



## Coronavirus Impact on M&A Agreement Drafting

March 5, 2020

Given the uncertainty and rising public health concerns around the coronavirus (COVID-19), Deal Point Data decided to take a look at how practitioners are drafting the material adverse change (MAC) definitions in recently announced transactions. Specifically, we wanted to see whether the target MAC definition included a carveout related to the coronavirus and similar concepts. The inclusion of specific carveouts protects the target in the event that the acquirer attempts to terminate the transaction based on a material adverse change.

Thus far in 2020, Deal Point Data has tracked 22 M&A transactions involving public target companies that trade on either NASDAQ or the New York Stock Exchange. Of those:

- 41% (9 deals) included the term 'pandemic', 'epidemic' or 'COVID-19' in the target MAC definition
- 4.5% (1 deal) specifically addressed COVID-19 by name
- 59% (12 deals) **DID NOT** include the term 'pandemic', 'epidemic' or 'COVID-19' in the target MAC definition

If we limit the set further to only include the 17 transactions involving public target companies that are headquartered in the United States:

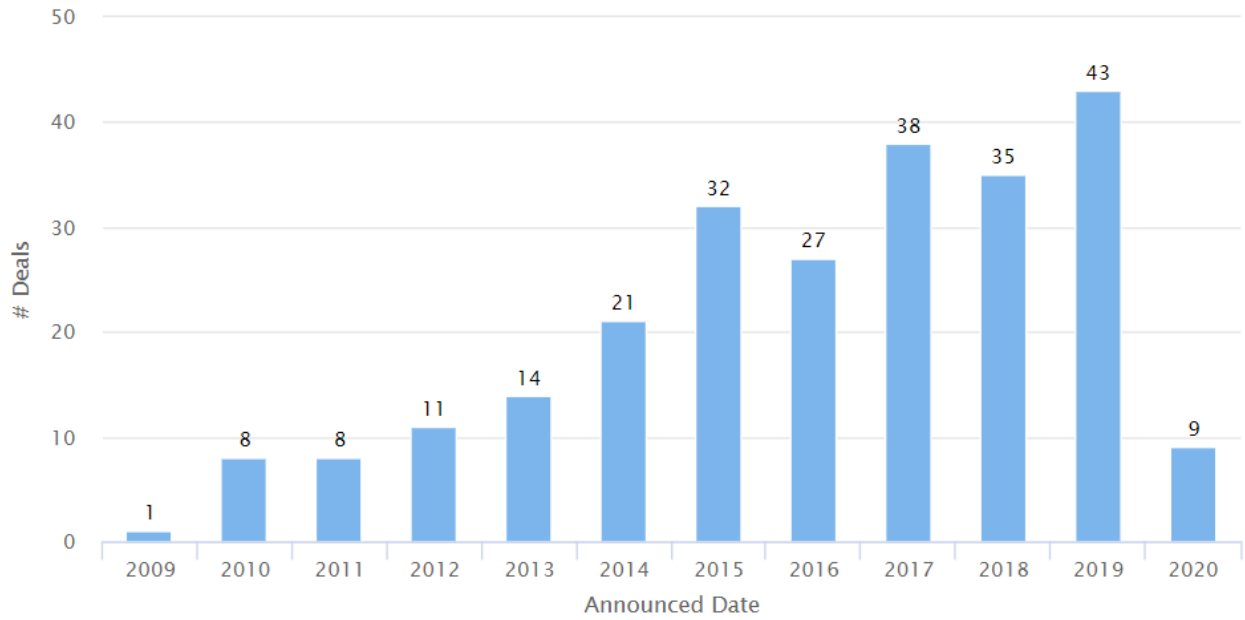
- 41% (7 deals) included the term 'pandemic', 'epidemic' or 'COVID-19' in the target MAC definition
- 6% (1 deal) specifically addressed COVID-19 by name
- 59% (10 deals) **DID NOT** include the term 'pandemic', 'epidemic' or 'COVID-19' in the target MAC definition

By way of comparison, last year by March 5 Deal Point Data had tracked 24 M&A transactions involving public targets companies that traded on either NASDAQ or the New York Stock Exchange. Of those:

- 16.7% (4 deals) included the term 'pandemic' or 'epidemic' in the target MAC definition
- 83.3% (20 deals) **DID NOT** include the term 'pandemic' or 'epidemic' in the target MAC definition

Since 2009 there has been a steady increase in the inclusion of MAC definition carveouts related to pandemics and epidemics involving public target companies that trade on either NASDAQ or the New York Stock Exchange, particularly since 2015, as the chart below indicates:

## Target MAC Definition Carveouts for Pandemics and Epidemics



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