



MAYER|BROWN

FINANCIAL SERVICES M&A SUMMIT 2026

Plug Into What's Next

AGENDA

2:00 – 2:05 P.M. WELCOME REMARKS

2:05 – 3:05 P.M. 2026 VISION: MARKET FORCES SHAPING FINANCIAL SERVICES M&A

3:05 – 3:15 P.M. NETWORKING BREAK

3:15 – 4:00 P.M. CONVERGENCE IN ACTION: LEADERS OF THE PACK IN INSURANCE, ASSET MANAGEMENT AND PRIVATE CREDIT

4:00 – 4:30 P.M. AI IN FINANCIAL SERVICES: OPPORTUNITIES, RISKS, AND THE ROAD AHEAD

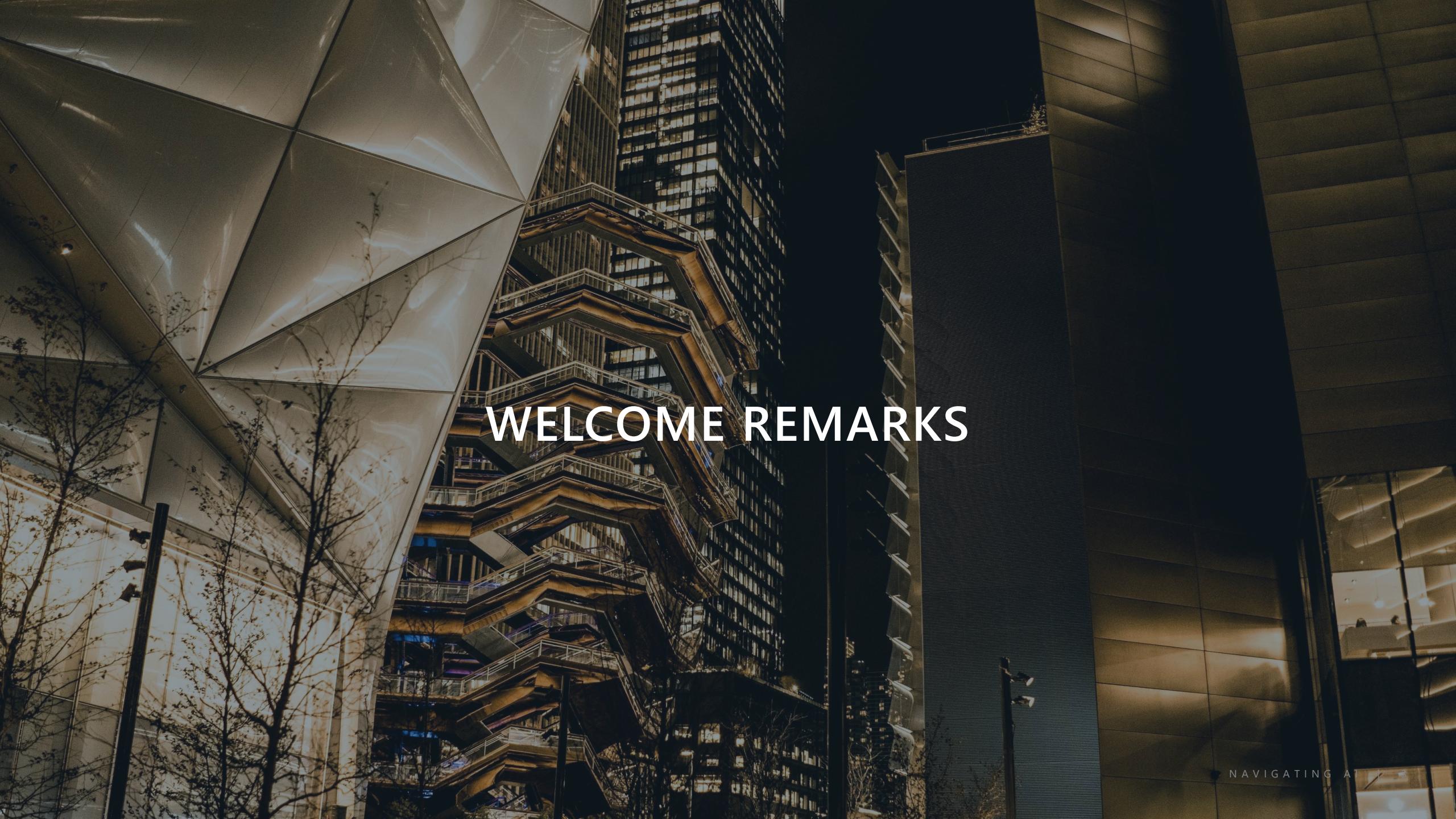
4:30 – 4:40 P.M. NETWORKING BREAK

4:40 – 5:10 P.M. DEAL OR NO DEAL: INSIDE HIGH-STAKES M&A DISPUTES

5:10 – 5:40 P.M. WHEN THE CYCLE TURNS: RESTRUCTURING SIGNALS AND IMPLICATIONS FOR FINANCIAL SERVICES M&A DEALS

5:40 – 5:45 P.M. CLOSING REMARKS

5:45 – 7:00 P.M. NETWORKING RECEPTION



WELCOME REMARKS

2026 VISION: MARKET FORCES SHAPING FINANCIAL SERVICES M&A



DAVID DESPREZ
Partner
Bain Capital



BRENT FERRIN
Managing Director
Houlihan Lokey



AL LAUFENBERG
Managing Director
KBW Investment Bank



GRAHAM NIX
Senior Managing Director
Evercore



ZACH PFANSTIEL
Managing Director
UBS



JP BERNARD
Partner
Mayer Brown



DANIEL SEROTA
Partner
Mayer Brown

INTRODUCTION

- If we're sitting here in January 2027, what will we say was the single biggest driver of financial services M&A in 2026— regulatory clarity, capital cost/availability, or confidence in asset quality—and what is the market mispricing today?
 - As an investor, what changes would be the most impactful in any decision to invest or sit on the sidelines in 2026? [David]
- Are boards truly capital constrained—or are they governance and execution constrained given today's supervisory posture and stakeholder dynamics?
- What assumption about financial services M&A heading into 2026 do you think most executives are getting wrong – valuation, timing to approval or integration risk? Are there any asset classes that you expect to see heightened activity in, given the current political and regulatory climate in the U.S.?
 - Do you think there is alignment between what you look for as an investor and the executives' strategies that will drive M&A activity in 2026?



THEME 1: PRIVATE CAPITAL & CONVERGENCE

- Is private capital crowding out strategics—or acting as a co-underwriter of complex deals (e.g., structured equity, TRS, sidecars, reinsurance) that would otherwise be unfinanceable?
- With the growth of private capital and convergence deals funded on insurers balance sheets, have the methods by which we measure value changed?
- Does convergence create value in the market? Where and how do you see that value?
 - Convergence has resulted in a host of non-traditional players looking at the same assets in M&A processes. Does this create opportunities for innovation, or does it create unrealistic expectations for M&A sellers?
- What do you think the convergence will lead to? More M&A or fewer outright acquisitions and more structured transactions / partnerships?
- Do you think that private capital and bank partnerships are a permanent structure, or will a resurgence of consolidation slow this activity?





THEME 2: SECTOR-SPECIFIC PLAYS AND VALUATION DISCIPLINE

- Are acquirers ready to pay for core deposit franchises again as deposit betas stabilize, or will CRE credit and supervision keep bank deals defensive?
- Do RIA roll-ups and alt-distribution platforms remain a volume story, or does cost of capital finally force a pivot to integration and profitability?
- In 2026, do three high-ROE tuck-ins beat one transformational deal—once you adjust for approval and integration risk?
- Where are synergy cases most overestimated today—revenue cross-sell, funding cost, or technology and operations?
- Do you think divestitures by banks are becoming more strategic than acquisitions? What is your view on the types of strategic transactions that we are likely to see involving banks and other financial institutions in 2026?

THEME 3: EXECUTION, STRUCTURE & 'FIX-IT' M&A

- Are minority stakes, JVs, and staged acquisitions a bridge to full M&A—or a permanent alternative where valuation gaps remain and control approvals and the timeline to obtain remain uncertain?
- Is the next M&A cycle more about buying growth—or selling complexity?
- What's new in diligence in 2026: underwriting AI/model risk, data rights and localization, cyber remediation, and cloud/vendor concentration—and how is that changing price and reps/warranties?





THEME 4: THE PATH FORWARD FOR REGIONAL BANKS: CONSOLIDATION, SPECIALIZATION, OR RESTRUCTURING

- Do you have a view on whether regional banks are structurally too small to survive independently? What is your view on the view that regional bank consolidation is inevitable? What can regional banks do to continue to be competitive in their markets?
- Is scale a solution—or just a proxy for something else?
- Are there regional banks that you think generally are better positioned than others in the market? If you were advising them, what strategy do you think creates the most value looking ahead for 2026?

THEME 5: TROUBLED FINANCE COMPANIES & BANKS: WHAT BREAKS IN 2026

- In your view, which business models are closest to the edge right now?
- When does “liquidity support” quietly turn into a control transaction?
- Do you expect any of the business models “on the edge” to go into any type of restructuring in 2026? For those business models, will 2026 be about restructurings or opportunistic acquisitions dressed up as rescues?





THEME 6: POST-CLOSING DISPUTES

- What is the most common surprise buyers face post-acquisition closing?
- Are sellers underestimating how aggressively buyers will enforce covenants and bring claims?
- Which deal terms are most likely to end up in arbitration or litigation?
- Are earn-outs solving valuation gaps—or deferring disputes?
- At what point does “creative structure” become a red flag?

CLOSING QUESTION / LIGHTNING ROUND

- What assumption about 2026 deal activity do you most disagree with?
- In one sentence: what must change in 2026 for financial services M&A to materially accelerate?
- What's the single indicator you're watching to know that change is actually happening?
- If that change doesn't happen, the most important strategic decisions in 2026 may be the deals companies choose not to do.





NETWORKING BREAK

3:05 – 3:15 P.M.

CONVERGENCE IN ACTION: LEADERS OF THE PACK IN INSURANCE, ASSET MANAGEMENT AND PRIVATE CREDIT



KATIE DALY
Partner, Apollo, Global Head
of M&A, Reinsurance and
Pensions, Athene



GARY SILBER
Managing Director, General
Counsel of Investments and Risk
KKR Insurance



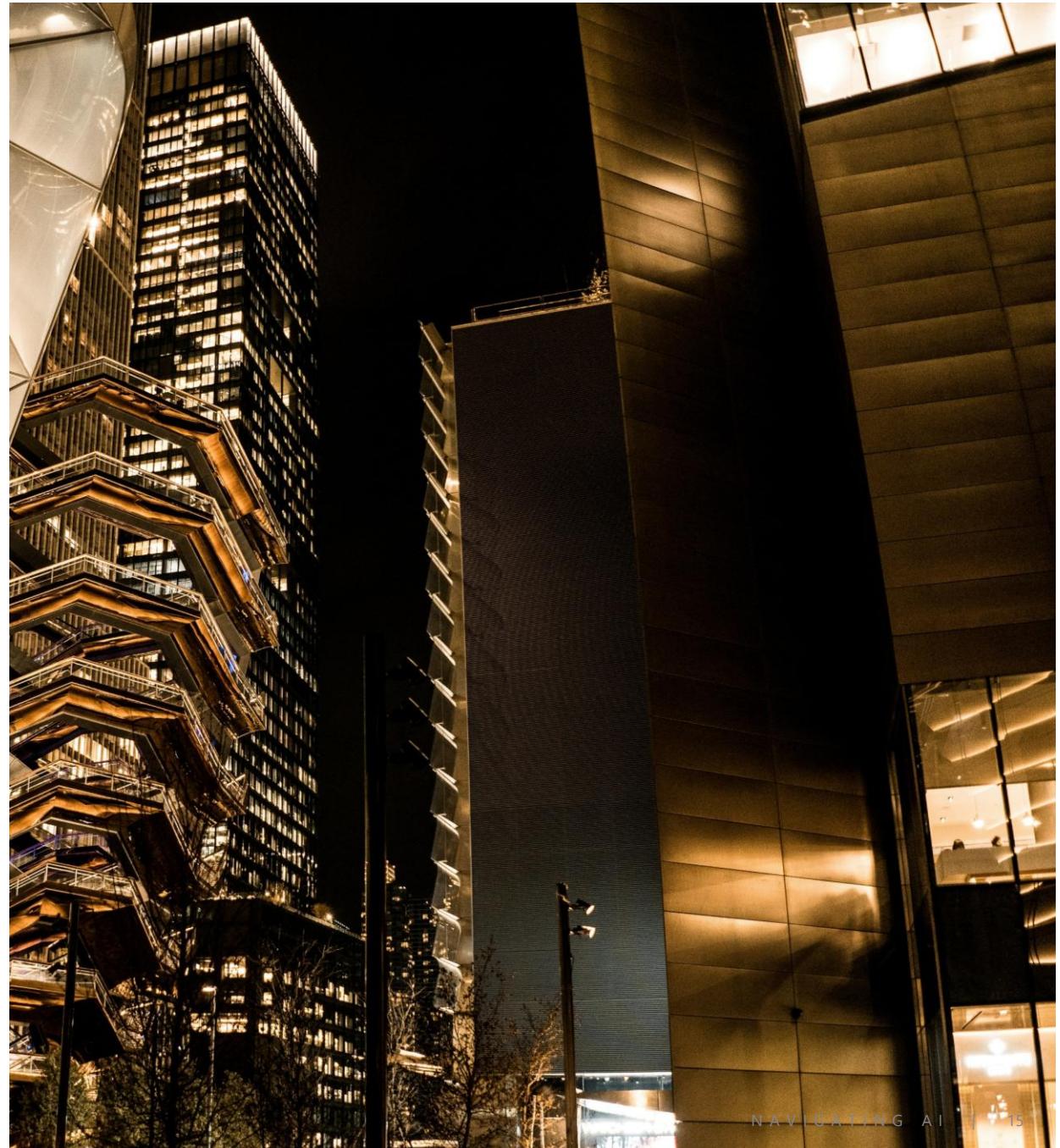
ALBERT YEE
Managing Director, Insurance
Capital Solutions,
Macquarie Group



GREG OGUSS
Partner
Mayer Brown

ROUND 1

- **Katie**, to help orient us, could you describe your primary responsibilities at Apollo and Athene? Also, can you speak to how you and your team support other Apollo-affiliated insurance brands and businesses, for example, the ACRA sidecars, other consolidators like Venerable and Athora, and the contexts where Apollo works directly with insurers on the funds or asset management side?



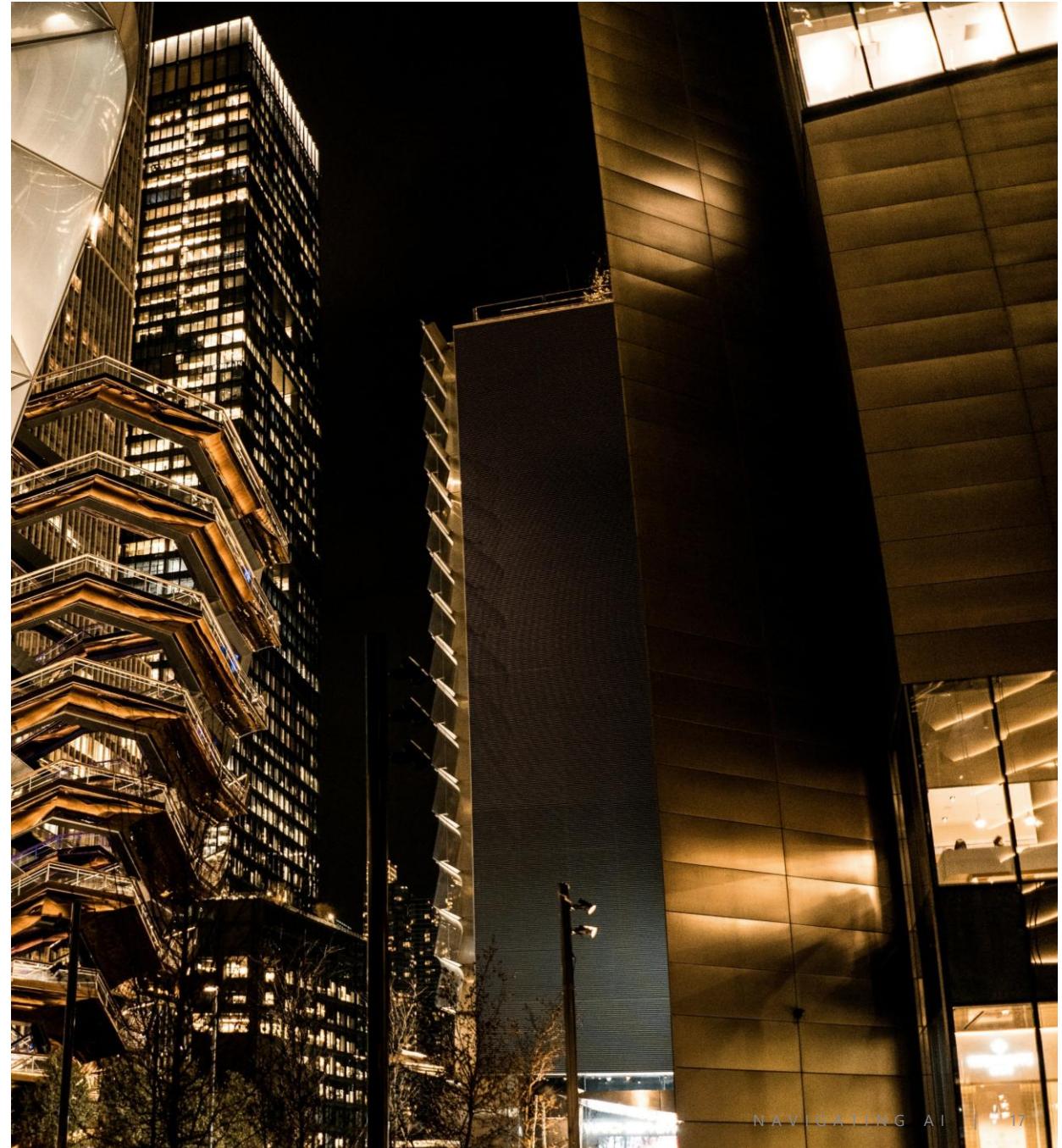
ROUND 1

- **Gary**, as GC of Investments and Risk, can you describe your roles and responsibilities, with a focus on where and how you get involved with the deal teams, whether on the asset side or the liability side? Also, as a member of the legal and risk function, what if anything is keeping you up at night regarding how crowded this trade is getting of asset managers buying, establishing or affiliating with on- and off-shore acquirors of life and annuity liabilities that Global Atlantic helped to pioneer?



ROUND 1

- **Albert**, what was it about the opportunity set here that was compelling enough to convince Macquarie to enter the life insurance consolidation space where you would be competing with some successful long-tenured incumbents as well as a great many other new entrants? Also, as a leader in Macquarie's insurance capital markets business, to what extent are your responsibilities focused on the InEvo Re deal pipeline vs. what percentage of your time is devoted to other insurance-related business channels?





ROUND 2

- **Gary**, Global Atlantic – and Athene – are great examples of successful consolidators of life and annuity business that also have successful U.S. retail franchises. In light of the recent announcement that the Sixth Street-backed Talcott plans to enter retail, and the fact that Ares-backed Aspida Re has done the same with some success, can you speak to the pros and cons of having both a thriving retail insurance arm and a successful roll-up business? Does the retail success get in the way of working with potential sellers and cedants due to perceived conflicts? Or does strong retail premium flow make it easier to do M&A and reinsurance given the liquidity benefits to Global Atlantic's surplus?



ROUND 2

- **Albert**, in the first year of InEvo Re's operations, you have consummated 3 impressive publicly-announced cross-border transactions with sellers in 2 very different international jurisdictions, namely the U.S. and the U.K. As you take stock of 2025, what are some of the challenges about the start-up phase that surprised you and what are some of the keys you landed on to addressing those challenges that drove that out-of-the-gate success?



ROUND 2

- **Katie**, given your role encompasses so many different types of transactions as well as product types and jurisdictions, can you speak to what makes a given counterparty or jurisdiction compelling for Apollo on block or flow reinsurance vs an entity acquisition vs a pension group annuity or funding agreement vs a stand-alone investment management mandate for Apollo?

ROUND 3: STRUCTURING COMPLEXITY / CASE STUDIES

- **Albert**, the first discussion you and I had touched on structural sweeteners that can help convince a seller you are the most compelling partner in an environment with many suitors. As we discussed when comparing notes, these come in many different flavors. A few months back, you promised me a roll-forward on how Macquarie is currently thinking about things like making a preferred equity investment in the seller or conversely giving the seller equity and profit participation in a reinsurance deal via a segregated cell company acquirer. I'm going to put you on the spot to see if I can get you to give me that roll-forward now as to how Macquarie is currently thinking about what works well and what doesn't with respect to some of these structures.



ROUND 3: STRUCTURING COMPLEXITY / CASE STUDIES

- **Katie**, one structuring theme that to me is closely associated with Apollo is found in multi-step transactions or sometimes a series of transactions over several years that facilitate a demerger or IPO for a third party that is a strategic partner of Apollo. Sometimes these include multiple block and flow reinsurance deals with Athene, but they can also encompass equity investments as well asset management mandates and other types of collaboration. Can you walk us through a case study of one of these sorts of deals that helps us understand how these longer-term plays may help set you apart from other players in the market?



ROUND 3: STRUCTURING COMPLEXITY / CASE STUDIES

- **Gary**, we have lately seen lots of complicated liability sets come to market, many of which, though not all, successfully transact. Things like long-term care business for instance as well as certain ULSG blocks. Can you talk about how KKR and Global Atlantic have been able to successfully structure and consummate acquisitions of complicated sets of liabilities in such a way where the risks that Global Atlantic is less interested in taking are either left behind or retroceded to third parties who are good strategic partners for you given their appetites on liabilities are different from but complementary to yours?





GROUP QUESTION: DISCIPLINED EXECUTION

- As a first group question for 3 highly successful enterprises when it comes to deal execution, how is it possible to maintain internal discipline around pricing and other commercial and legal key deal terms while still winning mandates in a cutthroat environment like we are currently seeing?



GROUP QUESTION: REGULATORY FOCUS

- We are in a time of rapid regulatory change and robust public policy debates that impact convergence deals, which includes scrutiny of things like the percentage of private assets on insurer balance sheets, private equity's involvement in the sector generally and the appropriate use cases for asset-intensive off-shore reinsurance. What are your thoughts on the current state of these debates and scrutiny and why it does not seem to have slowed down deal flow or the globalization of the convergence trend?



GROUP QUESTION: PEOPLE AND CULTURE

- One less-discussed aspect of the competition in the convergence space is the competition for talented employees who are best-in-class in actuarial, finance, risk and legal disciplines, all of which are departments that are integral to the deal function. Every year, we see lots of attrition in Bermuda, New York, London and globally in the battle for top talent. How do you maintain culture and consistency over time given that some attrition is part and parcel of this level of competition and how do you out-flank competitors when recruiting and maintaining the talented and collaborative workforce that is required for success in our industry?



GROUP QUESTION: ASIA OPPORTUNITIES

- The Asia-Pacific region has been a real focus of convergence transactions for asset managers and insurers over the last few years. While Japan is in the lead in activity, places like Hong Kong, Singapore, Korea and Australia seem to have a lot of upside as well as various challenges. What can we expect to see in 2026 and beyond when it comes to APAC convergence deals? What are the Asian markets and types of counterparties or types of strategic partnerships you are most excited about in that part of the world and why?

Q&A

AI IN FINANCIAL SERVICES: OPPORTUNITIES, RISKS, AND THE ROAD AHEAD



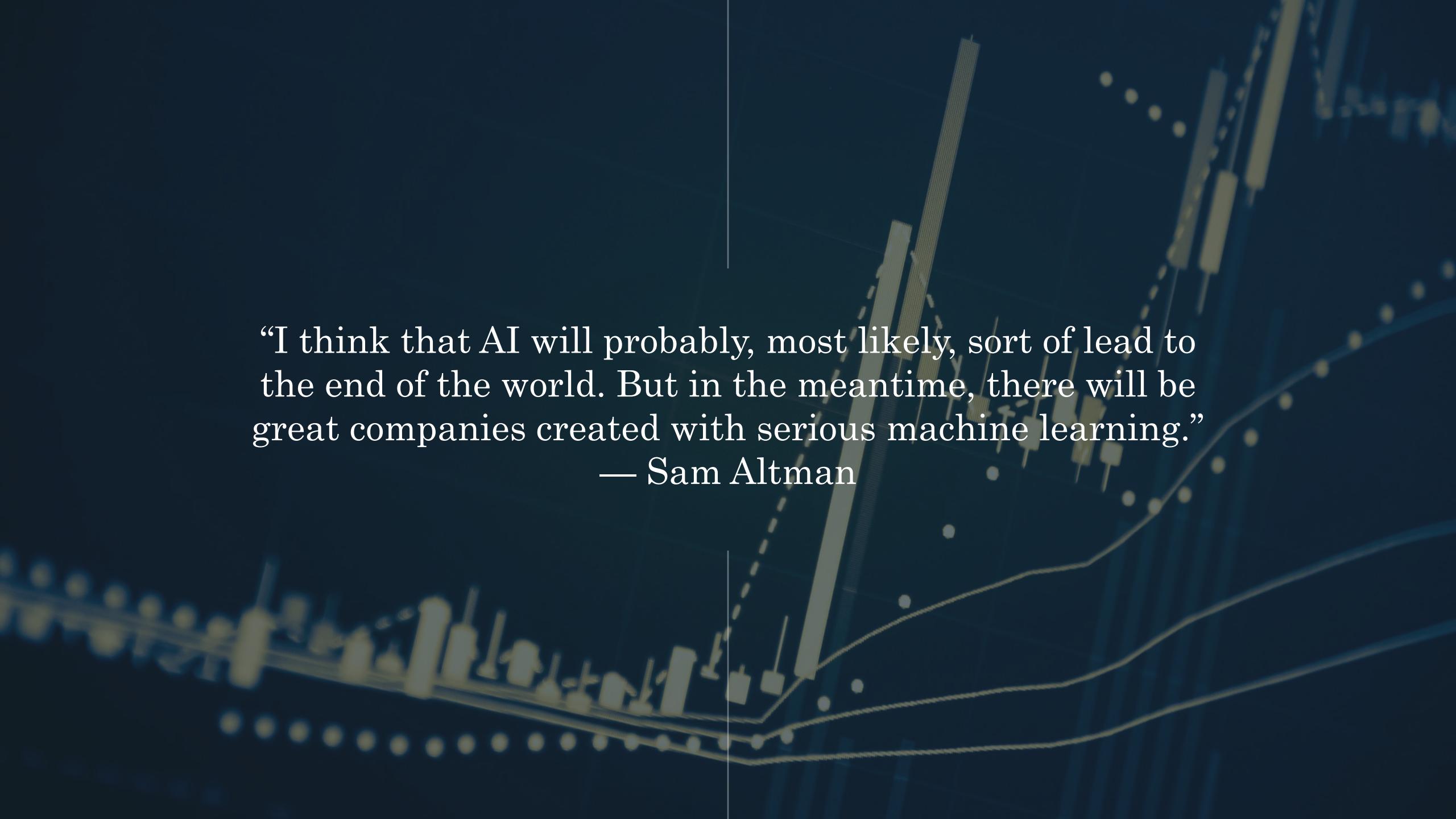
SANJAY SAKHRANI
Managing Director
KBW Investment Bank



RISHI TAPARIA
Co-Founder and General Partner
Garuda Ventures

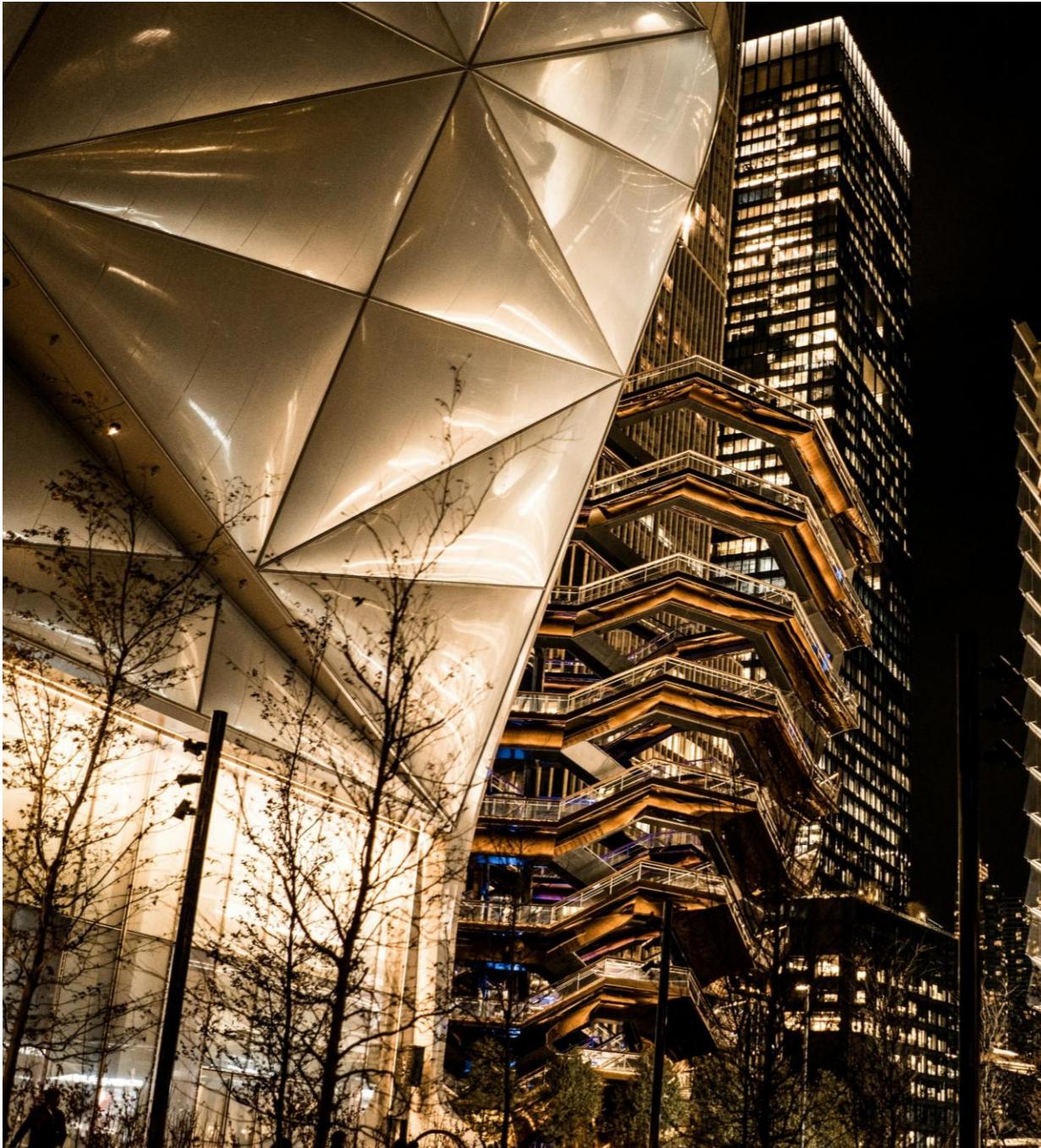


NINA FLAX
Partner
Mayer Brown



“I think that AI will probably, most likely, sort of lead to the end of the world. But in the meantime, there will be great companies created with serious machine learning.”

— Sam Altman



WHY AI, WHY NOW: CONVERGENCE OF CAPABILITY, COST, AND ADOPTION

- Breakthrough model performance, lower compute costs, and enterprise-ready tooling have converged to unlock production-grade AI across functions—from customer operations to software delivery. Early adopters are realizing measurable productivity and revenue gains.

FINTECH M&A SNAPSHOT: KEY TRENDS AND RECENT ACTIVITY

- FinTech M&A activity accelerated meaningfully through Q3 2025.
 - Total deal volume across private financings, M&A, and IPOs surpassed the prior three full years.
 - Rebound is broad-based—late-stage financing activity improved, M&A scaled with a rising share of \$1 billion+ deals, and the U.S. IPO window was the most active in years.
 - Sector leadership concentrated in Financial Management Solutions and early-stage momentum remained strong in Crypto & Blockchain.

(Source: FT Partners through Q3)



FINTECH M&A MARKET TRENDS

- FinTech is in a renewed upswing.
 - Characterized by increased transaction volumes and normalization in late-stage financings after the 2021–2022 peak.
 - Late-stage venture (Series B–D) was led by Financial Management Solutions and remains concentrated in North America and Europe.
 - Early-stage investment remains steady, with Crypto & Blockchain and Financial Management Solutions leading Seed and Series A by both deal counts and dollars through Q3.
 - Regionally, M&A deal count growth was fastest in Africa, followed by Asia and Europe.

(Source: FT Partners through Q3)





AI IN FINTECH M&A

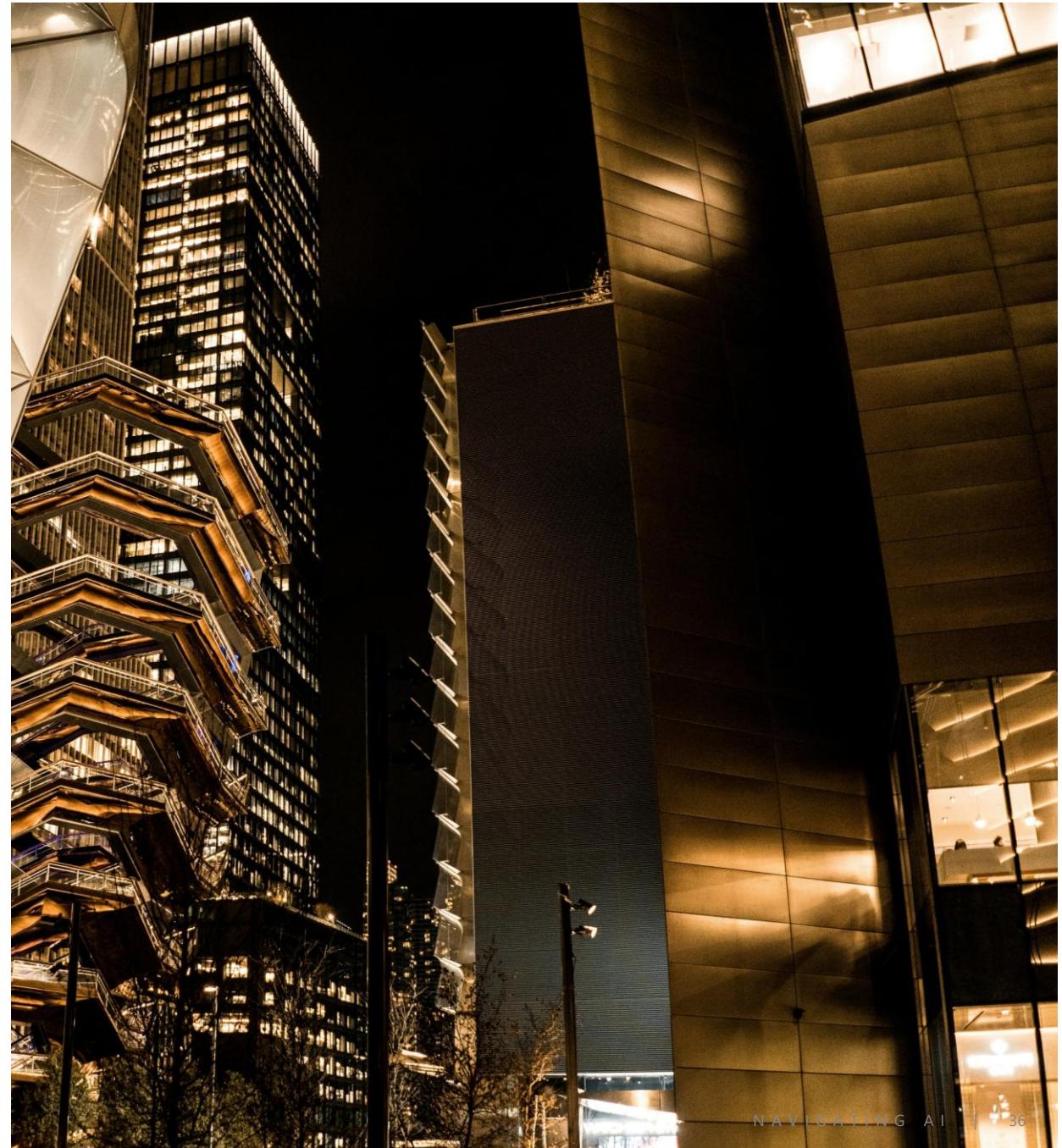
- Overall, 2025 upswing in AI in Fintech M&A activity, including late-stage financings and higher M&A volumes. AI is positioned to be a structural driver of FinTech's next phase.
 - Potential shift from feature-level adoption to embedded, cross-workflow capability, with AI as intertwined with core financial rails and data ecosystems rather than a standalone tool, with implications for multipronged regulatory analysis.
 - “AI agents” integration suggests transition from assistive tools to semi-autonomous workflows in operations, risk, and finance functions.
 - As AI embeds deeper into payments and cross-border flows, data governance becomes a central control plane, implicating provenance, localization, model input/output controls, and third-party risk management as investment and partnership activity expand.

(Source: FT Partners through Q3)

	General FinTech Trends	AI-Specific Themes
Market posture	Activity rebounded across financings, M&A, and IPOs; 2025 YTD already exceeds 2022–2024, still below 2021 highs	AI positioned as a core 2025 trend rather than a peripheral feature
Capital formation	Moderate pickup in late-stage venture; strong early-stage in Crypto & Blockchain and FMS	Institutionalization of AI adoption raises expectations for governance and legal diligence in financings and partnerships
M&A landscape	Highest quarterly volumes since 2021; larger share of \$1B+ deals in 2025 YTD	Consolidation likely to concentrate AI capabilities within platforms, increasing integration, IP, and data-transfer considerations
Regional dynamics	Fastest M&A deal-count growth in Africa; Asia and Europe also up; U.S. remains financing hub with Middle East momentum	Cross-border AI deployments intersect with payments and data-localization regimes, expanding regulatory surface areas
Public markets	U.S. IPO window most active in years for FinTech in Q1–Q3 2025	Public-company readiness for AI includes stronger risk disclosures, performance SLAs, and auditability artifacts

MOVE FAST, DON'T BREAK TRUST: GUARDRAILS BY DESIGN

- Establish policy for data handling, human-in-the-loop review, model evaluation, and incident response. Implement red-teaming, monitoring for drift and bias, and clear approval pathways. Align with applicable regulatory frameworks and internal audit needs.





NETWORKING BREAK

4:30 – 4:40 P.M.

DEAL OR NO DEAL: INSIDE HIGH-STAKES M&A DISPUTES



FRANK DERY
Managing Director
Berkeley Research Group



FRANK FAVIA
Partner
Mayer Brown

AGENDA

1. Executive Summary
2. Financial Services Dispute Landscape
3. Key Drivers of Disputes
4. Industry Trends & Outlook
5. Notable Recent Cases
6. Resolution and Avoidance Strategies
7. Looking Ahead
8. Q&A

01

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

Financial Services M&A disputes are entering a new era—marked by rising complexity, higher stakes, and evolving risks. Precision and proactive strategies are essential for navigating the challenges ahead.

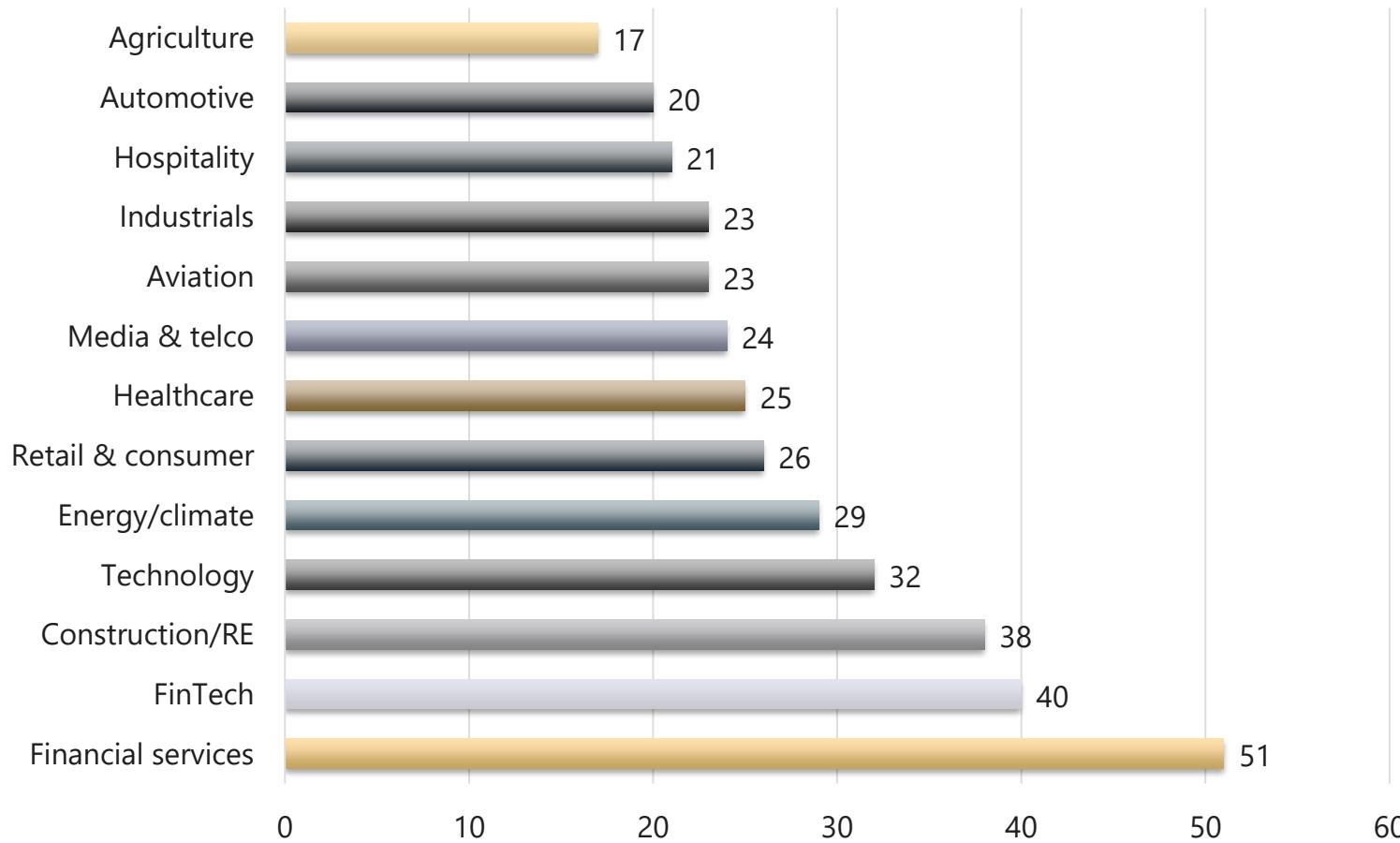
- Financial Services remains the largest source of M&A disputes globally.
- Dispute complexity is rising, driven by earnouts, valuation gaps, and post-COVID deal backlogs.
- 2026 outlook: Continued growth in deal flow and dispute activity, with increasing stakes

02

FINANCIAL SERVICES DISPUTE LANDSCAPE

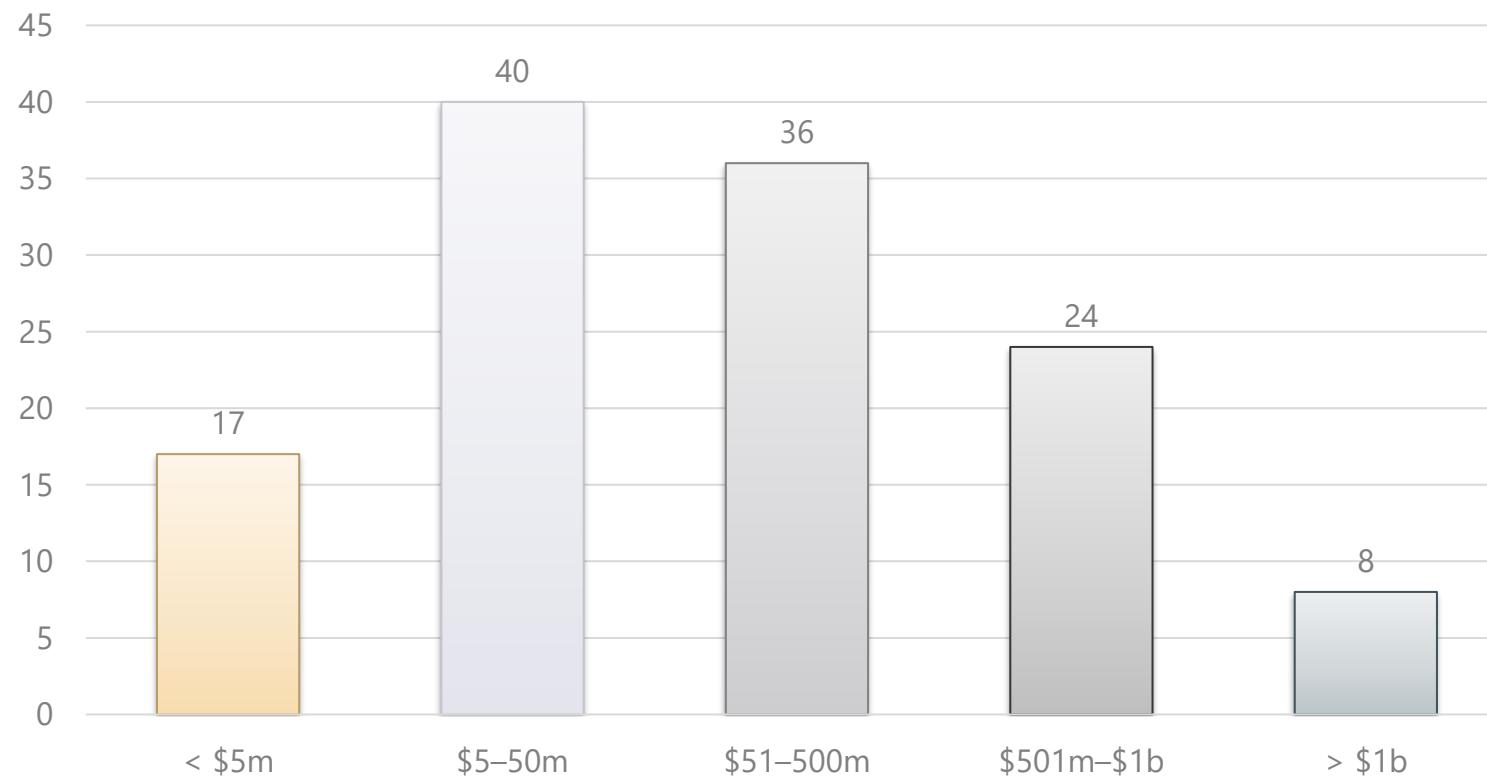
FINANCIAL SERVICES LED LAST YEAR'S DISPUTES

Industries experiencing an uptick in disputes last year

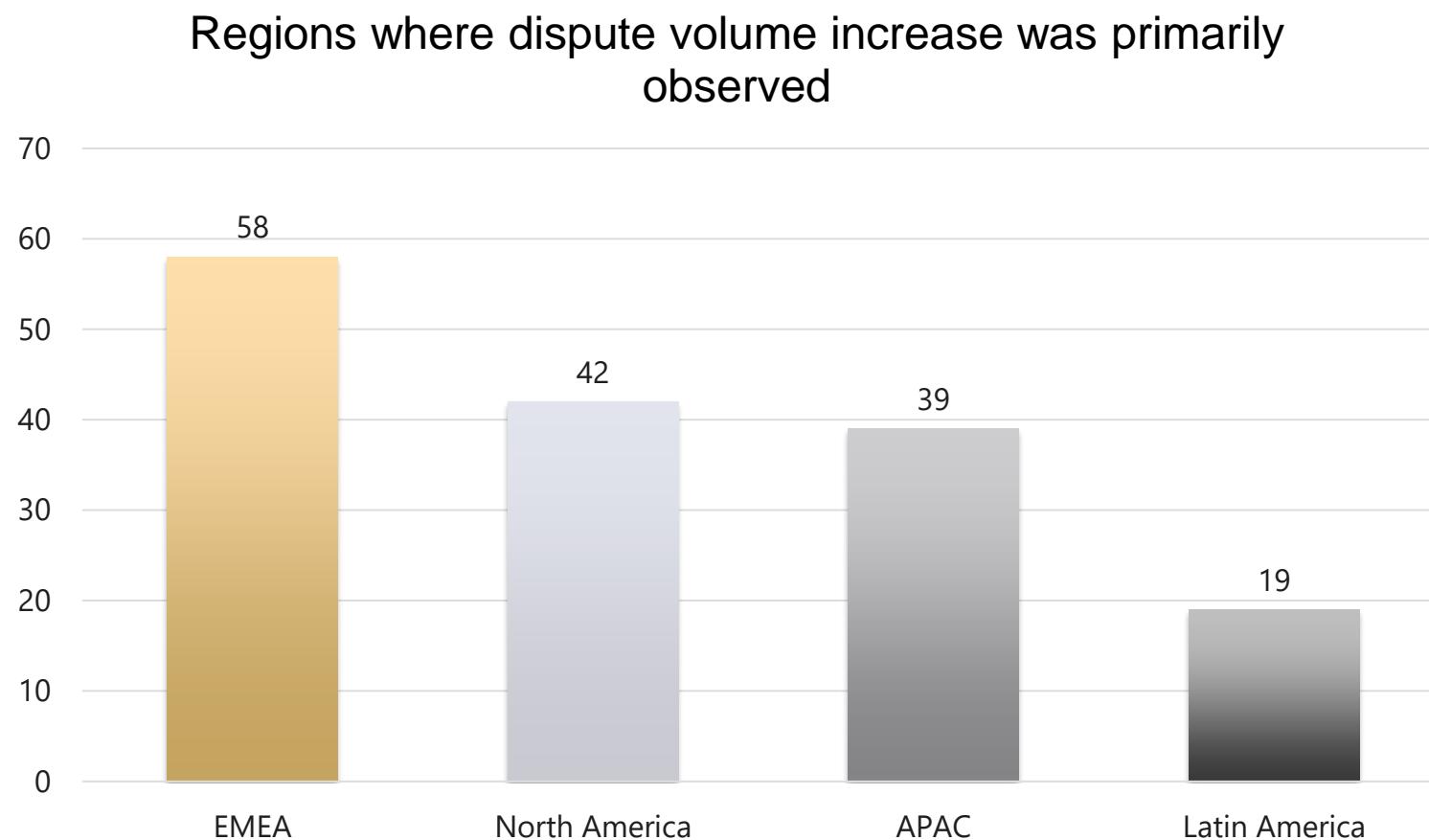


WHERE DISPUTES SURGED — SMALL & MIDDLE MARKET

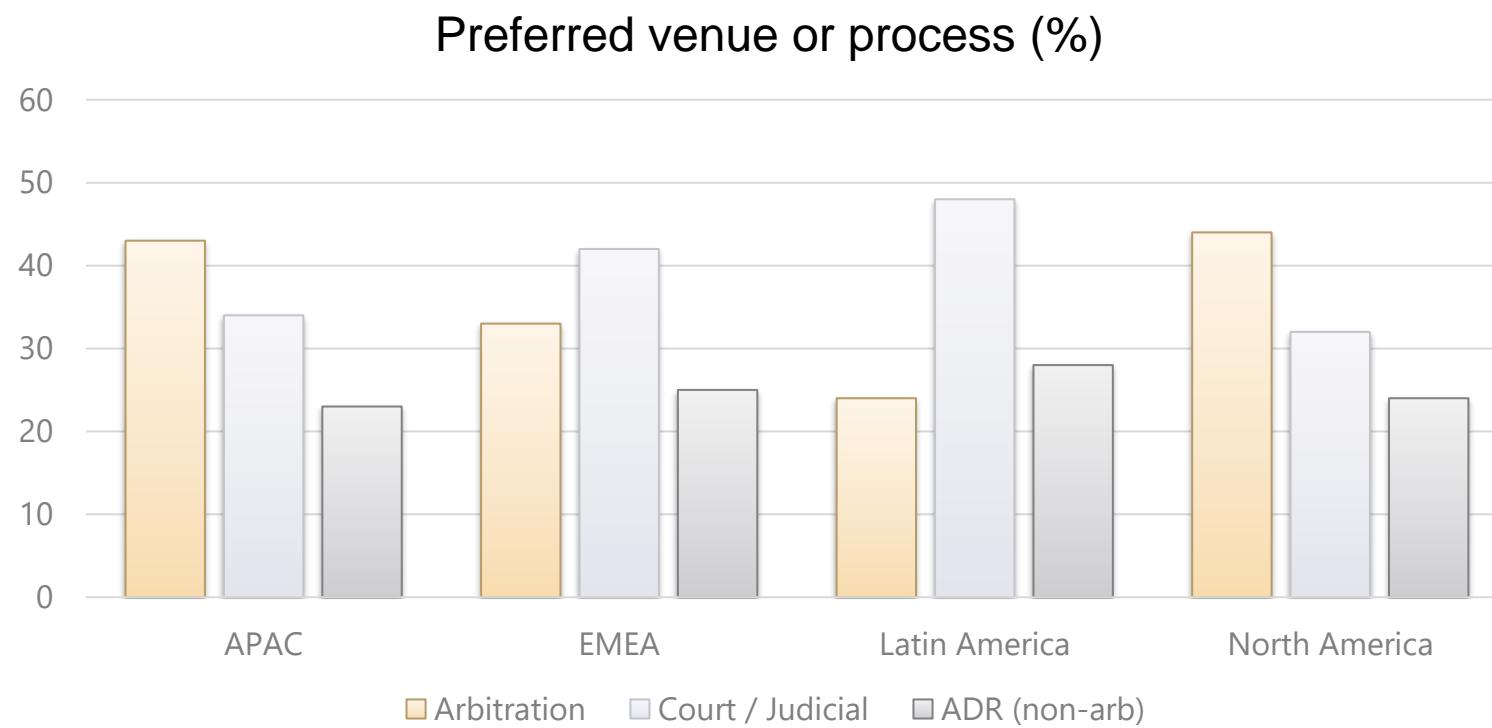
Deal size ranges experiencing increased disputes
(among those with increases)



WHERE THE INCREASE SHOWED UP

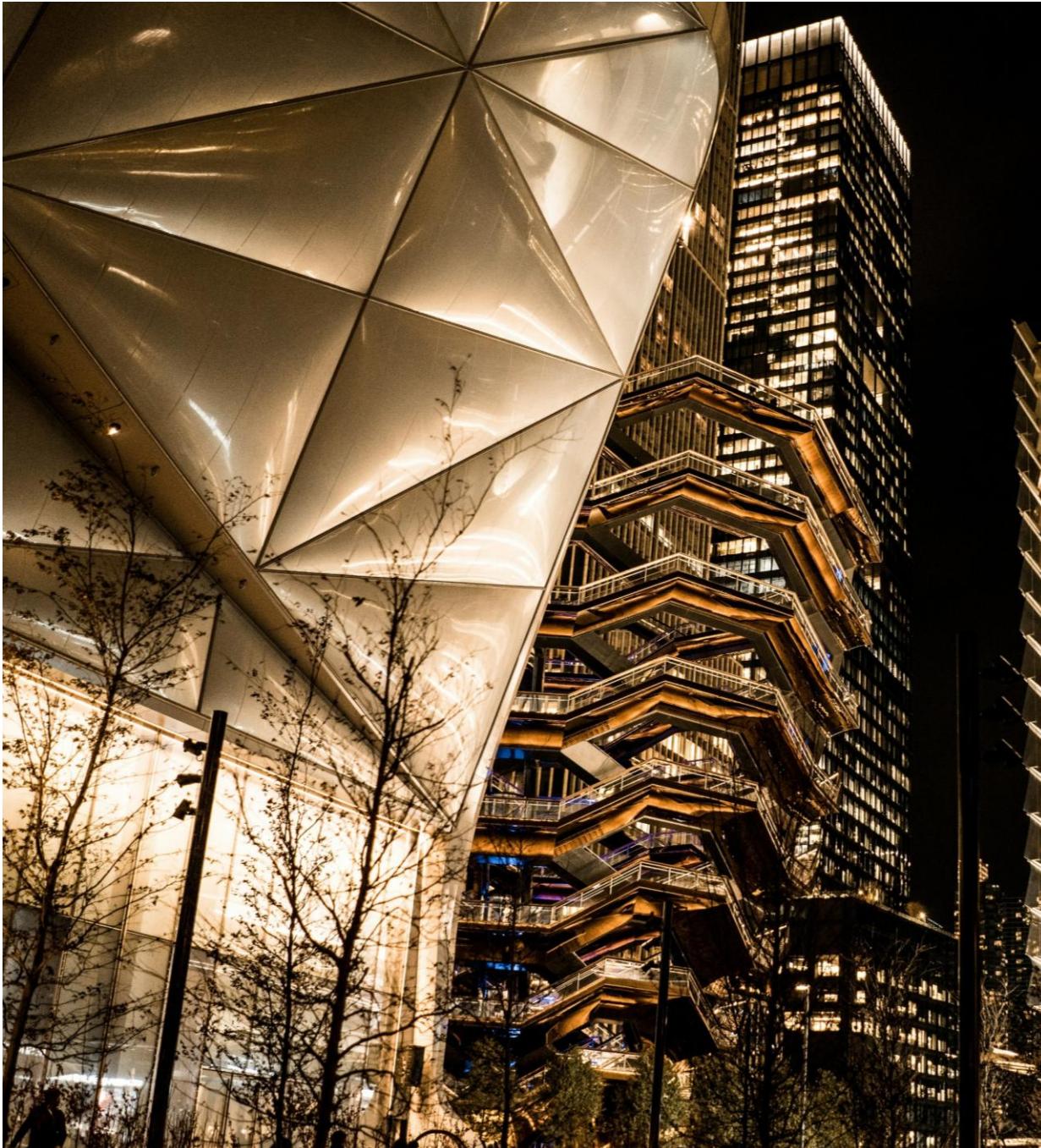


PREFERRED DISPUTE VENUES LAST YEAR — BY REGION



03

KEY DRIVERS OF DISPUTES



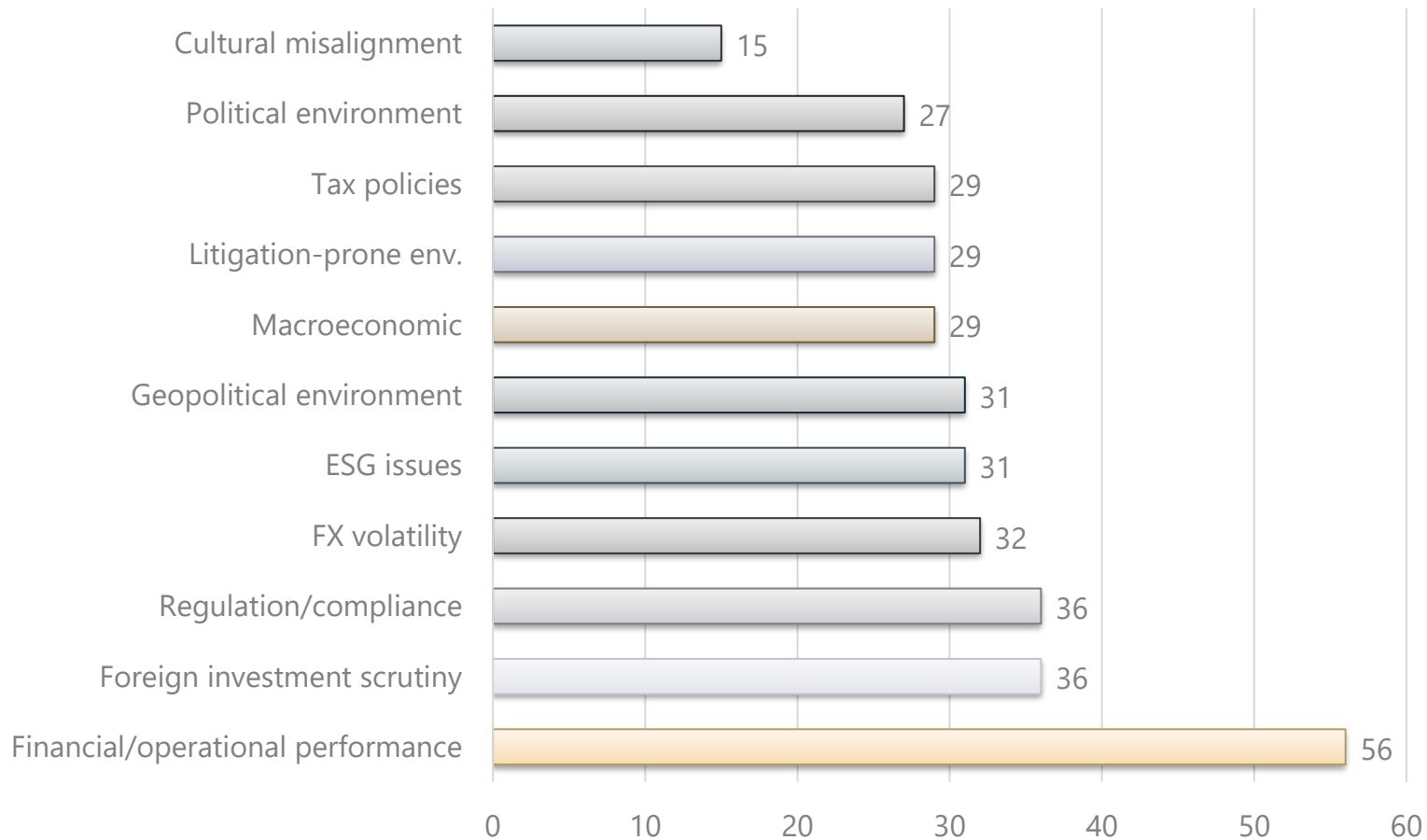
KEY DRIVERS OF DISPUTES

Shifting market forces, geopolitical instability, and complex deal terms are redefining the drivers of financial services M&A disputes.

- 2025: Financial/operational performance, macroeconomic pressures, due diligence challenges, earnouts/post-closing issues.
- 2026: Geopolitical instability, FX uncertainty, complex financial/accounting definitions, MAC/MAE clauses, indemnities.
- Precision in financial metric definitions is critical to dispute avoidance.

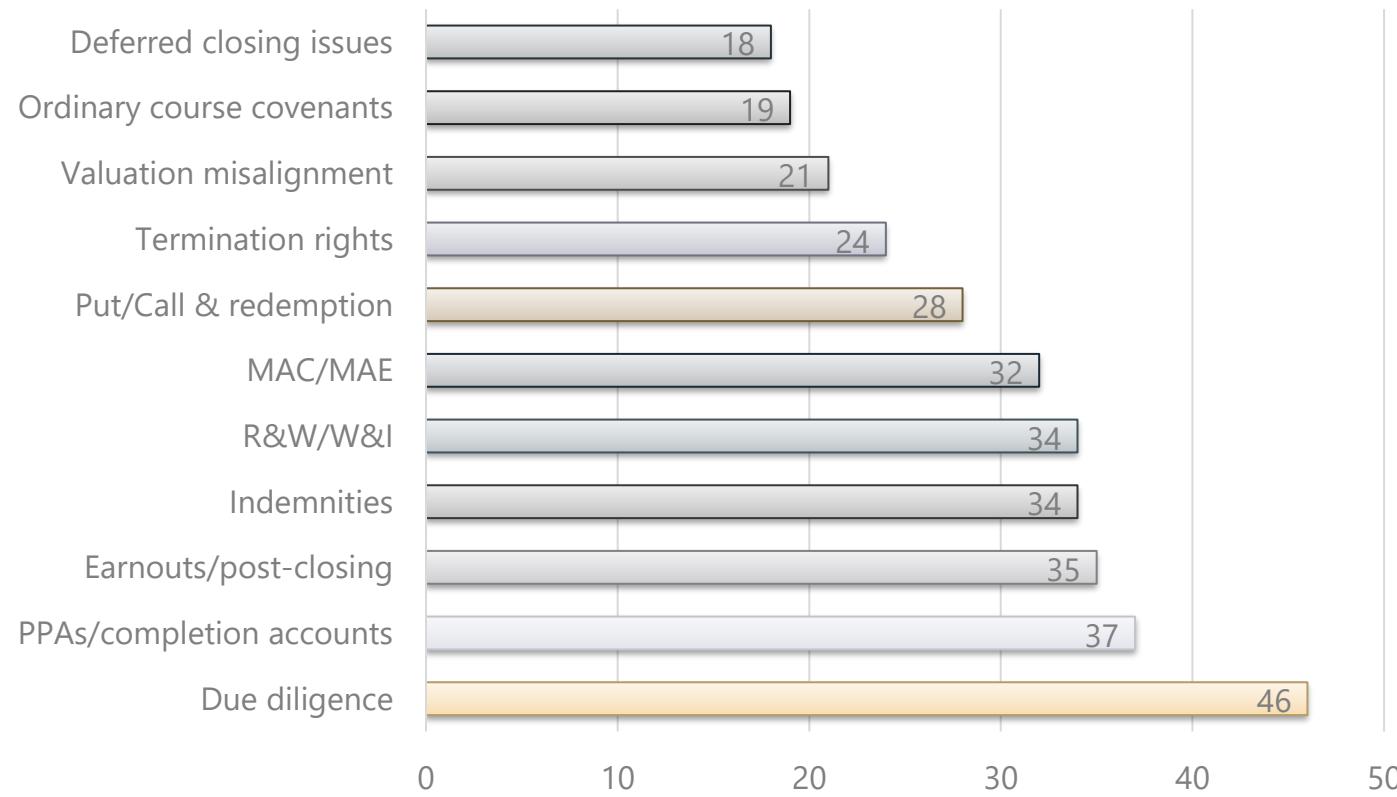
PERFORMANCE REMAINED THE #1 DISPUTE DRIVER

What most often led to disputes last year



DUE DILIGENCE AND EARNOUTS FEATURED PROMINENTLY

Deal terms/process factors most prevalent in disputes



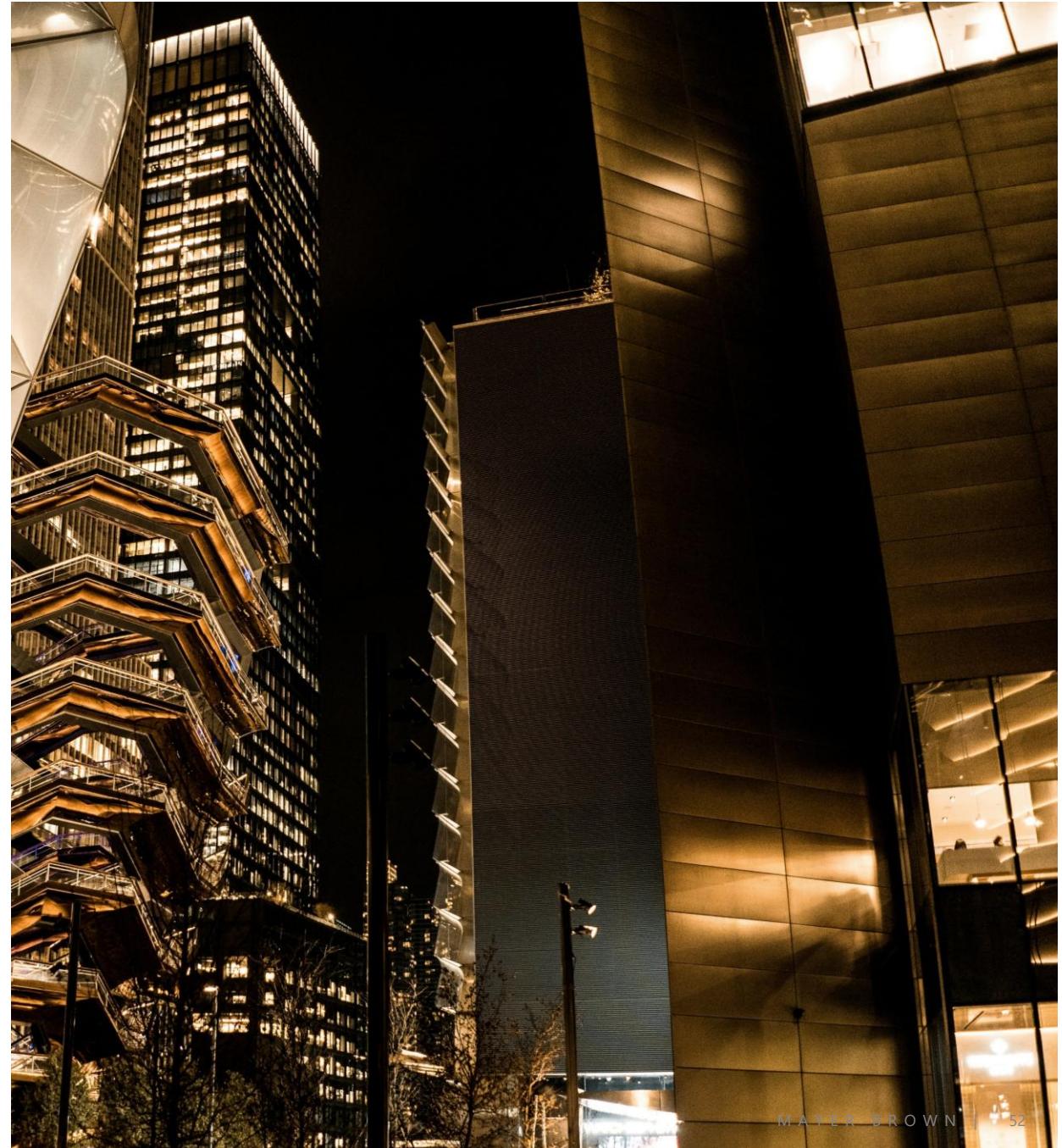
04

INDUSTRY TRENDS & OUTLOOK

INDUSTRY TRENDS & OUTLOOK

Financial services disputes continue to lead global M&A dispute activity, with regulatory shifts, market volatility, and evolving deal structures shaping the sector's future.

- Financial Services consistently leads global dispute volume.
- Sector remains dominant in both observed and expected dispute activity.
- Regulatory changes, market volatility, and evolving deal structures continue to shape the landscape.



05

NOTABLE RECENT CASES

Northern Data AG v. Riot Platforms, Inc.

2025 WL 1661855 (Del. Ch. Ct. June 2, 2025)

- Interplay between PPA and indemnification dispute resolution processes
- Interpretation of accounting principles that require application of GAAP consistent with historical practices



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

- In 2021, Riot acquired from Northern Data all outstanding stock of a data center company.
- The purchase price included a combination of stock and \$80 million in cash, with the cash component subject to post-closing adjustments for net working capital, indebtedness, final closing cash, and transaction expenses.
- The Stock Purchase Agreement (SPA) provided that purchase price adjustment disputes would be resolved through an accounting expert determination process and that the buyer's exclusive remedy for breach of the seller's reps and warranties would be indemnification by seller.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

The PPA provisions had typical features:

- *Closing Statement*: The seller was required to provide an estimated closing statement to the buyer prior to closing. Shortly after closing, the buyer was required to deliver a proposed final closing statement. The seller could then review the proposed final closing statement and deliver a statement of objections. After a period to resolve any disputes through good-faith negotiations, either party could submit the unresolved matters to an accounting expert for resolution.
- *Accounting Principles*: The closing statement was to be prepared "in accordance with GAAP, in a manner in accordance and consistent with an illustrative closing statement attached to the SPA. The illustrative closing statement reflected the target company's historical accounting practices.
- *Scope of the Accounting Expert's Authority*: The accounting expert, acting as an expert and not as an arbitrator, was to limit its review to unresolved matters that were properly included in the seller's statement of objections and to make any corresponding adjustments to the proposed final closing statement, in each case in accordance with the specified accounting principles. The accounting expert's determination would be final and binding absent manifest error.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

The indemnification provisions were also fairly typical:

- *Exclusive Remedy*: Indemnification was the exclusive remedy for breaches of the seller's representations and warranties under the SPA. The exclusive remedy provision expressly carved out PPA adjustments, along with fraud and certain other specified matters.
- *Cap*: The damages recoverable through indemnification were capped at a specified amount.
- *PPA Adjustments*: To avoid double recoveries, any adjustments accounted for under the PPA process could not be subject to indemnification claims or counted against any indemnification threshold or limitation.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

- The parties submitted four disputed items to the accounting expert, who ruled in buyer's favor on all four items.
- The seller then initiated litigation in the Delaware Chancery Court, in which it sought to vacate the accounting expert's determination.
- The seller claimed that the accounting expert:
 - exceeded his authority by addressing indemnification issues in connection with two of the disputed items, and
 - misapplied the applicable accounting principles because he analyzed the two remaining disputed items only under GAAP without considering the target company's historical accounting practices.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

Interplay Between the PPA and Indemnification Dispute Resolution Processes:

- Two disputed items concerned (1) whether the target company's alleged double-billing of a customer prior to closing was properly included in accounts receivable, and (2) whether an invoice for electricity charges the company received prior to closing had been paid and should have been included in accounts payable.
- The Delaware court analyzed whether these two items presented indemnity claims or accounting disputes under the SPA. The Court found that both items directly implicated representations & warranties made by seller in the SPA.
- More specifically:
 - The Court found that the disputed item regarding double-billing directly implicated the seller's representations and warranties that all accounts receivable in the company's financial statements represented bona fide transactions and, to the company's knowledge, were current and collectible.
 - The Court further found that the disputed item regarding the electricity invoice directly implicated the seller's separate representations and warranties that it had provided a complete list of all indebtedness, including certain outstanding accounts payable, as of the date of the Agreement.
- The Court ruled that, under the SPA, the indemnification process—including the damages cap applicable to indemnity claims—was the "sole and exclusive" remedy for the alleged breach of these representations and warranties.
- Thus, the Court vacated the Accounting Expert's determinations on these two disputed items and ruled that these disputes must proceed under the contractual indemnification process.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

Interpretation of Accounting Principles:

- The two remaining disputed items concerned whether \$22 million in upfront payments to the target company from a customer should have been recognized as deferred revenue as of the closing because they concerned services to be provided after closing.
- The seller argued that the accounting expert misapplied the applicable accounting principles because he analyzed these two disputed items only under GAAP without considering the illustrative closing statement or the target company's historical accounting practices.
- In resolving this issue, the Delaware Court cited prior case law precedent involving similarly worded accounting principles.
 - In that prior case, the agreement provided that the accounting expert would resolve a PPA dispute "in accordance with GAAP and consistent with the past practices of the company and a specified historical balance sheet."
 - The Court in that opinion found that this language set GAAP compliance as the "floor" and explained that the requirement of consistency with the historical balance sheet "narrowed the expert's available choices under GAAP."
 - In other words, so long as the company's historical balance sheet complied with GAAP, the accounting expert was required to follow those practices in resolving the dispute. But if the historical practice was not compliant with GAAP, it could not be used in resolving the dispute.
- Applying this reasoning, the Court in *Northern Data* found that the accounting principles in the SPA established a hierarchy.
 - First and foremost, the accounting expert's determinations must comply with GAAP. If GAAP allows for multiple approaches, then the accounting expert must adopt the approach most consistent with the illustrative closing statement.
 - If, however, the illustrative closing statement and the company's historical practices did not comply with GAAP, then the SPA required the accounting expert to apply a method that was GAAP-compliant.



NORTHERN DATA AG V. RIOT PLATFORMS, INC.

Interpretation of Accounting Principles:

- Applying this contractual interpretation, the Court conducted a detailed review of GAAP and determined that the target company's historical practices were not GAAP compliant.
- The Court upheld the accounting expert's findings on these two disputed items because they followed a GAAP compliant approach.
- In other words, under the parties' agreed accounting principles, the accounting expert *could not* follow the target company's non-compliant historical practices.
 - Instead, the accounting expert was required to use a GAAP-compliant methodology.
- The Court granted summary judgment for the buyer on these two disputed items.



In re Dura Medic Holdings, Inc. Consolidated Litigation

333 A.3d 227 (Del. Ch. Ct. Feb. 20, 2025)

- Delaware's Pro-Sandbagging Default Position
- Use of a Transaction Multiple to Calculate Damages



IN RE DURA MEDIC HOLDINGS, INC.

- This case involved a private equity firm's acquisition of a medical equipment supplier through a reverse triangular merger.
- The buyer sought indemnification from the sellers for breaches of certain representations and warranties in the merger agreement.
- The sellers represented and warranted that the target company had been in compliance with applicable healthcare laws and, except as otherwise disclosed, had not received written notice of alleged noncompliance from any government authority in the three years prior to closing.
 - The disclosure schedules described one such notice, but soon after closing, the buyer discovered others, one of which resulted in further government review and significant expense to the buyer.
 - The buyer sued the sellers for breach of the representation & warranty.
 - In response, the sellers contended that the buyer's claim failed because the sellers had informed the buyer about the relevant notices in a conference call during pre-closing due diligence.



IN RE DURA MEDIC HOLDINGS, INC.

Delaware's Pro-Sandbagging Default Position:

- In M&A transactions, the term “sandbagging” refers to circumstances in which a buyer asserts a claim after the closing based on a breach of a representation or warranty despite having had reason to suspect it was inaccurate as of the closing.
- Delaware courts will enforce provisions in M&A agreements that expressly allow sandbagging (“pro-sandbagging” provisions) or expressly prohibit it (“anti-sandbagging” provisions, which effectively require the buyer to prove that it did not have knowledge of the inaccuracy of a representation or warranty in order to bring a claim).
- In cases where the acquisition agreement is silent, a number of recent cases, including *In re Dura Medic Holdings*, have confirmed Delaware pro-sandbagging default position.



IN RE DURA MEDIC HOLDINGS, INC.

Delaware's Pro-Sandbagging Default Position:

- The Delaware Court noted that representations and warranties in an acquisition agreement serve to allocate risk between the parties and, unlike fraud claims, do not require a buyer to prove that it justifiably relied on the representations.
- It emphasized that, by making a representation and warranty, a seller agrees to assume the risk that the facts and circumstances as represented are or may become incorrect, regardless of the foreknowledge of either the buyer or the seller.
 - This approach not only holds the parties to the plain terms of their acquisition agreement, but also serves to reduce due diligence costs.
- The Court found that the buyer proved its claim for breaches of the seller's representations and warranties with regards to the notices, and that whether the sellers disclosed the notices in a diligence call had no bearing on the breach of contract analysis given the express representations and warranties in the agreement.



IN RE DURA MEDIC HOLDINGS, INC.

Use of a Transaction Multiple to Calculate Damages:

- The purchase price for the target company was calculated using a multiple of 6.7797 times EBITDA for the 12 months ending April 30, 2018.
- The merger agreement provided that the sellers would indemnify the buyer for "Losses" resulting from inaccurate representations, with "Losses" defined as "any and all damages," including "damages based on a multiple of earnings, revenue or other metric."
 - While the agreement allowed a transaction multiple to be used in calculating indemnifiable Losses, it was silent as to *when* such a multiple should or should not be used.
- The sellers represented and warranted in the agreement that no significant customer had notified the target company of an intent to terminate or reduce its business. This representation proved to be false with respect to two customers.
- At issue was whether the Losses over this twelve-month period should be multiplied by 6.7797 to mirror the purchase price calculation.
 - The sellers argued that no multiple should apply because the target company was not permanently impaired by the loss of the two customers and because the buyer had failed to mitigate the losses.



IN RE DURA MEDIC HOLDINGS, INC.

Use of a Transaction Multiple to Calculate Damages:

- The Court applied the 6.7797 multiple to calculate damages due to the breached representation & warranty regarding customer losses.
- It found that when an acquisition agreement is silent as to when a multiple should be applied, Delaware courts must look to common law, which allows a party to recover reasonable expectation damages based on a multiple where the price was established with a market approach using a multiple.
- With respect to the merger at issue, the Court cited evidence—namely, the buyer's pre-closing investment committee memorandum and expert testimony—that proved that the buyer had derived the purchase price using a 6.7797 multiple of EBITDA during the applicable twelve-month period.
- He also rejected an argument by the sellers that losses must permanently affect a business in order for a transaction multiple to apply to the calculation of damages.
 - Instead, the Court found that "[w]hether a misrepresentation diminishes the value of the business sufficiently to warrant applying a multiple turns on the extent to which the misrepresentation affects future earning periods."
- Using that standard, the Court found that the undisclosed customer losses resulted in recurring declines in the target company's revenue, which resulted in the buyer paying an inflated purchase price and caused damages that the buyer could not mitigate due to the sellers' breach of its significant customer representation.



Four Cents Holdings, LLC v. M&E Printing, Inc.

2025 WL 2366460 (Del. Super. Ct. Aug. 12, 2025)

- Recovery of attorneys' fees as indemnifiable losses in first-party claims



FOUR CENTS HOLDINGS, LLC V. M&E PRINTING, INC.

- The parties entered into an Asset Purchase Agreement (APA), through which Four Cents acquired substantially all of M&E assets.
- In the APA, the seller made certain representations & warranties regarding the accuracy of financial statements provided and its compliance with immigration laws.
- After closing, Four Cents discovered that those representations & warranties were allegedly untrue and brought a claim for breach of contract seeking indemnification.
- As part of its claim, Four Cents sought to include its attorneys' fees incurred in the indemnification litigation as indemnifiable "Losses" under the APA.
- The APA defined "Losses" to include "losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of any kind, *including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder* and the cost of pursuing any insurance providers."



FOUR CENTS HOLDINGS, LLC V. M&E PRINTING, INC.

- First-Party Claim = A claim for recovery between the parties to an agreement.
 - A typical example of a first-party claim is an action by a buyer for indemnification from the seller under an M&A agreement.
- Third-Party Claim = A claim threatened or brought against a party to an agreement by a person not party to the agreement.
 - For example, if after closing an M&A transaction, the buyer and the newly acquired company are sued by a customer or supplier of the acquired company, the litigation would involve a third-party claim.
- M&A agreements frequently include express provisions governing the handling of Third-Party Claims, but are often silent as to whether attorneys' fees for first-party claims must be included as indemnifiable losses.



FOUR CENTS HOLDINGS, LLC V. M&E PRINTING, INC.

- Delaware follows the American Rule, under which litigants generally bear the responsibility of paying their own litigation costs.
- Delaware courts have consistently held that, under the American Rule, standard indemnity clauses and loss definitions are presumed *not* to apply to first-party claims.
 - This presumption may only be rebutted by a “clear and unequivocal articulation” that the parties intended to shift attorneys’ fees in first-party suits.
 - While there are not magic words that must always be used, the language embodying this intent must be explicit, meaning “expressed without ambiguity or vagueness.”
 - “Without precise language setting forth an intent to shift fees, counsel should not expect the Court to deviate from the American Rule if care has not been taken in drafting a contract’s language.”
- In *Four Cents*, the Court emphasized that (1) the definition of Losses in the APA did not explicitly reference first-party actions, and (2) neither the indemnification provisions nor any other provisions in the APA included a prevailing party fee-shifting provision.
- Thus, the Court granted M&E’s motion for judgment on the pleadings, finding that Four Cents was not entitled to recover its attorneys’ fees in the first-party action for indemnification.



06

RESOLUTION AND AVOIDANCE STRATEGIES



RESOLUTION & AVOIDANCE STRATEGIES

Proactive planning, precise deal terms, and early subject matter expert involvement are key to resolving and preventing financial services M&A disputes.

- Most disputes settle, with confidentiality as a rising driver for arbitration.
- Arbitration is preferred in North America and APAC for financial services disputes.
- Avoidance principles: Tighten definitions, strengthen FX risk frameworks, enhance working capital calculations.
- Early involvement of M&A dispute lawyers and experts is recommended.

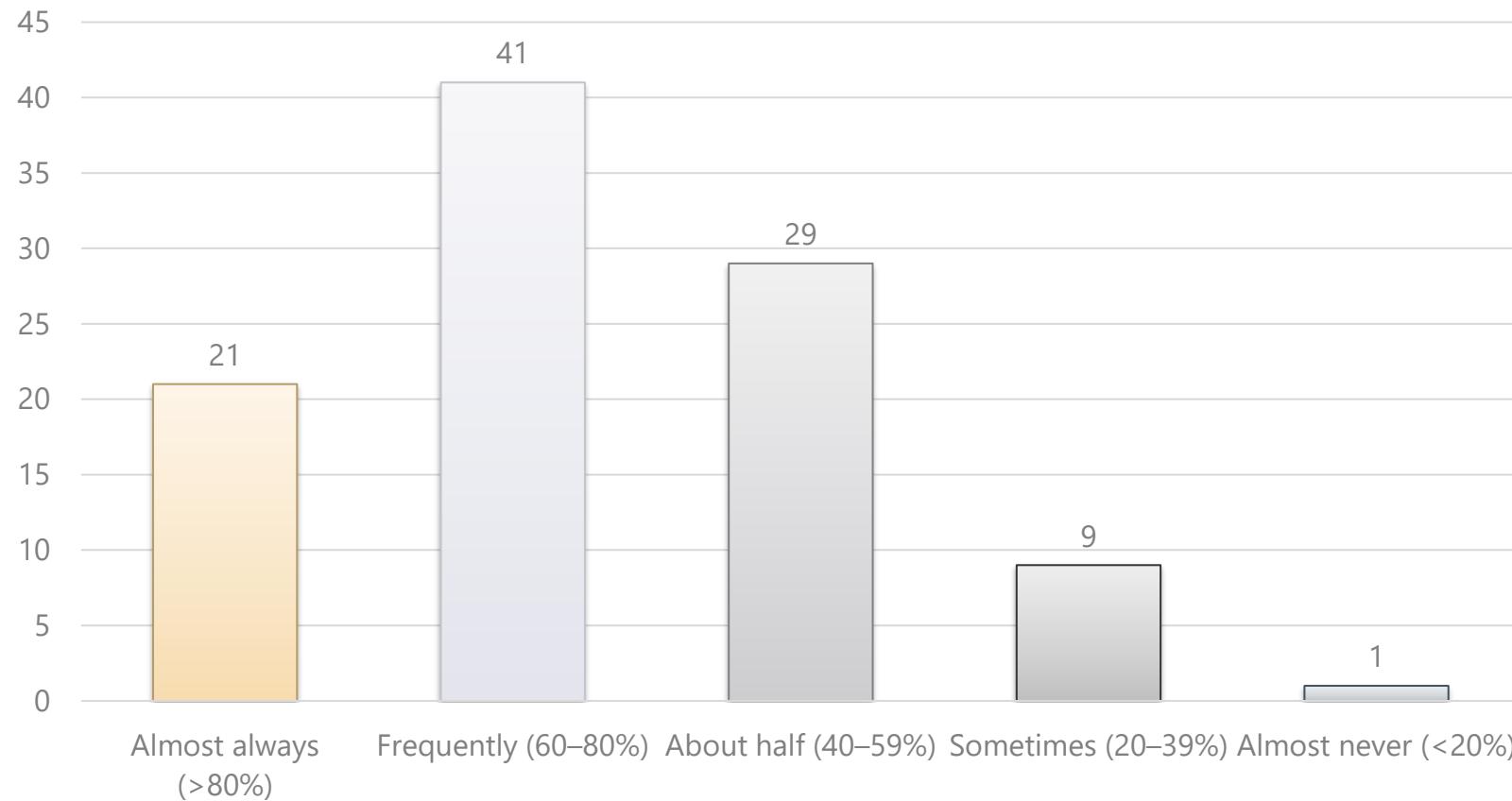
RESOLUTION & AVOIDANCE STRATEGIES – EXAMPLES

- In your agreement, clearly delineate, define and abide by the scope of post-closing dispute resolution mechanisms.
 - Mischaracterizing indemnification claims as PPA disputes can result in significant additional time and expense through litigation.
- For sellers, diligence whether the target company's historical practices comply with GAAP prior to agreeing to accounting principles that require a GAAP-compliant approach.
 - If those historical practices arguably do not comply with GAAP, a seller might consider expressly stating that, in any post-closing PPA adjustment dispute, the company's historical practices prevail.
- Understand the default laws in the jurisdiction that governs your agreement.
 - In Delaware, if you want anti-sandbagging protection, you should include an express anti-sandbagging provision in your agreement given Delaware's pro-sandbagging default position.
- For a buyer seeking to apply a transaction multiple in calculating recoverable losses, be prepared to support that claim with documentation and testimony demonstrating that the purchase price was calculated using a multiple and that a lower price would have been paid if the seller made accurate representations & warranties.
 - Conversely, if a seller wants to limit such a multiple-based recovery, it should consider drafting the agreement to expressly exclude multiple-based damages or otherwise limit the circumstances under which such damages may apply.
- If you want attorneys' fees for first-party claims to be included in indemnifiable losses, either expressly say so in the definition of Losses or include a prevailing party fee-shifting provision in your agreement that applies to first-party claims for indemnification.

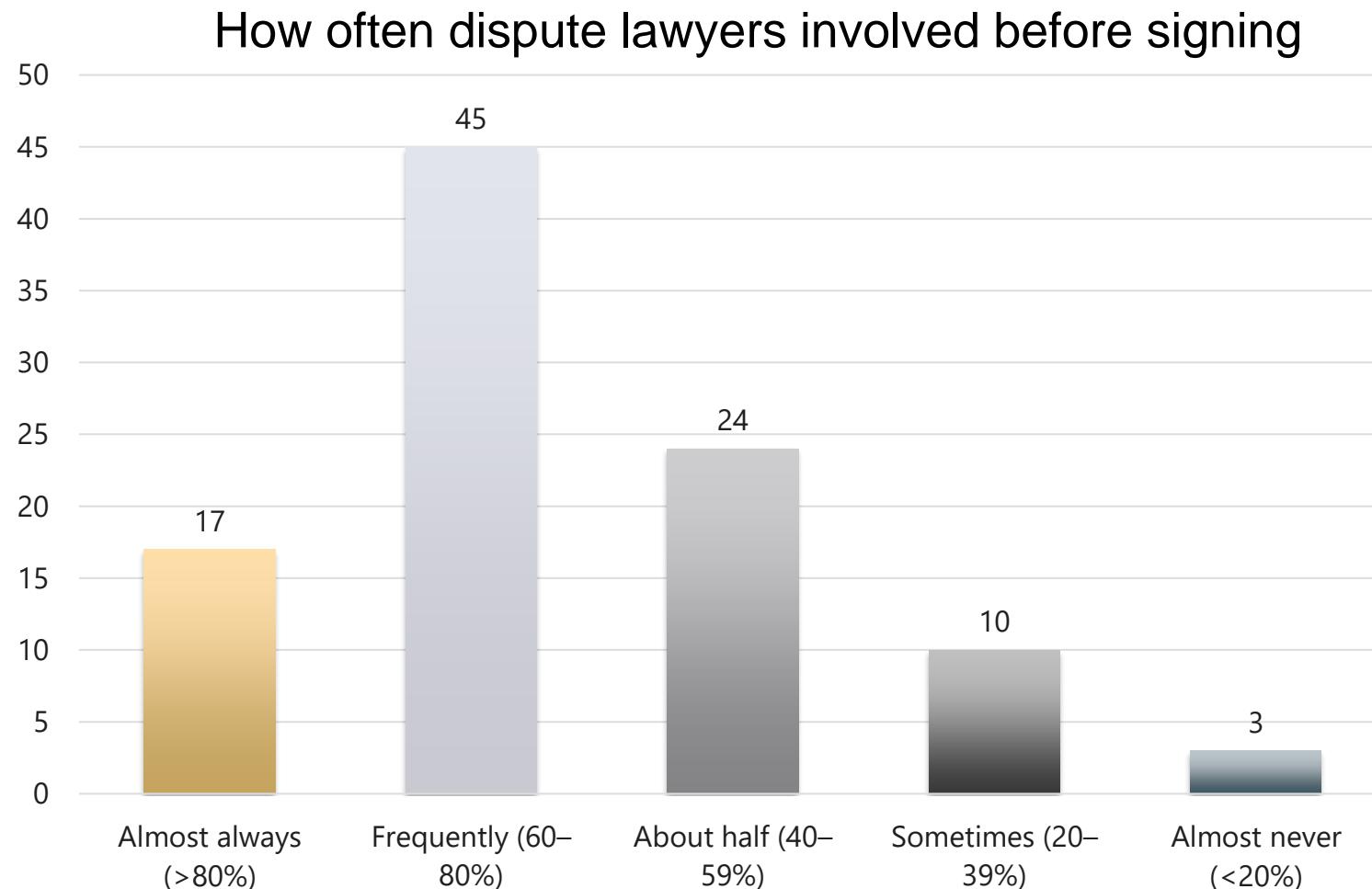


MOST DISPUTES SETTLED LAST YEAR

How often disputes settled (past 12 months)



ONLY 17% “ALMOST ALWAYS” INVOLVE DISPUTE LAWYERS PRE-SIGNING—AN OPPORTUNITY FOR EARLIER ENGAGEMENT





07

LOOKING AHEAD

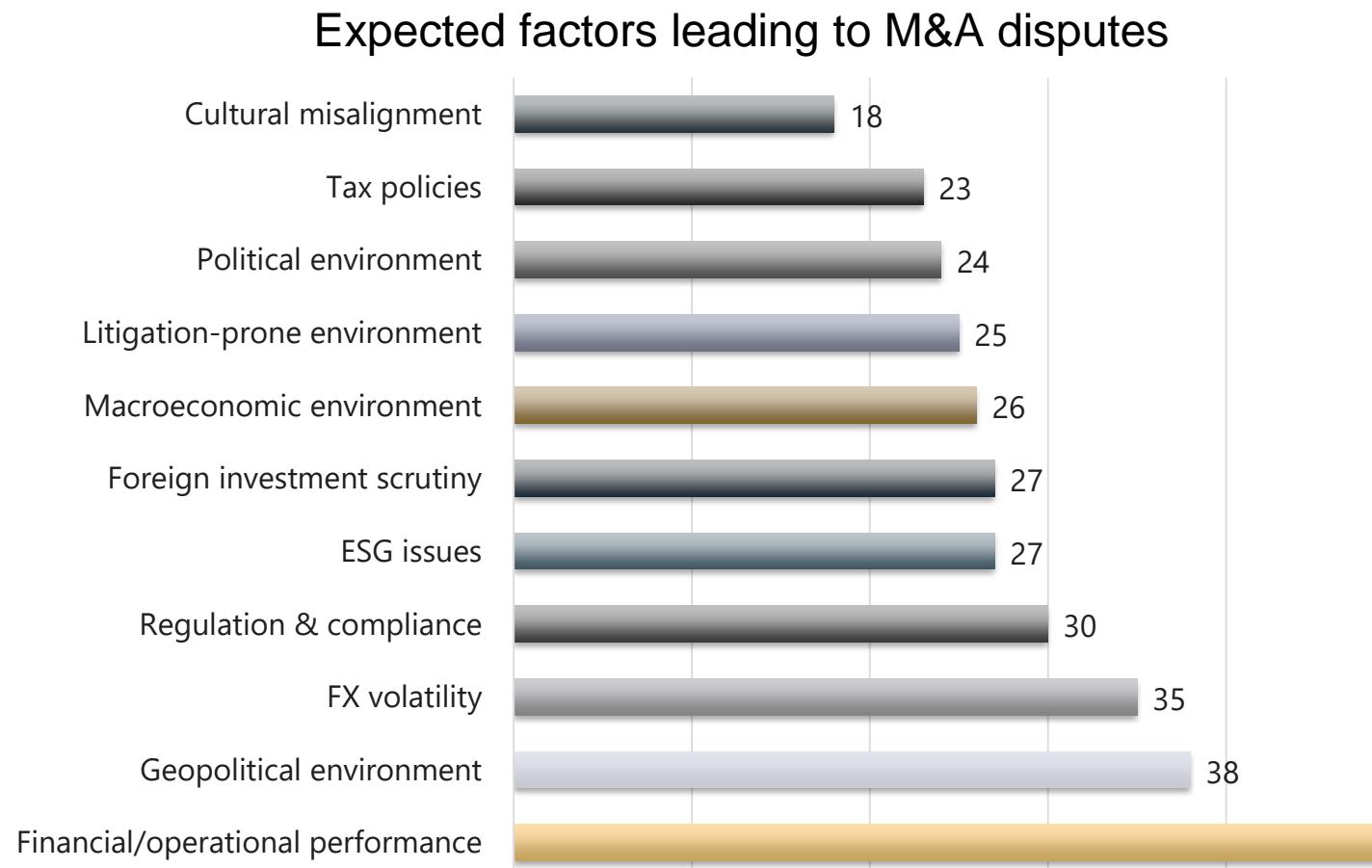
LOOKING AHEAD

Financial services M&A disputes will grow in complexity and value, driven by emerging risks like geopolitical volatility and FX exposure. Success will depend on stronger diligence, sharper forecasting, and tailored strategies for evolving deal dynamics.

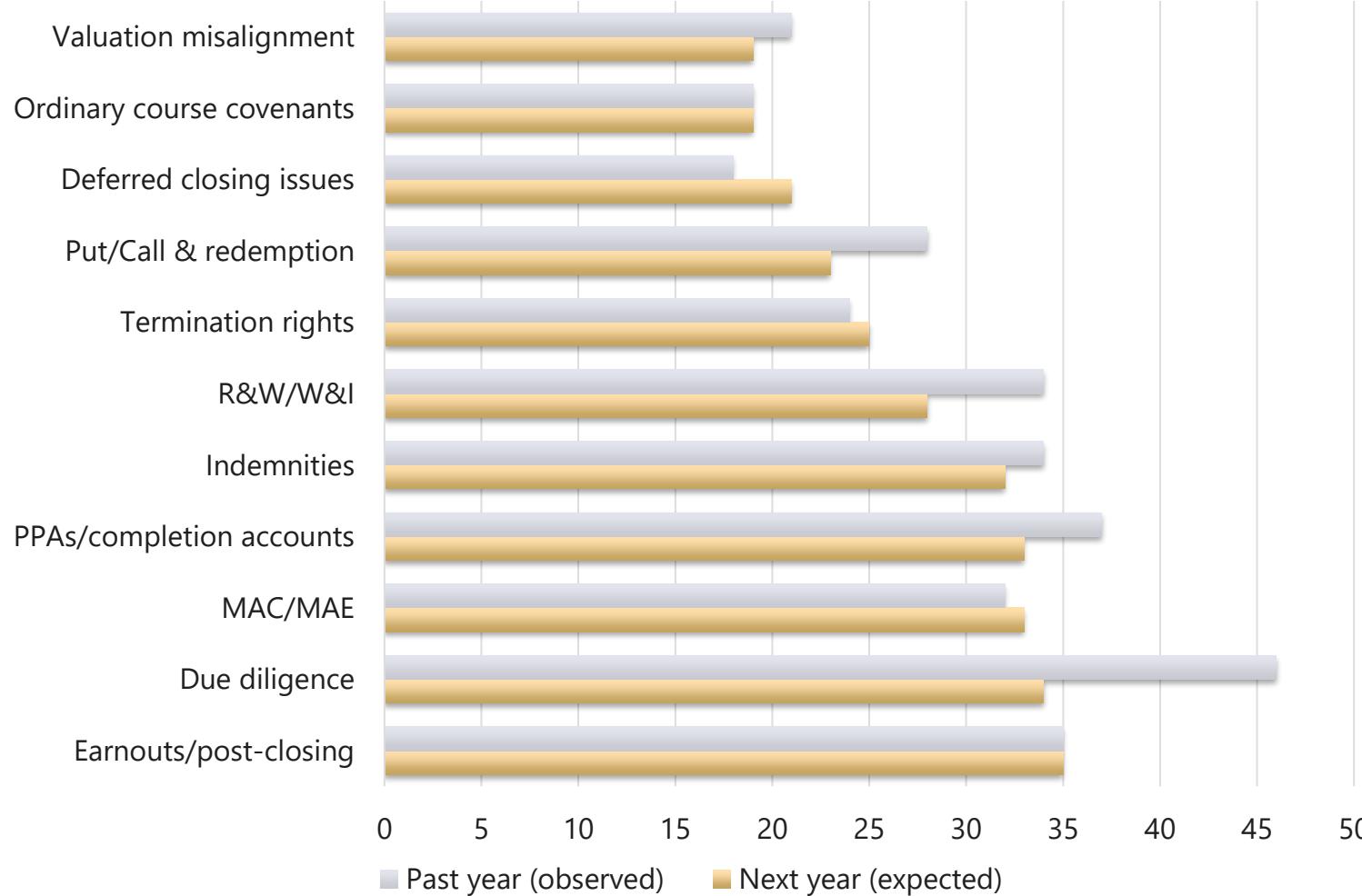
- Expect higher dispute values and continued complexity in major financial services transactions.
- Emerging risks: Geopolitical volatility, FX exposure, contingent consideration structures.
- Recommendations: Strengthen diligence, enhance dispute forecasting, tailor strategies for PE-driven and cross-border deals.



FACTORS EXPECTED TO DRIVE DISPUTES OVER THE NEXT 12 MONTHS



DEAL TERMS IN DISPUTES: NEXT YEAR VS. PAST YEAR



08

Q&A



FRANK J. FAVIA, JR.

PARTNER

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Public companies and private equity firms turn to Frank Favia for their most sensitive litigation matters. He brings a unique set of skills to his clients, having served as the executive vice president and general counsel of a private equity backed financial services company, during which time he led a legal department of over 200 lawyers and compliance professionals. He handles a diverse range of civil litigation matters and arbitrations across the country.

Frank frequently advises public companies and private equity clients in significant M&A litigation and disputes. He has successfully handled dozens of M&A post-closing disputes related to working capital, earn-outs, purchase price adjustments, representations and warranties, indemnification, employment restrictive covenants, and alleged fraud. He has experience bringing claims under representation and warranty insurance policies. He is frequently retained by private equity clients to represent their portfolio companies in significant disputes and investigations.

Frank has represented a diverse range of clients in other litigation matters in trials and arbitrations across the country. These matters have included, among other claims and issues, contract disputes, alleged breaches of fiduciary duties, business tort claims, labor and employment issues, alleged breaches of non-competition and non-solicitation covenants, and real estate disputes.

FRANK DERY

MANAGING DIRECTOR



INDUSTRY EXPERIENCE

- Pharma Lifesciences
- Medical Devices
- Healthcare
- Manufacturing
- Consumer Products
- Retail
- Construction
- Oil & Gas
- Aerospace & Defense
- Media

Frank's litigation case experience focuses on transaction related disputes, including working capital disputes, earn-out disputes and claims of breaches of representations and warranties. Mr. Dery has represented clients in post-closing negotiations, matters that have gone to mediation and arbitration, and has served as an arbitrator and co-arbitrator in the dispute resolution process. He also routinely advises clients on drafting purchase agreements and other transaction related issues, with a specific focus on the dispute resolution process, and is a frequent speaker on these topics.

REPRESENTATIVE PROJECTS:

Medical Devices – Served as the neutral accountant in an earnout dispute involving the determination of gross profits related to the sales of a medical device. Disputed issues included the timing of product sales, as well as identifying and calculating costs associated with those sales, in order to determine gross profits, and the resulting earnout payment, as defined in the agreement.

Pharma Lifesciences – Advised Seller in \$200 million earnout dispute involving the sale of a divested business. Disputed items included identifying various add backs to net income, as well as identifying non-recurring costs that would be excluded from the determination of EBITDA.

Retail – Served as the neutral accountant in a working capital dispute between two clothing retailers. The dispute focused on the proper determination of accounts receivable and inventory reserves.

Construction – Advised Buyer in a \$100 million earnout dispute relating to the purchase of a construction business. The dispute involved various accounting issues including calculating reserves and extraordinary / non-recurring expenses. In addition to the accounting issues, the dispute involved discovery issues, as well as disputes addressing compliance with operating covenants during the earnout period.

EDUCATION

University of Michigan, Bachelor of Business Administration

University of Michigan, Master of Accounting

Professional Licenses – Certified Public Accountant (Illinois), Certified in Financial Forensics, and Certified Fraud Examiner



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THANK YOU!

WHEN THE CYCLE TURNS: RESTRUCTURING SIGNALS AND IMPLICATIONS FOR FINANCIAL SERVICES M&A DEALS



MICHAEL POKRASSA
Managing Director
Raymond James



JOAQUIN C DE BACA
Partner
Mayer Brown



RICHARD STIEGLITZ
Partner
Mayer Brown

AGENDA

- I. Legal Prerequisites
- II. Market Trends
- III. Effectuating Transactions
- IV. Mitigating Legal Risk

I

LEGAL PREREQUISITES

LEGAL PREREQUISITES

- Can you use bankruptcy?
- Receivership or state law proceedings

II

MARKET TRENDS

III

EFFECTUATING TRANSACTIONS

HOW TO EFFECTUATE TRANSACTIONS

- Receiverships (state and Federal including SEC driven)
- Distressed out-of-court M&A
- 363 Sales
- Traditional reorganization





IV

MITIGATING LEGAL RISK



LEGAL TRAPDOORS AND HOW TO AVOID

- Successor liability
- Federal and state investigations
- Third-party claims

THANK YOU
QUESTIONS?



CLOSING REMARKS & NETWORK RECEPTION



THANK YOU
QUESTIONS?



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