

**Mind the gap! – Structuring the purchase price in troubled times
(rollovers, earn-outs, vendor loans, etc)**



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AGENDA

- a) Introduction
 - i. Foreword
 - ii. Some statistics
- b) Earn-outs: rebirth?
- c) Deferred consideration
- d) Other mechanisms
- e) Conclusion and Q&A

APPENDIX

1. Economic uncertainties forces shift in pricing structure - Extract from A&O 2023 issue of the annual M&A trends study
2. For a view on the US market, see enclosed extract of the « Deal points study » for 2020 published by the ABA Business Law section

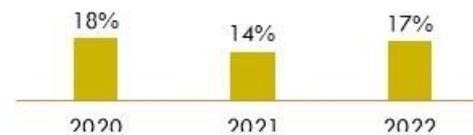
1. « Economic uncertainties forces shift in pricing structure » - Extract from A&O 2023 issue of the annual M&A trends study

Economic uncertainty forces shift in pricing structures

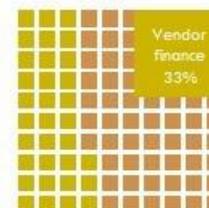
Payment by closing



Deferred consideration



Most common reason

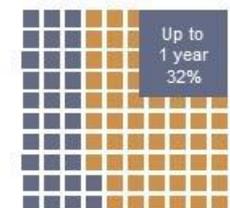


Average amount deferred

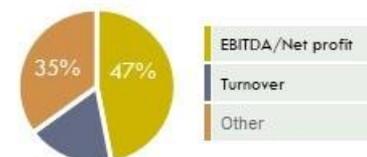


Earn-out

Most common period

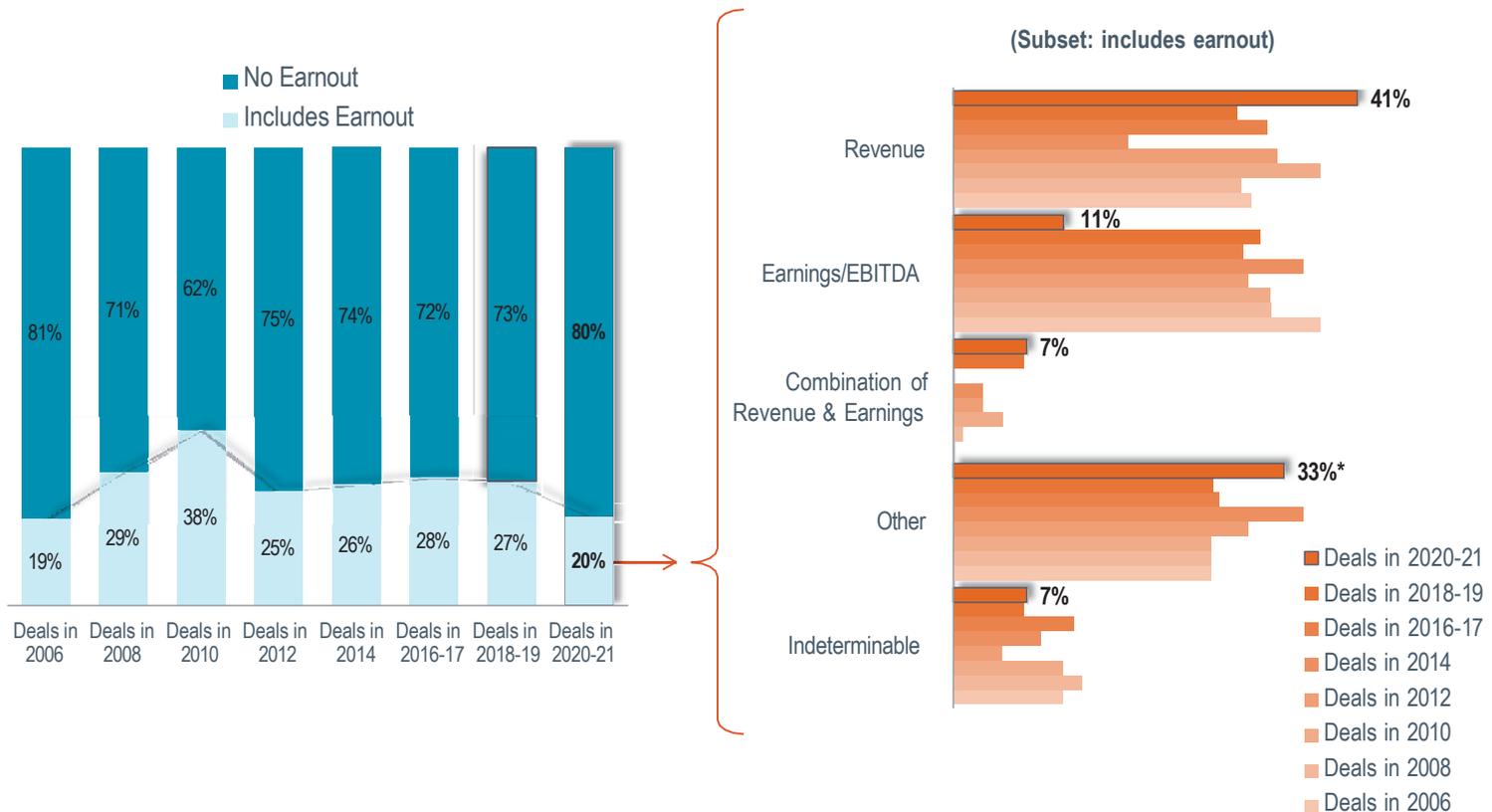


Metric



2. For a view on the US market, see enclosed extract of the « Deal points study » for 2020 published by the ABA Business Law section

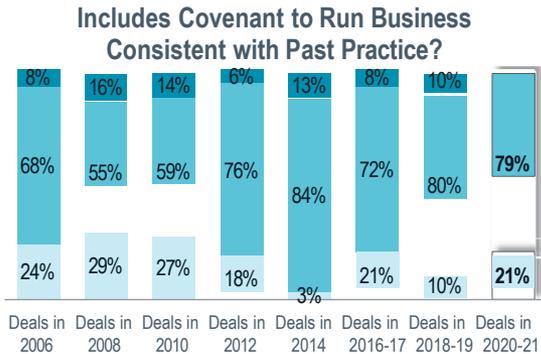
EARNOUTS



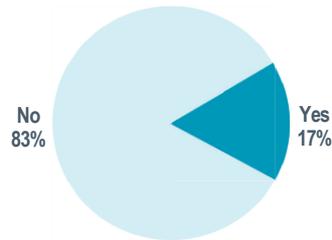
* Includes 3 deals that are also reflected in the “Revenue” category (also had regulatory approval or unavailable criteria in addition to revenue).

EARNOUTS – BUYER’S COVENANTS AS TO ACQUIRED BUSINESS*

(Subset: deals with earnouts)



Covenant to Run Business as Stand-Alone Entity/Division

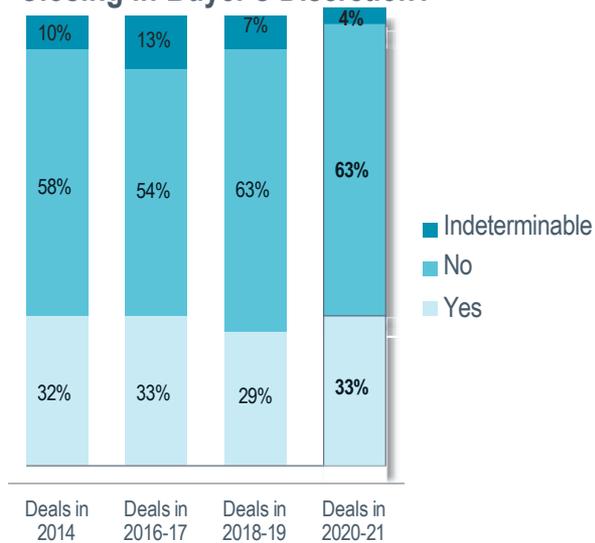


* 42% of the deals with earnouts contained at least one of these covenants and 4% of the deals with earnouts contained at least two of the three covenants. 12 deals not reflected in this 42% contained other provisions protecting Seller’s right to an earnout, such as good faith efforts, no change to accounting practices, and allocation of sufficient marketing resources. 80% of the deals with earnouts contained some other language protecting Seller’s right to the earnout, such as covenants regarding marketing, commercially reasonable efforts to obtain regulatory approvals, not taking actions in bad faith, and no new debt.

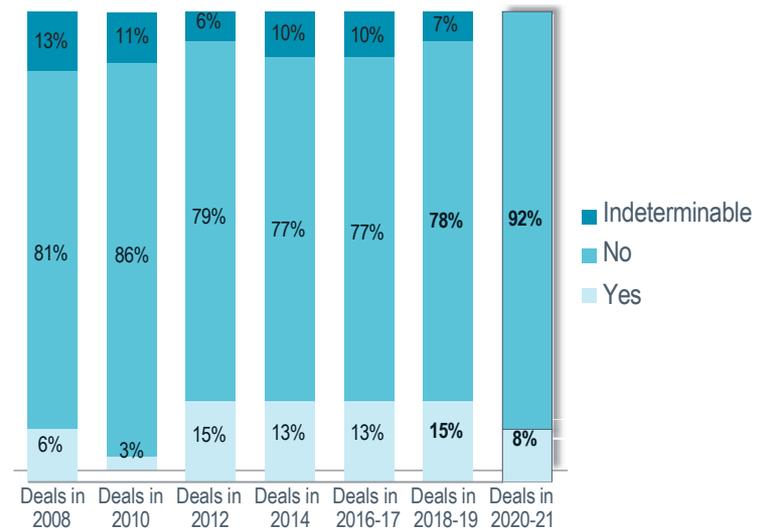
EARNOUTS – BUYER'S OPERATION AND EXPRESS DISCLAIMER OF FIDUCIARY RELATIONSHIP

(Subset: deals with earnouts)

Includes Right of Buyer to Operate Post-Closing in Buyer's Discretion?



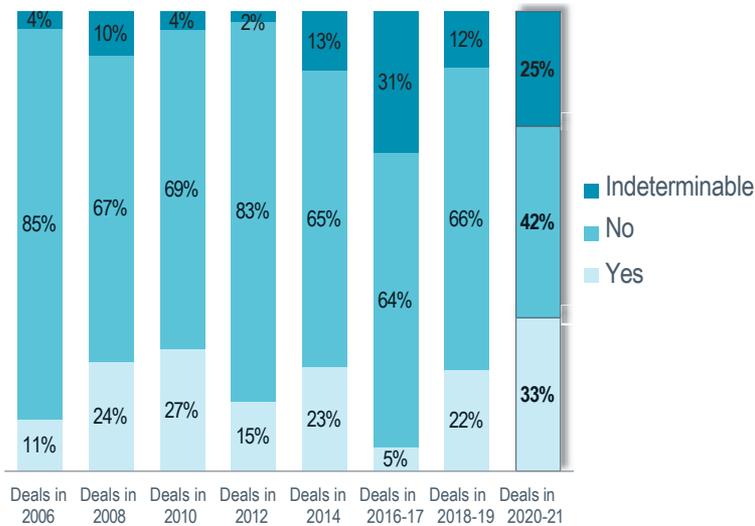
Includes Express Disclaimer of Fiduciary Relationship?



EARNOUTS – ACCELERATION AND OFFSETS

(Subset: deals with earnouts)

Does Earnout Expressly Accelerate on Change of Control?



Can Buyer Offset Indemnity Payments Against Earnout?

