Schulte Roth & Zabel

Private Equity Buyer/Public Target M&A Deal Study

2011 Year-End Review

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Survey Methodology

We conducted our survey as follows:

- We have reviewed the treatment of certain key deal terms in all private equity buyer/public company target cash merger transactions involving consideration of at least $500 million in enterprise value[1] entered into during 2010 and 2011, which totaled 37 transactions.
- We then compared the treatment of such deal terms in the 20 transactions entered into between Jan. 1, 2010 and Dec. 31, 2010, which we refer to as the "2010 Transactions," with the treatment of the same key deal terms in the 17 transactions entered into between Jan. 1, 2011 and Dec. 31, 2011, which we refer to as the "2011 Transactions." Where applicable, we have included comparative notes setting forth detailed analysis of any notable or meaningful changes in the frequency or treatment of deal terms in the 2011 Transactions compared to the 2010 Transactions.

We have added several new topics to this *Deal Study*, including an overview of deal activity by volume and industry and an analysis of selected aspects of the timing and process for signing and completing deals.

Please note that (i) our findings described in this survey are not intended to be an exhaustive review of all transaction terms in the surveyed transactions — instead, we report only on those matters that we believe would be most interesting to the deal community; (ii) our observations are based on a review of publicly available information for the surveyed transactions — the surveyed 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; and (iii) our observations from the comparative analysis are affected by the two data sets not being of the same sample size (17 transactions in 2011 to date vs. 20 transactions in 2010) although we note average deal size is similar ($1.7 billion mean for 2011 Transactions vs. $1.6 billion mean for the 2010 Transactions).

A list of the surveyed transactions is attached as Appendix A.

[1] The equity values of the 37 transactions ranged from $154 million to $5.0 billion (calculated based on outstanding stock, excluding options, warrants and other securities convertible into or exercisable for common stock).

Key Observations

As widely reported, 2011 was a tumultuous year characterized by economic uncertainty. The European sovereign debt crisis and the downgrade to the U.S. credit rating caused significant volatility in the U.S. debt and equity markets. The large private equity buyer/public company segment of the U.S. M&A market was not immune to these factors. Deal activity was down overall relative to 2010 and the deals that were completed in 2011 took longer to complete.

Market Activity and Deal Process Observations:

- **Fewer deals were done in 2011**. Deal activity in the segment surveyed in our study decreased 15% in 2011 compared to 2010. This decline in 2011 was driven by the 37.5% drop in deals in the fourth quarter of 2011 compared to the same period in 2010.

- **The technology and healthcare sectors are hot**. The technology and healthcare sectors were the most active in 2010 and 2011, representing 29.7% and 21.6%, respectively, of all transactions during the 2-year period. The prevalence of technology-related transactions remained consistent, representing 30% of 2010 Transactions and 29% of 2011 Transactions. Healthcare transactions became more prominent in 2011, representing 35% of 2011 Transactions compared to 10% of 2010 Transactions. Transactions involving the retail or apparel sector, the next most represented sector, were generally flat on a year-on-year basis, amounting to 15% of 2010 Transactions and 12% of 2011 Transactions.

- **Deals are taking longer to get signed up**. For 2011 Transactions, the mean time from the start of the target's process to signing a definitive agreement was 9.3 months compared to 8.5 months for 2010 Transactions, an increase of approximately 3 weeks. Similarly, for 2011 Transactions, the mean time from the buyer signing a confidentiality agreement with the target to signing a definitive agreement was 4.1 months, an increase of approximately 2.5 weeks.

- **More targets are engaging in pre-signing market checks[2] — leading to fewer "go-shop" provisions**. Pre-signing market checks were more common in 2011 Transactions than in 2010 Transactions. Targets undertook pre-signing market checks in 65% of the 2011 Transactions compared to only 45% of the 2010 Transactions. Not surprisingly, "go-shop" provisions were used significantly less in 2011 than 2010 (29% of the 2011 Transactions vs. 60% of the 2010 Transactions). The increase in pre-signing market checks may also explain why 2011 Transactions took longer to sign, as noted above.

- **Tender offers are becoming more prevalent and have shown to be demonstrably faster**. The two-step tender offer/back-end merger structure was used slightly more frequently in 2011 Transactions than in 2010 Transactions (18% of the 2011 Transactions vs. 15% of the 2010 Transactions). The mean number of days from signing a definitive agreement to closing the transaction (measured by the closing of the short-form merger in tender offer transactions) was 44 days for tender offers vs. 92 days for one-step mergers.

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[2] For purposes of this *Deal Study*, we characterized a deal as involving a "pre-signing market check" if the "background of the merger" discussion in the applicable proxy statement or Schedule 14D-9 disclosed that (i) the target solicited interest from at least 25 possible bidders pursuant to an active process prior to execution of the applicable merger agreement; (ii) the target was in discussion with 5 or more possible bidders without engaging in a broader solicitation of interest; or (iii) the target issued a public announcement to the effect that it was exploring "strategic alternatives." We did not count the Apollo/CKE merger as having a pre-signing market check because this transaction was the result of a topping bid made during the "go-shop" period of the merger agreement between Thomas H. Lee Partners and CKE.

- **Limited specific performance rights for the target are becoming almost universal**. The limited specific performance remedy (where the target's ability to force the buyer to close is dependent on the buyer's debt financing being available at closing) is being used almost exclusively. 88% of the 2011 Transactions provided the target with a limited specific performance right against the buyer, 6% had no specific performance right and 6% provided the target with a full specific performance right. In contrast, 70% of the 2010 Transactions provided the target with a limited specific performance right, 20% provided the target with no specific performance right and 10% provided the target with a full specific performance right (where the target's ability to force the buyer to close was not dependent on the buyer's debt financing being available at closing).

"Market Practice" Remains Unchanged

- **As expected, we continue to observe a "market practice" based on the treatment/inclusion of a number of the key deal terms**. For example:
  - None of the 37 transactions included a traditional "force the vote" provision or provided the buyer with a closing condition regarding appraisal rights.
  - None of the transactions structured as single-step mergers provided the buyer with a financing closing condition.
  - Approximately 95% of the transactions:
    - Provided the buyer with matching rights and "last look" matching rights;
    - Included a "tail provision" that applied in the event the merger agreement was terminated under certain circumstances; and
  - Approximately 85% of the transactions:
    - Were structured as one-step mergers;
    - Permitted the target board to make a change in recommendation other than specifically in connection with a superior proposal; and
    - Gave the target company a limited specific performance right that was only available if (i) the buyer's closing conditions to the merger agreement were satisfied; and (ii) the buyer's debt financing was available.
    - Contained "marketing period" provisions.
- **While "go-shop" provisions are not standard, they continue to be widely used — although the use of "go-shops" declined significantly in 2011 as the use of pre-signing market checks increased**. Of the 37 transactions, approximately 46% included a "go-shop" provision. Although this percentage represents a 50% decline year-over-year, this decline can likely be explained by the 44% increase in the use of pre-signing market checks year-over-year. Comparing "apples to apples," the use of "go-shops" for transactions without a pre-signing market check remained relatively constant — appearing in 67% of the 2011 Transactions compared to 64% of the 2010 Transactions.

- **Transactions involving "go shop" provisions had higher deal premia based on the target's stock price 30 days prior to announcement, but the difference in deal premia may be narrowing**. When deal premia are calculated comparing the stock price 30 days prior to the announcement of the applicable transaction to the price paid by the acquiror, the 17 deals that contained "go-shop" provisions had a mean deal premium of 33.6%, with a median of 33.7%; whereas the 20 transactions without this provision had a mean premium of 27.5%, with a median of 20.3%.

Market Activity

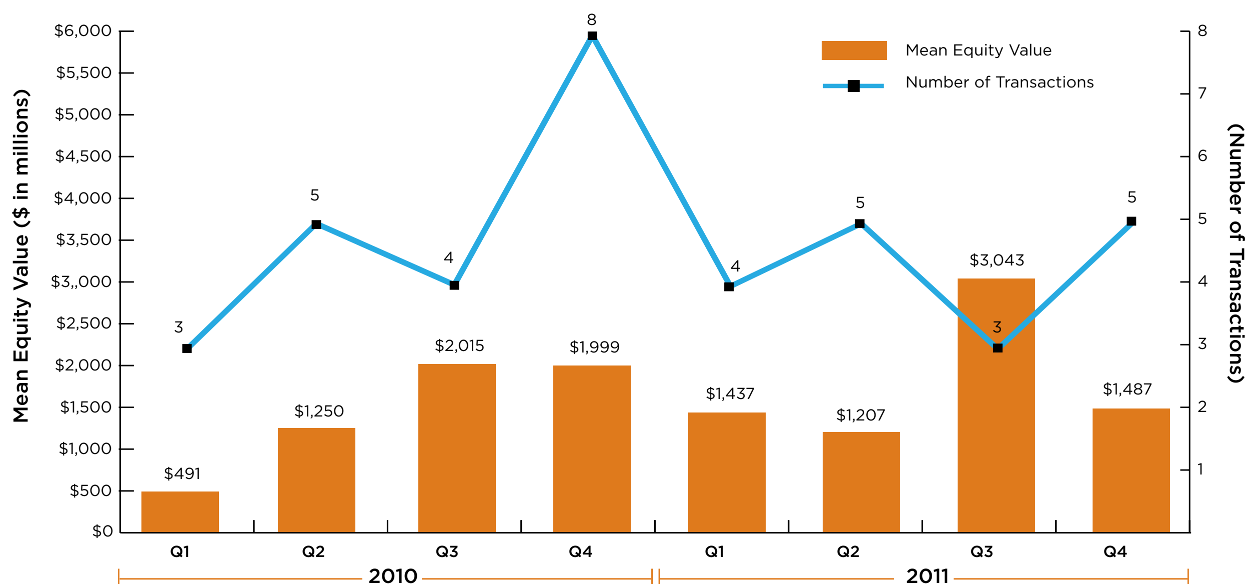
We reviewed the 37 transactions to observe changes in the volume and value of deal activity in the periods analyzed.

1. Number and Value of Transactions

As noted in the chart below:

- Overall, deal activity decreased 15% in 2011 compared to 2010.
- The fourth quarter of 2010 saw the largest number of deals.
- Contributing to the 2011 decline was a 37.5% drop in deals in the fourth quarter of 2011 compared to the same period in 2010, which may have been caused by the downgrade of the U.S. credit rating, the European sovereign debt crisis and the resulting volatility in the U.S. debt and equity markets during the summer and fall of 2011.

Quarterly Activity by Number and Mean Equity Value



2. Deal Process and Timing

In light of several well-publicized recent Delaware court cases[3] emphasizing the importance of good process and managing possible financial advisor conflicts, we reviewed the 37 transactions to observe timing of signing and completing deals, target board process and handling of potential financial advisor conflicts.

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[3] For example, *In re Del Monte Foods Company Shareholders Litigation*, Consol. C.A. No. 6027-VCL (Del. Ch. Feb. 14, 2011) (Court of Chancery granted a preliminary injunction after finding that the proposed merger was tainted by the target's financial advisor's conflict because of the financial advisor's desire and financial incentives to steer the deal to a buyer that would use that same financial advisor to finance the transaction), *In re Southern Peru Copper Corporation Shareholder Derivative Litigation*, C.A. No. 961-CS (Del. Ch. Oct. 14, 2011) (Court of Chancery awarded $1.3 billion for breach of fiduciary duties in connection with an acquisition by a controlling stockholder) and *In re El Paso Corporation Shareholder Litigation*, Consol. C.A. No. 6949-CS (Del. Ch. Feb. 29, 2012) (Court of Chancery denied a preliminary injunction but concluded that the target's sale process may have been tainted by conflicts of interest of the target's CEO and financial advisor).

- In 2011 Transactions, the mean time from the start of the target's process to the signing of a definitive agreement was 9.3 months compared to 8.5 months for 2010 Transactions, an increase of approximately 3 weeks. The mean time from the buyer signing a confidentiality agreement to signing a definitive agreement in 2011 Transactions was 4.1 months, a 17% increase compared to 3.5 months for 2010 Transactions, representing an increase of approximately 2.5 weeks. It is not clear if this increase is the result of buyers being more cautious, targets putting a greater emphasis on process or, as discussed elsewhere in this study, greater frequency of pre-signing market checks by targets.

- We also reviewed the 37 transactions to determine the number of target board or special committee and number of financial advisor formal valuation presentations.

    - We found that the mean number of target board or special committee meetings was 19 for both 2011 Transactions and 2010 Transactions.

    - The mean number of target financial advisor presentations slightly decreased from 2.15 in 2010 Transactions to 2 in 2011 Transactions. The median number of target financial advisor presentations did not change from the 2010 Transactions to the 2011 Transactions amounting to 2 presentations per transaction in each period. It will be interesting to see if, on average, more board meetings and financial advisor presentations take place in 2012 in light of the heightened emphasis on good process.

We also reviewed the 37 transactions to determine the frequency of transactions involving 2 target company financial advisors and the stated or apparent reasons (based on our review of the applicable public disclosure) for the engagement by the target of a second financial advisor. Overall, target companies hired 2 financial advisors in 15 of the 37 transactions (41%).

- In 8 of these 15 transactions, 2 financial advisors were hired in a co-advisory capacity, either as dual advisors to the company where the second financial advisor had extensive industry experience or as separate advisors to the company and its independent board of directors.

- In the remaining 7 transactions, it appears that a second financial advisor was hired to address an actual or potential conflict of interest (of possible appearance of such a conflict). Of these transactions, 72% involved the first financial advisor providing financing to the buyer, 28% involved the first financial advisor having had a significant prior relationship to the buyer and 14% involved affiliates of the first financial advisor having an ownership stake greater than 10% in the buyer.[4] The first financial advisor delivered fairness opinions in 4 of these 7 transactions (57%).

    - In these 7 transactions, the date on which the target company engaged its second financial advisor ranged from 1.5 to 24 weeks prior to signing, with a mean of 9 weeks prior to signing and a median of 7 weeks prior to signing.

    - Note that none of these 7 transactions occurred after the *Del Monte*[5] decision. It will be interesting to see whether the handling of potential financial advisor conflicts in 2012 signals more conservatism in these situations.

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[4] This data assumes the accuracy of the financial advisor-related disclosure contained in the relevant proxy statement or Schedule 14D-9, as applicable, filed in connection with each transaction. One transaction (3G/Burger King) involved an initial financial advisor who had both a significant prior relationship with the buyer and an ownership stake in the target.

[5] KKR's acquisition of Del Monte, which was the subject of the *Del Monte* decision, is included in 1 of the 7 transactions noted.

3. Target Industry Concentration

We reviewed the 37 transactions to determine if targets are concentrated in particular industries. As noted in the following table:

- The technology and healthcare sectors were the most active in 2010 and 2011, representing 29.7% and 21.6%, respectively, of all transactions during the 2-year period.
- The prevalence of technology-related transactions remained consistent representing 30% of 2010 Transactions and 29% of 2011 Transactions.
- Healthcare transactions became more prominent in 2011, representing 35% of 2011 Transactions compared to 10% of 2010 Transactions.
- Transactions involving the retail or apparel sector were generally flat on a year-on-year basis, amounting to 15% of 2010 Transactions and 12% of 2011 Transactions.
- Transactions in the food and beverage industry were prevalent in 2010, representing 15% of 2010 Transactions; however, none of the 2011 Transactions involved that industry.

Industry	2011 Transactions	2010 Transactions
Technology	29%	30%
Healthcare	35%	10%
Retail/Apparel	12%	15%
Food & Beverage	0%	15%
Other[6]	24%	30%

[6] In 2010, other industries included electronic alarm monitoring, financial market data analysis, advertising, transportation, mining and minerals and security/law enforcement. In 2011, other industries included legal, real estate, sanitation and media and entertainment.

Deal Structure

We reviewed the 37 transactions to determine whether they were structured as one-step statutory mergers or two-step tender offer/back-end mergers.

4. One-Step Merger vs. Two-Step Tender Offer/Back-End Merger

Of the 37 transactions:

- 31 of the 37 transactions (84%) were one-step mergers; the remaining 6 transactions (16%) were two-step tender offer/back-end mergers.
- 3 of the 6 two-step tender offer/back-end mergers (8% overall) — 3G Capital/Burger King, Apax/Epicor and TPG/Immucor — employed a dual-track structure of pursuing a merger and tender offer at the same time, so that whichever method resulted in faster approval of the transaction could be used to complete the transaction. In each of 3G Capital/Burger King, Apax/Epicor and TPG/Immucor, the tender offer was used to complete the transaction.
    - A dual-track structure requires both the buyer to launch a tender offer promptly after signing and the target to file a preliminary proxy statement promptly after signing (while the tender offer is pending), and, to the extent that the target stockholder meeting is necessary for the buyer to consummate a back-end merger, for the target to hold its stockholder meeting to obtain stockholder approval. The dual-track structure is useful where the target does not have enough authorized but unissued shares (plus shares held in treasury) to grant the buyer a top-up option sufficient to obtain the shares required for a short form merger based on 50.01% of the target stockholders tendering into the offer.
- The other 3 two-step merger agreements only required the target to file a proxy statement and hold a meeting to obtain stockholder approval if required by law, i.e., if the tender offer, together with the exercise of the top-up option, was not sufficient to obtain the 90% required to complete a short form merger.

In general, the benefit of a tender offer is the ability to close more quickly. The mean number of days from signing a definitive agreement to closing the transaction (measured by the closing of the short form merger in tender offer transactions) was 44 days for tender offers vs. 92 days for one-step mergers.

Historically, private equity buyers have been reluctant to use the two-step structure because, among other things, the margin rules limiting borrowing to 50% of the value of the collateral pledged to secure the loan made it difficult to obtain acquisition financing to fund the tender offer. Several developments have made tender offers more attractive:

- In 2006, the SEC clarified that the "all holders/best price rule" (Rule 14d-10 under the Securities Exchange Act of 1934) does not apply to employment compensation, severance or other employee benefit arrangements that meet certain criteria, which provided comfort to private equity buyers concerned about the treatment of target management post-closing arrangements.

- The use of the top-up option, which allows the buyer to ensure that it will reach the ownership threshold needed to complete a short form merger, allows private equity buyers to structure financing in a way that navigates the margin rules.
- Recent Delaware decisions[7] have provided guidance on properly structuring a top-up option to withstand stockholder litigation.
- Tender offers also provide an advantage in dealing with stockholder opposition to a transaction. While delay of a stockholder meeting to solicit additional votes in the face of opposition is possible, it is more vulnerable to court challenge. In contrast, a tender offer can easily be extended repeatedly until the minimum tender offer condition is satisfied.

2011 Transactions vs. 2010 Transactions Comparative Note:

The two-step tender offer/back-end merger structure was used slightly more frequently in 2011 Transactions than in 2010 Transactions (18% of the 2011 Transactions vs. 15% of the 2010 Transactions). In the near term, we expect this structure to continue to be an attractive option — at least in transactions that do not involve significant regulatory or antitrust issues — to take advantage of the tender offer's timing benefit.

[7] *See Joanne Olson v. ev3, Inc.,* C.A. No. 5583 (Del. Ch. Feb. 21, 2011) and *In re Cogent, Inc. Shareholder Litigation*, Cons. C.A. No. 5780 (Del. Ch. Oct. 5, 2010).

Target Fiduciary Duty Issues

We reviewed the 37 transactions for certain provisions related to the target board's satisfaction of its fiduciary duties.

5. "Go-Shop" Provisions

We reviewed the 37 transactions to determine which of them included a "go-shop" provision (i.e., a provision that grants the target the affirmative right — during a specified period of time — to solicit alternate acquisition proposals). As noted in the following chart:

- 17 of the 37 transactions (46%) had "go-shop" provisions.
- The "go-shop" periods ranged from 21 to 54 days (median: 40 days; mean 37.8 days).[8]
- Of the 17 transactions with "go-shop" provisions, 10 of them had language that permitted the target board to continue negotiations with an "excluded party" (generally defined as any party that made a written acquisition proposal during the "go-shop" period) without the need for the target board to determine whether the excluded party's offer constituted, or was reasonably likely to constitute, a superior proposal.
    - Of these 10 transactions, 2 limited the period during which negotiations with excluded parties are permitted to 15 days after the "no-shop" start date, 1 transaction limited the period to 20 days after the "no-shop" start date, and 7 transactions had no such restrictions.

Recently, a handful of transactions involving strategic buyers and public company targets have included a hybrid "go-shop/no-shop" provision that does not provide the target with a "go-shop" right, but specifies that a lower termination fee applies in the event that the target accepts a superior proposal during a limited period of time after the execution of the merger agreement. We have yet to see such a provision in transactions within our parameters, but, as we have noted previously, there is no reason why it could not be used.

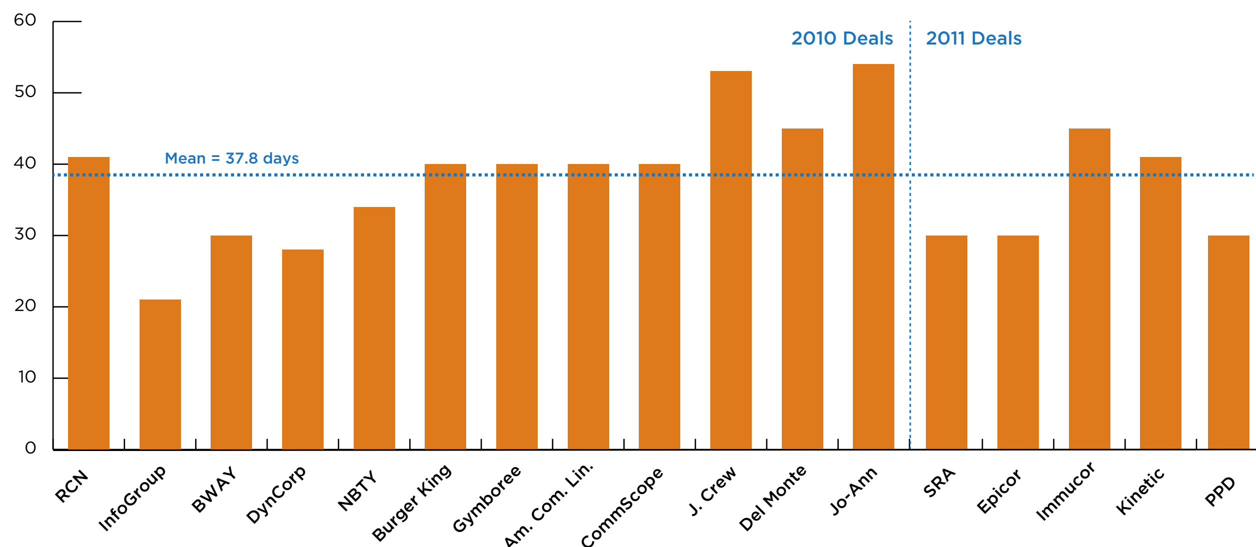
Transactions without a pre-signing market check contained "go-shop" provisions nearly twice as often as transactions with a pre-signing market check. Of the 17 transactions without a pre-signing market check, 11 of them (65%) contained a "go-shop" provision, compared to 6 of the 20 transactions with a pre-signing market check (30%). This suggests, as widely assumed, that "go-shop" provisions are much more commonly used in the context of transactions not involving pre-signing market checks.

2011 Transactions vs. 2010 Transactions Comparative Note:

"Go-shop" provisions were used less frequently in 2011 Transactions than in 2010 Transactions (29% for 2011 Transactions vs. 60% for 2010 Transactions). The decline in use of this provision could be due to the fact that, based on our review of public filings, the 2011 Transactions included a higher number of transactions involving pre-signing market checks as compared to 2010 Transactions (65% for 2011 Transactions vs. 45% for 2010 Transactions). Comparing "apples to apples," the use of "go-shops" for transactions without a pre-signing market check remained relatively constant — appearing in 67% of the 2011 Transactions compared to 64% of the 2010 Transactions.

[8] For purposes of our calculations, we omitted the extension of the "go-shop" period from 53 to 85 days in the amended J. Crew/TPG merger agreement.

Length of "Go-Shop" Periods



We also analyzed (i) the premia paid in transactions with "go-shop" provisions as compared to those without such provisions; and (ii) whether "go-shop" provisions are more frequently used in transactions involving pre-signing market checks.

- The deal premium paid was calculated using the per share cash merger consideration compared to the closing market price of the applicable target's common stock (i) on the last trading day prior to the announcement of the applicable transaction; (ii) 30 days prior to the announcement of such transaction; and (iii) 60 days prior to the announcement of such transaction.

- Consistent with previous studies, we observed that transactions involving "go-shop" provisions had higher deal premia if calculated based on the target's stock price 30 days prior to announcement. Interestingly, we found that if deal premia are calculated based on the target's stock price 60 days prior to announcement, the mean premia for transactions without "go-shop" provisions was higher than those with "go-shop" provisions.

	No "Go-Shop" Provision		"Go-Shop" Provision	
1 Day Premium	Range: Mean: Median:	-9.4% to 62.1% 20.9% 14.8%	Range: Mean: Median:	-2.0% to 49.4% 20.2% 21.0%
30 Days' Premium	Range: Mean: Median:	-3.5% to 75.1% 27.5% 20.3%	Range: Mean: Median:	6.0% to 71.5% 33.6% 33.7%
60 Days' Premium	Range: Mean: Median:	-5.2% to 72.9% 36.7% 35.4%	Range: Mean: Median:	-2.8% to 68.1% 34.4% 34.6%

6. Change in Target Board Recommendation

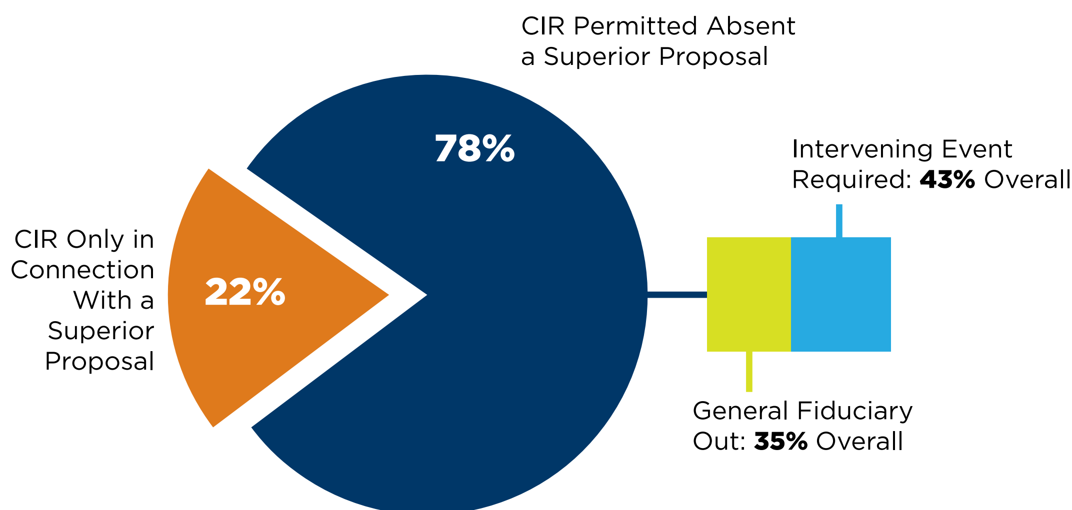
As expected, all of the transactions we surveyed permitted the target's board of directors to change its recommendation ("CIR") to its stockholders to approve the merger under certain circumstances to satisfy fiduciary duty requirements.[9] However, buyers continue to limit the scope of that right in various ways.

As noted in the following chart:

- In 8 of the 37 transactions (22%), the target board was permitted to make a CIR only in connection with a superior proposal.
- The remaining 29 transactions (78%) permitted the target board to make a CIR other than specifically in connection with a superior proposal. Of these 28 transactions:
  - 13 transactions (35% overall) permitted the target board to make a CIR based on the board's determination that its fiduciary duties required a CIR — without specific language in the agreement as to the underlying reasons for such CIR.
  - 16 transactions (43% overall) had more restrictive language — permitting the target board to make a CIR only in connection with an "intervening event" (generally defined as an event or circumstance that the target board becomes aware of after signing the merger agreement that results in the target board determining that its failure to make a CIR would be inconsistent with its fiduciary duties) but not generally to satisfy its fiduciary duties.

These results continue to be consistent with recent views of Delaware legal experts that a fiduciary out for general purposes or an intervening event is necessary.

Change in Recommendation (CIR) Triggers



[9] We also reviewed the 37 transactions to analyze the various formulations of the standard that applies when determining when a target board is permitted to make a CIR:

- 17 of the 37 transactions (46%) used "would be inconsistent with" or "would likely be inconsistent with" its fiduciary duties.
- 11 of the 37 transactions (30%) used "would be reasonably likely to be inconsistent with" its fiduciary duties.
- 6 of the 37 transactions (16%) used "could be inconsistent with" its fiduciary duties.
- 3 of the 37 transactions (8%) used "would be reasonably likely to violate" its fiduciary duties.

2011 Transactions vs. 2010 Transactions Comparative Note:

The 2011 Transactions had more limited CIR triggers than the 2010 Transactions.

- Approximately twice as many 2011 Transactions limited the target board's ability to make a CIR only in connection with a superior proposal as compared to the 2010 Transactions.
- 71% of the 2011 Transactions permitted the target board to make a CIR other than specifically in connection with a superior proposal, compared to 85% of the 2010 Transactions.

We also noted a correlation on certain issues between the scope of the CIR triggers and whether the target had engaged in a pre-signing market check — targets that conduct pre-signing market checks have less target-friendly CIR triggers.

- Three times as many transactions with pre-signing market checks permitted the target board to make a CIR only in connection with a superior proposal, compared to the transactions not involving pre-signing market checks.
- 70% of the transactions with pre-signing market checks permitted the target board to make a CIR other than specifically in connection with a superior proposal, as compared to 88% of the transactions without pre-signing market checks.

Deal Protections for Buyer

We reviewed the 37 transactions for provisions designed to protect the buyer against topping bids and target stockholder opposition.

7. Match & "Last Look" Match Rights

We reviewed the 37 transactions to determine whether the buyer had initial matching and "last look" matching rights under the merger agreement. Initial matching rights provide the buyer with an opportunity to negotiate with the target board during a specific period of time after receipt of notice from the target board of an intended CIR and propose modified terms that are sufficiently improved so as to preclude the target from effecting a CIR. "Last look" matching rights provide the buyer with a further right to negotiate in the event that the other bidder revises its proposed terms. We note that in *In re Smurfit-Stone Container Corp. Shareholder Litigation*, C.A. No. 6164 (Del. Ch. May 20, 2011), Vice Chancellor Parsons of the Delaware Chancery Court determined that each of the deal protection provisions agreed to by the target, which included a 3-day "matching right" provision, were "standard" whether considered alone or as a group.[10]

Of the 37 transactions:

- All of the transactions had initial matching rights and almost all (35 of 37; 95%) had "last look" matching rights.
- As noted in the following charts:
    - The range of initial matching rights was 2 to 7 days (mean: 4.4 days; median 4.2 days); and
    - The range of "last look" matching rights was 0 to 5.6 days (mean: 2.7 days; median 2.8 days).

2011 Transactions vs. 2010 Transactions Comparative Note:

While the terms of the initial matching rights and the "last look" matching rights were generally consistent across 2011 Transactions and 2010 Transactions, we note that for the transactions since March 2011, there was a decrease in the length of the "last look" matching rights. Beginning with the Warburg/Rural/Metro transaction in March 2011 and continuing through the end of the fourth quarter of 2011, the 15 transactions signed in that period had "last look" matching rights with a mean length of 2.3 days and a median of 2.8 days as compared to the 22 prior transactions that had a mean length of 3.0 days with a median of 2.8 days.

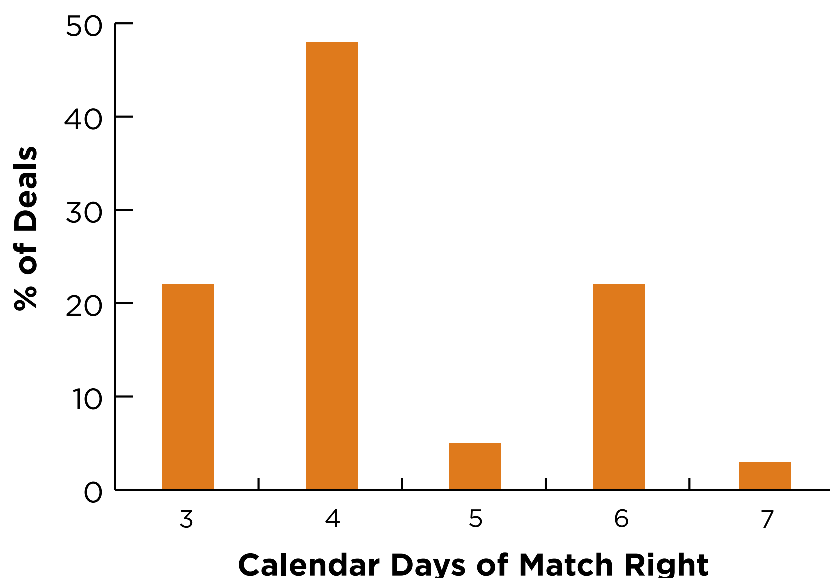
[10] The other deal protection provisions included a "no-shop" clause and a break-up fee of approximately 3.4% of the target equity value.

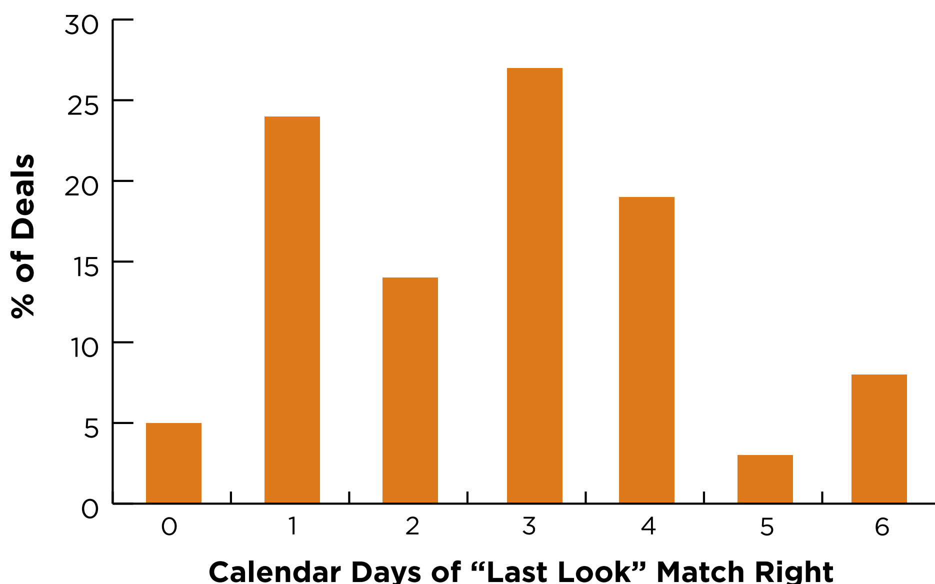
We also reviewed the 35 transactions with initial matching and "last look" matching rights to compare their durations. As noted in Chart B-1 in Appendix B:

- In 11 of the 35 transactions (31%), the durations were identical.
- In 6 of the 35 transactions (17%), the duration for the "last look" matching right was approximately 50% of the duration of the initial matching right.

As part of the settlement of the shareholders litigation over the J. Crew/TPG merger, TPG agreed to an elimination of its matching rights in the event that a competing bidder outbid TPG by $2.00 per share or more (a 4.5% premium to the TPG price). We also note that in at least 1 recent transaction not included in our study (Leonard Green & Partners/Prospect Medical), the buyer's contractual matching rights were eliminated if a competing bidder outbid the buyer's price by more than 10%.

Length of Match & "Last Look" Match Rights





8. "Force the Vote" Provision

None of the 37 transactions we reviewed included a traditional, unqualified force the vote ("FTV") provision (i.e., a clause that requires the target board to submit the proposed transaction to a vote of its stockholders, even if the target's board has made a CIR). This is a pro-buyer provision because it can discourage other bidders from making a topping bid given that the target cannot promptly terminate the agreement to accept a superior proposal but make prepare and file with the SEC a proxy statement and hold its stockholder meeting. This creates delay and potential uncertainty which can lead bidders to determine that its not worth investing the time and resources to make a topping bid.

Note that 18 of the 37 transactions (49%) contained a limited FTV provision that requires the target to hold the stockholder vote on the transaction despite a CIR unless the agreement is terminated. A limited FTV provision offers little protection to a buyer when the target is terminating the agreement to enter into an agreement for a superior proposal, but may offer some protection to a buyer in the context of a CIR for an intervening event that does not otherwise give rise to a termination right.

9. Break-Up Fee Payable by the Target

We reviewed the 37 transactions to calculate the size of the target's break-up fee (as a percentage of equity value) in the event the target chose to terminate the merger agreement to accept a superior proposal. As with other deal protection devices, Delaware courts have not provided any bright-line rules regarding when a break-up fee will be deemed unreasonable in amount. Nevertheless, practitioners can take comfort that fees in the range of 2.0% to 4.0% of equity value are generally permissible. Delaware jurisprudence, most recently in the *In re Cogent Inc. Shareholder Litigation*, suggests that equity value may be the appropriate metric for calculating a break-up fee where a target has minimal debt. Conversely, where the buyer is assuming a significant amount of a target's debt, enterprise value may be the appropriate metric. This difference is illustrated by the Macquarie/WCA Waste Corporation transaction which had an enterprise value of $526 million but an equity value of only $154 million, because of the target's significant debt. The Macquarie/WCA transaction had a two tier break-up fee of $11 million (2.09% of enterprise value and 7% of equity value) for entering into an alternative transaction and $16.5 million break-up fee for other specified terminations (3.15% of enterprise value and 10.71% of equity value). Because of the significant difference between enterprise and equity value, we have excluded WCA from the following analysis.

As noted in the following charts:

- The range of break-up fees for the 36 transactions (excluding WCA) (as a percentage of equity value) was 1.93% to 4.99% (mean: 3.11%; median: 3.04%).[11]
- Of the 17 transactions with "go-shop" provisions, 16 (including WCA) provided for a lower break-up fee that would be payable by the target in the event it terminated the merger agreement during the "go-shop" period. The range of these lower break-up fees (excluding WCA) as a percentage of equity value was 0.97% to 3.92% (mean: 1.67%; median: 1.53%). For purposes of comparison, for these same 15 transactions, the range of the break-up fees that would be payable by the target for other specified terminations following the conclusion of the "go-shop" period was 1.94% to 4.99% (mean: 3.09%; median: 2.96%).

[11] For purposes of our calculations, we included the two-tier break-up fee of $27 million (0.97% of equity value) for entering into an alternative transaction and $54 million for other specified terminations (1.94% of equity value) originally agreed to by the parties in J. Crew/TPG rather than the reduced single break-up fee of $20 million in the amended J. Crew/TPG merger agreement.

- For the 2010 Transactions, the range of break-up fees was 1.94% to 4.53% (mean: 3.06%; median: 3.01%).
- For the 2011 Transactions, the range of break-up fees was 1.93% to 4.99% (mean: 3.19%; median: 3.08%).

Break-Up Fees

2011 Transactions vs. 2010 Transactions Comparative Note:

From 2010 to 2011, we observed a decrease in the size of "go-shop" break-up fees, with the mean "go-shop" break-up fee decreasing from 1.77% to 1.46%, and an increase in the size of general break-up fees, with the mean general break-up fee increasing from 3.06% to 3.19%. This increase could represent a trend of higher break-up fees or could be the result of more 2011 Transactions having pre-signing market checks, which generally have higher break-up fees.

Given a wide range of fees and deal sizes, we grouped the 36 transactions (excluding WCA) by deal size and noted the range of break-up fees (as a percentage of deal size).[12] Somewhat surprisingly, we observed that the average size of the break-up fee as a percentage of equity value did not decrease appreciably as the deal size increased:

Deal Size (Equity Value)	Range	Mean	Median
Up to $1 Billion (16 of 36 Transactions)	1.93% to 4.99%	3.27%	3.26%
$1 Billion to $3 Billion (13 of 36 Transactions)	1.94% to 4.11%	2.90%	2.84%
$3 Billion to $6 Billion (7 of 36 Transactions)	2.82% 3.70%	3.16%	3.10%

We also compared the size of break-up fees in transactions with pre-signing market checks with those that did not have pre-signing market checks. We expected to observe that break-up fees are generally higher in transactions involving pre-signing market checks than those that do not involve such market checks. We generally observed this relationship; however, in transactions with a deal value below $1 billion, we observed that such fees were actually lower in transactions involving pre-signing market checks:

Deal Size (Equity Value)	Pre-Signing Market Check		No Pre-Signing Market Check	
Up to $1 Billion (16 of 36 Transactions)	Range: Mean: Median:	1.93% to 3.93% 3.27% 3.26%	Range: Mean: Median:	2.23% to 4.99% 3.53% 3.31%
$1 Billion to $3 Billion (13 of 36 Transactions)	Range: Mean: Median:	2.58% to 4.11% 3.15% 3.03%	Range: Mean: Median	0.72% to 2.99% 2.60% 2.78%
$3 Billion to $6 Billion (7 of 36 Transactions)	Range: Mean: Median:	2.82% to 3.70% 3.26% 3.27%	Range: Mean: Median	2.87% to 3.10% 3.01% 3.06%

10. Expense Reimbursement by the Target

We reviewed the 37 transactions to determine which of them required the target to reimburse the buyer for transaction expenses and the size of and triggers for such reimbursement obligation.

Of the 37 transactions:

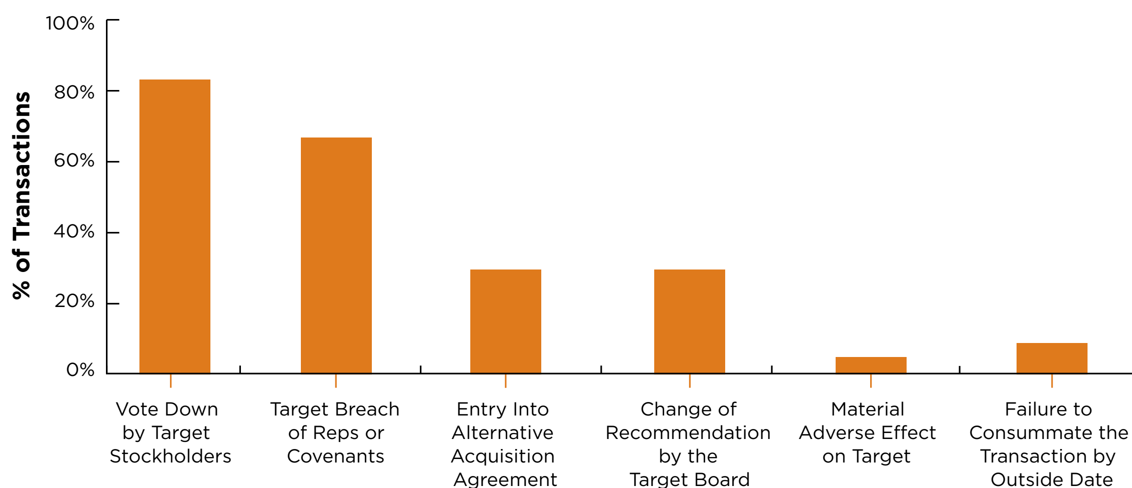
- 23 of the 37 transactions (62%) imposed an expense reimbursement obligation on the target.[13] As noted in the following chart, the triggers for this obligation were termination of the agreement due to:

[12] All break-up fees were structured to be paid net of any reimbursements for expenses.

[13] In addition, the TPG/J. Crew merger agreement was amended to provide expense reimbursement if a third-party bidder made a superior proposal and was subsequently outbid.

- Target's shareholders rejecting the proposed merger: 21 of the 23 transactions (91%), of which:
  - 19 (90% of this subset) did not require the existence of a competing acquisition proposal prior to termination (i.e., a "naked no-vote").
  - 2 (10% of this subset) required that the target board had made a CIR prior to termination.[14]
  - 1 (5% of this subset) required that an alternative acquisition proposal had been made and not been withdrawn prior to termination.
- Target's material breach of representations or covenants: 16 of the 23 transactions (70%).
- Target's entry into an alternative acquisition proposal: 7 of the 23 transactions (30%).
  - Change of target board's recommendation: 7 of the 23 transactions (30%).
  - Material adverse effect on target: 1 of the 23 transactions (4%).
  - Failure of the parties to consummate the closing by the outside date: 2 of the 23 transactions (9%).

Target Expense Obligation Triggers



- All expense reimbursement provisions were capped. As a percentage of equity value, caps ranged from 0.18% to 1.25% (mean: 0.63%; median: 0.64%). See Chart B-2 in Appendix B.

[14] Two transactions (CPI and inVentiv) allow for expense reimbursement where there is a "naked no-vote" but only in the situation where the target board has changed its recommendation. Both transactions also provided for payment of a termination fee if the board had changed its recommendation.

- Grouping the 23 transactions by deal size, the expense reimbursement obligations as a percentage of deal size were as follows:

Deal Size (Equity Value)	Range	Mean	Median
Up to $1 Billion (13 of 23 Transactions)	0.31% to 1.25%	0.77%	0.77%
$1 Billion to $3 Billion (8 of 23 Transactions)	0.18% to 1.20%	0.47%	0.38%
$3 Billion to $4 Billion (2 of 23 Transactions)	0.39% to 0.45%	0.42%	0.42%

11. Target's Obligation to Pay a Termination Fee During a "Tail" Period

We reviewed the 37 transactions to determine whether the target was obligated after the termination of the merger agreement to pay a termination fee if it subsequently entered into a definitive agreement or consummated an alternative acquisition proposal (a "tail provision"). In nearly all of the transactions we reviewed, the tail provisions required a third party to have publicly made an alternative acquisition proposal that was not timely withdrawn prior to the date of termination of the merger agreement.

Of the 37 transactions:

- 36 of the 37 (97%) transactions had a tail provision. Of these 36 transactions:
  - 31 transactions (86% of this subset) had a 12-month tail period; 4 transactions (11% of this subset) had a 9-month tail period; and 1 transaction (3% of this subset) had an 18-month tail period.
  - 35 transactions (97% of this subset) required that an alternative acquisition proposal has been made and not withdrawn prior to the termination of the agreement. Of the 35 transactions:
    - 24 transactions (69% of this subset) required the subsequent consummation of an alternative acquisition proposal (either during or after the tail period) to trigger the tail provision.
    - 11 transactions (31% of this subset) required either the entry into, or the consummation of, an alternative acquisition proposal to trigger the tail provision.
  - 33 transactions (92% of this subset) are formulated such that the proposal that triggers the termination does not have to be the same proposal that triggers the tail provision.
  - 3 transactions (8% of this subset) are formulated such that the proposal that triggers the termination must be the same proposal that triggers the tail provision.

Deal Certainty Provisions for the Target

We reviewed the 37 transactions for certain provisions affecting the certainty of closing the transaction.

12. Target's Ability to Obtain Specific Performance Against the Buyer

We reviewed the 37 transactions to determine whether the target had (i) a specific performance right to force the buyer to consummate the closing subject only to the satisfaction of buyer's closing conditions (a "full specific performance right"); (ii) a limited specific performance right that also required the buyer's debt financing to be available (a "limited specific performance right"); or (iii) no specific performance right to force the buyer to close (i.e., the target's only remedy was to terminate the agreement and receive whatever fees/damages were provided in the agreement). As noted in chart B-4 in Appendix B:

Of the 37 transactions:

- 3 of the 37 transactions (8%) granted the target a full specific performance right.
    - 1 transaction (33% of this subset) (TPG/PRIMEDIA) included an equity commitment by the buyer which amounted to the full value of the transaction.
- 29 of the 37 transactions (78%) granted the target a limited specific performance right.
- 5 of the 37 transactions (14%) did not provide the target with a specific performance right, but instead provided the target with the right to terminate the merger agreement and receive a reverse termination fee from the buyer. With respect to these 5 transactions:
    - 2 transactions (40% of this subset) had a single-tier reverse termination fee provision that was triggered upon a financing failure; and
    - 3 transactions (60% of this subset) had a two-tier reverse termination fee with the lower tier fee applicable in the event of a financing failure, and the higher tier fee applicable in the event of willful breach by the buyer.

2011 Transactions vs. 2010 Transactions Comparative Note:

There was a significant difference in the type and frequency of specific performance provisions in 2011 Transactions as compared to 2010 Transactions.

- 88% of the 2011 Transactions provided the target with a limited specific performance right against the buyer, 6% provided the target with no specific performance right and 6% provided the target with a full specific performance right. In contrast, 70% of the 2010 Transactions provided the target with a limited specific performance right, 20% provided the target with no specific performance right and 10% provided the target with a full specific performance right.
- This data shows that the limited specific performance right is now "market practice" and suggests that deviation from such "market practice" is becoming increasingly rare.

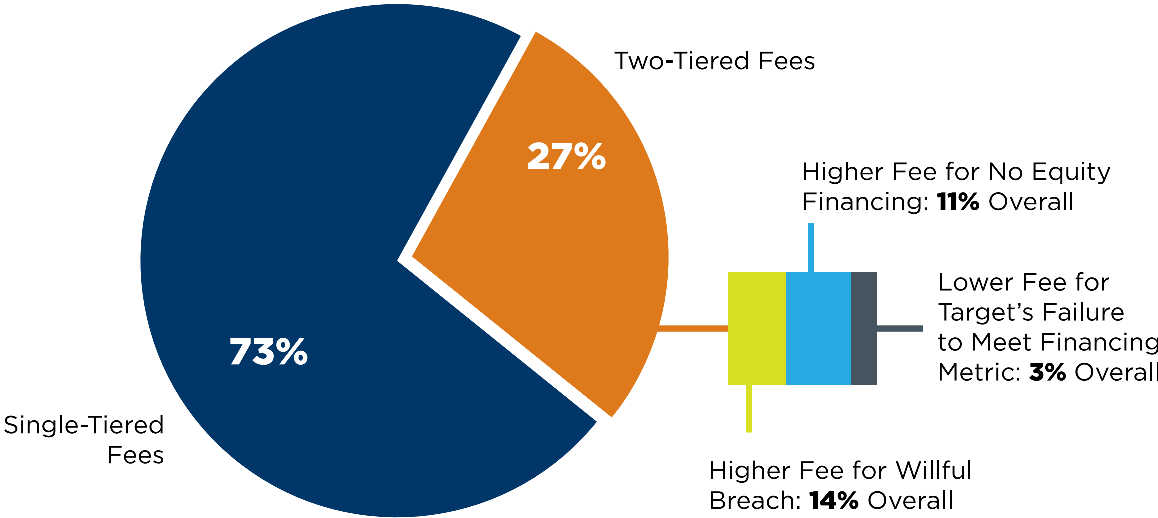
13. Reverse Termination Fees

We reviewed the 37 transactions to analyze the structure (single-tier vs. two-tier) and size of the reverse termination fees ("RTFs") (expressed as a percentage of target equity value) required to be paid by the buyer in connection with the termination of the merger agreement.

As noted in the following chart:

- All of the transactions had RTFs.
- 27 of the 37 transactions (73%) had single-tier RTFs.
- 9 of the 37 transactions (24%) had two-tier RTFs with triggering events for the higher fee tier due to:
  - Buyer's willful breach — 5 of the 9 transactions (56% of the subset; 14% overall).
  - Buyer's failure to consummate the transaction after obtaining debt financing — 4 of the 9 transactions (44% of the subset; 11% overall).
- 1 of the 37 transactions (3%) (Madison Dearborn/BWAY) had a two-tier RTF with a higher-tier general reverse termination fee and a lower tier triggered by the target's failure to maintain a specified ratio of debt to EBITDA at closing.

Reverse Termination Fees



With respect to the size of the RTFs:

- For transactions with single-tier RTFs, the range was 2.79% to 10.71% of target equity value (mean: 6.12%; median 6.35%).
- For transactions with two-tier RTFs:
  - The range for the first tier was 2.23% to 15.16% of equity value (mean: 5.50%; median 3.63%).

    - The range for the higher tier was 4.46% to 37.89% (mean: 12.49%; median 7.27%). With respect to the separate trigger events for the higher-tier RTF, the ranges were as follows:
        - In the event of willful breach — 5.51% to 37.89% (mean: 17.83%; median 8.30%); and
        - In the event of financing failure — 4.46% to 7.27% (mean: 5.44%; median 5.77%).
- As discussed above, in the Madison Dearborn/BWAY transaction, the lower-tier RTF, which applied in the event the buyer terminated due to target's failure to maintain a specified ratio of debt to EBITDA at closing, was 1.12% whereas the higher-tier general RTF was 6.15%.

14. Treatment of Buyer's Willful Breach

We reviewed the 37 transactions to see if "willful breach" was defined and whether the target's damages for buyer's willful breach were capped or not.[15] We note that:

- In 35 of the 37 transactions (95%), damages for buyer's willful breach were limited to the amount of the RTF. Of these 35 transactions, 9 had a two-tier RTF, and 8 transactions of this subset limited damages for buyer's willful breach to the higher RTF.
- 1 of the 37 transactions (3%) (Bain/Gymboree) had a one-tier RTF (2.79% of equity value) and separate cap on the aggregate liability of the buyer for willful breach (7.27% of equity value).
- In 1 of the 37 transactions (3%) (Macquarie/WCA) damages for buyer's willful breach were uncapped.
- Willful breach is defined in 6 of the 37 transactions and the definitions can be categorized as follows:
    - 1 of the 6 transactions (Veritas/CPI) defined "willful breach" to require an act knowingly undertaken with the intent of causing a breach of the agreement.
    - The remaining 5 transactions (Cerberus/DynCorp., GTCR/Protection One, Apax/Kinetic, Carlyle/PPD and Macquarie/WCA) defined willful breach as an act taken with actual knowledge that would cause a breach of the merger agreement but without any requirement that the act have been taken with the intent to cause a breach. The formulation used in the latter 2 deals is generally consistent with Delaware Chancery Court Vice Chancellor Lamb's definition of a "knowing and intentional breach" in *Hexion Specialty Chemicals v. Huntsman Corp.*, C.A. No. 3841 (Del. Ch. Sept. 29, 2008), where he held that a "knowing and intentional" breach means "the taking of a deliberate act, which act constitutes in and of itself a breach of the merger agreement, even if breaching was not the conscious object of the act." We note that the "knowing and intentional" formulation in *Hexion* and in these 5 transactions (Cerberus/DynCorp., GTCR/Protection One, Apax/Kinetic, Carlyle/PPD and Macquarie/WCA) is target-friendly in that it avoids any need to establish that a buyer acted with the intent of breaching the merger agreement, which may be very difficult to prove.

15. Select Buyer Closing Conditions

We reviewed the 37 transactions to see whether, with respect to the buyer's closing conditions, they included (i) a stand-alone no material adverse effect ("MAE") closing condition (as compared to just relying on the no MAE representation and the related accuracy of representations closing condition (which may be less buyer-friendly because it takes into account disclosures made against the no MAE representation in the target's disclosure schedules)); (ii) a financing closing condition; and/or (iii) a financial metric closing condition.

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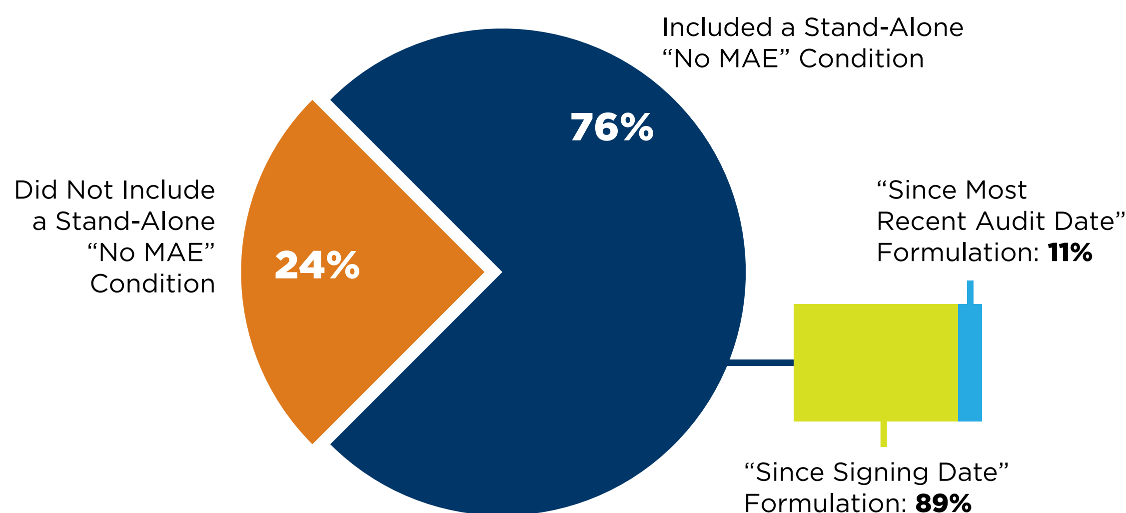
[15] We based our analysis on the plain meaning of the language and applicable buyer guarantee, but note that the language could be subject to interpretation in a dispute.

As noted in the following chart:

- 28 of the 37 transactions (76%) included a stand-alone no MAE closing condition.
    - Of those 28 transactions, 25 of them (89% of this subset) provided comfort as to the absence of an MAE since the applicable signing date; the remaining 3 (11% of this subset) provided comfort as to the absence of a MAE since the target's most recent audit date.
- 3 of the 37 transactions (8%) included a financing condition; each of the 4 transactions was structured as a two-step tender offer/back-end merger.
- 2 of the 37 transactions (5%) included a closing condition requiring the target to have a specific ratio of consolidated debt to EBITDA.
- None of the 37 transactions included a closing condition regarding the exercise of appraisal rights by the target's stockholders.

"No MAE" Closing Conditions



16. Marketing Periods

We reviewed the 37 transactions to determine which of them had a "marketing period" provision (i.e., a provision necessitated by provisions in the buyer's debt commitment papers that provides that the buyer is not required to consummate the closing unless it has received certain specified financial information concerning the target and a specified time period has expired since the receipt of such information).

Of the 37 transactions:

- 31 of the 37 transactions (84%) had marketing period provisions.
- Of the 31 transactions, 20 of them (65%) had a marketing period of approximately 1 month.

- The average length of a marketing period was 29 calendar days, with a median of 28 days.[16]

We also reviewed the 31 transactions to determine when the marketing period could begin:

- 30 of the 31 transactions (97% of this subset) conditioned the beginning of the marketing period on the buyer's receipt of financial information pursuant to the target's cooperation with the financing covenant.
- 19 of the 31 transactions (62% of this subset) conditioned the beginning of the marketing period on the satisfaction of closing conditions (other than those conditions that by their nature can only be satisfied at closing).[17]
- 7 of the 31 transactions (23% of this subset) provided that the marketing period could begin no earlier than the mailing of the proxy.
- 2 of the 31 transactions (6% of this subset) provided that the marketing period could begin as early as signing.
- 2 of the 31 transactions (6% of this subset) were structured as two-step tender offers where the marketing period began on a certain date but was subject to the satisfaction of the offer conditions.
- 1 of the 31 transactions (3% of this subset) conditioned the beginning of the marketing period on receipt of target stockholder approval.

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[16] Where the marketing period was expressed in business days, we converted the period to calendar days for comparison purposes. See Chart B-3 in Appendix B for more information.

[17] 1 of the transactions included in this subset also provided that the marketing period could not begin until the end of the "go-shop" period.

Other Selected Deal Points

In connection with our review, we identified the following additional points of interest:

- 35 of the 37 transactions (94%) required the parties to exercise "reasonable best efforts" to obtain the necessary regulatory approvals; 1 of the 31 transactions (3%) required "commercially reasonable efforts" and 1 of the 31 transactions (3%) required "best efforts."
    - 16 of the 37 transactions (43%) also contained a "hell or high water" provision obligating the buyer to take any actions necessary to obtain antitrust approval. In general, such a provision requires a buyer to agree to divest assets of the target and/or of the buyer and its affiliates to satisfy antitrust concerns.
- There was a noticeable difference in the mean "look-back" period for target's representations and warranties in 2011 Transactions as compared to 2010 Transactions. For 2010 Transactions, the mean was approximately 21.5 months prior to the beginning of the target's most recent fiscal year, with a median of 24 months, whereas for 2011 Transactions, these figures dropped to a mean of 18.4 months and a median of 12 months. The range for both 2011 Transactions and 2010 Transactions was 1 to 3 years.
- 29 of the 37 transactions (78%) had a "no undisclosed liability" representation limited to GAAP liabilities (i.e., liabilities that meet the FAS 5 standard as per GAAP, which would not include all contingent liabilities).
- 27 of the 37 transactions (73%) qualified the target's representations by disclosure in the exhibits to the target's SEC filings.
- 8 of the 37 transactions (22%) were "club deals" in which 2 or more unaffiliated financial buyers acted together to acquire the target company.
- 7 of the 37 transactions (19%) included target management rolling over (or contributing) existing target stock in exchange for equity of the new buyer entity. We note that the buyer in 4 of the 7 transactions filed a Schedule 13E-3 in connection with the transaction. The management rollover as a percentage of the buyer's total equity was 2.5%, 8.5%, 13.6% and 22.9% in the 4 transactions in which a Schedule 13E-3 was filed and 0.1%, 0.2% and 1.9% in the other 3 transactions.
- In 2 transactions (TPG/PRIMEDIA and Silver Lake/Interactive Data), stockholder approval was obtained by written consent rather than a stockholder vote. In PRIMEDIA, this consent had to be given within 24 hours of the execution of the merger agreement, while for Interactive Data such consent had to be given by the close of business on the second day after signing, otherwise the target board had a right to terminate the agreement without paying a fee.[18]

[18] Note that obtaining stockholder approval through written consent is only available where the target's charter or bylaws allow for action by non-unanimous stockholder written consent. The use of written consent to obtain stockholder approval in a sale of control transaction was reviewed by the Delaware Chancery Court in *Optima International of Miami v. WCI Steel, Inc.*, C.A. No. 3833-VCL (Del. Ch. June 27, 2008) and *In re OPENLANE, Inc. S'holders Litig.*, C.A. No. 6849-VCN (Del. Ch. Sept. 30, 2011) and, in each decision, the Court determined that the use of such consent did not impermissibly "lock up" the applicable deal in violation of the Delaware Supreme Court's ruling in *Omnicare, Inc. v. NCS Healthcare, Inc.*, (818 A.2d 914 (Del. 2003)).

Appendix A — Surveyed Transactions

2010 Transactions

Target	Sponsor	Date	Enterprise Value	Equity Value
RCN Corporation	ABRY Partners VI, L.P.	March 5, 2010	$1.2 Billion	$561 Million
***info*Group, Inc.**	CCMP Capital Advisors, LLC	March 8, 2010	$635 Million	$463 Million
BWAY Holding Company	Madison Dearborn Partners, LLC	March 28, 2010	$915 Million	$447 Million
DynCorp International Inc.	Cerberus Series Four Holdings, LLC	April 11, 2010	$1.5 Billion	$1.0 Billion
CKE Restaurants, Inc.	Apollo Management VII, L.P.	April 18, 2010	$1.0 Billion	$694 Million
Protection One, Inc.	GTCR Fund IX/A, L.P.	April 26, 2010	$828 Million	$396 Million
Interactive Data Corporation	Silver Lake Partners III, L.P., Warburg Pincus Private Equity X, L.P. and Warburg Pincus X Partners, L.P.	May 3, 2010	$3.4 Billion	$3.2 Billion
inVentiv Health, Inc.	Thomas H. Lee Equity Fund VI, L.P.	May 6, 2010	$1.1 Billion	$911 Million
SonicWALL, Inc.	Thoma Bravo Fund IX, L.P. and Ontario Teachers' Pension Plan Board	June 2, 2010	$717 Million	$637 Million
NBTY, Inc.	Carlyle Partners V, L.P.	July 15, 2010	$3.8 Billion	$3.5 Billion
Burger King Holdings, Inc.	3G Special Situations Fund II L.P.	Sept. 2, 2010	$4.0 Billion	$3.3 Billion
Internet Brands, Inc.	Hellman & Friedman Capital Partners VI, L.P.	Sept. 17, 2010	$640 Million	$625 Million
The Gymboree Corporation	Bain Capital Fund X, L.P.	Oct. 11, 2010	$1.8 Billion	$1.8 Billion
American Commercial Lines Inc.	Platinum Equity Capital Partners II, L.P.	Oct. 18, 2010	$777 Million	$436 Million
CommScope, Inc.	Carlyle Partners V, L.P.	Oct. 26, 2010	$3.9 Billion	$3.1 Billion
Syniverse Holdings, Inc.	Carlyle Partners V, L.P.	Oct. 28, 2010	$2.6 Billion	$2.2 Billion
J. Crew Group, Inc.	TPG Partners VI, L.P., Green Equity Investors V, L.P. and Green Equity Investors Side V, L.P.	Nov. 23, 2010	$3.0 Billion	$2.8 Billion
CPI International, Inc.	The Veritas Capital Fund IV, L.P.	Nov. 24, 2010	$525 Million	$331 Million
Del Monte Foods Company	KKR 2006 Fund L.P., Vestar Capital Partners V, L.P., Centerview Capital, L.P. and Centerview Employees, L.P.	Nov. 24, 2010	$5.3 Billion	$3.8 Billion
Jo-Ann Stores, Inc.	Green Equity Investors V, L.P. and Green Equity Investors Side V, L.P.	Dec. 23, 2010	$1.6 Billion	$1.6 Billion

2011 Transactions

Target	Sponsor	Date	Enterprise Value	Equity Value
Pre-Paid Legal Services, Inc.	MidOcean Partners III, L.P., MidOcean Partners III-A, L.P., and MidOcean Partners III-D, L.P.	Jan. 30, 2011	$650 Million	$649 Million
Emergency Medical Services Corporation	Clayton, Dubilier & Rice Fund VIII, L.P.	Feb. 13, 2011	$3.2 Billion	$2.8 Billion
Rural/Metro	Warburg Pincus Private Equity X, L.P.	Mar. 28, 2011	$701 Million	$443 Million
SRA International, Inc.	Providence Equity Partners VI, LP and Providence Equity Partners VI-A, LP	March 31, 2011	$1.88 Billion	$1.82 Billion
Epicor Software Corporation	Apax US VII, L.P., Apax Europe VII-A, L.P., Apax Europe VII-B, L.P. and Apax Europe VII-1, L.P.	April 4, 2011	$976 Million	$802 Million
CKx, Inc.	Apollo Global Management	May 10, 2011	$560 Million	$509 Million
PRIMEDIA, Inc.	TPG Partners VI, L.P.	May 15, 2011	$525 Million	$322 Million
BJ Wholesale Club, Inc.	Leonard Green & Partners, L.P. and CVC Capital Partners Advisory (U.S.), Inc.	June 28, 2011	$2.7 Billion	$2.8 Billion
Blackboard Inc.	Providence Equity Partners VI L.P. and Providence Equity Partners VI-A L.P.	June 30, 2011	$1.6 Billion	$1.6 Billion
Immucor, Inc.	TPG Partners VI, L.P.	July 2, 2011	$2.0 Billion	$1.9 Billion
Kinetic Concepts, Inc.	Apax Europe VII-A, L.P., Apax Europe VII-B, L.P., Apax Europe VII-1, L.P., Apax US VII, L.P., Port-aux-Choix Private Investments Inc. and CPP Investment Board (USRE V) Inc.	July 12, 2011	$6.3 Billion	$5.0 Billion
Emdeon Inc.	Blackstone Capital Partners VI L.P.	Aug. 4, 2011	$3.4 Billion	$2.2 Billion
Pharmaceutical Product Development, Inc.	The Carlyle Group and Hellman & Friedman LLC	Oct. 3, 2011	$3.9 Billion	$3.8 Billion
99¢ Only Stores	Ares Corporate Opportunities Fund III, L.P. and Canada Pension Plan Investment Board	Oct. 11, 2011	$1.6 Billion	$1.5 Billion
Tekelec	Siris Capital Group, LLC	Nov. 6, 2011	$780 Million	$777 Million
Blue Coat Systems, Inc.	Thoma Bravo, LLC	Dec. 8, 2011	$1.3 Billion	$1.1 Billion
WCA Waste Corporation	Macquarie Infrastructure Partners II U.S., L.P and Macquarie Infrastructure Partners II International, L.P.	Dec. 21, 2011	$526 Million	$154 Million

Appendix B — Additional Charts and Graphs

Chart B-1: Matching and “Last Look” Matching Rights

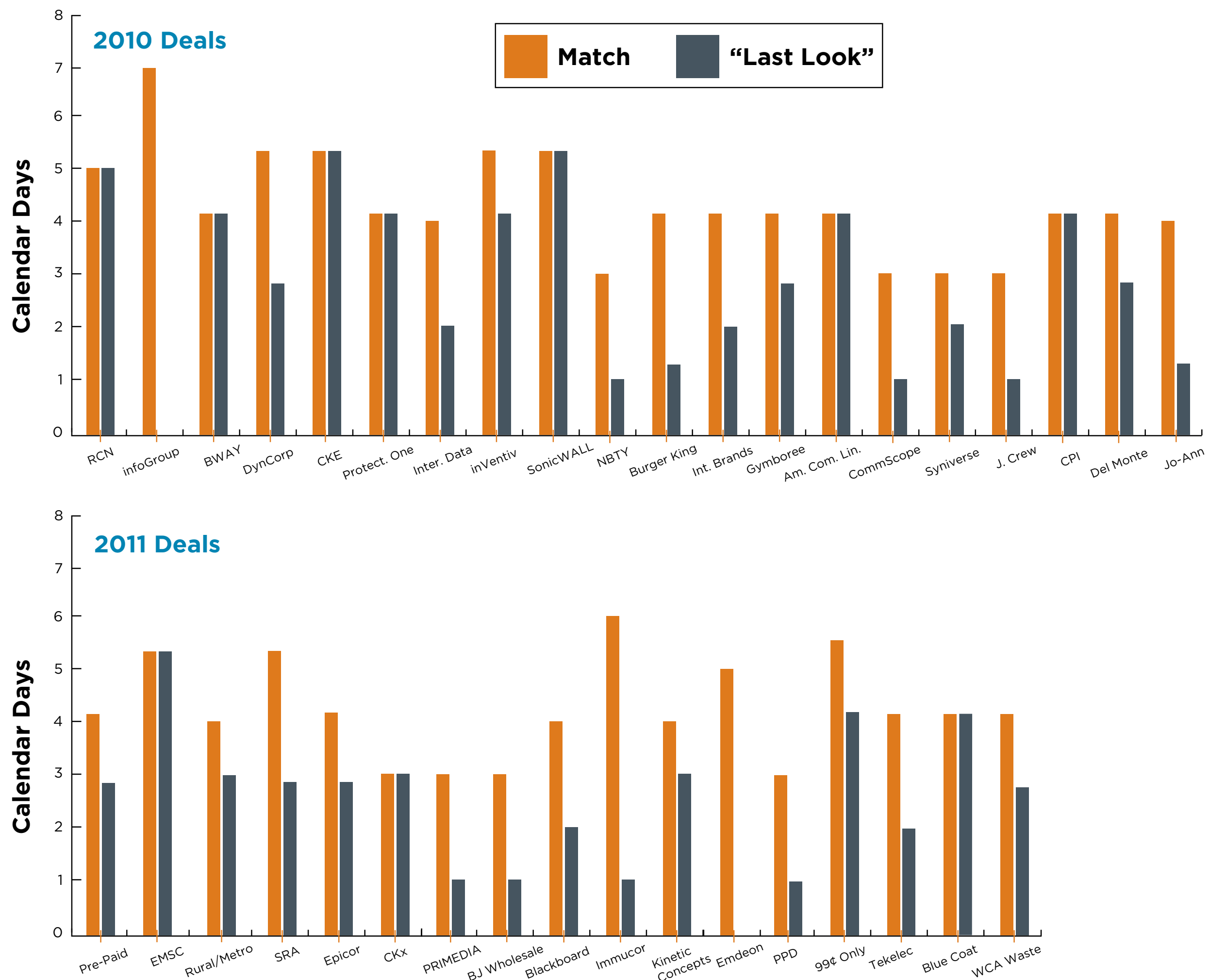
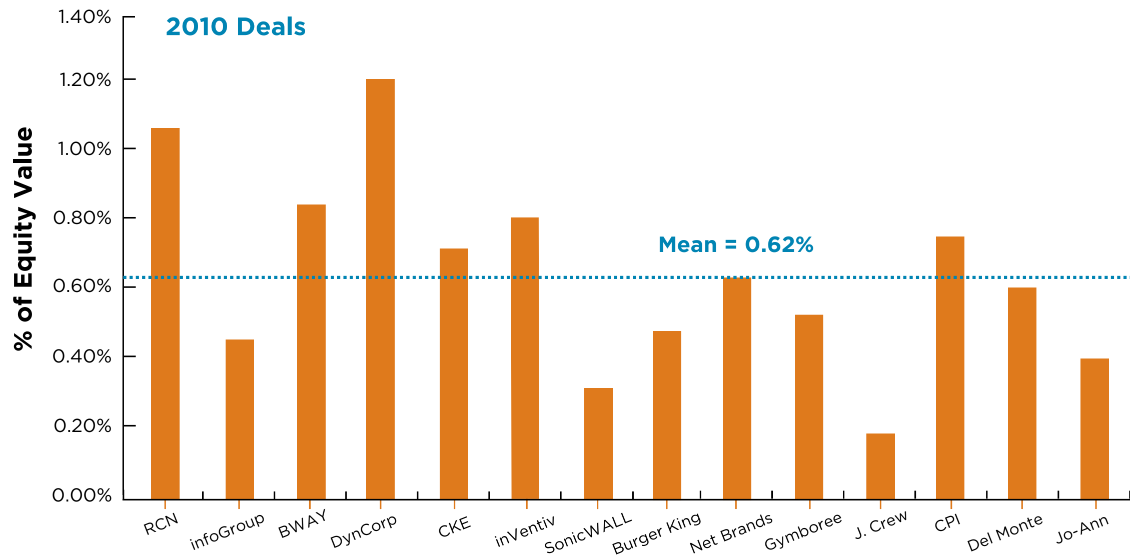


Chart B-2: Expense Reimbursement



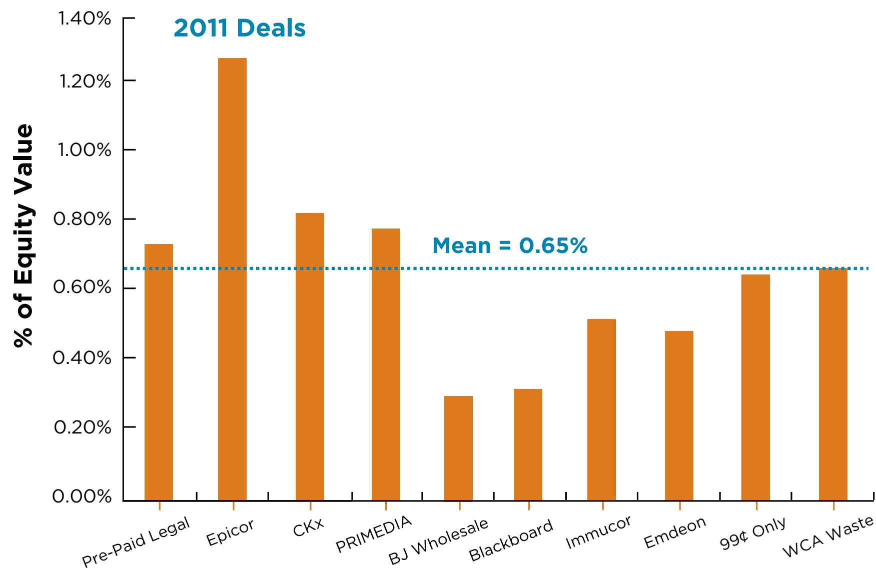
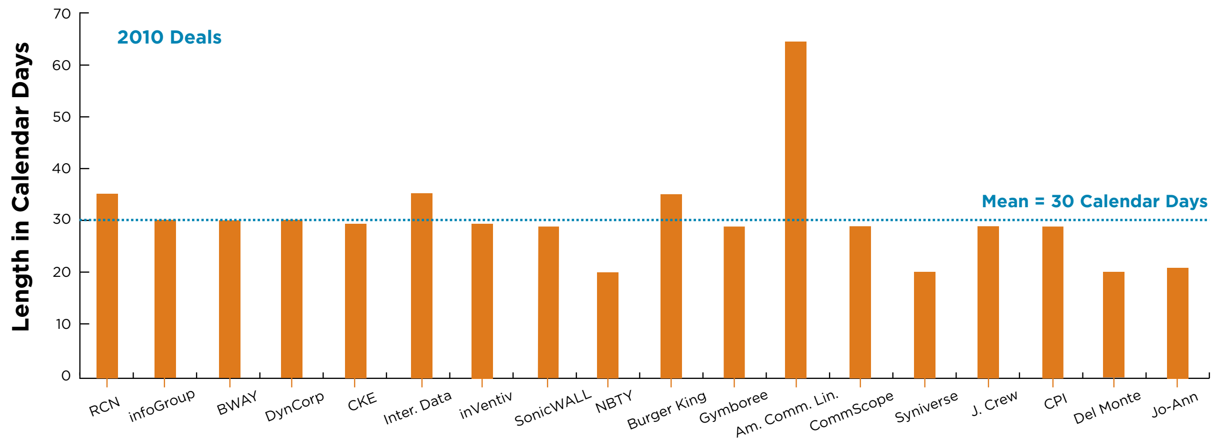


Chart B-3: Marketing Periods



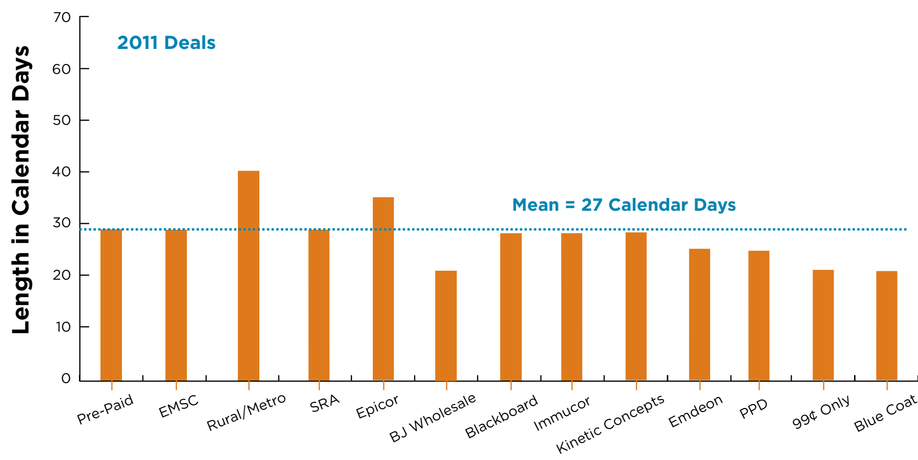
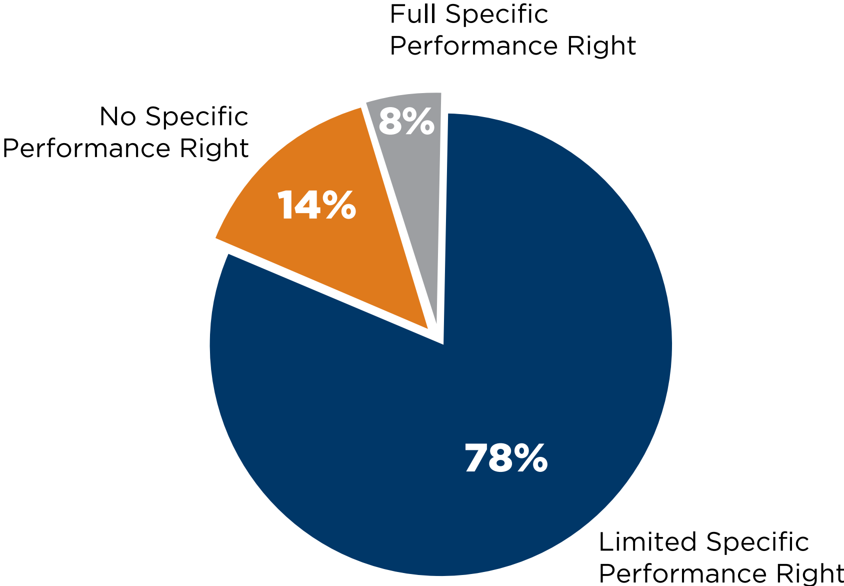


Chart B-4: Target Specific Performance Rights — Cumulative 2010 Transactions and 2011 Transactions



Appendix C — Break-Up Fees and Reverse Termination Fees[19]

2010 Transactions

Target	Sponsor	Break-Up Fee	Break-Up Fee as % of Equity Value	RTF	RTF as % of Equity Value
RCN	ABRY Partners VI, L.P.	$10.0 $17.5	1.78% 3.12%	$30.0	5.34%
infoGroup	CCMP Capital Advisors, LLC	$15.8	3.42%	$25.4	5.47%
BWAY	Madison Dearborn Partners, LLC	$5.0 $12.5	1.12% 2.79%	$5.0 $27.5	1.12% 6.15%
DynCorp	Cerberus Series Four Holdings, LLC	$30.0	2.99%	$100.0 $300.0	9.98% 29.94%
CKE	Apollo Management VII, L.P.	$15.5	2.23%	$15.5 $30.9	2.23% 4.46%
Protection One	GTCR Fund IX/A, L.P.	$8.0	2.02%	$60.0 $150.0	15.16% 37.89%
Interactive Data	Silver Lake Partners III, L.P., Warburg Pincus Private Equity X, L.P. and Warburg Pincus X Partners, L.P.	$120.0	3.70%	$225.0	6.93%
inVentiv	Thomas H. Lee Equity Fund VI, L.P.	$27.5	3.02%	$55.0	6.04%
SonicWall	Thoma Bravo Fund IX, L.P. and Ontario Teachers' Pension Plan Board	$25.0	3.93%	$60.0	9.43%
NBTY	Carlyle Partners V, L.P.	$53.6 $98.2	1.54% 2.82%	$214.2	6.14%
Burger King	3G Special Situations Fund II L.P.	$50.0 $95.0	1.51% 2.87%	$175.0	5.28%
Net Brands	Hellman & Friedman Capital Partners VI, L.P.	$23.0	3.68%	$38.0	6.08%
Gymboree	Bain Capital Fund X, L.P.	$30.0 $50.0	1.68% 2.79%	$50.0	2.79%
ACL	Platinum Equity Capital Partners II, L.P.	$12.0 $14.0	2.75% 3.21%	$16.0 $20.0	3.67% 4.58%
CommScope	Carlyle Partners V, L.P.	$43.3 $103.9	1.42% 3.40%	$233.8	7.66%
Syniverse	Carlyle Partners V, L.P.	$60.0	2.76%	$60.0 $120.0	2.76% 5.51%
J. Crew	TPG Partners VI, L.P., Green Equity Investors V, L.P. and Green Equity Investors Side V, L.P.	$27.0 $54.0	1.94% 0.97%	$200.0	7.19%
CPI	The Veritas Capital Fund IV, L.P.	$13.0 $15.0	3.92% 4.53%	$22.5 $27.5	6.79% 8.30%
Del Monte	KKR 2006 Fund L.P., Vestar Capital Partners V, L.P., Centerview Capital, L.P. and Centerview Employees, L.P	$60.0 $120.0	1.57% 3.14%	$249.0	6.52%
Jo-Ann	Green Equity Investors V, L.P. and Green Equity Investors Side V, L.P.	$20.0 $44.9	1.25% 2.80%	$90.0	5.60%

[19] All dollar amounts are in millions. For two-tiered fees, the first number is the lowest tier and the second number is the higher tier.

2011 Transactions

Target	Sponsor	Break-Up Fee	Break-Up Fee as % of Equity Value	RTF	RTF as % of Equity Value
Pre-Paid Legal	MidOcean Partners III, L.P., MidOcean Partners III-A, L.P., and MidOcean Partners III-D, L.P.	$21.5	3.31%	$50.0	7.70%
EMSC	Clayton, Dubilier & Rice Fund VIII, L.P.	$116.5	4.11%	$203.9	7.19%
Rural/Metro	Warburg Pincus Private Equity X, L.P.	$16.9	3.82%	$33.8	7.63%
SRA	Providence Equity Partners VI, LP and Providence Equity Partners VI-A, LP	$28.2 $47.0	1.55% 2.58%	$112.9	6.20%
Epicor	Apax US VII, L.P., Apax Europe VII-A, L.P., Apax Europe VII-B, L.P. and Apax Europe VII-1, L.P.	$15.0 $40.0	1.87% 4.99%	$20.0 $60.0	2.49% 7.48%
CKx	Apollo Global Management	$20.0	3.93%	$40.0	7.85%
PRIMEDIA	TPG Partners VI, L.P.	$8.0	2.48%	$30.0	9.31%
BJ Wholesale	Leonard Green & Partners, L.P. and CVC Capital Partners Advisory (U.S.), Inc.	$80.0	2.84%	$175.0	6.22%
Blackboard	Providence Equity Partners VI L.P. and Providence Equity Partners VI-A L.P.	$49.1	3.10%	$106.4	6.71%
Immucor	TPG Partners VI, L.P.	$25.0 $45.0	1.30% 2.34%	$90.0	4.69%
Kinetic Concepts	Apax Europe VII-A, L.P., Apax Europe VII-B, L.P., Apax Europe VII-1, L.P., Apax US VII, L.P., Port-aux-Choix Private Investments Inc. and CPP Investment Board (USRE V) Inc.	$51.8 $155.4	1.03% 3.10%	$317.2	6.33%
Emdeon	Blackstone Capital Partners VI L.P.	$65.0	2.95%	$80.0 $153.0	3.63% 6.95%
Pharmaceutical Product Development, Inc.	The Carlyle Group and Hellman & Friedman LLC	$116.2	3.06%	$251.8	6.63%
99¢ Only Stores	Ares Corporate Opportunities Fund III, L.P. and Canada Pension Plan Investment Board	$47.3	3.03%	$94.5	6.05%
Tekelec	Siris Capital Group, LLC	$15.0	1.93%	$40.0	5.15%
Blue Coat Systems, Inc.	Thoma Bravo, LLC	$39.0	3.41%	$73.0	6.38%
WCA Waste Corporation	Macquarie Infrastructure Partners II U.S., L.P. and Macquarie Infrastructure Partners II International, L.P.	$16.5	10.71%	$16.5	10.71%

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