

2024

M&A Annual Review

The background of the entire image is a dark blue, almost black, marbled pattern. The marbling consists of intricate, swirling, and wavy lines of varying shades of blue and black, creating a complex, organic texture. The overall effect is reminiscent of traditional marbled paper or a high-quality, dark blue fabric with a marbled finish.

In the past five years:

730
transactions

\$563 billion
in deal value

72 deals
over \$1 billion

Inside

| | |
|-----------------------------|---------------------------|
| M&A in 2024 and 2025 Trends | <u>1</u> |
| ACT | <u>22</u> |
| Ascendent Capital Partners | <u>24</u> |
| Bow River Capital | <u>26</u> |
| CONVOTIS | <u>28</u> |
| Fortress Investment Group | <u>30</u> |
| KISS | <u>32</u> |
| Palladium Equity Partners | <u>34</u> |
| Rivian Automotive | <u>36</u> |
| Sekisui House | <u>38</u> |
| SoftBank | <u>40</u> |
| Sweetwood Smoke & Co. | <u>42</u> |
| U.S. Silica | <u>44</u> |
| Visa | <u>46</u> |
| M&A Deals Announced in 2024 | <u>48</u> |

M&A in 2024 and 2025 Trends

Global M&A in 2024 faced geopolitical issues, elevated interest rates, and inflationary pressures, with expanding antitrust, foreign investment, national security, and export regimes adding complexity.

But inflation receded and dealmakers acted in anticipation of interest rate reductions, which central banks began delivering in the second half. Private equity players grew more active, equity markets built on 2023's strong performance, and major technology developments, such as in artificial intelligence, drew interest. The end of the year also saw hopes for post-election policy changes that may facilitate M&A, tempered by uncertainty regarding the potential direction and scope of those changes.

Global M&A deal value rose from the lows of 2023, increasing 8% to \$3.4 trillion,¹ approaching pre-pandemic levels. Overall deal count fell, but the number of larger deals grew, with \$2 billion+ deals increasing 20% year-over-year (including the pending \$40 billion Mars acquisition of Kellanova and the \$35 billion Synopsys acquisition of Ansys). Corporate acquirers were notably active, accounting for nine of the top 10 largest deals of the year.

In this report, we review the M&A markets in 2024 and the key legal and regulatory issues and trends that will affect deals in 2025.

¹ All data as of December 16 and courtesy of *Mergermarket*, except as otherwise indicated.

Overview

Global Activity

North America

Deal value increased 9% year-over-year to \$1.7 trillion, driven by a 27% increase in technology deal value and a 39% increase in sponsored buyout value. Utility and energy M&A surged, up 80% in value to \$137 billion.

Asia-Pacific

Deal value increased 3% year-over-year to \$790 billion. Eight out of the 10 largest transactions in the region were announced in the second half of the year, hinting at the potential for a larger resurgence in 2025.

Europe, the Middle East, and Africa

Deal value increased 10% year-over-year to \$840 billion. Deals involving financial sponsors rose 36% in value, with take-private transactions in Europe surging to a record 95 deals.

Technology

The technology sector saw \$640 billion in deal activity, up 16% from 2023. As our 2024

Tech M&A Survey revealed, dealmakers continue to exhibit strong enthusiasm for AI and machine learning technologies, with 47% of respondents predicting these areas will present the greatest M&A opportunities over the next 12 months. Notably, cybersecurity surpassed AI as the top subsector of focus for technology dealmakers, underscoring risk mitigation as a priority for those involved in technology transactions.²

Life Sciences

Life sciences M&A deal value in 2024 declined from 2023, but healthcare still was the second largest M&A segment, with 10% of global M&A value, following 19% of global M&A value for the tech sector. Larger life sciences companies continue to need to fill their pipelines, and lower interest rates are expected to facilitate larger deals in 2025.

Private Equity

After a sluggish 2023, private equity (“PE”) deal activity increased by 34% in value in 2024, with technology accounting for 32% of buyout

value. Sponsor exit value rose 25% in 2024, including 28 IPOs. Our 2024 Tech M&A Survey indicates that sponsor sentiment is high for 2025, with 57% of PE respondents forecasting an increase in the number of deals over the next 12 months.

Looking Forward

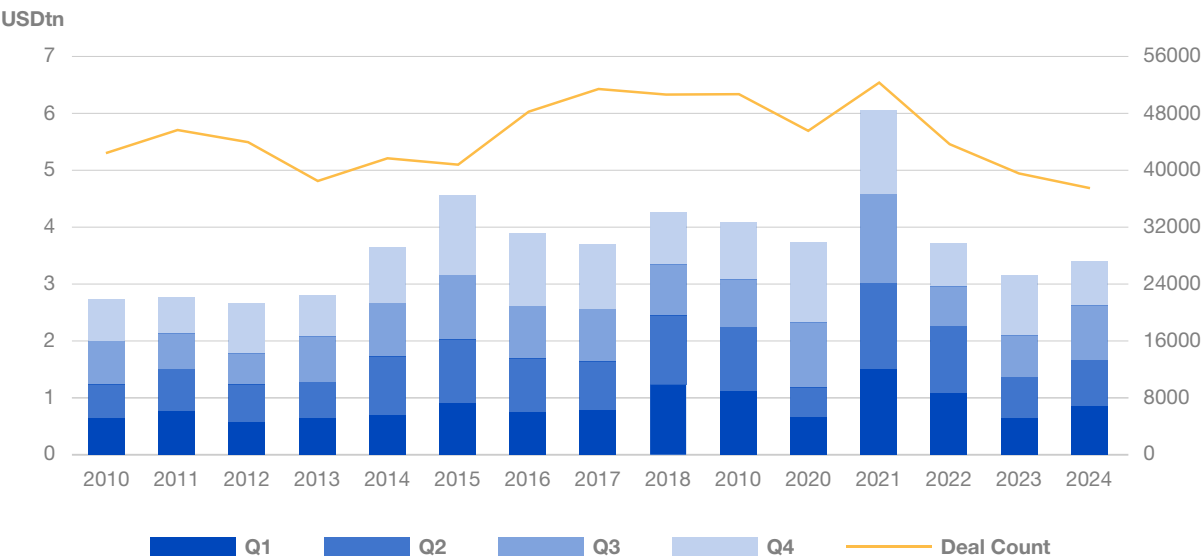
Looking ahead to 2025, sentiment in the global M&A market is optimistic, driven by a reduction in interest rates across the United States and Europe, the resolution of several key national elections, and strong equity markets, along with the continuing need for strategic adaptation and growth. Geopolitical issues remain at the forefront, and the outlook for inflation and interest rates is uncertain, but potential shifts in policies under the Trump administration will bring both opportunities and uncertainties as the market prepares for regulatory changes, corporate tax cuts, and tariffs.

[Learn more about Morrison Foerster's Global M&A Practice.](#)

2 For more insights from tech dealmakers, [visit MoFo's 2024 Tech M&A Survey.](#)

A Modest Revival

Global M&A recuperated in 2024



Source: Mergermarket, data correct as of Dec. 16, 2024



Report: Morrison Foerster 2024 Tech M&A Survey

Powering Up: Sentiment, Stocks, and Security Drive the Tech Deal Revival

1.

Dirty Data Damaging Deals

Data Issues in AI M&A

2024 saw strong interest in M&A involving companies that use or develop artificial intelligence (“AI”) offerings. The rise of AI has brought new issues for companies and dealmakers.³ In particular, 2024 saw regulators focusing further on the collection and use of data in AI products, applying existing rules and developing new approaches.

For example, in October, the Federal Trade Commission (“FTC”) announced actions against five companies for allegedly deceptive or unfair practices enabled by AI.⁴ This followed the FTC’s complaint in January alleging that Rite Aid Corporation used facial recognition technology “to identify patrons that it had previously deemed likely to engage in shoplifting or other criminal behavior” without appropriate safeguards, including sufficient bias testing. The FTC ordered Rite Aid to, among other things, delete or destroy all photos and videos of consumers collected by the system as well as any data, models, or algorithms derived in whole or in part from them (so-called “algorithmic disgorgement”).⁵

Given the regulatory focus, buyers have increased their

scrutiny of data used to train and develop AI products, including the potential for claims relating to:

Breach of Contract

- If customer data was used to train the AI model, did the customer expressly consent to such use (e.g., in the end-user license agreement)?
- If the data was obtained from a third party, does the license or data aggregation agreement permit the data to be used to train AI models?
- If the AI offering is dependent on the use of a large language model (“LLM”), is the use of the offering permitted by the contract with the LLM provider?

IP Infringement

- Is the AI model trained on and does it regurgitate unlicensed third-party copyrighted works?
- If the data was acquired from a third party, does the licensor have the right to make the data available for the applicable use, and what warranties and indemnification has the

licensor provided with respect to such data?

Privacy and Data Protection

- Does the data include personal data and, if so, were the data subjects provided with any required notice and was any required consent obtained from them?
- What privacy laws apply to the data (e.g., the EU’s General Data Protection Regulation (“GDPR”) or the California Consumer Privacy Act), and is that something that can be ascertained with confidence (which may not be possible if the data was scraped from public sources)?⁶
- Is the AI model developed in a way that enables the handling of individuals’ rights requests? For example, can the AI model process correction or deletion requests if it outputs incorrect information?

Other Regulations

- Is the target compliant with applicable AI regulations, such as the EU’s AI Act,⁷ and regulations specific to financial, health, and other sensitive information?
- Is the target compliant with applicable cross-border data

3 Visit [MoFo’s Artificial Intelligence Resource Center](#) for updates and insights on AI regulations and issues, including links to laws, regulations, and regulators by jurisdiction.

4 See MoFo’s client alert, [“FTC Rolls Out Targeted AI Enforcement,”](#) Oct. 8, 2024.

5 See MoFo’s client alert, [“The FTC Brings Algorithmic Bias into Sharp Focus,”](#) Jan. 8, 2024.

6 See [“Using special categories of data for training LLMs: never allowed?”](#) by Lokke Moerel and Marijn Storm, Morrison Foerster, Aug. 28, 2024.

7 See MoFo’s client alert: [“EU AI Act – Landmark Law on Artificial Intelligence Approved by the European Parliament,”](#) Mar. 14, 2024.

2024 saw regulators focusing further on the collection and use of data in AI products, applying existing rules and developing new approaches.

transfer regulations, such as the GDPR, especially where data was scraped in one jurisdiction for processing in another?

- Is the target at risk for claims of allegedly deceptive or unfair use or offering of AI (including with respect to any advertising for the offering), such as by the FTC for deceptive or unfair acts in violation of the FTC Act?

Data-related risks can lead to:

- Delays in dealmaking to conduct “deep dive” diligence to identify data from problematic sources (“dirty data”) and to ascertain the ability to remove or segregate that data.
- A closing condition that dirty data or impacted algorithms be replaced.
- Indemnities and special escrows for the identified risks, including the estimated cost of retraining a model based on clean data if required by a third-party claim or regulatory enforcement.
- An upfront purchase price adjustment.
- Buying a target primarily for its AI systems but being unable to use the systems due to noncompliance with AI, IP, or privacy laws.

Companies that use or develop AI offerings should ensure good data hygiene to minimize these risks, especially if they are considering a potential exit transaction.



MoFo's Artificial Intelligence Resource Center



Client Alert

*FTC Rolls Out Targeted
AI Enforcement*



Client Alert

*The FTC Brings
Algorithmic Bias into
Sharp Focus*



Client Alert

*EU AI Act – Landmark
Law on Artificial
Intelligence Approved
by the European
Parliament*

2. Antitrust Policies Evolve

Antitrust agencies around the world continued, and even expanded, their heavy scrutiny of mergers. The new administration may bring some shifts in the United States, but likely will not reverse all of the prior administration's policies, and regulators in other countries may continue or even increase their scrutiny.

U.S. Antitrust: Shifting Priorities

[Return to Earlier Practices](#)

The Biden administration adopted a very aggressive stance on mergers, often seeking to block transactions outright rather than exploring remedies. While the first Trump administration also disfavored behavioral remedies, aimed at managing post-merger company behavior, the new Trump administration likely will be more receptive than the Biden administration to structural remedies, such as divestitures. The Biden administration's push to require broad prior approval of future mergers as a condition to clearance is also likely to be reversed in favor of prior notice or narrower prior approval.

Additionally, in connection with the new Hart-Scott-Rodino ("HSR") rules (discussed below), regulators said they would reinstate the practice of granting early termination of the HSR waiting period in

certain situations, which had been suspended since 2021.

[Revisiting the 2023 Merger Guidelines](#)

The Merger Guidelines adopted at the end of 2023 represented a significant shift in antitrust policy.⁸ For example, in challenging the Tapestry/Capri merger, the FTC cited Tapestry's pattern of acquisitions,⁹ which is mentioned as a potentially anticompetitive practice under the 2023 Merger Guidelines. The new administration could rescind the 2023 Merger Guidelines, possibly returning to the 2010 Horizontal Merger Guidelines and 2020 Vertical Merger Guidelines, which would signal less aggressive intervention, or could modify the 2023 Merger Guidelines, such as by raising the threshold for presumption of competitive harm in a merger.

[More Comprehensive HSR Filing Forms](#)

New rules for HSR filings, set to take effect February 10, 2025, would significantly increase the information required from filing parties. Key areas include ordinary course documents describing competition from the year before filing, documents shared with deal team leads in addition to officers and directors, customer and supplier lists where product or service overlaps

exist, information regarding supplier relationships, and additional information regarding PE transactions, such as in some circumstances listing limited partners holding 5% or more of interests.¹⁰ The new administration may revise or rescind the new rules, but some companies now are hurrying to make their HSR filings, including by filing based on a letter of intent, before the new rules are scheduled to go into effect.

[Continued Scrutiny of Big Tech](#)

The strong antitrust enforcement environment for big tech that defined the Biden administration is unlikely to go away entirely. As a reminder, with respect to conduct enforcement, the landmark lawsuits against Google and Meta were filed originally by the first Trump administration.

However, not all areas of the economy are likely to receive equal attention. For example, private equity—a target of the Biden administration—may face less aggressive oversight, reflecting a reallocation of resources toward other industries.

[Departure from Novel Theories of Harm](#)

Lina Khan's tenure as chair of the FTC saw the adoption of untested or previously disfavored theories of harm—such as the bundling/

8 See MoFo's client alert, "[DOJ and FTC Finalize New Merger Guidelines – What You Need to Know](#)," Dec. 21, 2023.

9 See MoFo's client alert, "[Tapestry/Capri Handbag Merger Temporarily Halted by S.D.N.Y.](#)," Oct. 29, 2024.

10 See MoFo's client alert, "[FTC Adopts Final HSR Rules, Substantially Expanding M&A Filing Requirements for Parties](#)," Oct. 13, 2024.

The new administration may revise or rescind the new [HSR] rules, but some companies now are hurrying to make their HSR filings ... before the new rules are scheduled to go into effect.

conglomerate theory in the Horizon/Amgen deal—and an interest in exploring the labor market impacts of mergers. These approaches met limited success in court as the FTC failed in its attempts to block several mergers, including Microsoft/Activision Blizzard and Meta/Within. With Chair Khan's departure likely, a return to more traditional theories of harm, which focus on consumer welfare, appears imminent.

Moreover, the FTC's sweeping 2024 rule banning non-compete agreements—blocked by courts but appealed by the FTC¹¹—may be reconsidered or rescinded under the new administration.

Uncertainty Surrounding Non-U.S. Antitrust Issues

International agencies have moved toward greater collaboration in antitrust enforcement. However, differing priorities—particularly the embrace of novel theories of harm by some non-U.S. regulators—could hinder future cooperation. President-elect Trump's policy of favoring America first may lead to increased scrutiny of transactions involving non-U.S.

entities (although more likely under national security laws).

European Union: Continued Appetite To Review Non-Notifiable Mergers

The risk of intervention by the European Commission where transactions do not cross traditional merger control notification thresholds remains. In September, the European Court of Justice ruled that the European Commission's review of Illumina's \$8 billion acquisition of Grail, which was referred from several member states but did not trigger merger control filings at EU or member state-level, was unlawful.¹² However, the new European Competition Commissioner has signaled that capturing acquisitions of targets with low revenues but high competitive and innovative potential (so-called “killer acquisitions”) is among her top priorities. Eight member states have already introduced national laws enabling them to request the notification of below-threshold transactions (so-called “call-in powers”) if these deals could have a significant competitive impact. Others are considering introducing such powers. We expect to see continued use of below-threshold review powers, particularly in digital and pharmaceutical markets and in the AI space.



Client Alert

DOJ and FTC Finalize New Merger Guidelines – What You Need to Know



Client Alert

Tapestry/Capri Handbag Merger Temporarily Halted by S.D.N.Y



Client Alert

FTC Adopts Final HSR Rules, Substantially Expanding M&A Filing Requirements for Parties



Client Alert

FTC Appeals Texas Court's Ruling Blocking FTC's Non-compete Ban



Client Alert

Illumina Grail: European Court Limits Commission Jurisdictional Reach in Merger Cases

11 See MoFo's client alert, “[FTC Appeals Texas Court's Ruling Blocking FTC's Non-compete Ban](#),” Oct. 22, 2024.

12 See MoFo's client alert, “[Illumina Grail: European Court Limits Commission Jurisdictional Reach in Merger Cases](#),” Oct. 3, 2024. Article 22 of the EU Merger Regulation allows member states to request that the European Commission review an acquisition that does not meet the EU-wide thresholds for mandatory notification if they believe the acquisition affects trade between member states and could significantly affect competition within their territory.

3.

Delaware Addresses Questions on Merger Agreement Damages and Board Approvals

In 2023 and early 2024, the Delaware Chancery Court surprised many M&A practitioners with decisions questioning:

- the right of the target company to recover from the buyer, following a breach by the buyer, the lost premium the target company's stockholders would have received for their shares had the deal closed, even when the merger agreement expressly provides for such damages, where (as in all public target deals and many private target deals) the stockholders are not party to, and are specified not to be third-party beneficiaries of, the merger agreement,¹³ and
- the ability of the target company's board of directors in connection with a merger to give their final approval based on a draft that is less than a complete, final copy of the merger agreement, or without disclosure schedules.¹⁴

The Delaware legislature responded with amendments to the Delaware General Corporation Law ("DGCL")

that took effect on August 1, 2024. Under the amendments:

Lost Stockholder Premium Damages and Stockholder Representatives¹⁵

- Merger agreements can require the buyer to pay the target company damages for a pre-closing breach, including amounts based on lost stockholder premium, and the target company can retain such damages. Parties desiring such a result should provide for it expressly in the merger agreement.
- Merger agreements can provide for the appointment of stockholder representatives with exclusive authority to act on the stockholders' behalf, codifying this longstanding market practice.

Process for Approving Merger Agreements¹⁶

- A board can approve a merger in "final or substantially final form," which (according to the amendment synopsis) means that all the material terms are included in the draft or are determinable though other information or materials presented to or known by the board.
- After the initial board approval, a board may ratify a merger agreement so long as the ratification takes place

While the DGCL has been amended, the board's fiduciary duties still apply.

prior to the effectiveness of the filing with the Delaware Secretary of State.

- The disclosure schedule is not deemed to be part of the merger agreement, and so does not need to be approved by the board or adopted by the stockholders, unless the merger agreement expressly states that the disclosure schedule forms part of the agreement.
- Documents (like a merger agreement) included with a stockholder meeting notice are deemed to be part of the notice, addressing concerns about the adequacy of merger agreement summaries in proxy materials.

While the DGCL has been amended, the board's fiduciary duties still apply. Thus, for example, while there is no statutory requirement to review a disclosure schedule if the merger agreement does not expressly incorporate it, a board may want to review a disclosure schedule, or material parts of it, to the extent necessary for the directors to understand the material terms of the merger agreement.

¹³ *Crispo v. Musk*, Del. Ch. Oct. 31, 2023.

¹⁴ *Sjunde AP-Fonden v. Activision Blizzard* (Del. Ch. Feb. 29, 2024 (corrected Mar. 19, 2024)).

¹⁵ DGCL Secs. 261(a)(1), 261(a)(2).

¹⁶ DGCL Secs. 147, 268(b), 232(g).

4. Shareholder Activism Outpaced Prior Year Averages

2024 saw the most activist campaigns since 2018, with an increasing focus on operational and strategic initiatives in addition to traditional M&A-related theses.

Increased Focus on Operational and Strategic Objectives

Strategic and operational focused campaigns rose in 2024 to 22% of activist campaigns (25% in the United States). M&A focused campaigns (including calls for a divestiture or to break up a proposed deal as well as for the sale of a company) dipped in the first half of 2024, likely caused by high interest rates, geopolitical uncertainty, and a tougher regulatory environment, but bounced back in the second half, with full year numbers at 43%, in line with prior year averages.¹⁷ We expect the looser monetary policy and regulatory environment of Trump's first term to return during his second term, providing a more M&A-friendly backdrop and inspiring more M&A focused campaigns, though geopolitical

and other policy uncertainties remain.

Retail Investors and Social Media Taking a More Active Role

Retail investors and social media have played increasing roles in activism over the last several years, joining "occasional" activists (such as institutional investors and individuals not dedicated to activist strategies) in an increasingly diverse activism landscape.¹⁸ Retail investing has grown significantly due to fintech firms like Robinhood lowering barriers to entry, and both companies and activists are increasingly seeking retail investor participation in governance matters. Social media and other public relations methods have become important tools for both companies and activists to garner retail investor support. For example, in Disney's defeat of activist Nelson Peltz, both Disney and Peltz spent aggressively on tactics to solicit retail investor votes.

Moelis, DGCL Amendments and Activist Settlements

The Delaware Chancery Court in February struck down several pre-approval and board composition provisions

in a governance agreement with a controlling stockholder, finding the provisions to be unlawful restraints on the board's statutory discretion.¹⁹ The court noted (but did not rule on) the potential applicability of its reasoning to activist settlements. Delaware responded by amending the DGCL in August to expressly authorize stockholder agreements granting stockholders certain governance and consent rights that are not contrary to the company's charter and that would not be contrary to Delaware law if included in the company's charter.²⁰ The amendments are new and subject to interpretation but are expected to mitigate some effects of the Moelis decision that many considered inconsistent with prevailing market practice.

Minimal Effects of the Universal Proxy Card

2024 saw the second proxy season under the SEC's universal proxy rules, but the full impact of these rules remains unclear. Indeed, contrary to predictions that the universal proxy card would make it easier for activists to attain board seats, activists only secured 119 board seats in 2024, down from 134 in

17 Barclays 2024 Review of Shareholder Activism; [Barclays H1 2024 Review of Shareholder Activism](#).

18 See MoFo's client alert, "[Occasional Activists: Shaping Corporate Governance in 2024](#)," Aug. 19, 2024.

19 *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.* (Del. Ch. Feb. 23, 2024). See also MoFo's client alert, "[Maintaining the Balance of Power in Venture-Backed Startups: The Impact of Delaware's Moelis Decision on Drafting Shareholder Rights Provisions](#)," Mar. 4, 2024.

20 DGCL Sec. 122(18).

Retail investors and social media have played increasing roles in activism over the last several years, joining “occasional” activists ... in an increasingly diverse activism landscape.

2023.²¹ That said, it appears that individual directors lacking the requisite qualifications face a greater risk of being challenged and replaced.

Focus on Advance Notice Bylaws

Activist investors were encouraged by several Delaware court decisions scrutinizing advance notice bylaws. In one case, the Delaware Supreme Court reiterated that advance notice bylaws must “‘be reasonable in their application’ and not unfairly interfere with stockholder voting” and invalidated an “unintelligible” bylaw comprised of one sentence that ran on for more than 1,000 words.²² While advance notice bylaws remain a critical piece of every public company’s preparedness, activists are now looking for advance notice bylaws that are overly broad or have unique features not viewed as “market.” In the first half of 2024, stockholders submitted 11 proposals under Rule 14a-8 challenging the applicable company’s advance notice bylaws, though those proposals eventually were withdrawn, except for one that was not passed.



Client Alert

Occasional Activists: Shaping Corporate Governance in 2024



Client Alert

Maintaining the Balance of Power in Venture-Backed Startups: The Impact of Delaware’s Moelis Decision on Drafting Shareholder Rights Provisions

21 Barclays 2024 Review of Shareholder Activism; [Barclays 2023 Review of Shareholder Activism](#).

22 *Kellner v. AIM ImmunoTech Inc.* (Del. Supreme July 11, 2024).

5. Surge in Court Opinions on Earnouts Provides Lessons

Earnouts have become increasingly important tools for bridging valuation gaps between sellers and buyers, particularly in life sciences deals, but the number of disputes seems to prove the adage that earnouts are “agreements to litigate in the future.” Earnouts generally are matters of contract, involving descriptions of the earnout trigger, the obligations of the buyer to pursue the earnout, and related matters. The rise in earnouts over the past several years, and accompanying rise in earnout disputes, resulted in multiple court decisions in 2024, which show how courts approach earnout-related provisions in acquisition agreements. We highlight below two disputes over whether the buyer used appropriate efforts to pursue earnout milestones.

Sellers Prevail on “Outward Facing” Buyer Efforts Standard

Alexion acquired Syntimmune in 2018, pursuant to an agreement that required Alexion to use “commercially reasonable efforts,” defined as “such efforts and resources typically used by biopharmaceutical companies similar in size and scope to” Alexion. Later, due to an internal initiative to launch a certain number of products by 2023, Alexion prioritized other programs, as it did

not believe the Syntimmune products would be ready by then. Then, in 2021, Alexion itself was acquired by another company, following which the development of the Syntimmune products was paused after the acquiror promised significant synergies as part of the acquisition.

The court determined that Alexion breached the efforts covenant, finding that Alexion’s decision to discontinue development of the products was driven by the pursuit of acquisition synergies, and so peculiar to Alexion, and not a decision that a hypothetical similarly situated company would have made.²³ The court noted, among other things, that the definition of commercially reasonable efforts did not explicitly allow Alexion to consider its own efforts and cost.

Buyer Satisfies Efforts Covenant That Permitted “Due Regard of the Costs”

Cephalon acquired Ception in 2010, pursuant to an agreement that required Cephalon to exercise “commercially reasonable efforts,” defined as “the exercise of such efforts and commitment of such resources by a company with substantially the same resources and expertise as [Cephalon], with due regard to the nature of efforts and cost required for the undertaking at

stake,” but otherwise provided Cephalon “complete discretion” with respect to the business. The earnout milestone was achieved for one therapy, but after itself being acquired by another company and several discussions with regulators, Cephalon halted development of another therapy that could have triggered another earnout payment.

The court determined that Cephalon satisfied its efforts covenant, finding that it was commercially reasonable for Cephalon to halt production given the costs and the likelihood of the therapy becoming a commercial success.²⁴ The court found that allowing “due regard” for “efforts and costs” meant that the buyer could cease development “where the circumstances reasonably indicate, as a business decision, [and] [t]his includes all the costs and risks involved, including the milestone payments and the opportunity costs faced by” the buyer. The sellers complained that such an application of the efforts provision would only restrict actions that were against the buyer’s self-interest anyways, the court emphasized that that was “all that the sellers bargained for.”

The sellers had previously claimed that Cephalon breached the implied covenant of good faith and fair dealing, which the court dismissed on

23 *Shareholder Representative Services v. Alexion Pharmaceuticals* (Del. Ch. Sep. 5, 2024).

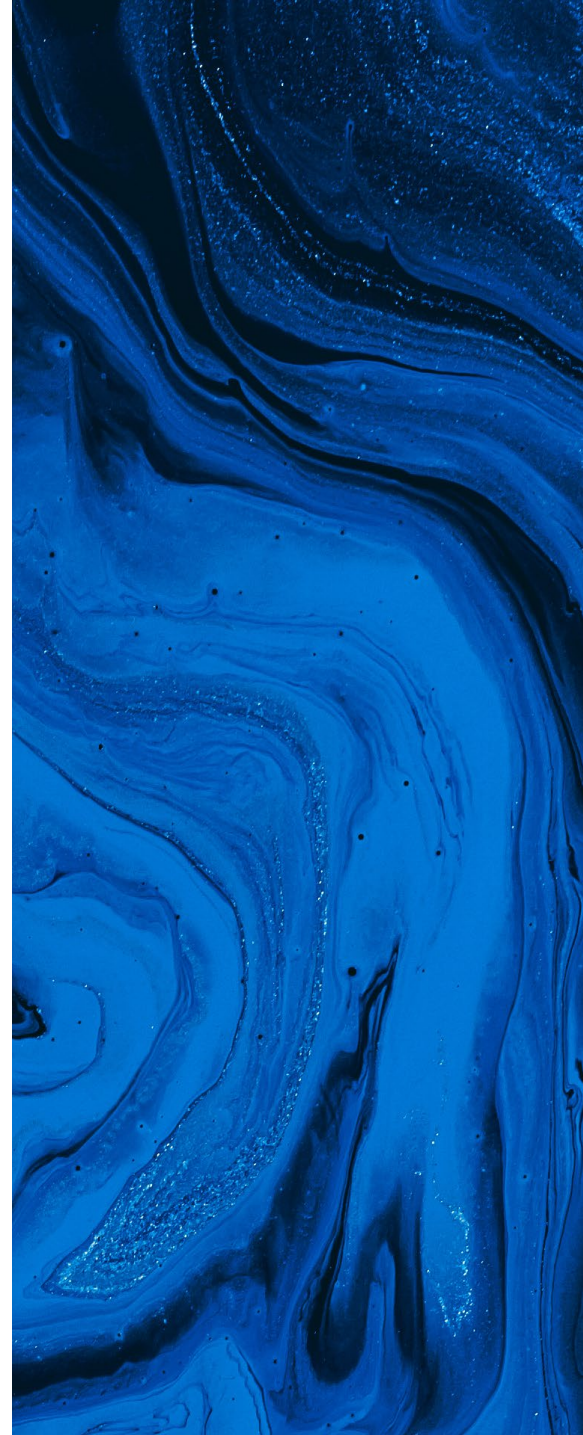
24 *Himawan. v. Cephalon, Inc.* (Del. Ch. Apr. 30, 2024)

The rise in earnouts over the past several years, and accompanying rise in earnout disputes, resulted in multiple court decisions in 2024, which show how courts approach earnout-related provisions in acquisition agreements.

pleadings.²⁵ To be properly invoked, there must be a “gap” in the contract that must be filled, and here the sellers could not point to such a gap.

Lessons for Dealmakers

- Words matter—courts review earnout provisions pursuant to contract principles, focusing on the language of the agreement. However, when called for (such as when the language is ambiguous), courts also look to external circumstances.
- Specificity can help—for example, some courts (particularly in Delaware) do not see significant legal difference between statements merely requiring “commercially reasonable efforts,” “reasonable best efforts,” and “reasonable efforts.” Specifying desired requirements makes them more likely to be understood and enforced.
- Courts generally see “outward facing” efforts covenants, which require the buyer to act in a manner typical of similarly situated companies in its industry, as more seller friendly than “inward facing” efforts covenants, which focus on the buyer’s own practices. However, the inward facing standard may be more helpful for sellers where the buyer has (or holds itself out as having) stronger development or other relevant processes or resources than “typical” or “similarly situated” companies in the industry.
- Like sellers in most deals, buyers, generally and especially in earnout deals where they may make out-of-contract statements to sellers regarding the prospects of the earnout, should consider steps to reduce exposure to fraud claims. For example, the buyer could include in the acquisition agreement a disclaimer by the seller of reliance on out-of-contract statements by the buyer. A standard integration clause by itself generally will not preclude reliance by sellers on out-of-contract statements.
- The implied covenant of good faith and fair dealing applies only infrequently, where there are “gaps” in the parties’ agreement. These claims are rarely successful but may prevail in appropriate circumstances.



25 *Himawan v. Cephalon, Inc.* (Del. Ch. Dec. 28, 2018).

6. Use of National Security Tools for Foreign and Economic Policy Purposes Continues

The United States and other countries, particularly in Europe, continued to expand and refine national security regulatory tools in 2024. More changes will come as the Trump administration takes office.

United States

Increased Regulation of Outbound and Inbound M&A and Investments

- *New Outbound Investment Restrictions.* The Outbound Investment Security Program regulations²⁶ took effect on January 2, 2025. The program focuses on investments into China and targets three highly sensitive tech sectors: advanced semiconductors and microelectronics; quantum information technologies; and artificial intelligence systems. Depending on the technology involved, a covered transaction will be either prohibited or require certain disclosures to the Department of the Treasury.
- *CFIUS Enforcement Procedures.* The Committee on Foreign Investment in the United States (“CFIUS”) expanded the information it can require persons to submit when engaging in transactions that were not initially filed with CFIUS. New rules also increase the

penalties CFIUS can impose for providing false statements to CFIUS.

- *CFIUS Penalties.* 2024 saw significant CFIUS enforcement activity. Notably, CFIUS published a \$60 million enforcement action (the largest ever imposed by CFIUS) against T-Mobile, regarding apparent failures to take preventative measures against unauthorized access to sensitive data and to promptly report such unauthorized access.

Increased Export Controls on Critical Technologies

The Department of Commerce acted to mitigate national security risks associated with semiconductors, quantum computing, and other critical technologies, particularly with respect to Russia and China, including:

- Export controls on computers and related equipment with high performance capabilities and technologies used to manufacture advanced semiconductors.²⁷
- Proposed reporting obligations on companies developing AI technologies with certain capabilities that could be modified to perform

tasks that pose a risk to national security.

- Prohibition of shipment to China of high bandwidth memory chips, software tools used to develop and produce semiconductor chips, and equipment used to manufacture certain chips.
- Proposed ban on the import or sale of connected vehicles and vehicle systems and components designed, developed, manufactured, or supplied by entities connected to China or Russia.²⁸

Sanctions on Russia

Treasury’s Office of Foreign Assets Control (“OFAC”) designated hundreds of additional Russian individuals and entities, primarily in Russia’s financial sector, as Specially Designated Nationals (known as “SDNs”) for their contributions to Russia’s Ukraine war effort. OFAC also expanded its basis for imposing “secondary sanctions” on foreign financial institutions engaged in transactions involving Russia.

What to Expect in 2025

Significant attention to national security issues will continue, as illustrated by President Biden’s January 3 order prohibiting Nippon Steel’s proposed acquisition of U.S.

26 See MoFo’s client alert, “[Up and Running: Treasury Publishes Final Rules for Outbound Investment Security Program](#),” Oct. 31, 2024.

27 See MoFo’s client alert, “[Commerce Announces New Trade Controls Affecting Quantum Technologies and AI Developers](#),” Sept. 12, 2024.

28 See MoFo’s client alert, “[Commerce Curbs Connected and Autonomous Vehicles with a Nexus to China or Russia](#),” Sept. 27, 2024.

The Trump administration is expected to take a tough approach to national security, especially concerning Iran and China.

Steel. The Trump administration is expected to take a tough approach to national security, especially concerning Iran and China. Tensions with China are likely to continue heating up, with the threat of significant new tariffs on Chinese goods and both countries imposing export controls directed at semiconductors and other important technologies.

Europe

- *EU Foreign Subsidies Regulation ("FSR")*. The FSR covers M&A deals where target companies have EU-wide revenues of at least EUR 500 million and the parties were granted at least EUR 50 million in combined foreign subsidies. In 2024, the EU Commission issued its first final decision under the FSR, conditionally approving an acquisition by Emirates Telecommunications Group.²⁹ The EU Commission is expected to keep investigating potential distortions of competition due to foreign subsidies under this new tool.
- *Expanding FDI Control*. The January 2024 European Economic Security Package's³⁰ proposed revision of the EU foreign direct investment ("FDI") regime is designed to further harmonize national screening rules, such as by setting out criteria for activities
- that trigger a mandatory notification. Meanwhile, additional EU member states have implemented new or amended FDI regimes, with Ireland's regime having become effective on January 6, 2025, and Croatia, Cyprus, and Greece are expected to close the gap as well, so that in the near future all EU member states will have a national FDI regime.
- *Export Controls, Outbound Investment, Research Security*. The European Economic Security Package includes initiatives to enhance EU export controls and controls of R&D cooperations to protect EU technology. Following the steps taken by the United States, the EU is considering rules on outbound investment restrictions.
- *United Kingdom*. The UK is considering further refining the screening of transactions under the UK's National Security and Investment Act, aiming to balance between controlling and attracting investments.
- *EU and UK financial and trade sanctions*. The EU and UK have adopted additional sanctions against Russia to weaken its access to technology and financial resources that would support its war against Ukraine. With the new Trump administration and the uncertainties around

the U.S. sanctions on Russia following a potential negotiated settlement to the war, the EU is considering ways to strengthen its own Russia sanctions regime.

For 2025, the geopolitical environment remains uncertain with the ongoing war in Ukraine, the Trump administration taking office in January, and key EU member state governments in a currently weak state due to internal political reasons (e.g., France and Germany), among other things. There is reason to believe that the EU may not act as quickly as the United States under the new Trump administration on sanctions, trade controls, and investment screening, and some EU member states may decide to push ahead separately in aligning with the United States within the limits of their regulatory powers.



Client Alert

Up and Running: Treasury Publishes Final Rules for Outbound Investment Security Program

29 See ["European Commission, Commission conditionally approves the acquisition of parts of PPF Telecom by e&, under the Foreign Subsidies Regulation,"](#) Sept. 23, 2024.

30 See MoFo's client alert, ["The European Economic Security Package – EU FDI "Upgrade," Outbound Investment Control and More to Come,"](#) Feb. 6, 2024.

7. Dealing with Controlling Stockholders

In 2024, Delaware courts expanded their review of actions of controlling stockholders. Significant stockholders, even if holding less than a majority of a company's shares, when dealing with the company, must consider whether they nonetheless might be deemed to control particular actions of the company, if not the company itself, and controlling stockholders and companies must recognize, consider, and manage conflicts in transactions and other operations. The courts' increasing scrutiny of such actions has inspired debate, including some calls for movement out of Delaware, though (with a few notable exceptions, such as Tesla) few companies have reincorporated.

Entire Fairness and *MFW* Applied to All Conflicted Controller Transactions

The Delaware Supreme Court, in *Match Group*,³¹ held that entire fairness (Delaware's most stringent standard of review) presumptively applies to any transaction where a controlling stockholder stands on both sides and receives a non-ratable benefit. Accordingly, to get the benefit of the deferential business judgement rule under *MFW*,³² a controlling stockholder must commit at the appropriate time to obtain, and then actually obtain, approvals

of both (1) a committee of independent directors and (2) a majority of independent stockholders. Obtaining only one of these approvals might shift the burden in litigation to the plaintiff, but the standard of review would remain entire fairness. *Match* itself involved the separation of businesses by the company's controlling stockholder, rather than a squeeze out acquisition as had been at issue in the original *MFW* decision.

The Court also held that, for purposes of *MFW* cleansing, *all* members of the board's committee must be disinterested, and not just a majority. In addition, the Court reviewed some of the factors that might impinge on a director's independence from a controller, such as deep friendships or other business relationships.

Enhanced Scrutiny of Controllers Using Stockholder Level Powers

In *Sears Hometown*,³³ a special committee of the board decided to liquidate one of the company's two business segments, and the company's controlling stockholder (who was not represented on the special committee) responded by using its stockholder powers to remove two of the three members of the special committee and to amend the company's bylaws to make

approval of the liquidation procedurally more difficult.

The Delaware Chancery Court noted that a controlling stockholder, when using its voting power as a stockholder to change the status quo, is engaging in a fiduciary act, and so may owe some form of fiduciary duties to the corporation and its minority stockholders; conversely, when using its stockholder power to vote against a change, thereby maintaining the status quo, the controlling stockholder is not engaging in a fiduciary act. Much like a controlling stockholder's duties in a sale of its shares are limited to non-harm (e.g., do not sell to a "looter"), a controlling stockholder voting its stock to change the status quo merely owes the duties of loyalty (not to intentionally harm the corporation or minority stockholders) and of care (not to harm the corporation or minority stockholders through gross negligence), but does not need to meet the higher standard required of directors to affirmatively act in a way they subjectively believe is in the best interests of the corporation.

The Delaware Chancery Court applied enhanced scrutiny to the controlling stockholder's actions, and found that the controlling stockholder satisfied that standard for these steps, since he held a good faith belief

31 *In re Match Group, Inc. Derivative Litigation* (Del. Supreme, Apr. 4, 2024).

32 *Kahn v. M & F Worldwide Corp.* (Del. Supreme Mar. 14, 2014) (known as "*MFW*").

33 *In re Sears Hometown and Outlet Stores, Inc. Stockholder Litigation* (Del. Ch. Jan. 24, 2024).

Controlling stockholders and companies must recognize, consider and manage conflicts in transactions and other operations.

that the liquidation would be harmful to the company and his actions to stop the liquidation were reasonable.

MFW Applied to Comp Package for Controlling Stockholder/CEO

In *Tornetta v. Musk*,³⁴ the court rescinded a 2018 compensatory equity grant by Tesla to Elon Musk that was the “largest potential compensation opportunity ever observed in public markets.” The court applied the entire fairness standard of review after finding that Musk, though holding only about 22% of Tesla’s voting power, was the “paradigmatic ‘superstar CEO,’” with “thick” ties with relevant other directors, and “dominated” the grant process, and thus controlled Tesla “[a]t least as to” that process. The court noted that a stockholder may have transactional control where the totality of the circumstances shows that the stockholder “exercised actual control over the board of directors during the course of a particular transaction.” The grant was conditioned on approval by a majority of the minority stockholders, but the court found that the disclosure relating to the grant process was flawed, including because it failed to disclose Musk’s relationships with the relevant directors.

The company subsequently expanded its disclosure and asked stockholders to ratify

the prior action, but the court found additional disclosure defects and rejected the potential for ratification.³⁵ The decisions have drawn considerable publicity and are being appealed.



³⁴ *Tornetta v. Musk*, Del. Ch. Jan. 30, 2024.

³⁵ *Tornetta v. Musk*, Del. Ch. Dec. 2, 2024.

8. M&A Adjacent Structures

Joint Ventures and Strategic Alliances

Sometimes a business may want the benefits of an M&A transaction, but for only a portion of its business, or otherwise isn't ready or able to make a full commitment. An M&A-adjacent structure, like a joint venture ("JV") or strategic alliance, which allows parties to pool specified resources and expertise and otherwise collaborate while preserving their autonomy, might be an attractive solution.

Benefits and Risks

JVs can be particularly helpful in situations where companies seek to enter new markets, share risks, or combine complementary strengths, but also maintain their existing businesses. For example, two companies may lack the necessary infrastructure or market knowledge to succeed independently in a new geographic region or in respect of new technological advancements. A JV might allow the companies to combine resources and expertise, providing more opportunities for scale or depth and leading to greater potential for development and a more competitive offering in the marketplace. This collaborative approach can be particularly useful in high-risk sectors such as technology, pharmaceuticals, and automotive development and manufacturing. For example, Rivian and Volkswagen recently established a technology JV focused on codeveloping

an electrical architecture for electric vehicles that can be used by both parties, while each party remains independent with its own automotive manufacturing and sales operations.

While JVs have become more common in recent years, they also come with significant risks, most notably as a result of cultural differences between partners that can create morale issues among the employee population, cumbersome governance, and the potential for one or more JV partners to lose interest in the subject matter of the JV. Before entering into a JV, it's critical to think about when, and how, the parties would exit.

A strategic alliance—a business arrangement where companies work together to achieve mutual objectives but do not create a new entity or combine any operations—can be lower commitment and lower risk than a JV. Strategic alliances are typically used when companies want to collaborate on specific projects—such as R&D or marketing initiatives—while retaining their independence and employee bases and are often used for shorter term initiatives. For instance, two tech firms might form a strategic alliance to jointly develop a new product, sharing resources like IP or expertise, but without the longer-term commitment of a JV or the complete commitment of an acquisition. Again, when contemplating a

JVs can be particularly helpful in situations where companies seek to enter new markets, share risks, or combine complementary strengths, but also maintain their existing businesses.

strategic alliance, it is helpful to consider how to exit.

Structuring Considerations

Parties seeking to benefit from M&A adjacent structures should consider the following:

- Compliance with antitrust laws (using clean teams and information-sharing restrictions where necessary).
- Clear and workable decision-making parameters (including board/committee votes, tiebreakers, and escalation mechanisms).
- Detailed and workable plans for long-term funding of the relationship (such as capital contributions, service arrangements, and emergency funding).
- Clear plans for employee retention, including equity compensation, if applicable.
- Thoughtful remedies if the collaboration fails or finishes (e.g., treatment of IP and exit rights).

9. Rebound in the Global PE Market

Private equity activity resurged in 2024, fueled by anticipated and actual interest rate cuts. We anticipate a more transaction-friendly administration in the United States and demand pent-up over the last 18 months should contribute to a healthy market as sponsors seek to deploy accumulated dry powder, particularly as quality assets enter the market. Global M&A activity remains heavily impacted, however, by macroeconomic uncertainties, military conflicts, geopolitical events, and domestic economic slowdowns.

Highlights from 2024 and outlooks for 2025 include:³⁶

Increase in Tech and Healthcare Deals

PE showed increased interest in targets with strong growth metrics in the tech and healthcare sectors, particularly targets in both sectors focused on advancements in AI technology. Moving into 2025, we expect the increased interest in these areas to continue, with investment theses fueled by continued AI innovation.

Take-Privates Hold Steady

The PE-backed take-private trend held steady in 2024, given more attractive valuations, higher compliance and corporate governance costs of remaining public, and the abundance of dry

powder held by PE firms. In 2025, we anticipate the trend will continue in multiple international jurisdictions. Common challenges will continue into 2025, including the heightened risk of losing the deal at the last moment to a bidder with a superior offer, particularly at a time when strategic acquirors are expected to become more active.

Increasing Sustainability and Related Regulations

2024 saw an increased backlash against ESG initiatives, and we expect that the cultural and legal push and pull surrounding ESG will continue into 2025. However, significant legislation passed in the EU will impact not just companies with significant operations in the EU but also their customers, suppliers, and partners, including many, if not most, PE portfolio companies and should propel sustainability ahead in the market. The administration change in the United States will offer a less friendly regulatory environment for ESG investing and related corporate initiatives, but states like California will continue to push forward with regulations that track Europe and much of the rest of the world. Cybersecurity, privacy and climate risks, and other risks within the ESG orbit, as well as compliance with expanding regulations, will continue to be

the subject of diligence and assessment.³⁷

Debt Financing Innovations

In 2024, competition from non-bank lenders to provide financing to PE continued to increase. The evolving dynamics between banks and direct lenders, including joint ventures between them, underscored a trend toward diverse capital structures, enabling sponsors to remain agile and innovative. In 2025, we expect that deal volume will increase for both bank and private credit lenders.

Shifting Regulatory Environment

In 2024, like other serial buyers, PE sponsors faced increased antitrust scrutiny at the U.S. federal level. In particular, “roll-up” or “aggregator” strategies proved an easy target, though not all enforcement actions withstood objection—e.g., Welsh Carson won dismissal of the claim in connection with its investment in U.S. Anesthesia Partners. While a more lenient regulatory environment for M&A activity is expected at the federal level in the United States in 2025 (as noted above in the discussion of antitrust policies), at the state level, regulatory authorities are expected to continue aggressively reviewing private equity “roll-up” and “aggregator” strategies.

36 For further trends and outlook for the PE market, see MoFo’s client alert, “[Global PE Trends 2024 and Outlook for 2025](#),” Dec. 19, 2024.

37 For regular updates on ESG and sustainability, including their applicability to impact investing, [visit MoFo’s ESG and Sustainability Resource Center](#).

10.

Tax Changes Affect Transaction Planning

2024 saw several tax developments likely to impact M&A and the pending change in administration raises the potential for further significant changes.

Spin-Off Transactions

The IRS both expanded and limited the situations in which it would rule on whether a spin-off would be taxable. For example, the IRS confirmed that it would address whether a spin-off represents an impermissible “device” for the distribution of corporate earnings, or is part of a “plan” to acquire 50% or more of the distributing parent corporation or its spun-off subsidiary, either of which would render the spin taxable.³⁸ On the other hand, the IRS limited the situations in which it would rule on certain transactions designed to allocate group leverage between the distributing parent and the spun-off controlled corporation or where the distributing parent retains shares of its controlled subsidiary after the spin (even though the parent distributes the requisite 80% control of its subsidiary in the initial transaction).³⁹ Transactions

that involve a rebalancing of group leverage or the retention of shares in the controlled subsidiary therefore may be more difficult to accomplish.

Stock Buyback Excise Tax

New proposed regulations on the 1% stock buyback excise tax enacted as part of the 2022 Inflation Reduction Act generally follow the IRS’s initial guidance and impose the excise tax on “bootstrap” acquisitions and leveraged buyouts to the extent that cash used to purchase the target is sourced from the target. In contrast, the boot in partially tax-free reorganizations is subject to the excise tax regardless of its source.

15% Corporate Alternative Minimum Tax

New proposed regulations on the corporate alternative minimum tax, the 15% minimum tax applied on adjusted financial statement income (“AFSI”) of certain corporations or corporate groups with three-year average annual AFSI in excess of \$1 billion, expand on earlier guidance. Of special note

is the proposed rule that generally would include in AFSI all deferred gain in a tax-free transaction if any gain or loss is recognized by a transferor corporation unless the corporation distributes the taxable “boot” to its shareholders in connection with a taxfree reorganization or spin-off.

Future Tax Rates

While impossible to predict, GOP lawmakers and President-elect Trump have said it will be a priority to make the 2017 tax cuts permanent and perhaps even to restore certain deductions that were eliminated in 2017 (such as SALT deductions over \$10,000). However, the refusal of Congress to lift the debt ceiling as part of its recent actions to avert a government shutdown likely demonstrates the difficulties in passing legislation that would significantly reduce tax revenue. Changes, or expected changes, in tax rates could significantly affect desired timing of transactions and the value of avoiding a taxable event by using a compliant spin or other structure.

³⁸ Rev. Proc. 2024-1 and Rev. Proc. 2024-3.

³⁹ Rev. Proc. 2024-24

ACT

Morrison Foerster advised nonprofit corporation ACT, the mission-driven provider of the assessments, research, and work-ready credentials designed to support education and workplace success, in its entry into a partnership with a newly formed Delaware public benefit corporation majority owned by Nexus Capital Management, a Los Angeles-based private equity firm.

The partnership provides students, job seekers, and educators around the world with new products, solutions, and services that are created to better meet the needs of people at any stage in their education or career paths.

“ **Our goal is to help more students be ready for their postsecondary paths, and help more adults advance in their careers.**

Janet Godwin
CEO
ACT



Ascendent Capital Partners

Morrison Foerster advised Ascendent Capital Partners, a private equity firm, in connection with its \$1.66 billion take private of NASDAQ-listed HollySys Automation Technologies, a China-headquartered, British Virgin Islands company.

Founded in 1993, HollySys is an industrial automation company with businesses in over 40 countries. Leveraging its proprietary technology and deep industry know-how, HollySys empowers its customers with business-critical enhanced operational safety, reliability, efficiency, and intelligence.

“ We are delighted to complete the acquisition of HollySys. We look forward to working constructively with the key management and employees of the Company to bring our vision to the business and create the best possible outcome for the staff and customers of HollySys in the future.

Leon Meng

Founding Managing
Partner and Chairman
Ascendent



Bow River Capital

Morrison Foerster advised Bow River's Software Growth Equity Fund, a Denver-based growth equity fund, on several recent transactions.

Our work has included advising Bow River's Software Growth Equity Fund team in connection with its majority recapitalization of RippleWorx, a hyper-growth company developing human capital management software aimed at global workforce performance acceleration.

The firm also advised Bow River's Software Growth Equity Fund in its majority recapitalization of Accelo, a cloud-based, service operations platform that enables users to manage and automate business tasks such as sales, project management, client billing, and time tracking services.

“ We’re elated to have completed our third and fourth platform investments in SGE Fund II this year and to partner with the global SaaS leaders at Accelo and RippleWorx in rapidly implementing our value creation playbook and utilizing all our resources for transformative change.

John Raeder

Vice Chairman and Head
of Software Investments
Bow River Capital



CONVOTIS

Morrison Foerster advised CONVOTIS GmbH, a provider of digital platform and managed services intended to automate business processes, on several recent transactions, including its acquisition of AGENTIL Group, a leading provider of SAP solutions and IT services for enterprises in the Swiss, French, and European markets.

The firm also advised CONVOTIS in its acquisitions of aspectra AG, swiss cloud computing AG, and EDICOS. These transactions provide the companies with additional opportunities to scale across the European markets while continuing to offer end-to-end solutions to customers.

“ **aspectra’s established experience and successful market positioning will significantly contribute to diversifying our Managed IT offerings and further expanding our market position as a leading European Managed IT service provider.**

Manuel Ebner
CEO
CONVOTIS



Fortress Investment Group

Morrison Foerster advised Fortress Investment Group in connection with the \$3.32 billion sale of its portfolio company operating Accordia Golf courses in Japan to Heiwa, a Japanese leisure company listed on the Tokyo Stock Exchange that operates golf courses in Japan under the brand of Pacific Golf Management. Fortress is an investment management firm that manages alternative assets in private equity, liquid hedge funds, and credit funds.

The sale makes Heiwa the world's largest owner of golf courses, with the company having 321 courses.

“ With ample funding, better returns and a plethora of potential targets, Japan has become the new playground for private-equity firms. They are likely there to stay.

The Wall Street Journal



KISS

Morrison Foerster advised the iconic rock band KISS and its co-founders Gene Simmons and Paul Stanley in the sale of all assets comprising KISS to Pophouse Entertainment Group AB. This groundbreaking transaction at the intersection of music and technology includes the music catalogue, brand name, and likeness—including the world-famous face paint designs—as well as trademarks of the iconic American rock band.

Working closely with KISS, Pophouse is committed to nurturing the close relationship between KISS and its devoted fans moving forward. As part of the partnership, Pophouse will create digital versions of KISS that will allow the band and their unique personas to live forever. Pophouse is a private equity fund based in Sweden that focuses on investments in the music industry. Its holdings include the Avicii and Swedish House Mafia music catalogues, and it recently announced the acquisition of the Cyndi Lauper catalogue. It is the developer of the ABBA Voyage experience in London.

“ **We can be forever young and forever iconic by taking us to places we’ve never dreamed of before.**

Gene Simmons
Co-Founder
KISS

“ **What we’ve accomplished has been amazing, but it’s not enough. The band deserves to live on because the band is bigger than we are.**

Paul Stanley
Co-Founder
KISS



Palladium Equity Partners

Morrison Foerster advised Palladium Equity Partners, a middle-market buyout fund, in the \$695 million sale of its majority interest in Trachte, a leading provider of highly engineered protection and control buildings with mission critical applications, to nVent Electric, a leading global provider of electrical connection and protection solutions.

“ We are extremely pleased with the outcome of this investment which is another excellent example of how Palladium creates value and elevates the businesses in which it invests to the next level.

Daniel Ilundain

Partner and Co-Head of
Flagship Funds
Palladium

Scott Kirschner

Principal
Palladium



Rivian Automotive

Morrison Foerster advised Rivian Automotive, an electric vehicle developer and manufacturer, on the formation of an equally controlled and owned joint venture with Volkswagen Group.

The partnership is anticipated to accelerate the development of software for Rivian and Volkswagen Group relating to electrical architectures in electric vehicles. It is expected to allow both companies to combine their complementary strengths and lower cost per vehicle by increasing scale and speeding up innovation globally.

“ We have been focused on developing highly differentiated technology, and it’s exciting that one of the world’s largest and most respected automotive companies has recognized this.

RJ Scaringe
Founder and CEO
Rivian



Sekisui House

Morrison Foerster advised Sekisui House, a Japan-based publicly listed homebuilding company, in connection with its \$4.9 billion acquisition of M.D.C. Holdings, a large U.S. homebuilder listed on the NYSE.

The acquisition of M.D.C. made Sekisui House one of the largest homebuilders in the United States and has allowed Sekisui House to broaden its range of high-quality, ESG-conscious products and lifestyle packages to M.D.C. customers.



SoftBank

Morrison Foerster advised SoftBank Group Corp. in its acquisition of Graphcore, a UK-based semiconductor and microprocessor developer.

The firm also advised SoftBank in connection with its pre-IPO investment in Tempus AI, a leader in artificial intelligence and precision medicine, as well as its joint venture with Tempus to bring its AI solutions to Japan and the Asia region; and advised SoftBank as the lead investor in the \$1.05 billion Series C financing of Wayve, a leading UK developer of AI for autonomous vehicles.

“ With the advent and the acceleration of AI, what’s going to be critical is the foundation layers—not just the models but all the infrastructure around it, including on the semiconductor and systems side.

Vikas Parekh
Managing Partner
SoftBank Investment Advisers



Sweetwood Smoke & Co.

Morrison Foerster advised Sweetwood Smoke & Co., maker of FATTY Smoked Meat Sticks, in its sale to Conagra Brands, one of North America's leading branded food companies.

FATTY Smoked Meat Sticks are protein-packed, better-for-you snacks for people on the go, made with high-quality pork and beef smoked with real hickory wood. The sale to Conagra expands Sweetwood's customer base and increases its strategic growth.

“ I'm looking forward to working with Conagra to make FATTY products available to more people with big appetites for meat sticks.

Ryan Wood
Founder and CEO
Sweetwood Smoke & Co.



U.S. Silica

Morrison Foerster advised U.S. Silica, a NYSE-listed global industrial minerals and logistics leader, in its \$1.85 billion sale to entities affiliated with Apollo Global Management, one of the world's premier investment firms.

In partnering with Apollo, U.S. Silica gains significant resources, deep industry expertise, and enhanced flexibility as a private company to pursue the many market opportunities in front of it and invest in innovative capabilities that enable value-added offerings for customers.

“ U.S. Silica has been a leader in the industrial silica and minerals industry for 124 years, and this agreement is a great outcome for our stockholders that paves the way for the Company's continued success well into the future.

Bryan Shinn
CEO
U.S. Silica





Morrison Foerster advised longstanding client Visa in connection with the completion of its acquisition of Featurespace, a developer of real-time artificial intelligence payments protection technology that prevents and mitigates payments fraud and financial crime risks.

Visa is a world leader in digital payments, facilitating transactions between consumers, merchants, financial institutions, and government entities across more than 200 countries and territories. Visa will add Featurespace's capabilities into its range of fraud prevention and risk-scoring offerings.
















Over the coming months, Featurespace's product portfolio will be incorporated into Visa's existing offering, expanding the available range of fraud prevention solutions and use cases. The Featurespace and Visa teams will bring together their knowledge, modelling methodologies, and tools to further enhance the joint offering.































“ **Providing our clients with solutions that can adapt to and anticipate the changing threat landscape is of the utmost importance. Featurespace's strong foundation in AI will enhance our existing product portfolio and enable us to address our clients' most complex and pressing challenges.**

Antony Cahill
Global Head of
Value-Added Services
Visa



M&A Deals Announced in 2024

| | | | | | |
|---|--|--|--|---|--|
|  <p>Terms Not Disclosed</p> <p>Partnership with a Delaware Public Benefit Corporation Majority Owned by Nexus Capital Management Counsel to ACT</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of Pace International Counsel to AgroFresh Solutions</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its AlpineX Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of Summitry Counsel to Aspen Standard Wealth, Backed by Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its Evergreen Services Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its Orion Group Platform Counsel to Alpine Investors</p> |
|  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its Predictis Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its TEAM Services Group Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its Vertex Service Partners Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Multiple Acquisitions in Support of its Wilson Language Training Platform Counsel to Alpine Investors</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of Clark Foam Corporation Counsel to Specialized Packaging Group, Backed by Altamont Capital Partners</p> |  <p>Terms Not Disclosed</p> <p>Sale of Klement's Sausage Company to Amylu Foods Counsel to Tall Tree Foods, Backed by Altamont Capital Partners</p> |
|  <p>Terms Not Disclosed</p> <p>Acquisition of KOA Electronics Counsel to WAVE Electronics, Backed by Altamont Capital Partners</p> |  <p>\$139 Million</p> <p>Acquisition by Commure Counsel to Augmedix</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of Aether Media (d/b/a Wonder Dynamics) Counsel to Autodesk</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of IP from Golaem Counsel to Autodesk</p> |  <p>Terms Not Disclosed</p> <p>Partnership with Brené Brown Counsel to BetterUp</p> |  <p>Terms Not Disclosed</p> <p>Acquisition of Canopy Labs (d/b/a Heyday) Counsel to BetterUp</p> |
|  <p>\$160 Million in cash consideration</p> <p>Sale of Cylance Assets to Arctic Wolf Counsel to BlackBerry</p> |  <p>Terms Not Disclosed</p> <p>Majority Investment in Accelo Counsel to Bow River Capital</p> |  <p>Terms Not Disclosed</p> <p>Majority Recapitalization of RippleWorx Counsel to Bow River Capital</p> |  <p>\$300 Million</p> <p>Acquisition of BMC Enterprises Counsel to Breedon Group plc</p> |  <p>Terms Not Disclosed</p> <p>Sale of Builder Homesite to Zonda Counsel to Builder Homesite</p> |  <p>\$2.75 Billion</p> <p>De-SPAC Merger with Nidar Counsel to Caritca Acquisition Group</p> |

| | | | | | |
|---|---|--|--|--|---|
|  <p>CONVOTIS</p> <p>Terms Not Disclosed</p> <p>Acquisition of AGENTIL Counsel to CONVOTIS</p> |  <p>CONVOTIS</p> <p>Terms Not Disclosed</p> <p>Acquisition of Aspectra Counsel to CONVOTIS</p> |  <p>CONVOTIS</p> <p>Terms Not Disclosed</p> <p>Acquisition of edicos Consulting & Software Counsel to CONVOTIS</p> |  <p>CYDECOR</p> <p>Terms Not Disclosed</p> <p>Acquisition of Artel Counsel to Cydecor</p> |  <p>dataglobal[™]</p> <p>Terms Not Disclosed</p> <p>Acquisition of Vykon GmbH & Co. KG Counsel to dataglobal</p> |  <p>德朕 DELONIX</p> <p>Terms Not Disclosed</p> <p>Equity Investment in Hotel MONday Counsel to Delonix Group</p> |
|  <p>DOCUFY</p> <p>Terms Not Disclosed</p> <p>Acquisition of KGU Group Counsel to DOCUFY</p> |  <p>Elvaston</p> <p>Terms Not Disclosed</p> <p>Strategic Partnership with Brandnamic and Yavonis Counsel to Elvaston Capital Management</p> |  <p>Elvaston</p> <p>Terms Not Disclosed</p> <p>Sale of a 40% Equity Stake in SB Holdings International to EMH Partners Counsel to Elvaston Capital Management</p> |  <p>Elvaston</p> <p>Terms Not Disclosed</p> <p>Sale of Stonebranch and its Subsidiaries to EMH Partners Counsel to Elvaston Capital Management</p> |  <p>Excellere Partners[®] Concord TECHNOLOGIES</p> <p>Terms Not Disclosed</p> <p>Acquisition of Biscom Counsel to Concord Technologies, Backed by Excellere Partners</p> |  <p>Excellere Partners[®] Concord TECHNOLOGIES</p> <p>Terms Not Disclosed</p> <p>Acquisition of Opero Counsel to Concord Technologies, Backed by Excellere Partners</p> |
|  <p>FORTRESS</p> <p>\$3.32 Billion</p> <p>Sale of its Portfolio Company Operating Accordia Golf Courses to Heiwa Corp. Counsel to Fortress Investment Group</p> |  <p>GeoComply[®]</p> <p>\$37.5 Million</p> <p>Acquisition of FansUnite by Betting Hero Counsel to GeoComply Solutions as Minority Investor</p> |  <p>GTREASURY</p> <p>Terms Not Disclosed</p> <p>Acquisition of CashAnalytics Counsel to Gtreasury Holdings</p> |  <p>JLIT Group AG</p> <p>Terms Not Disclosed</p> <p>Acquisition of Swiss Cloud Computing AG Counsel to JLIT Group AG</p> |  <p>KISS</p> <p>Terms Not Disclosed</p> <p>Sale of Assets to Pophouse Entertainment Group Counsel to KISS and Its Co-founders Gene Simmons and Paul Stanley</p> |  <p>leaflink</p> <p>Terms Not Disclosed</p> <p>Acquisition of the Assets of Dama Financial's Banking Division Counsel to LeafLink</p> |
|  <p>LendingClub</p> <p>Terms Not Disclosed</p> <p>Acquisition of the IP Behind Tally Technologies in Partnership with Pagaya Technologies Counsel to LendingClub</p> |  <p>LENNAR</p> <p>Terms Not Disclosed</p> <p>Merger Between Doma Holdings and Title Resources Group Counsel to Subsidiaries of Lennar Corp.</p> |  <p>Markon</p> <p>Terms Not Disclosed</p> <p>Acquisition of Advanced Systems Engineering Corp. Counsel to Markon</p> |  <p>Markon</p> <p>Terms Not Disclosed</p> <p>Acquisition of JY Systems Counsel to Markon</p> |  <p>Markon</p> <p>Terms Not Disclosed</p> <p>Acquisition of Leverage Information Technologies Counsel to Markon</p> |  <p>MEDIOS</p> <p>€235.5 Million</p> <p>Acquisition of Ceban Pharmaceuticals Counsel to Medios AG</p> |
|  <p>MGM RESORTS INTERNATIONAL</p> <p>Terms Not Disclosed</p> <p>Joint Venture with Grupo Globo Counsel to MGM Resorts International</p> |  <p>Miura</p> <p>Terms Not Disclosed</p> <p>Acquisition of Cleaver-Brooks Counsel to Miura</p> |  <p>moneythumb</p> <p>Terms Not Disclosed</p> <p>Acquisition by an Affiliate of Iron Creek Partners Counsel to MoneyThumb</p> |  <p>nextworld</p> <p>Terms Not Disclosed</p> <p>Sale of The Citizenry to Havenly Counsel to NextWorld</p> |  <p>Nikon</p> <p>Terms Not Disclosed</p> <p>Acquisition of RED.com Counsel to Nikon Corporation</p> |  <p>octobot</p> <p>Terms Not Disclosed</p> <p>Acquisition by Sparq Counsel to Octobot</p> |



\$165 Million

Acquisition of Assets from Alcon
Counsel to OcuMension Therapeutics



Terms Not Disclosed

Investment from CVC
Counsel to Odevo

P5 Music

Terms Not Disclosed

Acquisition of Pavement Records GmbH
Counsel to P5 Music GmbH



Terms Not Disclosed

Acquisition of Promix Nutrition
Counsel to Paine Schwartz Partners



\$695 Million

Sale of Trachte to nVent Electric
Counsel to Palladium Equity Partners



Terms Not Disclosed

Sale of Alliant National Title Insurance Company to Dream Finders Homes
Counsel to Presidio Investors



\$35 Billion

Ansys's Sale to Synopsis
Counsel to Qatalyst Partners, Financial Advisor to Ansys



\$6.5 Billion

Sale of HashiCorp to IBM
Counsel to Qatalyst Partners, Financial Advisor to Hashicorp



\$1.7 Billion

Sale of Zuora to Silver Lake and GIC
Counsel to Qatalyst Partners, Financial Advisor to Zuora's Special Committee



Terms Not Disclosed

Acquisition of Foodsteps
Counsel to Registrar Corp, Backed by Paine Schwartz Partners



Terms Not Disclosed

Joint Venture with CG Power and Stars Microelectronics to Establish a Greenfield (OSAT) Facility in India
Counsel to Renesas



\$5 Billion

Joint Venture with Volkswagen Group
Counsel to Rivian Automotive



Terms Not Disclosed

Acquisition of Sigan Industries Group
Counsel to San Francisco Equity Partners and SV Labs



\$4.9 Billion

Acquisition of M.D.C Holdings
Counsel to Sekisui House



Terms Not Disclosed

Acquisition of Juno Technologies
Counsel to Sigma Defense Systems



\$31 Million

Acquisition of CloudNine at Camarillo and Sky 805
Counsel to SkyHarbour



Terms Not Disclosed

Acquisition by Block
Counsel to Shieldrule Technologies (Sliderule)



\$188 Million

Joint Venture with Tempus AI
Counsel to SoftBank



Terms Not Disclosed

Acquisition of Graphcore
Counsel to SoftBank



Terms Not Disclosed

Acquisition of All Outstanding Shares of Desktop Metal by Nano Dimension
Counsel to Stifel, Financial Advisor to Desktop Metal



Terms Not Disclosed

Sale to Conagra Brands
Counsel to Sweetwood Smoke & Co.



Terms Not Disclosed

Sale of 18% Shareholding in Medios AG to Luxempart SA
Counsel to Tangaroa Management GmbH



Terms Not Disclosed

Sale of Stake in a 900 MW Platform of Solar and Wind Projects in Mexico to ENGIE
Counsel to Tokyo Gas



Terms Not Disclosed

Sale of Digital Twin Professional Services Arm to Capgemini
Counsel to Unity Technologies



\$1.85 Billion

Sale to Entities Affiliated with Apollo Global Management
Counsel to U.S. Silica



Terms Not Disclosed

Acquisition of Featurespace
Counsel to Visa



\$72.5 Million

Sale of The Coats Company to Victor Capital Partners
Counsel to Vontier Corporation



\$60 Million

Strategic Growth Investment in Raft LLC
Counsel to Washington Harbour Partners



Terms Not Disclosed

Acquisition of Boldend
Counsel to SIXGEN, Backed by Washington Harbour Partners



Terms Not Disclosed

Acquisition of Secure Enterprise Engineering
Counsel to SIXGEN, Backed by Washington Harbour Partners



The background of the entire page is a dark blue marbled paper with intricate, swirling patterns in various shades of blue and black, creating a textured, organic appearance.

**MORRISON
FOERSTER**

© 2025 Morrison & Foerster LLP