



DykEMA

6th Annual
Mergers & Acquisitions
Outlook Survey

October 19, 2010

California | Illinois | Michigan | Texas | Washington, D.C.

www.dykema.com

Executive Summary

The coming months represent a critical period for U.S. and international businesses in the M&A market. We are still managing a difficult and unprecedented global financial crisis, and upcoming midterm elections will impact numerous domestic and foreign policy issues currently on the table.

The 6th Annual Dykema Mergers & Acquisitions Outlook Survey was designed to measure the perspectives of leading company executives and outside advisors on the direction of the M&A market in the coming year. Almost half of the survey's respondents have recently been involved in a transaction that did not close, so they have good reason to keep a close watch on the M&A market.

The conclusions of the survey show measured optimism in both the U.S. economy and the M&A market. However, measured optimism represents a marked improvement from the outlook in the prior two years, with more than half of the respondents expecting to acquire a business in the next year, a response level not seen since 2007. Industry leaders told us that they believe:

- Strategic buyers will continue to be strong drivers of M&A activity, as a means of growing their bottom lines, but private equity is making a comeback as they look for opportunities to invest their significant cash resources.
- M&A deals are seeing more creativity in their structure, with the use of earnouts, seller financing and subordinated debt financing all increasing in frequency.
- A number of purchase agreement provisions have become the subject of increased negotiations during the past 12 months, including financing contingencies material adverse change/effect clauses and damage limitations.
- Financing challenges are impacting costs and transaction timing more than transaction pricing, a positive sign for future deal flow.
- We will not see an increase in the number of distressed transactions in the coming year.

A more detailed report of our findings is contained in the following pages. We hope you find this information insightful and informative. We plan to periodically re-examine these issues to continue in our effort to remain focused on the challenges that are of critical importance to our clients and the U.S. business community at large.

Best regards,

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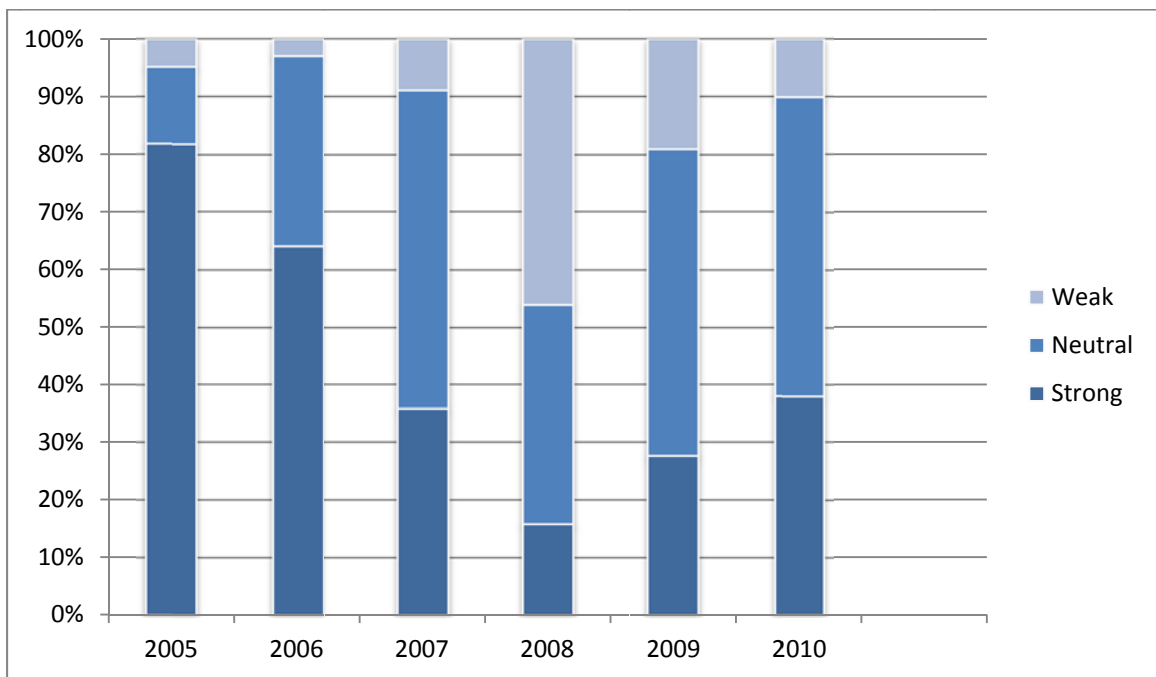
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2010 Mergers & Acquisitions Survey Results

Respondents were asked to complete a short questionnaire designed to measure their thoughts and perspectives on the direction of the M&A market in 2011. The following charts represent the collective input of all respondents to the survey. A full overview of the survey methodology can be found at the end of this report.

1. How strong will the overall U.S. M&A market be during the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Strong	37.97%	
Neutral	51.90%	
Weak	10.13%	




- For the second year in a row, confidence in the U.S. M&A market is slowly increasing after sliding for several years.



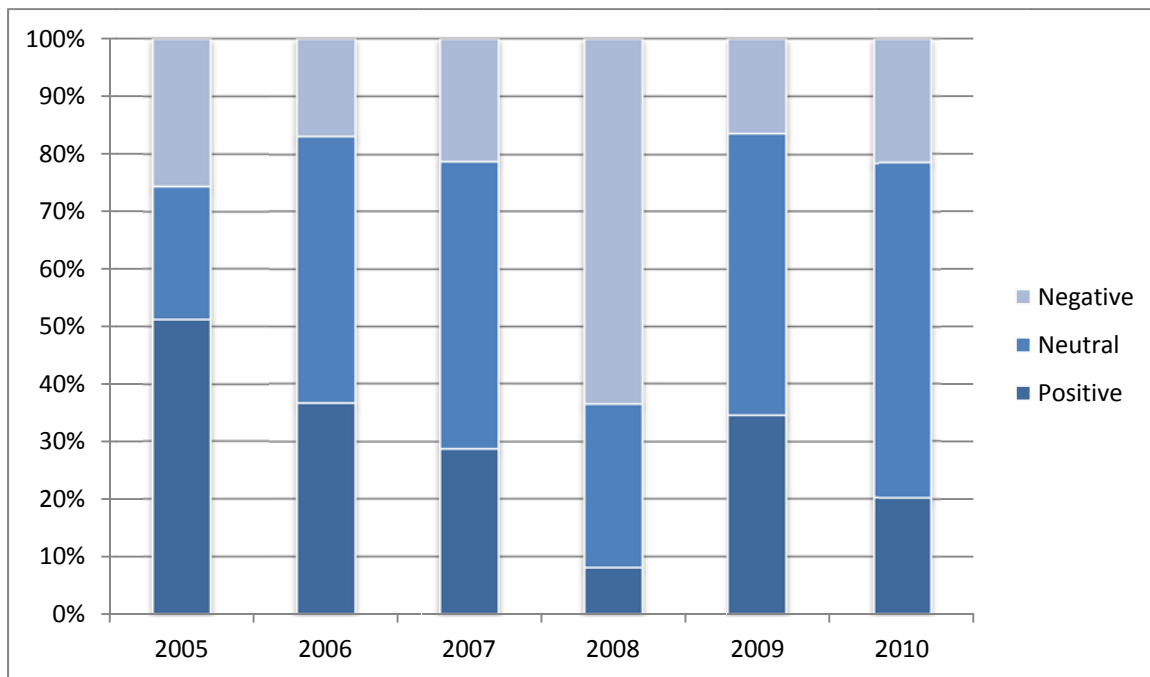
2. Which of the following is most responsible for fueling current U.S. M&A activity? (Select one option)		
Responses	%	Percentage of total respondents
General U.S. Economic Conditions	22.50%	
Strategic Buyers	38.75%	
Private Equity Buyers	18.75%	
Foreign Buyers	3.75%	
Financial Markets	7.50%	
Other (please specify)	8.75%	

- Respondents believe strategic buyers are still the strongest drivers of M&A activity but private equity buyers are making a comeback. Economic conditions are not driving the market as much as they were in 2009.
 - In 2009, respondents said strategic buyers (42 percent), general economic conditions (31 percent), financial markets (11 percent) and private equity buyers (eight percent) were most responsible for fueling current market activity.
 - In 2008, respondents said general economic conditions (32 percent), financial buyers (24 percent) and strategic buyers (23 percent) were most responsible for fueling current market activity.





- Some respondents said:
 - *Stronger players can add capabilities at attractive prices in anticipation of the next major economic cycle, with a kick provided by the ability to issue cheap corporate debt.*
 - *Financial buyers have the capital to deploy and need to generate returns for their investors.*
 - *Sponsors have been on the sidelines for the last two years and are risking losing their management fees if they don't start investing.*
 - *M&A activity is being fueled by excess cash on the balance sheets of corporations.*

3. What is your outlook for the U.S. economy, generally, over the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Positive	21.52%	
Neutral	58.23%	
Negative	20.25%	

- Respondents are somewhat more negative about the outlook for the U.S. economy than they were last year, likely due to expected slower growth and concerns about a double-dip recession. Respondents may also believe that the period of rapid growth seen over the past year has slowed and don't anticipate another bounce like we saw after the markets hit lows.






4. Which of the following types of buyers have most influenced deal valuations over the past 12 months? (Select one option)




Responses	%	Percentage of total respondents
Strategic Buyers	53.25%	
Financial Buyers	29.87%	
Foreign Buyers	2.60%	
None of the Above	14.29%	

- For the second year in a row, strategic buyers are seen as the group most influencing deal valuations over the previous year.
 - In 2007, 75 percent of respondents said financial buyers have most influenced deal valuations over the past 12 months.
 - In 2008, financial buyers were still the leading choice (41 percent), but strategic buyers were closing the gap (27 percent compared to 13 percent in 2007).
 - In 2009, strategic buyers were first seen as the group most influencing deal valuations over the previous year (40 percent), slightly edging out financial buyers (36 percent).

5. Which of the following buyers will INCREASE their presence the most in the U.S. M&A market over the next 12 months (as a percentage of total transactions)? (Select one option)

Responses	%	Percentage of total respondents
Strategic Buyers	51.25%	
Financial Buyers	27.50%	
Foreign Buyers	21.25%	

6. Which of the following buyers will DECREASE their presence the most in the U.S. M&A market over the next 12 months (as a percentage of total transactions)? (Select one option)

Responses	%	Percentage of total respondents
Strategic Buyers	16.22%	
Financial Buyers	31.08%	
Foreign Buyers	52.70%	



- Strategic buyers are again expected to increase their presence in the market.
 - In 2008 and 2009, 51 percent of respondents believed that strategic buyers would most increase their presence in the market, up from 34 percent in 2007.
 - Many respondents see buying opportunities for strategics with strong balance sheets.

- Of strategic buyers, some respondents said:
 - *Strategic buyers are well-positioned and have cash or access to inexpensive bank financing for small to medium size acquisitions. Most executives recognize that the economy is improving, albeit at a slower rate than we all wish.*
 - *Strategic buyers have the opportunity to buy growth at a cheaper rate than internal development.*
 - *Prices are excellent for filling the gaps with companies for strategic programs and industries.*
 - *Having cleaned up their balance sheet, they need to do something to fuel EPS growth.*
 - *Their need for growth is not being realized from organic operations.*








- Financial buyers and foreign buyers flip-flopped this year. As the dollar strengthens, the U.S. market becomes slightly less attractive to foreign buyers, and the anticipated drop in foreign investment likely stems from the belief that such buyers will take a more careful look at U.S. deals which are more expensive due to the increasing value of the currency.
 - In 2009, respondents said strategic (51 percent), foreign (27 percent) and financial (21 percent) buyers were most likely to **increase** their presence.
 - In 2009, respondents said financial (54 percent), foreign (28 percent) and strategic (18 percent) buyers were most likely to **decrease** their presence.
 - One respondent said:
 - *Strong dollar will limit foreign investment; borrowing constraints will limit financial buyers more than strategic ones.*

- If, as respondents predict, financial buyers start to increase their presence in the marketplace over the coming year, history tells us multiples are likely to increase bringing a new vibrancy to the M&A market. More money will be available for leveraged plays than in the past few years. Many respondents talked about why they see private equity making a comeback:
 - *Prices are rebounding, and financial buyers are more willing to meet seller expectations.*
 - *Private Equity groups have amassed cash they wish to deploy and banks are gradually easing terms and conditions related to financing.*
 - *The financial buyers have large sums of money earning nominal interest and they will want to put the money to work, particularly as the credit markets continue to open up and financing is available.*
 - *Improving financing markets will disproportionately benefit financial buyers while US strategic buyers will capitalize on improved and improving stock prices to fund acquisitions. As the M&A market heats up, US companies are likely to look relatively more expensive to foreign buyers. While all M&A will increase, foreign buyers will see the slowest growth.*












7. Have you been involved in an M&A transaction in the last 12 months that has been adversely impacted by the availability of financing? (Select one option)

Responses	%	Percentage of total respondents
Yes	49.37%	
No	50.63%	












8. What was the impact? (Check all that apply)

Responses	%	Percentage of total respondents
Delayed closing	51.28%	
Higher financing costs (interest rate, fees, etc.)	51.28%	
More restrictive loan covenants	25.64%	
Fewer bidders	12.82%	
Lower sale price	33.33%	
Financing unavailable	30.77%	
Other (please specify)	10.26%	






- As they have for the last two years, more than 40 percent of respondents say they had at least one M&A transaction in the last year that was adversely impacted by the availability of financing.
- While financing is still impacting deal cost and delaying closings, respondents do say that lower sale prices and a lack of bidders were less of a problem in 2010, which may signal a sense that increased availability of financing is bringing buyers back into the marketplace. In the current environment, healthy deals with good prices are likely to have quality bidders.
 - In 2009, the principal impacts of these financing issues were delayed closing (56 percent), higher financing costs (46 percent), unavailable financing (35 percent) and fewer bidders (35 percent).
 - In 2008, the principal impacts of these financing issues were higher financing costs (66 percent), more restrictive loan covenants (59 percent), lower sale prices (56 percent) and delayed closings (47 percent).

9. What sector will see the most M&A activity nationally in the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Automotive	2.56%	
Biotechnology and Life Sciences	7.69%	
Consumer Products	5.13%	
Energy	14.10%	
Financial Services	16.67%	
Healthcare	25.64%	
Manufacturing (non-automotive)	5.13%	
Technology	23.08%	
Telecommunications	0%	
Transportation	0%	
Other (please specify)	0%	













- In 2009, respondents named financial (21 percent), healthcare (20 percent), technology (17 percent) and biotechnology and life sciences (15 percent) as the sectors likely to see the most M&A activity nationally.
- The drop in respondents pointing to the U.S. financial industry (from 21 to 17 percent) may be a result of perceived stabilization as banks continue to pay back TARP loans.
- Respondents see more M&A healthcare opportunity nationally possibly because it has been difficult for health care providers to obtain financing or issue bonds to raise capital over the past few years and the market seems to be opening up. For-profit healthcare institutions have indicated they are in acquisition mode and are looking for nonprofits to acquire. Additionally, small providers find it more and more challenging to compete with large chains and several national for-profit home health and hospice companies are targeting the small tax exempt home health agency and hospice for acquisition. Even small physician practices are slowly realizing that they cannot compete with the expenses needed to comply with ever-growing regulations. Those small practices are joining together or being acquired by hospitals.

10. What sector will see the most M&A activity globally in the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Automotive	5.19%	
Biotechnology and Life Sciences	10.39%	
Consumer Products	5.19%	
Energy	14.29%	
Financial Services	6.49%	
Healthcare	11.69%	
Manufacturing (non-automotive)	11.69%	
Technology	22.08%	
Telecommunications	7.79%	
Transportation	0%	
Other (please specify)	5.19%	

- In 2009, respondents named financial services (19 percent), energy (18 percent), technology (18 percent) and biotechnology and life sciences (12 percent) as the sectors likely to see the most M&A activity globally.
- The drop in respondents pointing to the global financial industry (from 19 percent to six percent) may be a result of perceived stabilization of financial institutions globally.

11. Will there be a change in the number of distressed transactions in the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Significant Increase	6.49%	
Some Increase	42.86%	
No Significant Change	23.38%	
Some Decrease	27.27%	
Significant Decrease	0%	

- Almost half of respondents think the coming year will bring an increase in distressed deals. However, compared to 2009, far more respondents think there will be no significant change or some decrease in the number of distressed transactions.
 - Such a shift in perceptions is a positive sign pointing to fewer distressed transactions next year and indicative of the theme of stabilization of the economy that has been the trend of responses throughout the 2010 survey. For example, in question three, respondents were generally neutral on their outlook for the economy for the coming year.
 - In 2009, 19 percent of respondents predicted a significant increase, 61 percent predicted some increase, 10 percent predicted no change and 10 percent predicted some decrease in the number of distressed transactions over the coming year.

12. What industry will see the most distressed transactions in the next 12 months? (Select one option)		
Responses	%	Percentage of total respondents
Automotive	15.58%	
Biotechnology and Life Sciences	1.30%	
Consumer Products	1.30%	
Energy	1.30%	
Financial Services	15.58%	
Healthcare	1.30%	
Housing/Construction	44.16%	
Manufacturing (non-automotive)	14.29%	
Technology	0%	
Telecommunications	0%	
Transportation	2.60%	
Other (please specify)	2.60%	

- In 2009, respondents thought the automotive (45 percent); financial (17 percent), manufacturing (17 percent) and consumer products (12 percent) industries were likely to see the most distressed transactions in the coming year.
- Automotive numbers dipped significantly this year (from 45 to 16 percent) and it appears respondents think the industry is largely beyond the economic turmoil of the past few years.
- Housing/construction numbers jumped from six to 44 percent this year, perhaps due to current uncertainties in both the housing and commercial real estate markets.
- However, another indicator that respondents predict a stabilizing economy, anticipation of distressed transactions in the consumer products sector dropped from 12 to one percent.

13. How have the federal government's actions within the past 24 months impacted the U.S. M&A market? (Select one option)		
Responses	%	Percentage of total respondents
Positive impact/ Increased activity	27.85%	
Little to no impact	26.58%	
Negative impact/ Decreased activity	45.57%	

14. What was the impact on the U.S. M&A market of the following actions by the federal government?			
		Positive impact/ Increased activity	Negative impact/ Decreased activity
(a)	Automotive Bailout	52.78% 	47.22%
(b)	Financial Bailout	52.00% 	48.00%
(c)	Healthcare Reform	28.00% 	72.00%
(d)	Stimulus/American Recovery and Reinvestment Act (ARRA)	45.83% 	54.17%
(e)	Dodd-Frank Wall Street Reform and Consumer Protection Act	21.62% 	78.38%

- Recent legislation including healthcare reform and the Dodd-Frank Act seem to be a huge factor fresh on respondents' minds, as they are far more negative about the impact of the federal government's actions on the M&A market than they were at this time last year.
 - In 2009, 27 percent of respondents felt the government's actions in the past year had a positive impact on the M&A market, 50 percent thought there had been no impact, and 22 percent thought there was a negative impact.
- While respondents are split on whether actions taken by the government to stabilize the economy have had a positive impact on the U.S. M&A Market, they overwhelmingly agree that healthcare reform and Dodd-Frank have negatively impacted the market.
- Health reform includes several quality-of-care provisions that impose additional obligations on health care providers. Most of the requirements are not new but the law provides for a more formal process, better enforcement and reporting, including "pay for performance" programs that link payment to outcome. There is also an increased focus on preventing or reducing hospital readmissions and on non-payment for "hospital acquired conditions" and "never events." These quality provisions are burdensome and expensive, particularly for smaller health care providers.

15. Where will the most foreign buyers in the U.S. M&A market come from in the next 12 months? (Rank top 5 with 1 being the most buyers)	
Responses	Weighted Rank (Score)
China	1
Germany	2
India	3
Canada	4
United Kingdom (UK)	5
Japan	6
Brazil	7
United Arab Emirates (UAE)	8
Australia	9
South Korea	10
Russia	11
Mexico	12
Netherlands	13
France	14
Turkey	15
Italy	0

- Several respondents noted that the *“stronger dollar will increase the cost to foreign buyers”* and one said that foreign buyers will decrease in the coming year due to the *“weakening of the dollar and greater opportunities in other economies.”*
- Respondents continue to look at China as a principal source for investors in U.S. companies. Sooner or later China is going to be a big investor in the U.S. but, we are not seeing that yet and survey respondents have been saying “next year” for several years.
 - In 2007, respondents said China will be the leading country for foreign buyers in the U.S. M&A market (39 percent), followed by the UK (17 percent), India (14 percent) and the UAE (9 percent).
 - In 2008, respondents thought foreign buyers would come from China (28 percent), the UAE (23 percent) and India (12 percent).
 - In 2009, respondents thought foreign buyers would come from China (44 percent), Europe (38 percent) and the UAE (4 percent).







Note: In the 2009 survey, European countries were listed as a group. Added together, European nations were selected by 12 percent of respondents in 2008 and 21 percent of respondents in 2007.

16. What countries will experience the most U.S. outbound M&A activity in the next 12 months? (Rank top 5 with 1 being the most outbound activity)

Responses	Weighted Rank (Score)
China	1
Brazil	2
India	2
Canada	3
United Kingdom (UK)	4
Mexico	5
Germany	6
South Korea	7
Vietnam	8
Russia	9
Japan	10
Australia	11
Italy	12
Poland	12
France	13
Netherlands	14
Romania	15













- China, Brazil and India have all weathered the global economic storm and buyers are looking to invest in those resilient nations.
 - For example, China, Brazil and India were the only major markets to experience continued growth in their automotive industries during the economic downturn.
 - In 2009, respondents said Europe (42 percent) and China (33 percent) would be the leading regions for U.S. buyers making foreign acquisitions.
- The significant increase in value of the Yuan, wage rates becoming less competitive and transportations costs increasing, China needs to move up the scale to higher value products and face stiffer competition from other Asian as well as European and North American producers.
- A number of respondents still think that the NAFTA region will attract reasonable amounts of M&A activity with both Canada and Mexico being in the top six for outbound investment.

Note: In the 2009 survey, European countries were listed as a group. Added together, European nations were selected by 16 percent of respondents in 2008 and 17 percent of respondents in 2007.

17. In today's economy, how are deals being structured differently than in the past? (Check all that apply)		
Responses	%	Percentage of total respondents
No differences	6.41%	
More earnouts	58.97%	
More joint ventures	19.23%	
More seller financing	61.54%	
More subordinated debt financing	39.74%	
Other (please specify)	6.41%	



- 2010 continued to be a tough year and dealmakers saw even more alternative financing than in the past.
- In 2009, 22 percent were not seeing differences in deal structures, 49 percent saw more earnouts, 48 percent saw more seller financing and 29 percent saw more subordinated debt financing.
- Several respondents noted they're seeing more equity in deals.

18. Which of the following provisions in purchase agreements have you found to be the subject of increased negotiations during the past 12 months? (Check all that apply)

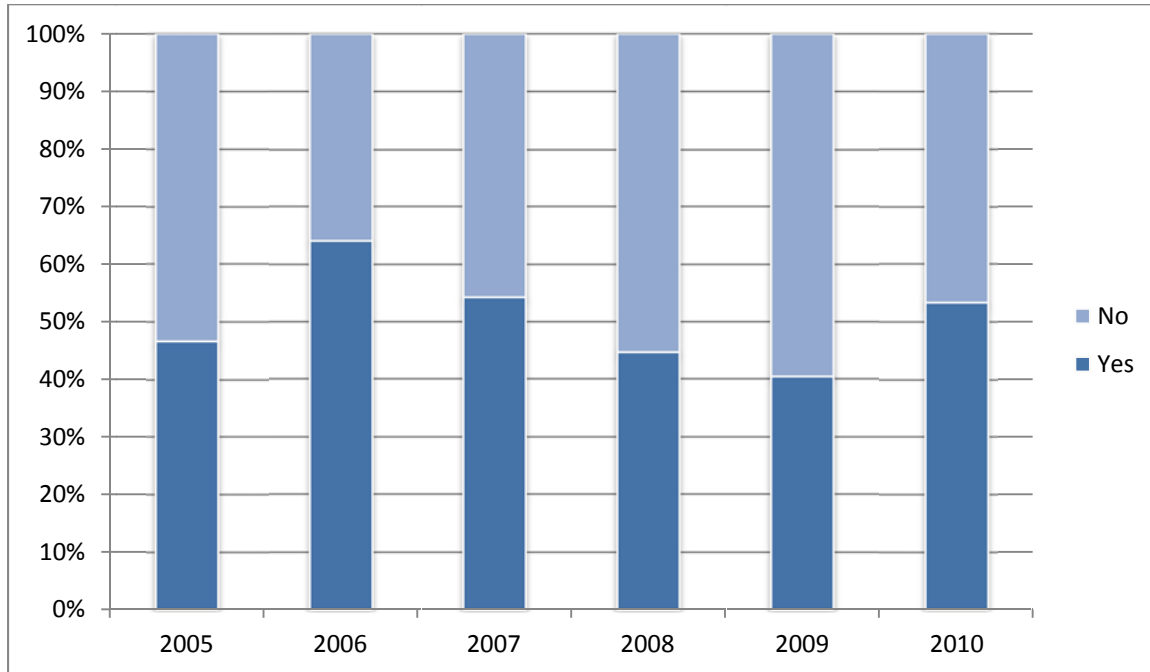
Responses	%	Percentage of total respondents
Earnouts	66.22%	
Material Adverse Effect/Material Adverse Change	37.84%	
No shop / No talk	10.81%	
Breakup fees	17.57%	
“Sand-bagging” provisions (i.e., provisions which invalidate indemnification for breaches or conditions of which the buyer had previous knowledge)	13.51%	
Damage limitations (e.g., baskets or caps on recovery, escrow of funds for indemnification)	35.14%	
Stand alone indemnity provisions for specific issues (e.g., tax, environmental, benefits, etc.)	18.92%	
Specific performance provisions (i.e., provisions which allow a party to ask the court to force the counterparty to close a transaction if all conditions precedent have been met)	10.81%	
Financing contingencies	54.05%	
Arbitration/Alternative dispute resolution	6.76%	
None of the above	5.41%	
Other (please specify)	0%	

- More than one-third of respondents cite material adverse change/effect clauses as the subject of increased negotiations during the past 12 months, indicating a high focus by buyers on the need to retain the ability to scuttle a deal because of pre-closing changes in the business to be acquired.
- The same concern by lenders causes buyers to be uncertain about their ability to complete their acquisition financing, contributing to tougher negotiations surrounding financing contingencies as suggested by 54 percent of respondents.
- The increased focus on damage limitations seen by 35 percent of respondents suggests that buyers and sellers alike believe that they are more likely to have indemnification claims than in the past.



19. In the next 12 months, do you believe your company will be involved in an acquisition as the acquirer? (Select one option)

Responses	%	Percentage of total respondents
Yes	53.33%	
No	46.67%	

- More than half of respondents believe their company will be involved in an acquisition in the coming year, a level not seen since the 2007 survey.



20. In the next 12 months, do you believe your company will be sold, downsized or involved in a spinoff? (Select one option)

Responses	%	Percentage of total respondents
Yes	6.76%	
No	93.24%	

- In 2007, 16 percent thought they would be sold, downsized or involved in a spinoff.
- In 2008, 12 percent thought they would be sold, downsized or involved in a spinoff.
- In 2009, eight percent thought they would be sold, downsized or involved in a spinoff.

Methodology

In September 2010, national law firm Dykema distributed its Mergers & Acquisitions Survey via e-mail to a group of senior executives and advisors in the industry including CEOs, CFOs and other company officers. 32 percent of respondents identified themselves as a company officer or executive and 44 percent identified themselves as an investment or commercial banker.

The 2010 survey is the sixth annual M&A market analysis developed by Dykema, and results are being released in conjunction with a firm M&A Survey event in Chicago and annual [M&A Seminar](#) in Detroit.

Respondents were only asked question 8 if they answered “yes” to the previous question: *Have you been involved in an M&A transaction the last 12 months that has been adversely impacted by availability of financing?*

Percentages in questions 8, 17 and 81 exceed 100 percent because respondents were asked to check all that apply.

Due to rounding, all percentages used in all questions may not add up to 100 percent. A few minor edits were made to verbatim responses to correct spelling and verb tense.