MINTZ

SEIZING OPPORTUNITY

THE POST-PANDEMIC FUTURE OF LIFE SCIENCES M&A 2022

// CONTENTS

2 Methodology

3 Foreword

4 Part 1: US pharmaceuticals, medical device/diagnostics and biotech (PMB) M&A in numbers

8 Part 2: Deal drivers
- Pricing and deal structures
- Partnerships
- Antitrust under Biden

20 Part 3: Post-merger integration
- Strategic issues
- Evaluating success
- Overcoming challenges
- Merging in a pandemic
- The question of culture

32 Conclusion

// METHODOLOGY

In Q1 2022, Mergermarket surveyed 100 senior-level US-based executives at life sciences companies on their most recent experience of M&A in the sector, divided evenly between buyers and sellers. Among buyers, 60% most recently acquired or merged with a US company. Among sellers surveyed, 80% were most recently acquired by or merged with a US company. The largest share of respondents operates primarily in the therapeutics subsector (including both pharma and biotech companies), with sellers focused on, in particular, gene and cell therapies. The survey included a combination of qualitative and quantitative questions. Results were analyzed and collated by Mergermarket. All responses are anonymized and presented in aggregate.

// FOREWORD

As we predicted in the previous edition of this report, 2021 turned out to be a very strong year indeed for US life sciences dealmaking, marked by high transaction values and volumes as the industry continued on its expansionary M&A path.

Life sciences companies most able to respond to the pandemic have reported exceptionally strong revenues, which they have been investing in growth and further innovation through both traditional M&A and, increasingly, partnerships with other organizations. The sector as a whole is looking for collaboration opportunities that build on the technologies, platforms and ways of working that have proven their mettle through the pandemic, which will create new products and services that could vastly improve patient care and outcomes across a range of conditions. Indeed, as our report's findings suggest, the stage is set for more and faster breakthroughs than ever before.

As Bill Whelan, Co-Chair of Mintz's Life Sciences Practice, explains, "The sector is poised for a very robust run of M&A activity. Investor enthusiasm created by the many successes of pandemic-centric innovations and technologies remains. Venture and private equity firms stand ready to finance acquisitions in the face of a slowdown in available funding from equity capital markets. And the recent downturn in valuations in the sector will lead to attractive acquisition opportunities."

As with last year, concerns around patent expiration have moved to the bottom of the pile when it comes to the rationale for M&A in the life sciences industry. Rather, US life sciences companies now see significant potential ahead, with other defensive reasons, such as cost-cutting and moves to offset losses in market share, also trending downwards. Instead, players in the sector are engaging in M&A from a position of confidence and with a desire to grow and diversify their customer bases and products.

Dealmakers have also approached their post-deal integration with more confidence, notwithstanding the continued challenges stemming from transacting during the pandemic. They are more satisfied with the outcomes of their integration processes than in our previous survey and they have also, tellingly, afforded more time to integrate businesses. That doesn't mean all has run completely smoothly, with many reporting that they have learned valuable lessons around the importance of cultural factors during integration and some having to withdraw products or services following the deal close.

US life sciences is clearly in a strong position to benefit from the tailwinds pushing the industry forward. 2022 is shaping up to be yet another exciting period that is rich with opportunity.

Venture and private equity firms stand ready to finance acquisitions in the face of a slowdown in available funding from equity capital markets. And the recent downturn in valuations in the sector will lead to attractive acquisition opportunities."
Bill Whelan, Co-Chair of Life Sciences, Mintz

// PART 1

US PHARMACEUTICALS, MEDICAL DEVICE/DIAGNOSTICS AND BIOTECH (PMB) M&A IN NUMBERS

US life sciences M&A had a strong 2021, with values and volumes boosted especially by dealmaking in the first half of the year.

In a similar pattern to overall M&A values and volumes, US life sciences dealmaking spiked in H1 2021 before trending downward for the rest of the year, as buyers digested their acquisitions and as the number of mega-deals (worth US$500m and above) declined.

Following the life sciences M&A boom logged in H2 2020, the opening two quarters of 2021 were among the most active on record by volume, with 297 deals announced in the sector in Q1 and 312 in Q2. The latter also recorded particularly strong activity by value, reaching US$126bn, with five of the year's largest deals announced during that period. Activity in H2, while more subdued, continued to outpace the corresponding periods in the pre-pandemic years of 2017-2019 in aggregate value terms, while volumes remained close to, or just above, historical levels.

Overall, 2021 was the best year on record for US life sciences M&A by volume, with 1,028 deals – a 31% annual increase. By value, 2021 was also particularly strong, reaching US$301bn. This represents a 43% rise on 2020 and amounts to the second highest annual total on record, exceeded only by 2015's output.

Money to burn

Private equity interest in US life sciences was one of the main M&A drivers in 2021 as healthcare investments moved up the agenda for these cash-rich buyers. As of September 2021, private equity firms globally were sitting on a record US$1.32tn of dry powder, according to data group Preqin.

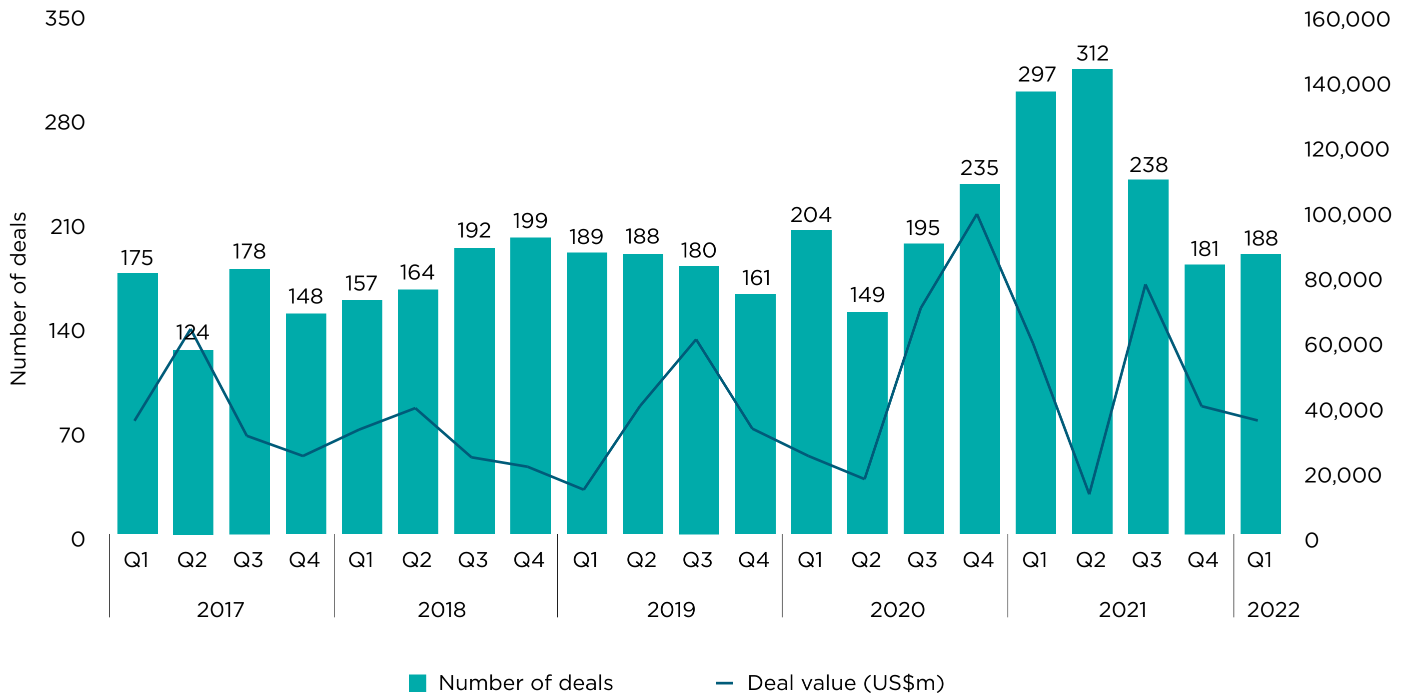
Correspondingly, 2021's largest US life sciences deal was the US$34bn buyout of healthcare supplies manufacturer Medline by a consortium including Blackstone, Carlyle and Hellman & Friedman.

Also in the top 10 largest deals of the year was the US$8.5bn acquisition of clinical research group Parexel by EQT Partners and Goldman Sachs Asset Management.

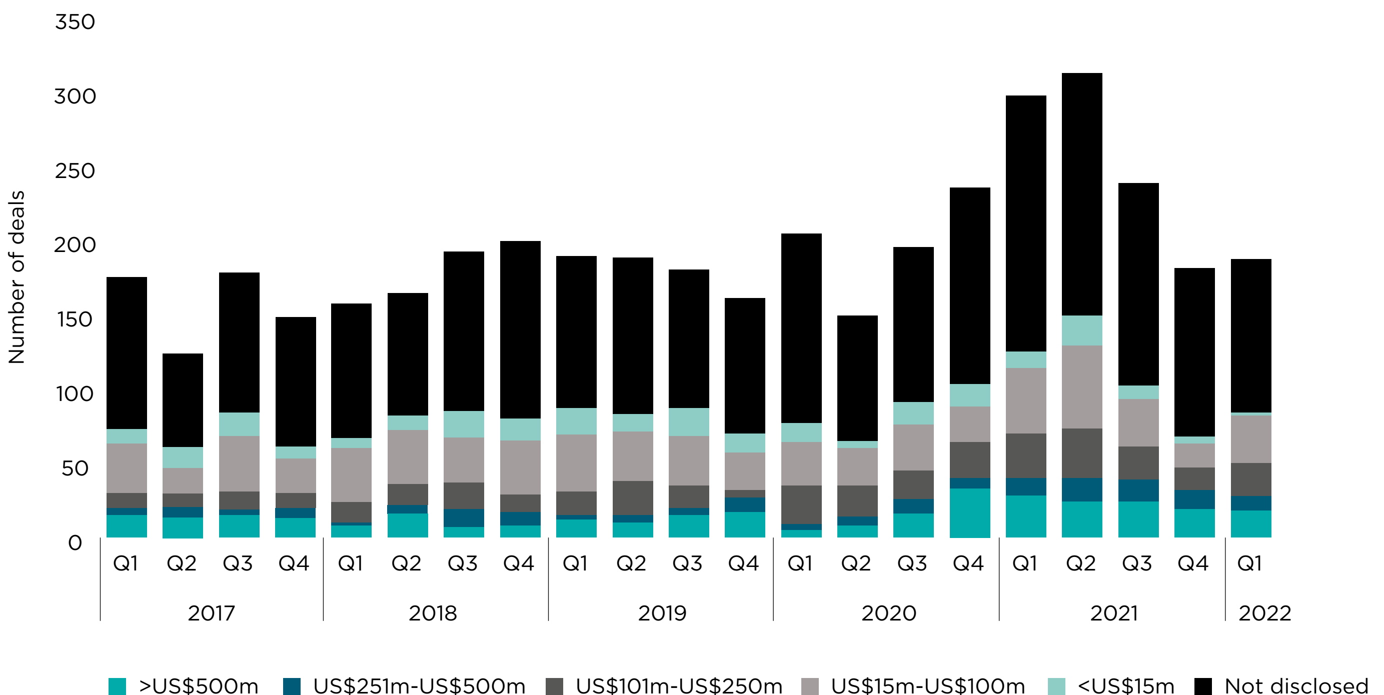
The third largest deal of the year, the public listing of Ginkgo Bioworks, illustrated another key trend in 2021 – the large number of special purpose acquisition companies (SPACs) that were looking for organizations to merge with. The deal saw Soaring Eagle Acquisition Corp acquire the synthetic biology business for US$20.1bn. But SPACs have, in recent months, lost much of their luster. As we detail later in this report, whatever enthusiasm respondents had for SPACs has been dampened by rising regulatory scrutiny of these vehicles.

The largest deal announced so far in 2022 reflects the rise of "hospital at home" services following the COVID-19 pandemic. Through its

US PHARMA, MEDICAL DEVICE/DIAGNOSTICS AND BIOTECH 2017-Q1 2022 BY VOLUME OF DEALS



US PHARMA, MEDICAL DEVICE/DIAGNOSTICS AND BIOTECH M&A 2017-Q1 2022 BY DEAL SIZE



TOP 10 US PHARMA, MEDICAL DEVICE/DIAGNOSTICS AND BIOTECH DEALS 2021

Announced Date	Target Company	Bidder Company	Bidder Dominant Country	Deal Value USD(m)
05/06/2021	Medline Industries, Inc.	The Carlyle Group; Hellman & Friedman LLC; Blackstone Group Inc; Abu Dhabi Investment Authority; GIC Private Limited	USA	34,000
15/04/2021	PPD, Inc.	Thermo Fisher Scientific Inc.	USA	20,976
11/05/2021	Ginkgo Bioworks, Inc.	Soaring Eagle Acquisition Corp.	USA	20,110
24/02/2021	PRA Health Sciences, Inc.	ICON plc	Ireland (Republic)	12,123
02/09/2021	Hill-Rom Holdings, Inc.	Baxter International, Inc.	USA	11,858
17/06/2021	Aldevron, LLC	Danaher Corporation	USA	9,600
02/07/2021	PAREXEL International Corporation	EQT Partners AB; Goldman Sachs (private equity operations)	Sweden	8,500
23/12/2021	Ortho Clinical Diagnostics Holdings plc (100% Stake)	Quidel Corporation	USA	8,448
30/09/2021	Acceleron Pharma, Inc. (60.33% Stake)	Merck & Co., Inc.	USA	6,975
27/04/2021	Kindred at Home (60% Stake)	Humana Inc	USA	5,700
08/01/2021	Celularity, Inc.	GX Acquisition Corp.	USA	1,250

TOP 10 US PHARMA, MEDICAL DEVICE/DIAGNOSTICS AND BIOTECH DEALS Q1 2022

Announced Date	Target Company	Bidder Company	Bidder Dominant Country	Deal Value USD(m)
29/03/2022	LHC Group, Inc. (100% Stake)	UnitedHealth Group, Inc.; Optum, Inc.	USA	6,050
27/02/2022	Viatris Inc (Biosimilars business) (100% Stake)	Biocon Limited; Biocon Biologics India Limited	India	3,335
18/01/2022	ProKidney, LLC (100% Stake)	Social Capital Suvretta Holdings Corp. III	USA	1,925
25/02/2022	AmeriVet Veterinary Partners Inc. (100% Stake)	AEA Investors LP; Abu Dhabi Investment Authority	USA	1,600
23/03/2022	Columbia Care Inc. (100% Stake)	Cresco Labs Inc.	USA	1,593
10/01/2022	Apria, Inc. (100% Stake)	Owens & Minor, Inc.	USA	1,580
25/02/2022	Channel Biosciences, LLC (100% Stake)	Biohaven Pharmaceutical Holding Company Ltd.	USA	1,238
05/01/2022	Smile Doctors LLC (50% Stake)	Gilead Sciences, Inc.	USA	1,200
23/03/2022	OmniAb, Inc. (100% Stake)	Avista Public Acquisition Corp. II	USA	1,000
10/01/2022	Affera, Inc (97% Stake)	Medtronic plc	USA	925

subsidiary Optum Inc., which offers healthcare data analytics, UnitedHealth Group is to acquire LHC Group, which provides healthcare services at home for mainly older patients with chronic illness, in a deal valued at US$6.1bn.

As we move through 2022, dealmaking has continued at a pace in line with historical, pre-pandemic norms, with deal volume up marginally in Q1 (188) versus Q4 2021 (181) and aggregate value down slightly to US$35bn from US$40bn. The US life sciences sector is, to at least some degree, insulated from some of the issues weighing on global markets, such as the war in Ukraine and rising inflation. However, volatility may sour dealmakers' appetite in the short term as they start to factor in uncertainties around challenges such as increasing fuel costs and further supply chain issues.

// PART 2

DEAL DRIVERS

Trends stemming from the pandemic – including new technology deployment and strong revenues – are fueling expansionary dealmaking in the US life sciences space.

In last year's survey we highlighted a shift in deal rationale among respondents, with at least some of that change likely stemming from innovations necessitated by the pandemic. The accelerated processes deployed to bring COVID-19 vaccines and treatments to the world look to have shortened the expectations around certain product development timelines. New technologies that accelerate the development and approval of new treatments, including the use of artificial intelligence and platforms such as mRNA used in some of the vaccines, taken together with remote clinical trial recruitment and monitoring, are now being employed across a range of applications.

As a result, patent expiration – which was among the most important rationales for M&A in US life sciences before the pandemic – has fallen way behind other factors for the past two years. Indeed, this is now the least important rationale for all our respondents.

Instead, the most important reason among all respondents for pursuing their most recent M&A transaction is that the deal added to or improved their R&D pipeline (for reasons other than patent expiration), with an average score of four out of five.

World-beating R&D

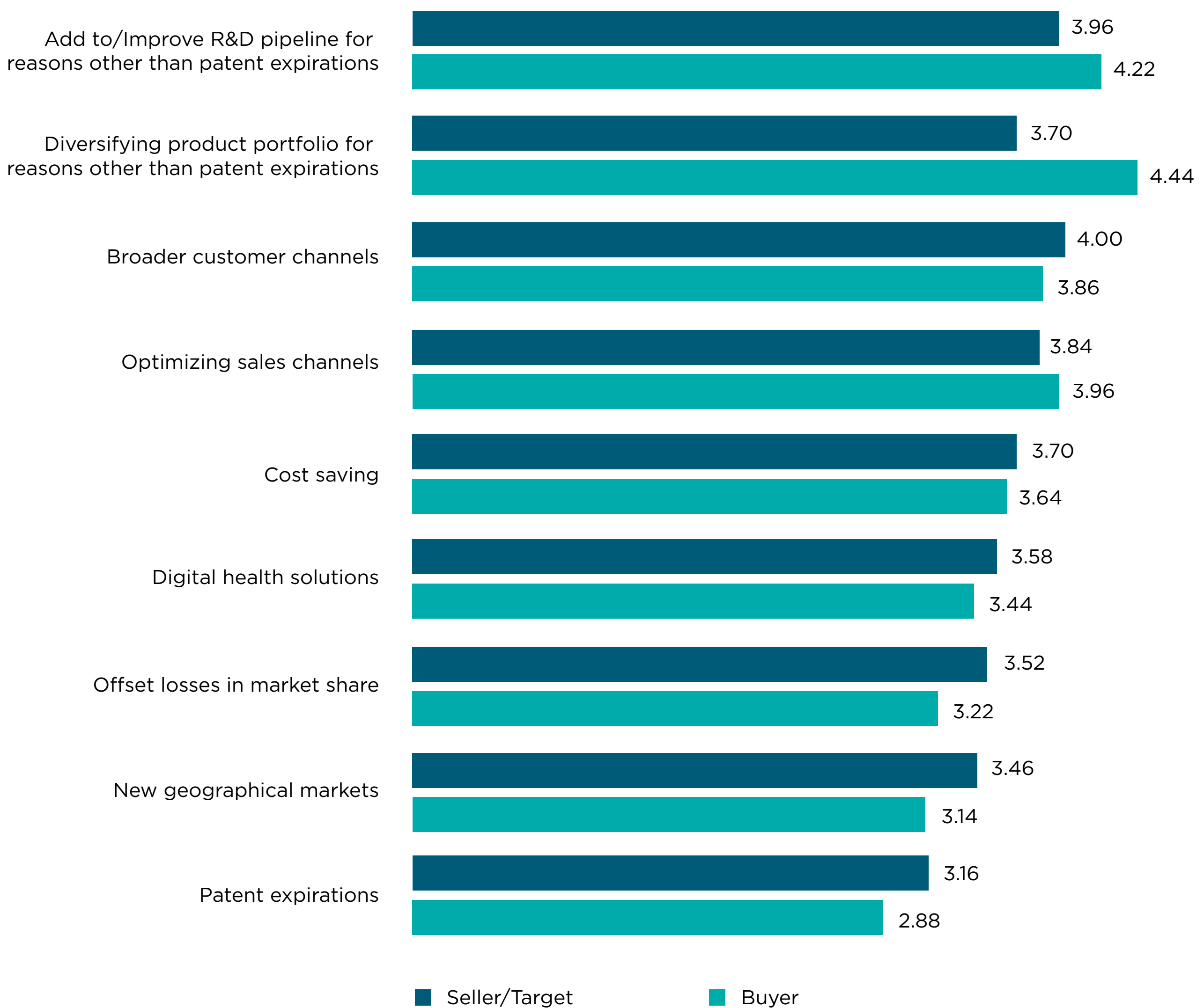
The pace of R&D among biopharmaceuticals companies worldwide is buoying efforts among dealmakers to secure new treatment and product pipelines: last year saw 5,500 new planned clinical trials globally, a 14% increase versus 2020, according to the IQVIA Institute for Human Data Science, which attributes the rise to faster scientific breakthroughs post-pandemic. Furthermore, the number of products in active developments globally exceeded 6,000 last year, up 68% on 2016 totals, while a record 84 novel active substances were launched in 2021, double the number of five years ago. Of these, 72 were launched in the US, attesting to the country's world-leading life sciences capabilities.

For buyers, the top reason for their most recent acquisition was diversifying their product portfolio (again, for reasons other than patent expiration), with a score of 4.44, while for sellers, it was to broaden their customer base, with a score of four. These two factors are likely related, since a greater range of products will naturally attract a greater range of customers.

For comparison, in our most recent prior survey the top reasons for all respondents to complete their most recent deal were optimizing sales channels (4.51) and a wish to broaden their customer base (4.47). These have since slipped down the list of priorities to fourth and third place, respectively, for this year's crop of respondents, who put more significance on improving their R&D pipelines and diversifying their portfolio.

In last year's survey, we highlighted a move toward M&A for more expansionary (or offensive) as opposed to defensive strategies. This year appears to confirm the trend – cost savings and offsetting losses in market share are both even less important this time around, with the former falling to 3.67 from 4.19 and the latter to 3.37 from 4.06.

CHART 1. WHAT WAS THE RATIONALE BEHIND YOUR MOST RECENT M&A DEAL? (RATE EACH OPTION ON A SCALE OF 1 TO 5, WHERE 5 = VERY IMPORTANT AND 1 = NOT AT ALL IMPORTANT) MEAN SHOWN



The SEC now has focused more on SPACs, with a view to improving their transparency and levelling the regulatory playing field between these vehicles and traditional IPOs, especially when it comes to forward-looking statements."

Michael Fantozzi, Managing Member of Mintz's Boston Office and Chair of the firm's Corporate, Tax, Private Client & Immigration Division

CHART 2. WHAT WAS THE RATIONALE BEHIND YOUR MOST RECENT M&A DEAL? (RATE EACH OPTION ON A SCALE OF 1 TO 5, WHERE 5 = VERY IMPORTANT AND 1 = NOT AT ALL IMPORTANT) MEAN SHOWN (2022 VS. 2021)

	All respondents 2022	All respondents 2021
Add to/Improve R&D pipeline for reasons other than patent expirations	4.09	4.31
Diversifying product portfolio for reasons other than patent expirations	4.07	4.12
Broader customer channels	3.93	4.47
Optimizing sales channels	3.90	4.51
Cost saving	3.67	4.19
Digital health solutions	3.51	3.86
Offset losses in market share	3.37	4.06
New geographical markets	3.30	3.46
Patent expirations	3.02	3.75

PRICING AND DEAL STRUCTURES

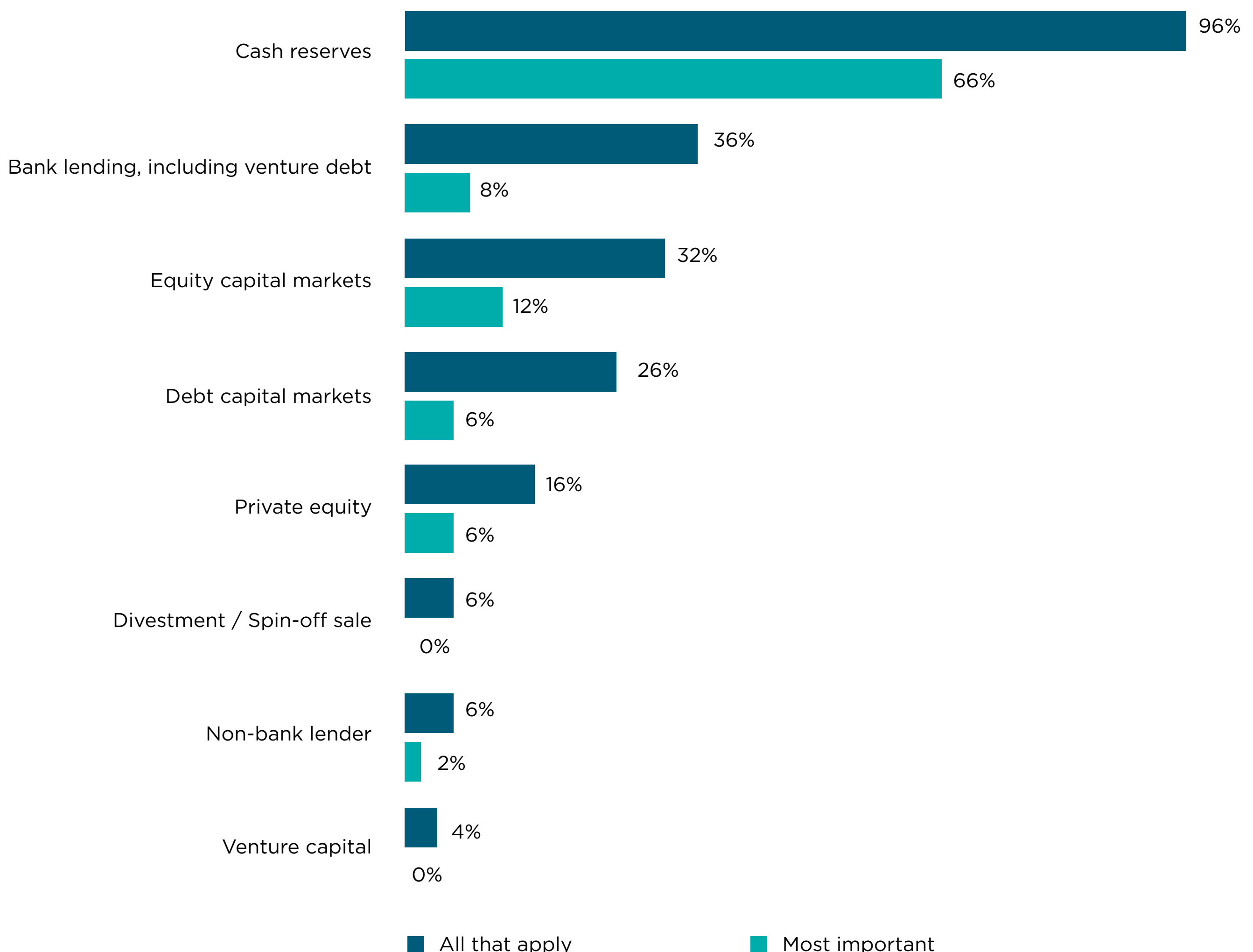
The flurry of biotech listings in 2021 – there were a record-breaking 100 during the year – as well as the heavy divestment record of pharmaceuticals companies over recent years as they trim their portfolios have bolstered the cash positions of many US life sciences companies.

M&A firepower in the biopharma industry worldwide reached an estimated US$1.2tn in 2021, according to EY figures, the highest for seven years. It is unsurprising, then, that nearly all buyers (96%) financed their most recent deals using cash reserves, and two-thirds say this was the most important source of funding. A distant second place for financing deals was bank loans (including venture debt), used by 36%, while the equity capital markets came third with 32%.

Cooler market

In last year's report, we highlighted dynamics that illustrated H2 2020 as a seller's market. This was also true in 2021, albeit to a lesser extent,

CHART 3. [BUYERS ONLY] HOW DID YOU FINANCE YOUR MOST RECENT M&A DEAL? (SELECT ALL THAT APPLY)

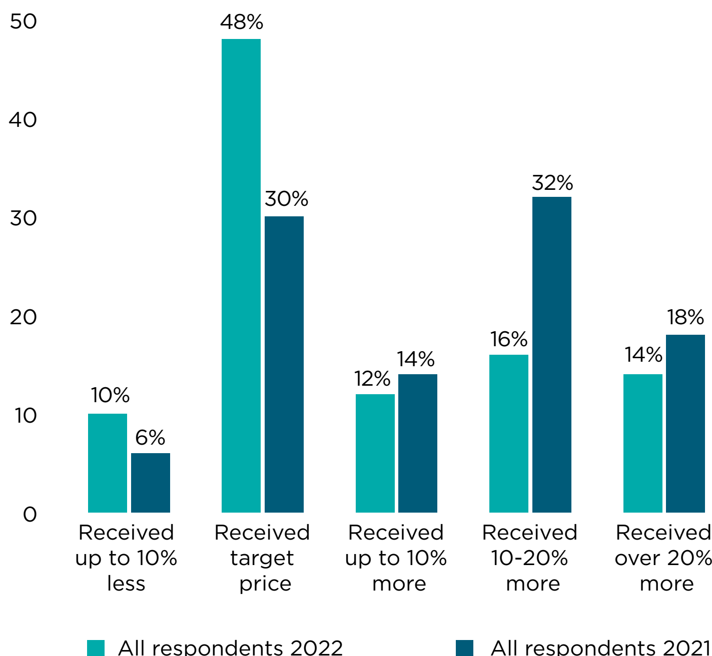


possibly as the M&A market cooled toward the end of the year and stock market valuations dropped as we moved through Q4. For example, after peaking in September at 5,449.33, the NASDAQ Biotechnology Index fell sharply for the rest of the year, and by mid-April 2022 stood at under 4,200.

Responses from this year's survey reflect this somewhat less heated deal market. Nearly half of sellers (48%) say they received the acquisition price they were targeting. And while a further 42% say they received more than their target price for their most recent sale (including 14% who say they received over a fifth more), this is down considerably from the 64% of sellers who reported the same in last year's research. There are also marginally more sellers this year (10%) who report receiving up to 10% less than their target price than was the case last year (6%).

With private equity firms flush with cash and their sights set on the healthcare segment – private equity deal value in healthcare rose by 109% to US$247bn in 2021 versus 2020, according to Mergermarket figures – life sciences dealmakers have clearly been considering the option of teaming up with buyout houses.

CHART 4. [FOR SELLERS ONLY] DID THE TARGET/SELLER SECURE THE BUYOUT (ACQUISITION PRICE) THAT THE TARGET/SELLER WAS AIMING FOR? (2022 VS. 2021)



Half of the buyers surveyed say they have considered doing a club deal over the past 18 months. However, just 34% of sellers report the same, with those respondents instead favoring venture capital investments (36%) and partnerships (42%). A similar share of buyers (44%) also report having considered a partnership over the last 18 months, making this the most popular option overall (43% of all respondents, just ahead of the 42% who cite club deals).

SPAC scrutiny

Our survey charts a conspicuous fall in the popularity of SPACs. During 2021, there were a record 613 US SPAC IPOs, representing 63% of the entire US IPO market for the year and more than double the previous high of 248 in 2020, according to SPAC Analytics.

But the shine has come off these vehicles, with just 33% of respondents saying they had considered SPACs as an option over the last 18 months, versus 51% who reported the same in last year's edition of this research.

According to Michael Fantozzi, Managing Member of Mintz's Boston Office and Chair of the firm's Corporate, Tax, Private Client & Immigration Division, "Some of this has to do with the disappointing post-merger performance of many companies opting to list via a SPAC and the increasing number of SPAC-related disputes. Furthermore, the SEC has now focused more on SPACs, with a view to improving

CHART 5. OVER THE LAST 18 MONTHS, DID YOU CONSIDER ANY OF THE FOLLOWING OPTIONS? (SELECT ALL THAT APPLY)

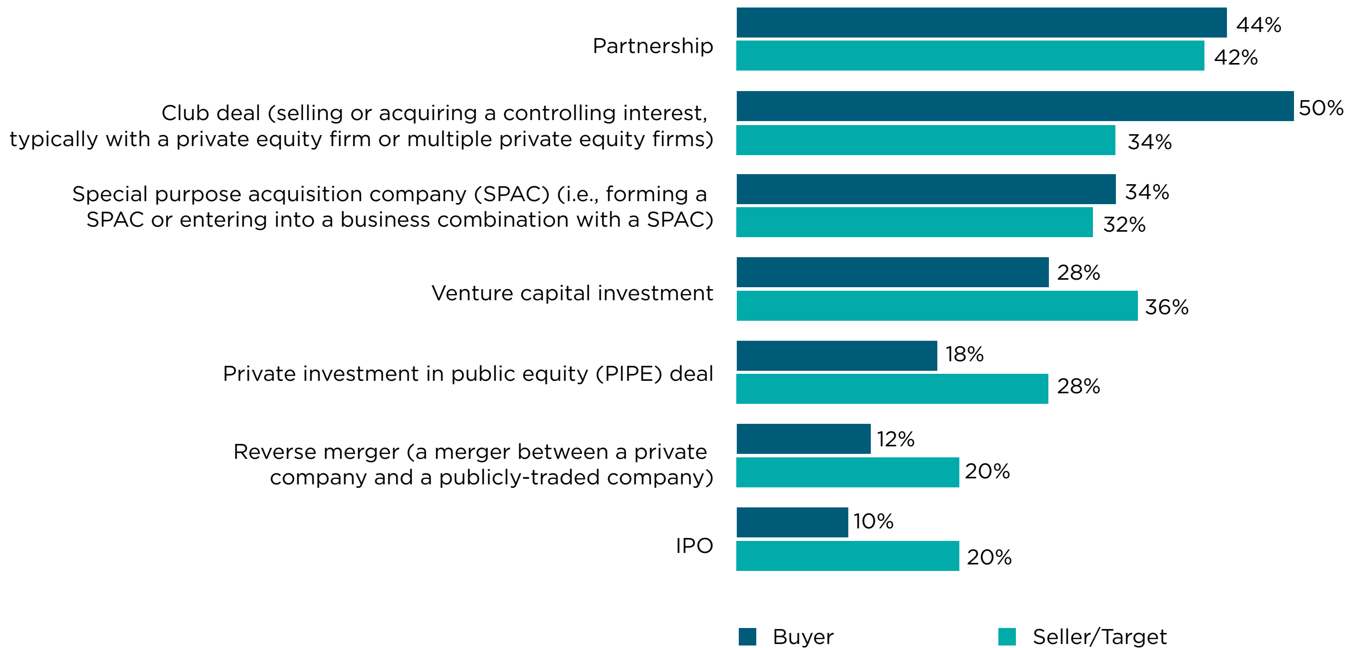
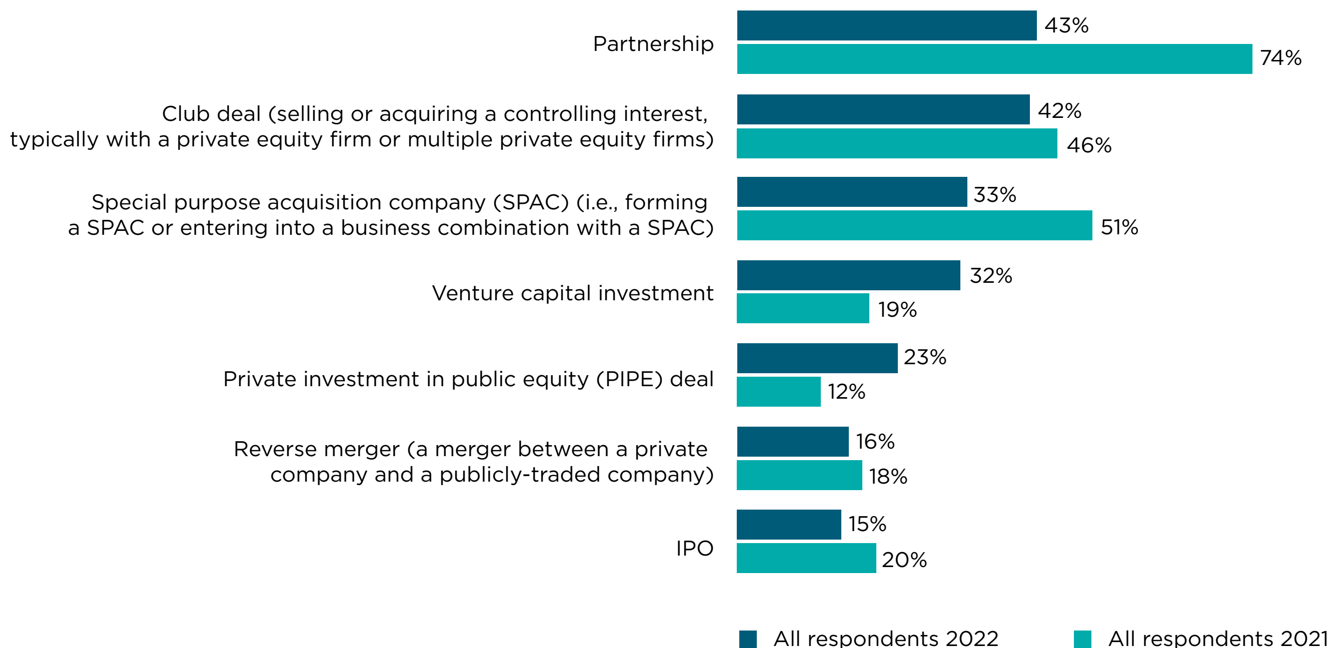


CHART 6. OVER THE LAST 18 MONTHS, DID YOU CONSIDER ANY OF THE FOLLOWING OPTIONS? (SELECT ALL THAT APPLY) (2022 VS. 2021)



their transparency and leveling the regulatory playing field between these vehicles and traditional IPOs, especially when it comes to forward-looking statements."

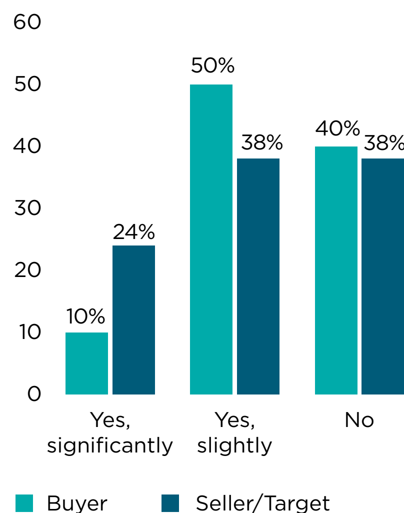
These developments are weighing on dealmakers' minds. Nearly two-thirds of both buyers (60%) and sellers (62%) say that the rising numbers of SPAC disputes and increasing SEC scrutiny have dampened their enthusiasm for these vehicles.

PARTNERSHIPS

Partnerships, which include collaborations, licensing and development deals, are a popular and flexible alternative to M&A in the life sciences industry. Mintz's Licensing & Collaborations Member John Cheney notes that, "When well-structured, partnerships can help organizations improve their R&D pipeline, expand their offerings to patients and customers, leverage disruptive technologies, and even test the water prior to a potential merger or acquisition." Illustrating the attractiveness of partnerships even to companies with high cash reserves, Pfizer tied up with gene-editing business Beam Therapeutics earlier in 2022 in a research collaboration.

In our survey, the most important reasons for buyers to have formed a partnership over the past 18 months are gaining access to a partner's particular capabilities and resources without having to deal with parts of the business extraneous to the company's strategy (23%) and forming connections with other organizations for potential new partnerships in the future (also 23%). A vice president of business development and strategy comments: "It has been a great experience working closely with other teams. When the collaboration levels click, we can actually make a difference in the field. There are many new opportunities created."

CHART 7. DISPUTES AROUND M&A TRANSACTIONS INVOLVING SPACS HAVE INCREASED, AS HAS SEC SCRUTINY OF THESE TRANSACTIONS. HAS THIS ACTIVITY NEGATIVELY IMPACTED YOUR INTEREST AND WILLINGNESS TO PURSUE SPAC TRANSACTIONS?



Sellers' motivations for seeking out partnerships are similar, with 29% emphasizing the formation of new connections for potential future partnerships. However, respondents are also concerned about regulatory hurdles in M&A and see partnerships as a less complex option, possibly, at least in part, because of strengthening antitrust enforcement in the US. Just under a quarter of sellers (24%) cite fewer regulatory hurdles than M&A as a reason for collaboration.

> Well-structured, partnerships can help organizations improve their R&D pipeline, expand their offerings to patients and customers, leverage disruptive technologies, and even test the water prior to a potential merger or acquisition."
>
> **John Cheney, Licensing & Collaborations Member, Mintz**

A lower-risk alternative

Partnerships can also offer a more straightforward alternative to M&A as they do not require the same type of often-time-consuming integration processes, with 18% of buyers and 14% sellers saying they allow parties to develop a long-term relationship without the complexities of integration inherent in a formal acquisition. Some also highlight the value of forging alliances at a time of intense competition, with 19% of

CHART 8. IF YOU CONSIDERED A PARTNERSHIP IN THE LAST 18 MONTHS, WHY DID YOU CONSIDER IT?

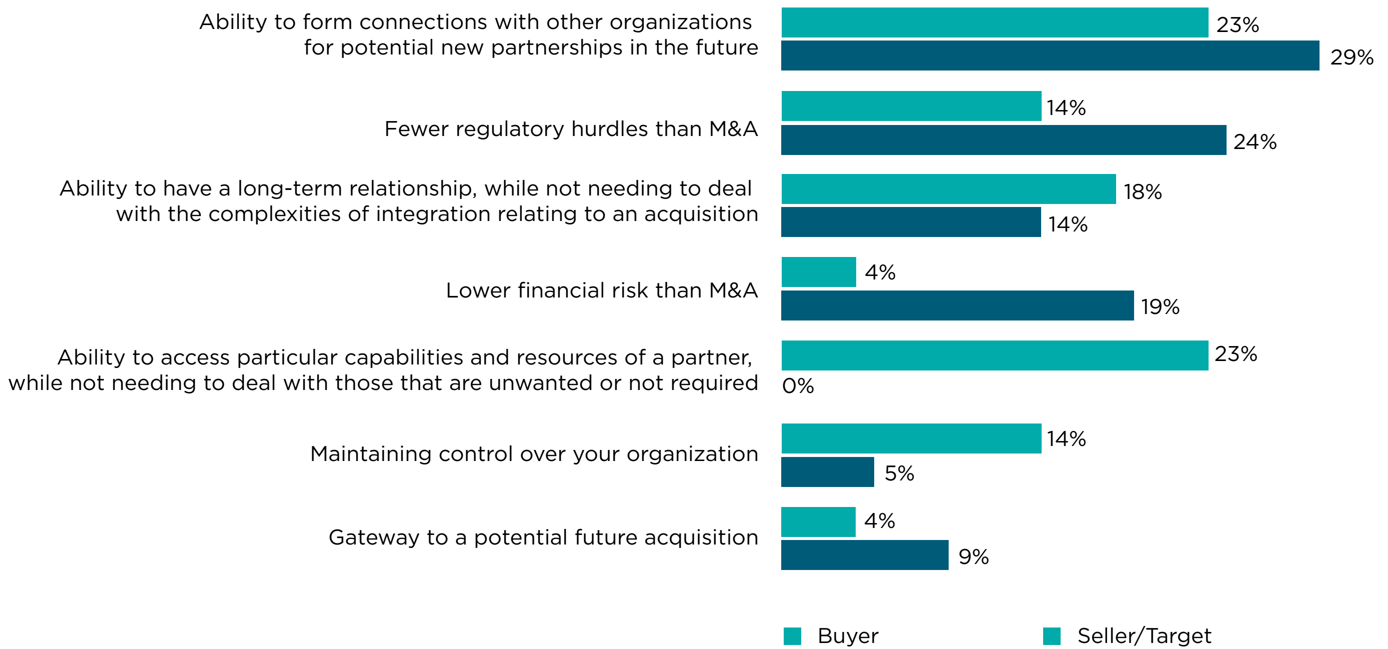


CHART 9. IF YOU CONSIDERED A PARTNERSHIP, WITH HOW MANY LIFE SCIENCES COMPANIES DID YOU ACTUALLY FORM A PARTNERSHIP DURING THE LAST 18 MONTHS?

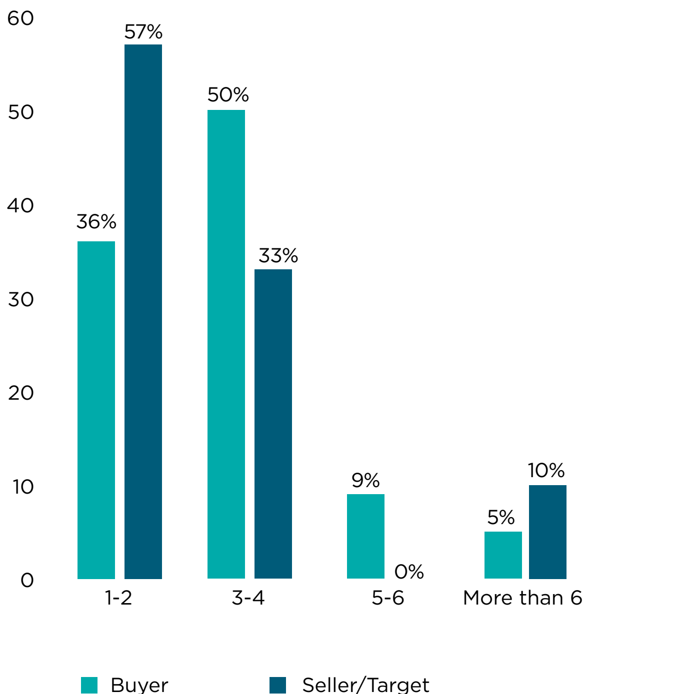
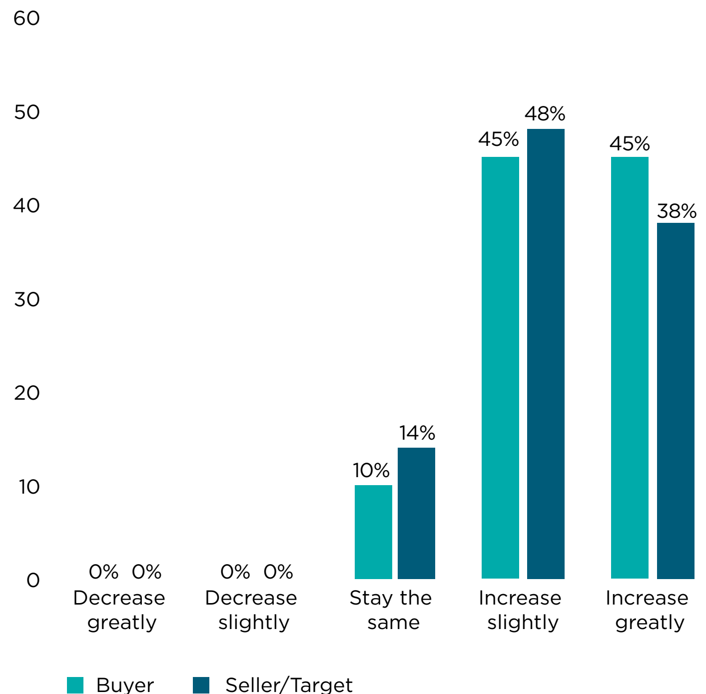


CHART 10. DID YOUR EXPERIENCE IN THE PARTNERSHIP(S) YOU ENTERED INTO INCREASE OR DECREASE YOUR APPETITE FOR OTHER PARTNERSHIPS IN THE FUTURE?



sellers saying they offer lower financial risk than M&A processes.

"The risk of financial and reputational loss is lower with partnerships," says a CFO. "When M&A deals don't work out, it impacts the seller and buyer companies a lot, and their stock prices are affected." A senior director of corporate development adds: "Considering the new acquisition models and M&A trends, I feel that partnerships are less complicated. There is no competition to deal with, and no complex bidding procedures."

As our survey shows, entering into multiple partnerships is frequently seen by life sciences companies as a preferable alternative to engaging in serial M&A deals. Of the respondents that formed a partnership over the last 18 months, 50% of buyers say they did so with three to four life sciences companies, while a further 14% did so with five or more. Sellers had a slightly lower appetite, with 57% forming between one and two such partnerships over the same period, although a further 33% formed between three and four.

The vast majority of respondents have had a positive experience with the partnerships they have formed over the past 18 months. Of those that forged alliances in this period, 90% of buyers and 86% of sellers say that doing so has increased their appetite for other partnerships in the future, while no respondents say their appetite has decreased.

CHART 11. WITH HOW MANY LIFE SCIENCES COMPANIES WOULD YOU HOPE TO FORM A PARTNERSHIP DURING THE NEXT 18 MONTHS?

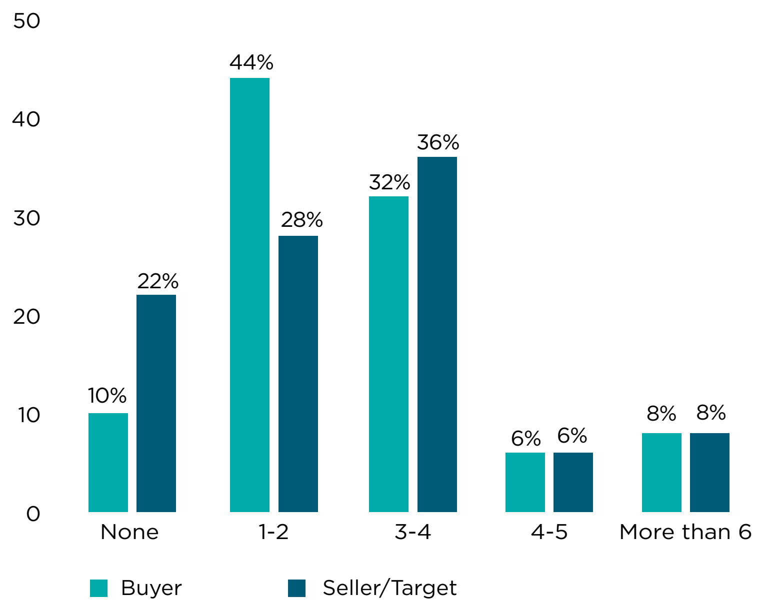
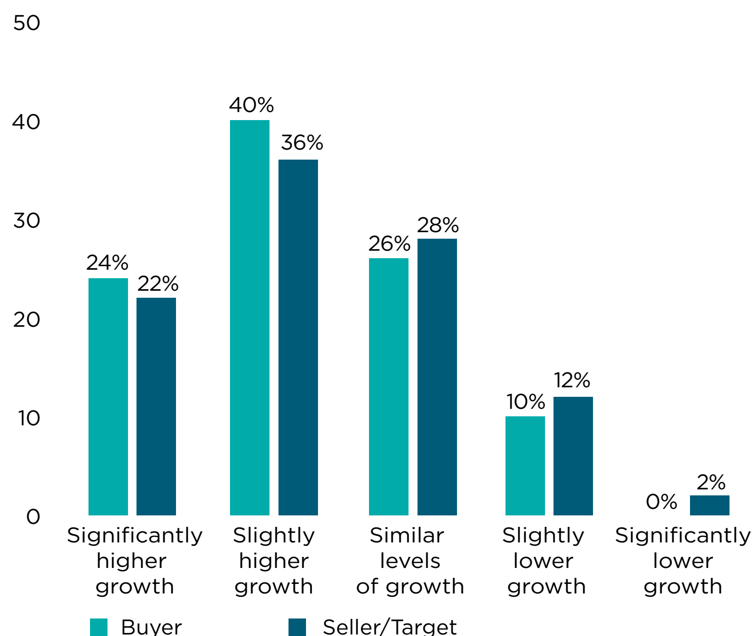


CHART 12. WHAT LEVEL OF GROWTH IN THE NUMBER OF PARTNERSHIPS IN THE US LIFE SCIENCES INDUSTRY DO YOU EXPECT TO SEE COMPARED TO THE NUMBER OF M&A DEALS IN THE US LIFE SCIENCES INDUSTRY OVER THE NEXT 18 MONTHS?



For many, partnerships are proving to be a relatively lower-risk route to capturing innovation, as summed up by one corporate development director: "Previous partnerships have increased our appetite for new ones. We definitely want to explore new opportunities with mutual benefits. There isn't any harm in experimenting with new ideas."

A rising trend

It seems as though partnerships will continue to come to the fore. Irrespective of their past experience with them, 46% of buyers and 50% of sellers hope to form at least three partnerships with life sciences companies over the next 18 months. A further 44% of buyers and 28% of sellers hope to form at least one such partnership, while 14% of both buyers and sellers are looking to pair up with five or more partner organizations.

The perceived flexibility of partnerships and the fact that they avoid the same level of risk of deal failure or antitrust investigations associated with M&A are leading to predictions of more alliances in the future. Nearly two-thirds (64%) of buyers and 58% of sellers expect to see higher growth in the number of partnerships as compared to the number of M&A deals in the US life sciences industry over the next 18 months, including just under a quarter of both respondent groups who forecast a significant uptick in partnerships.

However, some of the qualitative responses to our survey do highlight the limitations of partnerships, in particular when it comes to targeting new markets and generating strong growth in a relatively short timeframe. Here, M&A is the strategy of choice, as a CEO says: "M&A deals are more effective when it comes to accelerating growth. When companies want to expand to foreign markets, M&A would be more beneficial to them." A CFO adds: "Companies cannot realize their growth targets based on partnerships alone. To enter new markets and attract new clientele, they need to think about M&A."

ANTITRUST UNDER BIDEN

In last year's report, we highlighted that 60% of respondents believed that the then-incoming Biden-Harris administration would have at least a somewhat favorable impact on life sciences dealmaking, with the prospect of greater policy stability and a more international outlook among the reasons cited.

Early on, President Biden made clear that antitrust would be an area of focus for his administration. The past year has seen budgets increase for both the Justice Department and Federal Trade Commission (FTC), while the US is now part of a multilateral task force formed to review pharmaceutical merger enforcement, which aims to tackle rising drug prices and secure drug supply chain resilience, among other things.

Enforcement effects

Against this backdrop, respondents are increasingly cognizant of the potential effects of more stringent antitrust rules. A noticeable share of both buyers and sellers (34% each) say stricter enforcement will alter their deal plans negatively, including 16% of buyers who say the effect will be significant.

"There will be a sizable impact," says a strategy director. "We might not be able to fulfill our company's growth objectives, and we might have to set up a separate team and hire legal expertise to manage the antitrust enforcements."

And while around half of respondents (44% of buyers and 52% of sellers) say the administration's antitrust focus will not have a noticeable effect on their M&A plans, many do point to hurdles in getting deals over the finish line. As a director of corporate development comments: "There will not be an impact on our interest in M&A, but there may be more challenges and longer deal timelines. We will have to find ways of mitigating this and will use advisors to help the process along."

When asked to assess the US M&A landscape more broadly in the light of stricter antitrust enforcement, most respondents expect this to have a negative effect, with fewer than a third expecting there to be no impact. Almost two-thirds of buyers (including 32% who expect the

CHART 13. DO YOU THINK THE BIDEN ADMINISTRATION'S RENEWED FOCUS ON ANTITRUST ENFORCEMENT IN US M&A TRANSACTIONS WILL HAVE A POSITIVE OR NEGATIVE IMPACT ON YOUR INTEREST IN M&A ACTIVITY?

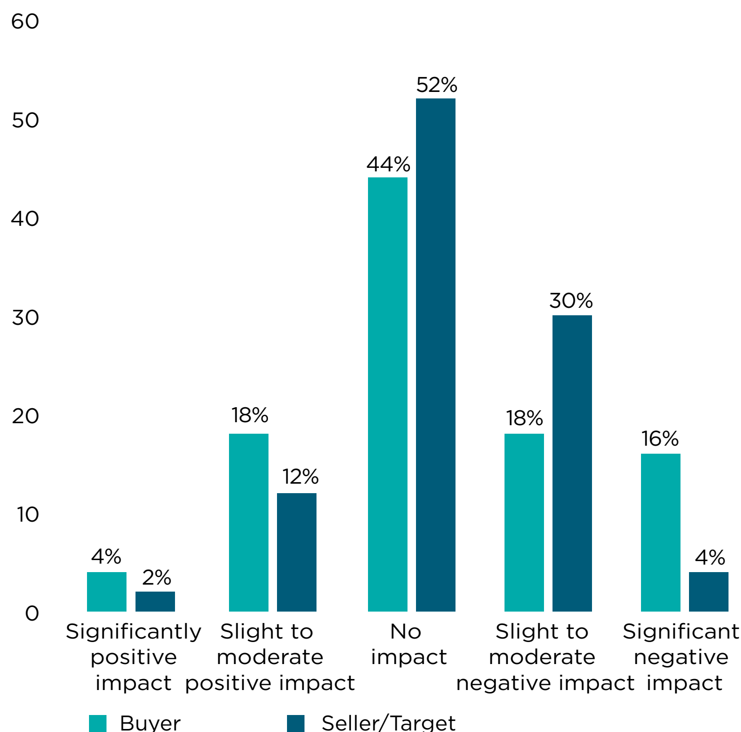
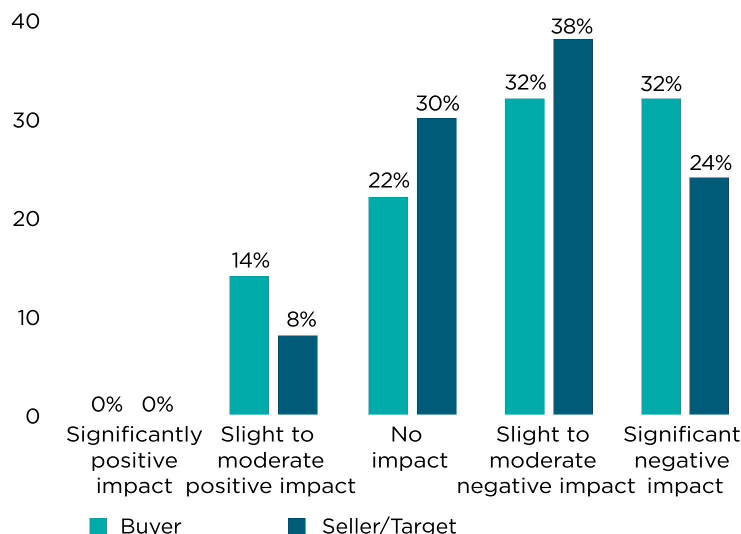


CHART 14. DO YOU THINK THE BIDEN ADMINISTRATION'S RENEWED FOCUS ON ANTITRUST ENFORCEMENT IN US M&A TRANSACTIONS WILL HAVE A POSITIVE OR NEGATIVE IMPACT ON US M&A DEAL VOLUME OVERALL?



impact to be significant) and 62% of sellers are anticipating a negative impact on the deal market. "I would expect the impact on US M&A volumes to be considerable," says a CEO. "Companies might have to look to other markets to complete their deals under more favorable regimes."

These responses – to their own plans and to US M&A generally – may seem contradictory. However, they appear to imply that life sciences dealmakers are either underestimating the potential impact of firmer antitrust enforcement on their own plans and/or overestimating their ability to mitigate the effects compared to the wider market. Hedging their bets, one CEO suggests their organization "can reduce any negative impact by collaborating with the authorities more often. However, the changes in antitrust enforcement will extend deal timelines, at least for the next few months."

// PART 3

POST-MERGER INTEGRATION

Merging businesses is always challenging, and the pandemic has further complicated things, with personnel and cultural issues among the matters respondents are seeking to improve.

Finding the right target and outbidding others in a competitive market for life sciences deals is difficult enough, but it's at the integration stage where many deals go awry. This is especially true in an industry as complex and highly regulated as life sciences, where customer and patient safety have to remain the top priority.

In 2020, stay-at-home orders and travel bans clearly made this process significantly more cumbersome than usual, but the pandemic was far from over in 2021 and many of the challenges of remote working and building relationships from a distance were still in evidence.

STRATEGIC ISSUES

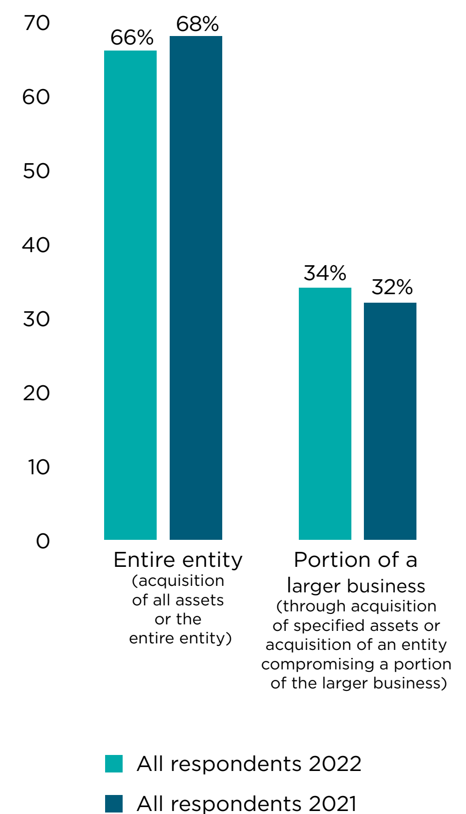
In their most recent deal, two-thirds of buyers acquired a whole entity as opposed to a portion of a business that would need to be carved out of its seller, down only marginally from the 68% who reported the same in last year's survey. Moving into the post-transaction phase, 44% of buyers say they opted for a full integration model in their most recent deal, the top answer for acquirers.

But among sellers, the largest share (42%) state that the target remained a standalone entity after the deal. What's more, when compared with our previous surveys on this topic, there has been a noticeable uptick in respondents saying their last deal involved partial integration post-deal, rising to 28% of respondent answers from 17% last year.

These responses likely at in least part reflect the growing prevalence of acquisitions of smaller companies, which can remain more agile when not subsumed into a larger organization. It may also be a function of the popularity of partnerships, which do not require integration. Yet they are also likely to be a sign of the difficulty of attempting to integrate businesses fully, particularly in an uncertain environment and when face-to-face contact has been curtailed.

As Dean Zioze, Chair of Mintz's Mergers & Acquisitions Practice, says,

CHART 15. [FOR BUYERS ONLY] WAS THE TARGET/SELLER A... ? (2022 VS. 2021)



Effecting wide-scale changes following an acquisition can be a time-consuming undertaking for buyers. While the goal of integration is to capitalize on synergies, efficiencies, and cost savings, getting this right has the potential to divert management resources away from business growth and day-to-day operations."

Dean Zioze, Chair of Mergers & Acquisitions Practice, Mintz

CHART 16. WHAT WAS THE INTEGRATION MODEL FOR THE TARGET/SELLER? (SELECT ONE)

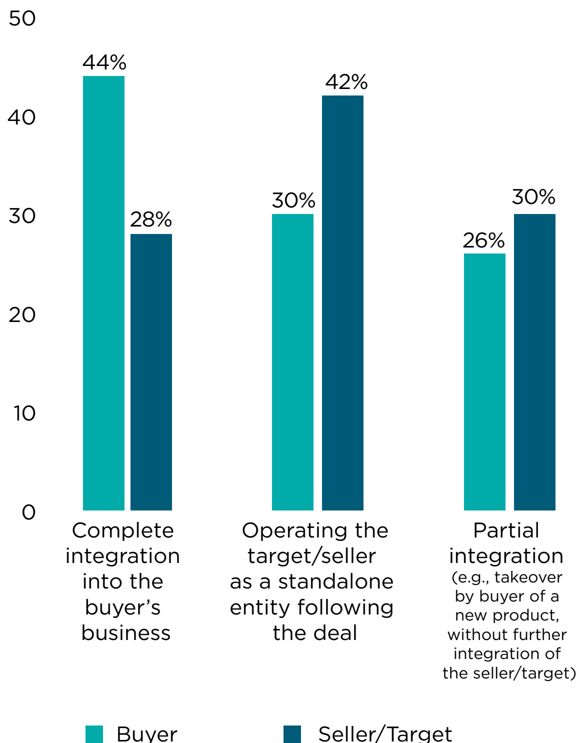


CHART 17. WHAT WAS THE INTEGRATION MODEL FOR THE TARGET/SELLER? (SELECT ONE) (2022 VS. 2021)

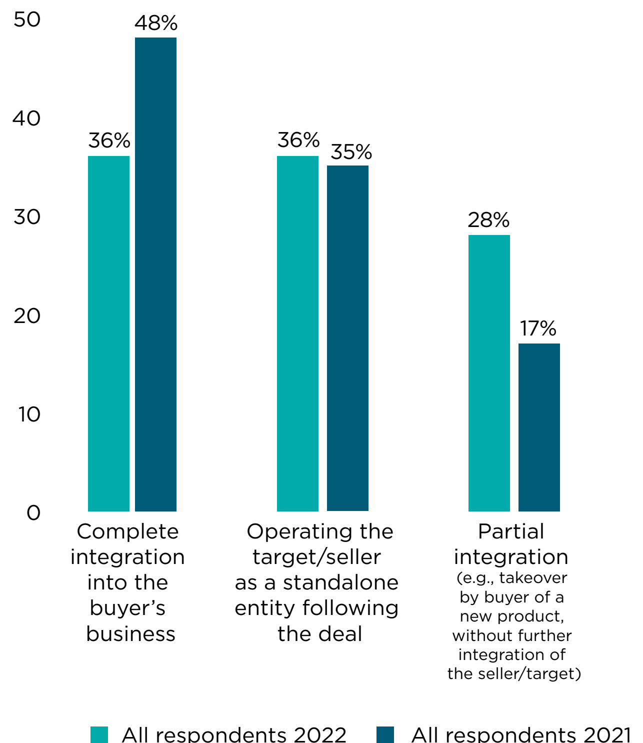


CHART 18. HOW SUCCESSFUL DO YOU FEEL THE INTEGRATION WAS OR HAS BEEN TO DATE?

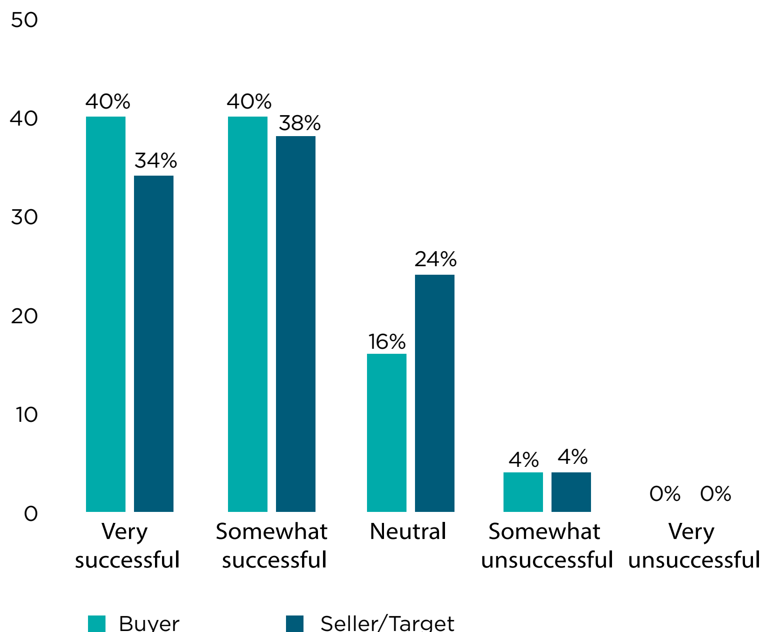
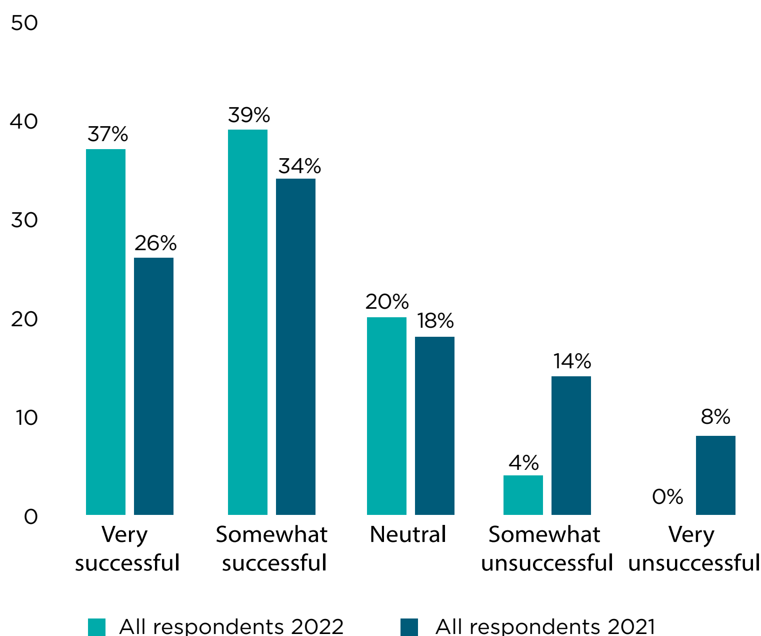


CHART 19. HOW SUCCESSFUL DO YOU FEEL THE INTEGRATION WAS OR HAS BEEN TO DATE? (2022 VS. 2021)



"Effecting wide-scale changes following an acquisition can be a time-consuming undertaking for buyers. While the goal of integration is to capitalize on synergies, efficiencies, and cost savings, getting this right has the potential to divert management resources away from business growth and day-to-day operations. This is why it's essential for buyers to dedicate time and resources at the outset of the merger process to plan for post-merger integration. For buyers, a successful post-acquisition outcome hinges on the successful pre-acquisition planning for integration."

Indeed, many respondents report that integration was a lengthy process – and more so than the previous year's responses suggest. Over half (55%) say post-deal integration took between seven and 12 months and a further 14% say it took longer than 12 months, representing a considerable increase on last year's results. Then, nearly two-thirds said the deal took just four to six months and just 30% said it took seven months or longer.

EVALUATING SUCCESS

Despite integration taking up more time for this year's survey participants, respondents are generally positive about how successful their latest deal has been. Buyers are slightly more bullish than sellers, with 80% of acquirers saying the deal has been a success, including 40% rating their latest transaction as very successful, while 72% of those disposing of a business

report a successful outcome. Only 4% of buyers and sellers say their most recent deal was somewhat unsuccessful and none reports a very unsuccessful outcome.

It may be that the additional time taken to work through integration issues has borne fruit. Careful planning and a detailed approach to execution are vital to the success of an integration, especially when the business requires high levels of regulatory compliance and when the backdrop is challenging for operational aspects. Respondents may well also have learned some valuable lessons during the pandemic, prioritizing successful outcomes over speed.

As one CFO comments: "The post-closing integration was undertaken gradually. We had to contemplate the short-term effects of COVID-19 on the working environment." A vice president of strategy adds: "The targets were changed because of the external climate. We did not want to overburden teams right from the time of integration. We allowed a settle period for all employees."

Overall, respondents are more optimistic about the success of their integration processes than were last year's survey participants. More than one-third (37%) of respondents this year say their post-deal integration has been very successful, versus around a quarter (26%) who said the same last year. Further, last year saw 22% say the integration had not been successful, including 8% who said it had been very unsuccessful, whereas only 4% of this year's cohort describe their integration as unsuccessful.

New measures

For buyers, the most important measure on average for determining the success of their integration is an increase in market share, scoring 4.3 out of five, followed by the advance of products through late-stage clinical trials, regulatory approval or sales at 4.22. An increase in market share is also the top response for sellers (4.22), although they are also concerned, naturally, with achieving earn-outs or other milestones (4.14).

This year also demonstrates the rise of ESG and sustainability on the agenda of US life sciences dealmakers as societal and regulatory emphasis builds in these areas. In a 2020 PwC Health Research Institute survey, 62% of US consumers said they would view an organization more positively if it was taking action to address the social determinants of health. Life sciences management teams also have their eye on environmental issues – a 2022 EY survey of CEOs in the industry cited the acceleration of climate change impacts and increasing pressures to build sustainability as the top risk to their future growth strategy.

As a result, many respondents point to the need to address non-financial aspects of transactions as well as meet financial targets, with measures put in place to help manage these. "Improvements in the ESG framework were one of the agreements," explains a CFO. A CEO echoes this: "Yearly milestones have been set and we are looking at the financial and non-financial metrics, including sustainability. We want to move ahead with a positive attitude and consider all aspects of the business."

"A company's ESG policies are becoming increasingly important to a number of constituencies, including customers, employees, investors and regulators," according to Megan Gates, Chair of the Corporate Section and Co-Chair of the Securities & Capital Markets Practice at Mintz. "Reconciling approaches to ESG is likely to gain more focus for deal managers as they integrate businesses and workforces following mergers and acquisitions."

These success factors mark something of a shift in priorities among US life sciences dealmakers. In the previous two years, overcoming regulatory obstacles (other than those related to advancing products through clinical trials) had ranked as the most important measure, scoring 4.59 out of five last year. This time around, it comes in as the least important. This may reflect a pragmatic stance among buyers or sellers as the regulatory bar in areas such as antitrust has risen – they may take the view that setting success criteria against a moving target is not particularly helpful or meaningful.

A company's ESG policies are becoming increasingly important to a number of constituencies, including customers, employees, investors and regulators."

Megan Gates, Chair of the Corporate Section and Co-Chair of the Securities & Capital Markets Practice, Mintz

CHART 20. WHAT MEASUREMENTS DID YOU OR WILL YOU USE TO DETERMINE INTEGRATION SUCCESS? (RATE EACH OPTION ON A SCALE OF 1 TO 5, WHERE 5 = VERY IMPORTANT AND 1 = NOT AT ALL IMPORTANT)

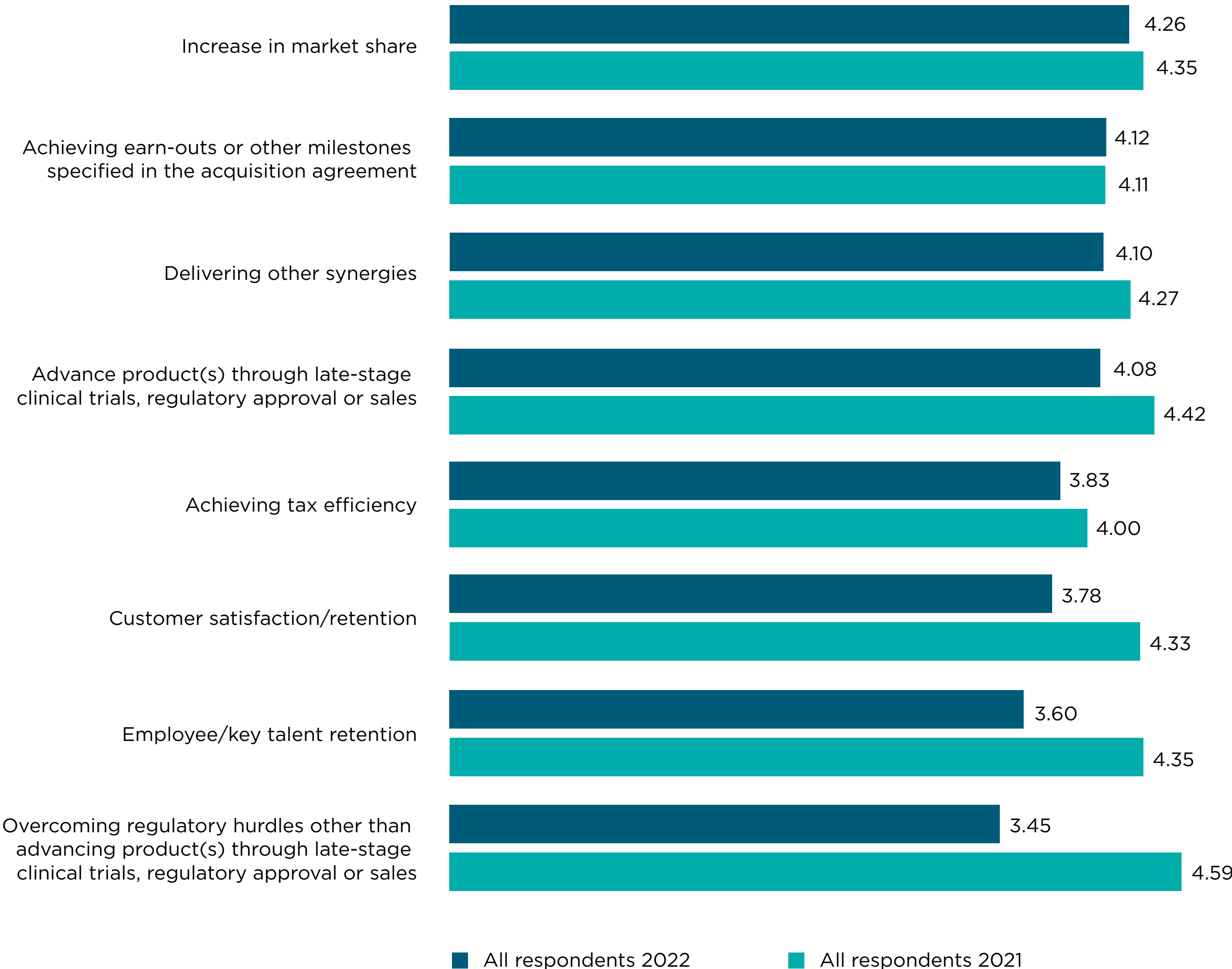
	Buyer	Seller/Target
Increase in market share	4.30	4.22
Achieving earn-outs or other milestones specified in the acquisition agreement	4.10	4.14
Delivering other synergies	4.12	4.08
Advance product(s) through late-stage clinical trials, regulatory approval or sales	4.22	3.94
Achieving tax efficiency	3.74	3.92
Customer satisfaction/retention	3.88	3.68
Employee/key talent retention	3.68	3.52
Overcoming regulatory hurdles other than advancing product(s) through late-stage clinical trials, regulatory approval or sales	3.52	3.38

Perhaps surprisingly, given the need for skilled staff in the life sciences industry, employee and key talent retention has also slipped down the list of success factors. In our last survey, this came in fourth with a score of 4.35, yet in this survey it came in second to last with an importance ranking of just 3.6 out of five.

OVERCOMING CHALLENGES

The fact that retaining key talent has declined in importance for dealmakers when assessing the success of their transactions is perhaps explained by the finding that this was the least challenging aspect of integration in their most recent deal. Just 4% of buyers and 6% of sellers cite this as a difficulty, much the same as in our previous study. This may be because some companies focused more on retaining staff to ensure

CHART 21. WHAT MEASUREMENTS DID YOU OR WILL YOU USE TO DETERMINE INTEGRATION SUCCESS? (RATE EACH OPTION ON A SCALE OF 1 TO 5, WHERE 5 = VERY IMPORTANT AND 1 = NOT AT ALL IMPORTANT) (2022 VS. 2021)



continuity of operations in an uncertain environment.

"We saw some key changes in the way we managed employee retention challenges," says a CFO. "We held on to most of the talent because we did not know how the demand fluctuations would affect operations."

Instead, the list of challenges is topped by the issue of advancing products to later clinical stage trials, receiving regulatory approval or initiating sales, with 34% of sellers and 22% of buyers citing this. This is a curious finding, given that this is one of the key success factors for buyers, and perhaps suggests that many dealmakers were either unable to assess this aspect adequately during due diligence or that it did not receive enough focus during the integration planning phase.

This was also a key concern among respondents in last year's research, with 18% of survey participants overall citing this as the number-one challenge (versus 28% this year). However, last year, cultural differences (other than retaining staff) was the top response, with 22% facing such issues during integration. This has fallen to third on the list of challenges for this year's group of respondents with 14%, just below intellectual property rights with 16%.

That said, a greater focus on cultural issues features high on dealmakers' list of factors that would improve future integrations, as we will explore

CHART 22. ONCE YOUR MOST RECENT M&A DEAL CLOSED, IF ANY PRODUCT(S) WAS/WERE ABANDONED/TERMINATED, WHAT WERE THE MAIN REASONS? (SELECT ALL THAT APPLY)

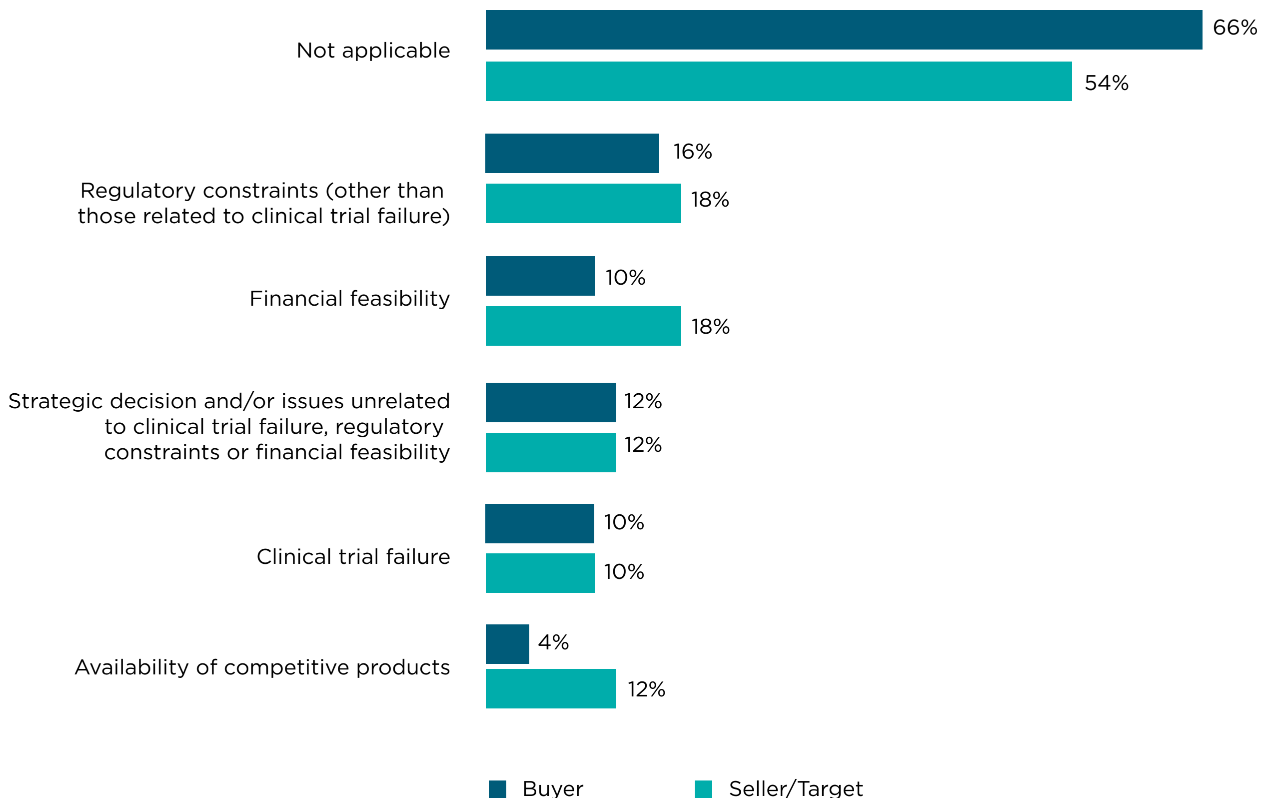
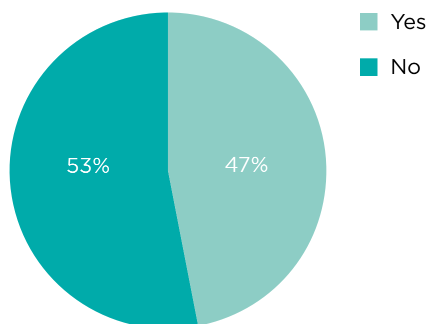


CHART 23. DID YOUR M&A TRANSACTION INVOLVE EARN-OUT PAYMENTS PAYABLE ON THE ACHIEVEMENT OF SIGNIFICANT MILESTONES, SUCH AS THOSE RELATING TO DEVELOPMENT OR COMMERCIALIZATION?



later in this section. This suggests there is much more work to be done by life sciences companies to make the transition smoother for employees and therefore deliver the desired results from the transaction.

Due diligence issues

If buyers and sellers are to achieve maximum value from their transactions, especially where the deal rationale is to diversify product portfolios or to add to the R&D pipeline, there needs to be sufficient attention paid to products' viability or market dynamics during the due diligence phase, taking account of potential regulatory and financial matters. Some respondents may well have faced issues with this during the pandemic.

While most respondents did not have to terminate a product (66% of buyers and 54% of sellers say this), a sizable minority did, which suggests that some dealmakers may not have been able to evaluate a product's viability or market dynamics adequately during due diligence before the transaction was consummated. In fact, 18% of sellers and 16% of buyers say that, in their most recent M&A deal, there was at least one instance of a product having to be abandoned due to regulatory constraints unrelated to clinical trial failure. A further 18% of sellers say that at least one product was abandoned because of issues with its financial feasibility, while 12% say this happened because of competitor products.

The value of earn-outs

Among those respondents that had to abandon a deal in the past 18 months, divergent valuation expectations are frequently mentioned as a reason why. For example, one senior director says: "The deal was not completed because of the significant valuation gaps. During the period, sellers and buyers had different perspectives about the future of the target company."

One tool that may be effective in bridging these gaps, albeit not appropriate in each and very circumstance, is the use of earn-outs. These are a key feature of life sciences deals, given the need for risk-sharing in areas where products may fail clinical trials or where regulatory issues can emerge. They are also useful in times of high uncertainty – such as during the pandemic – and when valuations are elevated, offering a creative way of sealing a deal.

Given the backdrop of the past 18 months, it is unsurprising that just under half of respondents (47%) say their most recent transaction involved earn-out payments payable on the achievement of significant milestones, such as development or commercialization. As one CFO explains: "We had to involve the earn-outs because of the market threats. It would not be worth the investment if the financial output was not at the desired level. We had to see consistent growth."

"The transaction was taking place when the external challenges were increasing and the markets were unpredictable," adds a chief development officer. "So, we had to set some financial goals for the target to achieve."

MERGING IN A PANDEMIC

While M&A has continued at a strong pace through the pandemic, the crisis has contributed to challenges in formulating an appropriate strategy, performing robust due diligence, making sense of a target's financial projections and creating cohesive organizations post-transaction.

Yet the deployment of technology and increased use of advisors has helped smooth the process for dealmakers across all sectors, with life sciences being no exception. With more experience in transacting deals in a pandemic, just 25% of respondents this year say they made changes to their typical post-closing integration process in light of the COVID-19 crisis, down noticeably from the 36% who reported the same in last year's research.

Among those that did make some adjustments, the use of technology is mentioned frequently. "Investments in technology increased significantly," says a CFO. "We had not planned this and it's not the typical way we complete the integration process. However, it was the need of the hour." A director of corporate development also comments: "The crisis did change the way we approached integration. We could not use the standard procedures because a lot of the functionalities could only be completed using online solutions."

As dealmakers have become more accustomed to completing M&A in the new environment, there were far fewer terminated deals than we saw last year. Less than a quarter (24%) of respondents to this year's research say they were involved in a deal over the last 18 months that started but failed to complete. This is a notable drop from the 44% of respondents who reported the same last year. Many employed advisors to help them navigate through the process during what continued to be an uncertain time. "We used external help and consultations with local advisors were helpful," explains a CFO. "They knew the extent of damage that could be caused by the COVID-19 crisis."

A vice president of business development and strategy says third-party support was essential to forging ahead with their deal: "We were only involved in deals that reached completion. We hired external advisors to help us through the process. It was easier since they provided critical insights as needed."

And among those that managed to complete a deal, as we mentioned earlier in the report, companies factored in longer timelines to complete the integration process as a pragmatic response to remote working patterns. "In light of this crisis, we implemented the delegation process slowly," says a CFO. "There

CHART 24. IN THE LAST 18 MONTHS, WERE YOU INVOLVED IN ANY M&A DEALS THAT STARTED BUT DID NOT REACH COMPLETION (A DEAL WAS TERMINATED BEFORE CLOSING)? (2022 VS. 2021)

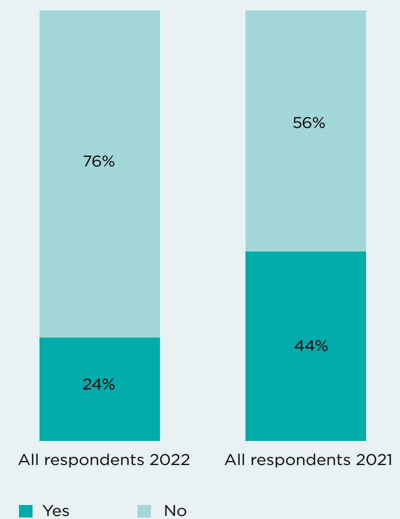
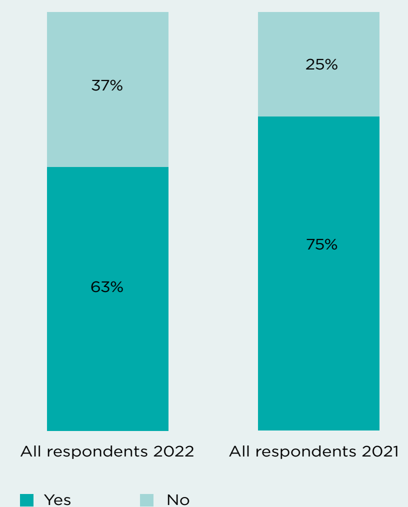


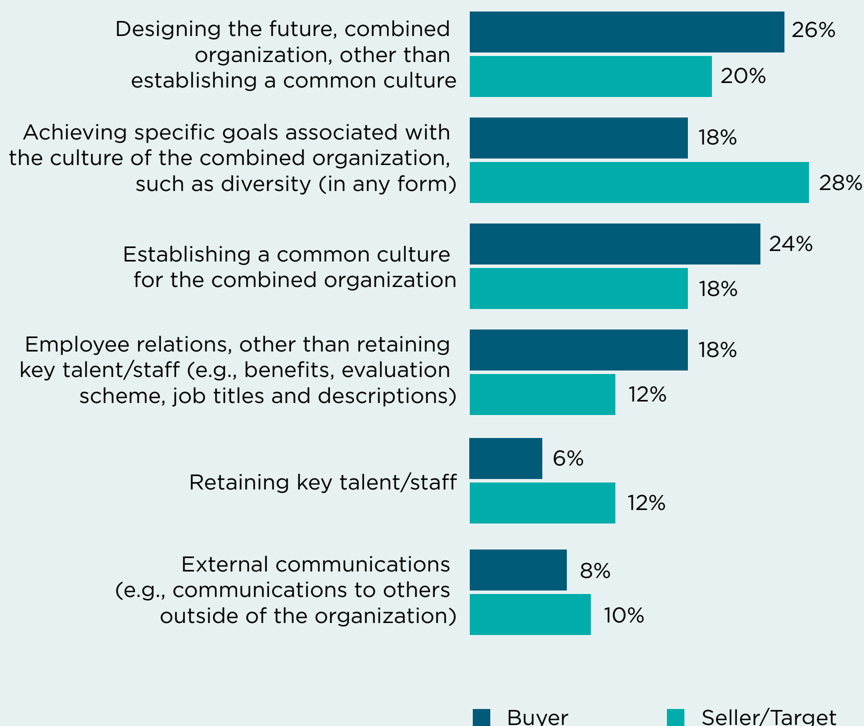
CHART 25. IF "YES" TO THE PREVIOUS QUESTION, DID COVID-19-RELATED DISRUPTION CONTRIBUTE TO THE TERMINATION OF ANY OF THOSE DEALS? (2022 VS. 2021)



were many talented team members, and the responsibilities were assigned after most of the COVID-19 threats passed."

And yet still around a quarter of respondents were involved in a deal that failed to complete over the past 18 months. The pandemic was a contributing factor for most of these terminated transactions (63% say this), although this is down from our most recent prior survey, when three-quarters cited COVID-19. Indeed, the pandemic created multiple challenges for some buyers. "It was very difficult to connect with the seller," says a vice president and general manager. "The due diligence process could not be conducted as we wanted... There were challenges collecting information and researching prospects. We could not gauge the future of the target with the limited amount of information at hand."

CHART 26. WHAT WAS THE MOST CHALLENGING CULTURAL ASPECT OF THE INTEGRATION? (SELECT ONE)



THE QUESTION OF CULTURE

While cultural differences have moved down the list of obstacles to integration compared with last year, many respondents did find this a difficult issue to resolve effectively.

Yet this is a key item in any M&A deal, especially at a time when people have been working remotely and many staff have been considering their futures and reassessing their work-life priorities during a period dubbed "the great resignation." Three-quarters of C-suite executives that responded to a 2020 Accenture survey agreed that getting the talent and cultural aspects in an M&A deal right had increased in importance in light of the COVID-19 crisis.

Differences in views on this topic are encapsulated by the varying opinions of buyers and sellers about what was most challenging in their most recent deal. For buyers, the biggest cultural concern was designing the future, combined organization, mentioned by 26% (versus 20% of sellers), followed by establishing a common culture (24%, against 18% of sellers).

"That was the most difficult aspect," says a director of corporate strategy. "With so many varied expectations and leadership styles, it was challenging to create the foundation for a common culture."

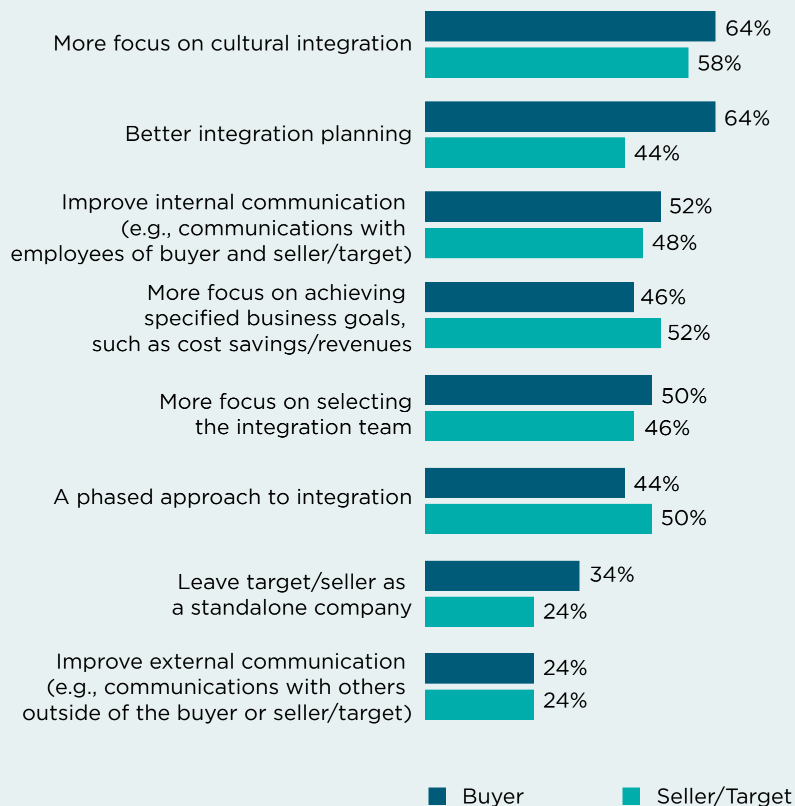
For sellers the top issue was achieving specific goals associated with the culture of the combined

organization, such as diversity, being cited by 28% of targets (and highlighted by just 18% of buyers). These data points raise interesting questions about the way in which buyers and sellers each approach a deal. The latter's focus perhaps implies a more protective stance on their part, insofar as establishing specific goals allows sellers to hold buyers to their word. In the event of a cultural sea change, such as a merger or acquisition can typically entail, it seems quite understandable that a seller would like to set concrete expectations for both parties. On the other side of the aisle, that buyers, having made a large financial commitment and with their eye on the big picture, focus more on the general concept of designing the future organization is also hardly unexpected.

This difference might suggest that some buyers could be attempting to impose a culture on the merged entity or that they are perhaps setting targets that are difficult to achieve. As one CEO comments: "Building a common culture takes a lot of time, but the acquiring team wanted to make changes overnight. They were too ambitious about this aspect, and this is the main reason for the process being challenging."

A CFO also says: "Reaching specific goals, including around gender diversity, was challenging, especially when we also had to balance other factors like the performance of individuals and their experience levels."

CHART 27. WHICH FACTORS WOULD IMPROVE FUTURE INTEGRATIONS? (SELECT ALL THAT APPLY)

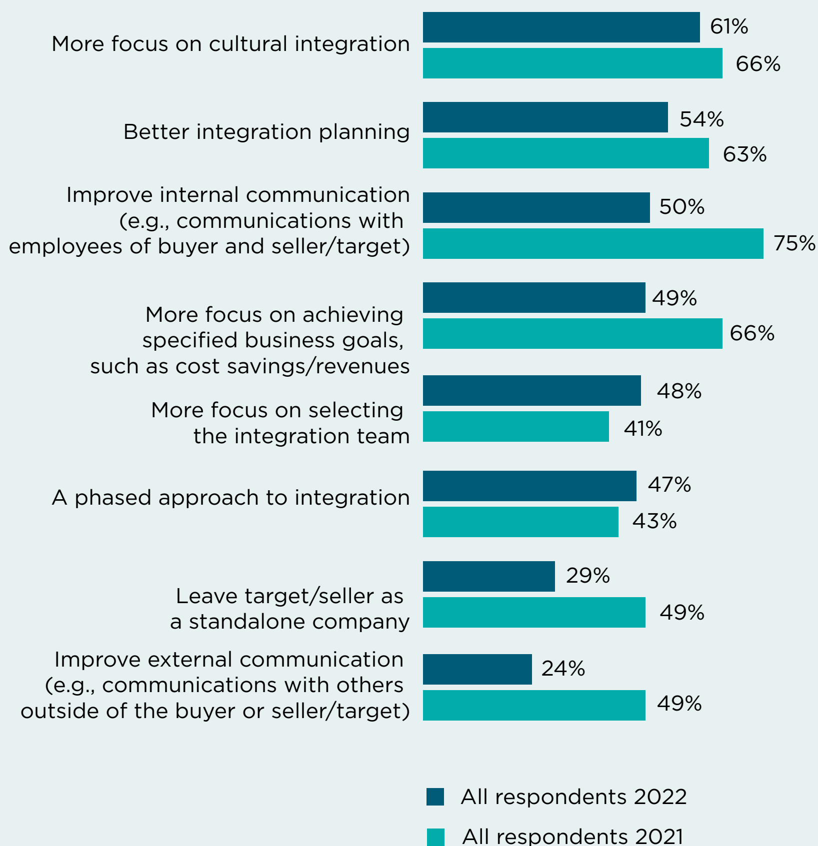


No shortcuts

Cultural issues need to be approached with sensitivity and fairness if a deal is to deliver its intended outcomes. And management teams should be prepared for cultural integration to take longer than anticipated. "Overall, the decision-making process, operations and collaboration levels depend on building a common culture," says a CFO. "We were unable to establish this within the dedicated amount of time."

This is why careful planning is so integral to the successful creation of a common culture. With so many moving parts and,

CHART 28. WHICH FACTORS WOULD IMPROVE FUTURE INTEGRATIONS? (SELECT ALL THAT APPLY) (2022 VS. 2021)



sometimes, competing agendas, creating a common culture needs to be a major consideration even before the deal is signed. "There has to be a shared vision for the company," explains a senior vice president of corporate development. "This means sitting down to discuss the issue and ensuring compliance as well as employee satisfaction. Bringing the adequate amount of diversity can be challenging as it can mean changing some job roles."

Nearly two-thirds of buyers (64%) and over half of sellers (58%) say they will benefit in future deals from focusing more on cultural integration. "Establishing a common culture is always a challenge," admits a chief strategy and product officer. "People are accustomed to working a certain way, and they are not ready to adapt to a new office culture. It takes a lot of planning and motivation."

Dealmakers have also learned other valuable lessons from their recent experiences. Equal shares of buyers (64%) say they will improve their integration planning and focus more on cultural integration, although the two are inextricably linked. Both buyers (52%) and sellers (48%) will also look to improve internal communication with employees, another area that has a significant impact on creating a common culture within an organization.

There are some differences in responses from last year's survey, when improving internal communications was a bigger deal (75%) – unsurprising given how the move to remote-working impacted operations – as was a focus on achieving specified business goals. This time around, however, respondents plan to place more emphasis on selecting the integration team (48% versus 41%) and to consider a more phased approach to integration (47% versus 43%). This latter point chimes with our earlier findings around a trend for longer integration processes in preference to making swift changes.

// CONCLUSION

With 2021 continuing on from 2020's strong dealmaking path, US life sciences buyers and sellers have been through an intensely busy period. Yet as we move through 2022, there are signs that the market is moving closer to historical norms in terms of M&A transaction values and volumes. This should give the respondents to our survey some breathing space to ensure their recent deals are settling into place well.

Over the coming period, partnerships look set to grow in strategic importance for the sector. Already popular and valued by respondents to this year's survey, many are predicting an increase in future partnerships both for their own organizations and for the industry generally. This is in part as organizations opt to collaborate on new projects and products, potentially using new technologies or processes proven during the pandemic, but also as a means of accessing expertise without the need to integrate teams or jump through the same antitrust hoops in the ways that they would need to with an M&A transaction and without the need to assume the same level of risk associated with a failed M&A deal.

That said, M&A will continue to be the strategy of choice for companies seeking strong and rapid growth, particularly in new markets and geographies. As Josh Fox, a Partner in Mintz's Corporate and Life Sciences groups, explains: "Partnerships, collaborations and development deals have always been, and will continue to be, a valuable tool for life sciences companies to advance their products and programs in ways that they could not have independently. The same is true for M&A transactions. This year's M&A report shows significant current and projected future activity in deals. The survey also shows the complexity associated with successfully integrating teams after a closing. We hope that the information provided in the survey related to challenges in integration will help buyers and sellers in future transactions."

Now that the initial logistical challenges of the pandemic are, in large part, behind us, life sciences companies have their sights set on diversifying products and customer bases and further filling their R&D pipelines. They will also likely have an eye to improving their M&A processes, with cultural integration being an area of focus here. They are likely to have to consider cultural integration carefully due to, among other reasons, the new work patterns that are emerging for many employees, including hybrid models of remote and face-to-face working, and topics such as diversity and inclusion rising up the agenda in boardrooms and among staff and stakeholders more broadly.

Partnerships, collaborations and development deals have always been, and will continue to be, a valuable tool for life sciences companies to advance their products and programs in ways that they could not have independently."

Josh Fox, Partner in Corporate and Life Sciences Practices, Mintz

// ABOUT MINTZ

Mintz, a leading life sciences law firm, represents therapeutics, vaccine, medical device and systems, research tools and diagnostics companies, as well as investment banks, venture capital firms and other investors. Our work for these clients encompasses transactional, health care regulatory, intellectual property, litigation, employment, real estate and other matters. We are embedded in the global life sciences ecosystem and provide industry leaders with practical solutions to business-critical challenges, helping them achieve their strategic and business goals.

- $22B+ in transactions handled in 2021 for industry clients, including public offerings, joint ventures, licensing and complex collaborations, mergers and acquisitions, divestitures, distribution deals, and private financings
- Advise on the complete spectrum of FDA regulations, from clinical trials through product launch and beyond, including product approvals, labeling, and supply and distribution agreements
- Prosecute patents to issuance (more than 30 patent team members have biology or chemistry PhDs), navigate trademarks through the USPTO and health regulatory bodies, and defend patent, trade secret and trademark rights in trial courts and at the USPTO
- Successful track record of helping life sciences clients avoid — and when necessary resolve —securities class actions, governmental investigations, and disputes with collaboration/licensing partners

To learn more about our life sciences practice, please visit **mintz.com.**