Dykema

2011 Mergers & Acquisitions Survey Results

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Executive Summary

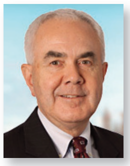
The coming months represent the continuation of a critical period for U.S. and international businesses in the merger and acquisition, or M&A, market. We are still working through a difficult and unprecedented global financial crisis, and upcoming elections may set the stage for potential changes in the White House and Congress that would impact numerous domestic and foreign policy issues currently on the table.

The 7th Annual Dykema Mergers & Acquisitions Outlook Survey was designed to measure the perspectives of leading company executives and outside advisors about the direction of the M&A market in the coming year. More than half of the survey's respondents expect to be involved in at least one transaction in the coming year, so they have good reason to keep a close watch on the M&A market.

The conclusions of the survey show respondents do not anticipate a lot of change in the U.S. M&A market or economy over the next 12 months compared to the preceding year, although there exists a detectible note of reservation, if not concern, in the responses. Industry leaders told us that they believe:

- Strategic buyers will continue to be strong drivers of M&A activity as they use acquisitions to achieve growth.
- An increasing need by financial buyers to deploy capital is helping to drive valuations in the M&A market.
- A greater availability of capital is driving the M&A market but an uncertain economy has been the most frequent obstacle to successful deals during the past year.
- Uncertainty about European financial affairs weighs on the minds of dealmakers who wonder about the resulting impact on investment in the U.S and the U.S. financial markets.
- Respondents have started thinking about potential market changes resulting from the 2012 elections.
- Provisions in purchase agreements related to purchase price adjustments, earnouts, financing contingencies and material adverse change/effect clauses continue to be or have become the subject of increased negotiations during the past 12 months.
- About half of respondents think the coming year will bring an increase in distressed deals as corporate executives remain uncertain about the future of the economy.

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 in order to keep you informed about the opportunities and challenges that are of importance to you, our clients and friends.



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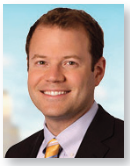

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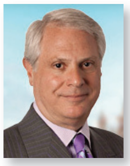

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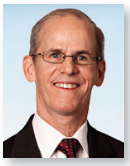

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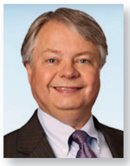

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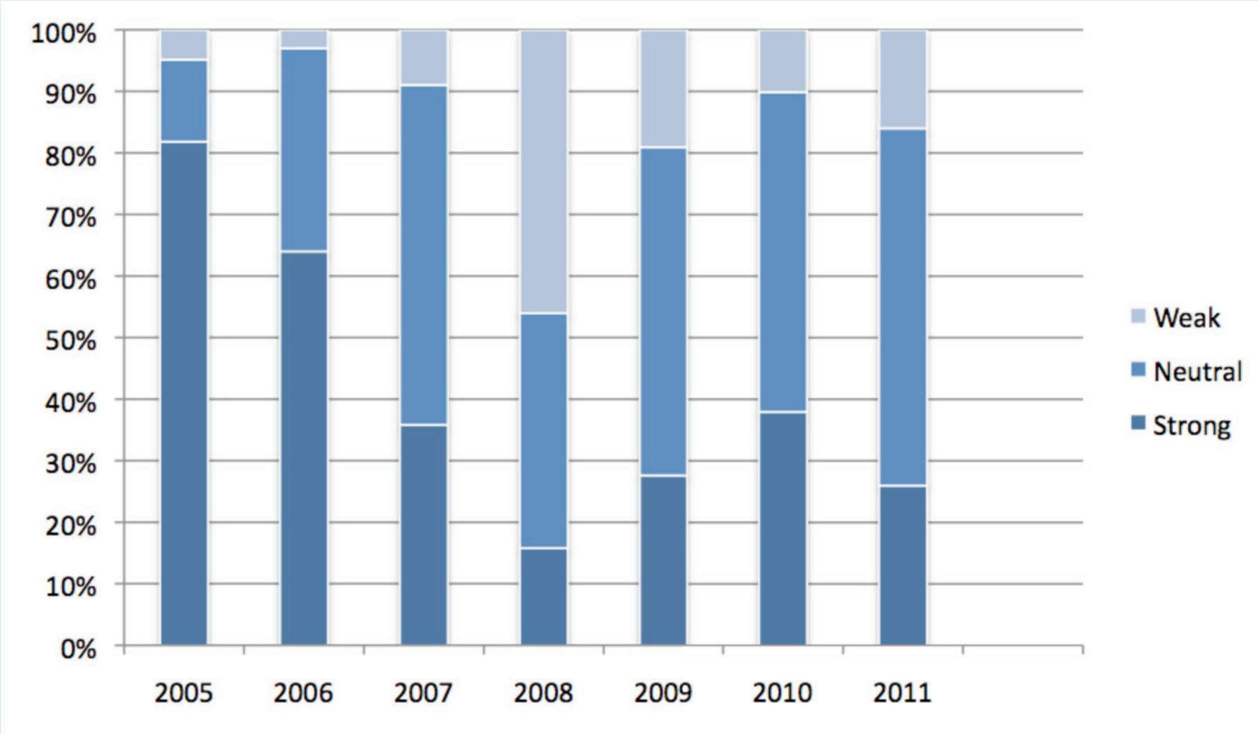
2011 Mergers & Acquisitions Survey Results

Respondents were asked to complete a questionnaire designed to measure their thoughts and perspectives on the direction of the M&A market in 2012. The following charts represent the collective input of all of our respondents. An overview of the survey methodology can be found at the end of this report.

Q1. How strong will the overall U.S. M&A market be during the next 12 months? (Select one option)



Despite strong fundamentals including an increased availability of capital and somewhat improved economy, there is little optimism for the next year. Confidence in a strong market dropped slightly after rising for two years and there is a 150 percent increase in predictions for a weak market.

- Given the drastic economic shifts of the past 24 months, it is not surprising that corporate executives are somewhat less confident than a year ago.

- While 90 percent of respondents believe that the U.S. M&A market in 2012 will be the same or stronger than in 2011 (see question 2), the above shows a slightly more pessimistic outlook in 2011 than in 2010. This could be attributed to a perception that the M&A market was not very strong in 2011 and that, even with an improvement, would not be strong in 2012.

Q2. How will the U.S. M&A market for the next 12 months compare to the last 12 months? (Select one option)

Responses	Count	%	Percentage of total respondents
Market will be stronger in the next 12 months	131	43.96%	
Market will see no significant change in the next 12 months	136	45.64%	
Market will weaken in the next 12 months	31	10.40%	
Total Responses	**298**		**20% 40% 60% 80% 100%**

- While respondents don't necessarily believe the M&A market will be strong in 2012 (just 26 percent of responses in question one), nearly half believe the next 12 months will be stronger than the 12 preceding months.
- Only 10 percent of respondents think that the market is going to weaken in the next 12 months. 90 percent forecast a market equal to or better than last year.

Q3. Which of the following is most responsible for fueling current U.S. M&A activity? (Select one option)

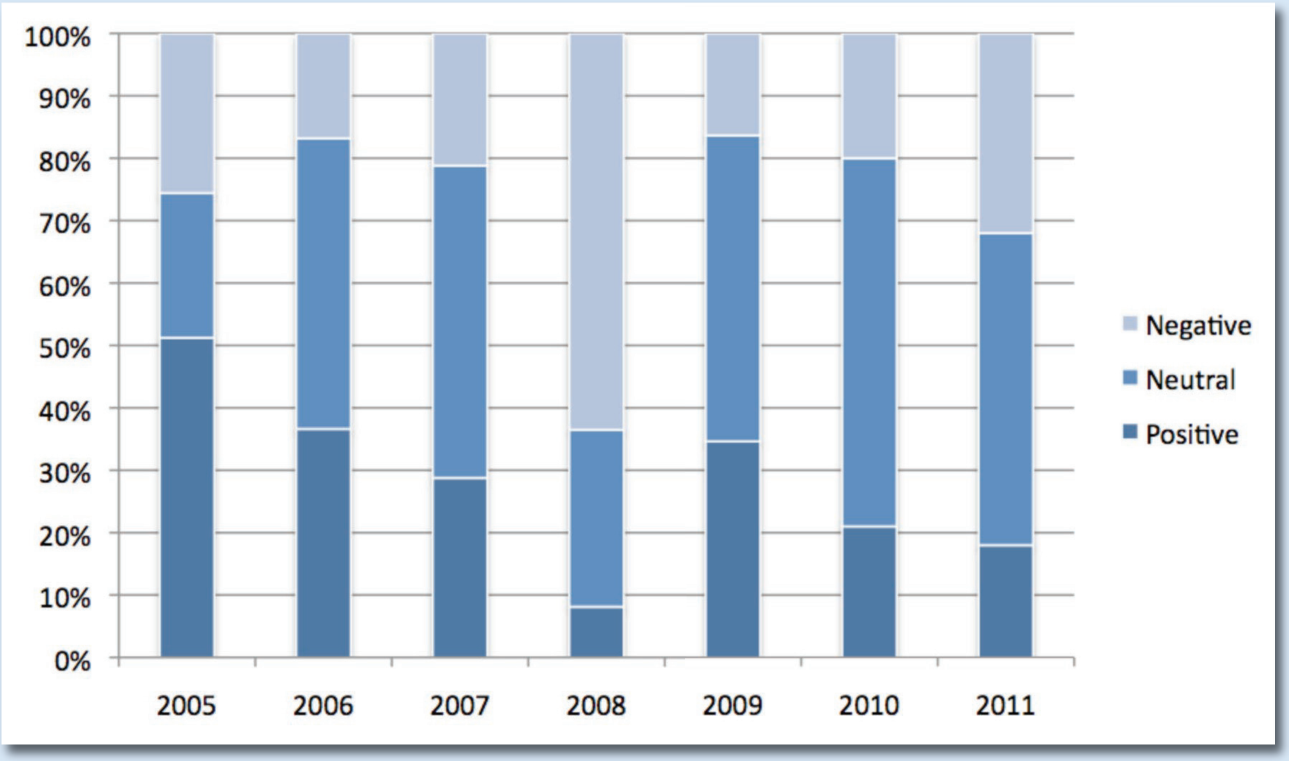
Responses	Count	%	Percentage of total respondents
Availability of capital	116	39.06%	
General U.S. economic conditions	111	37.37%	
Favorable interest rates	33	11.11%	
Financial markets	13	4.38%	
Other (please specify)	24	8.08%	
Total Responses	**297**		**20% 40% 60% 80% 100%**

- Respondents say availability of capital (39 percent) is the biggest driver for current M&A activity, likely because most deals are led by strategics and those buyers are currently flush with cash and have access to bank financing. In addition, private equity firms have cash they need to deploy and so are active in the market.
- More than a third of respondents believe general U.S. economic conditions are fueling current U.S. M&A activity potentially signifying an important need for growth by acquisition. Strategic buyers need acquisitions to boost otherwise anemic organic growth, and are better positioned to capture strategics and synergistic value.

- On the flip side, borrowing is more available and therefore access to the financial markets is not as important a factor on the ability of strategics to complete transactions. Strategic buyers are using cash in transactions as opposed to using their stock, especially when the financial markets are volatile.

- Other activity-drivers named by respondents include:
  - Financial turmoil in Europe
  - Motivated sellers
  - Pent-up demand
  - Anticipation of more business-friendly Administration and Congress following the 2012 election
  - Opportunistic strategic buyers
  - Global economic conditions
  - Need for growth

Q4. What is your outlook for the U.S. economy, generally, over the next 12 months? (Select one option)



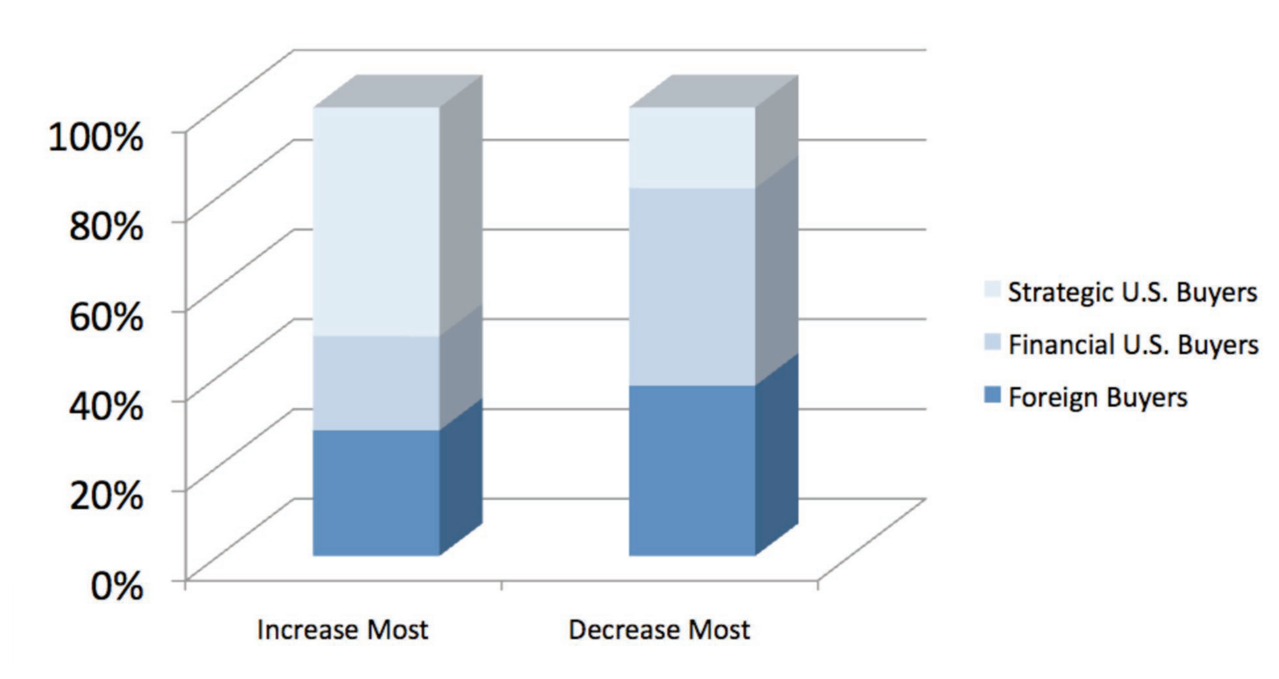
- For the second year in a row, respondents had a somewhat more pessimistic outlook for the U.S. economy compared to the previous year. This could be due to expected slower growth and concerns about a double-dip recession, which was of particular concern during the survey period, or just a new normal.

Q5. How will the U.S. economy for the next 12 months compare to the last 12 months? (Select one option)

Responses	Count	%	Percentage of total respondents
U.S. economy will improve over the next 12 months	74	24.83%	
U.S. economy will see no significant change over the next 12 months	158	53.02%	
U.S. economy will worsen over the next 12 months	66	22.15%	
Total Responses	**298**		**20% 40% 60% 80% 100%**

- Respondents were evenly split between positive and negative outlooks on the U.S. economy over the next 12 months, demonstrating a lack of consensus and continued uncertainty about the U.S. economy.

Q6. Which one of the following categories of buyers will increase its presence and which one will decrease its presence the most in the U.S. M&A market over the next 12 months (as a percentage of total transactions)?



For the fourth year in a row, strategic buyers are again expected to show the greatest increase in their market presence (51 percent).

- Remarkably, in each of the last four years, 51 percent of respondents believed that strategic buyers would most increase their presence in the market.

- Many respondents see buying opportunities for strategics with strong balance sheets and a need to fuel growth through acquisitions.

- Strategics may be seen as more active because of lack of demand in the current market. The only way to grow in a stuck economy is to add geography or a new product line.

- The perceived importance of financial buyers and foreign buyers to M&A activity flip-flopped this year. In 2010, 28 percent of respondents said financial buyers and 21 percent said foreign buyers would increase their presence the most.

- Some respondents likely believe that foreign buyers, particularly in Asia, will increase their presence due to economic problems in their home countries (e.g. uncertainty in Europe). The U.S. is still viewed as a safe haven globally, with a stable, if not potentially growing, economy.

- In a related open-ended question asking why categories of buyers would increase or decrease, respondents are split. For example, several see foreign buyers increasing their presence in the U.S. market because of stability, while others say the opposite is likely to happen due to challenges they face in their home countries. Selected verbatim responses:

Strategic U.S. Buyers

- Strategics are sitting on large cash reserves, need acquisitions to boost otherwise anemic organic growth and are better positioned to capture strategic and synergistic value.

- Strategics money is already resigned to the Obama Administration and Senate Democrats losing in 2012. So strategics will deploy money now to be in a position to take advantage of the coming decade of growth à la the 80s under Reagan.

- Financing will continue to hinder the lower end of the financial buyer market until the banks feel less regulatory pressure. Strategic buyers, particularly at the upper end, have cash and financing options.

Financial U.S. Buyers

- Financial buyers will continue to sell.

- The low hanging fruit for the financial buyers has been snapped up and private equity competition, combined with higher market multiples, will make the classic financial deals harder to find.

- As financial buyers continue to feel increased pressure to realize returns on existing portfolio companies, as well as put any remaining capital to work, we believe you will see an increase in M&A activity from private equity groups over the next 12 months.

Foreign Buyers

- Foreign buyers continue to have a large presence in the U.S. taking advantage of opportunities that U.S. buyers cannot afford.

- U.S. economy is still the most stable in the world.

- Foreign economic troubles will continue putting pressure on foreign buyers to keep capital rather than spend capital.

- Foreign buyers will be facing challenges in their home markets.

- Weakness in Europe is likely to reduce the number of those strategic buyers.

- Foreign buyers of developed economies will be more constrained by their own demands.

- Due to the global economic situation, worldwide you will see fewer foreign buyers.

- China has a lot more money than they know what to do with. Look for most M&A activity from these buyers as they look to buy entities that can help them fuel the planned expansions of Chinese consumer demand.

- Asian capital needs to be invested and U.S. assets are relatively cheap and much more secure.

- Foreign buyers will be impacted by the continuing European debt crisis.

- Weakness in Europe likely to reduce the number of those strategic buyers. International economic conditions may chase away Chinese investment, given their conservative approach to M&A.

Additional Comments

- While interest rates continue to be low, globally the U.S. is still the safest haven.

- After the 2012 elections, everything will open up as the politics will be gone and those holding back in support of the Republican opposition and those holding back out of anxiety will no longer be restrained.

- There has been a slight resurgence of M&A activity as we emerge from the recession, but it is for those who had capital sitting on the sidelines to negotiate strategic acquisitions and mergers as various industries complete restructuring and consolidations, or as foreign buyers in rapidly growing emerging markets seek to pick up key pieces. Two trends, we believe, will cause a slowdown in further activity until the global banking crisis settles down and money moves off the sidelines: (i) existing restructuring and consolidation opportunities are winding up and finishing and (ii) foreign buyers are beginning to see some risk in their own markets and slowdown, particularly in China.

Q7. Which of the following types of buyers have most influenced deal valuations over the past 12 months? (Select one option)

Responses	Count	%	Percentage of total respondents
Strategic U.S. Buyers	131	44.41%	
Financial U.S. Buyers	89	30.17%	
Foreign Buyers	46	15.59%	
None of the Above	29	9.83%	
Total Responses	**295**		**20% 40% 60% 80% 100%**

Although down from last year, for the third year in a row strategic buyers lead the list as the group most influencing deal valuations. Financial buyers are not seen as driving valuations any more than they were a year ago.

- 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).
- In 2010, 53 percent of respondents pointed to strategic buyers, 30 percent to financial buyers and three percent to foreign buyers as the group most influencing deal valuations over the previous year.

Q8. What is the most common obstacle you have experienced in deals in the past 12 months? (Select one option)

Responses	**Count**	**%**	**Percentage of total respondents**
Uncertainty in economy	117	39.66%	
Valuation	63	21.36%	
Availability of quality target	44	14.92%	
Financing	40	13.56%	
Buyer competition	15	5.08%	
Due diligence	12	4.07%	
Other (please specify)	4	1.36%	
Total Responses	**295**		**20% 40% 60% 80% 100%**

- The economy is affecting M&A activity, and to a large degree. Industry leaders say it is not a lack of capital that is primarily responsible for holding back acquisitions. An uncertain economy has been the most frequent obstacle to successful deals during the past year. Respondents highlighting uncertainty in the economy corresponds with evidence that many are companies sitting on the sidelines holding on to cash reserves.
  - Buyers and sellers generally agree on valuations—unlike in 2009 or 2010—but the economy is holding back deals.
- Of note, 15 percent of respondents lament a lack of available quality targets as standing in the way of deals.
- Availability of targets ties directly into valuation (21 percent); when there are not enough quality targets on the market, prices increase and companies are hindered from completing transactions.

Q9. Will there be a change in the number of distressed transactions in the next 12 months? (Select one option)

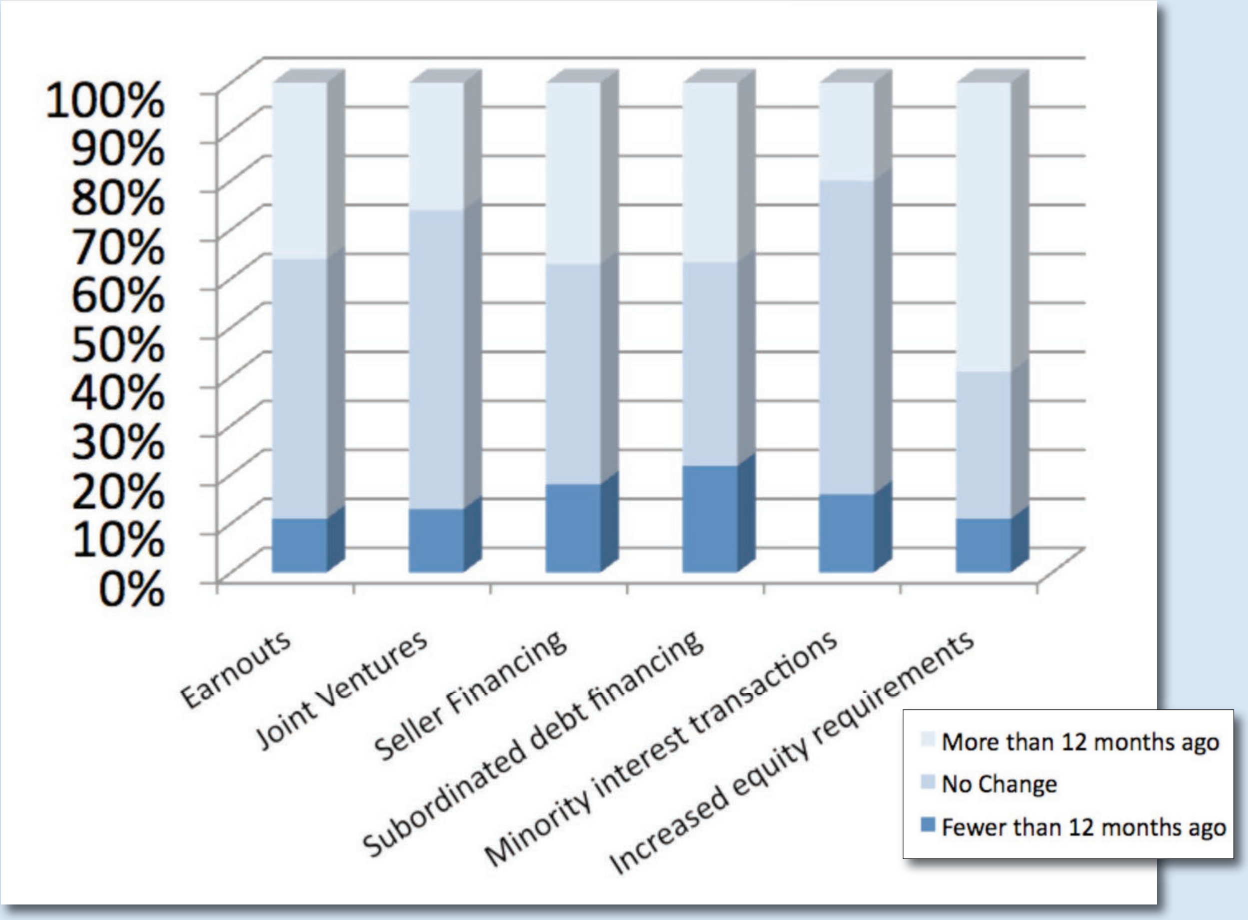
Responses	Count	%	Percentage of total respondents
Significant increase	22	7.46%	
Some increase	139	47.12%	
No significant change	101	34.24%	
Some decrease	31	10.51%	
Significant decrease	2	0.68%	
Total Responses	**295**		**20% 40% 60% 80% 100%**

In an increase as compared with last year, over half of respondents believe the coming 12 months will bring an increase in distressed deals. As reflected in responses to other questions, corporate executives remain uncertain about the economy and that unease may be driving the responses regarding distressed transactions.

- In 2010, six percent of respondents predicted a significant increase, 43 percent predicted some increase, 23 percent predicted no change and 27 percent predicted some decrease in the number of distressed transactions over 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.

Q10. How are deals being structured differently than they were 12 months ago?



- Respondents continue to see earnouts and seller financing used heavily when structuring deals. In 2010, 62 percent of respondents said they were seeing more seller financing and 59 percent said they were seeing more earnouts than in previous years.

- 59 percent of respondents are seeing increased equity requirements. While bank financing is more available than in the past, the banks are protecting their downside by requiring greater equity investments by buyers.

- The implication from respondents is that there is another party out there increasing equity versus the buyer having to put up their own equity since lenders are requiring larger equity. It could be that private equity buyers are requiring sellers to keep a larger equity piece.

Q11. 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)

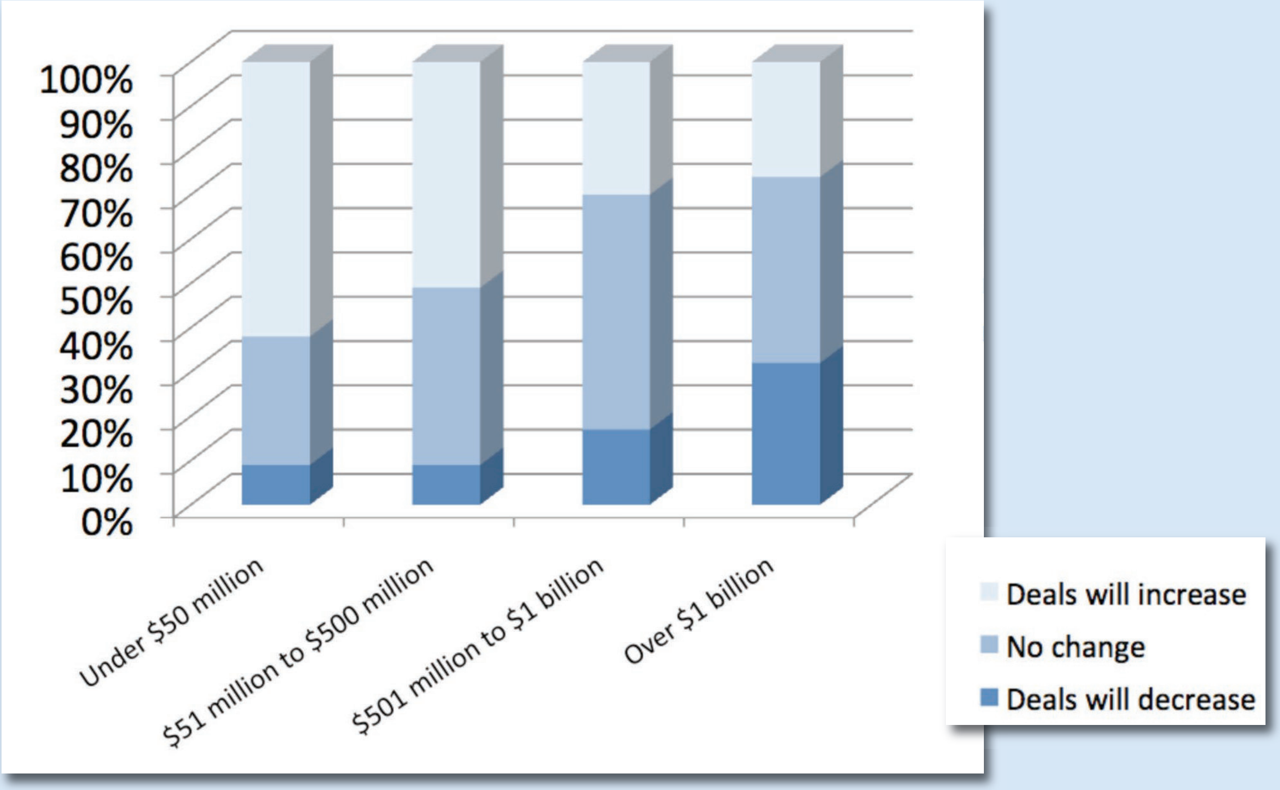
Responses	Count	%	Percentage of total respondents
Purchase price adjustments	135	47.70%	
Financing contingencies	115	40.64%	
Earnouts	97	34.28%	
Material Adverse Effect/Material Adverse Change	91	32.16%	
Damage limitations (e.g., baskets or caps on recovery, indemnification escrows)	79	27.92%	
Stand alone indemnity provisions for specific issues (e.g., tax, environmental, benefits, etc.)	67	23.67%	
Breakup fees	56	19.79%	
"Sand-bagging" provisions (i.e., provisions which invalidate indemnification for breaches of which the buyer had previous knowledge)	48	16.96%	
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)	28	9.89%	
Arbitration/Alternative dispute resolution	24	8.48%	
None of the above	23	8.13%	
No shop / No talk	19	6.71%	
Other (please specify)	2	0.71%	
Total Responses	**784**		**20% 40% 60% 80% 100%**

- Purchase price adjustments, which were not included as an option on last year's survey, are the number one provision of increased negotiation in purchase agreements according to respondents. Fluid markets and major economic swings have presented challenges in capturing the value of an asset.
- A third of respondents identified earnouts as a major discussion point, that figure is down sharply from 2010 when 66 percent of industry leaders selected that option.
- Perhaps a combination of a more competitive market and greater market acceptance of earnouts accounts for this decline.

- Financing contingencies continue to be a hot button issue but are down from last year with an improving financing market (41 percent in 2011; 54 percent in 2010).

- In 2010, respondents named earnouts (66 percent); financing contingencies (54 percent); MAE/MAC (38 percent), damage limitations (35 percent); stand alone indemnity provisions (19 percent); breakup fees (18 percent); sand bagging (14 percent); specific performance provisions (11 percent); no shop/no talk (10 percent); and arbitration (seven percent) as issues of increased negotiation.

Q12. Do you expect the number of deals in each of the following market sectors to increase, decrease or stay the same over the next 12 months?



- Respondents expect small and middle market deals to increase significantly in the coming year.
  - Many of the small and middle market deals that are taking place are add-on deals (companies acquiring competitors to increase market share, etc.).

- The larger deal space already includes four U.S. megadeals over $1 billion in the third quarter, and more than half of respondents think the number of deals in this space is likely to be consistent in the coming year.
  - In August, independent M&A intelligence service mergermarket reported that while the number of North American M&A deals was down 6.4 percent from the same eight months in 2010, the total value of the deals announced year-to-date was up 21.2 percent.

Q13. 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	Rank 1	Rank 2	Rank 3	Rank 4	Rank 5	Weighted Rank (Score)
China	169	43	30	13	9	1 (1142)
Europe	45	45	42	40	41	2 (652)
India	12	74	50	36	34	3 (612)
Canada	22	27	43	57	39	4 (500)
Japan	6	24	30	40	30	5 (326)
South/Central America	14	19	24	25	44	6 (312)
Australia	2	17	32	34	52	7 (294)
Russia	2	23	21	27	23	8 (242)
Total Responses						**272**

- Respondents continue to look at China as a principal source for investors in U.S. companies, far outranking any other region. China will likely 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. Despite the fact that China is one of America's top creditors and the U.S. is by far China's largest export markets, in 2010, Chinese companies spent only $3 billion on U.S. acquisitions according to Thomson Reuters data.
  - 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).
  - In 2010, respondents thought foreign buyers would come from China, Germany, India and Canada (ranked, no percentage available).
- It is interesting that Europe is named the second most likely region for U.S. investment given the current economic turmoil in parts of that region. Perhaps, as some respondents indicated in earlier verbatim questions, the U.S. is seen as a safe place to invest in an uncertain time.

Note: In the 2009 and current survey, European countries were listed as a group.

Q14. What regions 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	Rank 1	Rank 2	Rank 3	Rank 4	Rank 5	Weighted Rank (Score)
China	106	34	24	30	18	1 (816)
Brazil	31	44	48	36	28	2 (575)
Europe	53	39	22	24	28	3 (563)
India	23	54	40	23	34	4 (531)
Canada	15	15	39	42	33	5 (369)
Mexico	10	23	27	31	22	6 (307)
South/Central America (except Brazil)	8	15	24	29	34	7 (264)
Japan	3	16	12	14	19	8 (162)
Australia	6	9	13	11	23	9 (150)
Russia	4	10	10	19	20	10 (148)
Total Responses						**259**

China is again the winner, but less significantly so on the outbound side. According to the respondents, dealmakers are not as interested in putting dollars into China as they were three years ago as the rankings have narrowed, with runners up Brazil, Europe and India also seen as top investment locations.

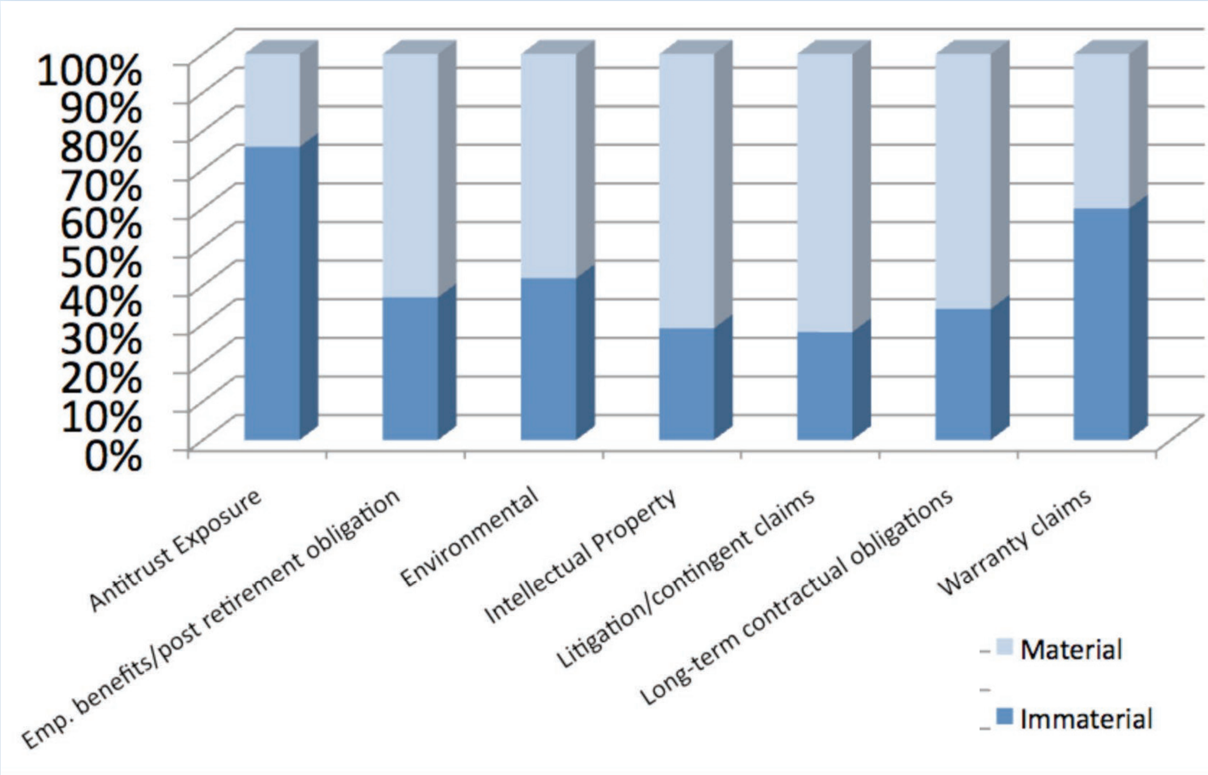
Q15. Is the March tsunami in Japan, and ensuing structural damage and nuclear events, causing you to consider a merger or acquisition to minimize your company's exposure to supply chain disruption by vertically integrating your source of supply? (Select one option)

Responses	Count	%	Percentage of total respondents
Yes	18	6.25%	
No	134	46.53%	
Unsure	29	10.07%	
Not applicable	107	37.15%	
Total Responses	**288**		**20% 40% 60% 80% 100%**

Most respondents to the survey are not using acquisitions to reduce their supply chain risk associated with Japan's natural disaster.

- Of respondents in the automotive industry, 70 percent said the tsunami-related issues in Japan are not leading them to consider a merger or acquisition to minimize exposure to supply chain disruption. Only 14 percent said they are considering that option.
- Similarly, only nine percent of respondents in the non-automotive manufacturing industry are considering a merger or acquisition stemming from the issues in Japan.

Q16. What areas of legal due diligence/risk assessment are significant for your company? (Select one option for each)



- Acquirers are not just looking for additional capability—they are often buying technology to support and expand market share. As a result, acquirers appear to be spending more time on IP due diligence.

- Interestingly, 67 percent of automotive industry respondents say warranty claims are material, while 64 percent of all other respondents say warranty claims are immaterial.

- Automotive respondents are slightly higher than all respondents on the importance of due diligence on antitrust (34 percent); environmental (67 percent); IP (86 percent) and warranty claims (67 percent).

Q17. In the next 12 months, do you believe your company will be involved in an acquisition as the acquirer? (Select one option)

Responses	Count	%	Percentage of total respondents
Yes	136	59.65%	
No	92	40.35%	
Total Responses	**228**		**20% 40% 60% 80% 100%**

Q18. In the next 12 months, do you believe your company will be sold, downsized or involved in a spinoff? (Select one option)

Responses	Count	%	Percentage of total respondents
Yes	37	15.95%	
No	195	84.05%	
Total Responses	**232**		**20% 40% 60% 80% 100%**

Methodology

In October 2011, national law firm Dykema distributed its Mergers & Acquisitions Survey via e-mail to a group of senior executives and advisors including CEOs, CFOs and other company officers. 33 percent of the 299 respondents identified themselves as a company officer or executive and 21 percent identified themselves as an investment or commercial banker. Industries represented include banking/financial services (30 percent), automotive (13 percent), manufacturing (12 percent), business services (12 percent) and health care (five percent).

The 2011 survey is the seventh annual M&A market analysis developed by Dykema, and the results are being released in conjunction with a firm M&A Survey event in Chicago.

Percentages in question 11 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.