



**SPENCER CAVALIER**

Co-Head of Downstream  
Energy & Convenience Retail  
Investment Banking

Matrix



**SEAN DOOLEY**

Managing Director  
Matrix



**JIM DIERKING**

Attorney  
Winthrop & Weinstine



**JED BREWER**

President  
Study Groups

## **Mergers & Acquisitions and Legal Update**

# SG Study Groups

**Study Groups Webinar: February 7, 2024**



**Spencer P. Cavalier, CFA, ASA**  
Co-Head of DER Group  
667.217.3320  
spcavalier@matrixcmg.com

**Sean P. Dooley, CFA, ASA**  
Managing Director  
667.217.3322  
sdooley@matrixcmg.com

**James W. Dierking**  
Shareholder  
612.604.6651  
jdierking@winthrop.com

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This presentation is designed to highlight common issues faced by business entities and their owners. It should be used as a guide and not as a definitive source to answer your legal questions. If you have specific questions or situations for which you need guidance, you should consult with an attorney. We hope that this presentation will help familiarize you with frequently arising issues so that you know when to seek professional advice.

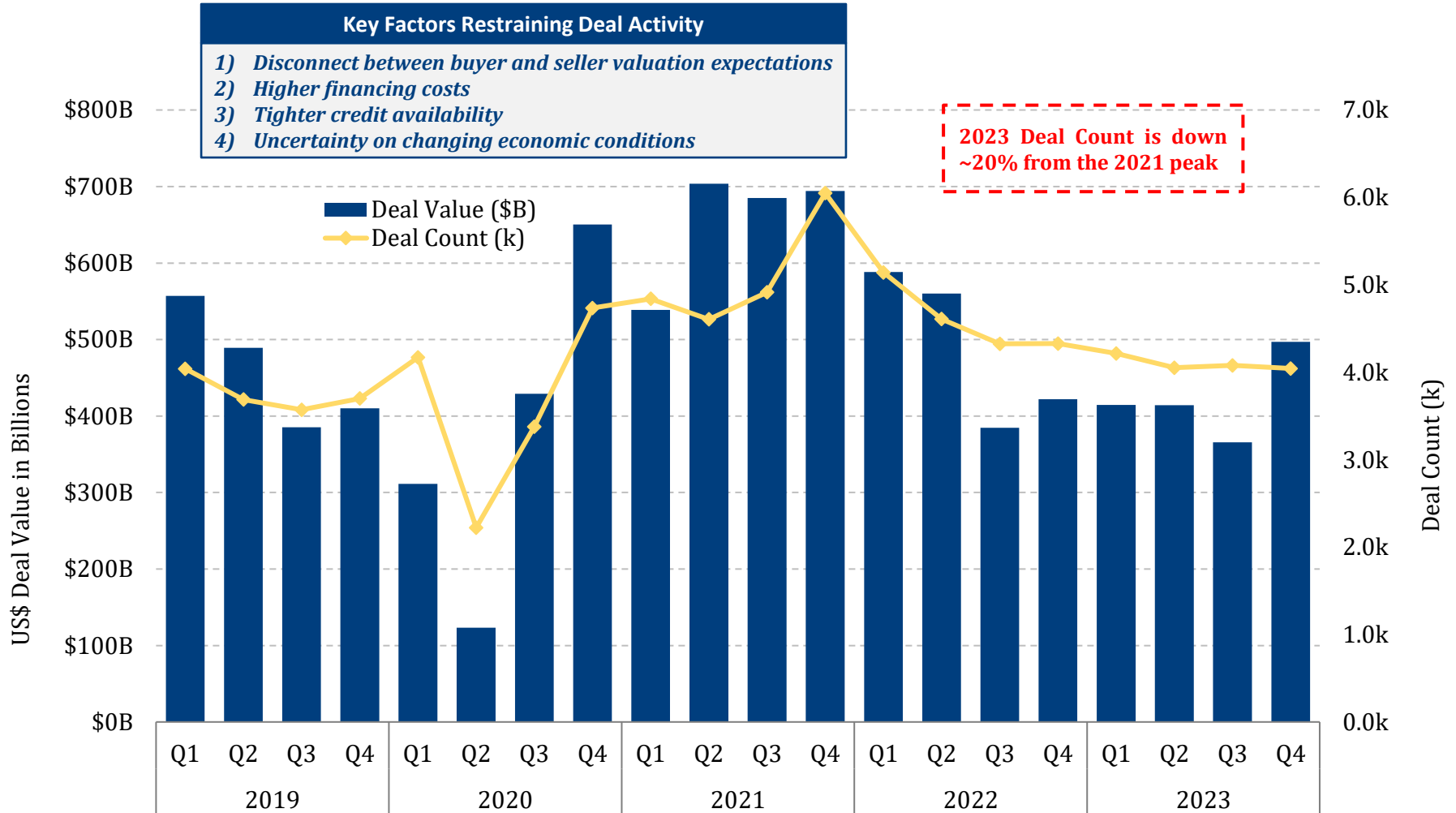
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## DISCUSSION TOPICS

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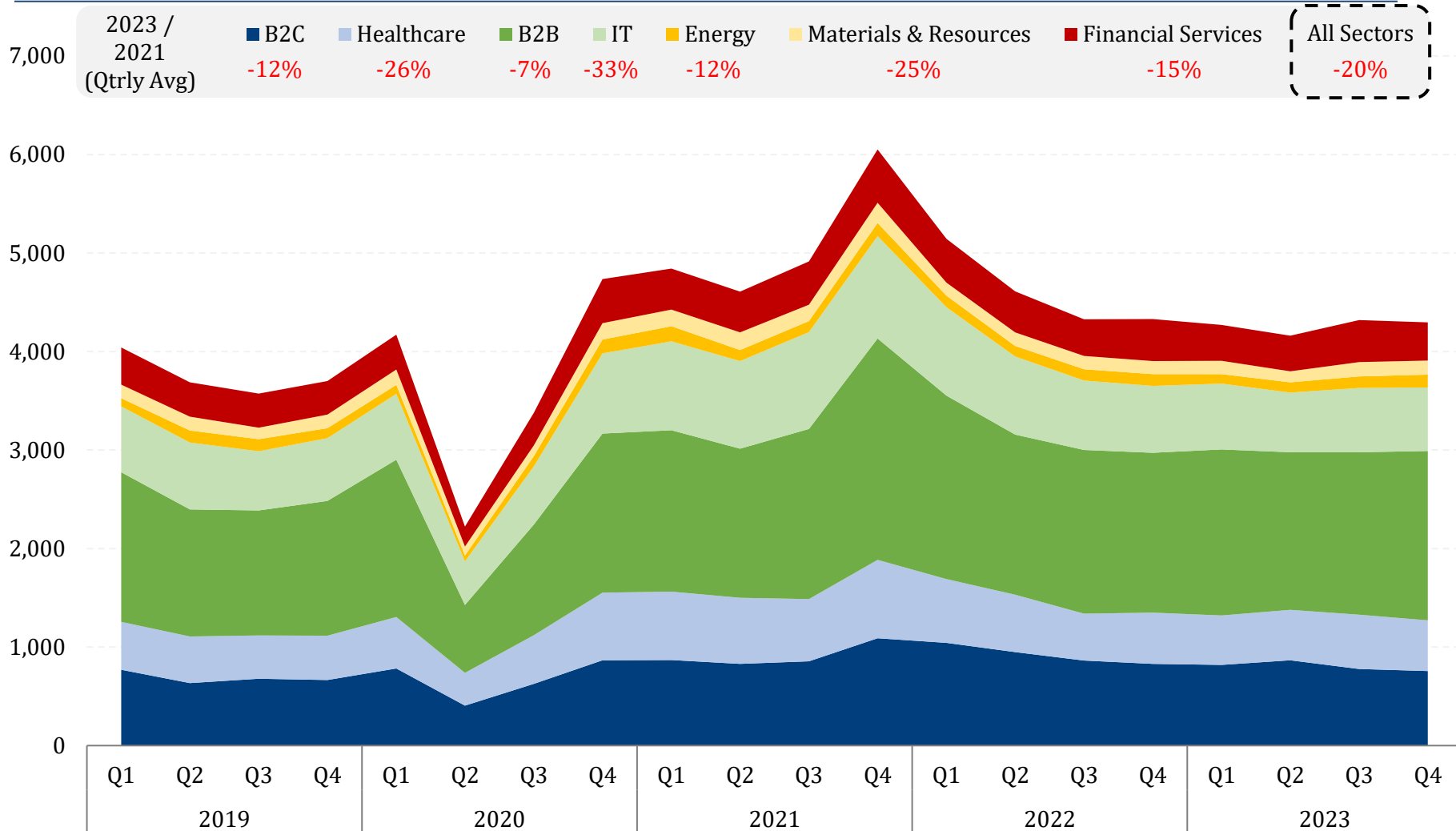
<b>I</b>	<b>2023 M&amp;A Activity</b>	<b>3</b>
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# NORTH AMERICAN M&A ACTIVITY (ALL SECTORS): DEAL VALUE & COUNT



Source: Pitchbook (includes estimates of transactions not yet reported in 2023)

# NORTH AMERICAN M&A ACTIVITY BY SECTOR: DEAL COUNT



Source: Pitchbook (includes estimates of transactions not yet reported in 2023)

## DISCUSSION TOPICS

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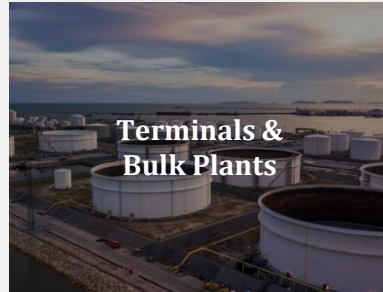
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# HOW MATRIX DEFINES DOWNSTREAM ENERGY & CONVENIENCE RETAIL

Included in Downstream Energy & Convenience Retail:

Included in Retail & Wholesale Fuels:

*(Data for this section)*



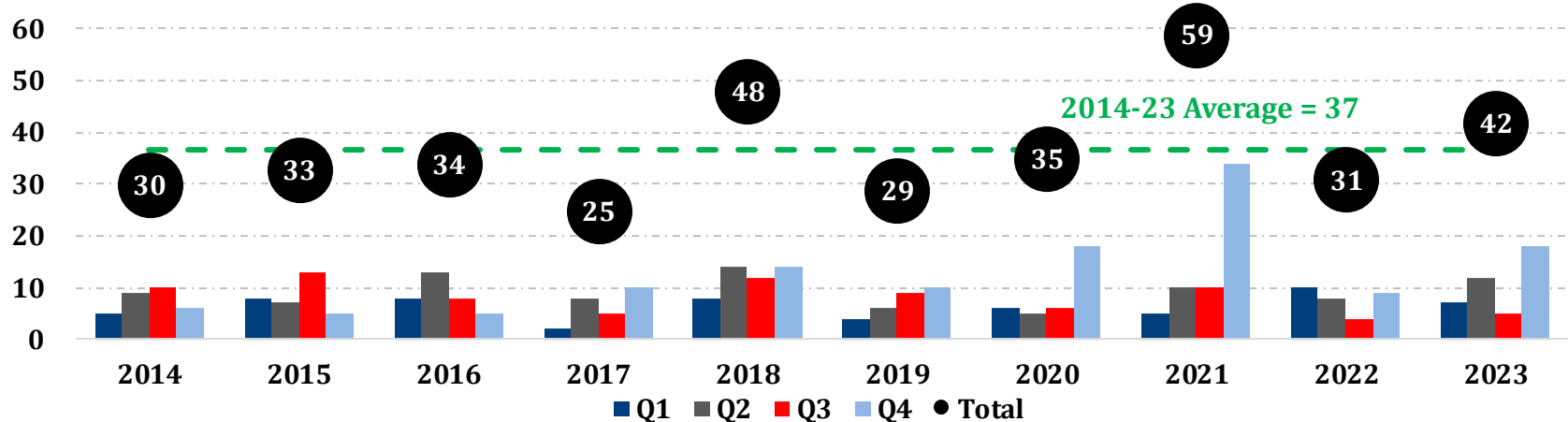


# RETAIL & WHOLESALE M&A ACTIVITY BY QUARTER: DEAL COUNT

➤ **Criteria for transactions included in tables below**

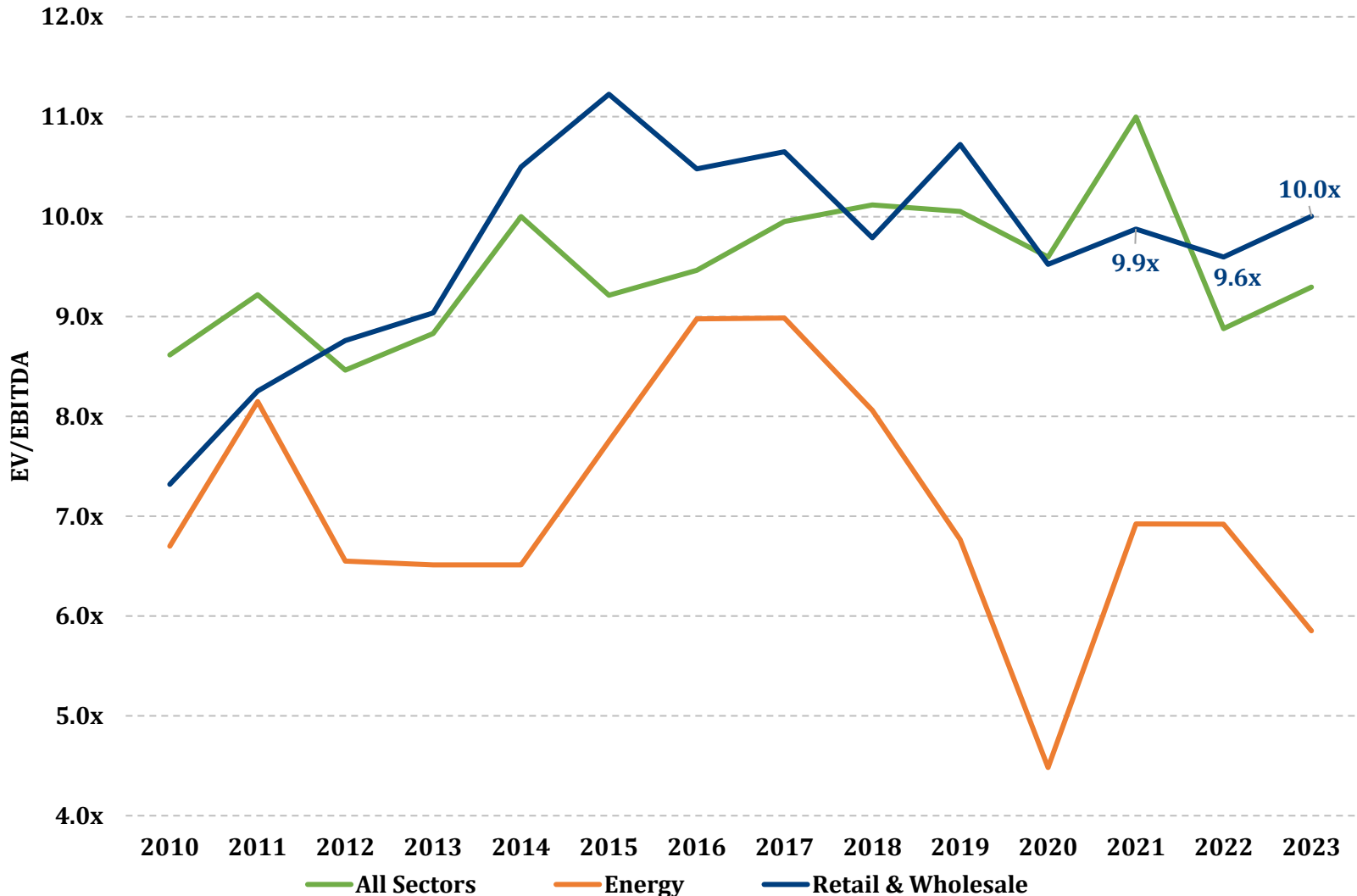
- Transaction has closed and included at least 10 convenience stores or 25 supply accounts or two truck stops, with majority in U.S.
- Convenience stores and/or fuels distribution business was substantial component of transaction
- Sale/leaseback transactions not included

➤ **There have been 116 unique buyers for the 244 transactions since the beginning of 2018**

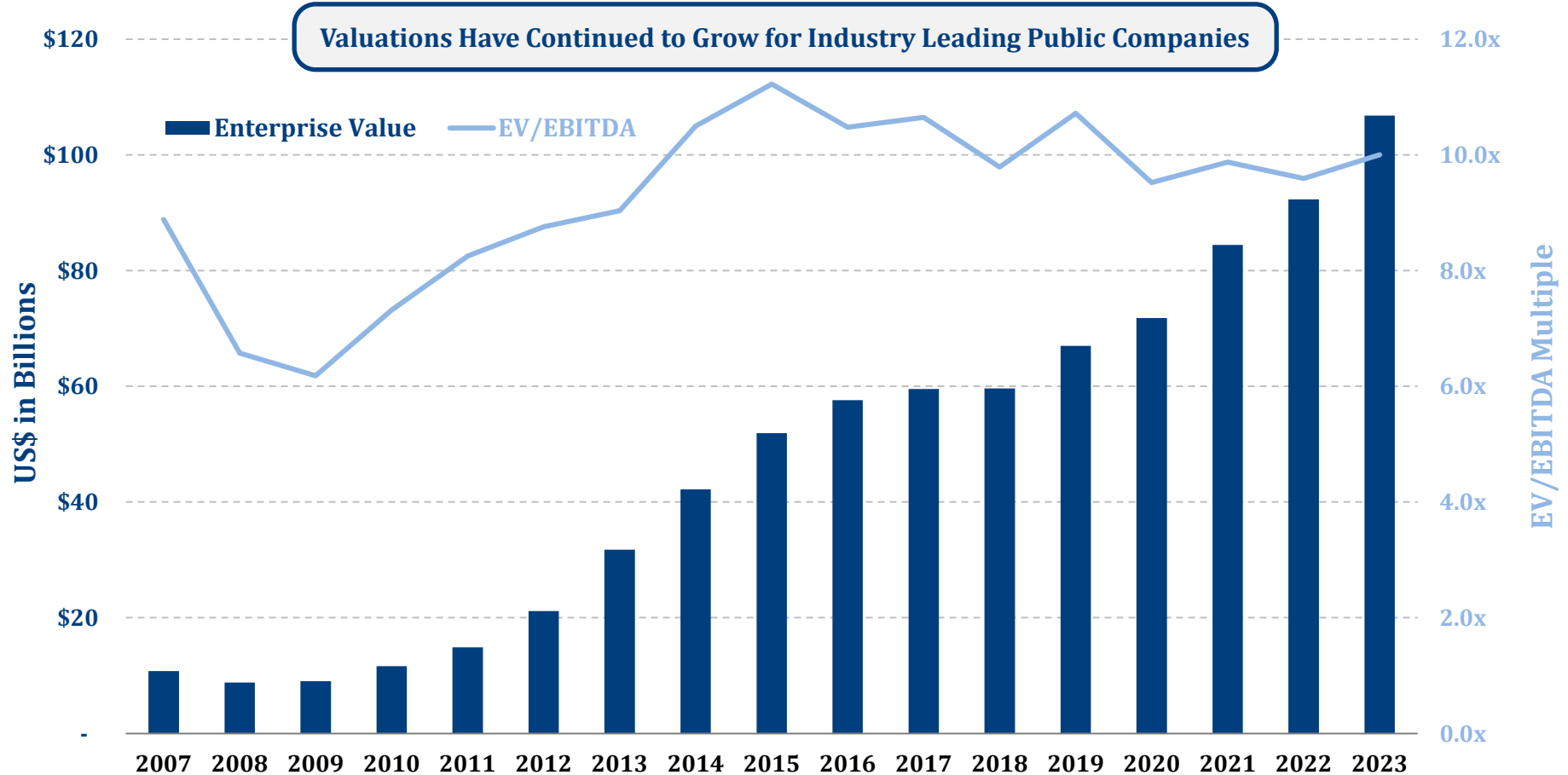


	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Q1	5	8	8	2	8	4	6	5	10	7
Q2	9	7	13	8	14	6	5	10	8	12
Q3	10	13	8	5	12	9	6	10	4	5
Q4	6	5	5	10	14	10	18	34	9	18
Total	30	33	34	25	48	29	35	59	31	42

# RETAIL & WHOLESALE MULTIPLES RELATIVE TO OTHER SECTORS



## GROWTH OF SELECT CONVENIENCE RETAIL & DOWNSTREAM FUEL COMPANIES



Source: S&P Global Capital IQ data for Alimentation Couche-Tard, Arko Corp., Casey's General Stores, CrossAmerica Partners, CST Brands, Global Partners, Murphy USA, Parkland Corporation, Sunoco LP, Susser, The Pantry, and World Kinect; Multiples are calculated using consensus estimates of Next Twelve Months EBITDA

## DISCUSSION TOPICS

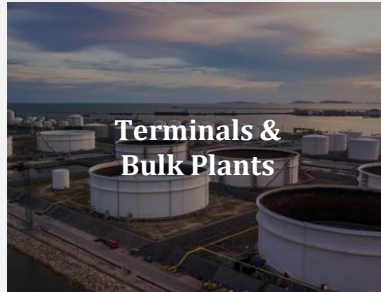
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# HOW MATRIX DEFINES DOWNSTREAM ENERGY & CONVENIENCE RETAIL

Included in Downstream Energy & Convenience Retail:

**Propane Distribution:**  
*(Data for this section)*



# PROPANE INDUSTRY – COMPETITIVE LANDSCAPE

~3 Companies  
~20% Market Share By Volume

Suburban Propane  
AmeriGas  
Ferrellgas  
National Reach

Nationwide scale with regionally scaled salesforce and operations

~35-50 Companies  
~20% Market Share By Volume

Take Comfort In Blossman Gas & Appliance  
DCC  
ENERGY DISTRIBUTION PARTNERS  
THOMPSON GAS  
SHARP ENERGY  
Superior Plus  
Paraco  
SHV ENERGY  
js west PROPANE GAS  
DOOLEY'S PETROLEUM INC.

Large Regional Presence

Mid-to-Large Companies focused on one or multiple regions in numerous states

~2,500+ Companies  
~60% Market Share By Volume

CHERRY'S PROPANE SERVICE  
WILDHORSE Propane & Appliance  
COLE OIL & PROPANE  
KOPPY'S PROPANE  
Anderson PROPANE  
ACE PROPANE  
UNT PROPANE  
UTAH LP GAS  
A-1 Propane Reliable & Affordable Energy  
PIONEER PROPANE  
Roberts Propane Gas  
Trico PROPANE INC.  
ATLANTIC PROPANE

Local Market Focused

Local companies; often family owned with community relationships

## SELECT COMPANIES DRIVING CONSOLIDATION: PROPANE & REFINED FUELS

### U.S. Public Companies



### Cooperatives



### Large Private Regionals



### Private Equity Groups

Company:



Sponsor:



### International Companies

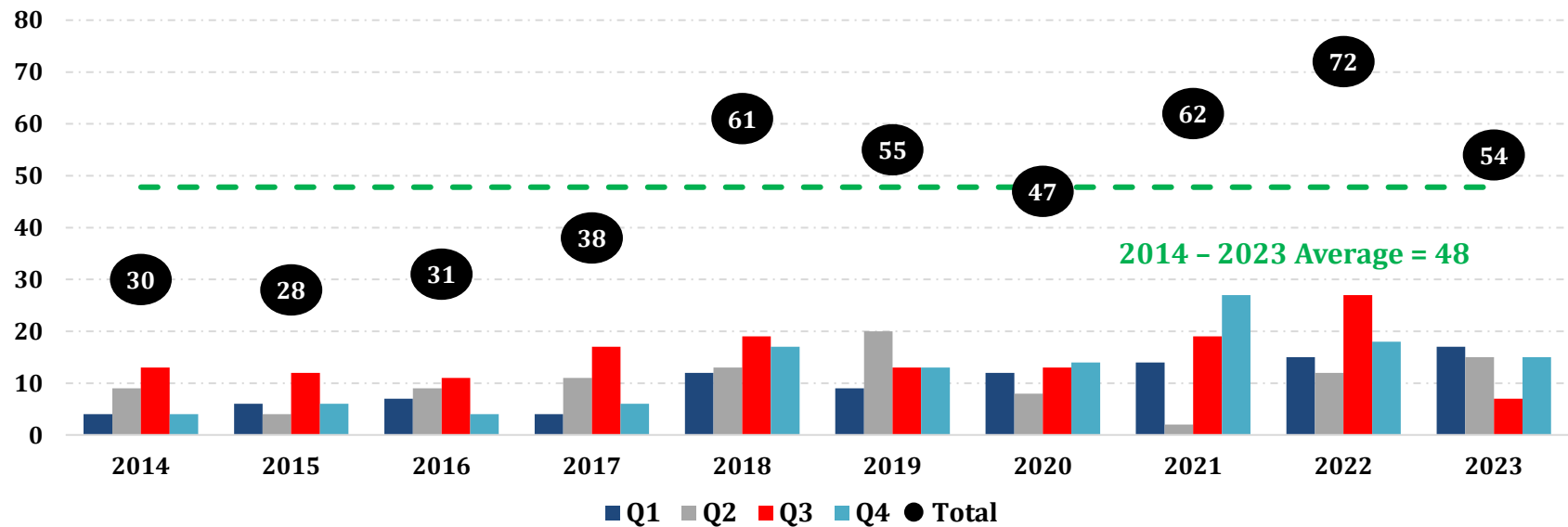


# PROPANE DISTRIBUTION M&A ACTIVITY BY QUARTER

➤ **Criteria for transactions included in tables below**

- Includes publicly announced transactions in North America with vast majority in U.S.
- Propane distribution business was substantial component of transaction
- Includes transactions of all sizes

➤ **There have been 133 unique buyers for the 478 transactions since the beginning of 2014 through end of 2023**



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Q1	4	6	7	4	12	9	12	14	15	17
Q2	9	4	9	11	13	20	8	2	12	15
Q3	13	12	11	17	19	13	13	19	27	7
Q4	4	6	4	6	17	13	14	27	18	15
Total	30	28	31	38	61	55	47	62	72	54



## DISCUSSION TOPICS

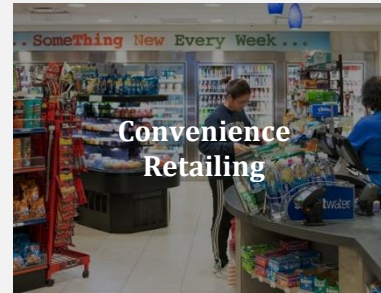
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# HOW MATRIX DEFINES DOWNSTREAM ENERGY & CONVENIENCE RETAIL

Included in Downstream Energy & Convenience Retail:

Lubricants Distribution:  
*(Data for this section)*



# SELECT LUBRICANTS DISTRIBUTION CONSOLIDATORS

Matrix's previous deal discussions and engagements with major lubricants distributors are instrumental in our knowledge of the industry:



## LUBRICANTS ACQUISITION MULTIPLES

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- Transaction values and multiples are very seldom published. Matrix's recent experiences with lubricants transactions would indicate most transactions are completed in the range of 5.0x to 7.0x for mid to large sized distributors. High quality, larger distributors, in desirable geographies may trade at the high end of 7.0x to 8.5x
  
- Very active consolidators like RelaDyne, Cadence and PetroChoice are all owned by private equity funds and have changed private equity ownership in the past few years
  - PetroChoice was acquired in May 2022 by Brazil-based, publicly-traded Cosan S.A.'s subsidiary Moove from Golden Gate Capital
  - RelaDyne was acquired in December 2021 by American Industrial Partners from Audax Private Equity
  - Cadence was acquired in October 2020 by Wellspring Capital Management LLC from Tenex Capital Management
  
- These large consolidators are believed to trade around 8.0x to 11.0x, so for acquisitions to be accretive the consolidators typically pay less than that range
  
- Large consolidators are not the only active acquirers, as many regional distributors continue to transact and do not face the same constraints as large consolidators

## DISCUSSION TOPICS

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# LEGAL UPDATE

FEBRUARY 7, 2024

**SHAREHOLDER**

**JIM DIERKING**

**P/ 612.604.6651**

**E/ [jdierking@winthrop.com](mailto:jdierking@winthrop.com)**

# OVERVIEW

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- 1. The Corporate Transparency Act**
- 2. Non-Compete Agreement Update**
- 3. Join Employer Rule Update**
- 4. Q&A**

# The Corporate Transparency Act



# THE CORPORATE TRANSPARENCY ACT: INFO

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## > What is it?

- The Corporate Transparency Act (CTA) passed as part of an anti-money laundering legislation. The CTA requires a government-maintained registry of beneficial ownership information (BOI) for certain entities registered or formed to do business in the U.S. The CTA requires that those entities report their BOI to the Financial Crimes Enforcement Network (FinCEN) of the Treasury Department.
- The reporting requirements of the CTA became effective on January 1, 2024. Companies existing before January 1, 2024 will have until January 1, 2025 to submit BOI reports. However, new reporting companies formed on or after January 1, 2024 must comply with CTA's 90-day reporting deadline.

# THE CORPORATE TRANSPARENCY ACT: REPORTING

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- > Who must report? Any corporation, limited liability company, or other similar entity that is:
  - i. created by the filing of a document with a Secretary of State or a similar office under the law of a State or Indian Tribe or
  - ii. formed under the law of a foreign country that is registered to do business in the United States must report, unless the entity is exempt.

## THE CORPORATE TRANSPARENCY ACT : REPORTING [COT'D]

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- > In addition, most partnerships (LPs, LLPs, and LLLPs) are reporting companies under the CTA because such entities are generally formed with a filing through the Secretary of State or other similar office.
- > Sole proprietorships, certain types of trusts and general partnerships that are not created with a filing through the secretary of state or other similar office may fall outside the CTA's definition of a reporting company.

# THE CORPORATE TRANSPARENCY ACT: EXCEPTIONS

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- > As always, there are exceptions (23 in total):
  - The CTA identifies specific categories of entities that are already required to disclose beneficial owners or that are unlikely to be used for illicit purposes.
  - Exempt companies include public companies, banks, credit unions, insurance companies and insurance producers, entities registered with the SEC (such as broker dealers), registered investment advisers and investment companies, venture capital fund advisers, public accounting firms, tax-exempt entities and others.

# THE CORPORATE TRANSPARENCY ACT: EXCEPTIONS [COT'D]

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- > Large private company exemption, which requires:
  - More than 20 employees on a full-time basis;
  - Reported gross receipts or sales of more than \$5 million in the previous year's tax returns (including subsidiaries and operating affiliates); and
  - A physical presence in the U.S.

# THE CORPORATE TRANSPARENCY ACT: EXCEPTIONS [COT'D]

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- > Inactive entities in existence before January 1, 2020 who:
  - Have had no active business;
  - Is not wholly or partially owned by a non-US person;
  - Has had no change in ownership in the prior 12 months;
  - Has not sent or received funds in excess of \$1,000 in the prior 12 months; or
  - Has no assets

# THE CORPORATE TRANSPARENCY ACT: BENEFICIAL OWNER

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- > A “beneficial owner” is, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationships, or otherwise:
  - Exercises “substantial control” over the entity, or
  - Owns or controls not less than 25% of the “ownership interests” of the entity.

# THE CORPORATE TRANSPARENCY ACT: BENEFICIAL OWNER

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- > “Substantial control” under the CTA includes individuals:
  - Serving as a senior officer (e.g., CEO, president, CFO, GC, COO, or any other officer performing a similar function, regardless of title);
  - Having authority over the appointment or removal of a senior officer or a majority of the board or similar body;
  - Directing, determining or having substantial influence over important decisions made by the reporting company; or
  - Having any other form of substantial control over the reporting company.
  
- > A reporting company must identify as a beneficial owner any individual who exerts substantial control (directly or indirectly).



# THE CORPORATE TRANSPARENCY ACT: BENEFICIAL OWNER

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- > As you can see, the language regarding Beneficial Owners is very broad. It is focused on those who control, or have the power to control, important company matters
- > Note that FinCEN expects that every reporting company will identify at least one person with substantial control.

# THE CORPORATE TRANSPARENCY ACT: BENEFICIAL OWNER

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## > Who is NOT a Beneficial Owner?

- A minor child (defined in the state where entity is formed) if parent/guardian is reported
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual
- An individual acting solely as an employee of a reporting person and whose control over the economic benefits from such entity is derived solely from the employment status of the person
- An individual whose only interest in a reporting company is through a right of inheritance
- A creditor of a reporting person, unless the creditor exercises substantial control over the entity or owns or controls not less than 25% of the ownership interests

# THE CORPORATE TRANSPARENCY ACT: INFO REPORTING OF BENEFICIAL OWNERS

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- > A reporting company must disclose the following regarding each of its beneficial owners, and – where the company was created or registered after January 1, 2024 – its company applicants
  - Full legal name;
  - Date of birth;
  - Current address;
  - Unique identification number from an unexpired passport, driver’s license, other acceptable identification document, or FinCEN identity number; and
  - An image of the identification document from which the unique identification number was obtained.
  
- > The information will not be publicly accessible, but will be available to federal, state and international law enforcement agencies and to financial institutions for customer due diligence.

# THE CORPORATE TRANSPARENCY ACT: INFO REPORTING OF THE REPORTING COMPANY

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- Full legal name of the reporting company;
  - Any trade names, d/b/a names, or t/a names whether or not formally registered,
- Complete current address (no P.O. boxes, registered agent addresses, mail forwarding/virtual office addresses);
  - The current street address of the principal place of business for domestic reporting companies
  - The current street address of the primary location where a foreign reporting company is conducting its business
- The state, tribal, or foreign jurisdiction of formation; and
  - For a foreign reporting company, the state or tribal jurisdiction where the company first registered in the US.
- The IRS TIN, including an EIN.
  - If a foreign reporting company has not been issued a TIN, it may provide a tax identification number issued by a foreign jurisdiction and the name of the issuing jurisdiction as an alternative

# THE CORPORATE TRANSPARENCY ACT: INITIAL REPORTS

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- > FinCEN's final rule was effective as of January 1, 2024.
  - Reporting companies formed before January 1, 2024 have until January 1, 2025 to file their initial BOI report.
  - Companies created (or for foreign reporting companies registered to do business) after January 1, 2024 must file their initial BOI report within 90 days from the earlier of the date on which the company:
    - Receives actual notice that its creation (or in the case of a foreign reporting company registration to do business) has become effective; or
    - A Secretary of State, or similar office, first provides public notice that the company has been created (or in the case of a foreign reporting company registered to do business).
  - Companies which no longer qualify for an exemption from the reporting requirements must file their initial BOI report within 30 days from the date when the exemption ceased to apply.

# THE CORPORATE TRANSPARENCY ACT: UPDATED AND CORRECTED REPORTS

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- > Any changes to the information regarding the reporting company or its beneficial owners that was accurate when reported must be updated within 30 days upon changes, such as:
  - A change to any information in the BOI report regarding the reporting company itself;
  - A reporting company becoming an exempt entity;
  - A change in the beneficial ownership of the reporting company regarding who is a beneficial owner or who is in the BOI regarding any particular beneficial ownership position;
  - A transfer of a beneficial owner's interest after death; or
  - A change to a beneficial owner's name, date of birth, address, or unique identifying number on their identifying document.
- > If the reporting company becomes aware, or has reason to know, that any information previously filed in its BOI report was inaccurate when filed, it must file a report within 30 days of such time to correct all inaccuracies.
  - CTA provides a safe harbor from liability for filing a false BOI report if the reporting company files a corrected report within 90 days.

# THE CORPORATE TRANSPARENCY ACT: NONCOMPLIANCE

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- > Penalties for Noncompliance (failure to properly report)
  - Civil penalties of up to \$500 for each day that the violation continues, and
  - Criminal fine of up to \$10,000 and/or imprisonment for up to two years
  - The unauthorized disclosure carries the same civil penalty, but carries a higher criminal penalty of up to \$250,000 and up to 5 years of imprisonment, or both.

# THE CORPORATE TRANSPARENCY ACT: NEXT STEPS

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- > Companies should determine and establish policies and procedures for:
  - i. identifying companies that may be required to report;
  - ii. gathering the information that must be reported for such companies and for their Beneficial Owners;
  - iii. timely filing the reports; and
  - iv. monitoring compliance on an ongoing basis.



# **Non-Compete Agreement Update**

# NON-COMPETE AGREEMENT: UPDATE

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- > In early 2023, the FTC put forth a proposed rule that would treat most non-compete agreements as violations of the Federal Trade Commission Act's prohibition on unfair competition. In announcing the proposed rule, the FTC described non-compete agreements as impeding an individual's freedom to change jobs, depriving them of higher wages and better working conditions. Non-compete agreements have otherwise generally been permitted within a variety of limitations, guidelines, state laws and regulations. All 50 states have laws that restrict non-compete agreements to some degree (e.g. MN, Cal, ND and OK ban them entirely).

# NON-COMPETE AGREEMENT: RATIONALE

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## EFFECTS OF NON-COMPETES



20% of American workers (30 mil) affected by non-competes at any given time



Decrease wages, innovation, entrepreneurship, healthcare affordability



Workers have no idea if non-competes are enforceable, rarely challenge

## EFFECTS OF PROPOSED RULE



Increase wages \$250 – 296 billion per year



Compliance costs \$1 – 1.7 billion as a one-time cost



Close racial pay gaps by 3.6% and gender pay gaps by 9.1%

# NON-COMPETE AGREEMENT: THE PROPOSED RULE

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- > The rule would prohibit “any clause that prevents a worker from seeking/accepting work from a different employer or operating a related business after ending work for the employer”.
- > In effect it would prohibit (i) entering into new agreements or maintaining existing agreements, with (ii) workers (not just employees – includes independent contractors, interns, volunteers and employees), and (iii) telling workers they are subject to a non-compete when there is no good faith basis to believe it is enforceable.

# NON-COMPETE AGREEMENT: THE PROPOSED RULE COT'D

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- > 910.2(b)(2) – Employers must provide *written* notice when rescinding *existing* non-competes:
  - Tell workers (current and former, if contact info available) in a written individualized communication
  - 910.2(b)(2)(C) – model language for employers to use to notify workers
  - 910.2(b)(3) – safe harbor; if employer provides notice, then employer is presumed to have actually terminated the non-compete clause
- > 910.4 – Proposed rule supersedes *less restrictive* state non-compete rules
  - But does not limit state rules that are *more restrictive*

# NON-COMPETE AGREEMENT: APPLICABILITY

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910.1(f) – Independent contractors

910.1(f) – Paid or unpaid workers  
(including employees, interns,  
volunteers, etc.)



910.1(f) – Franchisees

910.3 – Person who sells their  
business to employer, then goes to  
work for that employer\*

\*This only applies to people who own  
at least 25% of the business being  
acquired by employer.  
See 910.1(e).

Workers whose non-competes expire  
before the compliance date

# NON-COMPETE AGREEMENT: APPLICABILITY

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- > Generally speaking, non-solicitation, non-recruit, or confidentiality clauses are still enforceable. However, 910.1(b)(2) applies to *any clause*, regardless of label, if acts as a de facto non-compete
- > Other possible similar clauses:
  - Non-disclosure/confidentiality agreements
  - Client/customer non-solicitation agreements
  - Non-recruit agreements
  - Liquidated damages provisions
  - Training repayment agreements
- > What is a de-facto non-compete? A clause so broad in scope and burden as to be the functional equivalent of a non-compete clause. The FTC intends to use a “functionality test” to make determinations.

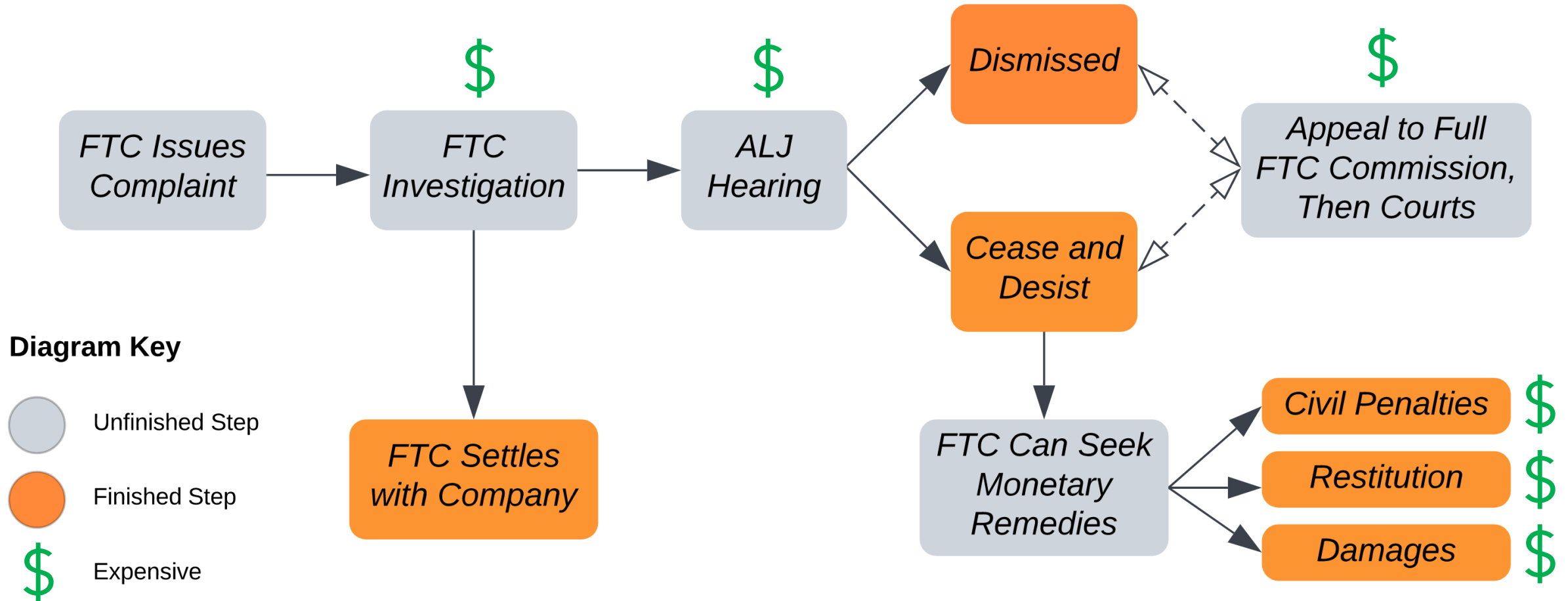
# NON-COMPETE AGREEMENT: APPLICABILITY

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- > Does not apply to agreements *between businesses* to not compete with each other.
- > Does not affect other terms of an existing contract, just the restrictive covenants.
- > There is an exception which would permit a non-compete clause entered into by a person selling a business or by a person selling all of the operating assets of a business, when the seller holds at least a 25% ownership interest in the business entity.



# NON-COMPETE AGREEMENT: VIOLATION PENALTIES



# NON-COMPETE AGREEMENT: PROCESS AND STATUS

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- > When the rule was proposed, the FTC sought comment on entire proposed rule, but particularly:
  - Finding that non-competes negatively affect labor and product markets
  - Finding that non-competes exploit workers at time of signing *and* departure
  - Whether rule should apply to all workers (skilled vs. unskilled, high wage vs low wage, executives, etc.)
  - Circumstances where a business need for non-competes outweighs harm to workers
  - Whether trade secret laws and non-disclosure agreements are sufficient tools to protect business


# NON-COMPETE AGREEMENT: PROCESS AND STATUS

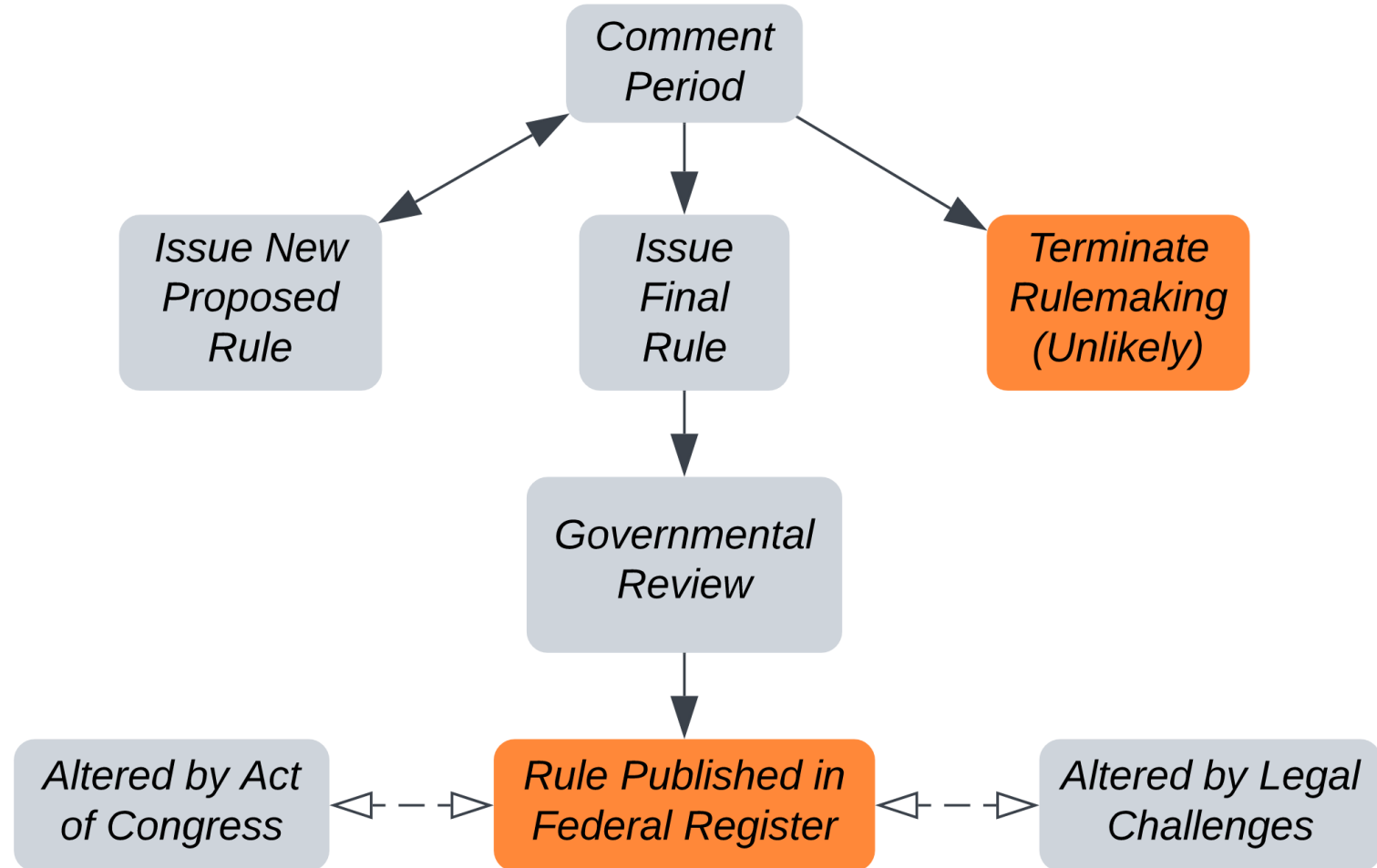
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- > Over 26K comments
- > Vast majority favor *banning* non-competes
  - Often personally impacted workers commenting
  - Only 1 in 20 (approx.) argue in favor of *keeping* non-competes
- > Common Industries
  - Healthcare, tech, trades, accounting
- > The rule is anticipated to be finalized, with modifications, in the next 3-6 months. The rule may likely be challenged on legal grounds, which would challenge the FTC's authority.

# NON-COMPETE AGREEMENT: NEXT STEPS

## Diagram Key

-  Unfinished Step
-  Finished Step



# NON-COMPETE AGREEMENT: ACTION ITEMS

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- > Locate all existing non-competes and review their terms
- > Are they necessary to protect legitimate business interests?
- > Are they reasonable?
  - Limited by geography, time, high-income/skilled workers, etc.
- > Do better alternatives exist?
  - Similar protections:
    - Non-disclosure agreements, non-solicitation agreements, etc.
  - Trade Secret Protection
    - FTC cites trade secret protections as still applicable
  - REMEMBER: avoid provisions that could arguably be de facto non-competes

## NON-COMPETE AGREEMENT: ACTION ITEMS

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- > Consider whether your noncompete agreements comply with existing state law (recall many changes have occurred)
- > Consider whether state laws are more or less restrictive than proposed rule
  - Less restrictive state laws = superseded
  - More restrictive state laws = both applicable

# Joint Employer Update

## JOINT EMPLOYER UPDATE

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- > In late 2023, the National Labor Relations Board issued its final rule modifying the “joint employer” doctrine, which treats multiple entities as employers of a group of employees.



# JOINT EMPLOYER UPDATE

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- > The new rule would treat entities as joint employers if they are each found to control or determine essential terms and conditions of employment, which are:
  - i. wages, benefits and other compensation
  - ii. hours of work and scheduling
  - iii. assignment of duties
  - iv. supervision of the performance of duties
  - v. work rules governing the manner, means and methods of performing duties and the grounds for discipline
  - vi. hiring and discharge
  - vii. health and safety related working conditions

## JOINT EMPLOYER UPDATE

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- > Notably, a company can be deemed a joint employer if it has the right to control any one of these factors, even if it does not exercise that right, or if it is exercised indirectly (i.e. through a staffing or temporary agency).
- > If companies are determined to be joint employers under this rule, they can be required to jointly bargain with employees and could be held liable for unfair labor practices with respect to workers they did not consider to be their employees.

# THANK YOU.

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## QUESTIONS?

SHAREHOLDER

JIM DIERKING

P/ 612.604.6651

E/ [jdierking@winthrop.com](mailto:jdierking@winthrop.com)