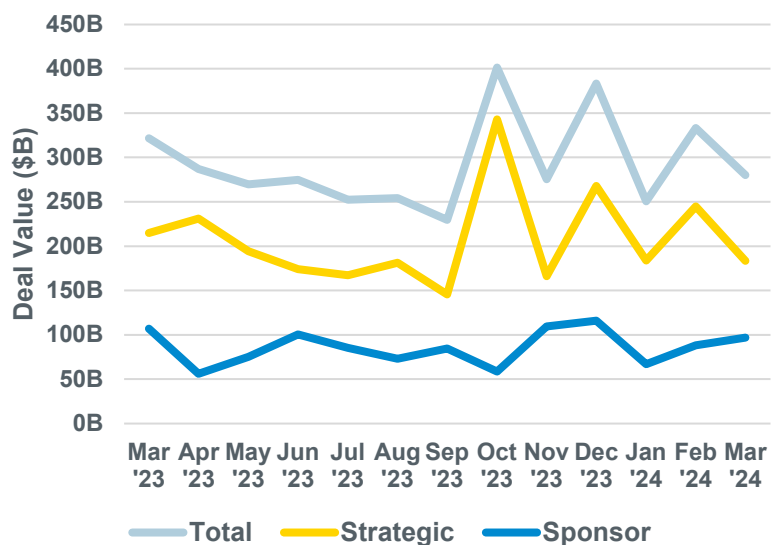
ACTIVE INDUSTRIES

DELAWARE DEVELOPMENTS

GLOBAL M&A ACTIVITY UPDATE

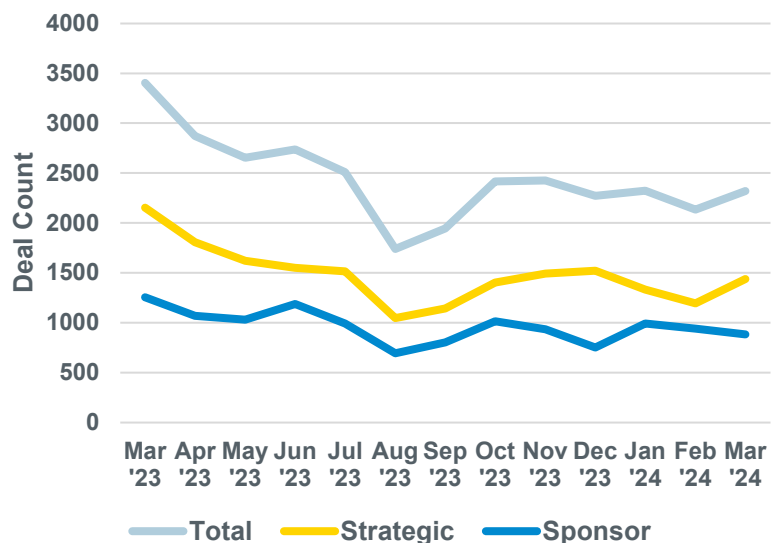
1 Monthly Deal Value Trends

- ↓ Aggregate global deal value¹ was \$280 billion in March, down 16% from February. Aggregate deal value fell 13% year-over-year (vs. March 2023).
- ↓ Transactions involving strategic buyers in March declined 25% from February and continued a 9-month streak of month-over-month volatility. Strategic deal value decreased 15% year-over-year (vs. March 2023).
- ↑ Financial, or sponsor, buyer transactions reached \$97 billion in March, up 10% from February. Compared with March 2023, sponsor deal value decreased 9%.



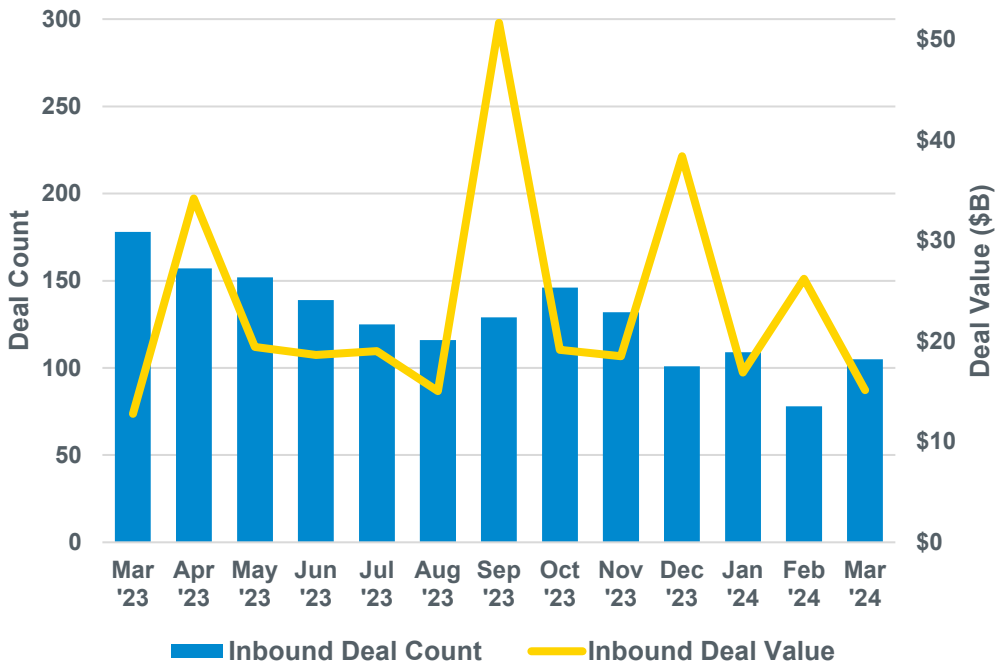
2 Monthly Deal Count Trends

- ↑ Global deal count in March increased 9% from February. Global monthly deal count has remained stable (varying by 10% or less) for 6 consecutive months.
- ↑ Strategic buyer deal count in March increased 20% from February but decreased 33% year-over-year (vs. March 2023, which was the most active month since 2022).
- ↓ Sponsor buyer deal count decreased modestly in March, down 6% from February. Compared with March 2023, the number of sponsor buyer deals fell by 30%.



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

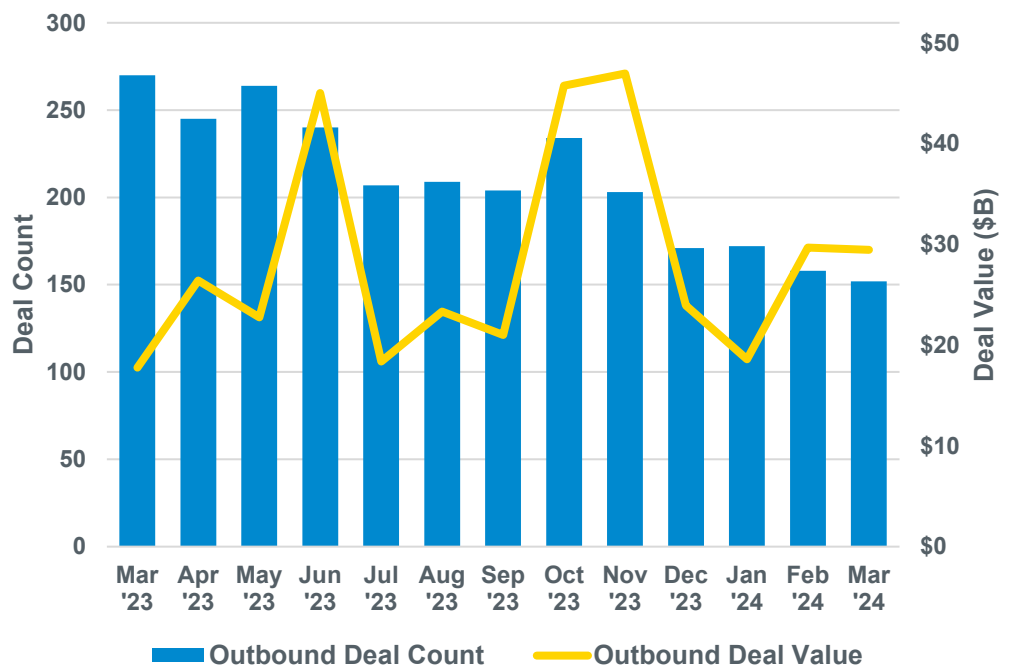
3 Inbound U.S. M&A Activity



- Acquisitions of U.S. targets by non-U.S. acquirers increased 35% by deal count month-over-month.
- By deal value, however, inbound U.S. activity in March decreased 42% from February, marking a 7-month low.
- UK-based acquirers led the most inbound deals in March (with 22 transactions), followed by Canada (17) and Japan (11).

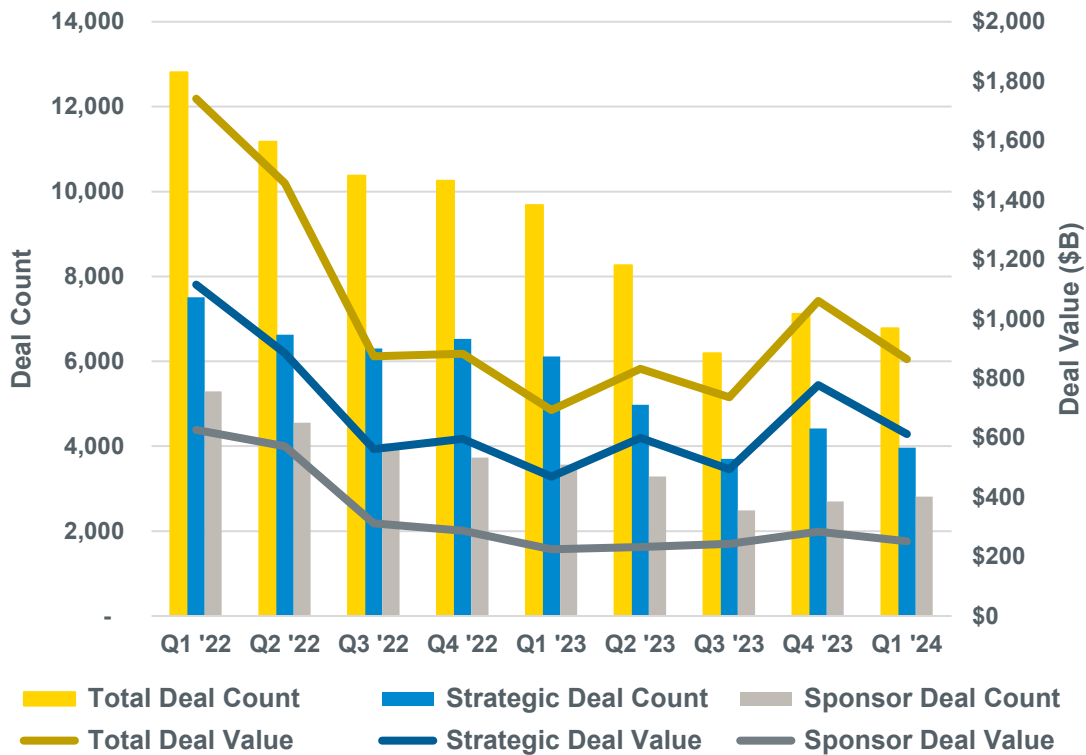
4 Outbound U.S. M&A Activity

- By deal count, acquisitions of ex-U.S. targets by U.S. buyers decreased modestly (4%) from February to March.
- By deal value, outbound activity remained steady from February to March, declining by 1%.
- U.S. acquirers most frequently looked to targets in the UK during March (at 28 transactions), with Canada (18) and Germany (14) rounding out the top three ex-U.S. target countries.



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Quarterly Global M&A Activity

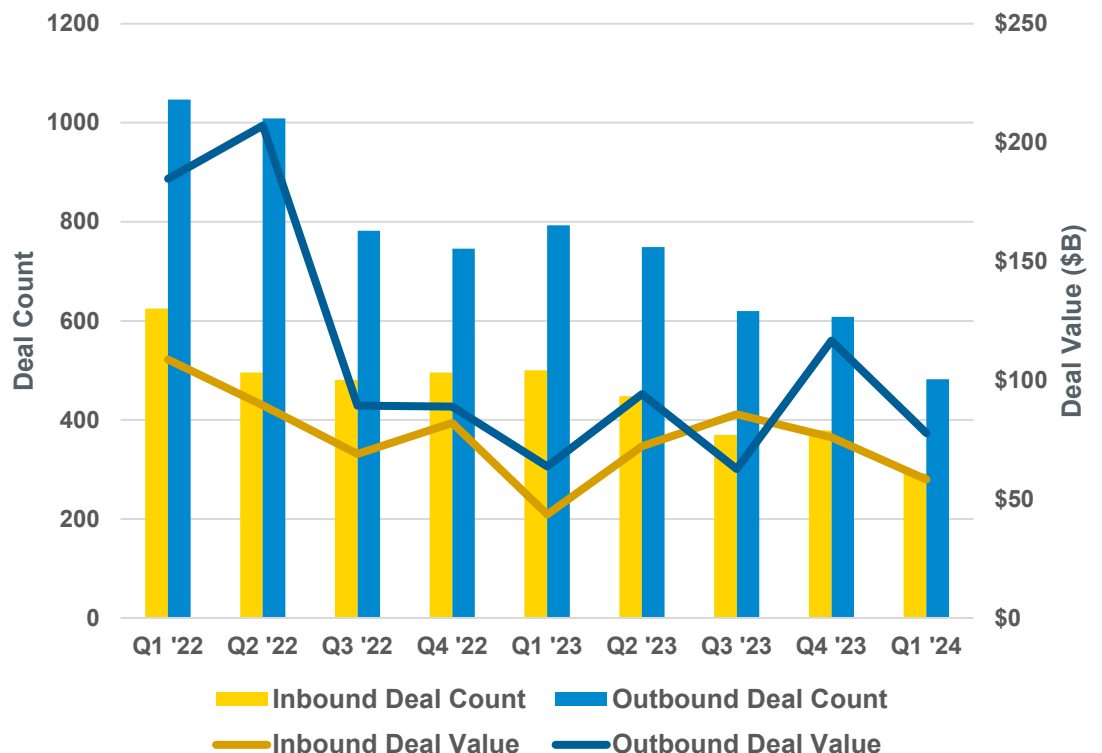


- After ramping up in Q4 2023, global M&A activity declined by most metrics in Q1 2024.
- Total deal value was down 19%, with strategic deal value falling more sharply (21%) than sponsor deals (11%).
- Global deal count in Q1 2024 decreased 5% from Q4 2023 in aggregate. Strategic deal count fell 10%, while the number of sponsor buyer deals edged up by 4% – the third consecutive quarter of modest growth.

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Quarterly U.S. Crossborder Activity

- Both inbound and outbound U.S. transactions declined in Q1 2024, compared with Q4 2023.
- Inbound deal activity declined 23% by both deal count and deal value from Q4 2023. Year-over-year (vs. Q1 2023), inbound deal value increased by 34%.
- Outbound deal activity declined 33% by deal count, and 21% by deal value, from Q4 2023. Year-over-year (vs. Q1 2023), outbound deal value increased by 22%.

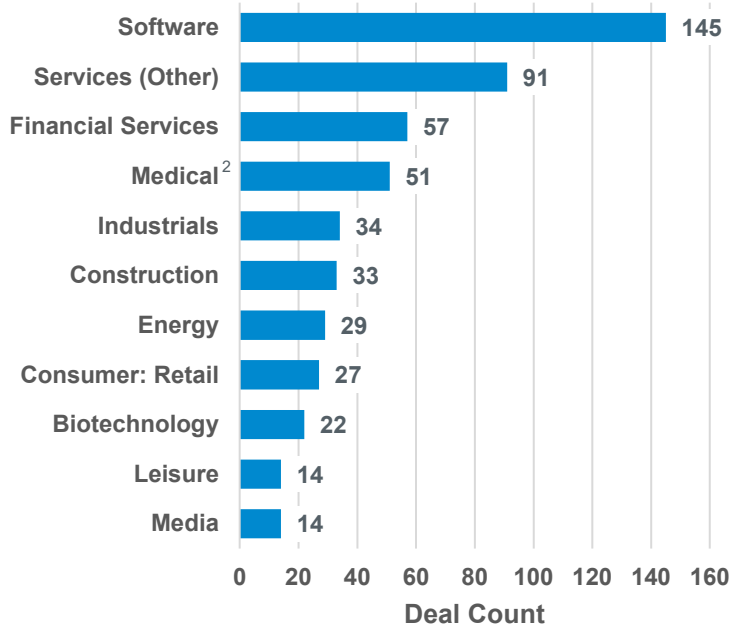


ACTIVE M&A INDUSTRIES (U.S. TARGETS)

7

By Deal Count

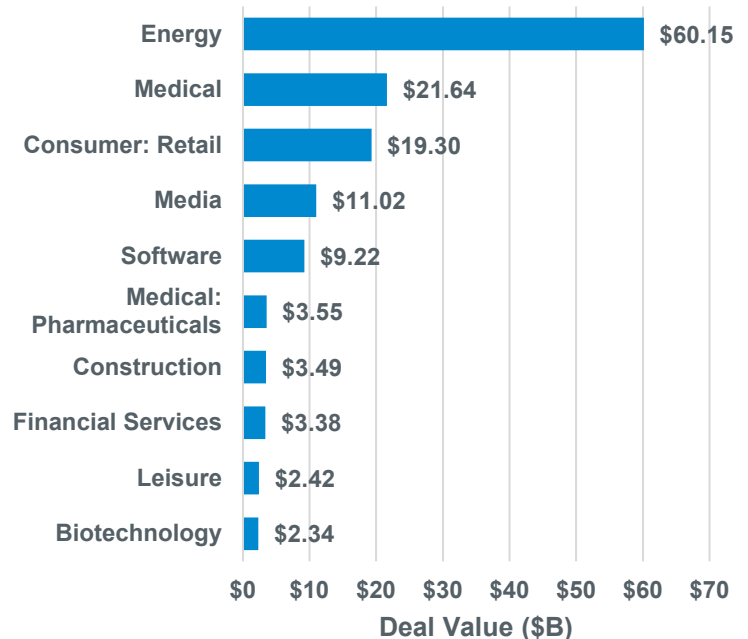
- The software industry once again topped the list of U.S. M&A activity by deal count in March, continuing its streak as the leading industry by volume.
- Services-based industries remain active, with financial and other professional services rounding out the top three sectors by deal count in March.



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By Deal Value

- The energy sector reclaimed the top position on U.S. M&A activity charts by deal value in March, representing two of the five largest deals for the month.
- The medical and retail industries secured the second and third most active sectors by deal value, respectively, each bolstered by multibillion dollar transactions.



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Blockbuster Deals

Largest
Strategic
Deal

THE HOME DEPOT agreed to acquire
SRS DISTRIBUTION in an all-cash
transaction valued at **\$18.25**
billion.

Advent International
GLOBAL PRIVATE EQUITY agreed to
acquire **nuvei** in an all-
cash take-private transaction
valued at **\$6.3 billion.**

Largest
Sponsor
Transaction

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

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Delaware Developments

The Delaware courts continue to grab headlines – but proposed amendments to the Delaware General Corporation Law (“DGCL”) seek to address several issues raised by recent court opinions.

In re Match Group, Inc. Derivative Litigation

- The Delaware Supreme Court recently affirmed that its deferential business judgment standard of review is not available to *any* conflicted transaction in which a controlling stockholder stands on both sides unless each of the “*MFW*” requirements is met.
- If properly employed, the dual prongs of the *MFW* framework – approval by an independent committee and unaffiliated stockholder vote – can alleviate judicial scrutiny from the stringent entire fairness standard and restore business judgment review.
- The *MFW* framework was first articulated in the context of a controlling stockholder squeeze-out merger.
- In *Match Group*³, the court rejected arguments that *MFW*’s dual prongs were limited to squeeze-out mergers. The court confirmed that entire fairness applies (absent *MFW* adherence) to any challenged transaction in which a controlling stockholder stood on both sides and received a non-ratable benefit.
- The court also determined that *all* members of a special committee must be independent for purposes of satisfying *MFW*’s requirements, reversing the Chancery Court’s finding that a majority-independent committee may suffice.
- Given Delaware’s expansion of *MFW*, corporations seeking business judgment rule deference would be well advised to utilize its framework in any conflicted transaction in which a controller receives a disparate benefit.

Proposed Amendments to DGCL

The Council of the Corporation Law Section of the Delaware State Bar Association recently approved proposed amendments to the DGCL.

If adopted by Delaware’s General Assembly and signed into law by the governor, the amendments would become effective August 1, 2024.

The proposed changes address several issues raised in recent Chancery Court decisions and would better align Delaware law with established market practices.

Lost Premium Provisions (*Crispo*)

- In October, the court⁴ limited a target’s ability to recover damages in respect of lost stockholder premium from a breaching buyer. The decision rendered commonly-used lost-premium provisions (“LPPs”) ineffective in Delaware.
- The proposed DGCL amendments would statutorily bless the adoption of LPPs in merger agreements and resolve operational questions raised by *Crispo*.

Stockholder Agreements (*Moelis*)

- In February, the court⁵ invalidated several provisions in a stockholder agreement for improperly constraining the board’s authority under Delaware law.
- The proposed DGCL amendments would empower corporations to enter into contracts with current or prospective stockholders that contain consent rights and other restrictive provisions addressed in *Moelis*.

Board Authorization (*Activision Blizzard*)

- Also in February, the court⁶ strictly interpreted DGCL provisions regarding board and stockholder approval of merger agreements. The decision cast doubt upon frequently-used approval methods.
- The proposed DGCL amendments would provide statutory flexibility to approval processes and generally align Delaware law with market practice.

³ *In re Match Group, Inc. Derivative Litigation*, C.A. No. 2020-0505 (Del. Apr. 4, 2024).

⁴ *Crispo v. Musk et al.*, C.A. No. 2022-0666-KSJM (Del. Ch. Oct. 11, 2023).

⁵ *West Palm Beach Firefighters’ Pension Fund v. Moelis & Co.*, C.A. No. 2023-0309-JTL (Del. Ch. Feb. 23, 2024).

⁶ *Sjunde AP-fonden v. Activision Blizzard, Inc., et al.*, 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
Seven-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 deal 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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