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Mergers & Acquisitions Laws and Regulations 2026 – USA

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OVERVIEW

In 2025, the U.S. M&A market moved decisively off the post-pandemic trough and into a more active phase, marked by a sharp rebound in aggregate deal value and a renewed willingness to pursue larger, strategic transactions. Total U.S. deal value is estimated at approximately $2.3 trillion for the year, an increase of nearly 50% over 2024, while global M&A value rose by more than 35% to an estimated $4.9 trillion, underscoring the scale of the recovery. The rebound was also evident in cross-border activity, with inbound cross-border M&A deal value reaching approximately $387.3 billion in 2025, up 40% from 2024. Although M&A activity remained below the extraordinary levels of 2021, 2025 represented a clear inflection from the slower markets of 2022–2024.

The most striking feature of 2025 was the resurgence of large-cap M&A. After several years in which many board-level transactions had been postponed, the number of large U.S. deals increased significantly, including multiple transactions exceeding $40 billion in value. The U.S. rebound reflected a broader global return to scale: the average global deal size approached $100 million, and approximately 120 transactions exceeded $5 billion.

Mega-deals, or deals valued at over $10 billion, once again accounted for a substantial share of overall U.S. deal value, even as small- and mid-cap transactions, add-ons and carve-outs continued to dominate deal counts. The top 20 U.S. transactions alone represented approximately 33% of total deal value, despite only modest growth in deal volume. Among the most significant U.S. mega-deals, Union Pacific agreed to acquire Norfolk Southern in a stock-and-cash transaction valuing Norfolk Southern at approximately $85 billion, although regulatory approval for the merger remains pending and its ultimate consummation is uncertain. Charter Communications agreed to combine with Cox Communications in a transaction valuing Cox at approximately $34.5 billion, which is expected to close in the fall of 2026 subject to California state regulatory approval. Private capital also remained active in large-cap transactions, as a consortium comprising Saudi Arabia’s Public Investment Fund, Silver Lake, and Affinity Partners agreed to acquire Electronic Arts in an all-cash take-private transaction valued at approximately $55 billion. The global M&A landscape in 2025 was increasingly “K-shaped”, where a significant amount of growth was driven by large technology-based deals. Strategic acquirers took advantage of stronger equity markets, easing financing conditions, and improved earnings visibility to pursue transformational combinations while also continuing to use M&A to fill product gaps and accelerate digital and AI-related capabilities.

Private equity sponsors also played a central role in the 2025 rebound: U.S. sponsor-led announced activity reached $1.2 trillion, up approximately 36% year over year, as sponsors became more active both as buyers and sellers, supported by improving exit markets and continued availability of private credit. Global sponsor-backed deal value increased materially, with private equity announced transactions reaching almost $2 trillion in aggregate value for the year, the highest level since 2021. Dry powder remained elevated, but sponsors were more willing than in prior years to deploy capital into larger deals and to underwrite complex capital structures, particularly in technology, infrastructure-linked assets, and professional services.

Macroeconomic conditions in 2025 were generally supportive of dealmaking. Equity markets posted strong gains: the S&P 500 rose approximately 16% and the Nasdaq nearly 20%, while inflation moderated toward central bank targets. The Federal Reserve instituted a series of interest rate cuts, which eased financing costs and helped narrow valuation gaps between buyers and sellers. As a result, aggregate M&A value in the second half of 2025 increased significantly compared to the first half, reflecting improved confidence among both strategic and financial buyers.

Regulatory and political developments remained an important consideration in 2025, but after several years of aggressive merger enforcement, the enforcement environment showed signs of easing. The agencies seemed to show an increased willingness to resolve merger issues through targeted structural remedies and consent decrees rather than issuing outright rejections. Still, U.S. antitrust agencies continued to scrutinise transactions in highly concentrated industries, particularly in technology, media, health care, and critical infrastructure. National security review of cross-border transactions, especially those involving sensitive technologies and data-rich businesses, remained robust. In this environment, deal documentation in 2025 continued to feature extended outside dates, detailed regulatory covenants, and bespoke risk-allocation mechanisms, such as targeted divestiture commitments and reverse termination fees, to address execution risk.

In all, 2025 can be characterised as a year of renewed, but disciplined, expansion in U.S. M&A: dealmakers returned to the market in force yet remained attentive to financing conditions, regulatory risk, and the need for clear value-creation theses.

SECONDARIES TRENDS

Although the financial environment surrounding M&A and the capital markets continues to improve, interest in alternative fund exit structures remains high. As a result, the market for secondaries transactions has continued to grow substantially. While no substantive regulatory action has been taken, many market participants have begun to anticipate potential regulatory changes in the secondaries landscape in the future.

Fundraising for secondaries transactions began decades ago, but it has attracted significantly greater attention in recent years. In 2006, 33 secondaries funds raised $20 billion in total commitments, and in 2020 secondaries fundraising peaked at 85 vehicles raising $100 billion. Although fundraising then declined (to $54 billion across 92 funds in 2021 and $45 billion across 88 funds in 2022), activity has since surged. Secondaries raised a record $327 billion in 2025, up 14% from $288 billion in 2024. At the end of 2025, three of the 10 largest private equity vehicles were secondaries-focused, and forecasters project continued growth across the market in 2026.

Historically, the private secondaries market has been dominated by limited partner secondaries transactions. In such a transaction, a limited partner in a private, closed-end investment fund sells its interest in the fund to a third-party buyer. The buyer assumes the selling limited partner's capital commitment obligations and otherwise replaces the seller as a limited partner in all material respects. By selling its interest, an investor can obtain liquidity in one or more of its fund investments before the end of the fund term. These transactions are also attractive to buyers, as they provide indirect access to a known set of a fund's portfolio companies before the technical end of the fund's life. In addition, because these positions are private and non-controlling, the interests typically trade at a relative discount.

Traditionally, the buyer of a limited partner's interest in a secondary transaction fell into one of two camps: (a) another limited partner of the same fund; or (b) a private fund dedicated to secondaries. During the Global Financial Crisis, however, a shift occurred. Funds nearing the end of their term faced a decision: sell into difficult market conditions or seek structures that afforded more time to shore up a portfolio company or wait for market multiples to return to more favourable levels. Extending a fund's term often requires the consent of the limited partners or the limited partner advisory committee (LPAC), and such an extension can give rise to conflicts of interest and strain the relationship between the manager and the limited partners.

To address this dilemma, fund managers developed the general partner-led secondaries fund, commonly known as a continuation fund. In a continuation fund transaction, the general partner of an existing fund leads a group composed of some combination of new investors and existing limited partners to form a new vehicle – the continuation fund. This new fund acquires one or more assets from the existing fund. Participation in the sale is optional: a limited partner may sell its interest outright, roll its existing interest into the new fund, or roll over and increase its interest in the new fund. This optionality helps mitigate conflict-of-interest concerns and makes it easier to obtain limited partner consent to the transaction. It also allows the general partner to offer its limited partners liquidity with respect to high-performing portfolio companies; and because the structure is typically centred on a concentrated set of portfolio companies with a shorter hold period, limited partners with strong conviction can continue to hold their investment for a reasonably manageable period.

In response to this growing trend, some have raised questions about the relatively light regulatory framework for secondaries in the U.S. In August 2023, the Securities and Exchange Commission (SEC) finalised new rules under the Investment Advisers Act that would have required advisers to obtain a fairness or valuation opinion when conducting a general partner-led secondary transaction. In June 2024, however, the U.S. Court of Appeals for the Fifth Circuit unanimously vacated the rule. The current administration has elected not to pursue further legal action in response to the decision and has otherwise taken limited regulatory action related to continuation funds.

While analysts do not expect a material change in administrative policy in the short term, related regulation appears more likely over the medium to long term. Because the general partner manages both the existing fund and the continuation fund, it may have an incentive to value assets inaccurately when they are transferred to the continuation fund. If the general partner holds a greater stake in the continuation fund than in the existing fund, stakeholders may question the fairness of the valuation of the underlying assets. And although the LPAC can help limit these conflicts, limited partners who reinvest in the continuation fund may have similar conflicts of interest, which can undermine the effectiveness of LPAC oversight. Moreover, given the short timeline in which limited partners are expected to decide whether to liquidate their position or roll into a continuation vehicle – on average, approximately 20 business days, sometimes less – a limited partner may have little time to vet its decision.

The benefits of the continuation fund model have driven its increasing use over the past 20 years. As a result, continuation funds have become a well-established means of providing liquidity and allocating capital for private equity sponsors and their investors. As this market matures and continues to grow, its participants may face greater regulatory scrutiny of the associated risks and rewards.

SHAREHOLDER ACTIVISM

Last year, 2025, was a record year for shareholder activism, with activity broadening across geographies, sectors, and market capitalisations. Although observers differ on the level of activist advocacy that qualifies as an activist campaign, most agree that 2025 produced a record number of campaigns. Estimates ranged from 255 to 297 campaigns; the wide range reflects both definitional differences and the fact that many campaigns are settled without any public disclosure. Activism volume also remained structurally above pre-pandemic levels, supported by robust M&A activity, equity-market volatility, and constructive financing conditions. Globally, campaigns with aggregate activist stake value increased by approximately 6.5%, reaching approximately $74 billion in 2025.

Against that backdrop, M&A was once again at the centre of the activist playbook. M&A demands were made in 44% of global campaigns, in line with the four-year average, but activity accelerated sharply as the year progressed. M&A activist demands were made in 54% of campaigns in the second half of 2025, compared with 35% in the first half, and in 61% of the campaigns in the fourth quarter of 2025. In addition, 35% of activist campaigns had an M&A-related objective, surpassing the 2020–2024 average of 29%.

Elliott was the most prominent large-cap activist of 2025, launching 18 campaigns, targeting five of the 10 largest companies subject to activism, and deploying approximately $19 billion of capital. Elliott's targets included Barrick, Genuine Parts, HPE, PepsiCo, Smiths, Toyota, Medtronic, Rexford Industrial, Sumitomo Realty & Development, Workday, Equinix, and Lululemon.

Other highly active investors included Murakami Funds, Oasis, Saba, Asset Value Investors, Dalton, Starboard, and HoldCo Asset Management. HoldCo became a leading fourth-quarter activist through regional-bank M&A campaigns involving BankUnited, Central Pacific Bank, Comerica, Eastern Bank, KeyCorp (KeyBank N.A.), Columbia Banking System, and First Interstate BancSystem. In all, there were 142 unique global activists in 2025, including 29% first-timers. The top 10 activists launched 79 campaigns, representing over 25% of all campaigns.

As activists pursued campaigns across these markets, board change continued to be the dominant global campaign theme, appearing in 37% of campaigns. Activists won 120 board seats globally, with Elliott and Starboard accounting for nearly 30% of seats won. U.S. settlements also reached a record 52, up from 35 in 2024, and nearly half occurred without prior public agitation.

The universal proxy regime continued to reinforce this more targeted and settlement-oriented approach. Activists assembled higher-quality slates, sought fewer seats, and focused on more vulnerable directors. In U.S. campaigns with public board-seat demands, activists won an average of 75% of the initial seats sought, surpassing the four-year average of 64%. ISS and Glass Lewis supported more than two-thirds of activist nominees in proxy fights and major withhold campaigns. CEO turnover and vote-no pressure further amplified activist leverage, particularly around M&A. Thirty-two CEOs resigned within one year of an activist campaign, the highest number on record and 60% above the prior four-year average. There was also a notable increase in withhold and vote-no campaigns, several of which led to board or executive changes and renewed M&A pressure.

DELAWARE CASE LAW DEVELOPMENTS

Between early 2025 and spring 2026, Delaware courts and the General Assembly continued to favour contractual ordering, statutory safe harbours, and deal certainty, but paired that deference with exacting enforcement of drafting choices, corporate formalities, and process requirements. The strongest through-line is that Delaware will enforce what parties clearly wrote and validly approved but will not rescue imprecise drafting, defective approvals, or post-closing leverage tactics that depart from statutory or contractual entitlements.

Overview

Delaware is moving simultaneously in two directions: Delaware General Corporation Law (DGCL) amendments and their subsequent constitutional validation expand statutory pathways for cleansing conflict transactions, while Court of Chancery and Supreme Court decisions continue to police M&A notice regimes, earnout protections, materiality scrapes, transfer restrictions, and negotiated deal mechanics with granular precision. For venture-backed and emerging companies, the most salient lessons are that protective provisions must enumerate specific transaction forms, stock repurchases require scrupulous board authorisation, and midstream restrictions on already-issued equity may be invalid without affected-holder consent.

Statutory Reform: DGCL Amendments and Constitutional Validation

Sweeping amendments to the DGCL, effective March 25, 2025, create new safe harbours for conflict transactions involving directors, officers, and controlling stockholders. For non-go-private controller transactions, amended Section 144(b) permits cleansing through either a properly empowered disinterested committee or a disinterested stockholder vote, whereas prior case law required both. Go-private transactions preserve the dual-mechanism MFW framework. The amendments also eliminate the *ab initio* timing requirement for special committees, create a rebuttable presumption of disinterestedness for public-company directors satisfying stock exchange independence standards, and define “controlling stockholder” with a statutory floor of one-third voting power plus managerial authority. In *Rutledge v. Clearway Energy Group LLC* (March 2026), the Delaware Supreme Court upheld these provisions as constitutional and confirmed they may apply retroactively, except to proceedings pending as of February 17, 2025.

M&A/Deal Counsel Note: A single cleansing device now suffices for non-go-private controller transactions. Deal planners should build processes around the statutory requirements from the outset.

Key M&A Decisions

Earnout Protections: Fortis Advisors v. Krafton (March 2026)

Where an acquiror terminates key employees without contractual cause and seizes operational control to avoid earnout obligations, the Court of Chancery will grant specific performance rather than limiting the seller to damages. In *Fortis Advisors LLC v. Krafton, Inc.*, the court strictly construed the “cause” definition, applied the mend-the-hold and after-acquired evidence doctrines to bar *post hoc* justifications, ordered reinstatement of the CEO, and equitably extended the earnout testing period by 258 days. The court also flagged the acquiror’s use of an AI chatbot to develop earnout-avoidance strategies – and subsequent deletion of those logs – as discoverable and subject to preservation obligations.

M&A/Deal Counsel Note: Operational control covenants, narrow for-cause protections, and specific performance clauses are not merely hortatory. Acquirors face exposure to forced reinstatement, injunctive relief, and equitable time extensions – not merely monetary damages.

Materiality Scrapes: JanCo v. ISS (February 2026)

When a materiality scrape is applied to an absence-of-changes representation referencing a defined "Material Adverse Effect" (MAE) term, the correct approach is to first insert the full MAE definition and then strip materiality qualifiers, a sequence that can reduce the warranty to one against any adverse effect. In *JanCo FS 2, LLC v. ISS Facility Services, Inc.*, the court used the asset purchase agreement's (APA) indemnification structure to confirm that a low basket was inconsistent with requiring proof of a full MAE. Yet the buyer recovered nothing because its damages theory was untethered to the specific breach proved and key damages categories were excluded.

M&A/Deal Counsel Note: Model how the scrape operates on each representation before signing. Sellers should consider carving specific representations out of the scrape or eliminating circular MAE definitions. Buyers must align damage categories with the lowered breach threshold, or win on the breach and recover nothing.

Merger Consideration and Releases: Chertok v. OnSolve, LLC (May 2026)

A surviving corporation may not require a stockholder to execute a release of claims, lacking independent consideration, as a prerequisite to receiving merger consideration. In *Chertok v. OnSolve, LLC*, the court held this breached the certificate of incorporation, limited the remedy to the per-share merger price plus simple interest, and rejected the stockholder's attempt to obtain a higher payout through the appraisal-withdrawal mechanism.

M&A/Deal Counsel Note: Separate standard exchange-agent deliverables from release-bearing joinders. Support releases with independent consideration. Consider promptly paying undisputed merger consideration to limit interest exposure.

Indemnification Notices: Thompson Street v. Sonova (August 2025)

Deficient indemnification notices can forfeit a buyer's recovery rights entirely. The Delaware Supreme Court held that merger agreement notice requirements controlled over the escrow agreement's less demanding provisions, creating a condition precedent that could trigger forfeiture. Practitioners should consider expressly stipulating that notice provisions are material to the parties' bargain.

Security Interests as Transfers (March 2026)

A blanket collateral pledge can constitute a "transfer" triggering right of first negotiation (ROFN)/right of first refusal (ROFR) rights under existing contracts. The court relied on catchall "or otherwise transfer" language and a carve-out for a specific prior collateral assignment, reasoning the express exclusion implied other security interests were covered. Borrowers must conduct diligence on transfer restrictions before granting security interests, and lenders should assess transfer-restriction risk in collateral.

Integration Clauses and Fraud: Park7 v. PR III (November 2025)

Even without anti-reliance language, an integration clause precludes a fraudulent inducement claim where the alleged pre-contractual misrepresentation directly conflicts with an express contract term. Critical pre-signing assurances must be memorialised in the transaction agreement; side understandings that contradict the integrated text will not survive.

Advancement vs Indemnification: GreenMarbles v. Cushing (December 2025)

"Payable as incurred" within an "indemnify and hold harmless" provision does not create advancement rights. Express advancement language (*e.g.*, "advance" or "defend") is required; courts will not supply what the contract omits.

Protective Provisions: Gunderson v. The Trade Desk (January 2025)

Charter provisions using generic "amend or repeal" language do not reach conversions under DGCL Section 266, even if the conversion effectively repeals the charter. Under the doctrine of independent legal significance, drafters must enumerate conversions, mergers, and other transaction forms to ensure protective rights apply.

Restrictive Covenants: A Consolidated View

Three Court of Chancery decisions – *Weil Holdings v. Alexander* (August 2025), *Payscale v. Norman* (September 2025), and *BluSky v. Robbins & Popwell* (March 2026) – establish that Delaware will not enforce or blue-pencil overbroad non-competes, even in sale-of-business or sponsor equity contexts. The courts struck covenants that exceeded the acquired business's geographic footprint, covered unrelated affiliates, used "attempt to" non-solicitation language, or imposed potentially indefinite durations tied to ownership without a divestiture mechanism. The Delaware Supreme Court in *North American Fire v. Doorly* (February 2026) tempered the trend by holding that forfeitable or contingent equity constitutes valid consideration at formation, but did not relax the reasonableness requirement for scope, duration, or geography. The collective message is clear: draft restrictive covenants to the actual goodwill, business line, and competitive footprint being protected, because judicial blue-penciling is no longer a safety net.

Recurring Themes and Doctrinal Shifts

1. **Statutory and contractarian, but not forgiving:** The DGCL amendments and *Rutledge* expand safe harbours for conflict transactions, but *Gunderson*, *GreenMarbles*, and *Park7* show that Delaware's contractarianism cuts both ways: parties get the benefit of what they wrote, but not protections they failed to specify.
2. **Enhanced scrutiny survives statutory reform:** *Dura Medic* (September 2025) confirms that Revlon review applies to any end-stage transaction, including asset sales, that terminates stockholders' ongoing equity interest. Statutory cleansing should be built into conflicted transactions, while boards in final-stage sales should still build a contemporaneous process record.
3. **M&A drafting choices are enforced at a granular level:** Indemnification notices may be conditions precedent; "payable as incurred" does not create advancement; integration clauses can defeat fraud claims contradicting express terms; materiality scrapes operate through a specific textual order of operations; and releases cannot be imposed as post-closing payment conditions without independent consideration.
4. **Emerging company governance remains vulnerable to formal defects:** *Gunderson*, *Ban v. Manheim* (August 2025), and *Foley v. Session Corp.* (September 2025) form a cautionary sequence: protective provisions must specify the covered transaction form, post-issuance transfer restrictions require affected-holder consent under DGCL Section 202(b), and non-unanimous written consents are invalid as a matter of law.

Bottom-Line Takeaways

The developments collectively counsel a drafting-first, record-first approach. Transaction planners should map protective rights to transaction forms, model materiality scrapes, make notice requirements and release mechanics operationally precise, and align indemnification architecture with expected remedies. Boards and sponsors should use the amended Section 144 safe harbours deliberately while preserving fiduciary-process discipline in end-stage transactions. Buyers should assume overbroad restrictive covenants will be struck wholesale, not narrowed – draft to the actual competitive footprint or risk losing enforcement entirely.

INDUSTRY SPOTLIGHTS

The 2025 M&A recovery was sector-led. Buyers focused on assets with durable demand, defensible margins, visible growth, strong cash-flow conversion, and clear value-creation levers. Technology, health care and life sciences, and industrial and business services drew the most attention, with the U.S. playing an outsized role in global deal value.

Technology and health care and life sciences led the M&A market in 2025. Globally, technology deal value rose nearly 80%, supported by large M&A deals like Alphabet's purchase of Wiz for $32 billion. Technology was well positioned at the centre of nearly every strategic thesis in 2025: AI; software; cloud; cybersecurity; data infrastructure; and digital transformation. The U.S. story was even more concentrated around large technology-driven transactions: more than 20% of U.S. transactions valued at $5 billion or more had an AI theme.

Health care and life sciences remained active, but the strongest opportunities were targeted rather than broad-based. Globally, large-cap pharmaceutical, biotech, medtech, and diagnostics transactions supported deal value, while provider platforms and technology-enabled health services attracted buyers pursuing scale, integration, and value-based care strategies. The health care sector was buoyed late in 2025 by renewed momentum, specifically in the medtech space. M&A deal value in the health care sector in the U.S. declined from $62 billion in 2024 to $46 billion in 2025. However, buyer interest remained elevated in medtech, provider services, specialty care, behavioural health, diagnostics, and technology-enabled health services. Medtech was the standout, with approximately $98 billion in deal value, the highest total in more than a decade. Buyers favoured differentiated products, durable growth profiles, and assets that could strengthen larger health care platforms.

Industrial and business service activity followed the same practical logic in both global and U.S. markets. Buyers wanted platforms that made supply chains stronger, operations more efficient, and service delivery more scalable. Industrial M&A activity was supported by supply-chain resilience, reshoring, automation, digitisation, and outsourcing. Targets included logistics, specialty manufacturing, industrial technology, workflow automation, and tech-enabled services platforms. The most attractive businesses combined recurring or repeat revenue, operational improvement opportunities, and exposure to long-term productivity trends.

The 2025 sector story showed buyers becoming more disciplined about where they put their capital. Globally, technology, health care, energy, infrastructure, industrials, business services, and financial services all benefited from durable secular themes. In the U.S., the scale of larger transactions, the prominence of AI and technology-enabled deal rationales, and the continued concentration of buyer interest in assets with resilient cash flows and strategic importance made the recovery more dependent on sectors where buyers could underwrite both near-term performance and long-term strategic value.

CONCLUSION

The U.S. M&A landscape in 2025 and into 2026 reflects a market that has matured through volatility and emerged with greater discipline, sophistication, and strategic focus. Record deal values, a resurgent private equity market, and the continued rise of AI-driven transaction rationales signal that dealmakers are not simply returning to form; they are operating with sharper conviction about where and how to deploy capital. At the same time, the developments surveyed across secondaries, shareholder activism, and Delaware case law underscore that execution risk has never been more granular: the difference between a successful transaction and costly litigation increasingly turns on precise drafting, rigorous process, and meticulous attention to contractual mechanics. As regulatory frameworks continue to evolve and activist investors remain structurally embedded in the deal ecosystem, transaction planners, boards, and sponsors will need to balance the urgency of opportunity against the discipline of process. For those who do, the current environment presents a compelling window, one defined not by the absence of risk, but by the growing capacity of experienced practitioners to anticipate, allocate, and manage it.

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