

# United States

Robert Katz and Charles Ruck, Latham & Watkins



## Market overview

Entering 2026, market participants were anticipating a more robust M&A environment. The belief was grounded in certain key expectations, including:

- US monetary policy would create a lower cost of borrowing;
- An uptick in private equity transactions given significant amounts of committed capital remaining in funds controlled by asset managers;
- The regulatory environment globally being less of an impediment than in more recent years;
- The continued cycle of outsized investment in technology, AI, and infrastructure; and
- Boardroom confidence buoyed by rising stock market valuations and strong capital and debt markets prompting transformational M&A transactions.

While the US M&A market in mid-2026 is generally considered healthy and has continued to be active, optimism has been restrained relative to the end-2025 optimism. The pace, depth, and breadth of the US M&A market have been tempered by geopolitical uncertainty, valuation concerns, and more general trade policy headwinds. However, market participants remain optimistic heading into H2 2026, with deal activity gaining momentum. Statistically, global M&A deal value in Q1 2026 was up nearly 10% from Q1 2025 and the strongest first quarter since 2021. Transaction volume is generally running flat to 2025, with markets seeing fewer, but larger transactions.

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**Robert Katz**  
Partner, Latham & Watkins  
robert.katz@lw.com

Robert is a partner in the New York office of Latham & Watkins and a member of the firm's global M&A and private equity practice. He represents companies domestically and internationally, as well as private equity sponsors and financial advisers in their highest-stakes M&A transactions across various geographies and industries. Robert's practice includes solicited and unsolicited transactions, board counselling and governance matters, joint ventures, leveraged buyouts, public and private acquisitions and divestitures, spin-offs, and takeover and activist defence strategies.



**Charles Ruck**  
Partner, Latham & Watkins  
charles.ruck@lw.com

Charles is a partner in the New York and Orange County offices of Latham & Watkins and serves as global chair of the firm's corporate department. He primarily advises on M&A and general corporate and securities matters. Charles serves as primary outside counsel to a number of public and privately held companies and he regularly represents boards of directors and special committees in complex strategic corporate governance matters.

because there are many more private than public companies. In addition, companies have been able to stay private for longer due to private financing alternatives and there is a trend of larger private companies being active in the M&A market – both buy-side and sell-side. The cost of capital and the availability of debt financing are driving factors, particularly for private company and private equity dealmaking where acquirer stock is not available as transaction currency. For public companies, well-capitalised balance sheets together with an ability to use stock as an acquisition currency remain key drivers for potentially strong deal volume in 2026.

### Significant transactions

Transactions in 2025 were notable not only because of their size but also because they generated debates that will continue to impact how boards of directors, regulators (both in the US and globally), and market participants more generally approach transactions.

The technology and AI sectors continue to be industry verticals creating tremendous M&A volume. Antitrust authorities globally have become more aggressive in scrutinising transactions in technology, AI, and the digital platform sectors. These transactions have sparked interesting conversations around 'national' competitiveness and whether particular countries and jurisdictions should be reviewing transactions with an eye towards sovereign technological leadership rather than orthodox merger control review.

An adjunct issue to technological advancements is transactions amongst participants in industry verticals that may be experiencing a structural decline. Market participants will be discussing whether consolidation amongst competitors in particular industries is necessary to create scale, maintain investment levels, improve infrastructure, and create an ability to compete against larger companies that may currently have competitive advantages. Certain industry verticals – including technology, energy, and healthcare – continue to be subject to these debates.

It is expected that 2026 will continue to see megadeals such as those conducted in 2025 and 2024. These megadeals continue to prop up total deal value. It is common for megadeals to receive extensive regulatory review, and practitioners continue to have

There are key factors driving the more robust outlook for 2026, including:

- Corporates (strategics) being more active participants in the M&A market;
- The global AI super-cycle has market participants very active in the artificial intelligence boom and all of the adjacent markets;
- A more generally muted regulatory enforcement environment within the US and globally;
- Asset managers continuing to hold 'dry powder' at the ready;
- Event-driven investors catalysing opportunities; and
- Well-capitalised strategic corporates undertaking transactions that look

beyond the current economic cycle, as well as being conscious of having streamlined portfolios.

In terms of cross-border dealmaking, participants will continue to be cognisant of particular issues, including:

- Foreign direct investment screening;
- Sanctions and export controls;
- Antitrust and competition control authorities;
- Data privacy and digital regulations; and
- Geopolitical risk.

### Private and public M&A

The US M&A market is driven by both private and public M&A transactions, although private M&A is more prevalent

somewhat less visibility and certainty – particularly from a ‘political’ perspective – as to which transactions will close and, importantly, on what timeline and with what conditions imposed by governmental agencies. In addition, regulators on a state level have begun to review transactions not only in connection with the competitive aspects but also with a view towards how businesses may impact more local economies and resources.

### Economic factors

Global deal flow in 2025 showed signs of recovery relative to what was seen in 2024, which itself was an uptick from a somewhat muted M&A market in 2023. After peaking in 2021 – a year that market participants regard as the high-water mark for dealmaking both in terms of deal volume and deal value – the M&A market has slowly been climbing back.

M&A activity in 2025 saw what many regard as an uneven recovery. Global M&A deal value rose from 2024, increasing approximately 15% year over year, with a corresponding deal value of approximately \$5 trillion. However, deal volume declined by approximately 10% from 2024, which was a stark indication of a market driven by larger deals. In fact, the number of transactions exceeding \$1 billion increased significantly and megadeals (those above \$5 billion) are becoming more common. Corporate acquirers were the driving force in the large-cap market space. In the US/North American market, deal value increased in line with the global increase (i.e., high single digits), driven by an uptick in certain market segments, including technology and energy.

### Drivers of change

Generally speaking, market participants are bullish about the prospects of increased deal flow. Dealmakers look to greater clarity on certain macro issues – including monetary policy, with a new chairman of the US Federal Reserve having taken over in Q1 2026 – and more regulatory certainty. While no one can speak definitively on those issues, the directional shift of these matters buoys a more supportive deal environment. There remain risks to the US M&A market, including significant geopolitical tensions, that impact dealmakers’ confidence.

Continued activism is also a likely catalyst for deal volume. Activist funds

continue to raise and deploy capital and the hunt for ‘big-game’ targets continues. It is expected that M&A will continue to be a theme of activist investors. Activists also drive corporate/strategic transactions as public companies monitor activist activity among their peer groups and appreciate that it is better to organically undertake corporate transactions rather than have an investor catalyse such transaction from the outside.

### Financial investors

Transaction participants have been more keenly focused on the scrutiny regulators will apply to M&A transactions and how such risks are allocated amongst the parties to transactions. Regulators in the US have explicitly signalled a heightened sensitivity to the competitive effects of certain transactions and have taken more aggressive actions, particularly in certain market sectors. This increased regulatory scrutiny has and will continue to impact transaction strategies in the global markets. In particular, certain industries – including technology, energy, industrials, and healthcare – will remain under heightened oversight.

Participants in the US M&A market continue to see some acute disagreement between buyers and sellers with respect to valuations. In an effort to bridge the difference between the bid/ask spread in M&A transactions, the use of earn-outs, contingent value rights, and other means by which buyers and sellers could mitigate pricing risks becomes more common. Continuing a trend that has taken hold, representation and warranty insurance remains a tool used by M&A market participants to bridge and disintermediate exposures for unknown liabilities. Debt financing and private capital continue to be drivers of M&A activity. In an effort to address the absence of, or more subdued, traditional financing, parties were more active in discussing alternative financing arrangements with direct lenders and the use of seller financing. In 2026, it is expected that private capital – whether from non-bank lenders or more traditional bank lenders – will be deployed with increasing frequency and become part of the established landscape.

Private equity remains a driving force of dealmaking. Despite US interest rates not decreasing as aggressively as had been

forecast for 2025 and 2026 to date, private equity participants are expected to remain active, with uncommitted capital at private equity firms at record levels. So-called middle-market private equity transactions (i.e., transaction values ranging from \$50 million to \$500 million) have been, and are expected to represent, a significant portion of private equity M&A volume.

An interesting trend that was seen in 2025 and is expected to continue in 2026 is private equity’s use of continuation funds. Essentially, this allows an asset manager to sell a pool of assets from one fund it may manage to another fund it may manage. This type of transaction allows the asset manager to extend its ownership and management of the assets beyond originally expected lifespans. These transactions provide liquidity for private equity investors and allow the asset to trade with a private valuation rather than a public mark, which managers may not feel adequately values the asset.

### Legislation and policy changes

The federal government primarily regulates the issuance and sales of securities through the Securities and Exchange Commission (SEC), antitrust matters through the Federal Trade Commission and the Antitrust Division of the Department of Justice, and foreign investment that may have national security implications through the Committee on Foreign Investment in the United States (CFIUS). The laws, rules, and regulations administered by the SEC are particularly relevant in the purchase or sale of a US public company. The laws of the target’s state of incorporation govern that company’s internal affairs and impose requirements for shareholder approval of mergers and the procedures for effecting mergers.

### Legislative changes

Competition and antitrust regulators around the globe have continued, and in some ways expanded, their review of business combinations and the harms to consumers and competitors.

The prior administration in the US was very aggressive in regulating M&A, with a large number of transactions having been litigated and blocked outright. The first Trump administration was not entirely merger friendly (specifically, disfavoured

behavioural remedies); it is expected the second Trump administration will be more accommodative.

In addition, there were new Hart–Scott–Rodino (HSR) rules that took effect in February 2025. In connection with the adoption and implementation of those rules, regulators in the US have been more amenable to revisiting the practice of granting early termination of the HSR waiting period, a practice that has been suspended since 2021.

### Potential changes

In general, the US framework seeks to protect ‘consumers’ rather than ‘competitors’. The prior administration was interested in revisiting that paradigm writ large, with a view towards regulators focusing on other constituencies, including labour, the environment, and other ESG-related concerns. The Trump administration is likely to reverse that trend.

New rules in connection with HSR filings took effect in February 2025. The new HSR rules materially increase the information that must be provided by the filing parties. Of particular note, the increased information includes more ordinary-course documents prepared by the parties describing competition from the year prior, documents shared with the broader set of transaction team participants in addition to officers and directors of the filing parties, and information regarding customers and suppliers. The new rules also require additional information from private equity filers in certain circumstances with respect to limited partners. These new filing requirements will lengthen the time it takes to prepare an HSR filing, and market participants should be conscious of this timing in formulating transaction timelines and in agreeing to contractual provisions that prescribe the time by which filings must be submitted.

### Practice insight/market norms

The litigation profile as it relates to the US M&A market may sometimes be overstated. While it is true that public M&A transactions have significant probabilities of being litigated, the large majority of all such cases are neither material nor time-consuming. A well-run, deliberative, and thoughtful transaction process guided by informed and independent boards of directors will substantially reduce, if not

entirely obviate, the risks of litigation. Market participants should not avoid transactions for fear of litigation.

In public transactions, it is often asked whether the buyer may pursue indemnity claims or escrow funds or provide for representation and warranty insurance (RWI) to satisfy any post-closing claims for a breach of a representation or warranty. It is important to note that public M&A transactions are without recourse to the target company or the target company shareholders once the transaction has closed. In public company transactions, buyers should assume that once definitive transaction documents have been executed, the parties will be obligated to close, subject only to the receipt of required regulatory approvals or a material adverse event (MAE) having occurred with respect to the target company.

An intuitive follow-on question, and one that is often asked by non-US market participants, is how an MAE is determined; specifically, whether there are quantitative guidelines or whether it is entirely qualitative. In determining whether an MAE has occurred, there are no definitive guidelines. The question is whether the company in question has suffered a durationally significant, material diminution of its earnings potential not necessarily tied to macro market conditions but, rather, specific to the company in question.

### Technology

The role of technology continues to evolve in the dealmaking process. AI continues to become more prevalent and market participants believe the utility of AI and its impact on M&A will be significant. In particular, companies that use AI may be able to identify targets, understand transaction values and where they may come from, and execute due diligence and integration activities between targets and acquirers more efficiently.

### Public M&A

In public M&A, issues relating to obtaining control of a company are guided by the laws of the state in which a company is incorporated and the company’s organisational documents. Most states require shareholder approval (usually by a vote of a majority of outstanding shares) for M&A. Similarly, in the tender offer context,

acquisition of a majority of a company’s outstanding shares is required to obtain ‘control’. This would be the case where the target company has recommended the tender offer and in the unsolicited/hostile context, where an acquirer has launched a tender offer without requiring (or, in some cases, seeking) the target company’s recommendation. Certain regulatory approvals – including clearance under the Hart–Scott–Rodino antitrust statute, and for non-US acquirers, from the CFIUS – must be obtained before an acquirer can take control of a US company. Acquiring a US company in regulated industries such as financial services and energy may be subject to additional regulatory scrutiny at the federal and/or state level.

In light of the fiduciary duties of public company directors that generally require them to maximise shareholder value in a sale/change of control context, target boards often conduct some form of a pre-signing market check – an auction-type process. However, in some transactions, the target board will forgo a pre-signing market check in exchange for a ‘go shop’ right to solicit competing offers for a limited period (usually 30–60 days) after signing the transaction agreement.

Public company acquisitions can be structured as:

- A one-step merger between the acquirer (or, more commonly, a subsidiary of the acquirer) and the target (typically requiring majority shareholder approval); or
- A two-step transaction involving a tender or exchange offer by the acquirer for all the target’s outstanding shares (which is generally subject to a ‘minimum tender condition’ requiring the tender of at least a majority of the outstanding shares) followed by a back-end merger.

Both types of transactions are typically subject to the following conditions (among others):

- Accuracy of representations and warranties;
- Material compliance with covenants;
- No MAE on the target; and
- Receipt of regulatory approvals.

Parties to public company merger agreements may employ various deal protection measures to deter third parties from interfering with the closing of an agreed-upon transaction. Parties may employ the following:

- A no-shop provision – a contractual provision that prohibits the target company (and its representatives) from soliciting competing proposals after the execution of a merger agreement.
- Termination fees ('break-up fees') – termination fees are payable by the target company to the buyer to reimburse the buyer for its costs and expenses in the event the target company terminates its merger agreement to accept a superior proposal from a third party. In practice, termination fees are in excess of the costs and expenses incurred by the buyer, but the quantum of the fee must not be so large such that courts find the termination fees coercive and in violation of the target board's fiduciary duties. In the US, such fees typically range from 3–4% of the transaction value.
- Matching rights – merger agreements typically include contractual provisions that grant the buyer the right to match, within a certain number of days, any superior proposal that is received by the target company.
- Voting lock-ups – buyers may secure firm commitments from shareholders of the target company to vote their shares in favour of the proposed transaction.
- 'Force the vote' provisions – merger agreements may include provisions, subject to compliance with applicable state laws, that require target companies to put the proposed transaction to a vote of its holders, regardless of whether a superior proposal exists.

The suite of deal protection provisions agreed to in a transaction are, typically, the most heavily negotiated terms.

## Private M&A

2025 saw the continued use of earn-outs and similar provisions under which the seller will receive one or more additional payments, contingent on the target's future performance, in part to account for differences in valuation.

Completion accounts (known as working capital or balance sheet adjustments) are common in US private company acquisitions. Locked-box transaction structures are much less prevalent in US private company acquisitions, although they are often discussed.

A trend that continues is the use of RWI in private transactions. The private market has reached a point where RWI is the norm rather than a negotiated point. Market participants, both PE and strategics, have become comfortable with the product and how it is employed.

All the conditions listed under "Public M&A" above (except the minimum tender condition) generally also apply in private M&A transactions. However, in the absence of RWI, representations and warranties usually survive the closing in private M&A transactions and may give rise to post-closing indemnity claims.

Agreements are typically governed by the law of the target's state of incorporation. If such state has sparsely developed corporate law, the parties sometimes provide that Delaware law will govern certain issues.

The exit environment in 2025 was more robust than what was seen in 2024. The IPO market continued to improve, with the appetite for equities showing increasing demand. The technology sector

was particularly robust. The M&A markets were also more robust but remained choppy in the middle market as buyers and sellers had gaps in their valuation expectations and overall confidence levels ebbed and flowed. Financial sponsors actively sought opportunities but continued to face some difficulties exiting their own investments and in providing an exit opportunity for sellers. Private equity sponsors faced challenges related to valuations and the cost of debt financing.

Market participants expect a more robust exit environment in 2026. The equity markets have grown more buoyant through the second half of 2025 and in the early days of 2026, which bodes well for the IPO market. There is an expectation that M&A activity will also improve.

## Looking ahead

There is growing confidence among market participants that M&A activity will be robust through the entirety of 2026. Equity markets and asset prices have, generally, remained strong and have been trading near record highs. Corporate/strategic M&A players have strong balance sheets and there is confidence more generally regarding profitability through 2026 and beyond. Financial sponsors are similarly well situated. While there continue to be geopolitical and economic uncertainties, market participants believe M&A dealmakers have internalised those concerns and are willing to transact regardless of that overhang. This positive shift in sentiment and focus bodes well for M&A dynamics throughout the remainder of 2026.