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2010 Review of Selected U.S. Strategic M&A Transactions

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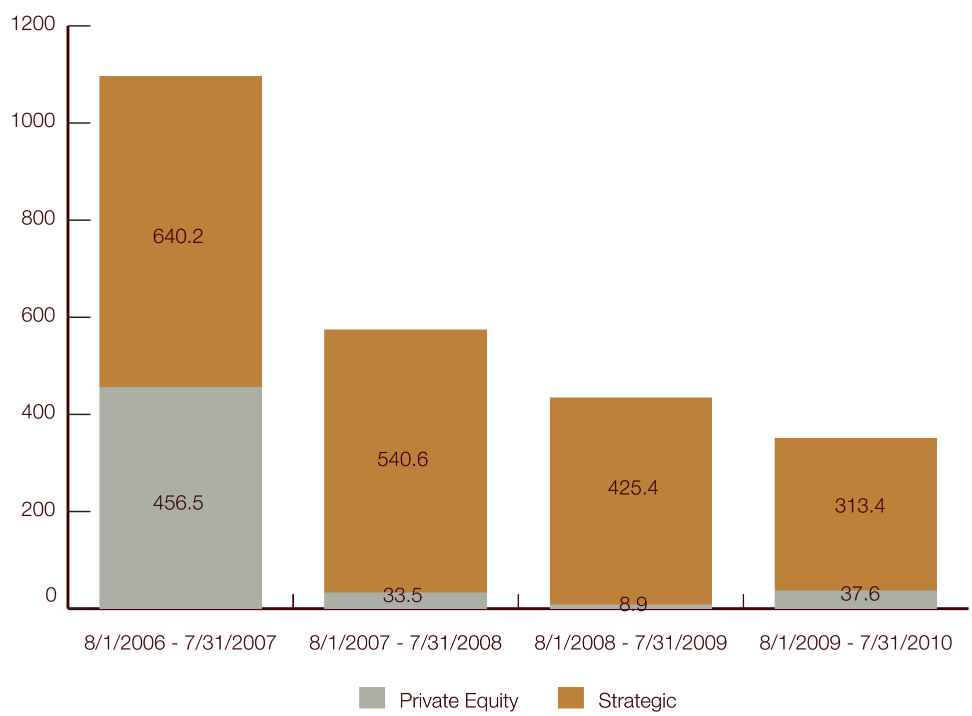
As noted in our October 2009 report, "A Study of Selected U.S. Strategic M&A Transactions in the Wake of the Credit Crisis" (the "2009 Study"), the downturn in the credit cycle from mid-2007 through mid-2009 had a tremendous impact on both the overall volume of U.S. strategic M&A transactions and the contractual devices employed by deal makers. In this update of the 2009 Study for the twelve months from August 1, 2009 through July 31, 2010, we observe the lingering effects of the credit crisis on how strategic M&A transactions were structured, even as the marketplace took tentative steps toward a recovery.

The twelve months ended July 31, 2010 saw rising equity prices and easier access to credit than existed in the two-year period covered by the 2009 Study. Nonetheless, despite the improvement in economic conditions, M&A activity in the twelve months ended July 31, 2010 did not uniformly reverse the declines in activity observed in the 2009 Study. For example, the combined volume of U.S. strategic and private equity transactions declined to $351 billion from $434 billion in the twelve months ended July 31, 2009, even as the volume of private equity activity, which had been most seriously affected by the credit crisis, increased by over 320% but still remained quite small when compared to the volume prior to the credit crisis. See Chart 1. In addition, strategic activity experienced a 26% drop relative to the same period ended July 31, 2009, although the average value of strategic transactions increased by approximately 21%, to $572 million from $474 million.

Chart 1 U.S. M&A Activity (Aggregate Value, $ Billions by Acquiror Type)



Source: Thomson Reuters

Tentative Steps Toward Recovery and Lessons Learned

The 2009 Study examined the 25 largest strategic transactions (excluding financial industry transactions) involving U.S. public company targets announced in each of the twelve-month periods from August 1, 2007 to July 31, 2008 ("Year 1") and from August 1, 2008 to July 31, 2009 ("Year 2"). For the purposes of this report, we examined the 25 largest strategic transactions (excluding financial industry transactions) involving U.S. public company targets announced in the twelve-month period from August 1, 2009 to July 31, 2010 ("Year 3").

We make the following observations based on the results of our survey:

- ***Certainty remained a paramount objective.*** Continuing a trend noted in the 2009 Study, deal makers strove to define the rights and obligations of acquirors and targets upon the occurrence of various contingencies. This effort can be seen, among other things, in the use of reverse break-up fees following financing failures as well as in the more specific definitions of the "intervening events" that would allow target boards to change their recommendation of a transaction.

- ***Private equity-like treatment of financing risk remained a fixture of the strategic marketplace.*** In the 2009 Study, we noted that the tightening of credit markets led to the introduction in strategic transactions of financing conditions, reverse break-up fees and limitations on specific performance following financing failures. Notably, the loosening of credit markets in Year 3 did not result in the abatement of such terms in transactions in which cash comprised a portion of the consideration. This confirms our conclusion in the 2009 Study that financing risk has been accepted as one risk among many to be negotiated by parties to strategic transactions (as opposed to being presumptively borne by the acquiror).

- ***The size of reverse break-up fees related to a financing failure increased, even as the size of traditional break-up fees declined.*** Although merger agreements initially limited the size of break-up fees to that of the corresponding traditional (target) break-up fee, a 42% increase in Year 3 in the size of reverse break-up fees following financing failures, together with a marginal decline in the size of traditional break-up fees during such period, clearly evidences the decoupling of such fees in the minds of deal makers. Whereas traditional break-up fees have often been the subject of litigation and have evolved under the guidance of the courts, reverse break-up fees are not subject to the same fiduciary duty analysis. Instead, reverse break-up fees related to financing failures should theoretically represent the economic value that deal makers attribute to financing risk.

Tentative Steps Toward Recovery and Lessons Learned

- ***Cash lost favor even as credit eased.*** In the 2009 Study, we noted the counterintuitive result that all-cash deals constituted a majority of the surveyed transactions and increased as a percentage of the sample as the credit crisis persisted. That trend reversed course in Year 3, as credit eased and equity valuations rebounded, suggesting that the cost of issuing equity relative to the cost of using cash—as opposed to the availability of cash alone—influenced the composition of consideration in the surveyed transactions. The higher use of stock consideration may also suggest that acquiring companies believed that stock prices had stabilized and accurately reflected the underlying value of their businesses, free of any discount owing to the volatility that was wrought by the credit crisis.

- ***Target boards had less flexibility to terminate deals.*** Year 3 saw an increase in the number of "force-the-vote" agreements, which allow a target company's board to change its recommendation in response to a superior acquisition proposal but prohibit it from terminating the agreement in response to such a proposal. Part of this increase may be attributable to the overall increase in stock transactions in Year 3, and, indeed, stock formed all or part of the consideration in all of the Year 3 force-the-vote agreements. Acquirors may have been more likely to push for—and targets more likely to accept—force-the-vote provisions in stock rather than cash transactions in recognition of the possibility that the target's board and its shareholders could differ as to the value of the acquiror's stock.

- ***Tender offer activity.*** Whereas the worsening economic environment in the 2009 Study was correlated with an increase in tender offer activity—from 20% of the Year 1 transactions to 44% of the Year 2 transactions—the economic rebound in Year 3 corresponded to a decline in tender offers, to only 24% of the surveyed transactions. We speculated in the 2009 Study that economic uncertainty had led merging parties to approach their transactions with greater urgency. We hesitate however to conclude, on the basis of the Year 3 data alone, that there has been a reversal in such trend.

- ***Absence of mergers-of-equals.*** Only one of the surveyed transactions (UAL/Continental) was labeled a "merger-of-equals" by the transacting parties, consistent with the complete absence of such transactions in the 2009 Study. We speculated in the 2009 Study that the dominance of pure acquisitions indicated that the credit crisis had created ripe conditions for opportunistic transactions by separating strong firms from weak ones. The continuing dearth of mergers-of-equals in Year 3 suggests either that such conditions remain or that firms were waiting for a period of greater economic stability to engage in merger-of-equals-type transactions.

In the 2009 Study, we selected the largest 25 strategic mergers (according to the equity value of the target implied by the merger consideration) involving U.S. public company targets announced during each of the twelve-month periods from August 1, 2007 through July 31, 2008 ("Year 1") and from August 1, 2008 through July 31, 2009 ("Year 2"). For this report, we added the largest 25 such transactions announced during the twelve-month period from August 1, 2009 through July 31, 2010 ("Year 3"). In both the 2009 Study and this report, we excluded transactions involving financial industry targets and transactions in which either party owned more than 10% of the other party's shares prior to the transaction.[1]

The findings reported herein are not intended to be an exhaustive review of all transaction terms in the surveyed transactions. We report only on those matters that we found most interesting.

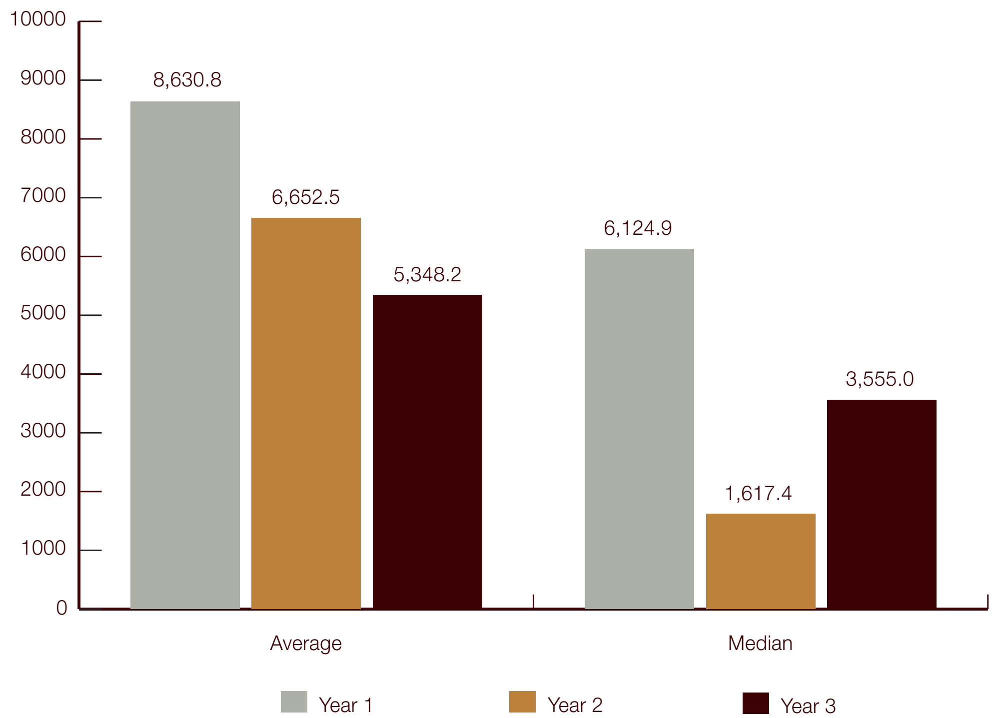
Our observations are based on a review of publicly available information for the surveyed transactions. Such transactions accounted for only a portion of M&A activity during the survey period and may not be representative of the broader M&A market. In addition, we treat the provisions of the surveyed transactions as if they were adopted deliberately and in lieu of mutually understood alternatives, and we ignore the roles that time, resource and informational limitations inevitably played.

[1] We used Factset Mergers to identify our sample group. To eliminate transactions with financial industry targets, we excluded transactions with targets having any of the following Factset Mergers industry classifications: "Finance/Rental/Leasing," "Financial Conglomerates," "Investment Banks/Brokers," "Investment Trusts/Mutual Funds," "Major Banks," "Regional Banks" or "Savings Banks."

Transaction Size and Form of Consideration

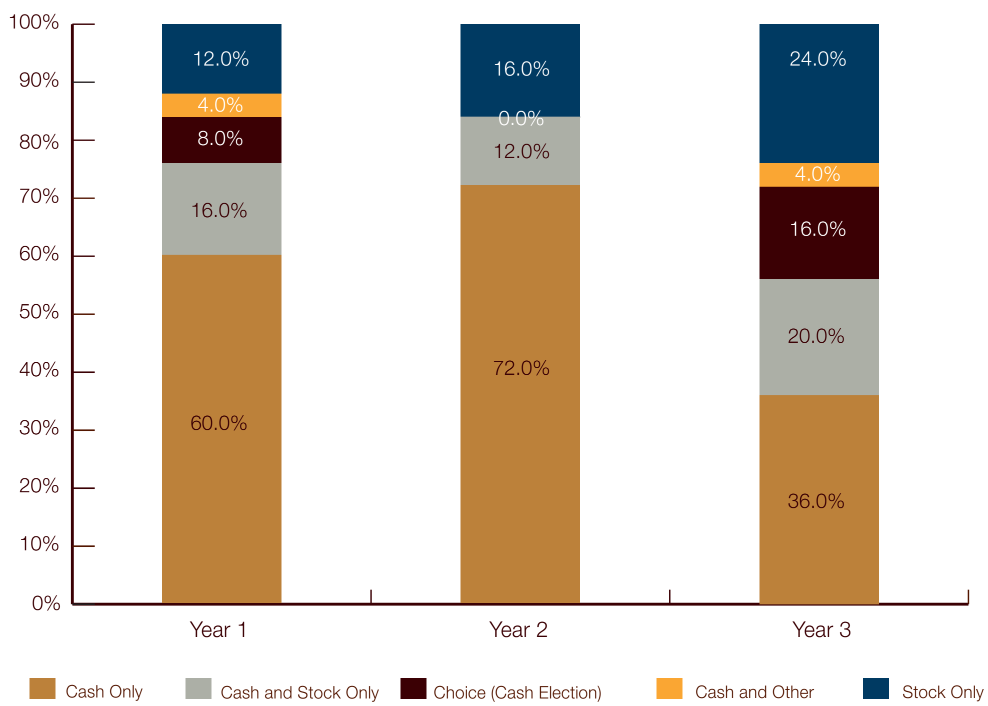
Transaction size. From Year 2 to Year 3, although the average size of the surveyed transactions (as measured by the target's implied equity value) continued its decline, the median size of the surveyed transactions more than doubled. This disparity was likely due to there being a small number of very large transactions in Year 2 (e.g., Pfizer/Wyeth and Merck/Schering-Plough). See Chart 2.

Chart 2 Size of Surveyed Transactions ($ Millions)



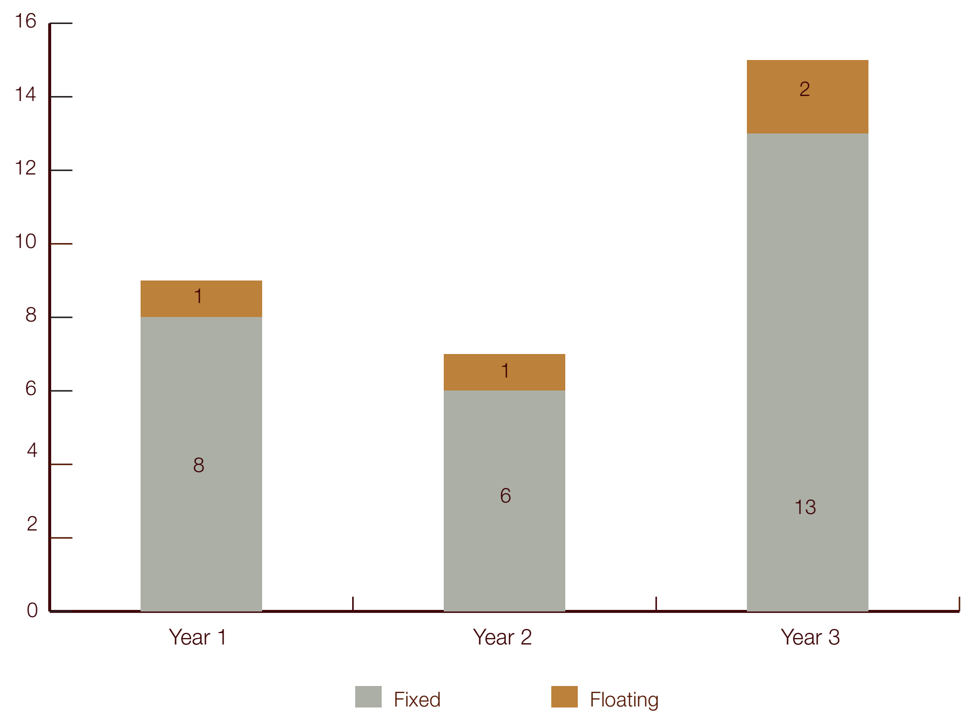
Cash versus stock. Cash was the exclusive consideration in half as many Year 3 transactions as Year 2 transactions. See Chart 3. That such a decrease occurred during a period of loosening credit markets and rising equity values is consistent with our observation in the 2009 Study that cash was increasingly favored as stock prices declined even as credit tightened. The three-year trend thus supports the conclusion that the composition of consideration in strategic transactions is driven by the *relative* costs to the acquiror of using cash or stock, rather than the *absolute* cost of financing a cash purchase. In other words, rising equity prices in Year 3 may have resulted in stock consideration becoming less dilutive to acquirors' shareholders than the cost of financing a cash purchase, even as the cost of financing declined. Also in Year 3, acquirors that used a combination of stock and cash consideration more frequently offered target shareholders the option to receive either cash or stock.

Chart 3 Form of Consideration (Percentage of Surveyed Transactions)



Fixed versus floating exchange ratios. In virtually the same ratio as seen in Year 2, when stock formed part of the consideration in the Year 3 transactions, the merging parties overwhelmingly chose a fixed, rather than a floating, exchange ratio. See Chart 4.

Chart 4 Exchange Ratio Type (Number of Surveyed Transactions with Stock Consideration)



Financing Risk and Remedies

Financing risk and specific performance. Chart 5 shows the frequency with which the surveyed transactions involving cash consideration entitled targets to a remedy of specific performance when the acquiror failed to consummate the transaction because of its inability to obtain financing and the reverse termination fees payable in connection therewith. In Year 3, as compared with Year 2:

- ***Approximately the same proportion of the transactions involving cash consideration*** showed private equity-like features by limiting the risk to acquirors in the event of a financing failure, either through limitations on specific performance or because the acquiror's obligations were conditioned on its receipt of financing for the transaction; and
- ***There were 42% and 21% increases*** in the average and median size of reverse termination fees due from acquirors following financing failures.

In the 2009 Study, we noted that several strategic transactions had adopted the approach—more typical of private equity transactions—whereby the acquiror could not be required to consummate the transaction following a failure to secure financing for the transaction. Notwithstanding the improvement in credit market conditions, such sharing of financing risk continued in Year 3, as financing conditions or limitations on specific performance appeared in 5 of the 19 (26%) transactions that included cash consideration, versus 5 of 21 (24%) such transactions in Year 2. The improvement in credit market conditions may partially explain the substantial increase in Year 3 in the size of reverse termination fees following financing failures, as acquirors may have felt greater confidence that their financing would be available and accordingly assigned a lower probability to the possibility that they would pay the reverse termination fee.

Chart 5 Availability of Specific Performance Against Acquiror Following Financing Failures

	Percentage of All/Part Cash Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Method of allocating financing risk				
Specific performance against acquiror after financing failure available	81%	95%	76%	74%
Specific performance never available against acquiror	3%	5%	5%	0%
Specific performance never available against either party	3%	0%	15%	0%
Specific performance after financing failure never available	5%	0%	5%	11%
Acquiror has limited financing condition	3%	0%	5%	5%
Acquiror has unlimited financing condition	5%	0%	5%	11%
Reverse termination fee following financing failure (fee size)				
Average		4.56%	5.71%	8.08%
Change			*25%*	*42%*
Median		4.56%	6.51%	7.90%
Change			*43%*	*21%*

Competing Offers and Changes in the Target Board's Recommendation

Non-solicitation provisions. All of the Year 3 transactions prohibited the target from soliciting competing offers from third parties but allowed the target to respond to and enter into negotiations with respect to unsolicited competing proposals that the target's board determined constituted, or were reasonably likely to lead to, a "superior proposal."

Chart 6 analyzes how "superior proposal" was defined in the surveyed transactions. In Year 3, as compared with Year 2:

- ***As many transactions*** required that a superior proposal either have committed financing or have financing no less favorable than that of the acquiror;
- ***Slightly fewer transactions*** required that a superior proposal be "reasonably likely" to be consummated; and
- ***Slightly more transactions*** required that a superior proposal be superior to the target's shareholders "from a financial point of view."

These results suggest that access to credit remained very much on the minds of contracting parties, even as overall credit markets improved, and that transacting parties remained focused on defining execution risk as it relates to alternative transactions.

Chart 6 Definition of Superior Proposal

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Funding certainty of superior proposal				
Proposal must have committed financing or have financing no less favorable than acquiror's	21%	8%	28%	28%
Proposal not expressly required to be either fully funded or have committed financing	79%	92%	72%	72%
Closing certainty of superior proposal				
Proposal must be "reasonably likely" to be consummated	72%	64%	80%	72%
Proposal not required to be "reasonably likely" to be consummated	28%	36%	20%	28%
Proposal must be superior "from a financial point of view"				
Required	56%	48%	56%	64%
Not required	44%	52%	44%	36%
Minimum required acquisition percentage				
<50%	4%	8%	0%	4%
50%	67%	72%	60%	68%
>50%; <100%	11%	12%	12%	8%
100%	19%	8%	28%	20%

Changes in board recommendation. As in the 2009 Study, all of the Year 3 transactions allowed the target board of directors to change its recommendation of the transaction in specified circumstances. Chart 7 shows the varieties of such limits on board discretion. In Year 3, as compared with Year 2:

- ***Fewer transactions*** allowed the target board to change its recommendation only in response to a "superior proposal";
- ***More transactions*** allowed the target board to change its recommendation solely based on its determination that the board's fiduciary duties required such change, regardless of whether an intervening event had occurred; and
- ***Substantially more transactions*** also allowed the target board to change its recommendation (but not necessarily terminate) in response to "intervening events" (typically defined as unforeseen material events other than competing acquisition proposals) upon the determination that its fiduciary duties required such change.

From Year 1 to Year 3, "intervening events" provisions evolved to allow the marketplace to hone its approach to the question of when boards can change their recommendations in response to circumstances other than competing proposals.

Chart 7 Target Board Ability to Change Recommendation

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Conditions allowing change of recommendation				
Whenever fiduciary duties require	37%	44%	28%	40%
Whenever fiduciary duties require or, in any case, in connection with a superior proposal	17%	24%	20%	8%
Only in connection with a superior proposal	21%	28%	28%	8%
Whenever fiduciary duties require in response to an intervening event or, in any case, in connection with a superior proposal	24%	4%	24%	44%

Termination rights for superior proposals and match rights. Chart 8 shows the breakdown of transactions that allowed the target to terminate the transaction in order to enter into a superior proposal and the breakdown of transactions that gave the acquiror a "match right" with respect to such proposal. In Year 3, as compared with Year 2:

- ***More transactions*** did not allow the target board to terminate in response to a superior proposal, effectively forcing the vote of the target's shareholders on whether to reject the existing agreement in favor of a competing proposal (this trend follows a similar increase in "force-the-vote" transactions from Year 1 to Year 2); and

- ***All transactions*** in Year 3 gave acquirors a match right prior to the target board terminating to enter into—or, when not entitled to terminate, changing its recommendation in response to—a superior proposal.

These results suggest that in uncertain economic times acquirors may have placed greater emphasis on protecting their transactions in the face of potential competing proposals. In addition, the increase in force-the-vote agreements may be partly attributable to the overall increase in stock transactions in Year 3, and, indeed, stock formed all or part of the consideration in all of the force-the-vote agreements. Acquirors may have been more likely to push for—and targets more likely to accept—force-the-vote provisions in stock rather than cash transactions in recognition of the possibility that the target's board and its shareholders could differ as to the value of the acquiror's stock.

Chart 8 Target Superior Proposal Termination Right and Match Rights

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Target has right to enter into definitive agreement in respect of a superior proposal				
Does not include	17%	8%	16%	28%
Includes	83%	92%	84%	72%
Acquiror has right to match a superior proposal				
Does not include	5%	4%	12%	0%
Includes	95%	96%	88%	100%

Termination fees for entering into superior proposals and changes in board recommendations. Chart 9 shows the average and median fees to be paid by a target that terminates to enter into a superior proposal or whose board changes its recommendation. From Year 2 to Year 3:

- ***There were 8% and 6% decreases*** in the average and median fees to be paid by targets if they terminated a transaction to enter into a superior proposal; and
- ***There were 6% decreases*** in the average and median fees to be paid by targets following changes in their board's recommendation and the acquiror's decision to terminate the transaction.

The relative stability in such termination fees suggests that deal makers have ceased to push the size of termination fees that Delaware or other applicable courts are willing to accept to protect a negotiated transaction. In addition, targets do not seem to have the bargaining power (or, perhaps, the inclination) to push for substantially lower fees. One further possibility is that the declines in Year 3 reflect a return to the norm following a period of economic instability when deal makers used heightened termination fees to protect their deals.

Chart 9 Superior Proposal and Change in Board Recommendation Termination Fees [2]

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Superior proposal (fee trigger)				
Fee payable	81%	92%	80%	72%
Fee not payable	1%	0%	4%	0%
No termination right included	17%	8%	16%	28%
Superior proposal (fee size)				
Average	3.39%	3.11%	3.70%	3.40%
Change			*19%*	*-8%*
Median	3.26%	3.05%	3.51%	3.30%
Change			*15%*	*-6%*
Change in board recommendation (fee trigger)				
Fee payable	88%	88%	92%	84%
Fee not payable	11%	8%	8%	16%
No termination right included	1%	4%	0%	0%
Change in board recommendation (fee size)				
Average	3.43%	3.25%	3.64%	3.40%
Change			*12%*	*-6%*
Median	3.26%	3.15%	3.48%	3.26%
Change			*11%*	*-6%*

[2] Average and median termination fees are calculated based upon only the subset of surveyed transactions in which such fees were agreed upon. As a result, the variance in such statistics across different types of termination fees is generally not due to multi-level fee structures in individual transactions, but to the different subsets of the surveyed transactions in which such fees were imposed.

Limitations on Damages

Damages following termination. All of the Year 3 surveyed transactions allowed the parties to seek damages following termination, but typically for only a limited set of breaches or fraud. As set forth in Chart 10, the most common limitations have been notably consistent from Year 1 through Year 3. Five of the Year 3 transactions, versus two in Year 2, attempted to contract around the exposition of the phrase "knowing and intentional" in the *Hexion*[3] litigation by defining whether a party, in order to be considered to have intentionally or willfully breached the agreement, needed to have undertaken its conduct with the knowledge that such conduct would constitute breach.

Chart 10 Breaches Supporting Damages Post-Termination

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Damages following termination				
Allowed, but breach must be willful or intentional, among other limitations	77%	76%	76%	80%
Allowed, but breach must be material, among other limitations	44%	44%	36%	52%
Allowed, without limitation	9%	12%	8%	8%

Stockholders as third party beneficiaries. The 2009 Study noted that parties in the surveyed transactions often attempted to contract around the Second Circuit's 2005 decision in *Consolidated Edison Inc. v. Northeastern Utilities*.[4] *Con Ed* precluded a target's shareholders from collecting the consideration they would have received but for the transaction's failure, on the grounds that such shareholders were not third-party beneficiaries of the merger agreement. The trend noted in the 2009 Study continued in Year 3, again with notable consistency with the results in the 2009 Study. Chart 11 shows the following results:

- ***20% of the Year 3 transactions*** provided that the target could collect the damages its shareholders would receive if they were third-party beneficiaries (but without making them so); and
- ***12% of the Year 3 transactions*** provided that the measure of the target's damages should be the amount of its shareholders' lost consideration.

Chart 11 Measure of Damages (Anti-*Con Edison* Language)

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Does not include	72%	68%	80%	68%
Agency approach (target can sue "on behalf of" shareholders)	20%	24%	16%	20%
Damages definition (target's damages include lost shareholder premium)	8%	8%	4%	12%

[3] *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.*, C.A. No. 3841 (VCL) (Del. Ch. Sept. 29, 2008).

[4] 426 F.3d 524 (2d Cir. 2005).

Post-Merger Governance Provisions

After an across-the-board decline from Year 1 to Year 2, the use in merger agreements of post-merger governance provisions—regarding the surviving company's headquarters, name, board composition, chairman or CEO, charitable or community activities or other operations—increased in some cases in Year 3 and decreased in others. See Chart 12. Such provisions are inevitably situation-specific, so limited conclusions may be drawn from these changes. In the absence of mergers-of-equals transactions, one would expect that these provisions would rarely appear.

Chart 12 Post-Merger Governance Provisions

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	Year 3
Provision regarding location of headquarters				
Does not include	87%	80%	88%	92%
Includes	13%	20%	12%	8%
Provision regarding surviving company name				
Does not include	84%	68%	96%	88%
Includes	16%	32%	4%	12%
Restriction on identity of board members				
Does not include	75%	60%	84%	80%
Includes	25%	40%	16%	20%
Provision regarding identity of chairman/CEO				
Does not include	83%	76%	84%	88%
Includes	17%	24%	16%	12%
Provision regarding continuation of charitable and community activities				
Does not include	95%	88%	100%	96%
Includes	5%	12%	0%	4%
Other operational restrictions				
Does not include	92%	84%	96%	96%
Includes	8%	16%	4%	4%

APPENDICES

List of Surveyed Transactions

Year 1 Transactions

Target	Acquiror	Date Announced
CheckFree Corporation	Fiserv, Inc.	8/2/07
NAVTEQ Corporation	Nokia Corporation	10/1/07
Tektronix, Inc.	Danaher Corporation	10/15/07
MGI PHARMA, Inc.	Eisai Co., Ltd.	12/10/07
Trane Inc.	Ingersoll-Rand Company Limited	12/17/07
Grant Prideco, Inc.	National Oilwell Varco, Inc.	12/17/07
Respironics, Inc.	Koninklijke Philips Electronics N.V.	12/21/07
BEA Systems, Inc.	Oracle Corporation	1/16/08
ChoicePoint Inc.	Reed Elsevier Group plc	2/21/08
Millennium Pharmaceuticals, Inc.	Takeda Pharmaceutical Company Limited	4/10/08
Northwest Airlines Corporation	Delta Air Lines, Inc.	4/14/08
Safeco Corporation	Liberty Mutual Group Inc.	4/23/08
Wm. Wrigley Jr. Company	Mars, Incorporated	4/28/08
DRS Technologies, Inc.	Finmeccanica SpA	5/12/08
Electronic Data Systems Corporation	Hewlett-Packard Company	5/13/08
W-H Energy Services, Inc.	Smith International, Inc.	6/3/08
Anheuser-Busch Companies, Inc.	InBev NV	6/11/08
Applera Corporation - Applied Biosystems Group	Invitrogen Corporation	6/12/08
Allied Waste Industries, Inc.	Republic Services, Inc.	6/23/08
Corn Products International, Inc.	Bunge Limited	6/23/08
APP Pharmaceuticals, Inc.	Fresenius SE	7/7/08
Rohm and Haas Company	The Dow Chemical Company	7/10/08
Alpha Natural Resources, Inc.	Cleveland-Cliffs Inc.	7/16/08
Barr Pharmaceuticals, Inc.	Teva Pharmaceutical Industries Limited	7/18/08
Philadelphia Consolidated Holding Corp.	Tokio Marine Holdings, Inc.	7/23/08

Year 2 Transactions

Target	Acquiror	Date Announced
Longs Drug Stores Corporation	CVS/Caremark Corporation	8/12/08
Alpharma Inc.	King Pharmaceuticals, Inc.	8/22/08
IKON Office Solutions, Inc.	Ricoh Company, Ltd.	8/27/08
Sciele Pharma, Inc.	Shionogi & Co. Ltd.	9/1/08
UST Inc.	Altria Group, Inc.	9/8/08
Constellation Energy Group, Inc.	Berkshire Hathaway Inc.	9/18/08
ImClone Systems Incorporated	Eli Lilly and Company	10/6/08
Embarq Corporation	CenturyTel, Inc.	10/27/08
Centennial Communications Corp.	AT&T Inc.	11/7/08
Mentor Corporation	Johnson & Johnson	12/1/08
Advanced Medical Optics, Inc.	Abbott Laboratories	1/12/09
Wyeth	Pfizer, Inc.	1/26/09
Schering-Plough Corporation	Merck & Co., Inc.	3/9/09
CV Therapeutics, Inc.	Gilead Sciences, Inc.	3/12/09
Metavante Technologies, Inc.	Fidelity National Information Services, Inc.	4/1/09
Centex Corporation	Pulte Homes, Inc.	4/8/09
Sun Microsystems, Inc.	Oracle Corporation	4/20/09
Foundation Coal Holdings, Inc.	Alpha Natural Resources, Inc.	5/12/09
Data Domain, Inc.	NetApp Inc.	5/20/09
Cougar Biotechnology, Inc.	Johnson & Johnson	5/21/09
Data Domain, Inc.	EMC Corporation	6/1/09
Wind River Systems, Inc.	Intel Corporation	6/4/09
Medarex, Inc.	Bristol-Myers Squibb Company	7/22/09
Varian, Inc.	Agilent Technologies, Inc.	7/27/09
SPSS Inc.	International Business Machines Corporation	7/28/09

List of Surveyed Transactions

Year 3 Transactions

Target	Acquiror	Date Announced
BJ Services Company	Baker Hughes Incorporated	8/31/2009
Sepracor Inc.	Dainippon Sumitomo Pharma Co., Ltd.	9/3/2009
Perot Systems Corporation	Dell Inc.	9/21/2009
Affiliated Computer Services, Inc.	Xerox Corporation	9/28/2009
Starent Networks, Corp.	Cisco Systems, Inc.	10/13/2009
Encore Acquisition Company	Denbury Resources Inc.	11/1/2009
The Black & Decker Corporation	The Stanley Works	11/2/2009
3Com Corporation	Hewlett-Packard Company	11/11/2009
XTO Energy Inc.	Exxon Mobil Corporation	12/14/2009
Brink's Home Security Holdings, Inc.	Tyco International Ltd.	1/18/2010
Allegheny Energy, Inc.	FirstEnergy Corp.	2/11/2010
Terra Industries Inc.	Yara International ASA	2/15/2010
Smith International, Inc.	Schlumberger Limited	2/21/2010
Millipore Corporation	Merck KgaA	2/28/2010
OSI Pharmaceuticals, Inc.	Astellas Pharma Inc.	3/1/2010
Terra Industries Inc.	CF Industries Holdings, Inc.	3/2/2010
Mariner Energy, Inc.	Apache Corporation	4/15/2010
Qwest Communications International Inc.	CenturyTel, Inc.	4/22/2010
Continental Airlines, Inc.	UAL Corporation	5/3/2010
Sybase, Inc.	SAP America, Inc.	5/12/2010
ev3 Inc.	Covidien Group S.a.r.l.	6/1/2010
Talecris Biotherapeutics Holdings Corp.	Grifols, S.A.	6/7/2010
Valeant Pharmaceuticals International	Biovail Corporation	6/21/2010
Abraxis BioScience, Inc.	Celgene Corporation	6/30/2010
Hewitt Associates, Inc.	Aon Corporation	7/12/2010

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