



First Annual Public Target M&A Deal Points Study

**A Project of the M&A Market Trends Subcommittee
of the
Committee on Negotiated Acquisitions
of the
American Bar Association's Section of Business Law**

The Public Target M&A Deal Points Study

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DISCLAIMERS

The findings presented in this Study do not necessarily reflect the personal views of the Working Group members or the views of their respective firms. In addition, the acquisition agreement provisions that form the basis of this Study are drafted in many different ways and do not always fit precisely into particular "data point" categories. Therefore, Working Group members have had to make various judgment calls regarding, for example, how to categorize the nature or effect of particular provisions. As a result, the conclusions presented in this Study may be subject to important qualifications that are not expressly articulated in this Study.

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Study Sample Overview

- ◆ This Study analyzes publicly-available acquisition agreements for acquisitions of U.S. publicly-traded targets by publicly-traded and other strategic acquirers for calendar year 2004. Acquisitions by private equity buyers have not been included in this Study.
- ◆ The Study sample was obtained from *www.LivEdgar.com*

Transaction Value Range	# of Deals	Consideration		
		All Cash	All Stock	Mixed
\$100M and over *	97	44%	28%	28%

* Tender offer sample includes seven deals from the main sample, plus two additional deals with a value of less than \$100M.

Contents

- I. Target's Representations and Warranties
 - A. Financial Statements – Fair Presentation
 - B. No Undisclosed Liabilities
 - C. Full Disclosure

- II. Conditions to Closing; Termination Rights
 - A. Accuracy of Target's Representations
 - B. No Material Adverse Change
 - C. Legal Opinions
 - D. Retention of Employees
 - E. No Governmental Litigation
 - F. No Non-Governmental Litigation
 - G. Resignation of Directors
 - H. Availability of Financing
 - I. Decrease in Buyer's Stock Price

Contents (cont'd)

III. Deal Protections

- A. Fiduciary Exception to No-Talk
- B. Fiduciary Exception to Board Recommendation Covenant
- C. Fiduciary (Superior Offer) Termination Right
- D. Definition of Superior Offer
- E. Break-Up Fee Triggers

IV. Other Merger Agreement Data Points

- A. D&O Indemnification
- B. D&O Insurance

V. Two-Step Cash Transactions (Involving Tender Offer)

- A. Structure of Cash Deals
- B. Minimum Tender Condition
- C. Top-Up Option
- D. Conditions Regarding Trading Suspension; Banking Moratorium; War/Terrorism; Extension of Credit

TARGET'S REPRESENTATIONS AND WARRANTIES

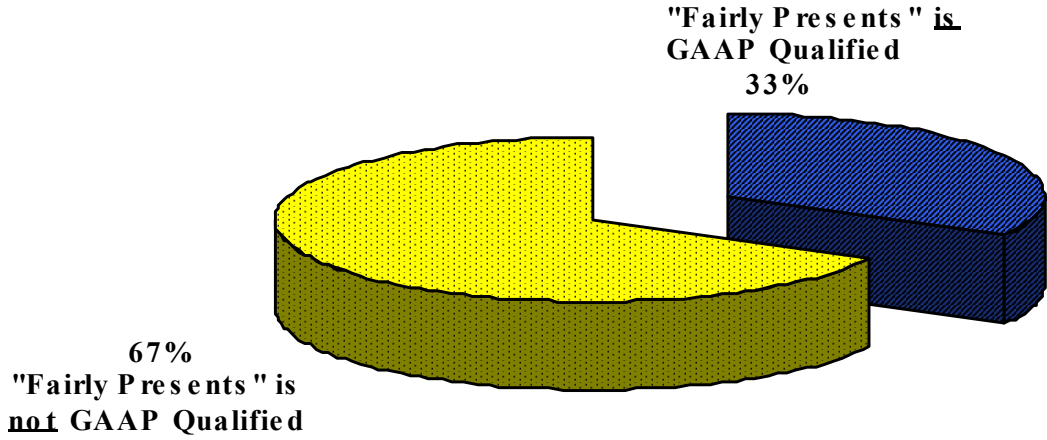
“Fair Presentation” Representation (“Fairly Presents” is GAAP Qualified)

“Financial Statements. The Target Financial Statements fairly present the financial position of the Target and its consolidated subsidiaries as of the respective dates thereof and the results of operations and cash flows of the Target and its consolidated subsidiaries for the periods covered thereby, **all in accordance with GAAP.**”

“Fair Presentation” Representation (“Fairly Presents” is not GAAP Qualified)

“Financial Statements. The Target Financial Statements fairly present the financial position of the Target and its consolidated subsidiaries as of the respective dates thereof and the results of operations and cash flows of the Target and its consolidated subsidiaries for the periods covered thereby. The Target Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered.”

“Fair Presentation” Representation



“No Undisclosed Liabilities” Representation

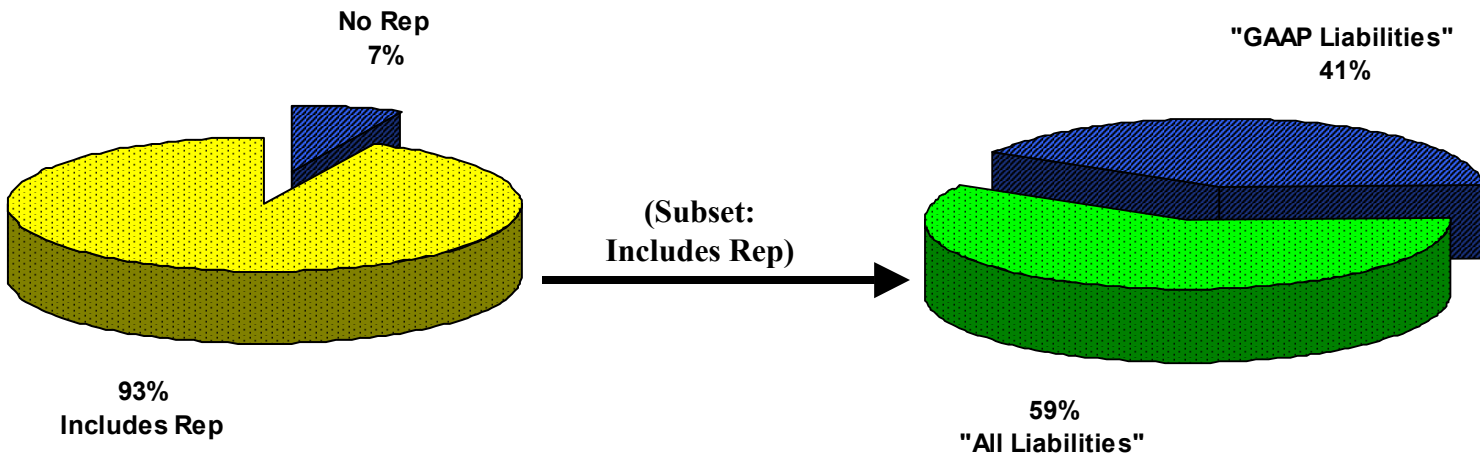
All Liabilities

“**No Undisclosed Liabilities.** The Target has no accrued, contingent or other liabilities of any nature, either matured or unmatured, except for: (a) liabilities identified as such in the “liabilities” column of the Unaudited Interim Balance Sheet; (b) normal and recurring current liabilities that have been incurred by the Target since [*date of interim balance sheet*] in the ordinary course of business and consistent with past practices; and (c) liabilities described in Part 2.12 of the Target Disclosure Schedule.”

GAAP Liabilities

“**No Undisclosed Liabilities.** The Target has no liabilities of the type required to be disclosed in the liabilities column of a balance sheet prepared in accordance with GAAP, except for: (a) liabilities disclosed in the financial statements (including any related notes) contained in the Target SEC Documents; and (b) liabilities incurred in the ordinary course of business.”

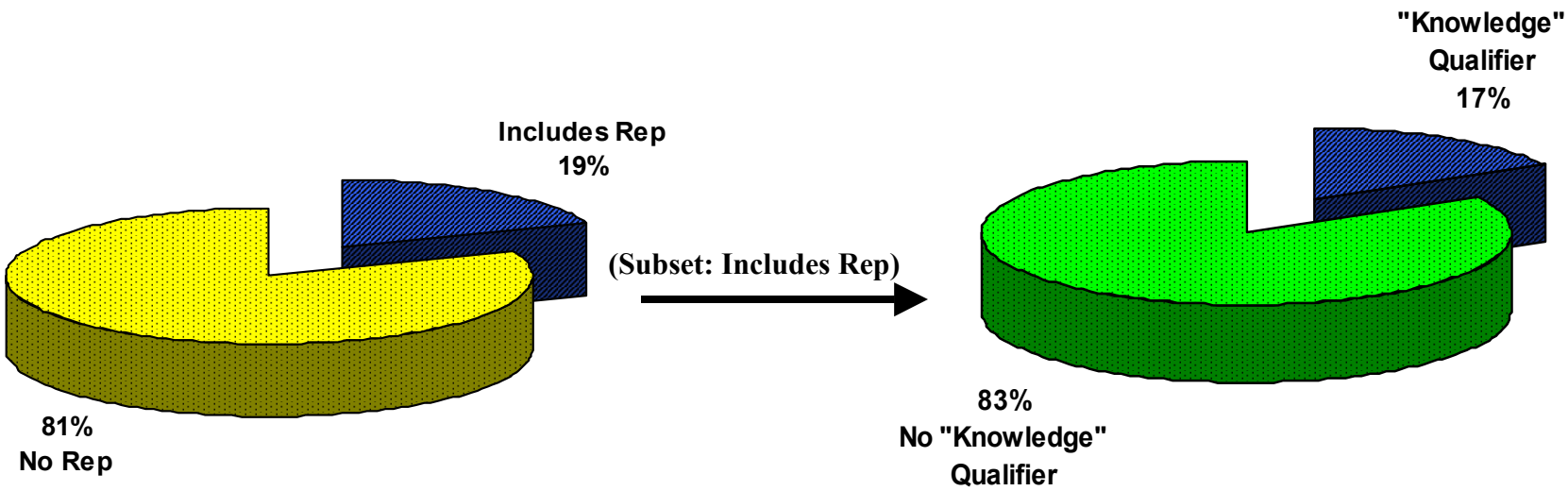
"No Undisclosed Liabilities" Representation



“Full Disclosure” Representation

“Full Disclosure. [To the knowledge of the Target,] No representation or warranty made by the Target in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make any such representation or warranty, in light of the circumstances in which it was made, not misleading.”

"Full Disclosure" Representation



CONDITIONS TO CLOSING; TERMINATION RIGHTS

Accuracy of Target's Representations - When Must They Be Accurate?

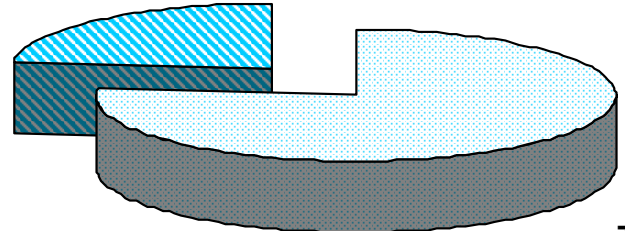
(Two Points in Time: At Signing and At Closing)

“Accuracy of Representations and Warranties. Each of the representations and warranties made by the Target in this Agreement shall have been accurate in all respects as of the **date of this Agreement**, and shall be accurate in all respects as of the **Closing Date** as if made on the Closing Date.”

Accuracy of Target's Representations – When Must They Be Accurate?

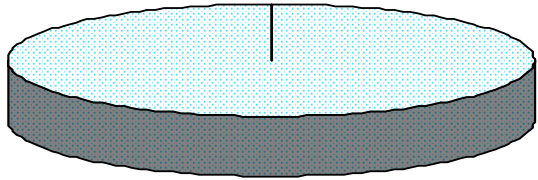
“When Made”
(i.e., at Signing)

No “When Made” Requirement
23%



77%
Includes “When Made” Requirement

“Bring Down”*
(i.e., at Closing)



Includes “Bring Down” Requirement
100%

* Includes deals with both “when made” and “bring down” requirement and deals solely with a “bring down” requirement.

**Accuracy of Target's Representations – How
Accurate Must They Be?**
("Accurate In All Material Respects")

“Accuracy of Representations and Warranties. Each of the representations and warranties made by the Target in this Agreement shall have been accurate **in all material respects** as of the Closing Date as if made on the Closing Date.”

Accuracy of Target's Representations – How Accurate Must They Be? (The Big MAC/MAE Qualification)

“Accuracy of Representations and Warranties. Each of the representations and warranties made by the Target in this Agreement shall have been accurate in all respects as of the Closing Date as if made on the Closing Date, **except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to result in a Material Adverse Effect.**”

Accuracy of Target's Representations – How Accurate Must They Be?

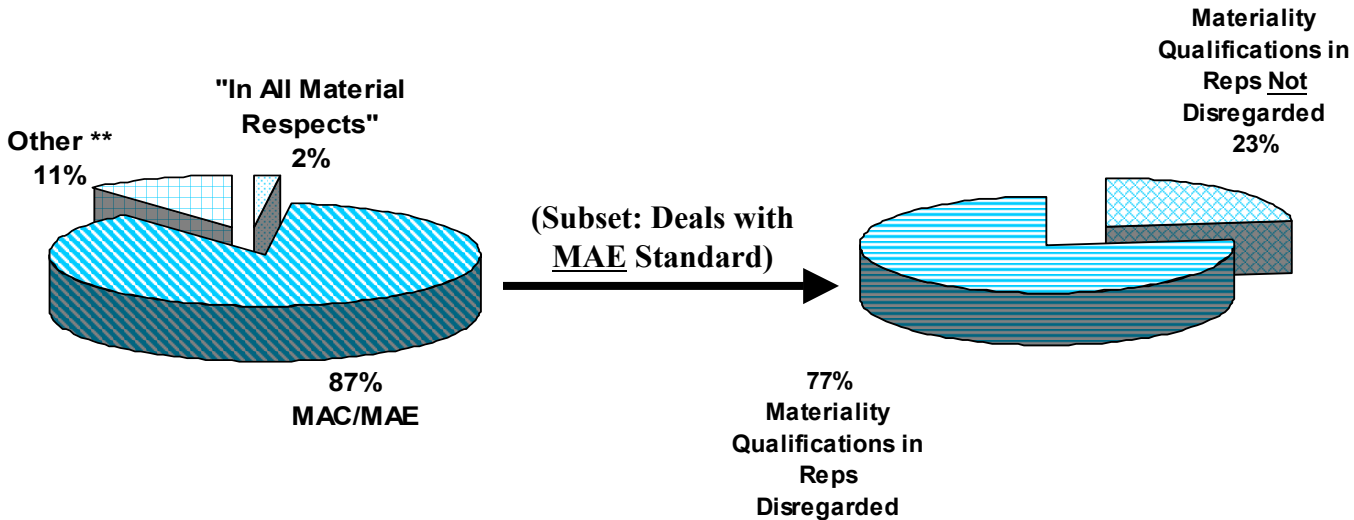
(“Double Materiality” Carveout)

“Accuracy of Representations and Warranties. Each of the representations and warranties made by the Target in this Agreement shall have been accurate in all respects as of the Closing Date as if made on the Closing Date, except for inaccuracies of representations or warranties the circumstances giving rise to which, individually or in the aggregate, do not constitute and could not reasonably be expected to result in a Material Adverse Effect (it being understood that, for purposes of determining the accuracy of such representations and warranties, all “Material Adverse Effect” qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded).”

Accuracy of Target's Representations - How Accurate Must They Be? (Materiality Qualifiers In "When Made" Component)

Materiality Standard *

"Double Materiality" Carveout



* Many deals included separate (and different) materiality standards for the capitalization representation and certain other representations.

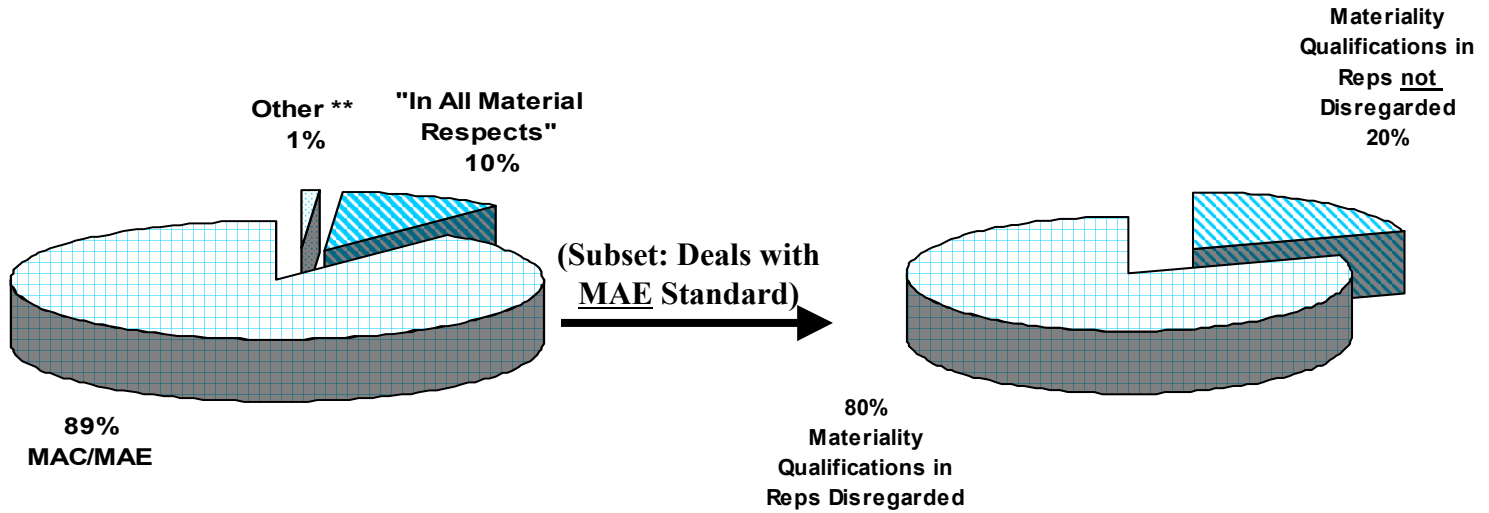
** "Other" includes "in all respects if qualified by materiality and in all material respects if not so qualified."

Accuracy of Target's Representations – How Accurate Must They Be?

(Materiality Qualifier In "Bring Down" Component)

Materiality Standard *

"Double Materiality" Carveout



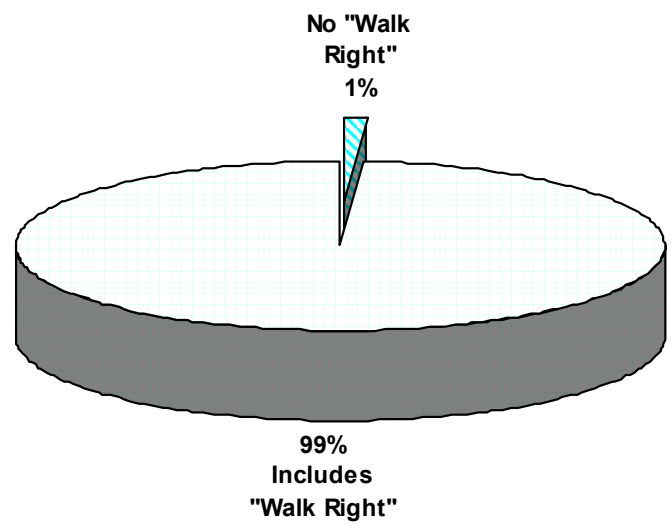
* Many deals included separate (and different) materiality qualifies for the capitalization representation and certain other representations.

** "Other" includes "in all respects if qualified by materiality and in all material respects if not so qualified."

Buyer's MAC/MAE "Walk Right"

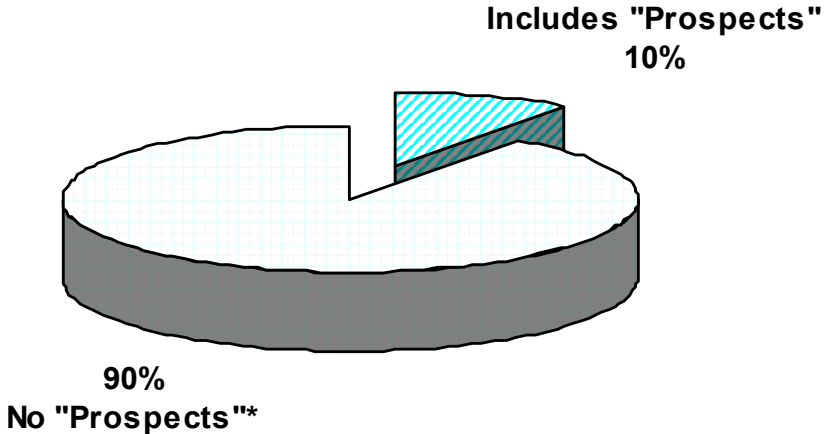
"No Material Adverse Change. Since the date of this Agreement, there has not been any material adverse change in the business, financial condition, capitalization, assets, liabilities, operations, results of operations or prospects of the Target or its Subsidiaries."

Buyer's MAC/MAE "Walk Right" *



* MAC/MAE "walk right" includes closing condition, specific termination right in termination section and "back door" MAC (*i.e.*, MAC termination right through bringdown of MAC representation).

Buyer's MAC/MAE "Walk Right" (Prospects)



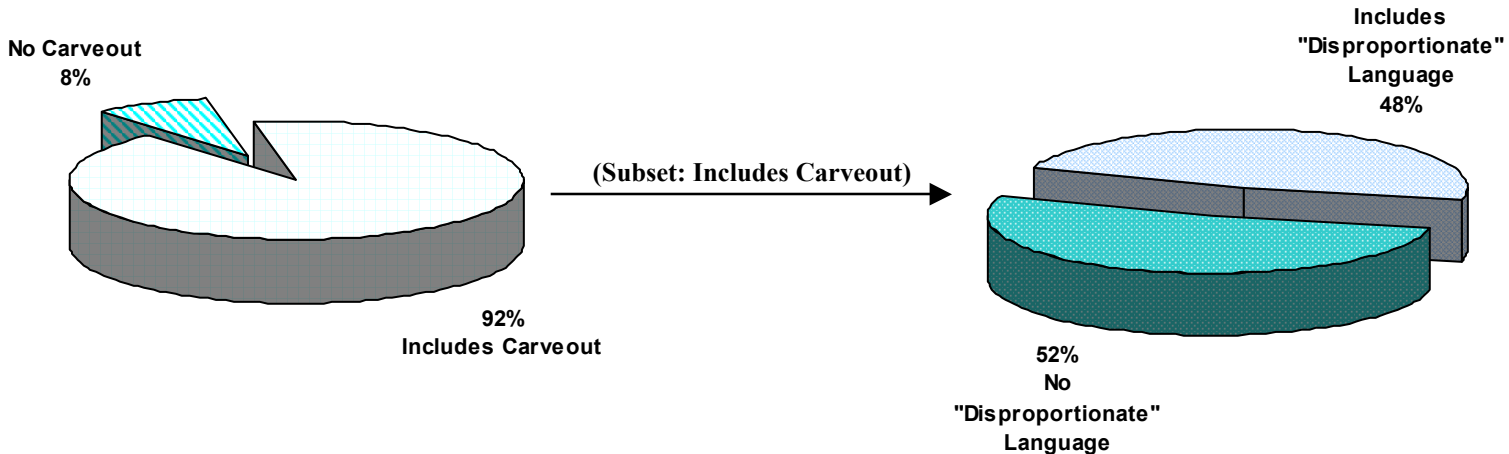
* Many of the acquisition agreements that do not include the word "prospects" in the MAC clause do include other forward-looking language in that clause, such as "events that could/would reasonably be expected to result in a MAC."

MAC/MAE Carveouts

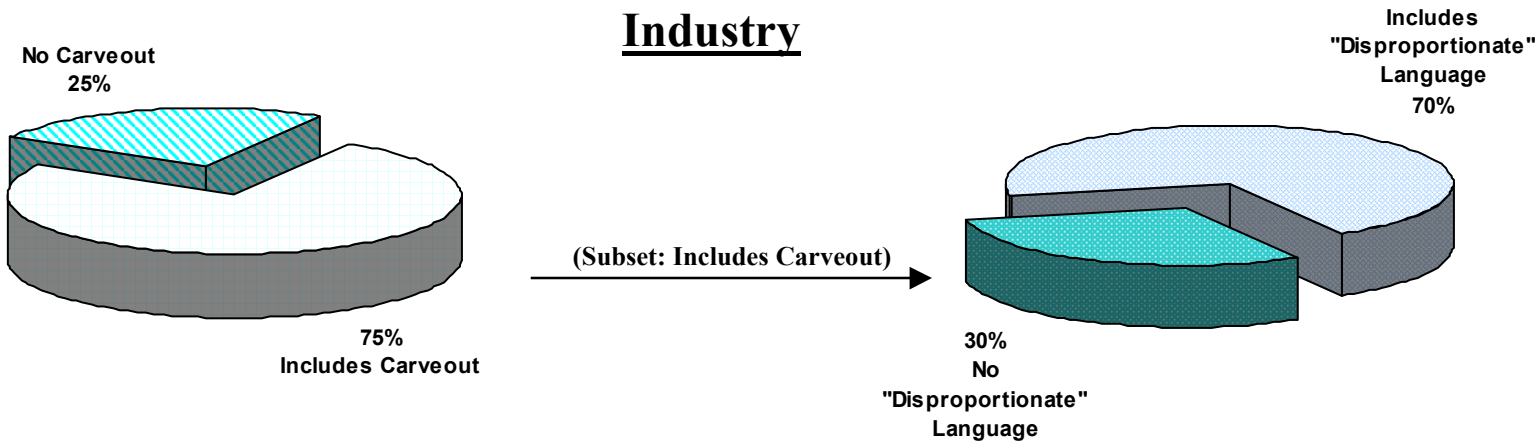
"MATERIAL ADVERSE CHANGE/EFFECT" means, when used in connection with the Target, any change, event, violation, inaccuracy, circumstance or effect that is materially adverse to the business, assets, liabilities, financial condition, results of operations or prospects of the Target and its Subsidiaries taken as a whole, other than as a result of: (i) changes adversely affecting the United States economy (so long as the Target is not disproportionately affected thereby); (ii) changes adversely affecting the industry in which the Target operates (so long as the Target is not disproportionately affected thereby); (iii) the announcement or pendency of the transactions contemplated by this Agreement; (iv) the failure to meet analyst projections, in and of itself; (v) changes in laws; (vi) changes in accounting principles; or (vii) acts of war or terrorism.

MAC/MAE CARVEOUTS

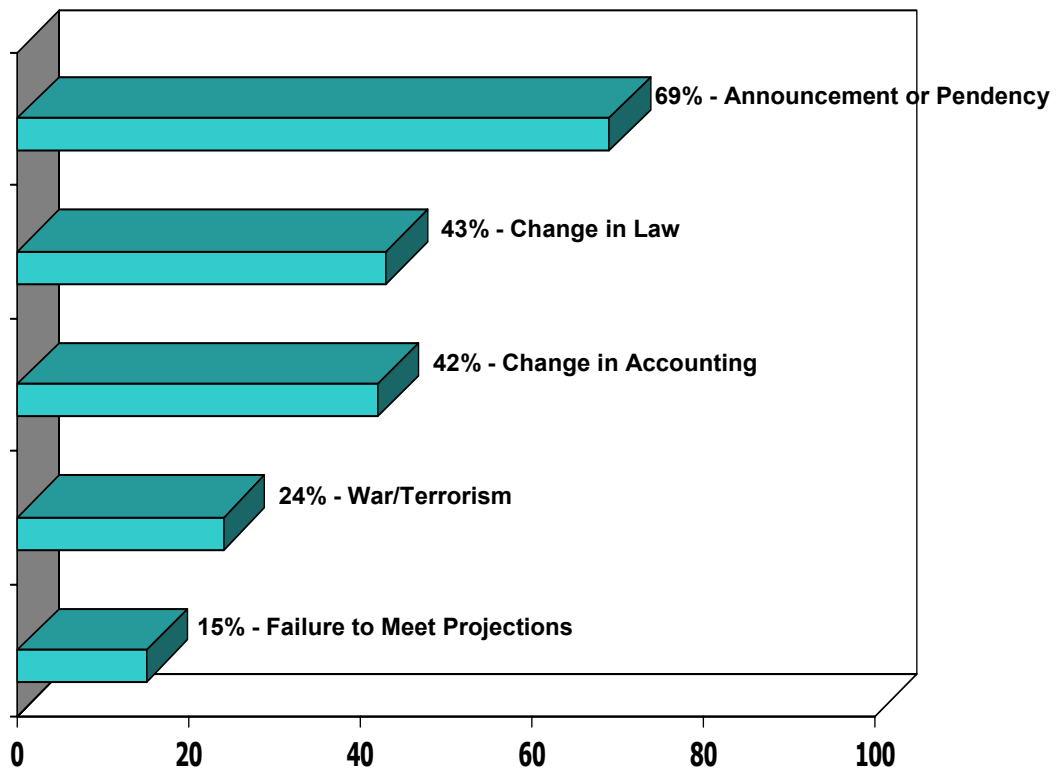
General Economy



Industry



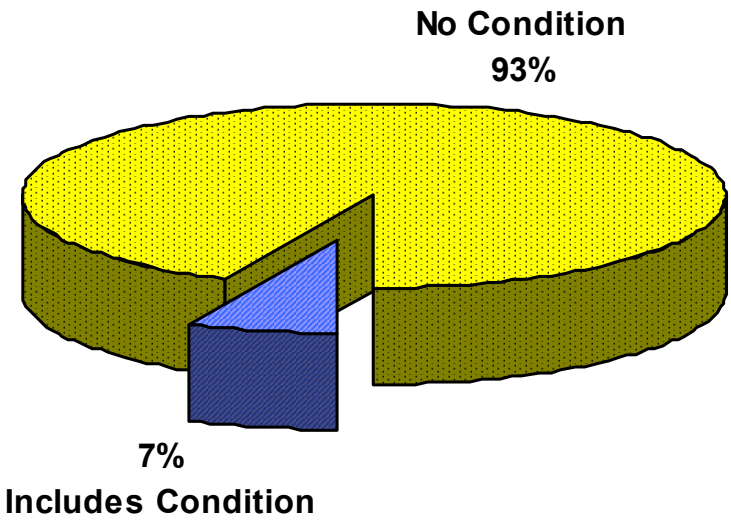
Other Popular MAC/MAE Carveouts



Opinion of Target's Counsel (Not Including Tax Opinion)

“Agreements and Documents. The Buyer shall have received the following agreements and documents, each of which shall be in full force and effect: . . . (___) a legal opinion of [counsel to the Target], substantially in the form of Exhibit ___;”

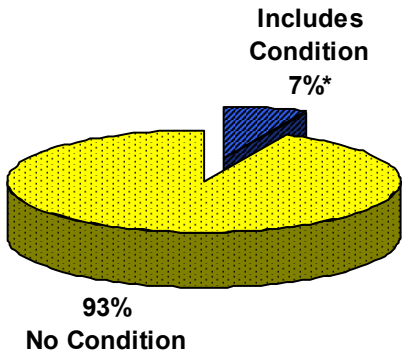
Opinion of Target's Counsel (Not Including Tax Opinion)



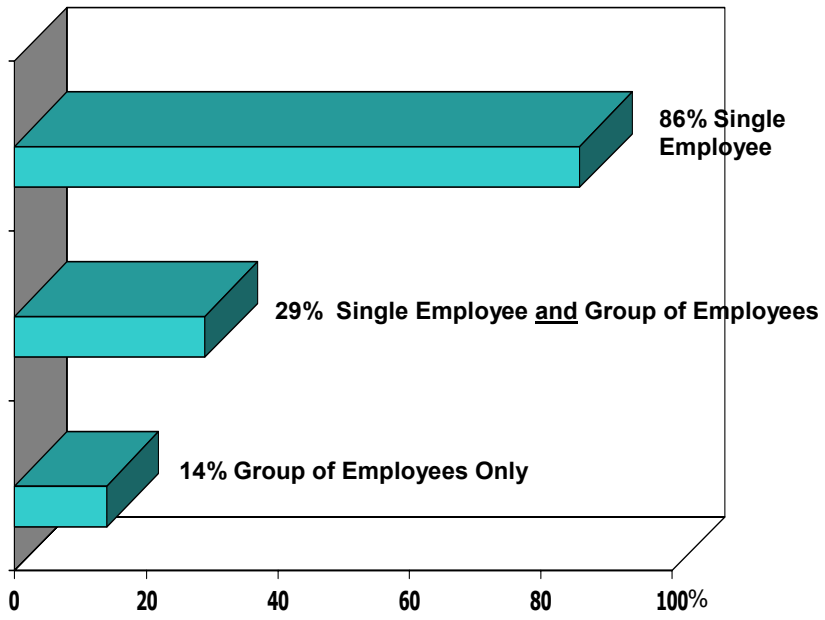
Retention of Target's Employees

“Employees. None of the individuals identified on Schedule 6.7(a) shall have ceased to be employed by the Target, or shall have expressed an intention to terminate his or her employment with the Target or to decline to accept employment with the Buyer; and not more than [90%] of the individuals identified on Schedule 6.7(b) shall have ceased to be employed by the Target or shall have expressed an intention to terminate their employment with the Target or to decline to accept employment with the Buyer.”

Retention of Target's Employees



(Subset: Includes Condition)

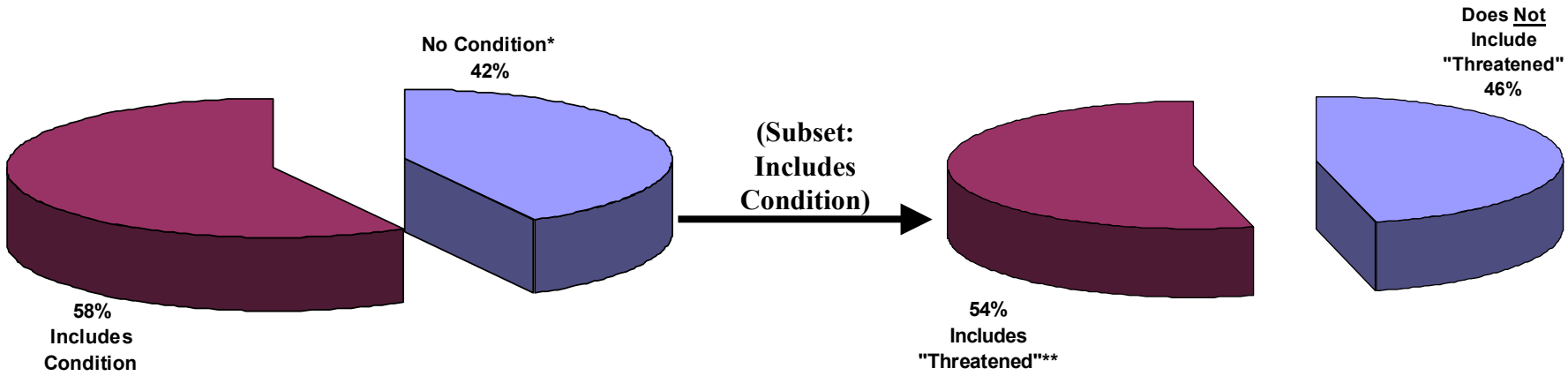


*Condition to the effect that "employment agreements remain in full force and effect" are not included in the 7% statistic.

No Governmental Litigation Challenging the Transaction

“No Governmental Litigation. There shall not be pending or threatened any Legal Proceeding in which a Governmental Body is or is threatened to become a party: (a) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement; (b) seeking to prohibit or limit in any material respect the Buyer’s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of the Surviving Corporation; or (c) seeking to compel the Target, the Buyer or any Subsidiary of the Buyer to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.”

No Governmental Litigation Challenging the Transaction



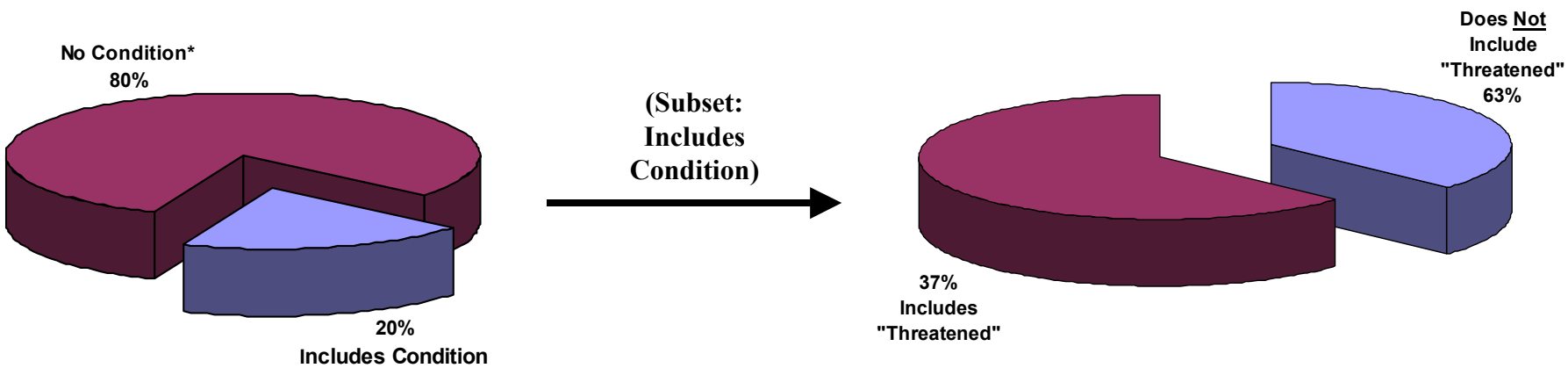
* Many of the agreements that did not include a specific “no governmental litigation” condition did include other provisions (such as a “material adverse change” condition or the “bring down” of the target’s “no litigation” representation) that could, under certain circumstances, provide the buyer with a walk right in the event of governmental litigation relating to the transaction.

** Of the transactions that included threatened governmental litigation, approximately 6.6% also included “overtly” and approximately 13.3% also included “in writing.”

No Non-Governmental Litigation Challenging the Transaction

“No Other Litigation. There shall not be pending or threatened any Legal Proceeding in which a Governmental Body or any other person is or is threatened to become a party: (a) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement; (b) seeking to prohibit or limit in any material respect the Buyer’s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of any of the Target; or (c) seeking to compel the Target, the Buyer or any Subsidiary of the Buyer to dispose of or hold separate any material assets as a result of the Merger or any of the other transactions contemplated by this Agreement.”

No Non-Governmental Litigation Challenging the Transaction

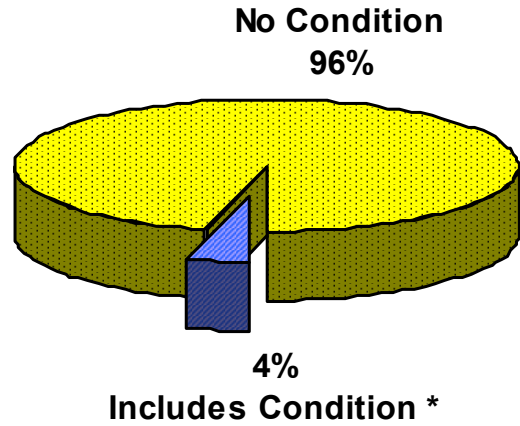


* Many of the agreements that did not include a specific “no non-governmental litigation” condition did include other provisions (such as a “material adverse change” condition or the “bring down” of the target’s “no litigation” representation) that could, under certain circumstances, provide the buyer with a walk right in the event of non-governmental litigation relating to the transaction.

Resignation of Target Directors

“Agreements and Documents. The Buyer and the Target shall have received the following agreements and documents, each of which shall be in full force and effect: . . . (___) the written resignations of all directors of the Target, effective as of the Effective Time.”

Resignation of Target Directors



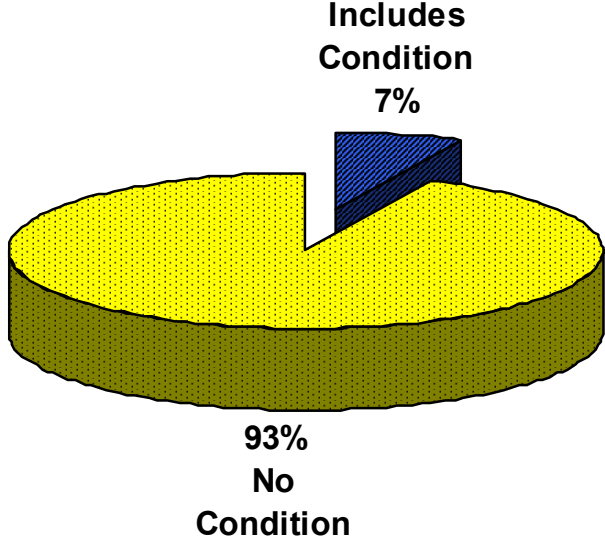
* All deals with director resignation condition involved targets that had staggered boards of directors.

Availability of Financing

“Financing. The Buyer shall have obtained the financing described in the Commitment Letters on the terms set forth in the Commitment Letters and on such other terms as are reasonably satisfactory to the Buyer.”

Availability of Financing

(Subset: Transactions In Which Consideration Was 100% Cash) *



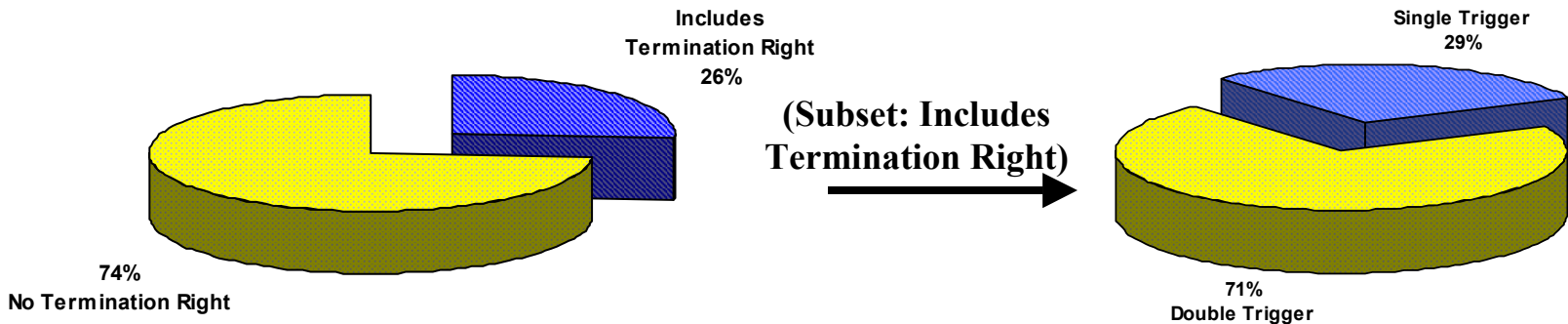
* No part cash/part stock deals included in the sample contained a financing condition.

Decrease in Buyer's Stock Price

“Stock Price Decline. This Agreement may be terminated by the Target if both of the following conditions are satisfied: (i) the Average Closing Price on the date that is two Business Days prior to the Effective Time (the “Determination Date”) of shares of Buyer Common Stock shall be less than \$39.2524; and (ii) (A) the number obtained by dividing the Average Closing Price on the Determination Date by \$52.3365 shall be less than (B) the number obtained by dividing the Average Index Price on the Determination Date by \$974.08, and subtracting 0.15 from the quotient in this clause (B).”

Decrease in Buyer's Stock Price

(Subset: Transactions In Which Consideration Was 100% Stock) *



* All such transactions contemplated a fixed exchange ratio with no collar, except for one fixed exchange ratio with a collar and three fixed value transactions, two of which had collars.

DEAL PROTECTIONS

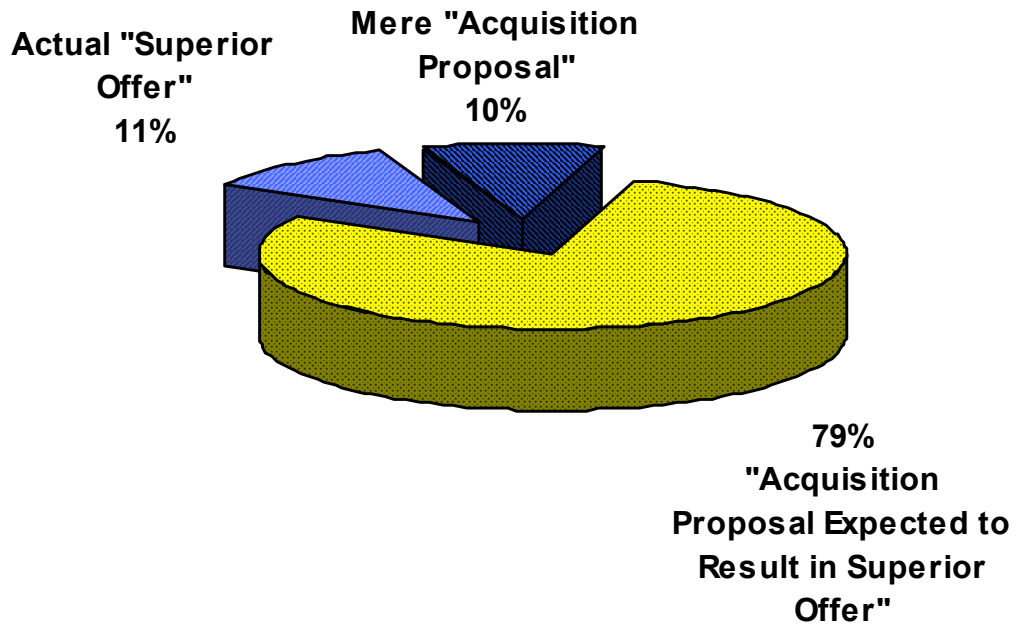
Target No-Shop/No-Talk; Fiduciary Exception to No-Talk

“No Solicitation. The Target shall not directly or indirectly, and shall not authorize or permit any of the other Acquired Corporations or any Representative of any of the Acquired Corporations directly or indirectly to: (a) solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any Acquisition Proposal . . . ; (b) furnish any information regarding any of the Acquired Corporations to any Person in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; (c) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal; (d) . . . ;”

Fiduciary Exception to No-Talk

“provided, however, that prior to the approval of this Agreement by the Required Target Stockholder Vote, this Section 4.3(a) shall not prohibit the Target from furnishing nonpublic information regarding the Acquired Corporations to, or entering into discussions with, any Person in response to [an Acquisition Proposal] [an Acquisition Proposal that is reasonably likely to result in a Superior Offer] [a Superior Offer] that is submitted to the Target by such Person (and not withdrawn) if”

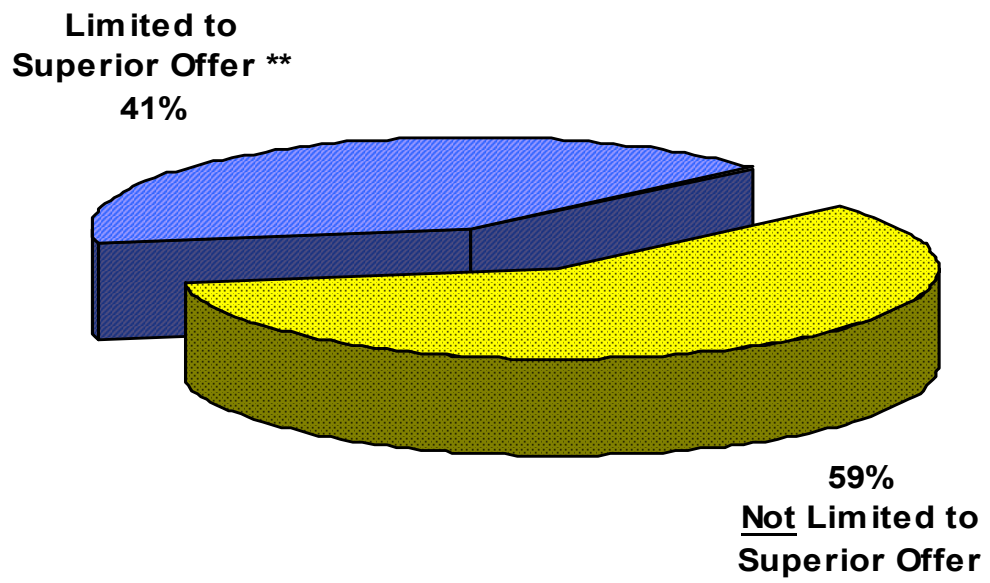
Target No-Shop/No-Talk; Fiduciary Exception to No-Talk



Fiduciary Exception to Target Board Recommendation Covenant

“Notwithstanding anything to the contrary contained in Section 5.2(b), at any time prior to the approval of this Agreement by the Required Target Stockholder Vote, the Target Board Recommendation may be withdrawn or modified in a manner adverse to the Buyer if: (i) an unsolicited, bona fide written offer to purchase . . . is made to the Target and is not withdrawn . . . (iii) the Target’s board of directors determines in good faith (based upon a written opinion of an independent financial advisor of nationally recognized reputation) that such offer constitutes a Superior Offer; (iv) the Target’s board of directors determines in good faith . . . that, in light of such Superior Offer, the withdrawal or modification of the Target Board Recommendation is required in order for the Target’s board of directors to comply with its fiduciary obligations to the Target’s stockholders under applicable law . . .”

Fiduciary Exception to Target Board Recommendation Covenant *



* Two transactions were excluded from the main study sample because they did not include a fiduciary exception to the recommendation covenant.

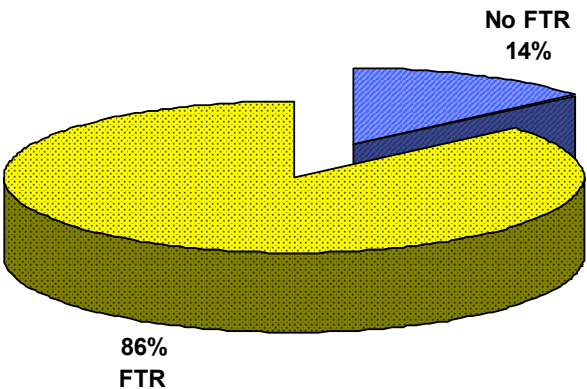
** A number of transactions in which the fiduciary exception was limited to superior offer also included provisions generally allowing the board to comply with its fiduciary duty of candor and/or securities law disclosure requirements.

Target Fiduciary (Superior Offer) Termination Right

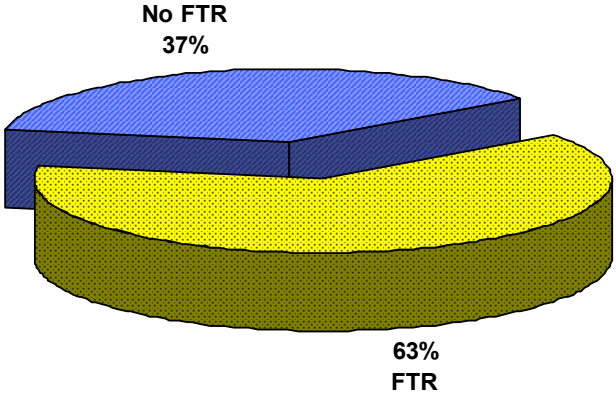
“Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the requisite approvals of the stockholders of the Buyer or of the Target . . . (f) by the Target if: (i) . . .; (___) the Target Stockholder Approval has not been obtained; and (___) concurrently the Target enters into a definitive Target Acquisition Agreement providing for a Superior Offer in accordance with Section 5.3; *provided that [first pay “break-up” fee].*”

Target Fiduciary (Superior Offer) Termination Right

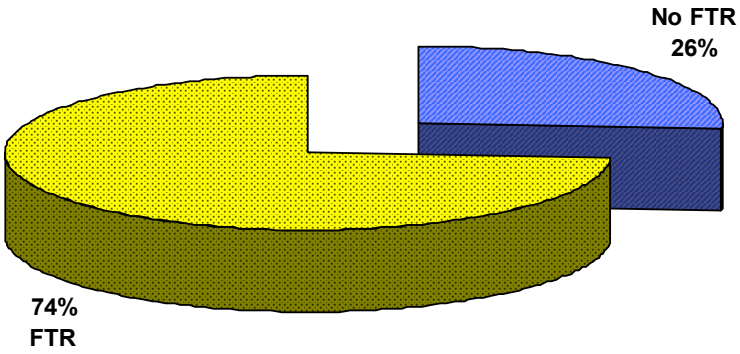
All Cash



All Stock



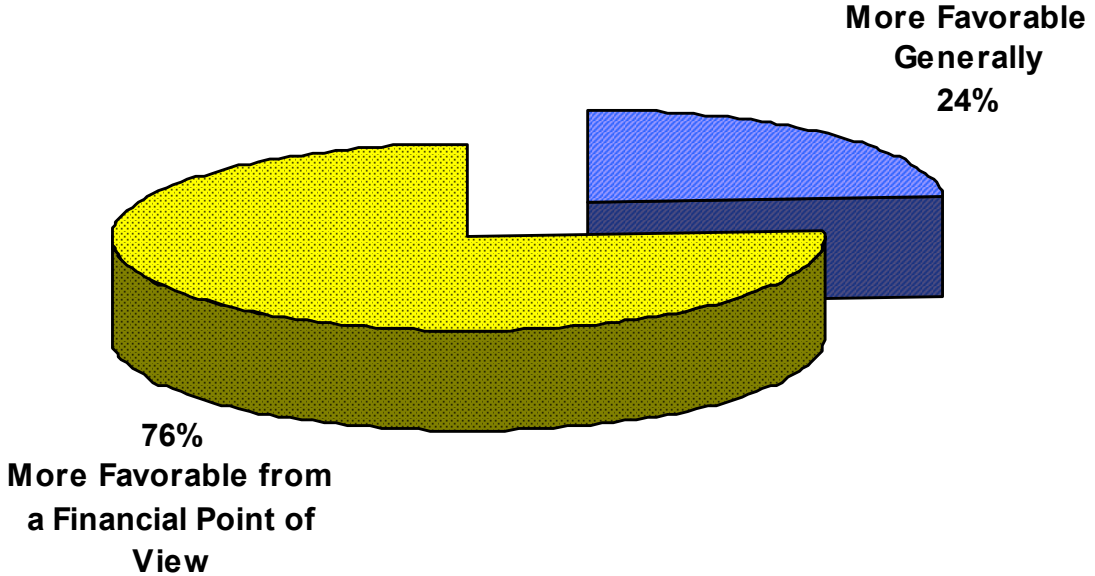
Part Cash/Part Stock



Definition of Superior Offer

“Superior Offer” shall mean an unsolicited, bona fide written offer made by a third party to purchase . . . on terms that the board of directors of the Target determines, in its reasonable judgment, based upon . . ., to be more favorable to the Target’s stockholders [from a financial point of view] than the terms of the Merger . . .”

Definition of Superior Offer



Target “Break-Up” Fee Triggers

“8.3 Expenses; Termination Fees.

(a) Except as set forth in this Section 8.3, all fees and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such expenses, whether or not the Merger is consummated; *provided, however*, that:

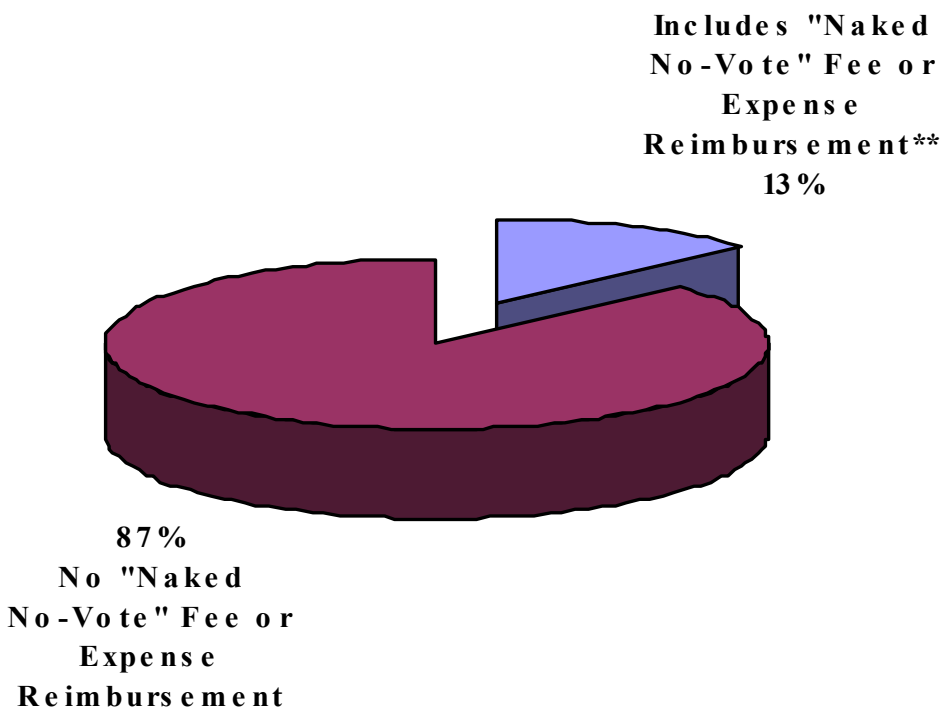
(i) [**Naked No-Vote Fee**] If this Agreement is terminated by the Buyer or the Target pursuant to Section 8.1(d) [*“no vote”*], then the Target shall pay to the Buyer, in cash, a nonrefundable fee in an amount equal to \$ _____ [*1% of aggregate transaction value*].

(ii) [**Fee for No-Vote + Acquisition Proposal**] If this Agreement is terminated by the Buyer or the Target pursuant to Section 8.1(d) [*“no vote”*] **and** at or prior to the time of the termination of this Agreement an Acquisition Proposal shall have been made, then the Target shall pay to the Buyer, in cash, a nonrefundable fee in the amount equal to \$ _____ [*3% of the aggregate transaction value*].

(iii) [**Drop-Dead Date + Acquisition Proposal**] If this Agreement is terminated by the Buyer or the Target pursuant to Section 8.1(b) [*drop dead date*] **and** at or prior to the time of the termination of this Agreement an Acquisition Proposal shall have been made, then the Target shall pay to the Buyer, in cash, a nonrefundable fee in the amount equal to \$ _____ [*3% of the aggregate transaction value*].

(iv) [**Change in Board Recommendation; Certain Breaches**] If this Agreement is terminated by the Buyer pursuant to Section 8.1(e) [*change in Board Recommendation*], Section 8.1(f) [*breach of no shop or meeting covenants*] or Section 8.1(g) [*breach of representations, warranties or covenants*], then the Target shall pay to the Buyer, in cash, a nonrefundable fee in the amount equal to \$ _____ [*3% of the aggregate transaction value*].”

Target "Break-Up" Fee Triggers ("Naked No-Vote") *

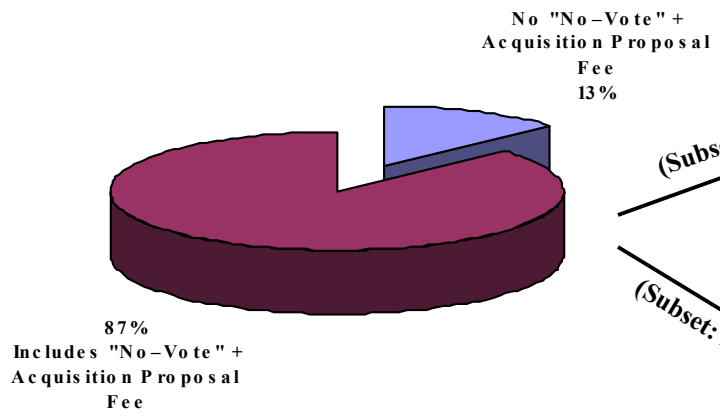


* Excludes seven tender offers and three other transactions from main study sample; therefore, sample size = 87 deals.
** Out of the eleven transactions that contained a naked "no-vote" trigger, nine required reimbursement of expenses only, one required payment of a full break-up fee and one required payment of a partial break-up fee.

Target "Break-Up" Fee Triggers

("No-Vote" + Acquisition Proposal) *

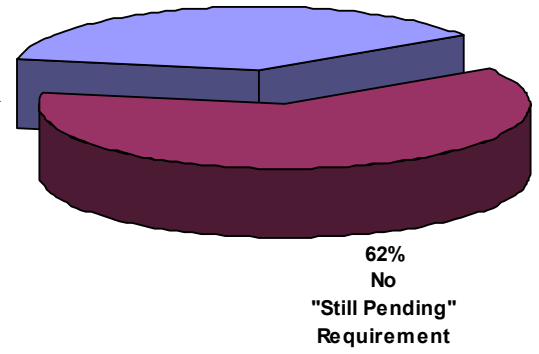
Included?



Acquisition Proposal Still Pending?

Includes "Still Pending" Requirement
38%

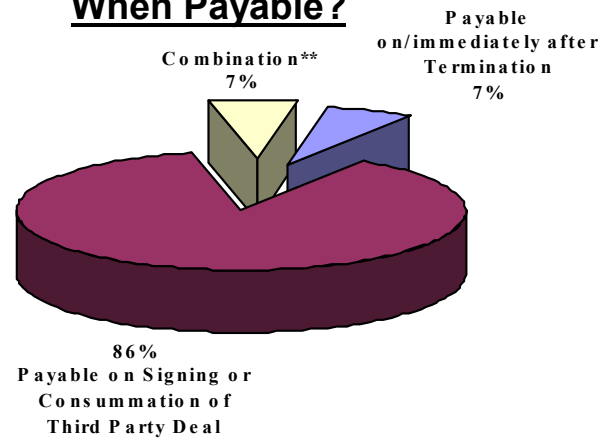
Pending?



(Subset: Includes Fee)

(Subset: Includes Fee)

When Payable?

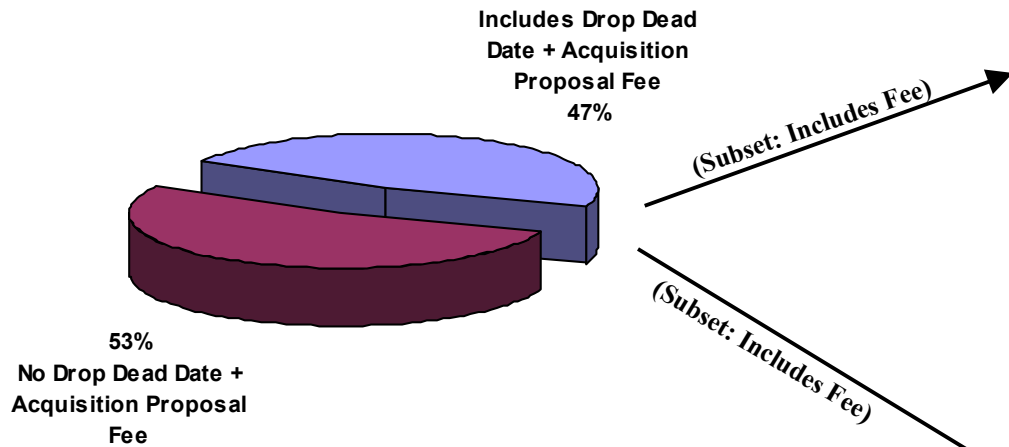


* Excludes seven tender offers and three other transactions from main study sample; therefore, sample size = 87 deals.

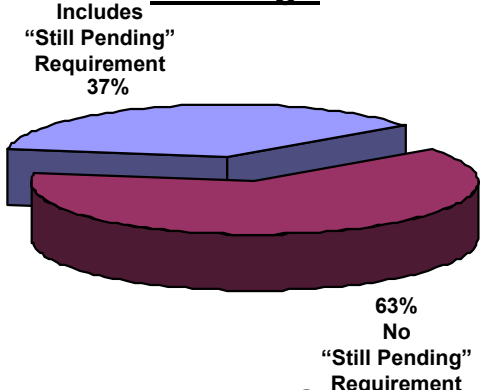
** Part of fee payable on termination and part of fee payable on signing or consummation of third party deal.

Target "Break-Up" Fee Triggers (Drop Dead Date + Acquisition Proposal) *

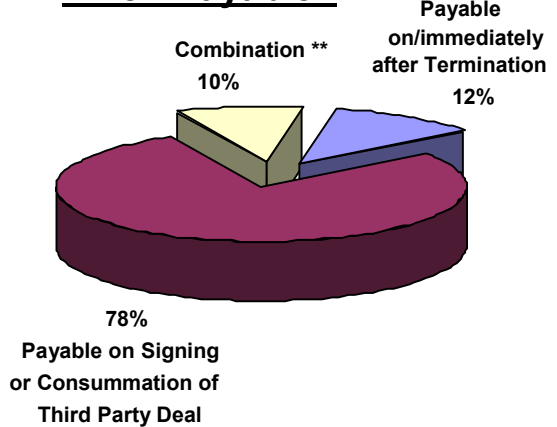
Included?



Acquisition Proposal Still Pending?



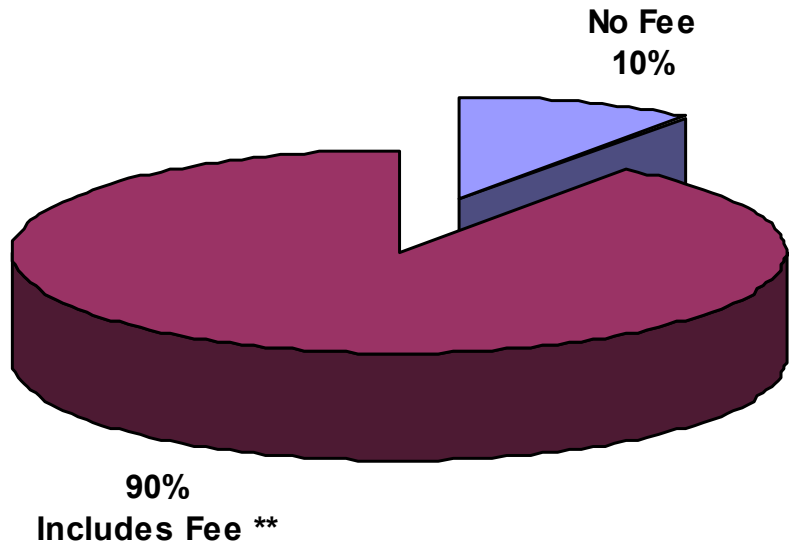
When Payable?



* Excludes seven tender offers and three other transactions from main study sample; therefore, sample size = 87 deals.

** Part of fee payable on termination and part of fee payable on signing or consummation of third party deal.

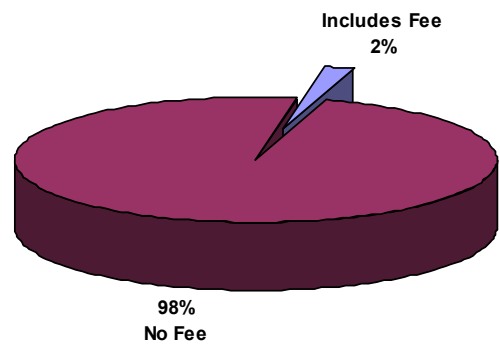
Target "Break-Up" Fee Triggers (Change of Board Recommendation) *



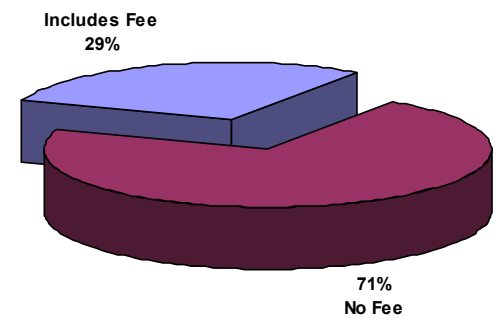
* Excludes seven tender offers and three other transactions from main study sample; therefore, sample size = 87 deals.
** A small number of transactions contain conditions in addition to mere change or withdrawal of board recommendation, such as consummation of a third party deal within a specified period after termination.

Target "Break-Up" Fee Triggers (Breach of Acquisition Agreement) *

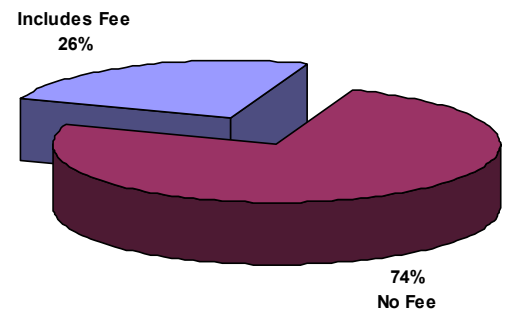
General Breach **



Breach No-Shop ***



Breach Stockholder Meeting Covenants ***



* Excludes seven tender offers and three other transactions from main study sample; therefore, sample size = 87 deals.
** General breach of representations, warranties and covenants: (a) is limited to transactions in which mere breach, without other conditions (such as consummation of a third party bid), triggers a break-up fee; however, some transactions require willful or intentional breach; and (b) do not include transactions in which a breach triggers reimbursement of expenses rather than full break-up fee.
*** Breach of stockholder meeting covenants and breach of no-shop covenants: (a) do not include general breach of representations, warranties and covenants; and (b) are limited to transactions in which mere breach, without other conditions, triggers a break-up fee.

OTHER MERGER AGREEMENT DATA POINTS

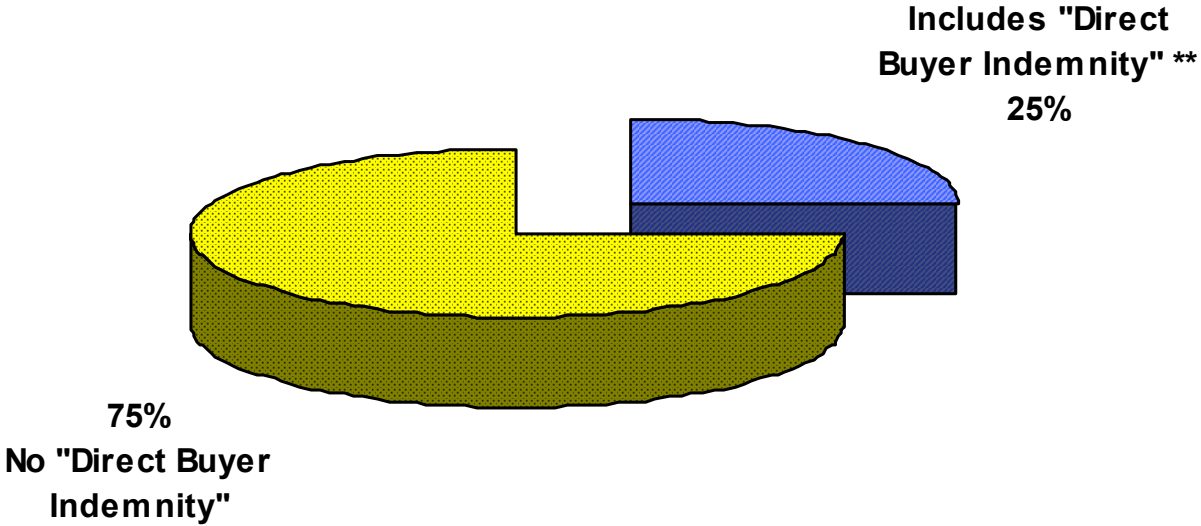
D&O Indemnification

“Indemnification of Officers and Directors. All rights to indemnification existing in favor of those Persons who are directors and officers of the Target as of the date of this Agreement (the “Indemnified Persons”) for their acts and omissions occurring prior to the Effective Time, as provided in the Target’s bylaws (as in effect as of the date of this Agreement) and as provided in the indemnification agreements between the Target and said Indemnified Persons (as in effect as of the date of this Agreement) in the forms disclosed by the Target to the Buyer prior to the date of this Agreement, shall survive the Merger and shall be observed by the Surviving Corporation to the fullest extent available under Delaware law for a period of ___ years from the Effective Time.

Direct Buyer Indemnity

Without limiting the foregoing provisions, during the period ending on the ___ anniversary of the Effective Time, the Buyer will indemnify and hold harmless each Indemnified Person against and from any costs, expenses, judgments ... in connection with any Proceeding ... to the extent such Proceeding arises out of or pertains to: (i) any action or omission or alleged action or omission in such Indemnified Person’s capacity as a director, officer or employee of the Target or any of its Subsidiaries; or (ii) any of the transactions contemplated by this Agreement.”

D&O Indemnification *

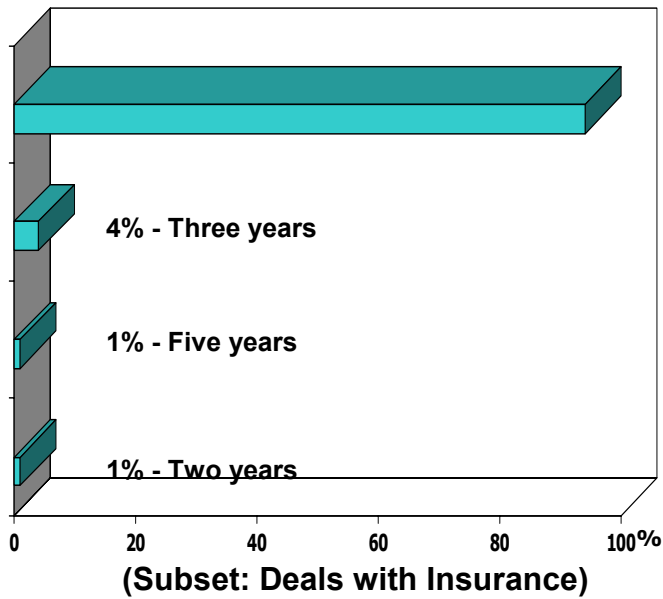
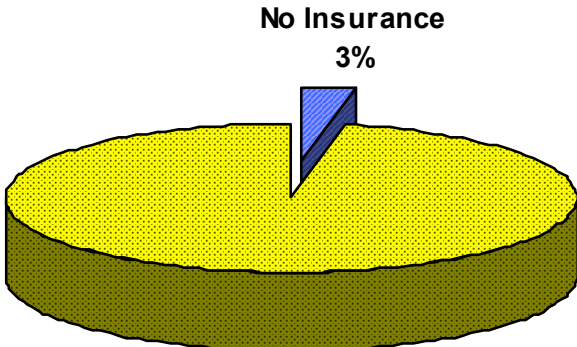


* 100% of the deals in the sample included some form of director and officer indemnification.
** "Direct Buyer Indemnity" does not include provisions to the effect that the buyer: (a) will "cause the surviving corporation to indemnify"; (b) "guarantees" the surviving corporation's indemnification obligations; (c) "continues to provide indemnification to the same extent as that provided by the target"; or (d) "honors the target's pre-existing indemnification obligations."

D&O Insurance

“D&O Insurance. From the Effective Time until the ___ anniversary of the Effective Time, the Surviving Corporation shall maintain in effect, for the benefit of the Indemnified Persons with respect to their acts and omissions occurring prior to the Effective Time, the existing policy of directors’ and officers’ liability insurance maintained by the Target as of the date of this Agreement in the form disclosed by the Target to the Buyer prior to the date of this Agreement (the “Existing Policy”); *provided, however,* that: (i) the Surviving Corporation may substitute for the Existing Policy a policy or policies of comparable coverage; and (ii) the Surviving Corporation shall not be required to pay annual premiums for the Existing Policy (or for any substitute policies) in excess of \$ _____ in the aggregate [**150%** of the current premium]....

D&O Insurance



97%
Includes Insurance
94% - Six years

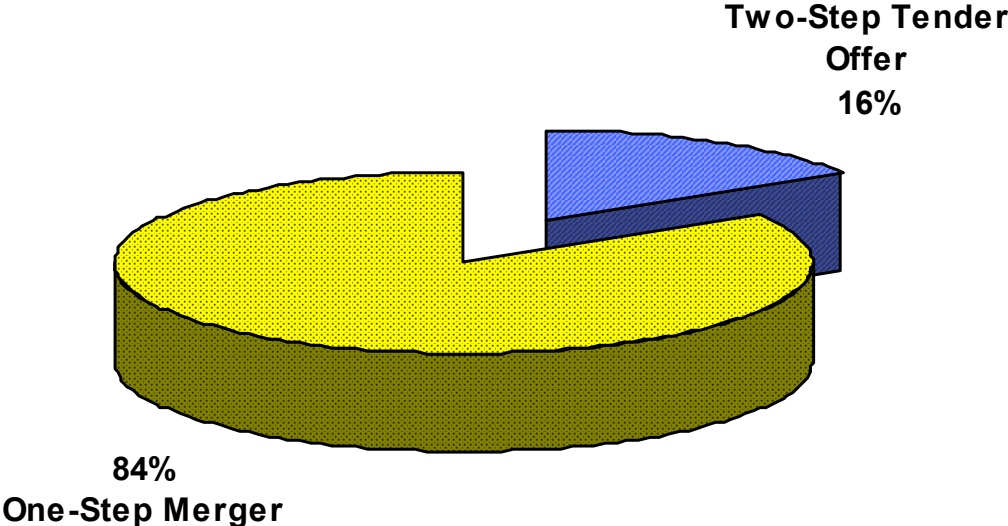
Premium Cap	Percent of Deals*
No cap	9%
300%	19%
275%	1%
250%	16%
200%	30%
175%	5%
150%	16%
125%	3%
100%	1%

(Subset: Deals with Insurance)

* Excludes 21 deals from main study sample because unable to determine premium cap percentage.

SELECTED DATA POINTS IN TWO-STEP CASH TRANSACTIONS (Tender Offer Deals)

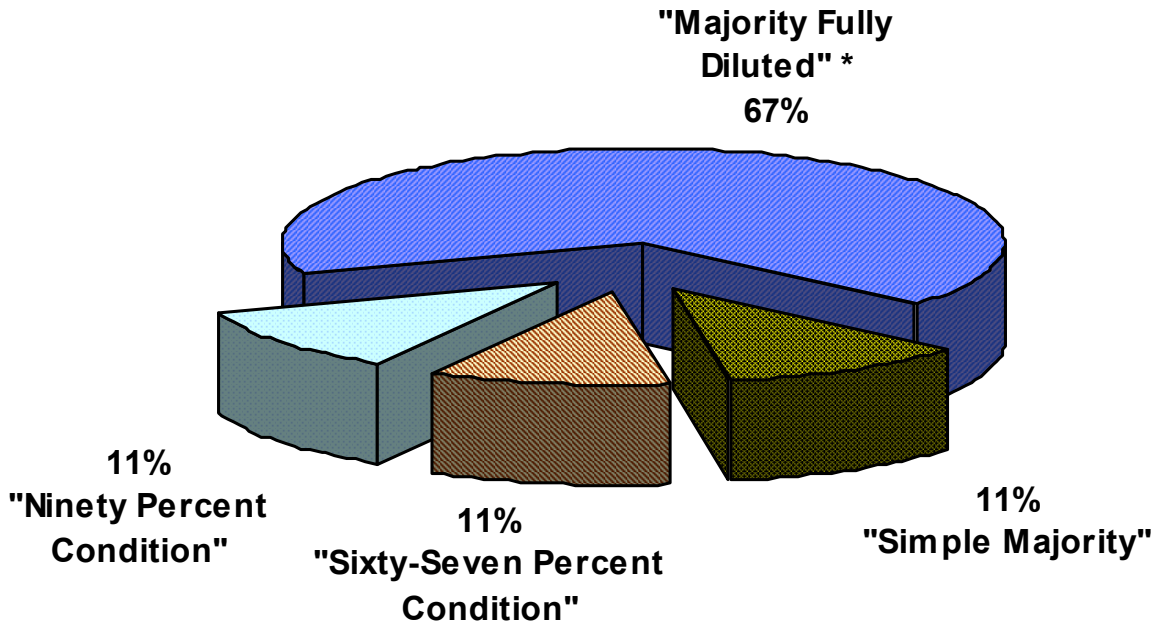
Structure of Cash Deals



Minimum Tender Condition

“Terms of Offer; Conditions to Offer. . . . The obligation of Merger Sub to accept for payment and to pay for any Target Shares tendered (and the obligation of the Buyer to cause Merger Sub to accept for payment and to pay for any Target Shares tendered) shall be subject only to: (a) the condition (the “Minimum Condition”) that, prior to the then scheduled expiration date of the Offer (as it may be extended from time to time pursuant to Section 1.1(c) hereof), there be validly tendered in accordance with the terms of the Offer and not withdrawn at least ____ Target Shares, and (ii) the other conditions set forth in Annex A hereto.”

Minimum Tender Condition



* "Fully-diluted" included: (i) majority of all shares and options, whether vested or unvested; and (ii) majority of all shares and vested options.

Top-Up Option

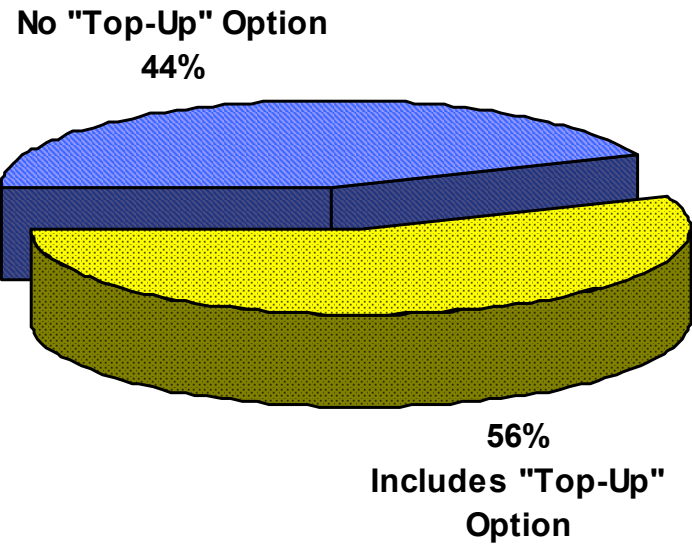
“Top-Up Option.

(a) The Target hereby grants to the Buyer and Acquisition Sub an irrevocable option (the “Top-Up Option”) to purchase that number of Shares (the “Top-Up Option Shares”) equal to the lowest number of Shares that, when added to the number of Shares owned by the Buyer and/or Acquisition Sub at the time of exercise of the Top-Up Option, shall constitute one Share more than 90% of the Shares then outstanding (assuming the issuance of the Top-Up Option Shares) at a price per Share equal to the Offer Price; *provided, however*, that the Top-Up Option shall not be exercisable unless immediately after such exercise the Buyer and/or Acquisition Sub would own more than 90% of the Shares then outstanding.

(b) The Buyer or Acquisition Sub may exercise the Top-Up Option, in whole but not in part, at any time after the occurrence of a Top-Up Exercise Event and prior to the occurrence of a Top-Up Termination Event.

(c) For the purposes of this Agreement, a “Top-Up Exercise Event” shall occur upon Acquisition’s acceptance for payment pursuant to the Offer of Shares constituting less than 90% of the Shares then outstanding. Each of the following shall be a “Top-Up Termination Event”: (i) the Effective Time; and (ii) the termination of this Agreement pursuant to its terms.”

Top-Up Option



Trading Suspension; Banking Moratorium; War/Terrorism; Extension of Credit

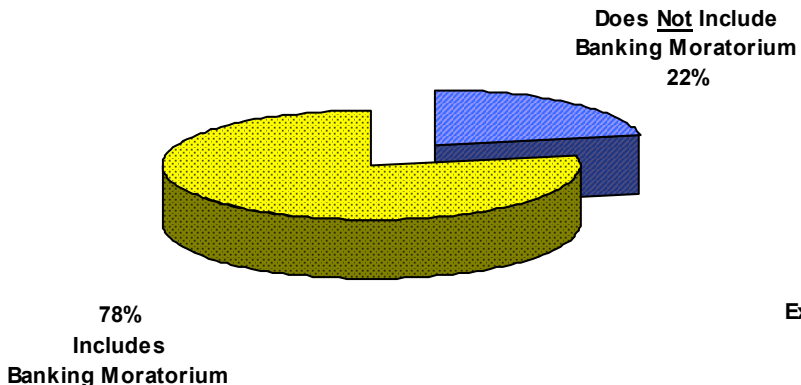
“ANNEX A CONDITIONS TO THE OFFER

... Merger Sub shall not be required to accept for payment ... any tendered Target Shares, if ... at any time on or after the execution and delivery of the Agreement and prior to the time of acceptance for payment for any such Target Shares, any of the following events shall have occurred:

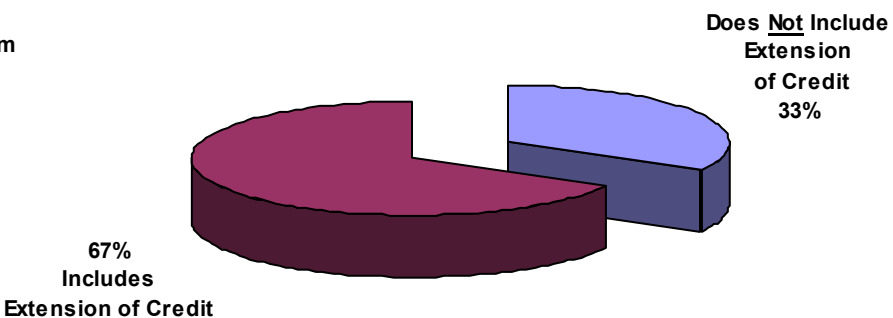
(c) ... (i) **any general suspension of trading** in, or limitation on prices for, securities on the New York Stock Exchange or in the Nasdaq, for a period in excess of twenty four hours; (ii) a declaration of a **banking moratorium** or any suspension of payments in respect of banks in the United States (whether or not mandatory); (iii) a commencement of a **war, armed hostilities or other international or national calamity (including terrorist activity)** directly or indirectly involving the United States; (iv) **any limitation** (whether or not mandatory) by any United States governmental authority **on the extension of credit generally** by banks or other financial institutions.”

Two-Step Cash Transactions

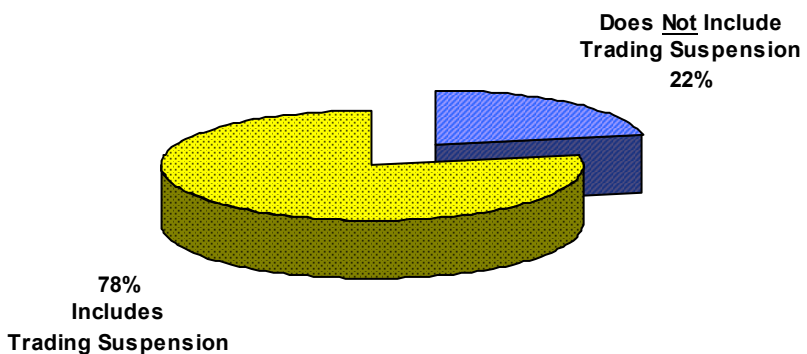
Banking Moratorium



Extension of Credit



Trading Suspension



War/Terrorism

