

Research Report

Corporate transactions
and the board: Governance
across M&A



Introduction

Governance professionals provide evidence of how boards oversee M&A strategy, approach transactions and view risk



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Levels of M&A activity have fluctuated wildly over the past few years against a background of market conditions influenced by factors such as the Covid-19 pandemic, economic and supply-chain upheavals, inflation, political uncertainty and Russia's invasion of Ukraine. Amid such rapidly shifting and challenging conditions, boards must continue to fulfil their duties, including overseeing their company's M&A strategies to ensure the best outcomes for investors and other stakeholders. Boards need to address various elements to help them be successful in this area, including assigning oversight, getting the right advice from outside the boardroom and taking risk into account.

In this special report, we present the results of a survey conducted among governance professionals such as general counsel, corporate secretaries and their teams. Their responses provide insight into how boards are going about their work across M&A, from strategy through to transactions and on to implementation. Respondents tell us about areas such as which elements of the board oversee M&A strategy, discussions with investors, boards' views on risk, the time and technology devoted to due diligence, ESG considerations in target selection and the briefings boards receive.

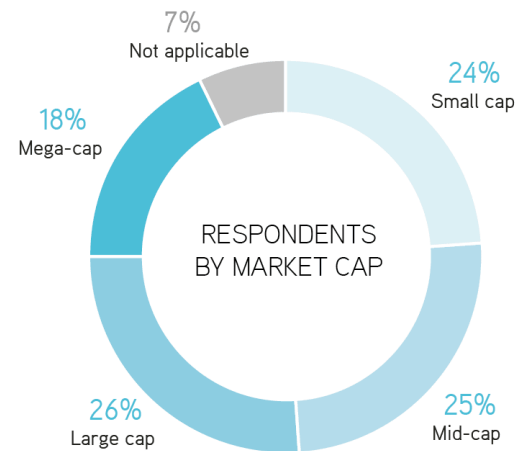
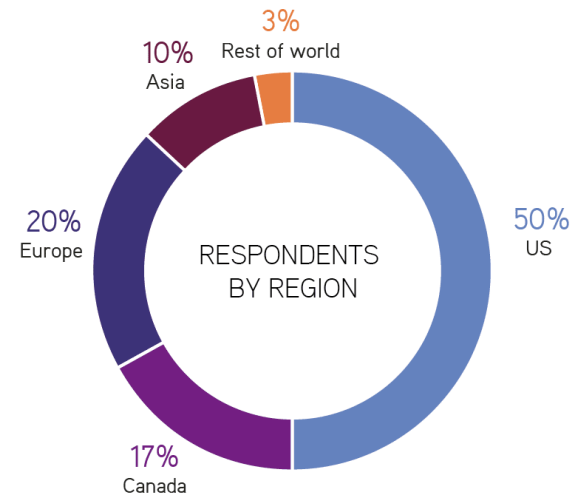
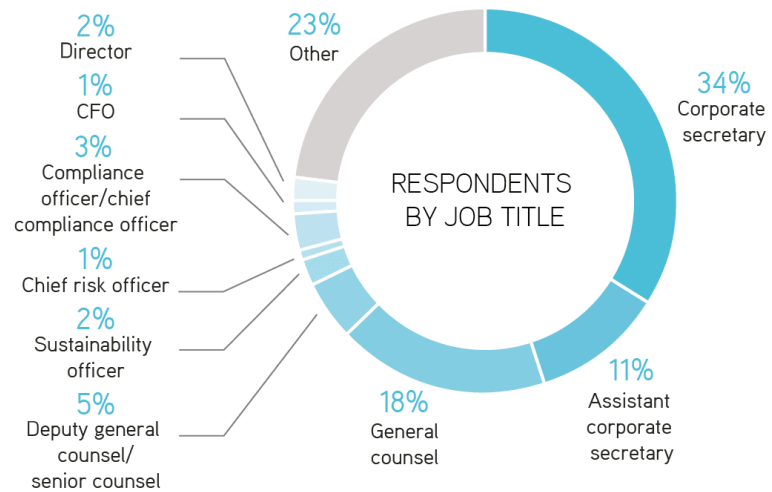
Key findings

- More than three quarters (77 percent) of all respondents say their main board has primary oversight of M&A strategy.
- Forty-four percent of respondents in Europe report investors asking questions about a company's M&A strategy frequently or always, compared with 21 percent of those in North America.
- Overall, 21 percent of respondents say their board has become slightly or much more risk-averse over the past 12 months, while 15 percent say their board has become slightly or much less risk-averse.
- Half of respondents say their board considers ESG factors as part of M&A strategy and target selection, while around a third (34 percent) say their board does not.
- A quarter of respondents say the length of time spent on due diligence for M&A deals their company has been involved in has increased over the past 12 months.
- Just over half (52 percent) of respondents report that their board is given briefings on M&A strategy on an ad hoc basis, while a quarter say their board is briefed at every meeting.

Survey demographics

This report is based on the findings from an online survey conducted between December 2022 and March 2023. A total of 211 respondents took part.

Total number of respondents: 211



Draft

Who is involved?

Overseeing M&A strategy



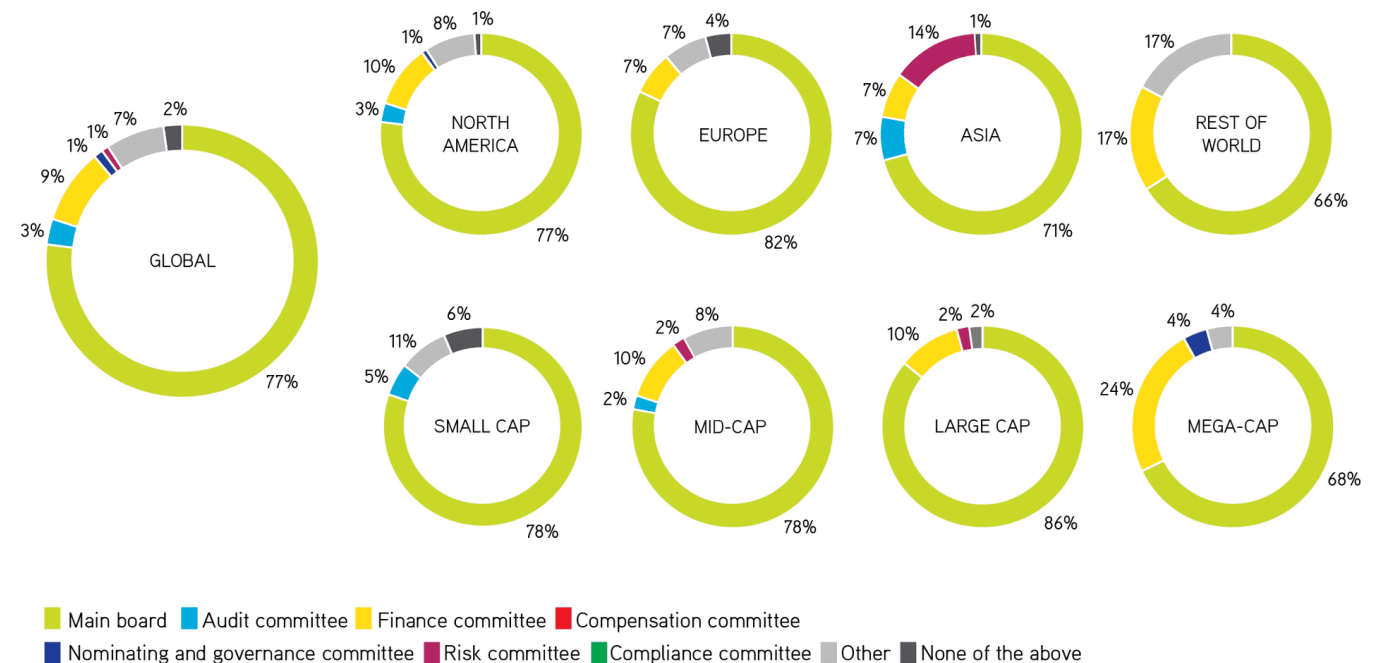
Overseeing M&A strategy

The role of overseeing companies' M&A strategy is widely held by the board as a whole. More than three quarters (77 percent) of all respondents say their main board has primary oversight of M&A strategy. Among those at small and mid-cap companies, 78 percent say the main board is in charge, while 86 percent of those at large-cap companies and 68 percent of those at mega-cap companies say likewise.

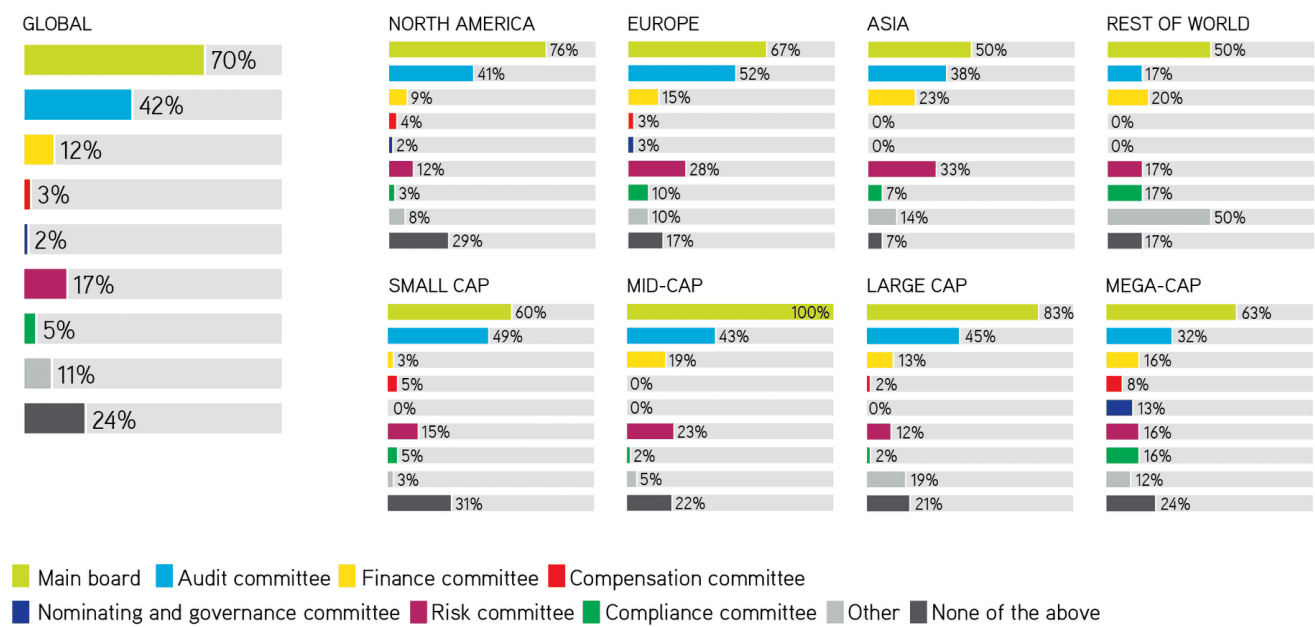
Overall, the finance committee (9 percent of respondents) is the most frequently cited alternative to the main board having primary oversight. Three percent of respondents mention the audit committee. Almost a quarter (24 percent) of those at mega-caps say their finance committee takes the lead on M&A oversight.

More than three quarters (77 percent) of respondents in North America say the main board has primary oversight, with 82 percent of those in Europe saying likewise.

On your company's board, which of the following has primary oversight of M&A strategy?



On your company's board, which of the following has some oversight of M&A strategy?

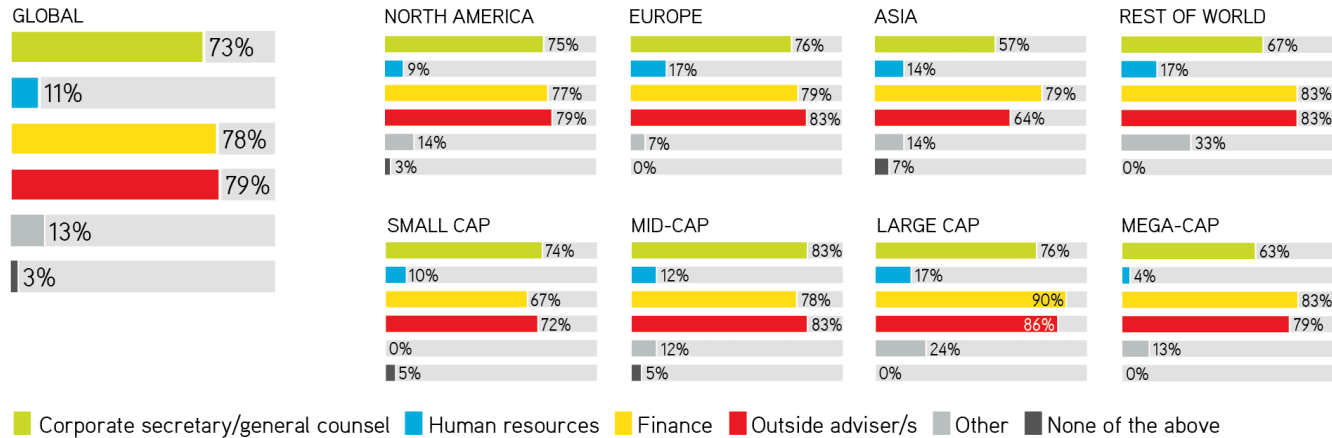


More respondents in Europe (52 percent) than in North America (41 percent) say their audit committee has some oversight of M&A strategy. More respondents in Europe (28 percent) also mention their risk committee than do those in North America (12 percent).

Despite the widespread practice of giving the main board lead oversight of M&A strategy, respondents report that individual committees are also involved to some extent. Overall, more than four in 10 (42 percent) say their audit committee has some oversight, followed by 17 percent who mention the risk committee and 12 percent who mention the finance committee.

A smaller proportion (32 percent) of those at mega-cap companies mention their audit committee as having some oversight, while other mega-cap respondents refer to their compliance, risk or finance committees (16 percent each). Almost a quarter (23 percent) of respondents at mid-caps mention their risk committee.

Does your company's board use any of the following to assist with M&A strategy?



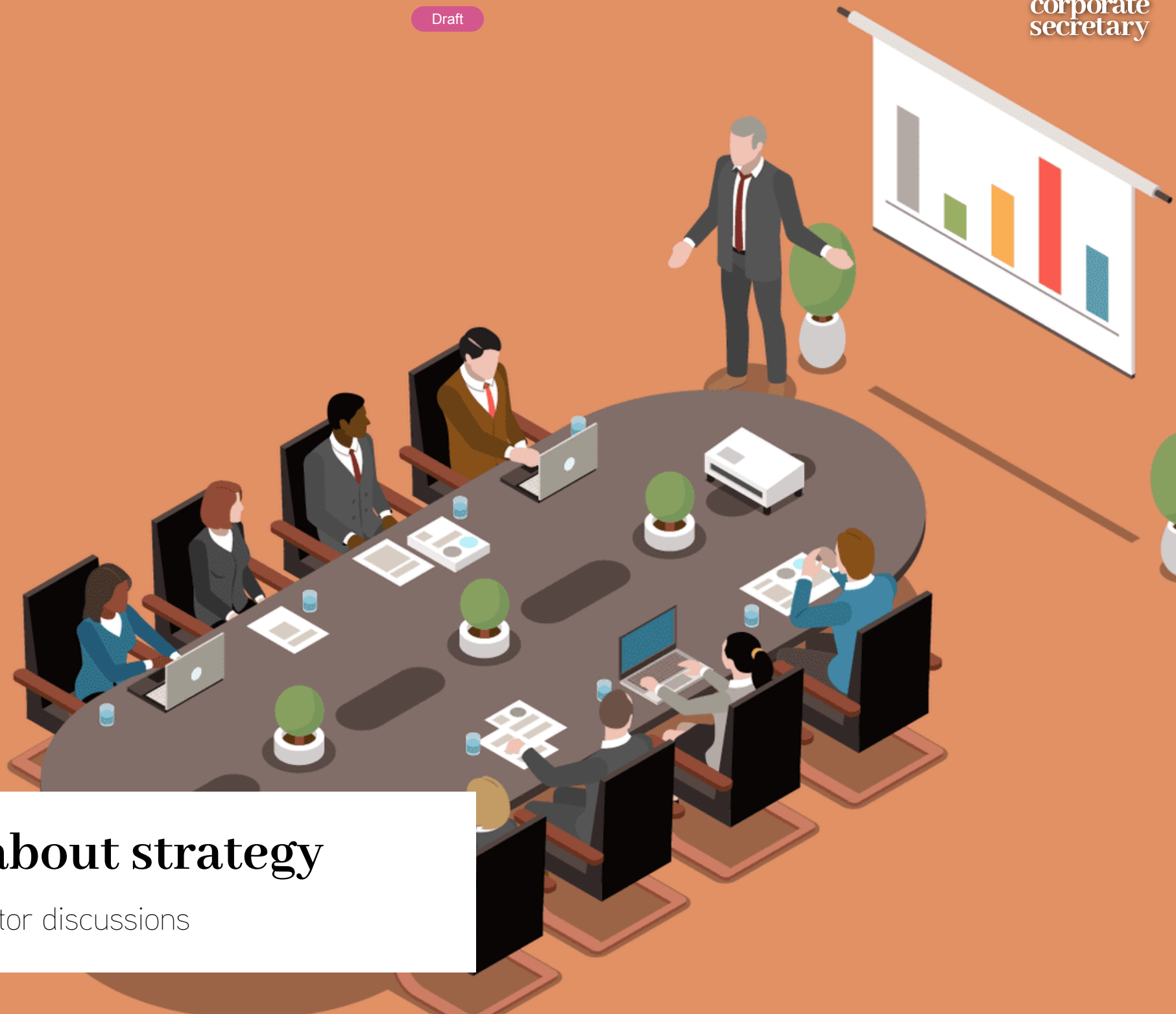
Slightly more respondents in Europe (83 percent) say their board uses outside advisers than do those in North America (79 percent). Seventeen percent of those in Europe say human resources helps with M&A strategy, compared with just 9 percent of those in North America.

Overall, the most frequently cited management team to be mentioned as assisting with M&A strategy is finance (78 percent of respondents) followed by the corporate secretary/general counsel (73 percent) and human resources (11 percent). More than three quarters (79 percent) say their board gets assistance from outside advisers.

Respondents at large-caps (86 percent) are most likely to say their board gets outside advice, followed

by those at mid-caps (83 percent), mega-caps (79 percent) and small-cap companies (72 percent).

Respondents at mid-cap companies (83 percent) are most likely to say their board gets assistance from the corporate secretary/general counsel, followed by those at large-cap companies (76 percent), small caps (74 percent) and mega-cap firms (63 percent).



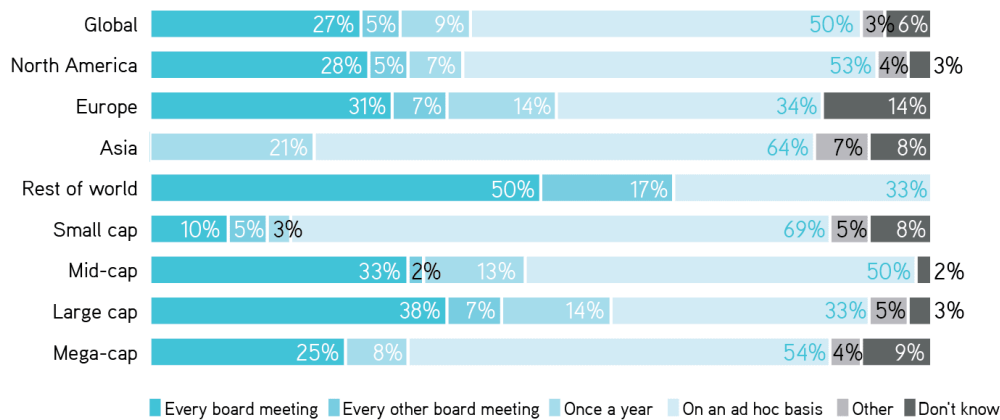
Talking about strategy

Board and investor discussions

Talking about strategy

Board and investor discussions

How often does the main board discuss M&A strategy?



Although more than a quarter (27 percent) of respondents say their main board discusses M&A strategy at every board meeting, half say those discussions happen on only an ad hoc basis. Just 9 percent say the board discusses strategy only once a year and 5 percent say it does so at every other board meeting.

One in 10 respondents at small caps report that their main board discusses M&A strategy at every meeting, with 69 percent saying those discussions happen on an ad hoc basis.

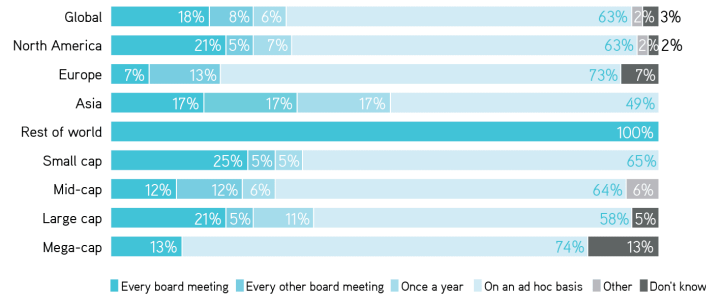
In contrast, 38 percent of those at large caps report discussions taking place at every meeting and only a third say these discussions are held on an ad hoc basis. A quarter of those at mega-

cap companies say discussions happen at every meeting and 54 percent report ad hoc talks.

Fewer respondents in Europe (34 percent) report the board discussing M&A strategy on an ad hoc basis than do peers in North America (53 percent).

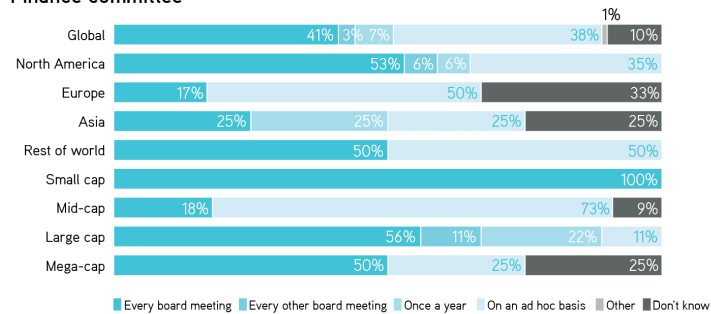
How often do committees with M&A strategy oversight report to the main board on those issues?

Audit committee



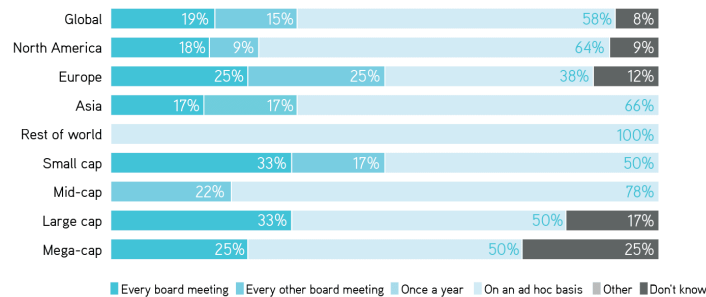
Overall, just under a fifth (18 percent) of respondents say audit committees with M&A strategy oversight report to the main board at every meeting on those issues, while 63 percent say they do so on an ad hoc basis.

Finance committee



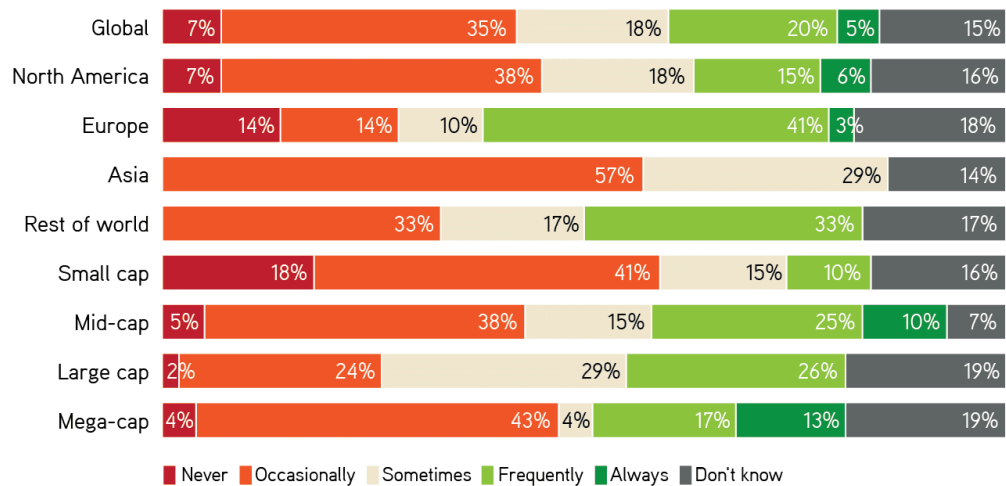
Similarly, 19 percent of respondents whose risk committee has oversight of M&A strategy say that panel reports to the main board on those issues at every board meeting, with 58 percent saying they submit ad hoc reports.

Risk committee



In comparison, 41 percent of respondents say finance committees with M&A strategy oversight report on it at every board meeting, while 38 percent say they do so on an ad hoc basis.

How often do investors ask about your company's M&A strategy?



Aside from boards discussing M&A strategy issues, companies also face questions from investors about their plans in that area. Overall, 43 percent of respondents say investors ask about their company's M&A strategy at least sometimes. Around a third say investors ask questions occasionally and just 7 percent say they never ask.

Small-cap companies appear to attract fewer inquiries. More than half of respondents at such firms say investors never or only occasionally ask about their M&A strategy. By contrast, more than half (55 percent) of those at large-cap companies say investors ask such questions sometimes or frequently.

Almost a third (30 percent) of those at mega-cap companies say investors ask about M&A frequently or always, while half of those at mid-caps say

investors ask about their company's M&A strategy at least sometimes.

There is a notable difference regionally: 44 percent of respondents in Europe report investors asking questions frequently or always, compared with just 21 percent of those in North America.

Doing deals

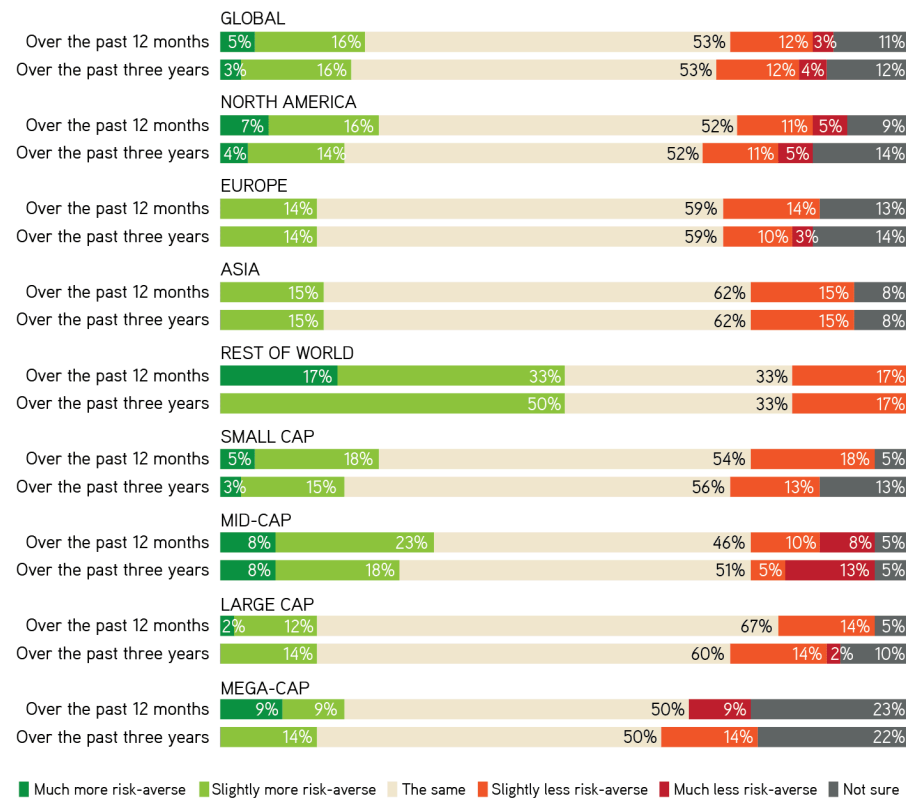
How boards approach transactions



Doing deals

How boards approach transactions

How has your board's view of M&A strategy changed?



Over the last few years, global markets have experienced the effects of the Covid-19 pandemic, widespread economic and supply-chain upheavals and uncertainty, inflation and Russia's invasion of Ukraine. Despite all this, governance professionals indicate that boards' views on M&A strategy and risk in many cases have not been strongly swayed in any one direction.

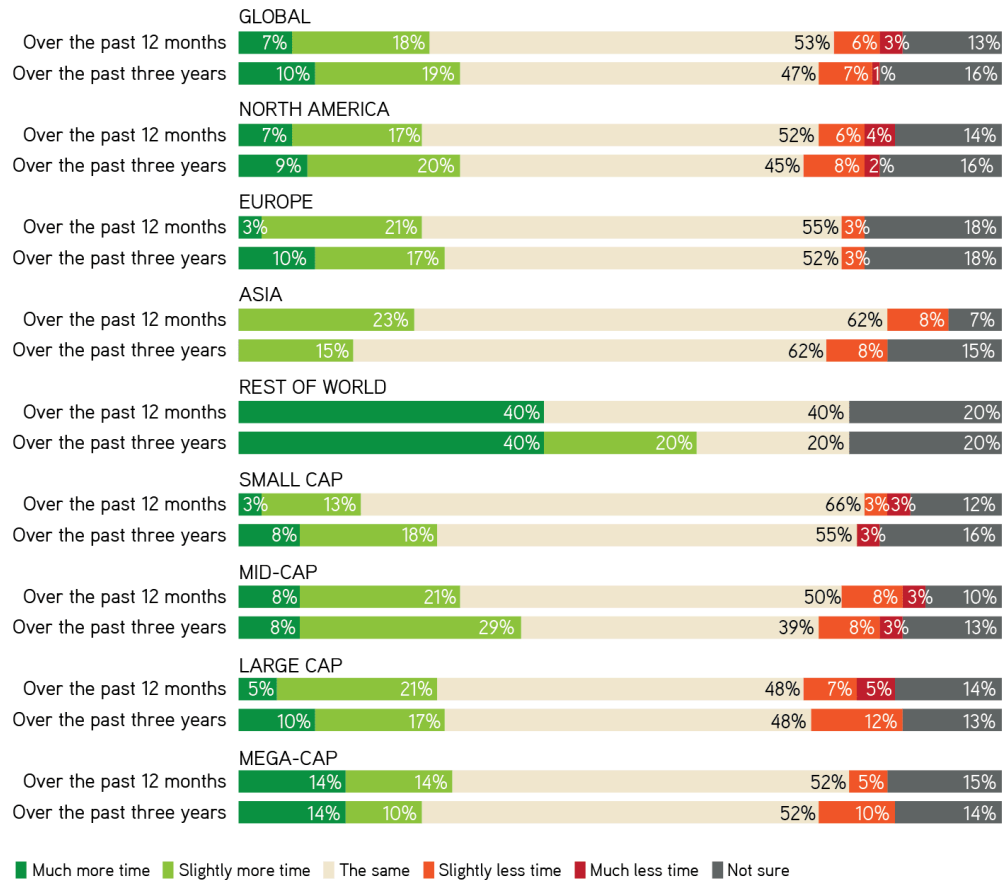
Overall, 21 percent of respondents say their board has become slightly or much more risk-averse over the past 12 months, while 15 percent say their board has become slightly or much less risk-averse. A slim majority of 53 percent say their board's views on M&A strategy have not changed.

Almost a third (31 percent) of respondents at mid-cap companies say their board has become slightly or much more risk-averse in the past year. This compares with 23 percent of those at small-cap companies, 18 percent of those at mega-caps and 14 percent of those at large-cap firms.

More than two thirds (67 percent) of respondents at large caps say their board's view has not changed over the last 12 months. Eighteen percent of those at small and mid-caps say their board has become less risk-averse.

The patterns are broadly similar when taking into account view changes over the past three years.

On average, how has the time spent on due diligence for M&A deals your company has been involved in changed?



Market conditions and changing practices and technology can all have an impact on how long companies devote to ensuring that an M&A transaction can and should go ahead.

Overall, a quarter of respondents say the length of time spent on due diligence for M&A deals their company has been involved in has increased over the past 12 months, with 9 percent saying their company has spent less time on this.

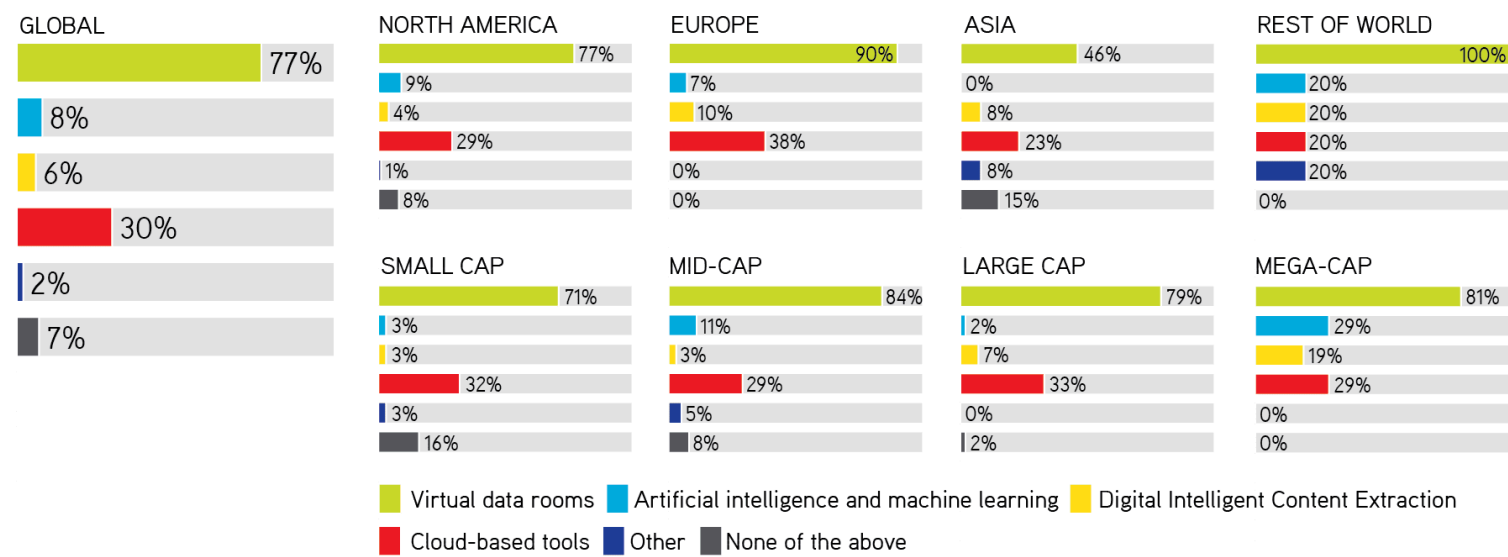
Twenty-nine percent of those at mid-caps say their company is spending much or slightly more time on due diligence. This compares with 28 percent of those at mega-caps, 26 percent of those at large caps and 16 percent of those at small-cap firms.

Almost a quarter (24 percent) of respondents in North America and

Europe each say their company is spending much more or slightly more time on due diligence.

The tendency toward increased focus on due diligence is broadly similar when looking back three years.

Which of the following technology tools has your company adopted to carry out M&A due diligence?



Due diligence has traditionally been a labor-intensive process, but new tools offer opportunities for companies and their legal teams to avoid much of the manual work. Overall, the most commonly adopted technology tool for M&A due diligence is virtual data rooms, cited by 77 percent of

respondents. This is followed by cloud-based tools, mentioned by 30 percent.

Artificial intelligence (AI) and machine learning are rapidly gaining in profile and use in many areas, but just 8 percent of respondents say their company has so far used them for M&A

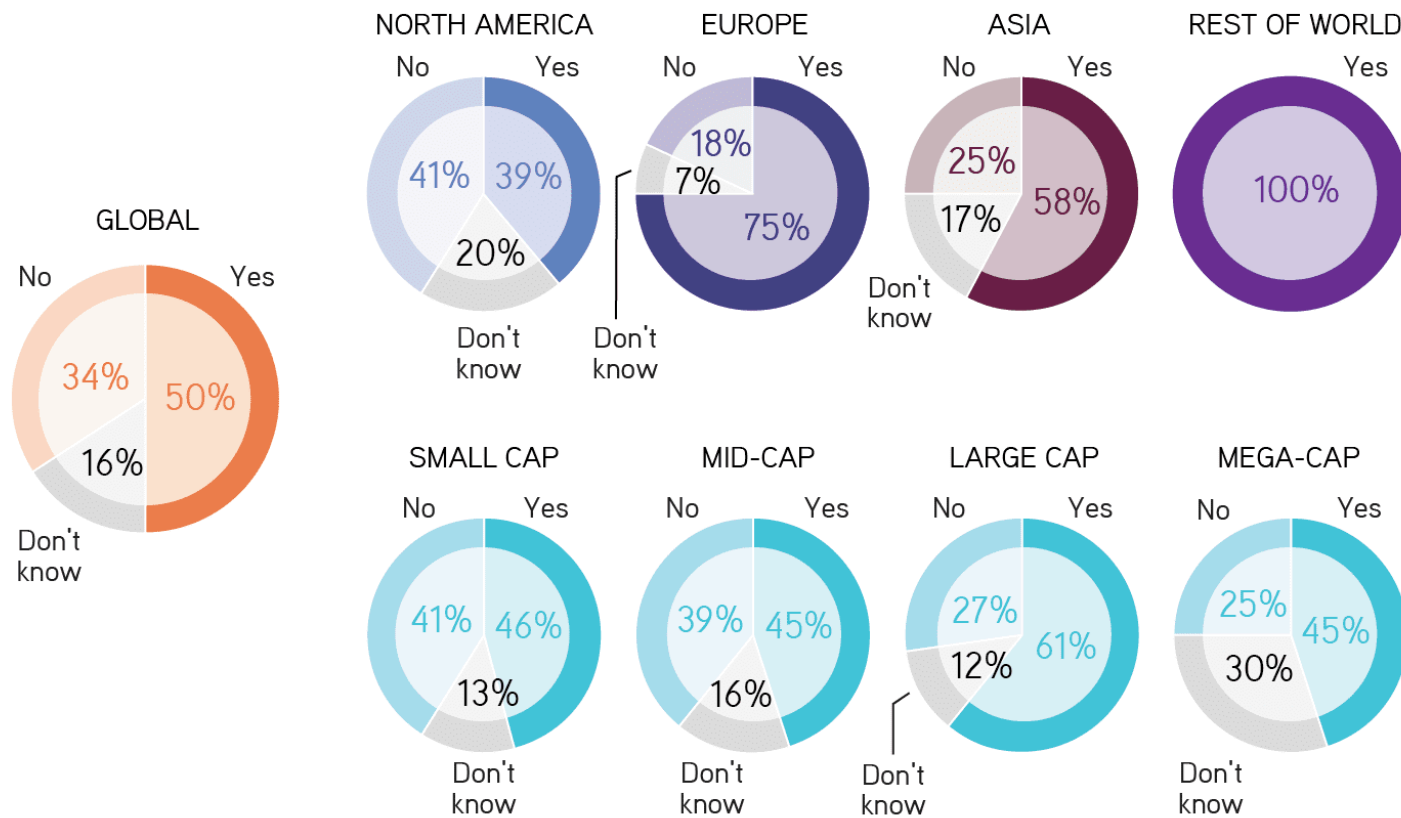
due diligence. Just 6 percent say their company uses Digital Intelligent Content Extraction (D-ICE).

The uptake of AI and machine learning is more pronounced at mega-caps, where almost three in 10 respondents (29 percent) say they have

adopted such tools. That compares with just 3 percent of those at small-cap firms and 2 percent of those at large caps. Similarly, 19 percent of respondents at mega-caps say their company uses D-ICE tools, compared with 3 percent of those at small and mid-cap firms.

Nine in 10 respondents in Europe report that their company uses virtual data rooms, compared with 77 percent of those in North America. Those in Europe are also more likely (38 percent) to use cloud-based technology than those in North America (29 percent).

Does your board consider ESG factors in M&A strategy and target selection?



while around a third (34 percent) say their board does not.

The pattern is particularly pronounced among respondents at large caps, where 61 percent say their board takes ESG into account when it comes to M&A. Only a quarter of those at mega-caps say their board does not consider ESG issues, although it should be noted that 30 percent don't know.

Perhaps reflecting legislative and political variations, three quarters of respondents in Europe say their board takes ESG factors into account in terms of M&A, while just 39 percent of those in North America say likewise.

Companies and their boards of directors are increasingly taking ESG matters into consideration in their

operations, executive compensation, public disclosures, investor engagement and other areas.

Half of the respondents say their board considers ESG factors as part of M&A strategy and target selection,

Helping the board

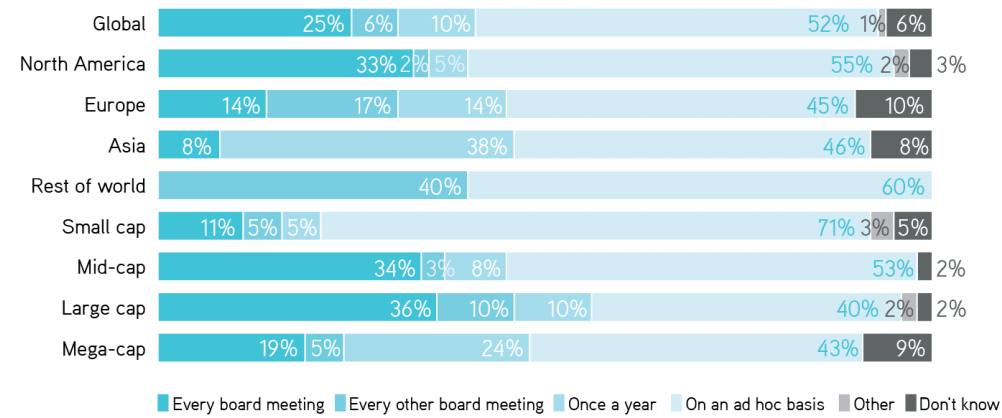
Updates and briefings



Helping the board

Updates and briefings

How often is the board given briefings in relation to M&A strategy?



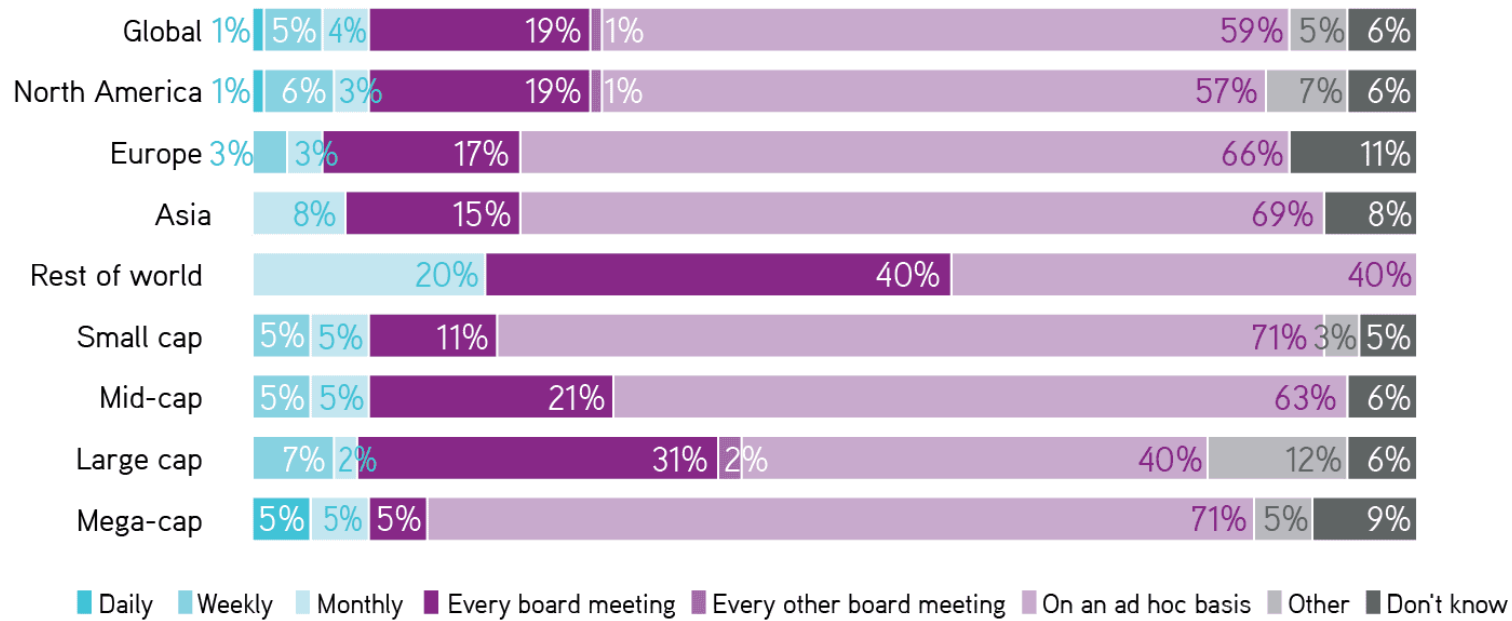
Of course, the board cannot oversee M&A strategy and deal-making without being advised by management. When it comes to strategy, just over half (52 percent) of respondents report that their board is given briefings on an ad

hoc basis, while a quarter say their board is briefed at every meeting. Thirty-six percent of those at large-cap companies, 34 percent of those at mid-caps, 19 percent of those at mega-

caps and just 11 percent of those at small-cap companies say their board is briefed at every meeting.

One third of respondents in North America say their board is briefed on M&A strategy at every meeting, compared with just 14 percent of those in Europe. Seventeen percent of respondents in Europe say briefings take place at every other board meeting, compared with 2 percent of those in North America.

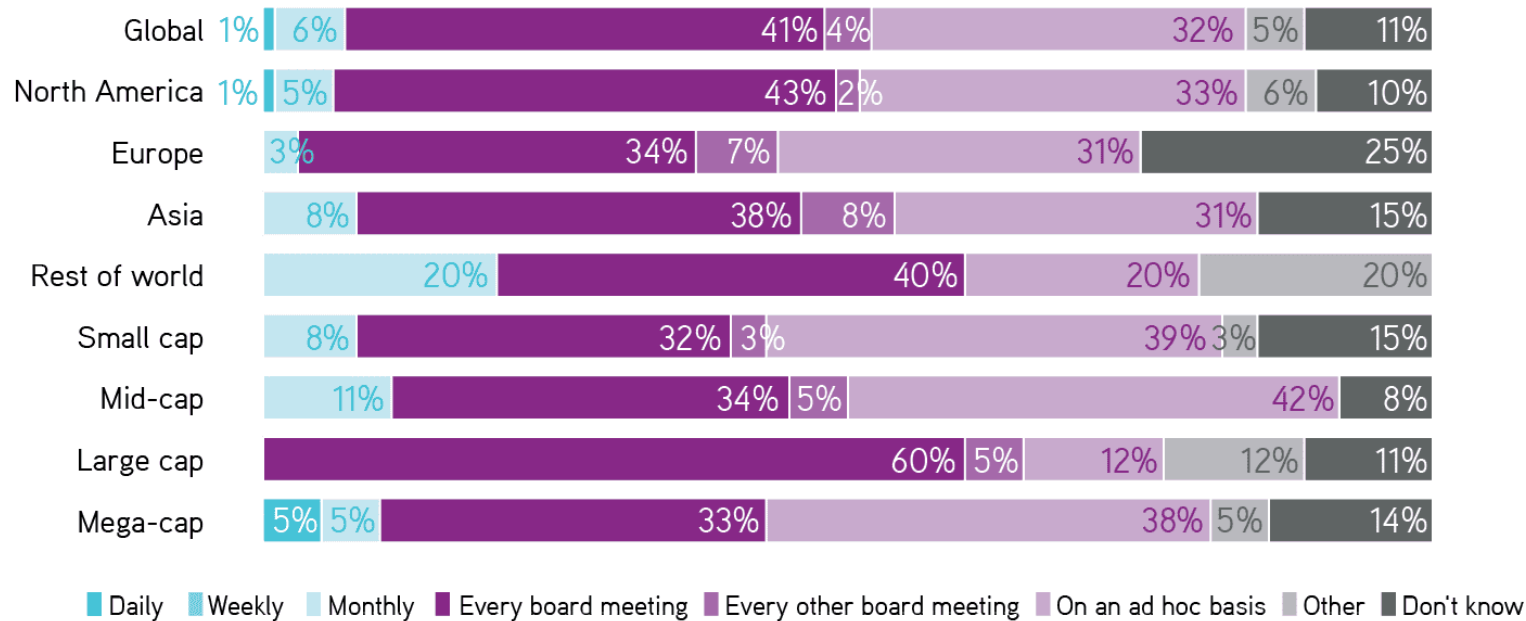
How often is the board updated on deal preparation/mechanics for a material M&A transaction?



More than half (59 percent) of respondents report that their board is updated on deal preparation/mechanics for a material M&A transaction on an ad hoc basis, while 19 percent say updates happen at every board meeting. Outside of that, 10 percent say updates are given on a daily, weekly or monthly basis.

Almost a third of those at large caps say deal updates are given to the board at each of its meetings. By comparison, just 5 percent of those at mega-caps and 11 percent of those at small caps say updates take place that frequently.

How often is the board updated on the implementation of a material M&A transaction during the first year after closing?



Boards also need to be kept in the loop on how a deal is being put into effect. Overall, 41 percent of respondents say their board is updated at every meeting on the implementation of a material M&A transaction during the first year after the deal closes. Around a third (32 percent) say those updates happen on an ad hoc basis.

Sixty percent of respondents at large caps report that implementation updates are given at every board meeting. This compares with 34 percent, 33 percent and 32 percent of those at mid-caps, mega-caps and small-cap companies, respectively.

More respondents in North America (43 percent) than in Europe (34 percent) say their board gets updates at every meeting.

Role of governance teams

Respondents were asked to name the most important role for governance teams in assisting the board on M&A. Due diligence and risk management are common responses. In addition to these, respondents' comments include:

- 'Helping manage the process and [due diligence] on governance-related matters'
- 'Ensuring all necessary steps are followed and stakeholders consulted/informed'
- 'Transparent approach and supply of complete and accurate information'
- 'Environmental liability'
- 'Understanding target's governance structure and challenges'
- 'Ensuring a good fit that is compliant with local laws and employment rules'
- 'Overall benefit/risk assessment and value'
- 'Finding errors'
- 'Due diligence, deal execution and post-closing integration'
- 'Reporting on risks'
- 'Understanding target's ability to conform to parent's governance requirements'
- 'Identifying and highlighting risks relevant to decision-making'
- 'Setting compliance strategy as a group'
- 'Disclosure issues'
- 'Identifying potential governance issues'
- 'Clear communication'
- 'Guiding the board [on any required] approvals and public announcements'
- 'Assisting the board in understanding the risks involved in the transaction and making sure it has adequate materials and information to properly assess the deals being presented for approval'
- 'Helping ensure all fiduciary duties and approval processes are met'
- 'Making sure all the regulatory steps are followed'
- 'Supporting execution materials. Ensuring effective information flows, decision-making and regulatory compliance. Shareholder approvals and external and internal comms'
- 'Identifying risks of the transaction, ensuring the transaction aligns with our values/priorities and forecasting the financial and brand implications'
- 'Identifying potential governance issues that can impact the structure of the transaction'
- 'Compliance'
- 'Gathering the data into a central location and advising the board on its governance requirements'
- 'Identifying potential liability issues (such as stockholder lawsuits) associated with transactions'
- 'Governance and disclosure matters'
- 'Alignment of businesses, leadership and culture'
- 'Ensuring disclosures are accurate'
- 'Project management and reporting'
- 'Supporting submission of clear and timely data on the deal and approval process. Helping board understand what authority it is giving management'
- 'Ensuring disclosures are well drafted and appropriate'
- 'Crafting appropriate deal-approval process'
- 'Right cadence of review and right information on decision-making process'
- 'Culture and ESG'
- 'Cyber-security'

Thank you for reading

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