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

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 Includes withdrawn deals.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 Annual Unsolicited / Hostile M&A Volume

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

Source: Thompson SDC

## All Time Largest Unsolicited / Hostile Transactions

<table>
<thead>
<tr>
<th>Target</th>
<th>Acquiror</th>
<th>Date Announced</th>
<th>Size ($bn)</th>
</tr>
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<tbody>
<tr>
<td>MANNSMANN</td>
<td>voafone airtouch</td>
<td>11/14/1999</td>
<td>203</td>
</tr>
<tr>
<td>RIO TINTO</td>
<td>bhp billiton</td>
<td>11/8/2007</td>
<td>185</td>
</tr>
<tr>
<td>ABN AMRO Holding N.V.</td>
<td>RFS Holdings</td>
<td>4/25/2007</td>
<td>98</td>
</tr>
<tr>
<td>WARNER LAMBERT</td>
<td>pfizer</td>
<td>11/4/1999</td>
<td>89</td>
</tr>
<tr>
<td>The Walt Disney Company</td>
<td>comcast</td>
<td>2/11/2004</td>
<td>67</td>
</tr>
<tr>
<td>Aventis</td>
<td>sanofi—synthelabo</td>
<td>1/26/2004</td>
<td>60</td>
</tr>
<tr>
<td>Endesa</td>
<td>e-on</td>
<td>2/21/2006</td>
<td>56</td>
</tr>
<tr>
<td>TOTALFINA</td>
<td>elf aquitaline</td>
<td>7/19/1999</td>
<td>51</td>
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<tr>
<td>Anheuser Busch</td>
<td>inBev</td>
<td>6/11/2008</td>
<td>48</td>
</tr>
<tr>
<td>Yahoo!</td>
<td>Microsoft</td>
<td>2/1/2008</td>
<td>43</td>
</tr>
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</table>
How Do Hostile Bids Unfold?
A fairly common pattern...

<table>
<thead>
<tr>
<th>Friendly</th>
<th>Action</th>
<th>Implication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Casual pass at conference</td>
<td>Commonplace and does not necessarily result in more aggressive activity, but must be evaluated on a case by case basis</td>
</tr>
<tr>
<td></td>
<td>• Banker-to-banker inquiry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• CEO to CEO call</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assertive</th>
<th>Action</th>
<th>Implication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Private “bear hug” letter</td>
<td>Reflects detailed planning, retention of advisors and Board-level consideration of transaction</td>
</tr>
<tr>
<td></td>
<td>• Bidder communication directly to Board</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Smaller share accumulations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Market rumors</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Conference call innuendo</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Aggressive</th>
<th>Action</th>
<th>Implication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Public “bear hug” letter</td>
<td>Indicates bidder is committed to completing transaction</td>
</tr>
<tr>
<td></td>
<td>• Proxy contest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Tender offer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Significant share accumulations</td>
<td></td>
</tr>
</tbody>
</table>
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)

Corporate Governance Proposals Sponsored by Institutions (2003-2007)

Source: Georgeson Corporate Governance Review and IRRC

Corporate Governance Proposals (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**

<table>
<thead>
<tr>
<th>Year</th>
<th>Success Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>44%</td>
</tr>
<tr>
<td>2002</td>
<td>46%</td>
</tr>
<tr>
<td>2003</td>
<td>37%</td>
</tr>
<tr>
<td>2004</td>
<td>45%</td>
</tr>
<tr>
<td>2005</td>
<td>55%</td>
</tr>
<tr>
<td>2006</td>
<td>57%</td>
</tr>
<tr>
<td>2007</td>
<td>50%</td>
</tr>
<tr>
<td>2008</td>
<td>71%</td>
</tr>
</tbody>
</table>

**Primary Campaign Types, 2007 Proxy Fights**

- Activism Against Merger: 17.5%
- Board Control: 31%
- Board Representation: 61%
- Other: 4%

**Percent of Proxy Fights that Settle**

<table>
<thead>
<tr>
<th>Year</th>
<th>Percent of Total Proxy Fights</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>17.7%</td>
</tr>
<tr>
<td>2002</td>
<td>25.4%</td>
</tr>
<tr>
<td>2003</td>
<td>28.7%</td>
</tr>
<tr>
<td>2004</td>
<td>28.6%</td>
</tr>
<tr>
<td>2005</td>
<td>37.5%</td>
</tr>
<tr>
<td>2006</td>
<td>42.8%</td>
</tr>
<tr>
<td>2007</td>
<td>38.9%</td>
</tr>
<tr>
<td>2008</td>
<td>38.7%</td>
</tr>
</tbody>
</table>

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

- **Discretion Over Large Pools of Capital**
  - $1.9 trillion in assets under management
  - $244 billion in “event-driven” funds
  - Allows rapid accumulations of stock positions

- **Declining Returns from Financial Engineering**
  - Returns have receded to the mean
  - Broad market gains have diminished
  - Creates need for “self-fulfilling” returns

- **“Wolf Pack” Coordination**
  - Leveraging of voting power
  - Information sharing and cooperation
  - Results in rapid and dramatic changes in shareholder profile

- **Impact of “Good Governance” Campaigns on Takeover Defense**
  - Rights plans
  - Staggered boards
  - Majority Voting

\[ \frac{2}{3} \text{ Success Rate (2001-06)} \]

1 Source: The Conference Board
# Which Companies are Targeted?

<table>
<thead>
<tr>
<th>Target</th>
<th>Goal</th>
<th>Selected Examples</th>
</tr>
</thead>
</table>
| Underperforming Companies | Change in Management / Board | - Relational / SPX  
- Steel Partners / GenCorp  
- Harbinger / New York Times |
| | Sale of Company | - Barlington / Nautica  
- ESL and Barlington / Payless  
- Carl Icahn / Yahoo |
| | Return Cash to Shareholders | - Highfields / Circuit City  
- Steel Partners / GenCorp |
| | Divestitures / Break-Up | - Relational / JC Penney (Eckerd)  
- Carl Icahn / Motorola |
| Overcapitalized / Cash-Rich Situations | | - Third Point / Massey  
- Third Point / Western Gas  
- Pershing / Target |
| | | |
| Diversified Companies | | |
| | | |
- Novartis / Chiron  
- Many funds / VNU  
- Many funds / Micron Technology / Lexar Media  
- Many funds / Armor Holdings / Stewart & Stevenson  
- Pershing Square and Advisory Research / Longs Drug Store |
Common Activist Tactics

- **Public Announcement of Significant Stake**
  - Announce a stake in a company and activist’s intentions

- **Send a Letter to Management/Board**
  - Send a public letter to management or board demanding financial/strategic action; often critical of current management

- **Attack Corporate Governance**
  - Pinpoint vulnerability in the corporate governance structure and submit shareholder proposals or publicly use weakness to achieve goal

- **Coordinate With Other Funds**
  - Informally or formally “partner” with other investors

- **Encourage Buyer Interest**
  - Directly solicit interest from potential buyers; publicly leak level of potential buyer interest

- **Pursue Litigation**
  - Use legal system to help pressure the company and distract management and the board

- **Attempt to Obtain Significant Influence**
  - Seek board seats with goal of disrupting leadership or embedding directors supportive of activist’s agenda

- **Proxy Fight**
  - Launch full or “short-slate” proxy fight to replace board
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

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of S&amp;P 500 Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>286</td>
</tr>
<tr>
<td>2004</td>
<td>266</td>
</tr>
<tr>
<td>2005</td>
<td>227</td>
</tr>
<tr>
<td>2006</td>
<td>171</td>
</tr>
<tr>
<td>2007</td>
<td>144</td>
</tr>
<tr>
<td>2008 YTD</td>
<td>121</td>
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</table>

58% Decline

Classified Boards

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of S&amp;P 500 Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>286</td>
</tr>
<tr>
<td>2004</td>
<td>269</td>
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<tr>
<td>2005</td>
<td>237</td>
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<tr>
<td>2006</td>
<td>207</td>
</tr>
<tr>
<td>2007</td>
<td>181</td>
</tr>
<tr>
<td>2008 YTD</td>
<td>162</td>
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</table>

43% Decline

Shareholder Proposals to Adopt Majority Voting of Directors

<table>
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<tr>
<th>Year</th>
<th>No. of S&amp;P 500 Companies</th>
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</thead>
<tbody>
<tr>
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<td>0</td>
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<td>2004</td>
<td>12</td>
</tr>
<tr>
<td>2005</td>
<td>64</td>
</tr>
<tr>
<td>2006</td>
<td>96</td>
</tr>
<tr>
<td>2007</td>
<td>77</td>
</tr>
<tr>
<td>2008 YTD</td>
<td>49</td>
</tr>
</tbody>
</table>

Source: SharkRepellent.net as of Sept 2008
## Shareholder Rights Plans
### Considerations for Renewal vs. Expiration

<table>
<thead>
<tr>
<th>Renew Rights Plan</th>
<th>Allow Rights Plan to Expire</th>
<th>Allow Expiration and Put New Rights Plan “On the Shelf”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>+</strong> Potential deterrent effect on most egregious “wolf pack” activities particularly following CSX decision</td>
<td><strong>+</strong> Avoids stockholder proposal or demand to terminate rights plan</td>
<td><strong>+</strong> Allows more thoughtful Board review of new rights plan</td>
</tr>
<tr>
<td><strong>+</strong> Use on interim basis may be accepted by market and RiskMetrics</td>
<td><strong>+</strong> Avoids RiskMetrics “withhold” vote issues</td>
<td><strong>+</strong> Board evaluation conducted absent pending threat</td>
</tr>
<tr>
<td><strong>−</strong> Will draw “withhold” vote recommendation from RiskMetrics at next annual meeting</td>
<td><strong>−</strong> Loss of immediate deterrent effect against “wolf packs”</td>
<td><strong>+</strong> Allows quick implementation in response to rapid share accumulations</td>
</tr>
<tr>
<td><strong>−</strong> Potential rallying point for activist investors</td>
<td><strong>−</strong> Delay attendant to later adoption can be strategically costly</td>
<td><strong>+</strong> No public notice / RiskMetrics</td>
</tr>
<tr>
<td><strong>−</strong></td>
<td><strong>−</strong> Subsequent adoption may be in “fog” of takeover battle</td>
<td><strong>−</strong> Any deterrent effect on most egregious “wolf pack” activities is delayed</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Takeover Approach</th>
<th>Description</th>
<th>Initial Response</th>
</tr>
</thead>
</table>
| **Casual Pass / Friendly Lunch** | • Informal request for meetings or discussions  
  • Price not typically proposed  
  • May come from acquaintances, colleagues on other Boards, at industry conferences or otherwise | • 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                                                                                                                                 |
| **Private “Bear Hug” Letter**    | • Private letter to management or Board requests meetings or discussions  
  • Initial price typically proposed  
  • Relatively friendly approach, but carries implicit threat to go public | • 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                                                                                                                                 |
| **Public “Bear Hug” Letter**     | • Public letter to Board requests meetings or discussions  
  • Initial price proposed  
  • Increasingly hostile approach | • 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)

<table>
<thead>
<tr>
<th>Takeover Approach</th>
<th>Description</th>
<th>Initial Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tender Offer or Exchange Offer</strong></td>
<td>• Formal offer directly to stockholders</td>
<td>• Issue “stop, look and listen” statement</td>
</tr>
<tr>
<td></td>
<td>• Regulated by U.S. securities laws</td>
<td>• Board evaluation required</td>
</tr>
<tr>
<td></td>
<td>• Hostile approach</td>
<td>• Determine strategic responses, in consultation with M&amp;A advisory team</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Public response required under U.S. securities laws within 10 business days</td>
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<tr>
<td></td>
<td></td>
<td>• No duty to negotiate</td>
</tr>
<tr>
<td><strong>Proxy Contest</strong></td>
<td>• Solicitation of votes for action by shareholders</td>
<td>• Issue “stop, look and listen” statement</td>
</tr>
<tr>
<td></td>
<td>• Seeks replacement of Board to remove rights plan</td>
<td>• Board evaluation required</td>
</tr>
<tr>
<td></td>
<td>• Typically coupled with tender offer or exchange offer</td>
<td>• Consider tactical responses</td>
</tr>
<tr>
<td></td>
<td>• Hostile approach</td>
<td>• Consider acceleration or delay of meeting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Determine strategic responses, in consultation with M&amp;A advisory team</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Public response required under U.S. proxy rules if Company seeks to solicit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>votes or consents in opposition</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No duty to negotiate</td>
</tr>
</tbody>
</table>
## Activist Approaches and Responses

### Activist Approach

<table>
<thead>
<tr>
<th>Description</th>
<th>Initial Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial Stock Accumulation and Request for Meetings</strong></td>
<td>- Accumulates initial stock ownership position (likely more than 5% but less than 15%)&lt;br&gt;- Requests meetings with management to discuss ideas to “enhance value”&lt;br&gt;- May make Schedule 13D filing disclosing plans and proposals to “enhance value”&lt;br&gt;- Not typically interested in acquisition</td>
</tr>
<tr>
<td><strong>“Wolf Pack” Tactics</strong></td>
<td>- Other activist funds accumulate stock ownership positions&lt;br&gt;- Likely act in parallel with initial activist, if not formally acting as a “group”</td>
</tr>
<tr>
<td><strong>Private Letters</strong></td>
<td>- Demands action with respect to:&lt;br&gt;  - Board seats&lt;br&gt;  - Management change&lt;br&gt;  - Evaluation of strategic alternatives&lt;br&gt;  - Financial restructurings (special dividend, leveraged recap, sale of non-core assets)&lt;br&gt;  - Frequently threatens public disclosure, stockholder proposals and/or proxy contests</td>
</tr>
</tbody>
</table>
## Activist Approaches and Responses (cont’d)

<table>
<thead>
<tr>
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</tr>
</thead>
</table>
| **Public Letters** | • Letter publicly disclosed  
• Reiterates demands made in private letters  
• Threatens shareholder proposals and/or proxy contests | • 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 |
| **14a-8 Stockholder Proposals**  
(made under U.S. proxy rules which require Company to include in proxy statement) | • Typically relates to governance items such as:  
• Majority voting for directors  
• Redemption of rights plan  
• Other procedural matters in bylaws  
• May be binding or advisory | • 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 |
| **Proxy Contest** | • Solicitation of votes for action by shareholders  
• Typically relates to election of directors  
• Activist initially bears cost of proxy solicitation | • 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 |