

Developments in Takeover Defense *Webcast*

September 23, 2008

Presentation Overview

1. The Current Environment – Is This What the Economists Meant by the Market for Corporate Control?
2. Practical Aspects of Takeover Defense – What Should I Tell My CEO?
3. Advance Notice Bylaws – Tell Us a Little About Yourself . . .
4. Structural Defenses – Which, When and How

Appendix A: Typical Approaches and Responses

Section 1:
The Current Environment –
Is This What the Economists Meant by the
Market for Corporate Control?

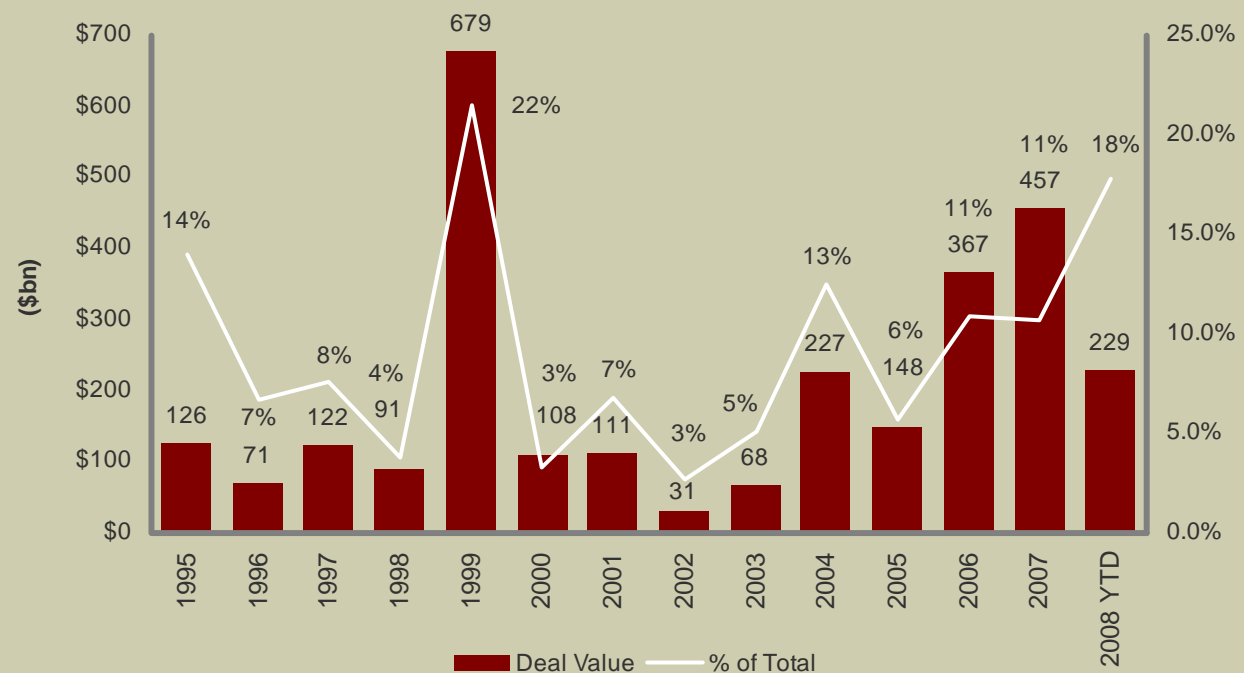
Two Different Types of Threats

- Traditional Hostile Tactics
 - Public “bear hug” letter to put Company “in play”
 - Tender offer at inadequate price
 - Creeping accumulation or aggressive block purchases
- Shareholder Activism
 - Disproportionate governance role
 - Pressure to effect extraordinary corporate transactions
 - Capital or other restructuring
 - Disposal of businesses
 - Sale of entire Company
- Threats Materialize and Evolve Rapidly
 - Large amounts of capital move with extraordinary velocity
 - Symbiotic relationships abound
 - Sense of inevitability can create self-fulfilling prophecy

Record Hostile and Unsolicited Activity

Hostile / unsolicited activity currently accounts for approx. 18% of total Global M&A activity

Global M&A Announced Hostile / Unsolicited Activity¹



Source: Thomson Financial

Notes:

¹ All deals with disclosed deal value, excluding minority stake purchases, repurchases, spin-offs and deals less than \$50 million. Includes withdrawn deals.

² YTD as of September 2008.

Historical Review of Unsolicited M&A

Historical Annual Unsolicited / Hostile M&A Volume

Year	Annual Global Volume (\$bn)	Annual Unsolicited Volume (\$bn)	% of Total
2008 YTD	1,285	229	17.8%
2007	4,270	457	10.7%
2006	3,371	367	10.9%
2005	2,614	148	5.7%
2004	1,820	227	12.5%
2003	1,329	68	5.1%
2002	1,162	31	2.7%
2001	1,626	111	6.8%
2000	3,308	108	3.3%
1999	3,162	679	21.5%
1998	2,400	91	3.8%
1997	1,597	122	7.6%
1996	1,065	71	6.7%
1995	899	126	14.0%

Source: Thompson SDC

All Time Largest Unsolicited / Hostile Transactions

Target	Acquiror	Date Announced	Size (\$bn)
 MANNESMANN ROHRENWERKE	 Vodafone airtouch	11/14/1999	203
 RIO TINTO	 bhpbilliton	11/8/2007	185
 ABN-AMRO Holding N.V.	RFS Holdings	4/25/2007	98
 WARNER LAMBERT	 Pfizer	11/4/1999	89
The Walt Disney Company	 Comcast	2/11/2004	67
 Aventis	 sanofi~synthelabo	1/26/2004	60
 Endesa	 e-on	2/21/2006	56
 TOTALFINA	 elf aquitaine	7/19/1999	51
 ANHEUSER BUSCH Companies	 InBev	6/11/2008	48
 YAHOO!	 Microsoft	2/1/2008	43

How Do Hostile Bids Unfold?

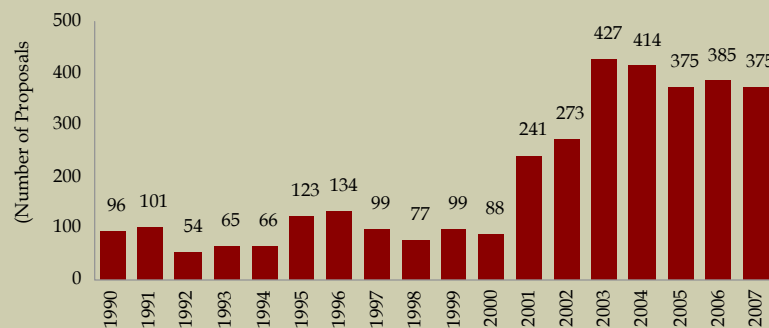
A fairly common pattern...

	Action	Implication
Friendly	<ul style="list-style-type: none">• Casual pass at conference• Banker-to-banker inquiry• CEO to CEO call	Commonplace and does not necessarily result in more aggressive activity, but must be evaluated on a case by case basis
Assertive	<ul style="list-style-type: none">• Private “bear hug” letter• Bidder communication directly to Board• Smaller share accumulations• Market rumors• Conference call innuendo	Reflects detailed planning, retention of advisors and Board-level consideration of transaction
Aggressive	<ul style="list-style-type: none">• Public “bear hug” letter• Proxy contest• Tender offer• Significant share accumulations	Indicates bidder is committed to completing transaction

Shareholder Activism is on the Rise

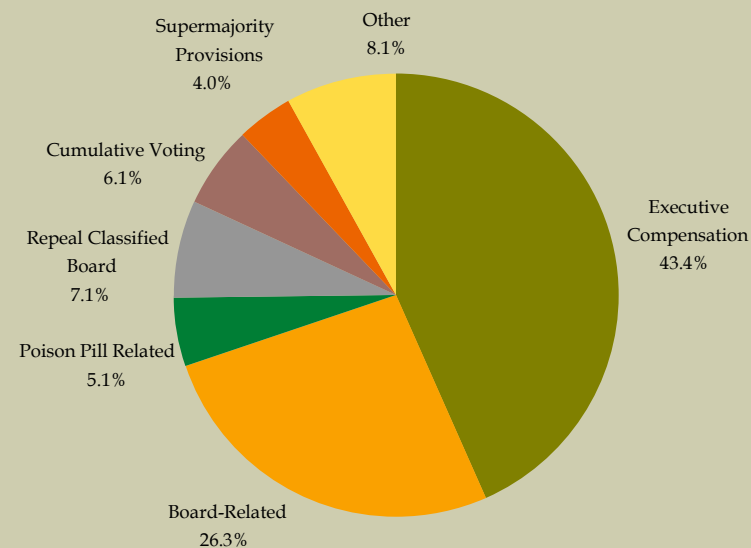
Since the corporate scandals in 2000 - 2001, the number of proposals regarding corporate governance have increased dramatically

Number of Corporate Governance Proposals (1990-2007)



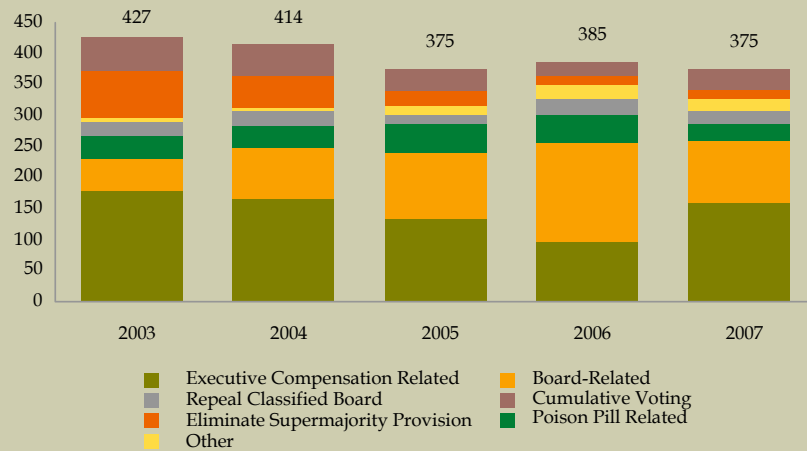
Source: Georgeson Corporate Governance Review and IRRC

Corporate Governance Proposals (2007)



Source: Georgeson Corporate Governance Review

Corporate Governance Proposals Sponsored by Institutions (2003-2007)

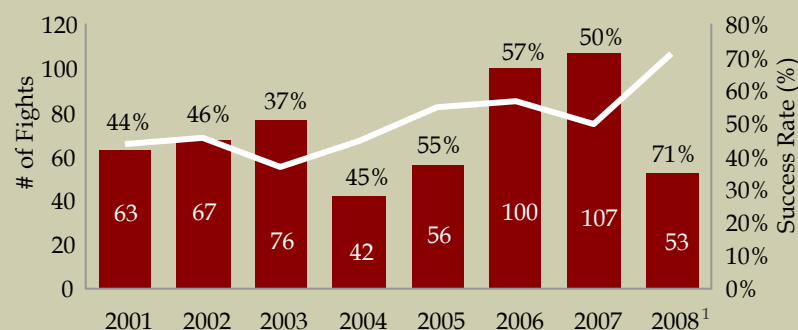


Source: Georgeson Corporate Governance Review

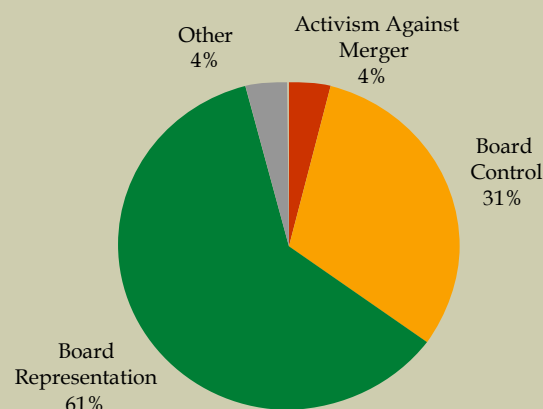
Activist Investors are Increasingly Successful in Contested Situations

Activists have enjoyed heightened success in contested situations so far in 2008

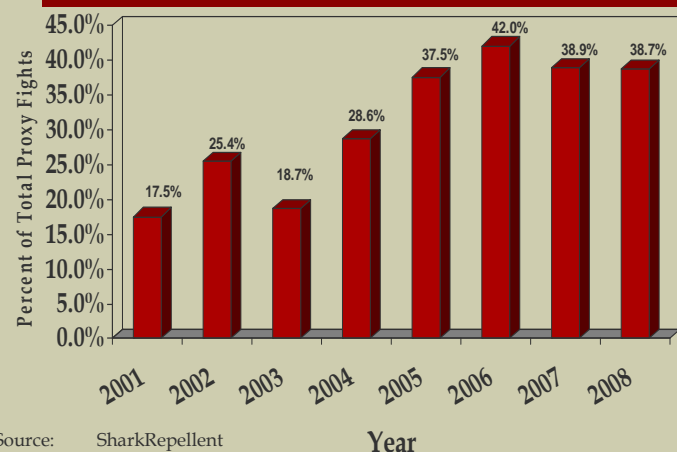
Dissident Success Rate, Proxy Fights



Primary Campaign Types, 2007 Proxy Fights



Percent of Proxy Fights that Settle



2009 and Beyond

Activist investors have performed well over last 12-18 months which should drive continued activist investing

- Success of recent proxy fights will drive future activity during upcoming proxy season
- Lower profile investors to search for activists to pursue selected situations
- Successful acquisitions of companies by activist hedge funds are leading to further convergence of private equity and public equity worlds

Source: SharkRepellent

Many Factors Have Contributed to the Surge and Success of Hedge Fund Activism



¹ Source: The Conference Board

Which Companies are Targeted?

Target	Goal	Selected Examples	
Underperforming Companies	Change in Management / Board	<ul style="list-style-type: none"> ▪ Relational / SPX ▪ Steel Partners / GenCorp ▪ Harbinger / New York Times 	<ul style="list-style-type: none"> ▪ Selim Zilkha / El Paso ▪ Sam Heyman / Hercules
	Sale of Company	<ul style="list-style-type: none"> ▪ Barington / Nautica ▪ ESL and Barington / Payless ▪ Carl Icahn / Yahoo 	<ul style="list-style-type: none"> ▪ Harbinger / Calpine Corp.
Overcapitalized / Cash-Rich Situations	Return Cash to Shareholders	<ul style="list-style-type: none"> ▪ Highfields / Circuit City ▪ Steel Partners / GenCorp 	<ul style="list-style-type: none"> ▪ Third Point / Massey
Diversified Companies	Divestitures / Break-Up	<ul style="list-style-type: none"> ▪ Relational / JC Penney (Eckerd) ▪ Carl Icahn / Motorola 	<ul style="list-style-type: none"> ▪ Third Point / Western Gas ▪ Pershing / Target
M&A Transactions	Defeat M&A Transactions / Increase Merger Price	<ul style="list-style-type: none"> ▪ Carl Icahn / Lear Corp. ▪ Novartis / Chiron ▪ Many funds / VNU 	<ul style="list-style-type: none"> ▪ Many funds / Micron Technology / Lexar Media ▪ Many funds / Armor Holdings / Stewart & Stevenson ▪ Pershing Square and Advisory Research / Longs Drug Store

Common Activist Tactics



Recent Legal Developments

- *CNET Networks / Office Depot*
 - Ambiguities in advance notice bylaws construed against the Company
 - Companies should review bylaws to mitigate risk
- *CSX Corporation*
 - “Total return equity swap” may confer beneficial ownership under federal securities laws
 - “Wolf pack” activities may result in “group” determination under Section 13(d)
 - Statutory remedies for violation may be limited, however
 - 2nd Circuit has confirmed lack of “sterilization” remedy
 - Consequences for shareholder rights plans
- *Lyondell Chemical Co.*
 - Adequacy of Board action in connection with a sale of the Company
 - Impact of CEO-dominated M&A process and need for active Board participation
 - Board required to evaluate process for maximizing shareholder value
 - Consider benefits of regular contingency planning
 - More recent decisions may mitigate impact
- *SEC’s Cross Border Release*
 - Generally codify existing “no-action” positions
 - Evolutionary in nature

Section 2: Practical Aspects of Takeover Defense – What Should I Tell My CEO?

Be Prepared from a Business Perspective

- Monitor and communicate regularly with shareholders
 - Consider stock-watch service to monitor trading activity
 - Regular shareholder communications on strategic plans frame alternatives if threat materializes
- Board should meet at least annually with financial advisor to review threat environment and analyze strategic alternatives
 - Industry dynamics and general M&A environment
 - Potential bidders, including strategic strengths and weaknesses, and potential opportunities
 - Current stock valuation and trends
 - Enables rapid initial response and provides foundation for Board to assess alternatives
 - Lesson of *Lyondell*
- Maintain long-term forecasts and strategic plans
 - Provides input for financial analysis
 - Credibility enhanced if prepared without regard to pending threat
 - OK to acknowledge variability
- Develop initial business response “playbook”
 - Define leadership and responsibilities among Board, management and outside advisors
 - Current “key players” list and contact information, including outside advisors
 - Initial plan for investor and employee communications

Be Prepared from Legal Perspective

- Board should meet at least annually with legal advisor to discuss takeover defense-related issues
 - Review fiduciary duties of directors
 - Update on legal developments, trends and issues
 - Assess defensive position; consider possible enhancements
- Monitor corporate governance developments
 - RiskMetrics and other proxy advisory services
 - General trends and key corporate governance issues
- Monitor shareholder filings
 - Schedules 13D / 13G / 13F
 - Hart-Scott-Rodino Act filings
- Maintain initial legal response “playbook”
 - “Stop, look and listen” press release
 - Rights plan “on the shelf”, if applicable

Business Fundamentals for Takeover Responses

- Unsolicited offers may arise if bidder mistakenly thinks the Company is receptive
 - Politeness in response to casual pass can be mistaken for receptiveness
- Board and CEO must speak with “one voice” and avoid leaks
 - Avoids unintended flirtations, ambiguous messages or misunderstandings
 - All statements may be used against the Company
- Adopt “no comment” policy on market rumors and activity
 - Policy ought to be in place generally
 - Provides additional flexibility, with no general duty to update
- Never underestimate the Board’s leverage
 - Board can exercise business judgment to: (i) pursue stand-alone business plan, (ii) consider available strategic alternatives or (iii) act as auctioneer to sell the Company
 - Substantial time and expense is required to overcome Board’s opposition, and Board should not end up with a lower price by saying no to the first pass
- Current and credible business plans will be crucial
 - Valuation underpins standalone valuation of the Company
 - Financial valuation analysis critical to Board process and securing shareholder support

Business Fundamentals for Responding to Activists

- Don't overreact to an initial accumulation
 - Treat activist as any other significant investor
 - Dialogue with activist should not assume they will go hostile
 - But, prepare assuming the activist will go hostile
- If activist asks for a meeting, take it
 - Good for information gathering
 - Avoid misperception of management entrenchment
 - Consider carefully who meets with the activists
- Board and CEO must speak with "one voice" and avoid leaks
 - Avoids unintended flirtations, ambiguous messages or misunderstandings
 - All statements may be used against the Company
- Monitor your stockholder profile daily, using an expert firm
 - Accumulations by insurgent
 - Emergence of "wolf pack"
- Gather the right advisors
 - Proxy Solicitor
 - Legal Advisor
 - Financial Advisor
 - Public and Investor Relations
- Stay close to your other significant investors
 - Communicate the Board's plans
 - Assess investor concerns/predilections

Section 3:
Advance Notice Bylaws –
Tell Us a Little About Yourself . . .

Conventional Advance Notice Bylaws

- Shareholders must provide advance notice (typically 60-90 days) to make proposals or nominate directors
 - Disclosure required on proposal, nominees (if any) and beneficial ownership, but nothing more
 - Uses or mirrors Exchange Act definition of beneficial ownership
- Does not require disclosure of other information that may be material to the Company and its shareholders
 - “Synthetic equity” or other derivatives positions, “record date capture” or other “empty voting” strategies or other material interests
 - Disclosures likely to be stale by shareholder meeting
- Federal securities laws have not been revised to address modern threats
- Many corporations’ bylaws are subject to challenge under *JANA/Office Depot*
 - Advance notice deadlines are too early
 - Lack of differentiation of treatment of 14a-8 proposals
 - Significant adverse consequences if bylaw provisions are struck or viewed as inapplicable

Modernized Advance Notice Bylaws

- Expanded Required Disclosures
 - Persons Making Proposals or Nominations
 - Create visibility to “synthetic equity” and other derivative ownership, “record date capture” and other “empty voting” strategies and other material interests
 - Other information that would be required in proxy statement
 - Possible additional disclosures based on SEC’s shareholder access proposal
 - Capture “wolf pack” through “conscious parallelism” based disclosure
 - Director Nominees
 - Same disclosure as if nominee were making a proposal (see above)
 - Financial and other relationships between proponent and director nominee
 - Proposed Business
 - Reasons for proposal
 - Agreements with other shareholders
- Updated Supplemental Disclosures
 - As of record date and as of shortly prior to meeting date
- Additional procedures if shareholders permitted to call special meetings or act by written consent

Rationale for Modernized Advance Notice Bylaws

- Establish orderly procedures
- Provide Company and shareholders adequate time to become informed and to respond
- Clarify and strengthen bylaws to protect against threats in current environment (CSX)
 - Obtain information on economic, voting and other interests or relationships that may be material
 - Address gaps under federal securities laws
- Obtain current information to ensure accurate disclosure of interests of proponent and nominee
- Eliminate ambiguities in existing bylaws, including distinction of 14a-8 proposals (*JANA / Office Depot*)
- Avoid:
 - Undue burden or ambiguity
 - Adoption after contest arises or is threatened

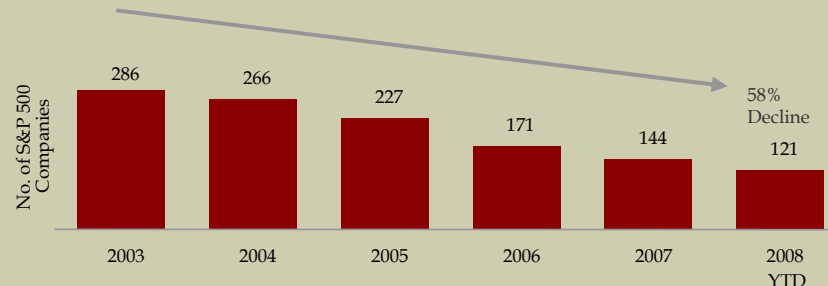
Section 4: Structural Defenses – Which, When and How

Defensive Position

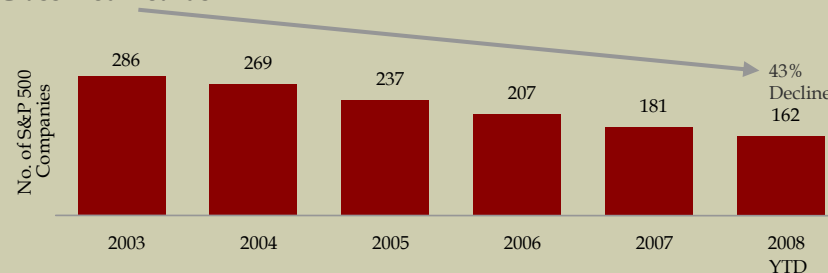
Impact of Activism and Corporate Governance Opposition

- Redemption or Expiration of Rights Plans
 - Company under constant threat
 - Enhances importance of trading monitors to pull “off the shelf”
- Declassification of Boards
 - Reduces impact of rights plan
 - Increases activist leverage for settlement
 - But, 2 to 3 directors are still often enough
- Director resignation policies
 - Reduces Board willingness to buck RiskMetrics
 - Encourages shareholder proposals due to subsequent withhold recommendations

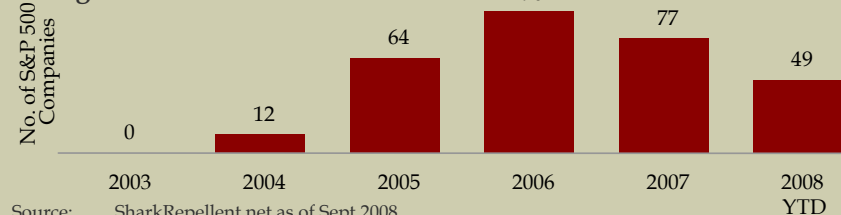
Poison Pills in Force



Classified Boards



Shareholder Proposals to Adopt Majority Voting of Directors



Source: SharkRepellent.net as of Sept 2008

Shareholder Rights Plans

Considerations for Renewal vs. Expiration

Renew Rights Plan	Allow Rights Plan to Expire	Allow Expiration and Put New Rights Plan "On the Shelf"
<ul style="list-style-type: none"> + Potential deterrent effect on most egregious "wolf pack" activities particularly following CSX decision + Use on interim basis may be accepted by market and RiskMetrics - Will draw "withhold" vote recommendation from RiskMetrics at next annual meeting - Potential rallying point for activist investors 	<ul style="list-style-type: none"> + Avoids stockholder proposal or demand to terminate rights plan + Avoids RiskMetrics "withhold" vote issues - Loss of immediate deterrent effect against "wolf packs" - Delay attendant to later adoption can be strategically costly - Subsequent adoption may be in "fog" of takeover battle 	<ul style="list-style-type: none"> + Allows more thoughtful Board review of new rights plan + Board evaluation conducted absent pending threat + Allows quick implementation in response to rapid share accumulations + No public notice / RiskMetrics - Any deterrent effect on most egregious "wolf pack" activities is delayed

Modernized Shareholder Rights Plan

- Traditional rights plans incorporate federal securities law definition of “beneficial ownership” in determining whether an “Acquiring Person” has exceeded trigger threshold
- Modernized rights plan could:
 - Add synthetic equity to definition of beneficial ownership
 - Address prospect that the holder of synthetic equity could direct the vote on the banker’s share position
 - Address concern that synthetic equity position can be easily converted to actual equity ownership
 - Expand “group” concept for definition of beneficial ownership to capture parties acting with “conscious parallelism”
 - Enable Board determination of triggering activity
- Synthetic Equity Issues
 - Does the holder of synthetic equity suffer dilution under the plan?
 - Effectiveness is likely dependent on scale of actual ownership
- Conscious Parallelism Issues
 - Ability to discourage “wolf pack”
 - Changed definition needed after CSX?
 - Does the need for Board determination hinder effectiveness?
- Do modernized provisions work with “on the shelf” strategy?

Appendix A: Typical Approaches and Responses

Takeover Approaches and Responses

Takeover Approach	Description	Initial Response
<i>Casual Pass / Friendly Lunch</i>	<ul style="list-style-type: none"> • Informal request for meetings or discussions • Price not typically proposed • May come from acquaintances, colleagues on other Boards, at industry conferences or otherwise 	<ul style="list-style-type: none"> • Report to CEO and Chairman • No duty to discuss, respond, negotiate or disclose publicly • Structure response, if any, to convey clear message and avoid unintended signals
<i>Private “Bear Hug” Letter</i>	<ul style="list-style-type: none"> • Private letter to management or Board requests meetings or discussions • Initial price typically proposed • Relatively friendly approach, but carries implicit threat to go public 	<ul style="list-style-type: none"> • Report to Board • Activate readiness plan and engage M&A advisory teams • Board evaluation required • No duty to discuss, respond, negotiate or disclose publicly • Structure response, if any, to convey clear message and avoid unintended signals • Plan for likely next events
<i>Public “Bear Hug” Letter</i>	<ul style="list-style-type: none"> • Public letter to Board requests meetings or discussions • Initial price proposed • Increasingly hostile approach 	<ul style="list-style-type: none"> • Issue “stop, look and listen” statement • Board evaluation required • Determine strategic responses, in consultation with M&A advisory team • Public response recommended • No duty to negotiate

Takeover Approaches and Responses (*cont'd*)

Takeover Approach	Description	Initial Response
<i>Tender Offer or Exchange Offer</i>	<ul style="list-style-type: none"> • Formal offer directly to stockholders • Regulated by U.S. securities laws • Hostile approach 	<ul style="list-style-type: none"> • Issue “stop, look and listen” statement • Board evaluation required • Determine strategic responses, in consultation with M&A advisory team • Public response required under U.S. securities laws within 10 business days • No duty to negotiate
<i>Proxy Contest</i>	<ul style="list-style-type: none"> • Solicitation of votes for action by shareholders • Seeks replacement of Board to remove rights plan • Typically coupled with tender offer or exchange offer • Hostile approach 	<ul style="list-style-type: none"> • Issue “stop, look and listen” statement • Board evaluation required • Consider tactical responses • Consider acceleration or delay of meeting • Determine strategic responses, in consultation with M&A advisory team • Public response required under U.S. proxy rules if Company seeks to solicit votes or consents in opposition • No duty to negotiate

Activist Approaches and Responses

Activist Approach	Description	Initial Response
<i>Initial Stock Accumulation and Request for Meetings</i>	<ul style="list-style-type: none"> Accumulates initial stock ownership position (likely more than 5% but less than 15%) Requests meetings with management to discuss ideas to “enhance value” May make Schedule 13D filing disclosing plans and proposals to “enhance value” Not typically interested in acquisition 	<ul style="list-style-type: none"> Activate contingency plan and engage activist advisory team Gather information about activist No duty to meet, discuss or respond Carefully staged meeting may be desirable to open communication Understand activist’s objections
<i>“Wolf Pack” Tactics</i>	<ul style="list-style-type: none"> Other activist funds accumulate stock ownership positions Likely act in parallel with initial activist, if not formally acting as a “group” 	<ul style="list-style-type: none"> Gather information about “wolf pack” members Evaluate extent to which “wolf pack” is acting as undisclosed “group”
<i>Private Letters</i>	<ul style="list-style-type: none"> Demands action with respect to: <ul style="list-style-type: none"> Board seats Management change Evaluation of strategic alternatives Financial restructurings (special dividend, leveraged recap, sale of non-core assets) Frequently threatens public disclosure, stockholder proposals and/or proxy contests 	<ul style="list-style-type: none"> Report to CEO and Chairman Board evaluation recommended Determine strategic responses, in consultation with advisory team No duty to meet, discuss, respond or disclose publicly Designate point person for all future contacts. Structure response, if any, to confer clear message and avoid unintended signals

Activist Approaches and Responses (*cont'd*)

Activist Approach	Description	Initial Response
<i>Public Letters</i>	<ul style="list-style-type: none"> • Letter publicly disclosed • Reiterates demands made in private letters • Threatens shareholder proposals and/or proxy contests 	<ul style="list-style-type: none"> • Board evaluation required • Determine strategic responses, including rejection or adoption of all or part of proposal or negotiated settlement, in consultation with advisory team • No duty to meet or discuss • Public response recommended
<i>14a-8 Stockholder Proposals</i> (made under U.S. proxy rules which require Company to include in proxy statement)	<ul style="list-style-type: none"> • Typically relates to governance items such as: <ul style="list-style-type: none"> • Majority voting for directors • Redemption of rights plan • Other procedural matters in bylaws • May be binding or advisory 	<ul style="list-style-type: none"> • Consider ability to exclude from proxy statement under U.S. proxy rules • Board evaluation required • Determine strategic responses, including possible negotiated settlement, in consultation with advisory team
<i>Proxy Contest</i>	<ul style="list-style-type: none"> • Solicitation of votes for action by shareholders • Typically relates to election of directors • Activist initially bears cost of proxy solicitation 	<ul style="list-style-type: none"> • Public response required under U.S. proxy rules if Company seeks to solicit votes or consents in opposition • Consider tactical responses • Consider delay or acceleration of meeting • Determine strategic responses, including fight through election, announcement of adoption of all/part of activist agenda or possible negotiated settlement, in consultation with advisory team