

MAC SURVEY NP 2020 REPORT



NIXON
PEABODY



18TH

Study of current
negotiation trends
involving material
adverse change clauses
in M&A transactions

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We are pleased to present the findings from our 18th MAC Survey

The mergers and acquisitions environment has remained robust since our last survey. While the coronavirus pandemic significantly affected the market through most of 2020, **we find that mergers and acquisitions continue to be a favored approach to growth.** 2019 was the fourth highest year ever for M&A volume and **the sixth consecutive year in which deal volume exceeded \$3 trillion.** Contributing to this overall trend were a number of strategic **multi-billion dollar megadeals** in industries such as **software, energy, entertainment, and pharmaceuticals.** In October 2019, **The Charles Schwab Corporation** agreed to acquire fellow financial services company TD Ameritrade for \$26 billion, in a move to further its leadership in the competitive financial services market. Adding to the deal fervor in financial services, in February 2020, **Franklin Resources** announced that it would acquire Legg Mason for \$4.5 billion followed three days later by the announcement of **Morgan Stanley's** \$13 billion acquisition of E* Trade. **Deal activity remained strong despite a global pandemic,** a U.S. general election, and global economic and geopolitical uncertainty, for reasons including, in the United States, an increase in available cash due to tax reform as well as a growing need for businesses to respond to competitive pressures and marketplace disruption.



Nixon Peabody's annual analysis of material adverse change clauses in acquisition agreements over the past 18 years has evinced a dealmaking climate highly sensitive to developments both in the United States and around the world. Each year, the survey provides a renewed opportunity to examine the market's responses to shifts in the myriad economic, geopolitical, and societal forces that shape the manner and environment in which transactions occur. With each survey we conduct, we capture a more robust picture of trends in M&A transactions.

Survey results provide us vivid insight into the prevailing conditions and concerns surrounding transactions. The tragic events of September 11, 2001, cast an unmistakable shadow over our inaugural survey covering deals during 2001–2002, which notably reflected the growing concern of the potential impact of terrorism on dealmaking. Ensuing years saw the world begin to adjust to a post-9/11 reality, and an increasingly stabilized economy as a consequence. A renewed sense of security helped spur growth during this period, which fostered conditions favorable to targets. The attending trend toward an increase in MAC exceptions halted, however, once the effects of the credit crisis and the Great Recession began to take hold in 2008 and 2009. Fewer companies found themselves in a position to buy. Those who were in the market were able to wield greater power in transactional negotiations. We have seen an increase in MAC exceptions in the years since the recession, indicating that the balance between purchasers and targets has equalized to some extent. Similar to the last survey we published in 2019, this year's results indicate an overall acceptance of the concept that MAC clauses should exclude from their reach general business risk.

The statistics contained in this summary convey useful information for understanding contemporary M&A transactions, and delving deeper into the results in order to explore the underlying factors influencing the results generates even more valuable knowledge. We hope that our survey and analysis of its results lead to a greater understanding of today's dealmaking landscape.

An Introduction to the MAC Clause

Material adverse change or material adverse effect clauses, often referred to as MAC or MAE clauses, serve dual purposes. First, a MAC definition is used in qualifications to various representations, warranties, and covenants, establishing a threshold for determining the scope of disclosure or compliance relating to risks associated with the changes in the target's business. For example, a representation may provide that a target has complied with all cybersecurity laws and directives "except as would not have a Material Adverse Effect." Such a MAC qualification would allow an immaterial breach of a cybersecurity law or directive to have a significantly reduced effect on the consummation of a deal.

As a second function, the MAC clause is used to delineate the circumstances under which a bidder would be permitted to exit a transaction without liability. This right to walk away is frequently referred to as a "MAC out" and generally appears in the conditions precedent to the bidder's obligation to close the deal. A typical MAC-out provision states as a condition that "there shall not have occurred a Material Adverse Change in the Company." The delineated events constituting a MAC are then qualified by a listing of other events, often referred to as "MAC exceptions." MAC exceptions preclude bidders from walking away from a deal or seeking a renegotiation of material terms on the basis that a MAC has taken place. The delineated events constituting a MAC, together with MAC exceptions, allocate carefully calibrated and negotiated deal certainty risk and risk of loss between the bidder and the target that may result from adverse circumstances occurring in the target's business in the sensitive period between deal execution and completion.

MAC clauses are often heavily negotiated between the parties. A target usually attempts to narrow the MAC definitional elements and expand the exceptions in order to shift risk to the bidder. By shifting risk to the bidder, the target bolsters the certainty of the deal's closing and its ability to preserve deal pricing. Bidders, however, strive to shift the risk to the target by expanding MAC elements and reducing the number and scope of the exceptions allowed, thereby reserving for the bidder a greater ability to walk away from

the deal or to renegotiate deal terms. While courts generally are reluctant to enforce MAC clauses, in 2018, the Delaware Chancery Court held that a target company's sustained drop in business performance between signing and closing constituted a MAC, and that its breach of representations regarding regulatory compliance would be expected to result in a MAC, allowing the buyer in that case to terminate the merger agreement. In addition, in recent years, some bidders have successfully invoked such provisions in order to re-price a deal.

Our Methodology

As with our prior surveys, we reviewed publicly filed acquisition agreements for transactions with values in excess of \$100 million dated between June 1 of the preceding year and May 31 of the current year. For this survey, we collected a sizable sampling of deals executed between June 1, 2019, and May 31, 2020, from publicly available information filed with the U.S. Securities and Exchange Commission. This year, we reviewed 220 agreements, which included asset purchase, stock purchase, and merger agreements. The surveyed transactions represent an expansive array of industries and range in value from \$100 million to \$26 billion. While the majority of deals surveyed were entered into before the pandemic, our dataset also includes a reasonable sample size that was entered into at the height of lockdown. In this year's survey, we tracked for the first time the appearance of an exception relating to pandemics or COVID-19. This smaller sample size of transactions entered into during the pandemic, may have understated the concern of dealmakers about the potential impact of the risk of pandemic or COVID-19. While we note that our review and analysis are not technically scientific and do not include private transactions for which no agreement is publicly available, we believe that the results generally reflect the climate of M&A transactions during the period.

Furthermore, we analyzed the 88 deals in our sample valued at \$1 billion or more, comparing them to all deals reviewed during the period examined; we believe this may shed light on some differences between the largest deals and their middle-market counterparts.

Summary of Results: Pro-Bidder Trends

Of the 220 agreements surveyed, 97% contained a material adverse change in the “business, operations, financial conditions of the Company” as a definitional element. This is essentially the same percentage as contained this definitional element last year, when this element appeared in 98% of all agreements. Meanwhile, 8% of the 220 acquisition agreements reviewed this year lacked a MAC closing condition, compared to none reported last year, 7% reported in the 2017 survey, and 3% reported in the 2016 survey. These trends demonstrate the universal acceptance of MAC clauses in M&A documents although the use of a MAC closing condition tends to vary slightly from year-to-year.

This year’s results indicate a continuation of the shift toward a more objective test in determining whether a change constitutes a MAC. A majority of agreements contained the pro-bidder “would reasonably be expected to” language in the MAC definition—it appeared in 65% of the deals reviewed this year, while appearing in 74% of all deals reviewed in 2019. This language appeared in 62% of all deals reviewed in 2017, 54% of all deals reviewed in 2016, 61% of deals reviewed in 2015, 56% in 2014, 53% in 2013, 42% in 2012, and just 29% in 2011. By defining a material adverse effect to involve circumstances

that “would reasonably be expected to” lead to a MAC, a bidder introduces a forward-looking feature to the definition, allowing it to adopt a more lenient approach during negotiations over whether a material adverse change in the target’s prospects needs to be covered by the definition.

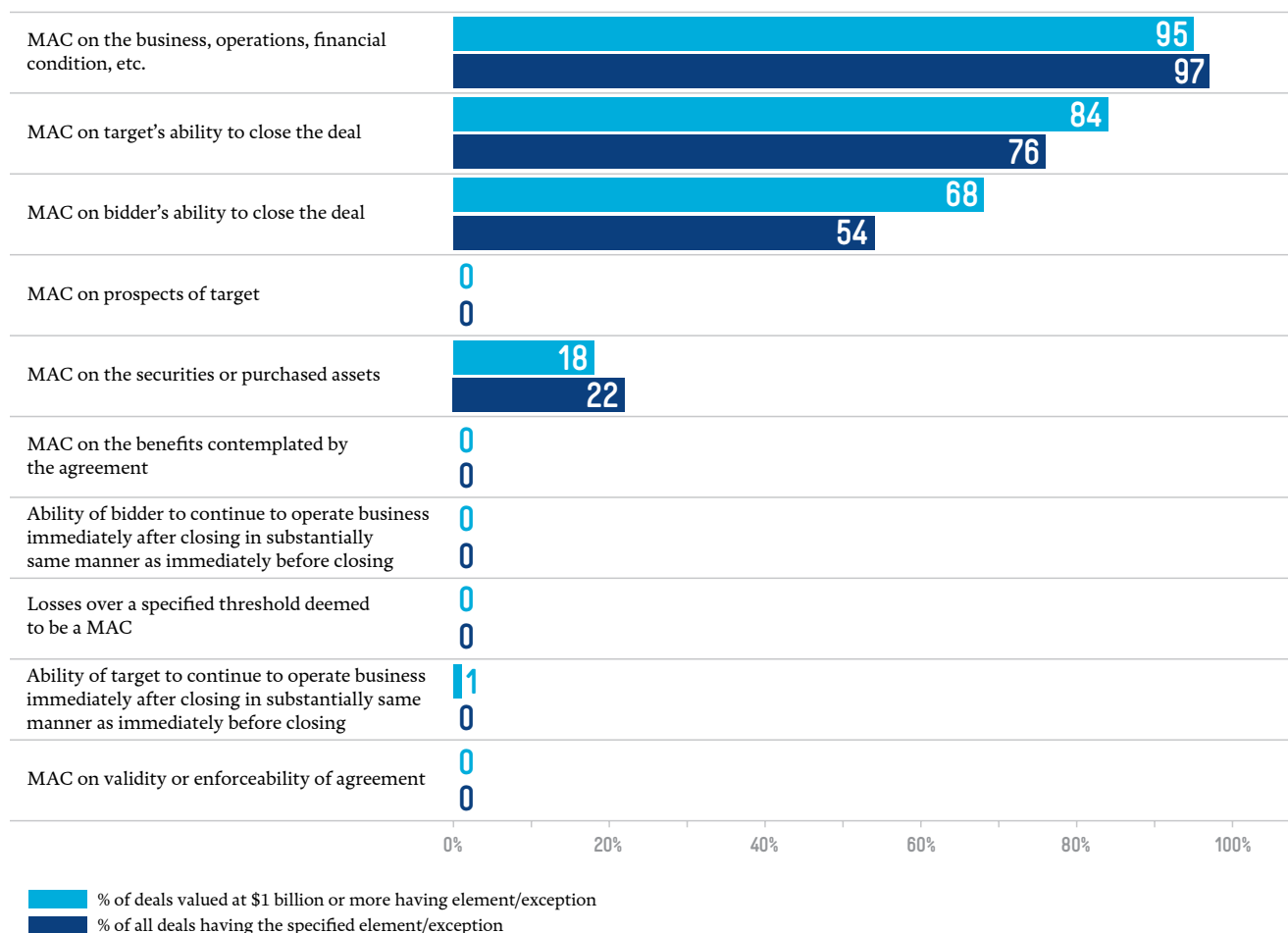
We also saw a slight decline in the usage of pro-bidder “disproportionately affect” language in the MAC exceptions during this year’s surveyed period. This language appeared in 83% of the deals reviewed this year, while appearing in 87% of deals reviewed in 2019, 76% of deals reviewed in 2017, and 81% and 83% of deals reviewed the two years before—which evidenced a significant increase over the 73% found in our 2011 and 2012 surveys and the 48% and 40% found in our 2009 and 2010 surveys, respectively. “Disproportionately affect” language carves out exceptions from the MAC clause to ensure that bidders have the protections of the MAC clause in the event the target company suffers more greatly than its peers from a specified event, such as a general economic or industry downturn. We are optimistic that the prevalent use of “disproportionately affect” clauses reflects the continued maturation and uniformity of MAC provisions generally.

The following chart details the prevalence of MAC elements in our survey:





MAC ELEMENTS



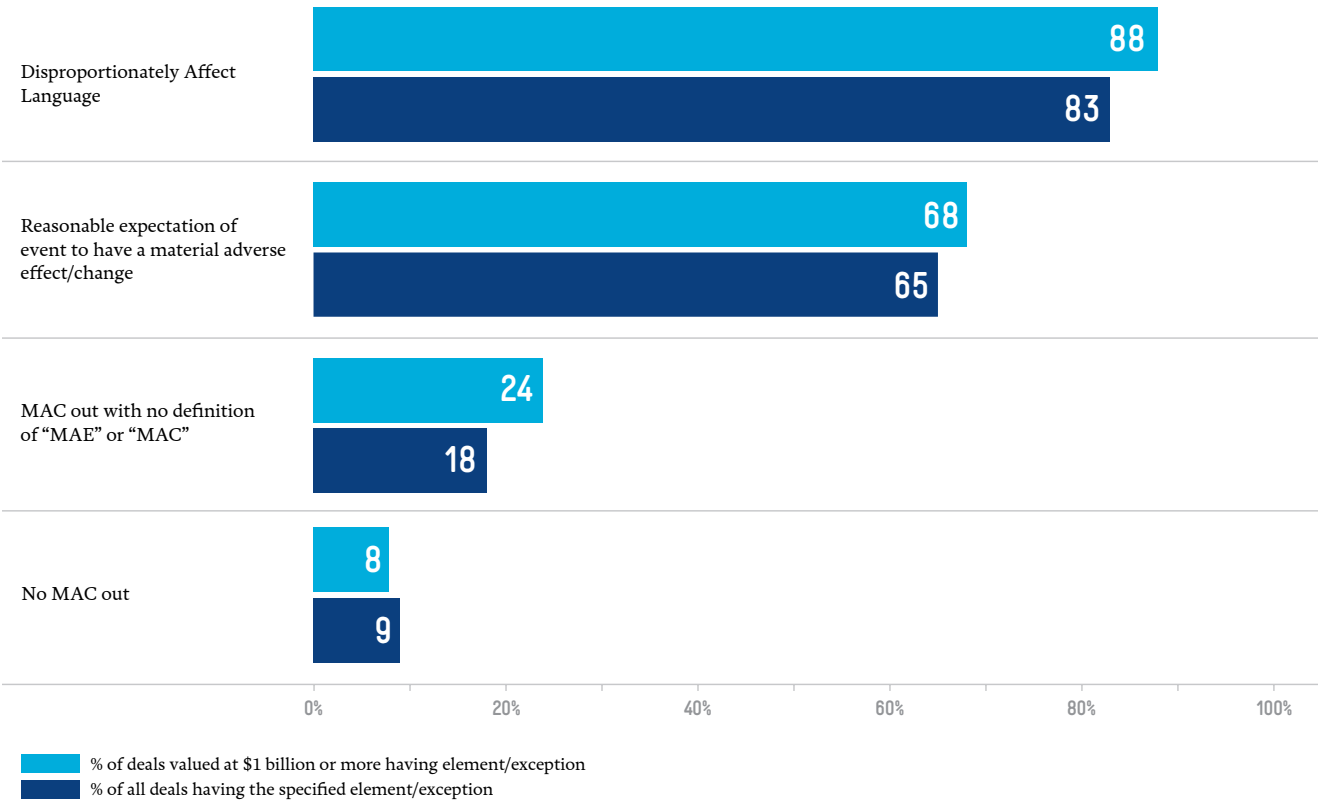
Increase in “Would Reasonably Be Expected to” Language in the MAC Definitions, Particularly in the Largest Deals

The MAC formulation where a listed event “would reasonably be expected to” result in a material adverse effect broadens the scope of events qualifying as materially adverse by allowing the bidder to account for effects on the target that are foreseeable but not yet revealed on an income statement or balance sheet. This clause incorporates a prospective element into the MAC clause formulation, significantly advantaging bidders. For example, notification from a target’s major customer that it would no longer do business with the target “would reasonably be

expected to” result in a loss of sales and a decline in profits but those effects may not have occurred by closing. In 2020, the “would reasonably be expected to” formulation declined from 2019. In addition to appearing in 65% of all agreements reviewed, this year, the formulation appeared in 68% of deals valued at \$1 billion or more in 2020 as compared to 77% in 2019. The declines among all deals and all deals of \$1 billion or more may reflect a pro-target change in the 2020 M&A environment, particularly since our survey did not indicate any increased use during the 2020 survey period of the concept of a material adverse change in the target’s prospects as a definitional element of a material adverse change.

The chart below details the findings in our survey with respect to general definitional matters:

MAC ELEMENTS: DEFINITIONAL MATTERS



Appearance of “Disproportionately Affects” Language Limiting the Exclusions Remains High

The pro-bidder “disproportionately affects” qualification ensures that exclusions favoring the target apply only when the target is keeping pace with its peers and its industry, not when it is an outlier in terms of its vulnerability to systemic threats. In about 83% of the agreements reviewed this year (and in 88% of deals valued at \$1 billion or more), the exclusions were limited in whole or in part to specified events that did not “disproportionately affect” the target. The use of the qualification in all deals reflected a slight decline from our 2019 survey where it appeared in 87% of the agreements we reviewed and returned closer to the results from the previous two years in which we conducted the MAC Survey, when it appeared in 76% and 81% of the agreements surveyed in 2017 and 2016, respectively. However, the results for transactions in the \$1 billion+ remained constant at 88%. The variations in this finding from year-to-year among all deals may reflect overall trends in deal valuations and, concomitantly, the relative leverage of bidders and targets with the higher percentages indicating increases in deal leverage flowing toward bidders and reductions in the percentages indicating increases in a target’s deal leverage. Overall, the general acceptance of this clause indicates that bidders and targets regularly reach consensus on the appropriate limits of exclusions from the MAC definition for factors affecting the target and its peer companies generally that typically are outside the control of the target.

More MAC Exceptions for the Largest Deals; Uniformity Across Industries

MAC exceptions tend to appear with greater frequency in the 88 deals valued at \$1 billion or more, compared to the full sample of 220 deals for the period covered in this survey. We identified, on average, approximately 14.1 exceptions per agreement for all agreements reviewed and about 15.7 exceptions per agreement for the top 88. It would appear that

the MAC clauses in deals valued in the billions of dollars are more stringently negotiated, and this is reflected in the number of MAC exceptions and the length of the MAC clause in general. This approach reflects the heightened importance of carefully delineating material events that could threaten deal certainty in the largest transactions.

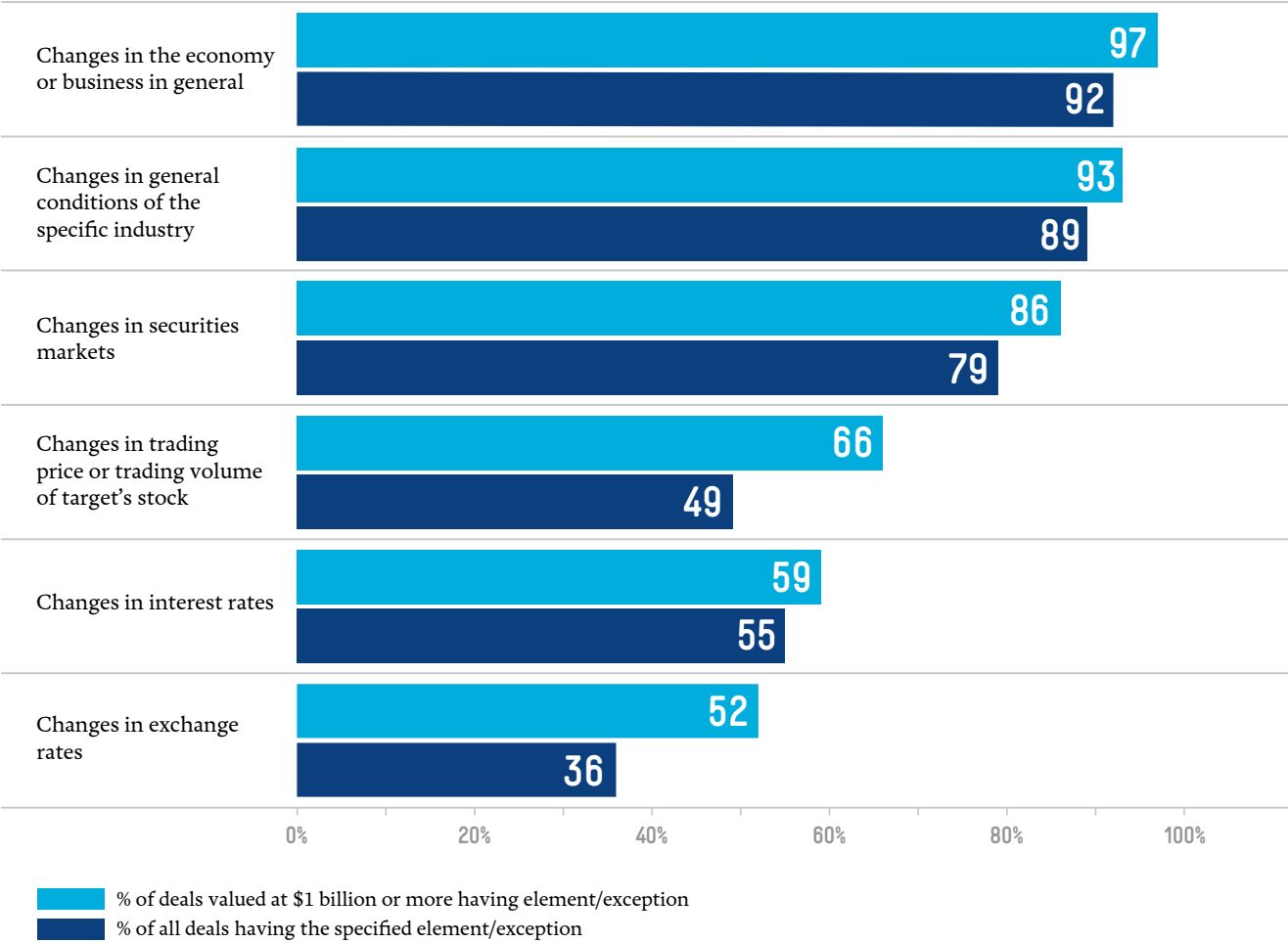
Among deals of the same magnitude, we observed a similar frequency of MAC exceptions across different industries, which reflects a relatively developed uniformity in MAC clauses. This is perhaps a sign of risk-averse approaches by both bidders and targets, as both sides may prefer conforming MAC clauses to market standards over negotiating unique formulations, particularly in the current competitive bidding and time-compressed environment for M&A transactions. It also may signal a greater common understanding of the meaning of a material adverse change

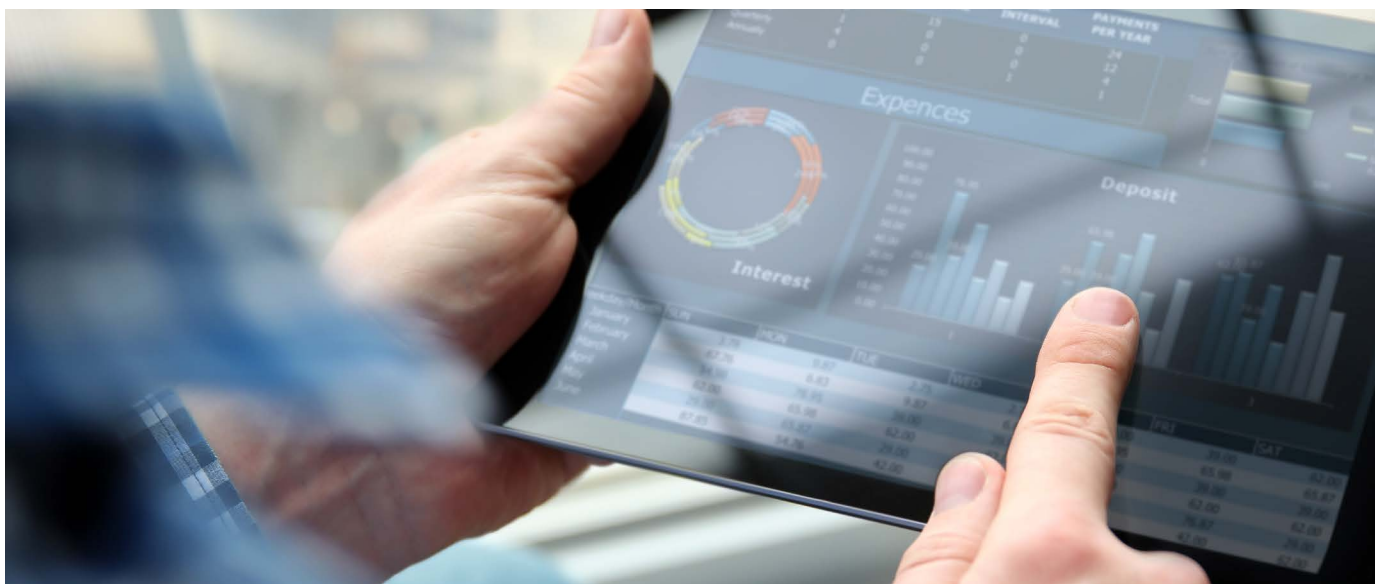
Exceptions Related to Changes in the Economy

In our previous survey, MAC exceptions for “changes in the economy or business in general” and “changes in general conditions of the specific industry” appeared in 94% and 87% of transaction agreements reviewed, respectively. This year, results for these exceptions were approximately the same at 92% and 89%, respectively, of transaction agreements reviewed. The MAC exception for “change in trading price or trading volume of Company’s stock” appeared in 49% of deals, a continued increase from its 2019 and 2017 levels of 40% and 36%, respectively. We note also that the exception for “change in trading price or trading volume” appeared in 66% of the 88 deals surveyed this year (as contrasted to 63% reported in our 2019 survey) that were valued at \$1 billion or more, reflecting the increased significance of trading price fluctuations on the larger transactions, which largely tend to involve public company acquisitions. The MAC exception relating to a change in securities markets appeared in 86% of deals this year, an increase from its 2019 and 2017 levels of 78% and 70%, respectively, perhaps reflecting target efforts to disallow the market volatility experienced this year from disrupting M&A transactions.

The chart below details the prevalence of MAC exceptions found in our survey relating to “Changes in Markets”

MAC EXCEPTIONS: CHANGES IN MARKETS





Exceptions for Changes Resulting from Acts of Terrorism and Changes in Political Conditions

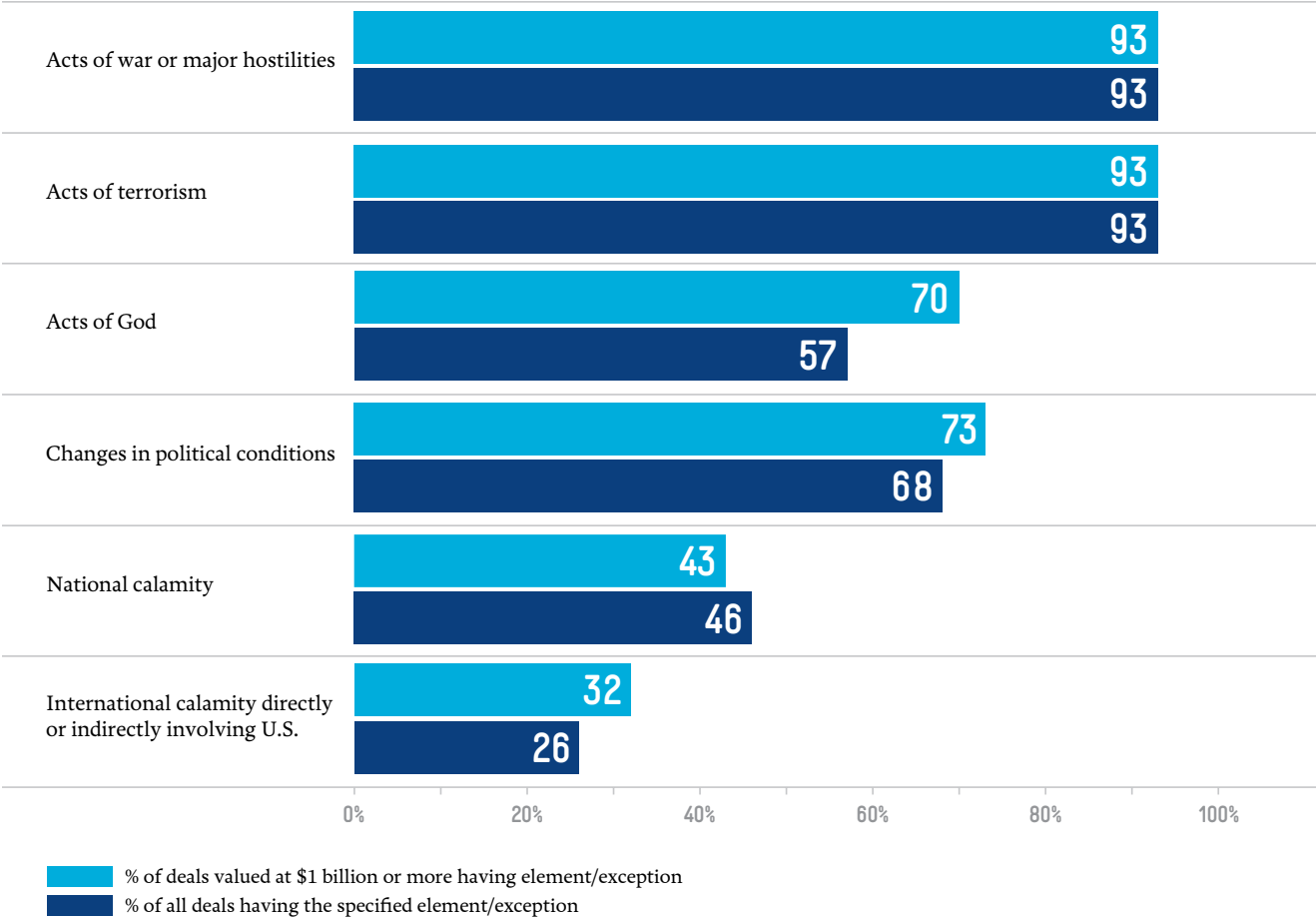
This year's survey featured some significant changes from our 2019 survey in MAC exceptions for changes resulting from acts of war, acts of terrorism, political conditions, and acts of God:

- “Changes due to acts of war or major hostilities” appeared in 93% of the agreements reviewed this year as was the case last year as contrasted with 81% and 85% of agreements reviewed in 2017 and 2016, respectively. This exception appeared in 82% of agreements surveyed in 2015, 85% in 2014, 88% in 2013, and 74% of those in 2012 and 2011.
- “Changes due to acts of terrorism in the United States or abroad” appeared in 93% of the agreements reviewed this year, an increase from 91% of agreements reviewed in 2019, 80% of agreements reviewed in 2017, and 85% in 2016. This exception appeared in 82% of the agreements surveyed in 2015, 85% in 2014, 87% in 2013, and 67% in 2012.
- “Changes in political conditions” appeared in 68% of the agreements surveyed this year, a material decrease from the 78% of the agreements reviewed in 2019, perhaps reflecting the concerns of buy-side parties about the potential impact of the U.S. general election and other current social factors. This exception appeared in 71% and 73% of agreements surveyed in 2017 and 2016, respectively. This exception appeared in 78% of the 88 deals valued at \$1 billion or more, a decrease from the previous survey's 82%.
- The “acts of God” exception appeared in 57% of the agreements reviewed this year, compared to 77% last year, 66% in 2017, 64% in 2016, 61% in 2015, 67% in 2014 and 2013, 43% in 2012, and 40% in 2011, a somewhat surprising result in view of the fires and weather volatility experienced during 2020. Notably, the “acts of God” exception appeared in 70% of the agreements in our sample valued at \$1 billion or more, a continuation of the declining trend over the past few years in which this exception appeared in 82% and 93% of the agreements reviewed in 2019 and 2017, respectively.
- The broadly worded exception for an “international calamity” appeared more frequently in this year's survey, which could reflect increased uncertainty surrounding risks relating to global security, Brexit, international trade, and other international issues. The exception appeared in 26% of all deals surveyed this year compared to 15% in 2019, 10% in 2017, and 18% of deals valued at \$1 billion or more, compared to 14% in 2017.
- In this year's survey, we tracked for the first time the appearance of an exception relating to pandemics or COVID-19. This exception appeared in 25% of both all of the agreements we reviewed as well as those for transactions valued at \$1 billion or more. This result may have understated the concern of dealmakers about the potential impact of the risk of pandemic or COVID-19 since only 70 of the 220 agreements included in the

survey were entered into on or after February 1, 2020, a date around which the COVID-19 pandemic began to achieve heightened awareness in the United States.

The chart details the prevalence of MAC exceptions relating to changes arising from hostilities, calamities, and acts of God.

MAC EXCEPTIONS: HOSTILITIES, CALAMITIES, AND ACTS OF GOD



Exceptions Relating to Changes in Legal Developments

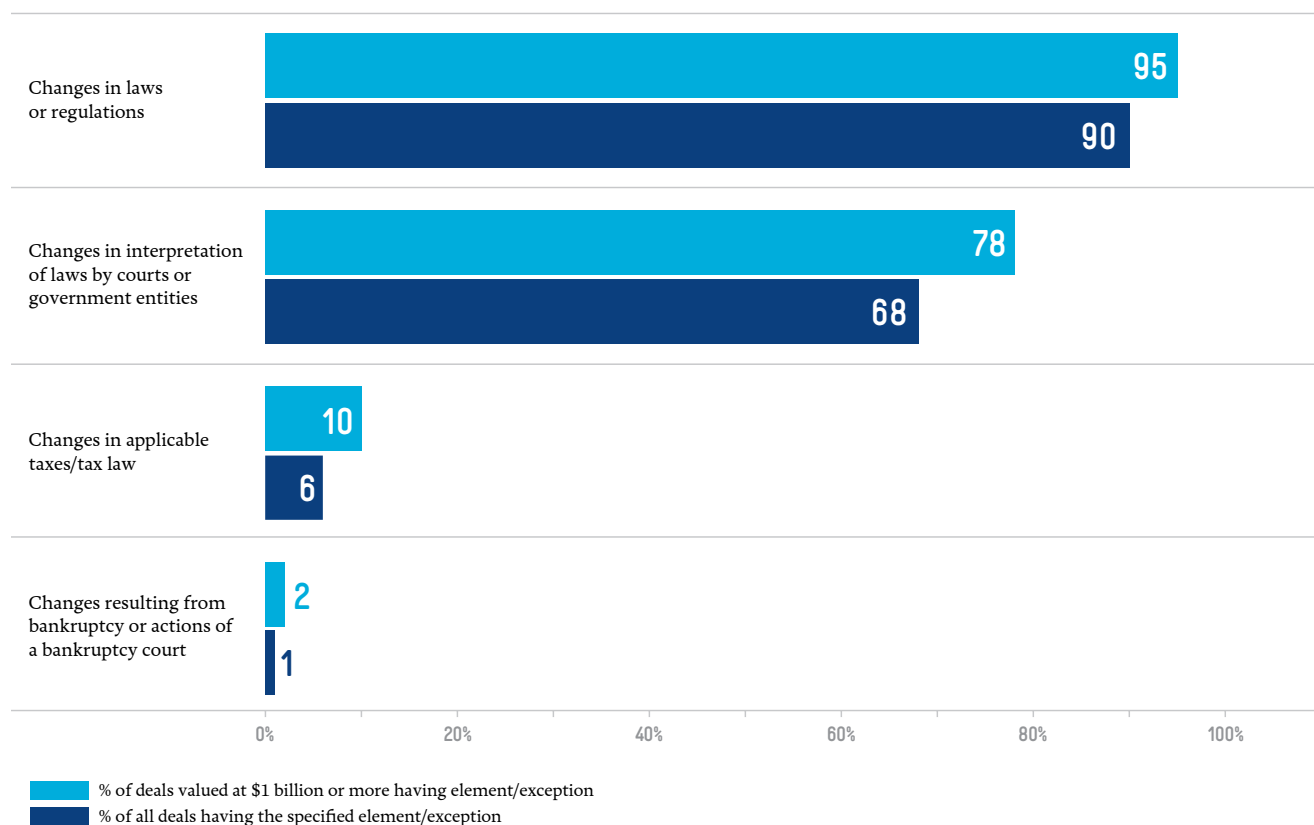
The MAC exception for “changes in laws or regulations” has grown quite steadily in the past decade. While this exception appeared in only 42% of transaction agreements in our 2006 review, this MAC exception has consistently appeared in more than 80% of the agreements reviewed in each of the last five years. The exception appeared in 90% of the agreements surveyed this year, 89% in 2019, 83% in 2017, 88% in 2016, 83% in 2015, 85% in 2014, 89% in 2013, 71% in 2012, and 67% in 2011. From our own experience, we have observed targets focusing on this exception due to uncertainty relating to the

United Kingdom’s plans to leave the European Union and the U.S. general election, which may be reflected in our survey results.

The exception for “changes in interpretation of laws by courts or government entities” appeared in 68% of the deals reviewed this year, which is relatively consistent with the 69% reviewed in 2019 and up from 57% of the deals reviewed in 2017. This figure was at 59% in 2016, 57% in 2015, 65% in 2014, 62% in 2013, 41% in 2012, and 27% in 2011.

The chart below details the prevalence of MAC exceptions found in our survey that relate to changes in legal developments:

MAC EXCEPTIONS: LEGAL DEVELOPMENTS



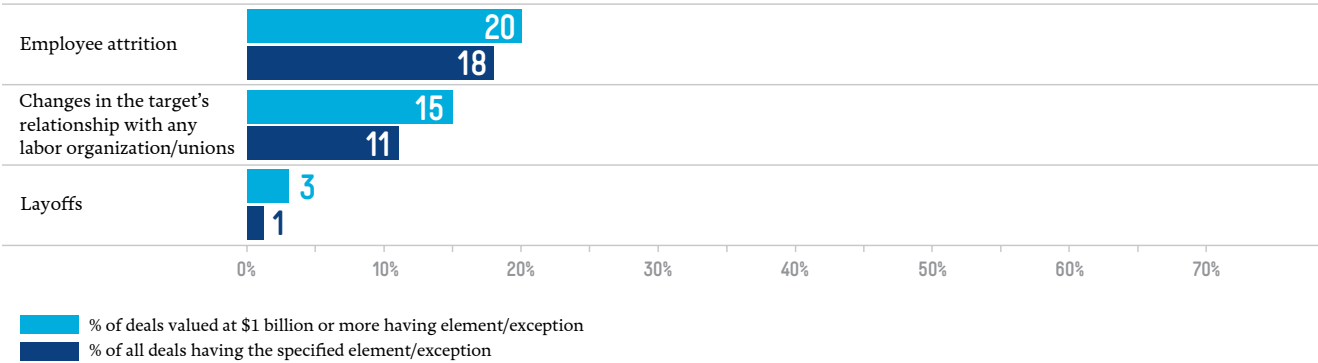
Other Notable Comparisons with the Top 88

As we observed before, MAC exceptions typically appeared at a higher rate within the 88 deals in our sample valued at \$1 billion or more, in comparison to the total deals reviewed. Notable examples include the carve-outs for changes in the economy or business

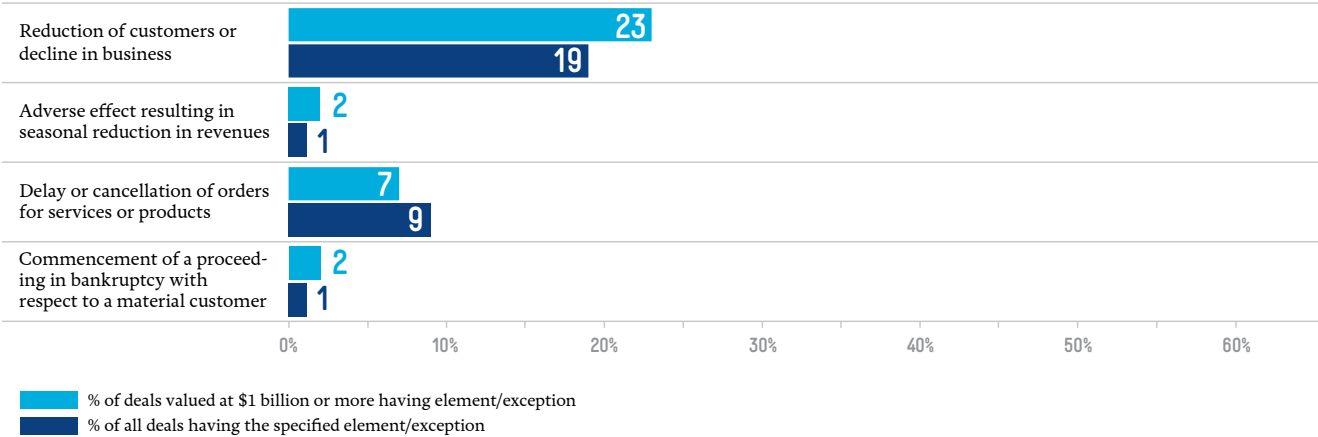
in general, changes in general conditions of the specific industry, changes in trading price or volume of the target’s stock, acts of God, the effect of the announcement of the transaction, and the failure of the target to meet revenue or earnings projections.

The following charts present the remaining results of this year’s survey.

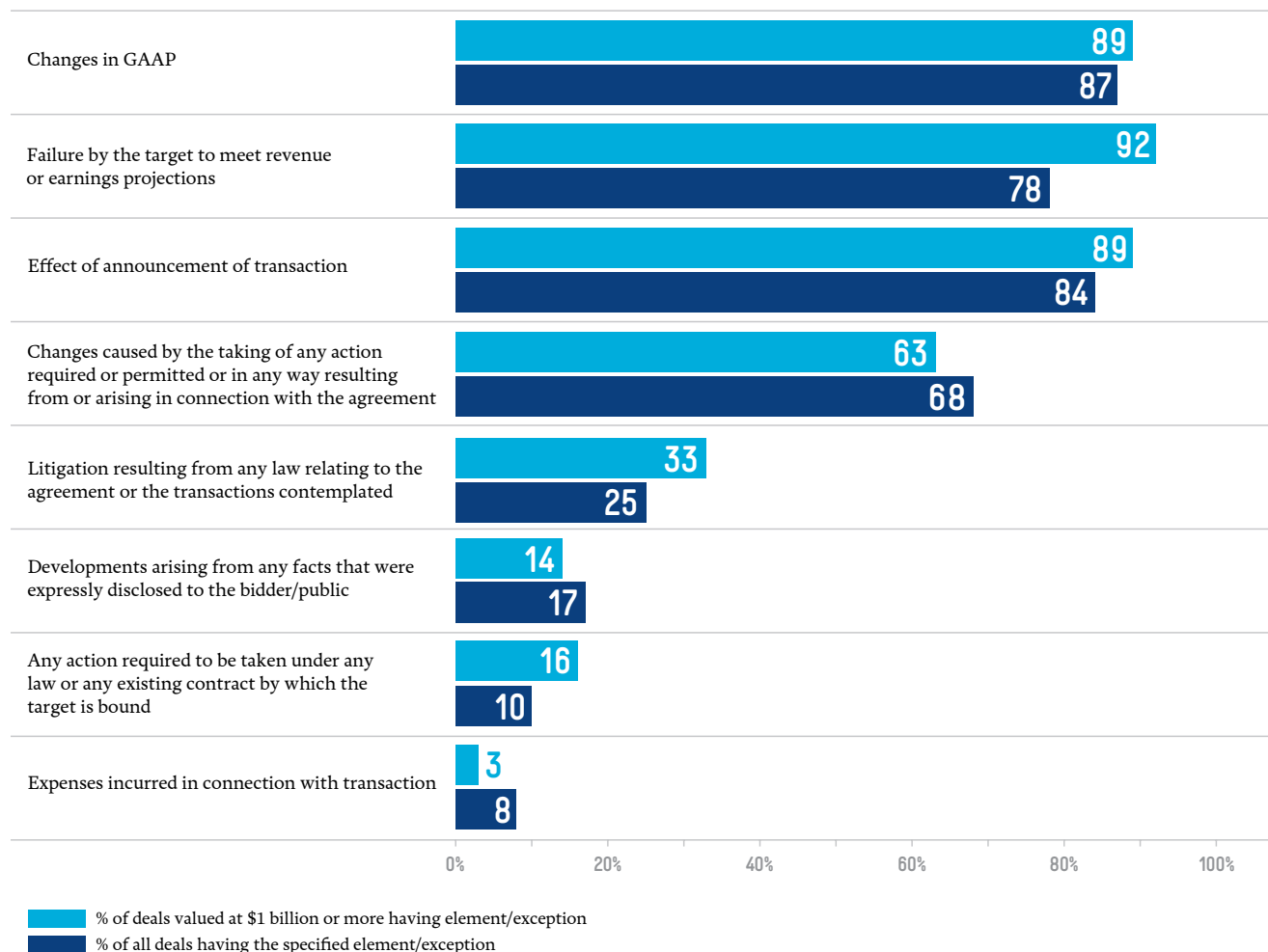
MAC EXCEPTIONS: EMPLOYEE MATTERS



MAC EXCEPTIONS: CHANGES IN ORDINARY COURSE OF BUSINESS



MAC EXCEPTIONS: MISCELLANEOUS





Recent MAC Cases

Due to the impact of the COVID-19 pandemic and the resulting economic tumult experienced during 2020, disputes have arisen between parties to M&A transactions, with the result that bidders have sought to invoke MAC and other clauses in acquisition agreements as a basis for renegotiating deal pricing and terms or for efforts to terminate deals prior to their closings.

Among the notable deals that resulted in litigation, Tiffany brought an action against LVMH in September 2020, seeking relief from the Delaware Chancery Court to enforce the \$16.2 billion merger agreement from which LVMH sought to walk away due to concerns arising out of the pandemic. In addition to claiming that there it was entitled to walk away from the deal due to the occurrence of a pandemic-related MAV, LVMH asserted that Tiffany had breached a pre-closing covenant to operate in the ordinary course of business by declaring a significant dividend while facing the pandemic-induced decline in its retail results. In another case, Simon Property Group attempted to disentangle itself from its \$3.6 billion acquisition of fellow mall operator Taubman Centers by bringing a lawsuit in Michigan alleging that a MAC clause was invoked in part by the pandemic. Simon Property subsequently also asserted that, by renegotiating without the approval of Simon Property its credit facilities, among other things, to grant its lenders collateral in previously unencumbered assets, Taubman Centers had breached its covenant to not act outside the ordinary course of business during the period between the signing of the acquisition agreement and the closing.

In another COVID-19-related litigation, retailer L Brands brought suit against Sycamore Partners for attempting to terminate the \$525 million acquisition of Victoria Secret's and PINK retail chains on the basis

that the chains were damaged by the pandemic. In that case, Sycamore did not seek to walk away from the deal based on the MAC clause in its acquisition agreement that related on a MAC related to L Brands' business, presumably because the MAC clause contained an exception to the MAC definition for events relating to a pandemic. Instead, Sycamore skated around the business-related portion of the MAC exception for a pandemic, by contending that it had the right to terminate the agreement because L Brands had damaged the business of its retail chains by acting outside the ordinary course of business in reaction to the pandemic by voluntarily responding to the pandemic by furloughing employees, skipping rent payments, and failing to restock inventory, and as well as on the basis that a MAC had occurred in relation to L Brands' ability to perform its obligations under the acquisition agreement. Under the terms of the acquisition agreement, the pandemic exception did not apply to "ability to perform" element of the MAC definition.

On November 30, 2020, Vice Chancellor J. Travis Laster of the Delaware Chancery Court issued a detailed opinion in *AB Stable VIII LLC v. MAPS Hotels and Resorts One LLC*, et al., 2020 WL 7024929 (Del. Ch. Nov. 30, 2020), which is likely to serve as a lawyer's guide to the drafting of MAC provisions and ordinary course covenants in acquisition agreements. In a thorough analysis of the MAC provision in the acquisition agreement for the aborted \$5.8 billion acquisition of the Strategic Hotels and Resorts luxury hotel chain, which was entered into before on the onset of the COVID-19 pandemic, the court, citing our 2019 MAC survey, ruled that the MAC clause was not invoked due to the COVID-19 pandemic because the MAC clause in the acquisition agreement contained an exception to the definition for "natural disasters or calamities," finding that the "plain language of the term 'calamities' encompasses the

COVID-19 pandemic and its effects.” Nevertheless, the court found that the target company had violated its ordinary course covenant to not act outside the ordinary course of business during the period between the signing of the acquisition agreement and the closing because, in responding to the COVID-19 pandemic, the target company “made extraordinary changes to its business.” The court found that this covenant violation was never cured and, as a result, a closing condition requiring contractual compliance by the target company was not satisfied, thereby justifying the bidder’s refusal to close the transaction.

These are among several deals in which MAC clauses have played a role in M&A litigation arising out of the pandemic and its fallout. In the case of the LVMH-Tiffany and the Simon Property-Taubman Centers deals, the litigation was settled when the parties renegotiated the pricing of the related deals. The L Brands-Sycamore Partners litigation was settled with a termination of the transaction. Litigation remains outstanding in several other pandemic-related cases in which MAC clauses were invoked, and litigators and dealmakers are expected to remain busy handling the lawsuits and related deal renegotiations for some time. The cases resolved to date, including those discussed above, highlight the leverage afforded bidders when they can invoke a MAC clause as a basis to terminate or renegotiate an M&A deal.

Court decisions historically have indicated that enforcement of MAC clauses is difficult. However, in October 2018, the Delaware Chancery Court decided for the first time that a MAC had occurred that permitted a buyer to walk away from a merger. In *Akorn, Inc. v. Fresenius Kabi AG*, No. 2018-0300-JTL, 2018 Del. Ch. LEXIS 325 (Ch. Oct. 1, 2018), the court held, among other things, that (1) target company Akorn’s sudden and sustained drop in business performance constituted a MAC, and (2) that Akorn’s representations regarding regulatory compliance were not true and correct, and that this deviation would reasonably be expected to result in a MAC. As a result, the court concluded buyer Fresenius validly terminated the deal. The case involved some unusual facts: a long (up to one year) period between signing and closing due to antitrust concerns, an 86% decline in full-year EBITDA, a 51% decline in adjusted EBITDA, and serious and pervasive data integrity and compliance problems brought to light by whistleblower complaints.

The 247-page opinion (which also cited our 2017 MAC Survey) cited and quoted extensively from the two leading Delaware decisions that declined to find a MAC: *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.*, 965 A.2d 715 (Del. Ch. 2008) and *In re: IBP Shareholders’ Litigation*, 789 A.2d 14 (Del. Ch. 2001). The court began its analysis with cautionary language from each of those opinions that the party claiming a MAC bears a “heavy burden” and that “a short-term hiccup” should not suffice, but, rather, the impact must be consequential to the company’s long-term earnings power and durationally significant when measured over a “commercially reasonable period, which one would expect to be measured in years rather than months” (citing *Hexion*). Thus, it will remain a “heavy burden” to demonstrate a MAC. Detailed precedent involving MAC clauses remains sparse, and so it is wise to incorporate in deal agreements thoughtfully prepared MAC language.

The more recent pandemic-related cases show that bidders can successfully invoke MAC clauses to renegotiate deal terms in their favor. Even when case law favors targets, targets are at times willing to settle by making a purchase price adjustment, rather than risk costly litigation and the possibility that the deal will not close.

MAC Clauses: Conclusions

In view of the economic, environmental, global health, and geopolitical volatility experienced in recent years, caution and an ever-present concern for unforeseeable changes seem to have inspired nearly all sizable M&A transactions to include detailed MAC clauses. The continued widespread inclusion of elaborate MAC clauses in these agreements suggests that these complex clauses now have become a permanent fixture in M&A deals. This year, we continue to observe in MAC clauses an awareness of global health, geopolitical, and legal developments as they affect deals. Global economic uncertainty, global security concerns, COVID-19, Brexit risks, trade tensions, and changing regulations on foreign investment are all likely to affect the way bidders and targets allocate risk.

Nixon Peabody will continue to closely monitor how the dealmaking market responds to these, and other, developments in the years to come.



For more information on MAC provisions, please contact your Nixon Peabody attorney or one of the attorneys listed at the end of this report.

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