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Nixon Peabody's 19th MAC Survey

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M&A deal language zeroes in on global risks

The Nixon Peabody MAC Survey studies deal trends involving material adverse change clauses on M&A transactions. Keep reading to learn what trends have the industry talking.



What's the Impact?

- / MAC clauses in merger agreements outline the conditions that allow the buyer to walk away from a deal—they appear at similar rates across industries but are more common in the largest deals (\$1B+).
- / Pro-bidder language is more common, with terms allowing for a broader scope of “materially adverse” events—frequently, MACs are about COVID-19 or geopolitical risks rather than stock prices.
- / MACs can be expected to remain a permanent fixture of the M&A environment.

In an era where the “new normal” is characterized by concurring economic and political curveballs, one constant remains—material adverse change (MAC) clauses play an important role in M&A agreements.

To gain insights into the M&A landscape, we reviewed 293 deals worth more than \$100 million (including 13 worth more than \$1 billion). Our analysis of MAC clauses in these publicly filed acquisition agreements evinces a dealmaking climate highly sensitive to developments both in the United States and around the world. The deal landscape has shifted as companies and investors factored in concerns about the Russian invasion of Ukraine and a series of interest rate

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increases by the Federal Reserve. As we near the midpoint of 2023, market indicators suggest dealmaking may rebound, but it's clear the era of "expecting the unexpected" is not over. For that reason, MACs remain integral to corporate transactions as businesses adjust to unprecedented conditions.

Key findings of the Nixon Peabody MAC Survey

Caution and an ever-present concern for unforeseeable changes seem to have inspired nearly all sizable M&A transactions to include detailed MAC clauses. Among the clauses we analyzed, several discernable trends stood out.

/ Trends in exclusion language

Pro-bidder language is increasingly common. While deal terms tend to guard against a broader scope of "materially adverse" events, how is the marketplace approaching general business risk?

/ What's driving exceptions

While the volume of MAC clauses appears to be industry-agnostic, they are more common in the largest deals (\$1B+). Top players are becoming more sensitive to geopolitical risk than stock prices.

/ Awareness is the new MAC

Given increased consciousness of how global health, geopolitical, and legal developments affect deals, MACs are poised to remain a permanent fixture of the M&A environment.

Nixon Peabody has a pulse on the M&A landscape, and we help sophisticated companies and investors navigate the MAC trends created by a rapidly changing marketplace. Our team looks forward to connecting with you about how MACs can help your business strengthen new opportunities and close deals.

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