



AMERICAN **BAR** ASSOCIATION

# Business Law Section Hybrid Spring Meeting, April 2023

## Acquisitions of Public Companies Subcommittee Meeting

# Contingent Value Rights in M&A

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# What are contingent value rights?

## What is a CVR?

- A Contingent Value Right (“CVR”) is a derivative instrument whose value is based upon the occurrence of specific contingencies that can be financial (e.g., revenue, profitability) or non-financial (e.g., regulatory approval)
- Two types of CVRs:
  - 1) Event Driven CVRs: right of target company shareholders to receive contingent payment upon achievement of a specified milestone event
  - 2) Price Protection CVRs: guarantees target’s stockholders the value of shares (often acquiror’s stock) issued as consideration for a transaction (less common than Event Driven CVRs)
- Complex and highly negotiated financial instrument intended to address uncertainty over significant milestones or bridge value gaps between buyer and seller
- Distributes risk of milestone / upside not being achieved between both parties

## How are CVRs are structured?

- If structured properly, both parties can perceive the CVR as advantageous
- CVRs can pay out cash, acquirer stock or a mix
- They can be structured as securities or non-traded contractual rights
- Can be based on performance over several periods or multiple milestones; timeframe can vary considerably

## When do CVRs work best?

- Definable or measurable future event that can result in significant value creation
- Sellers have made the required investments to capture future value opportunities
- Often binary outcomes, but can be based on multiple milestones

## Historical CVR utilization?

- Though impactful in the right scenarios, CVRs have been used sparsely in the context of total announced M&A
- Only ~50 CVR precedents over the past 18 years
- Used most frequently by healthcare companies, though recently finding application in other sectors
- Recently used in both large and small public M&A transactions; CVRs part of deals with equity values ranging from \$13.78 million to over \$19 billion over past three years\*

\* These Equity Values and all other data presented in the following slides are based on publicly available Securities and Exchange commission filings and databases including DealPoint Data, CapitalIQ, Intelligize, and MergerMarket.

# Legal and Deal Structure Considerations

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- CVRs are generally memorialized in a separate CVR Agreement accompanying the merger agreement
- CVR agreements are typically between the buyer parent or merger subsidiary and a rights agent; some also include a CVR representative:
  - **Rights Agent** – intermediary between buyer and CVR holders; generally keeps register of CVR holders, manages CVR payment / notice procedures, and acts as conduit for disputes
  - **CVR Representative** – responsible for looking after and enforcing the CVR holders' interests and rights; often an individual and sometimes a company
- CVRs are often structured to avoid being characterized as a "security" for U.S. securities law purposes. To be avoiding being a security a CVR should:
  - not be certificated
  - have no voting or dividend rights, or other rights commonly associated with stock
  - not grant ownership interest or bear interest
  - not be transferrable or assignable outside of limited transfers (e.g., into a trust)
- CVRs are occasionally registered and exchange traded on the theory that the liquidity will enhance value. However, most buyers determine that the additional time and process are not worth any perceived value gains

# Benefits and considerations of a CVR structure to both the Target & acquirer

## Buyer perspective

### Benefits

- Flexibility to offer higher headline / potential valuation than might otherwise be possible
- Distributes risk of milestone / upside not being achieved between both parties
- Minimizes upfront cash at risk

### Considerations

- Administrative burden of maintaining CVRs
- Requires additional disclosure on event / performance threshold tied to CVR
- Potential accounting/rating implications

## Seller perspective

### Benefits

- Higher headline valuation and potential payout makes transaction more attractive to shareholders
- Potential to preserve upside participation in future of the company or specified products
- Flexibility to structure around wide variety of events
- Ability to structure as tradeable instrument

### Considerations

- Loss of control of company while retaining risk around future development and commercialization
- Highly negotiated and complex financial instrument
- Even if tradeable, typically illiquid
- Investors are more inclined to prefer upfront cash

# Types of CVR Milestones

CVR Agreements may contain just a single or multiple milestones that trigger payouts.

	Based on specific target events	Based on target performance	Based on acquirer trading performance
Description	<ul style="list-style-type: none"> <li>• Seller receives contingent value upon achievement of specific event</li> <li>• Similar to milestone payment in a private deal</li> <li>• Events could include FDA approval, litigation outcome, product launch, specified asset sales, proceeds from existing or future third-party licensing / IP arrangements, etc</li> </ul>	<ul style="list-style-type: none"> <li>• Seller receives contingent value upon achievement of predefined operating performance threshold</li> <li>• Similar to an earn-out / milestone structure in a private deal</li> </ul>	<ul style="list-style-type: none"> <li>• Seller receives value difference of "target price" and actual price of acquirer (over defined time period)</li> <li>• Price floor generally part of CVR</li> </ul>
Comments	<ul style="list-style-type: none"> <li>• Found in Event Driven CVRs</li> <li>• Allows acquirer to increase value without paying more upfront or taking event risk upfront</li> <li>• Positions acquirer to pay more value only upon value-creating events</li> <li>• Allows seller to realize incremental value upon positive events</li> </ul>	<ul style="list-style-type: none"> <li>• Found in Event Driven CVRs</li> <li>• Allows acquirer to increase value without paying more upfront</li> <li>• Positions acquirer to pay more value only upon value-creating events</li> <li>• Allows seller to realize incremental value upon achievement of target</li> </ul>	<ul style="list-style-type: none"> <li>• Found in Price Protection CVRs</li> <li>• Allows buyer to offer more value without more cash or shares at closing</li> <li>• Can signal confidence in stock price reaction, trading performance</li> </ul>

# Example of CVR Milestones

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CVR milestones must be achieved by a specific date in order to trigger payout.

## Multiple Milestone Categories

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**“Clinical Trial Milestone”** means, and will be deemed to occur upon, the earlier of (a) first dosing of the first patient with the Clinical Trial Product in the first Phase III Clinical Trial, (b) the Conversion Date for the first Converted Trial of the Clinical Trial Product (and, for clarity, the first dosing of the first patient in an Adaptive Trial prior to the Conversion Date shall not constitute dosing of a first patient in a Phase III Clinical Trial), and (c) the first submission of a new drug application to market and sell the Clinical Trial Product in the United States.

**“Regulatory Approval Milestone”** means, and will be deemed to occur upon, Parent’s or its Affiliates’ (or their respective successors or assigns) first receipt of approval by the FDA of a new drug application or other regulatory approval application which approval grants Parent or its Affiliates (or their respective successors or assigns) the right to market and sell the Regulatory Approval Product in the United States.

Achillion Pharmaceuticals, Inc. (target) / Alexion Pharmaceuticals, Inc. (acquiror), announced 10/15/2019.

# CVR Duration

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- CVR agreements vary in duration from months to years based on their milestones, which often have a specified time period or expiration date
- CVR agreements can terminate on a specified date or often upon the earlier of:
  - achievement of all of the CVR milestones, or
  - non-achievement of some or all of the CVR milestones by the specified date(s)
- In CVR agreements with multiple milestones, duration can vary based on each milestone

## Example of Variable CVR Milestone Durations

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**“FDA Approval Milestone”** means the first achievement of regulatory approval by the FDA (including, for the avoidance of doubt, accelerated approval), **on or prior to January 1, 2028**, necessary for the commercial marketing and sale of tazemetostat in the United States as a second line treatment for relapsed or refractory follicular lymphoma in combination with lenalidomide and rituximab...”

**“Net Sales Milestone”** means the first achievement of Net Sales of at least \$250,000,000 during any period of four consecutive Calendar Quarters **ending on or prior to December 31, 2026**.

Achillion Pharmaceuticals, Inc. (target) / Alexion Pharmaceuticals, Inc. (acquiror), announced 10/15/2019.

# CVR Consideration: Form and Calculation

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Meeting a CVR milestone within the CVR period triggers a payout to CVR holders

CVR agreements with multiple milestones have multiple payouts

Payouts usually are in the form of cash but in some instances are paid out in stock or by buyer's election

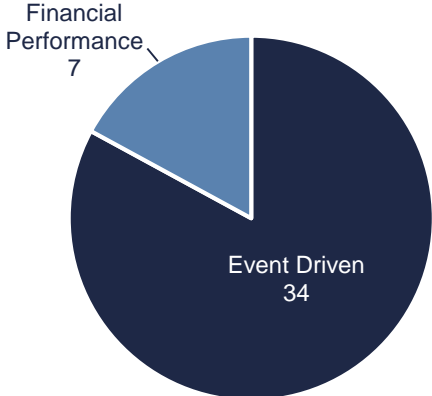
Cash payouts are either:

1. **Fixed** – a set amount per CVR for the milestone achieved
2. **Variable** – a variable amount per CVR that may be based on factors such as:
  - What and when a milestone is achieved
  - A percentage of overall net sales or proceeds
  - A formula accounting for various economic inputs (e.g., a company's average stock price over a period of time)

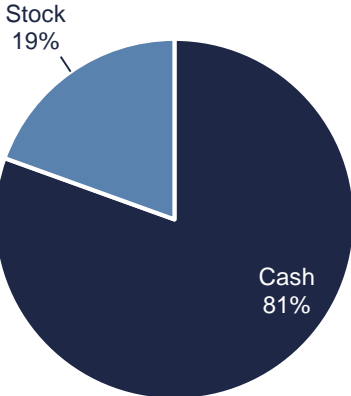


# Trends in CVR Consideration

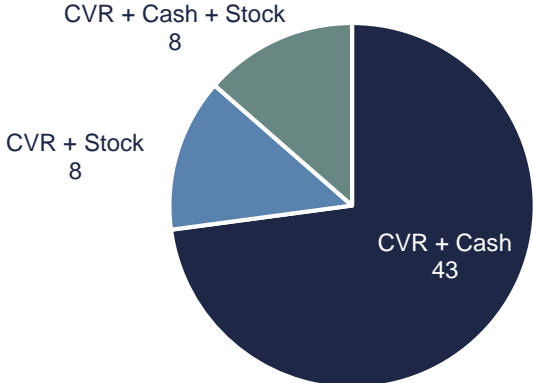
## CVR structure



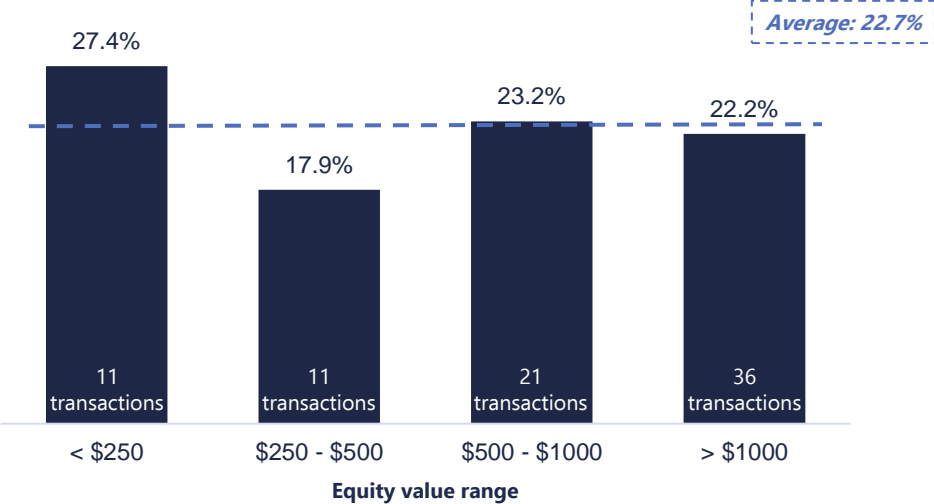
## Form of payout



## Type of consideration



## CVR as % of total price per share consideration<sup>1</sup>



Source: Company Filings; Deal Point Data as of 04/11/2023

1. Does not include transactions where consideration was paid in stock; Equity Value range does not include CVR consideration

# Example of Fixed versus Variable CVR Consideration

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## Fixed Dollar Amount

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**“Milestone 1 Amount”** means, with respect to the achievement of Milestone 1, an amount per CVR equal to \$1.00.

**“Milestone 2 Amount”** means, with respect to the achievement of Milestone 2, an amount per CVR equal to \$2.00.

**“Milestone 3 Amount”** means, with respect to the achievement of Milestone 3, an amount per CVR equal to \$3.00.

Flexion Therapeutics, Inc. (target) / Pacira Biosciences, Inc. (acquiror), announced 10/10/2021.

## Variable Dollar Amount

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**“Milestone Payment”** means (a) if the Milestone is achieved on or before December 31, 2024, \$4.00 per CVR, (b) if the Milestone is achieved from January 1, 2025 until and including the Expiration Date, an amount per CVR, rounded to the nearest \$0.01, equal to (i) \$4.00 multiplied by (ii) a fraction, (x) the numerator of which is 47 minus the number of full calendar months that have elapsed since January 1, 2025 and (y) the denominator of which is forty eight (48) and (c) if the Milestone is achieved after the Expiration Date, \$0 per CVR...

Prevail Therapeutics, Inc. (target) / Eli Lilly and Company (acquiror), announced 12/14/2020.

# Efforts Obligations

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Much like earn-outs, parties to a CVR will carefully negotiate the buyer's ongoing efforts to obtain or reach the milestones triggering payments.

CVR agreements often include commitments by the buyer to use a specified level of effort to achieve CVR milestones triggering payment.

The standard of effort to be used is **one of the most heavily negotiated points** in CVR agreements.

- **Buyers** – want clarity as to their obligations and to avoid the potential for litigation
- **Targets** – seek to maximize the likelihood of achieving milestones triggering CVR payments

Efforts obligations may be:

1. **Specified** – the CVR agreement may contain a specified efforts standard that may be general (similar to a general efforts covenant in a merger agreement) or may be highly detailed with specific requirements for, or carve-outs from, necessary actions
2. **Silent** – not described at all
3. **Affirm No Obligation** – affirmatively state buyer has no obligations to pursue achieving CVR milestones

# Examples of Effort Obligations

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**“Commercially Reasonable Efforts”** means, with respect to the achievement of the Milestone, carrying out those obligations and tasks in a good faith, diligent and sustained manner without undue interruption, pause or delay, including (without limitation) a level of effort and expenditure of resources that is consistent with commercially reasonable practices of a pharmaceutical company of comparable size and resources as the Company relating to commercializing a similar product or product candidate, as applicable, at a similar stage in its development or product life as TYMLOS, taking into account, provided, however, that the potential payment of the Milestone Payment Amount under this Agreement shall not be taken into account by Parent in determining the level of efforts to be asserted to achieve the Milestone. **For the avoidance of doubt, Commercially Reasonable Efforts will not mean that a party guarantees that it will actually achieve the Milestone, and a failure to achieve the Milestone may still be consistent with Commercially Reasonable Efforts.**

Radius Health / Gurnet Point Capital, Ltd, Patient Square Capital LP, announced 6/22/2022.

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**“Diligent Efforts”** means, with respect to a particular task or obligation, the efforts required to carry out such task in a good faith, diligent and sustained manner without undue interruption, pause or delay and expenditure of resources that is consistent with commercially reasonable practices, in each case which level is at least commensurate with the level of efforts that a pharmaceutical company of comparable size and resources as those of Parent and its Affiliates would devote to a product, taking into account issues of safety and efficacy, product profile, the competitiveness of other products in development and in the marketplace, the proprietary position of the Product (including with respect to patent or regulatory exclusivity), the regulatory structure involved, the profitability of the Product (including pricing and reimbursement but excluding, in respect of the Product, the obligation to make Milestone Payments under this Agreement), market potential, and other relevant technical, legal, scientific or medical factors.

Adamas Pharmaceuticals / Supernus Pharmaceuticals, announced 10/10/2021.

# Limits on Efforts Obligations

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## Limitations on Spending Required

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**4.6. Efforts.** With respect to each of . . . [the Milestones], . . . Parent will expend at least the respective amounts set forth on Annex A towards the achievement of such Milestone(s) . . . **provided that Parent shall not be required to expend the applicable Budgeted Amount upon any of the following events occurring with respect to the applicable Milestone(s):** (i) Parent determines to suspend or terminate the clinical protocol or study contemplated by such Milestone(s) because an unanticipated device adverse effect presents an unreasonable risk to the subjects of such clinical protocol or study; (ii) the Data and Safety Monitoring Board recommends that the clinical protocol or study contemplated by such Milestone(s) be suspended or terminated due to safety concerns or futility; (iii) the FDA determines to suspend the clinical protocol or study contemplated by such Milestone(s); or (iv) the clinical protocol or study contemplated by such Milestone(s) is otherwise prohibited by applicable Law . . .

Abiomed, Inc. (target) / Johnson & Johnson (acquiror), announced 10/31/2022.

## Limitations on Studies *and* Spending Required

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**“Diligent Efforts”** . . . In furtherance and not in limitation of the foregoing, “Diligent Efforts” will include (a) with respect to Milestone 1, the obligation to pursue FDA approval that would result in the achievement of Milestone 1, including by reasonably promptly appealing (within the applicable timeframe permitted by the FDA) any failure of FDA to grant such approval and reasonably promptly pursuing additional pre-clinical studies in support thereof **(provided that in no event will Purchaser or its controlled Affiliates be required under this Agreement to (i) pursue more than two (2) additional pre-clinical studies or incur obligations or liabilities in excess of \$2,000,000 in the aggregate with respect to such studies or (ii) conduct an additional pre-approval clinical study in Filsuvez . . .**

Amryt Pharma, PLC (target) / Chiesi Farmaceutici, S.A. (acquiror), announced 1/08/2023.

# Efforts Obligations Key Questions

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**Key questions** in defining the standard of effort in CVR agreements include:

- 1 To what actions does the standard apply?** – Does the standard apply to any action a buyer takes or only those in pursuit of a specific milestone?
- 2 Who does it apply to?** – Does the standard only apply to the buyer or also to its affiliates and licensees?
- 3 Consistent with what practice?** – Must the buyer act consistent with its past practices or consistent with a similarly sized company in a similar industry?
- 4 To what is the product being compared to?** – Is the product being compared to similar products or products with specific uses? What factors may the buyer consider in deciding whether to continue developing a product?
- 5 Are there limits on the standard of effort?** – Are there limits on the standard (e.g., defined monetary contributions or number of studies to be undertaken)?

# CVR Enforcement

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- 1** CVR holders may enforce their rights under CVR agreements generally only through the **Rights Agent** or a **CVR Representative**.
- 2** Some CVR agreements, often those with milestones tied to sales proceeds or asset sales, include a process for CVR holders to **audit or challenge whether a milestone has been met**.
- 3** Individual CVR holders rarely have enforcement rights; **enforcement actions usually require action by the “Acting” or “Majority Holders.”**
- 4** CVR agreements vary in what constitutes “Acting” or “Majority Holders,” with percentages **ranging from 30% to 50% of the outstanding CVR Holders** at the time of determination.
- 5** CVR agreements are usually governed by Delaware law and waive right to a jury trial; some require parties to submit to arbitration.

# Examples of Enforcement Provisions

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## Enforcement by Acting Holders

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“**Acting Holders**” means, at the time of determination, Holders of not less than thirty percent (30%) of outstanding CVRs as set forth in the CVR Register.

### **Section 6.4 Benefits of the Agreement. . . .**

Except for the rights of the Rights Agent and the Representative set forth herein, **the Acting Holders will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding with respect to this Agreement**, and no individual Holder or other group of Holders will be entitled to exercise such rights. . .

Jounce Therapeutics, Inc. (target) / Concentra Biosciences, LLC (acquiror), announced 3/26/23 (transaction still pending).

## Enforcement by Holder Representative

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**Section 7.3 Benefits of Agreement. . . .** To the extent permitted by applicable law, it is expressly agreed that in no event shall any Holders (as opposed to the CVR Holders’ Representative) or any former or ongoing stockholders of Parent (as opposed to the CVR Holders’ Representative) have, after the Effective Time, any power or right to commence or join in any Legal Proceeding against Parent or any Affiliate of Parent based on or arising out of the CVRs or this Agreement. **Such Legal Proceeding may be brought by, and only by, the CVR Holders’ Representative in the name of and for the benefit of the Holders.** The outcome or settlement of any such Legal Proceeding shall be binding upon all Holders . . .

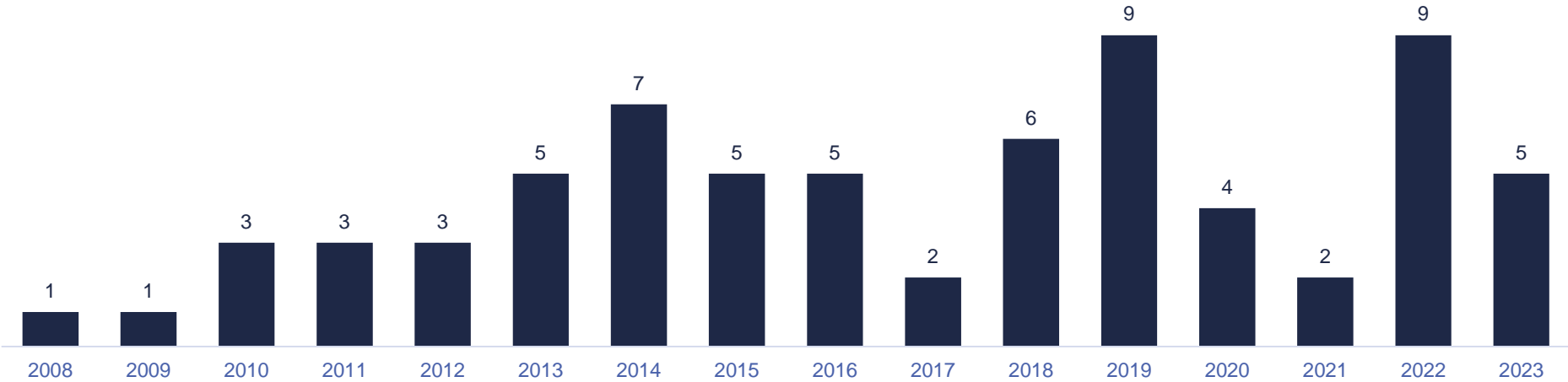
Leading Biosciences, Inc. (target) / Seneca Biopharma, Inc. (acquiror), announced 12/16/2020.



# CVRs are well understood in Pharma/Biotech but have historically been used sparingly in other sectors

## CVR usage over time

# of transactions



























## CVR usage by sector






Source: Company Filings; Deal Point Data as of 04/11/2023

# Recent healthcare transactions with CVRs

Select Pharma CVRs						
Date	Target	Acquirer	~\$M (Inc. CVR)	CVR% of Consideration	CVR Type	Effort
1/19/23	 CoNCERT Pharmaceuticals Inc.	 SUN PHARMA	\$800	30.4%	Sales	CRE
1/9/23	 CINCOR	 AstraZeneca	\$1,800	27.8%	Milestones	CRE
1/9/23	 Albireo	 IPSEN Innovation for patient care	\$1,100	19.2%	Milestones	CRE
1/8/23	 Chiesi	 AMRYT	\$1,450	14.7%	Milestones	CRE
11/14/22	 opiant	 INDIVIOR	\$150	28.6%	Sales	CRE
11/7/22	 OYSTER POINT	 VIATRIS	\$350	15.4%	Sales	None
10/18/22	 AKQUOS	 Lilly	\$550	19.4%	Milestones	CRE
6/27/22	 Epizyme	 IPSEN Innovation for patient care	\$400	40.8%	Both	CRE
6/23/22	 RADIUS	 GURNET POINT CAPITAL	\$500	9.1%	Sales	CRE
1/19/22	 ZOGENIX	 ucb	\$1,500	7.1%	Milestones	CRE

Select Medtech CVRs						
Date	Target	Acquirer	~\$M (Inc. CVR)	CVR% of Consideration	CVR Type	Effort
1/17/23	 neovasc	 SHOCKWAVE MEDICAL	\$100	30.6%	Milestones	None (Express Disclaimer)
11/1/22	 ABIOMED	 Johnson & Johnson	\$19,000	8.4%	Both	Budgeted Spend; No Others

# Recent CVR usage in non-healthcare transactions

Non-healthcare CVR transactions			
<b>Target</b>	 <p><i>produces a diverse range of wood, pulp, tissue and paper products</i></p>	 <p><i>hydroponic vertical farming company</i></p>	 <p><i>provides insurance and reinsurance products for a variety of industries</i></p>
<b>Buyer</b>	 <p><i>privately held diversified manufacturer printing, writing and packaging papers</i></p>	<p><b>Agrico Acquisition Corp</b></p> <p><i>privately held diversified manufacturer printing, writing and packaging papers</i></p>	 <p><i>underwrites specialty, property and casualty business</i></p>
<b>Date</b>	July 2022	January 2022	August 2020
<b>Industry</b>	Paper & Packaging Products	Food Products	Insurance (Property & Casualty)
<b>Transaction Overview</b>	<ul style="list-style-type: none"> <li>• Take private; strategic acquisition</li> <li>• Consideration equivalent to \$20.50 per share in cash and one CVR per share</li> </ul>	<ul style="list-style-type: none"> <li>• Merger</li> <li>• 0.181 new Pubco ordinary share per Kalera share and one non-tradeable CVR per share</li> </ul>	<ul style="list-style-type: none"> <li>• Merger of equals</li> <li>• Option to receive either \$9.50 in cash, 0.743 Third Point shares and one two-year CVR, or \$0.905 in cash and a mix of warrants, rights and pref stock</li> </ul>
<b>CVR Consideration Structure</b>	<ul style="list-style-type: none"> <li>• Under the CVR, stockholders will receive any refunds received on approximately \$500 million of net deposits on estimated softwood lumber duties paid by the Company through June 30, 2022</li> <li>• The amount and timing of any distributions will ultimately be determined by the terms and timing of the resolution of the softwood lumber dispute between Canada and the US</li> </ul>	<ul style="list-style-type: none"> <li>• The CVR is payable in up to two stock issuances that will be based upon the achievement of certain stock price thresholds following the closing of the transaction</li> <li>• CVR shares will be issued if the volume-weighted average price (VWAP) of the trading stock is greater than \$12.50 and \$15.00, in each case for any 20 trading days within a 30 trading day period</li> </ul>	<ul style="list-style-type: none"> <li>• Sirius shareholders that make the Share &amp; CVR option election will receive 0.743 of a TPRE Common Share and one CVR for each issued and outstanding Sirius share</li> <li>• Taken together, the TPRE share and the CVR guarantee that on the second anniversary of the closing date of the merger, each shareholder making a Share &amp; CVR election will have received equity and cash of at least \$13.73 per share</li> </ul>

# Valuation considerations for CVRs – financial advisor perspective

## Key valuation inputs

### Probability of Occurrence

- One of the most subjective inputs, which is the probability that the milestone occurs (from 0% - 100%)
- Most situations are unique and require a combination of objective observations (e.g., historical FDA approval for similar drugs) and subjective judgement
- For purposes of valuation, input is provided by company management (which could further be informed by outside consultants) and directed to use by the company’s Board of Directors

### Discount Rate

- This is to reflect the cost of capital expected by the target company stakeholders due to the passage of time
- It should not address to probability of the milestone occurring, which is covered in the probability
- Discount rates utilized are usually (a) cost of equity, (b) cost of debt or (c) weighted average cost of capital (“WACC”), with WACC being the most common – see following page for additional details

### Timing

- This is the future date when the specified milestone is expected to be achieved
- Relevant because of the time value of money
- For purposes of valuation, input is provided by company management (which could further be informed by outside consultants) and directed to use by the company’s Board of Directors

## Example: AstraZeneca/CinCor



Jan 2023

“For analytical purposes, assuming that for one CVR, the holders thereof receive a payment equal to **\$10.00 upon the achievement of the Milestone**, based **solely on the assessments of CinCor’s senior management** as to the **probability and timing of realizing the Milestone Payments**...and discounted to **present value as of December 31, 2022** using a **discount rate of 13.0%** (based on [Advisor]’s analysis of CinCor’s **weighted average cost of capital** using the Capital Asset Pricing Model and based on considerations that [Advisor] deemed relevant in its professional judgment and experience, taking into account certain metrics including yields for U.S. treasury notes, levered and unlevered betas for comparable group companies, market risk and size premia) and using a mid-year convention, [Advisor] calculated an **illustrative risk-adjusted net present value for one CVR of \$4.60**...and assumes a **probability of success of 70%** for treatment resistant hypertension (“rHTN”),”

		Probability of Occurrence				
		0.0%	25.0%	50.0%	70.0%	100.0%
Discount Rate	12.0%	\$0.0	\$1.7	\$3.4	\$4.7	\$6.7
	12.5%	0.0	1.7	3.3	4.6	6.6
	13.0%	0.0	1.6	3.3	4.6	6.5
	13.5%	0.0	1.6	3.2	4.5	6.4
	14.0%	0.0	1.6	3.2	4.4	6.3

		Occurrence Time Period (Years)				
		1.0	2.5	3.5	5.5	7.0
Discount Rate	12.0%	\$6.3	\$5.3	\$4.7	\$3.8	\$3.2
	12.5%	6.2	5.2	4.6	3.7	3.1
	13.0%	6.2	5.2	4.6	3.6	3.0
	13.5%	6.2	5.1	4.5	3.5	2.9
	14.0%	6.1	5.0	4.4	3.4	2.8

Source: Company Filings

# Selected CVR precedents with disclosed discount rate

Weighted-average cost of capital (WACC) is the most commonly used discount rate for purposes of valuing CVRs in analyses underlying financial advisors' fairness opinions.

Acquirer/target	CVR discount rate description	CVR discount rate
Viatrix / Oyster Point Pharma (12/01/2022)	<ul style="list-style-type: none"> <li>One CVR of \$2.00 per share valued at \$0.55 after probability adjustment (discount rate and PoS not disclosed)</li> </ul>	<ul style="list-style-type: none"> <li>Not disclosed</li> </ul>
Johnson & Johnson / Abiomed (11/15/2022)	<ul style="list-style-type: none"> <li>One CVR of \$35.00 per share discounted using the cost of equity through the application of capital asset pricing to NPV of \$16.96 per share Less relevant</li> </ul>	<ul style="list-style-type: none"> <li><b>Cost of Equity:</b> 11.8%</li> </ul>
Eli Lilly / Akuous (10/31/2022)	<ul style="list-style-type: none"> <li>Three CVRs of \$1.00 per share (\$3.00 total) probability adjusted and discounted using the weighted average cost of capital to total NPV of \$1.81 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Midpoint of 15.0% to 17.0%</li> </ul>
Gurnet Point / Radius Health (07/13/2022)	<ul style="list-style-type: none"> <li>One CVR of \$1.00 per share with no discounting methodology disclosed</li> </ul>	<ul style="list-style-type: none"> <li>Not disclosed</li> </ul>
UCB / Zogenix (02/01/2022)	<ul style="list-style-type: none"> <li>One CVR of \$2.00 per share probability adjusted by 64% and discounted using the weighted average cost of capital to total NPV of \$1.11 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Midpoint of 10.0% to 13.0%</li> </ul>
Supernus / Adamas (10/25/2021)	<ul style="list-style-type: none"> <li>One CVR of \$1.00 per share discounted to NPV (methodology not disclosed)</li> </ul>	<ul style="list-style-type: none"> <li>Not disclosed</li> </ul>
Pacira / Flexion (10/22/2021)	<ul style="list-style-type: none"> <li>One CVR of \$8.00 per share probability adjusted and discounted using the acquirer cost of debt to NPV of \$2.72 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>Cost of Debt:</b> 6.0%</li> </ul>
Eli Lilly / Prevail Therapeutics (12/22/2020)	<ul style="list-style-type: none"> <li>One CVR of \$4.00 per share discounted using the weighted average cost of capital to NPV of \$1.24 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Midpoint of 12.5% to 14.5%</li> </ul>
Menarini / Stemline Therapeutics (05/12/2020)	<ul style="list-style-type: none"> <li>One CVR of \$1.00 per share probability adjusted by 80% and discounted using the weighted average cost of capital</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Range from 9.0% to 12.0%</li> </ul>
Lantheus / Progenics (03/19/2020)	<ul style="list-style-type: none"> <li>One undisclosed private cash-settled CVR probability adjusted and discounted (methodology not disclosed)</li> </ul>	<ul style="list-style-type: none"> <li>Not disclosed</li> </ul>
Alexion / Achillion (11/21/2019)	<ul style="list-style-type: none"> <li>Two CVRs of \$1.00 per share each (\$2.00 total) probability adjusted and discounted using the weighted average cost of capital to \$1.14 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Midpoint of 11.0%-13.0%</li> </ul>
SOBI / Dova (10/11/2019)	<ul style="list-style-type: none"> <li>One CVR of \$1.50 per share probability adjusted and discounted using the weighted average cost of capital</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Median estimate of 12.0%</li> </ul>
Lundbeck / Alder (09/23/2019)	<ul style="list-style-type: none"> <li>One CVR of \$2.00 per share probability adjusted by 90% and discounted using the weighted average cost of capital to NPV of \$1.39 per share</li> </ul>	<ul style="list-style-type: none"> <li><b>WACC:</b> Mid-point of 11.0% to 13.0%</li> </ul>

# And Finally...A Bit More on Price Protection CVRs

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- Price protection CVRs are generally used in stock-for-stock transactions to help guarantee a certain value level to target stockholders
- The CVR will reference a target price, which is usually set above pre-announcement trading price of a reference security, which is generally acquiror's common stock
- Upon maturity CVR holders receive payment in cash or securities equal to the amount specified target price exceeds the actual price of the reference security
- May also include a floor price (e.g., a "collar") to cap potential CVR payout to CVR holders by buyer
- Key points of negotiation are similar to other securities-linked transactions, such as warrants or convertible debt
  - registration of shares to be issued
  - effects of share buy-backs / extraordinary distributions
  - anti-dilution adjustments
- Significantly less common than Event-Driven CVRs

# Thank you