

# Market Standards Coverage: Mergers & Acquisitions

The Market Standards database contains **over 38,000 transactions** from 2008 to the present. A **total of 150+ data points** are searchable for deals from 2017 to present, for public target transactions initially valued at \$100+ million and private-target transactions initially valued at \$25+ million. **All transactions in the database have 80+ searchable data points**, as shown below.

Category or Data Point (2017-Present)	2008 to Present
<b>Deal Attributes</b>	
Deal Structure	✓
De-SPAC Transactions (7/1/2020 to present)	
Document Type	✓
SEC Form Type	✓
First Filing Date	✓
Deal Size	✓
Consideration	✓
Transaction Status (Pending, Closed, Abandoned)	✓
Simultaneous Sign and Close	
Outside Date	
Closing Date: – Actual date of closing, as announced on the closing – Number of actual days between signing and closing	
Governing Law	✓
Strategic vs. Financial Acquirers	
<b>Target/Acquirer Information</b>	
Name (Target or Acquirer)	✓
Entity Type or Organizational Structure	✓
Industry (SIC Codes)	✓
State or Country of Incorporation	✓
State or Country of Headquarters	
Stock Exchange Listing	✓

Index (S&P 500, Fortune 100, etc.)	✓
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Category or Data Point (2017-Present)	2008 to Present
Law Firm (Target or Acquirer)	✓
Financial Advisor (Target or Acquirer)	✓
Financial Advisory Fees: <ul style="list-style-type: none"> <li>- Financial advisory fee provisions (Target/Acquirer)</li> <li>- Financial advisory fee amounts (\$/%)</li> <li>- Financial advisory fees that are “express opinion fees” only</li> </ul>	
<b>Definitions</b>	
Knowledge	✓
Material Adverse Effect	✓
Material Adverse Effect definitions containing an express MAE dollar or percentage threshold	
Alternative Proposal	✓
Superior Proposal	✓
Losses or Damages: <ul style="list-style-type: none"> <li>- Definition of Loss(es) or Damages</li> <li>- Express carveouts to the definition</li> </ul>	
<b>Consideration/Purchase Price</b>	
Earn-outs: <ul style="list-style-type: none"> <li>- Earn-out acceleration provisions</li> <li>- Post-Closing earn-out covenants</li> <li>- Dispute Resolution Mechanisms specific to earn-outs</li> </ul>	
Exchange Ratio: <ul style="list-style-type: none"> <li>- Exchange ratio provisions</li> <li>- Exchange ratio collars</li> </ul>	✓
Holdback: <ul style="list-style-type: none"> <li>- Purchase price holdback provisions outside of escrow</li> </ul>	
Escrow: <ul style="list-style-type: none"> <li>- Escrow types (general escrows, indemnification escrows, or adjustment escrows)</li> <li>- Escrow amounts (\$)</li> <li>- Escrow survival periods</li> </ul>	✓
Purchase Price Adjustment: <ul style="list-style-type: none"> <li>- Purchase price adjustment provisions</li> <li>- Purchase price adjustment metrics (working capital, debt, etc.)</li> <li>- Additional provisions related to purchase price adjustments</li> </ul>	✓
Earn-outs: <ul style="list-style-type: none"> <li>- Earn-out provisions</li> <li>- Earn-out metrics (EBITDA, revenue, etc.)</li> <li>- Earn-out durations</li> <li>- Earn-out covenants</li> <li>- Earn-out dispute resolution mechanism</li> <li>- Indemnity offset provisions against earn-outs payments</li> </ul>	✓
<b>Representations and Warranties</b>	

10b-5 Full Disclosure: – 10b-5/full disclosure provisions – 10b-5/full disclosure provisions qualified by knowledge qualifiers	✓
Absence of Changes Representation	
Bulk Sales Representation	

Category or Data Point (2017-Present)	2008 to Present
Financial Statements: – Financial statement provisions containing “fair representation” – “GAAP qualified” qualifiers	✓
#MeToo Representation	
Non-Reliance Representation	
No Undisclosed Liabilities: – No undisclosed liabilities provisions containing mandatory GAAP requirements or knowledge qualifiers	✓
Solvency Representation	
Tax Matters	✓
<b>Representations and Warranties Insurance</b>	
Representations and Warranties Insurance disclosures	✓
Insurance Payor Requirements: – Provisions indicating whether representations and warranties insurance payments are to be paid by the buyer, seller, or both	✓
Retention amounts – Provisions indicating the dollar value of the representations and warranties insurance retention amount	✓
<b>Covenants</b>	
No Shops: – No shop covenants – Fiduciary outs expressly related to a no shop covenant	✓
Go Shops: – Go shop covenants – Go shop durations – Open or closed go shop types	✓
Permitted Time Period for Matching Rights	✓
Fiduciary Outs: – Fiduciary outs to board recommendations in support of a transaction – Fiduciary out as a termination right	✓
Antitrust Risk Shifting Provisions	✓
Indemnity Offset Against Earn-out – Express right to offset indemnity amounts against earn-out payments	✓
MAE Covenant: – Covenants not to conduct actions that could lead to a Material Adverse Event	

<p>Non-Compete:</p> <ul style="list-style-type: none"> <li>- Post-closing covenants not to compete</li> <li>- Durations of post-closing covenants not to compete</li> </ul>	
<p>Non-Solicit:</p> <ul style="list-style-type: none"> <li>- Post-closing covenant not to solicit (customers, employees, etc.) -</li> <li>Durations of post-closing covenants not to solicit</li> </ul>	
<p>Non-Disparagement:</p> <ul style="list-style-type: none"> <li>- Post-closing covenants not to disparage</li> <li>- Durations of post-closing covenants not to disparage</li> </ul>	
<p>Force the Vote Covenant:</p> <ul style="list-style-type: none"> <li>- Covenants granting either the target or the acquirer the right to force a vote on the transaction</li> </ul>	

Category or Data Point (2017-Present)	2008 to Present
<p>Notice Covenants:</p> <ul style="list-style-type: none"> <li>- Notice of an MAE</li> <li>- Notice of other events</li> <li>- Provisions describing whether notice of an event qualifies as an update of the disclosure schedule</li> <li>- Provisions describing whether notice of an event cures a breach caused by such event</li> </ul>	
Tax Covenants	
<p>Control of Litigation in Third Party Claims:</p> <ul style="list-style-type: none"> <li>- Provisions describing whether the target, the acquirer, or both have control over litigation related to third party claims</li> <li>- Carveouts to the control of litigation provision, including in the event that current customers or suppliers are involved, if non-monetary damages are pleaded, or if damages exceed the indemnification cap</li> </ul>	
<b>Acquisition Financing</b>	
Debt Financing	✓
Acquirer Covenant to Obtain Financing	✓
Seller/Target Covenant to Cooperate with Buyer	✓
<b>Closing Conditions</b>	
<p>Bring Down of Representations and Warranties:</p> <ul style="list-style-type: none"> <li>- Accuracy of Reps and Warranties</li> <li>- Materiality qualifiers in connection to the bring down</li> <li>- Double materiality scrapes associated with bring downs</li> </ul>	✓
Financing Closing Condition	✓
<p>Regulatory Approval:</p> <ul style="list-style-type: none"> <li>- Regulatory approval closing conditions</li> <li>- Effort requirements to obtain regulatory approval</li> </ul>	✓
<p>Appraisal Rights:</p> <ul style="list-style-type: none"> <li>- Types of appraisal rights closing conditions</li> <li>- Trigger requirements for appraisal rights (%)</li> </ul>	✓

MAE Closing Condition: <ul style="list-style-type: none"> <li>- Material adverse event closing conditions as a standalone closing condition, without reference to a separate representation or pre-closing covenant</li> <li>- "Back door" material adverse event closing conditions, connected to the bring down of a representation requiring an absence of a material adverse event</li> <li>- "Back door" material adverse event closing condition, connected to the bring down of a pre-closing covenant requiring no action leading to a material adverse event</li> </ul>	
IRS Private Letter Ruling Closing Condition: <ul style="list-style-type: none"> <li>- A closing condition requiring the attainment of an IRS private letter ruling</li> </ul>	
Tax Opinion Condition: <ul style="list-style-type: none"> <li>- A favorable tax opinion closing condition</li> </ul>	
Stockholder Approval Requirement	
Director, Officer, or Controlling Stockholder Commitments: <ul style="list-style-type: none"> <li>- Voting commitments related to directors, officers, or controlling stockholders</li> <li>- Equity commitments related to directors, officers, or controlling stockholders</li> </ul>	
<b>Indemnification</b>	
Survival periods for indemnification purposes	✓
<b>Category or Data Point (2017-Present)</b>	<b>2008 to Present</b>
Baskets: <ul style="list-style-type: none"> <li>- Mini-Baskets (\$)</li> <li>- Basket Types (Tipping Basket, Deductible, etc.)</li> <li>- Basket Amounts (\$/%)</li> </ul>	✓
Caps: <ul style="list-style-type: none"> <li>- Cap Amounts (\$/%)</li> </ul>	✓
Indemnification Materiality Scrapes	✓
Indemnification as Exclusive Remedy: <ul style="list-style-type: none"> <li>- Indemnification as exclusive remedy provisions</li> <li>- Carveouts to such provisions</li> </ul>	✓
Indemnification Limitations	✓
Joint and Several Requirements: <ul style="list-style-type: none"> <li>- Express provisions stating that indemnification shall be joint and several, or several but not joint</li> </ul>	
Indemnification Net of Payments: <ul style="list-style-type: none"> <li>- Provisions stating that indemnification obligations shall be net of tax benefits or insurance benefits</li> </ul>	
Sandbagging: <ul style="list-style-type: none"> <li>- Pro-sandbagging provisions</li> <li>- Anti-sandbagging provisions</li> </ul>	✓
<b>Termination</b>	

Termination Fees: <ul style="list-style-type: none"> <li>- Termination fee triggers</li> <li>- Provisions stating that termination fees shall serve as the exclusive remedy for the aggrieved party</li> <li>- Termination fee amounts (\$/%)</li> <li>- Reverse termination fee amounts (\$/%)</li> <li>- Reverse termination fee triggers</li> <li>- Termination fee triggers for mergers of equals (MOE)</li> <li>- Termination fee amounts for mergers of equals (MOE) (\$/%)</li> </ul>	
<b>Miscellaneous</b>	
Specific Performance	✓
Waiver of Jury Trial	✓
Alternative Dispute Resolution <ul style="list-style-type: none"> <li>- Alternative dispute resolution governing rules (AAA, ICSID, JAMS, etc.)</li> <li>- Alternative Dispute Resolution Procedures (mandatory mediation prior to arbitration, arbitration only, etc.)</li> </ul>	
<b>Tax Treatment</b>	
Intended Tax Treatment	
Reverse Morris Trust	
<b>Tender Offers</b>	
Conditions to the Tender Offer	
Minimum Tender Amount Required	
Top-Up Option Available	

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