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Reverse Termination Fees: A Resurgence -- The Deal Video Interview

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In the few years before the credit crisis, financial buyers often arranged to buy businesses in deals that required a termination fee to be paid by the sponsor if the shell-company buyer refused to consummate the transaction. These reverse termination fees evolved out of seller demands for sponsors to eliminate traditional financing conditions and add more “skin-in-the-game.” Typically, the fee was payable by the buyer whether or not the failure to close was due to financing failure. The price of this “option” was typically the same as the breakup fee paid by a seller following a successful topping bid (about 2% to 4% of the equity value). When the credit markets tightened, financial buyers demonstrated a willingness to exercise that option. With the return of significant financial sponsor activity since the fourth quarter of 2009, sellers and financial buyers have had to adapt. As a result, reverse termination fees as a percent of equity value are now much larger than they were before the credit crisis but they are still frequently less than sponsor equity commitments.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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