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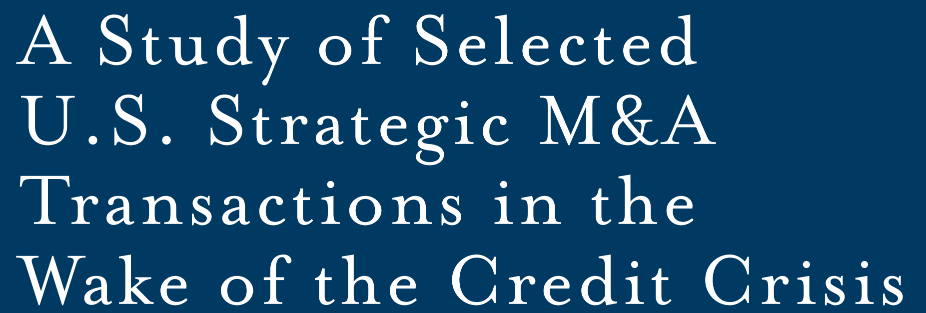

A Study of Selected U.S. Strategic M&A Transactions in the Wake of the Credit Crisis

OCTOBER 2009

NEW YORK BEIJING HONG KONG LONDON TOKYO WASHINGTON, D.C. WILMINGTON

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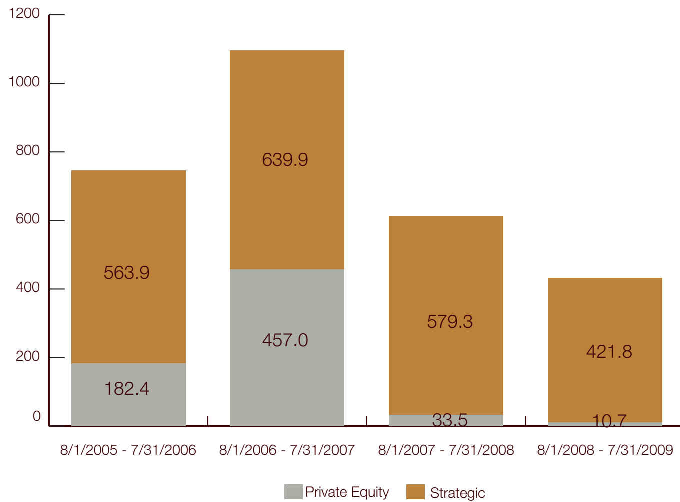
KEY OBSERVATIONS – HOW DEALS ARE GETTING DONE

The boom and bust of the credit cycle has had a tremendous impact on the strategic M&A marketplace. During the cycle's upswing, strategic acquirors competed with—and were often outbid by—financial buyers with easy access to credit and a higher tolerance for leverage. Aggregate transaction volume and average transaction size rose to unprecedented heights. In the twelve months ended July 31, 2007, the aggregate volume of U.S. public M&A activity was approximately $1.1 trillion, of which 42% consisted of private equity transactions.

Much changed with the credit cycle's downturn. In the twelve months ended July 31, 2009, the aggregate volume of U.S. public M&A fell 61% from the same period in 2007, to approximately $432.5 billion, with private equity activity declining 98%, to $10.7 billion. Pending transactions were tested by financing failures, underperformance and litigation, and negotiating parties were forced to reconsider transaction terms in the context of general economic uncertainty. See Chart 1.

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



Source: Thomson Reuters

In the wake of these events, we 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").

We refrain from concluding that the results of our survey indicate long-term trends. We believe that the economic environment during the surveyed period forced deal makers to reconsider and challenge traditional assumptions and focus on how to get transactions done in the face of other formidable challenges, such as reaching agreement on valuation and securing financing. Time will tell whether the approaches they used will become permanent features of the U.S. public M&A landscape. In this context, we make the following observations based on the results of our survey:

- ***Certainty was paramount.*** In uncertain economic times, deal makers who ventured into the M&A arena sought to ensure certainty. We refer to "certainty" not in the sense of certainty of closing but more broadly in terms of the contracting parties seeking to define their respective rights and obligations as specifically as possible in the face of various contingencies. The effort to achieve certainty can be seen in, among other things, the use of reverse termination fees to address the failure of a financing commitment, as discussed below.
- ***Strategic transactions borrowed pages from the private equity playbook.*** The private equity experience and the tightening of credit markets have left an unquestionable mark on the M&A marketplace. The financing out, previously the exclusive domain of private equity firms, has made its way into some strategic transactions. While far from universal, this trend highlights a shift in the collective mindset and demonstrates a realization by deal makers that having a counterparty walk away from a binding agreement is no longer exclusively a "legal issue." Instead, contracting parties now go to great lengths to carefully define and limit the remedies that apply to failed transactions. Here, an important distinction needs to be drawn between strategic and private equity transactions. While financing outs and reverse termination fees in private equity transactions were largely driven by the nature of the acquiror, parties in strategic transactions often used these methods to share the risk of unprecedented volatility in the credit markets. It remains to be seen whether this will be a lasting trend.
- ***In large transactions, cash remained king even as credit tightened.*** Despite an expectation that the credit crisis would cause acquirors to favor using stock as consideration, cash-only transactions dominated the survey. The preference for cash in the surveyed transactions suggests at least two factors at work: first, the economic crisis separated the strong (those with access to capital) from the weak (those without) and, second, as stock prices dropped well below their 52-week highs, many acquirors were reluctant to use their devalued stock as acquisition currency.
- ***Fixed exchange ratios continued to dominate transactions that used stock consideration.*** In transactions in which stock formed all or part of the consideration, the parties almost uniformly opted for fixed, rather than floating, exchange ratios. By opting for fixed exchange ratios, acquirors and targets chose to share the risk of fluctuations in their stock prices, instead of preserving for either party the benefits or burdens of their shares' performance relative to one another.

- ***A small number of completed transactions resulted from a hostile approach.*** Only two transactions in each of Year 1 and Year 2 were initially rejected by the target's board of directors after the offers had been made public, and in each of those cases the target's board of directors recommended the transaction following negotiations. Such a low level of successful hostile activity may have been driven by a number of factors, including (i) a desire on the part of potential acquirors to value targets based on in-depth due diligence rather than relying only on publicly-available information and (ii) a concern on the part of potential acquirors that because most stocks were trading at substantial discounts to their 52-week highs (which, at least initially, many perceived to be the temporary result of the economic downturn), acquisition bids would likely fail without the support of the target's board of directors.
- ***Tender offer activity increased.*** There was a trend towards structuring negotiated transactions as tender offers, which can be consummated more quickly than one-step mergers. Tender offers accounted for 20% of the Year 1 transactions and 44% of the Year 2 transactions. It is possible that in an uncertain economic environment merging parties approached their transactions with greater urgency. Overall, 32% of the surveyed transactions were structured as tender offers, a healthy level relative to the period prior to the implementation of changes to the SEC's "best price" rule (Rule 14d-10 under the Securities Exchange Act of 1934) in December 2006. According to FactSet Mergers, tender offers represented only 8% of negotiated transactions in 2006. Our survey suggests that the revisions to the "best price" rule are having their desired effect.
- ***Broken transactions were infrequent.*** As of July 31, 2009, all but two of the Year 1 transactions were completed and only two of the Year 2 transactions had been withdrawn, an impressive result considering the spate of private equity transactions terminated during the survey period. This suggests that economic uncertainty and a credit contraction may have a different effect on closing risk in strategic transactions than in private equity transactions. In a weak economic environment, merging may become more desirable for parties seeking synergies or other opportunities, and fewer third parties may be willing or able to make competing offers. Competing offers led to the break-up of two of the four withdrawn transactions in the survey (MidAmerican Energy/Constellation and NetApp/Data Domain).
- ***Mergers-of-equals were absent.*** None of the surveyed transactions were labeled as "mergers-of-equals" by the transacting parties, and none contained all of the traditional attributes of such transactions (such as a "no-premium" offer price for the target's shares). The dominance of pure acquisitions in the survey suggests that the credit crisis created ripe conditions for opportunistic transactions and reinforces the suggestion above that the economic environment separated the strong from the weak.

Survey Methodology

We selected the 25 largest strategic mergers involving U.S. public company targets announced during each of the twelve-month periods from August 1, 2007 through July 31, 2008 and from August 1, 2008 through July 31, 2009. We selected this two-year period as representative of the downturn of the credit cycle. We excluded from the survey 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. With the financial sector being the epicenter of the credit crisis, many financial industry transactions during the survey period involved targets in substantial distress, and their terms may not reflect broader market trends.[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, resources and informational limitations inevitably played.

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[1] We used FactSet Mergers to develop our sample group. We identified the 25 largest transactions during each twelve-month period based upon the equity value of the target implied by the merger consideration as of the transaction's announcement date. 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." We also excluded the Enterprise Products Partners/TEPPCO Partners transaction because it involved publicly traded limited partnerships.

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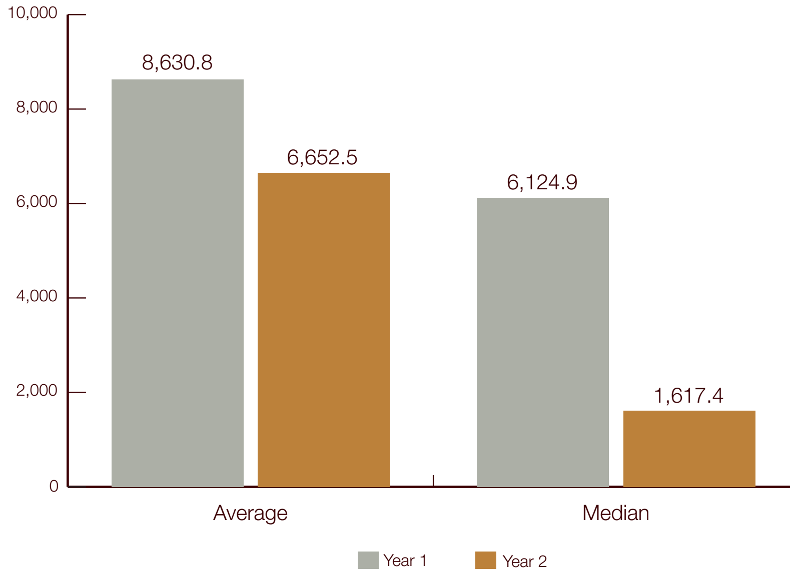
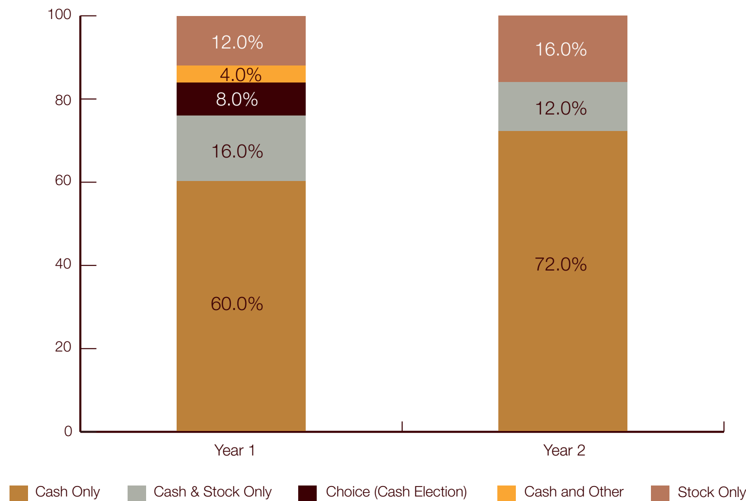
Transaction size. From Year 1 to Year 2, as the credit crisis worsened, there was a substantial decline in the average and median transaction size of the surveyed transactions. See Chart 2.

Chart 2 Size of Surveyed Transactions ($ Millions)



Cash versus stock. Cash was the exclusive consideration in the majority of the surveyed transactions each year and in a greater portion of the transactions as the credit crisis continued. See Chart 3. These results seem surprising given that reduced access to cash limited the ability of financial buyers to finance large acquisitions. However, for strategic acquirors that either had cash on hand or access to it, the decision to use cash, stock or some combination thereof as consideration in a transaction may have been driven by the relative costs of each to the acquiror, rather than the absolute cost of financing a cash purchase.

Chart 3 Form of Consideration (Percentage of Surveyed Transactions)



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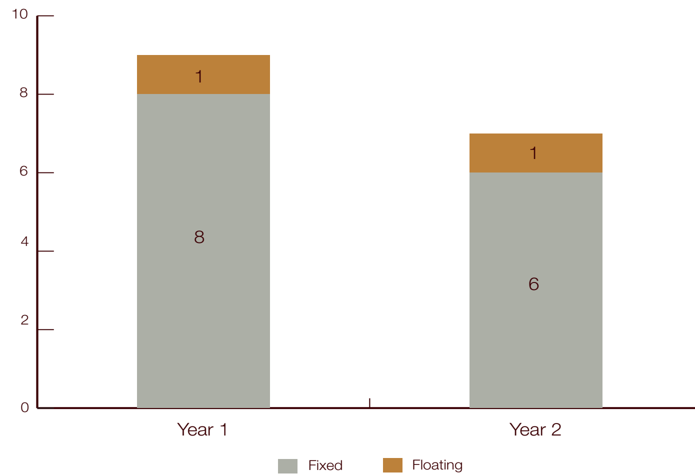
Fixed versus floating exchange ratios. When stock formed part of the consideration in the surveyed transactions, the merging parties predominantly chose a fixed, rather than a floating, exchange ratio. See Chart 4.

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



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Financing risk and specific performance. Chart 5 shows the frequency with which the surveyed transactions entitled targets to a remedy of specific performance when the acquiror failed to consummate the transaction because of its inability to obtain financing. In Year 2, as compared with Year 1:

- ***Fewer, but still the majority of transactions*** followed the traditional approach for strategic transactions, by providing that the acquiror could be required to consummate the merger even in the event of a financing failure; and
- ***More transactions*** 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.

Chart 5 Availability of Specific Performance Against Acquiror Following Financing Failures

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Method of Allocating Financing Risk			
Specific performance against acquiror after financing failure available	88%	96%	80%
Specific performance never available against acquiror	4%	4%	4%
Specific performance never available against either party	2%	0%	4%
Specific performance after financing failure never available	2%	0%	4%
Acquiror has limited financing condition	2%	0%	4%
Acquiror has unlimited financing condition	2%	0%	4%

In private equity transactions prior to the credit crisis, the acquiring fund typically was not required to consummate a transaction following a financing failure, and thus the target bore some measure of financing risk. Such risk sharing was adopted in some of the surveyed strategic transactions as the credit downturn continued. In five transactions, specific performance was unavailable against acquirors in the event of any financing failure. One additional transaction (Pfizer/Wyeth) released the acquiror of its obligation to consummate the merger following a financing failure only when such financing failure did not result from a degradation in the acquiror's creditworthiness or its experiencing a "material adverse effect." This structure allowed the parties to share "non-idiosyncratic" financing risk, but preserved the target's remedy of specific performance in the event of financing failures that arose from factors particular to the acquiror.

Agreements that did not provide for specific performance also typically limited the acquiror's exposure to monetary damages following a financing failure. In four of the six transactions in which there were financing conditions or limitations on specific performance following financing failures, the financing failure triggered a high reverse termination fee (an average of 5.4% of equity value) but limited the acquiror's liability to such amount. In one other such transaction (MidAmerican Energy/Constellation), the parties did not fix a particular reverse termination fee but capped the target's damages at 21.1% of the target's equity value.

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Non-solicitation provisions. All but one of the surveyed transactions sought to protect deal certainty by prohibiting the target from soliciting competing offers from third parties and none of them contained a "go-shop" provision. In every transaction in which solicitation was prohibited, the target was allowed to respond to and enter into negotiations with respect to unsolicited competing proposals in limited circumstances. In 92% of the transactions in each year, the target could take such steps only in response to a "superior proposal," variously defined.

Chart 6 analyzes how a superior proposal was defined in the surveyed transactions. In Year 2, as compared with Year 1:

- ***More transactions*** required that a superior proposal be fully-funded or have committed financing;
- ***More transactions*** required that a superior proposal be "reasonably likely" to be consummated;
- ***Slightly more transactions*** required that a superior proposal be superior to the target's shareholders "from a financial point of view;" and
- ***More transactions*** required that a superior proposal seek all (as opposed to a smaller percentage) of the target's shares or assets.

Chart 6 Definition of Superior Proposal

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Funding certainty of superior proposal			
Proposal must be fully-funded or have committed financing	18%	8%	28%
Proposal not expressly required to be either fully-funded or have committed financing	82%	92%	72%
Closing certainty of superior proposal			
Proposal must be "reasonably likely" to be consummated	72%	64%	80%
Proposal not required to be "reasonably likely" to be consummated	28%	36%	20%
Proposal must be superior "from a financial point of view"			
Required	52%	48%	56%
Not required	48%	52%	44%
Minimum required acquisition percentage			
<50%	4%	8%	0%
50%	66%	72%	60%
>50%; <100%	12%	12%	12%
100%	18%	8%	28%

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Changes in board recommendation. All of the surveyed transactions allowed the target board of directors to change its recommendation of the transaction in limited circumstances. Chart 7 shows the varieties of such limits on board discretion. In Year 2, as compared with Year 1:

- ***Fewer, but still nearly a third of transactions*** allowed target boards to change their recommendations whenever fiduciary duties so required;
- ***More transactions*** prohibited the target board from changing its recommendation in response to a competing acquisition proposal unless such proposal constituted a superior proposal; and
- ***More transactions*** allowed the target board to change its recommendation in response to "intervening events" (typically defined as unforeseen material events other than competing acquisition proposals) rather than on the basis of otherwise-undefined fiduciary duties.

Chart 7 Target Board Duty to Recommend

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Conditions allowing change of recommendation			
Whenever fiduciary duties require	36%	44%	28%
Whenever fiduciary duties require, unless following an alternative proposal, in which case only in connection with a superior proposal	22%	24%	20%
Only in connection with a superior proposal	28%	28%	28%
Whenever there is an intervening event	2%	0%	4%
Whenever there is an intervening event, unless following an alternative proposal, in which case only in connection with a superior proposal	12%	4%	20%

These results suggest that target boards of directors increasingly believed that their fiduciary duties would be satisfied even if the board's ability to change its recommendation in response to a competing proposal was limited to competing proposals that were superior to the existing transaction. The results also suggest that, in light of the worsening economy, acquirors sought greater certainty as to when they might lose the deal and that some target boards became more comfortable with limiting their ability to change their recommendations to specifically defined intervening events, rather than allowing for such changes whenever their fiduciary duties required.

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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 right of first refusal (or "match right") with respect to such proposal. In Year 2, as compared with Year 1:

- ***Fewer, but still almost all transactions*** allowed target boards to terminate in order to enter into a superior proposal;
- ***Fewer, but still almost all transactions*** 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; and
- ***Slightly more transactions*** in which the acquiror had a match right required the target to negotiate in good faith with the acquiror in an effort to make its improved offer meet the competing proposal (as opposed to simply requiring the target to consider whether the competing proposal remained "superior" in light of the acquiror's amended offer).[2]

Chart 8 Target Superior Proposal Termination Right and Match Rights

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Target has right to enter into definitive agreement in respect of a superior proposal			
Does not include	12%	8%	16%
Includes	86%	88%	84%
Includes, but only during a specified period	2%	4%	0%
Acquiror has right to match a superior proposal			
Does not include	8%	4%	12%
Includes, target has no obligation to negotiate with original acquiror	14%	16%	12%
Includes, target has obligation to negotiate with original acquiror	78%	80%	76%

[2] While the absolute number of surveyed transactions containing a match right declined from Year 1 to Year 2, of transactions with a match right, the percentage that required the target to negotiate with the initial acquiror increased from 83% in Year 1 to 86% in Year 2.

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Termination fees for entering into superior proposals and changes in board recommendation. Chart 9 shows the average and median fees (as a percentage of equity value) to be paid by a target that terminates to enter into a superior proposal or whose board changes its recommendation in favor of a transaction. From Year 1 to Year 2:[3]

- ***There were 19% and 15% increases*** in the average and median fees to be paid for terminating a transaction to enter into a superior proposal; and
- ***There were 12% and 11% increases*** in the average and median fees to be paid following a change in a target board's recommendation and the acquiror's decision to terminate the transaction.

Chart 9 Termination Fee Triggers and Size

	Percentage of Surveyed Transactions			
	Total	Year 1	Year 2	
Superior proposal (fee trigger)				
Fee payable	86%	92%	80%	
Fee not payable	2%	0%	4%	
No termination right included	12%	8%	16%	
Superior proposal (fee size)				**Change**
Average	3.38%	3.11%	3.70%	19%
Median	3.21%	3.05%	3.51%	15%
Change in board recommendation (fee trigger)				
Fee payable	90%	88%	92%	
Fee not payable	8%	8%	8%	
No termination right included	2%	4%	0%	
Change in board recommendation (fee size)				**Change**
Average	3.45%	3.25%	3.64%	12%
Median	3.26%	3.15%	3.48%	11%

The growth in such termination fees suggests that as the credit crisis continued, deal makers pushed harder to protect their negotiated transactions. It remains to be seen whether the courts in Delaware and elsewhere will resist this movement if it continues.

[3] 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 tiered fee structures in individual transactions, but to the different subsets of the surveyed transactions in which such fees were imposed.

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Material adverse effect conditions appeared in every transaction we surveyed and with limited variations. See Chart 10. We examined in particular whether there was any effect of the September 2008 opinion in the *Hexion*[4] litigation, which reinforced the difficulty under Delaware case law of an acquiror relying on a material adverse effect clause to walk away from a transaction. We found that the parties in the surveyed transactions continued to rely on customary definitions of "material adverse effect" and did not contract around the ruling in *Hexion* by introducing alternative measures (such as a minimum EBITDA condition) of whether a material adverse effect has occurred.

Chart 10 Definition of Material Adverse Effect

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Prospects or other forward-looking language			
Does not include	100%	100%	100%
Includes	0%	0%	0%
Short-term effects			
Does not include	100%	100%	100%
Includes	0%	0%	0%
EBITDA measure of materiality			
Does not include	100%	100%	100%
Includes	0%	0%	0%
Disproportionate effect qualifications to MAE exceptions			
General exceptions to MAE not qualified by disproportionate effect	6%	4%	8%
General exceptions to MAE qualified by disproportionate effect	94%	96%	92%

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

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Damages following termination. All but one of the surveyed transactions allowed the parties to seek damages following termination, but typically for only a limited set of breaches or fraud. The most common limitations, which were consistent from Year 1 to Year 2, are set forth in Chart 11. Only two of the surveyed transactions (Pfizer/Wyeth and Merck/Schering-Plough) attempted to contract around the exposition of the phrase "knowing and intentional" in the *Hexion* litigation by providing that a breach could only be "willful" if the breaching party acted with the knowledge that its actions would constitute breach.

Chart 11 Breaches Supporting Damages Post-Termination

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Damages following termination			
Allowed, but breach must be willful or intentional, among other limitations	76%	76%	76%
Allowed, but breach must be material, among other limitations	40%	44%	36%
Allowed, without limitation	10%	12%	8%

Measure of damages. Much more frequently in the surveyed transactions, parties attempted to contract around the Second Circuit's 2005 decision in *Consolidated Edison Inc. v. Northeastern Utilities*.[5] *Con Edison* 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. Chart 12 shows the following results:

- ***20% of the surveyed transactions overall, but fewer in Year 2*** provided that the target could collect the damages its shareholders would receive if they were third-party beneficiaries (but without making them so); and
- ***6% of the surveyed transactions overall, but fewer in Year 2*** provided that the measure of the target's damages should be the amount of its shareholders' lost consideration.

Chart 12 Measure of Damages (Anti-*Con Edison* Language)

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Anti-*Con Edison* Language			
Does not include	74%	68%	80%
Agency approach (target can sue "on behalf of" shareholders)	20%	24%	16%
Damages definition (target's damages include lost shareholder premium)	6%	8%	4%

[5] 426 F.3d 524 (2d Cir. 2005).

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Post-Merger Governance Provisions

Post-merger governance provisions—regarding the surviving company's headquarters, name, board composition, chairman or CEO, charitable or community activities or other operations—declined across the board in Year 2. See Chart 13. Such provisions are inevitably situation-specific, so limited conclusions may be drawn from such a decline. Notably, however, none of the agreements in which such provisions appeared provided for a mechanism by which the provisions could be enforced post-closing. We also note that the infrequency of these provisions may reflect the fact that none of the surveyed transactions were mergers-of-equals.

Chart 13 Post-Merger Governance Provisions

	Percentage of Surveyed Transactions		
	Total	Year 1	Year 2
Provision regarding location of headquarters			
Does not include	84%	80%	88%
Includes	16%	20%	12%
Provision regarding surviving company name			
Does not include	82%	68%	96%
Includes	18%	32%	4%
Restriction on identity of board members			
Does not include	74%	60%	88%
Includes	26%	40%	12%
Provision regarding identity of chairman/CEO			
Does not include	80%	76%	84%
Includes	20%	24%	16%
Provision regarding continuation of charitable and community activities			
Does not include	94%	88%	100%
Includes	6%	12%	0%
Other operational restrictions			
Does not include	90%	84%	96%
Includes	10%	16%	4%

APPENDICES

List of Surveyed Transactions

Year 1 Transactions

Year 2 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.	Philips Holding USA, Inc.	12/21/07
BEA Systems, Inc.	Oracle Corporation	1/16/08
ChoicePoint Inc.	Reed Elsevier Group plc	2/21/08
Millennium Pharmaceuticals, Inc.	Takeda America Holdings, Inc.	4/10/08
Northwest Airlines Corporation	Delta Air Lines, Inc.	4/14/08
Safeco Corporation	Liberty Mutual Insurance Company	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 N.V./S.A.	6/11/08
Applera Corporation	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 Ltd.	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.	MidAmerican Energy Holdings Company	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 1 Transactions

Year 2 Transactions

The Paul, Weiss Mergers & Acquisitions Group

Paul Weiss's Mergers & Acquisitions Group consistently ranks among the world's leading practices, and has been involved in some of the most highly publicized merger, acquisition, divestiture, and takeover transactions across the globe. The group responds nimbly to changing client needs and market conditions and has long been a force of innovation in the M&A marketplace.

The diversity of our practice is one of our greatest strengths. On behalf of businesses and investment firms of all sizes across a wide spectrum of industry sectors, we handle a full range of negotiated and contested transactions, including mergers and stock and asset acquisitions of public and private companies, divestitures, leveraged buyouts, tender offers and proxy contests, joint ventures, recapitalizations, rights offerings, "going private" transactions, spin-offs and carve-outs, strategic investments, and restructurings and workouts.

Clients rely upon Paul, Weiss for creative and innovative solutions that reflect deep insight into the specialized demands of each transaction and decades of sophisticated experience. Our clients receive first-rate service from lawyers who understand the business ramifications and implications of legal challenges and opportunities. Our lawyers represent, both in U.S. and non-U.S. matters, large and mid-cap public corporations, closely-held companies, investment banks, private equity funds and their portfolio companies, boards of directors, special and independent board committees, arbitrageurs, hedge funds and other financial investors, subordinated and senior lenders, and shareholder groups.

We also have a strong tradition of serving entrepreneurial enterprises through all phases of their growth, including some which have joined the ranks of the world's largest and most successful corporations. In addition to helping our clients to structure, negotiate, and close transactions from the transformative merger to the incremental acquisition or divestiture, we provide sound counsel on tax, antitrust, and corporate governance issues.

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Paul, Weiss lawyers employ a team approach to representing clients, working seamlessly to achieve the highest quality and most effective results. The Mergers & Acquisitions Group lawyers have in-depth experience in all relevant corporate disciplines necessary to consummate a successful M&A transaction and are supported as needed by our experts from other areas of the firm, including antitrust, tax, employee benefits, intellectual property, real estate, environmental, bankruptcy, and personal representation. Our Finance Group provides solutions on acquisition finance, especially in the financing of leveraged buyouts and recapitalizations, and our Securities Group is an integral part of every transaction that raises securities issues. Members of our acclaimed Litigation Department support our M&A practice, especially in contested transactions.

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Acknowledgements

A team of Paul, Weiss lawyers contributed to this effort. The principal authors were partners Ariel J. Deckelbaum and Judith R. Thoyer, counsel Didier Malaquin and Frances F. Mi and associate Daniel B. Levine. Invaluable assistance was provided by associates Youjung Byon and Adam B. Hahn and summer associates Jesse Dallal, Rafael Gutharz, Justin Haan, Michael Wagman, Camele-Ann White and Kathryn White.

We would also like to acknowledge and thank Thomson Reuters for providing us with data on overall U.S. M&A activity.

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