

Public Company M&A Priorities for 2025

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With the inauguration now behind us and the Republican party in control of the White House and the Congress, below are five ways in which the Republican administration could affect public company M&A this year.

- **Regulatory Environment.** Conventional wisdom holds that the incoming Republican administration should present a more favorable regulatory environment for M&A, setting the stage for big mergers in the media space and more transactions in sectors that in recent years have attracted close antitrust scrutiny, such as health care and technology.

It's unlikely, however, that there will be smooth sailing for all. CFIUS will likely continue to be a meaningful obstacle to inbound M&A from China and other disfavored jurisdictions, and it could become a tool to extract trade concessions by threatening to block transactions involving jurisdictions and industries that are subject to tariffs in the new administration. Further, federal antitrust enforcement may become more idiosyncratic, with transactions being investigated, or even sought to be blocked, based on political factors.

Cross-border deals may also face challenges. To the extent the U.S. pursues protectionist trade policies and steps up CFIUS enforcement, regulators in jurisdictions perceiving themselves as being targeted by such policies are likely to be less hospitable to inbound M&A from the U.S. Additionally, the recent Outbound Investment Rule restricting U.S. investment in certain Chinese industries became effective at the beginning of the new year. While the resulting uncertainty may chill U.S. outbound M&A activity, it probably will not translate into a reduction in overall M&A volume. We expect companies to continue to look to domestic M&A to fuel growth that cannot be obtained organically and, in some cases, to reduce dependency on foreign suppliers.

- **ESG.** The pervasive anti-ESG backlash will likely continue and intensify in the coming year. Companies will need to be able to justify their "social" programs by drawing a direct connection to the bottom line. Such programs, including diversity

efforts, should become a focus of M&A due diligence, so that acquiring companies do not step unaware into DEI beartraps.

- **Activism.** Many commentators forecast increased levels of shareholder activism. Their thesis likely depends on an overall improvement in the M&A market (perennially the most common objective of activists), perhaps as well as a less robust enforcement environment for Section 13 disclosure deficiencies and HSR filing infractions. If the M&A market improves, in addition to more activism overall, we could expect a resurgence of “bumpitragage,” in which activists seek to block negotiated transactions to extract higher purchase prices.
- **AI Governance.** Artificial intelligence capabilities are likely to continue to advance rapidly in 2025, but the technology as it exists today presents many companies with opportunities and risks. Boards of companies affected by AI should focus on appropriate governance and risk management frameworks, as they face an increasingly complex compliance and disclosure landscape. AI is likely to stimulate M&A, including acquisitions of AI native companies and transactions catalyzed by the disruptive effect of the technology in certain sectors. Effective due diligence in this context is key. Many boards will need to improve their familiarity with the evolving AI landscape and its potential business impact.
- **Tax Changes.** By design, important tax cuts enacted in the 2017 Tax Cuts and Jobs Act will expire in 2026, which would increase individual tax rates and reduce the standard deduction and child credits and the gift and estate tax exemption. Congressional Republicans intend to use budget reconciliation procedures to extend these tax cuts. As one way of offsetting the cost, Congress may seek to increase the current 1% excise tax on stock repurchases by public companies. Because that tax applies to share purchases funded with borrowings based on the target’s balance sheet in connection with M&A transactions, a meaningful increase in the tax rate could cool private equity interest in going private transactions, which typically involve significant acquisition leverage. The buyback tax also applies to cash or other taxable consideration in tax-free reorganizations and so would also increase the cost of these transactions.



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