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SELECTED LEGAL ISSUES RELATING TO THE SELECTION AND IMPLEMENTATION OF DIFFERING FORMS OF CONSIDERATION IN M&A TRANSACTIONS

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Historically, the fundamental decision to use stock or cash as the form of consideration (e.g., all stock, all cash or a combination thereof) in any M&A transaction has been a business decision to be made by the prospective purchaser and target companies, with the consultation of their respective investment bankers and tax and legal advisors, and typically has been related to many factors, including the need for certainty of ownership split or deal value or level of dilution, the availability of financing and its cost, the tax basis of any controlling holders of target stock and the desirability and anticipated performance of the purchaser's stock. Typically, these factors are also inextricably linked to general economic conditions and the broader deal-making environment, as was again the case in 2012. While the year in M&A started off slowly, the early pundit talk was that deal activity would accelerate over the course of the year. As in previous years since the financial crisis, low borrowing costs and significant amounts of cash on corporate balance sheets positioned many companies to make strategic moves. In actuality, however, deal volume remained relatively low throughout 2012, with a resurgence in mid-market activity during the final three months of the year driven primarily by tax considerations. Continuing Eurozone instability likely contributed to this lag, but domestic political uncertainties also played an especially significant role. The U.S. presidential election in many respects was fought over fundamental policy issues that directly affect deal-making, including financial regulation, tax policy, and industry-specific considerations related to the healthcare and energy sectors. Concerns relating to the "fiscal cliff" debate in Congress and the impending 2013 tax hike actually helped fuel some deal flow in the final months of the year, as businesses hustled to get deals done before these changes would go into effect, but from a broader perspective contributed to a near-paralysis for the kind of "bet-the company" strategic transactions that benefit from stability and clarity on the long-term policy and regulatory fronts. While statistics vary based on individual services, at least one service has indicated that U.S. aggregate M&A deal volume (excluding terminated transactions) dropped 26% year on year from 2011 to 2012.[1] While legislative drama surrounding tax and fiscal policy is on-going, there is reason to believe that some of the M&A skittishness may dissipate in the coming months, with greater policy visibility post-election. As many view 2012 as a recent nadir in M&A activity, there is some optimism that the M&A market will strengthen in 2013, with strategic acquisitions and deals in the energy sector projected to play major roles in driving this growth.

1 Based on Thomson Reuters information as of January 7, 2013. Includes announced transactions with aggregate values of $100 million or more, based on estimated values and excluding terminated transactions.

In a relatively stable market, the use of stock as deal consideration provides a prospective purchaser with transaction currency and allows target stockholders the opportunity to participate in potential upside. Periods of acute market volatility, such as late 2008, early 2009 and specific episodes in the summer and fall of 2011, add further complexity to the bargaining process, but relatively reduced market volatility overall over the last four years has helped stock become a more attractive form of consideration for buyers and sellers alike, both to address possible absolute and relative valuation issues and to minimize deal risks that arise in transactions where all or part of the cash component relies on debt financing. Despite what appears to be a return to market equilibrium compared to the turmoil of 2008 and 2009, shocks like the European sovereign debt crisis remind us that systemic risk is the known unknown that must be addressed in structuring every deal. Although these fundamental market issues and the business decisions of any particular transaction are beyond the scope of this article, transactions using stock as consideration raise value and market risk issues that demand careful attention in any environment and must be addressed in the course of negotiation and drafting. This article provides a broad overview of the structural considerations that apply to the use of stock as transaction currency (especially in the mixed cash and stock context) and discusses some of the more prominent tools in the M&A toolkit to mitigate its attendant risks.

Annexes A through I contain charts outlining the key attributes of selected transactions including stock or mixed consideration announced from 2004 through the beginning of 2013.

MIXED CONSIDERATION ISSUES

Parties to a transaction may structure a deal so that target stockholders are paid mixed consideration, comprised of a combination of stock and/or cash. With this form of consideration, a threshold determination will be how to allocate the stock and cash.

> Parties may choose a unit structure in which a share of the target's stock entitles the holder to a proportionate share of the aggregate stock consideration and the aggregate cash consideration. This construct has the advantage of simplicity and equal treatment of all holders and eliminates any issues of over-subscription in one form of consideration, but has the disadvantage of treating in a uniform manner stockholders with different investment objectives and tax considerations. This structure was used in the majority of the 2007 and 2008 transactions, and a substantial portion of the transactions in each of the years 2009 through 2012, listed in Annexes D through I, including the largest consummated transactions of 2007, 2009 and 2011, the acquisition of ABN AMRO by Royal Bank of Scotland, Fortis and Banco Santander, the acquisition of Wyeth by Pfizer and the acquisition of Medco Health Solutions by Express Scripts, respectively. Furthermore, as indicated in Annex A, J&J's thwarted effort to acquire Guidant is an example of a transaction that employed this structure with an added wrinkle, where each share of Guidant stock would have been converted into a unit consisting of the cash consideration and a number of shares of J&J determined pursuant to a "fixed value" formula with top and bottom collars. Boston Scientific's successful deal jump of that transaction and J&J's transaction terms in

its acquisition of Synthes for an estimated $22.7 billion, as set forth in Annex H, used essentially the same collared "fixed value" unit structure.

The other primary option is an election structure where stockholders of the target may choose between the two forms of consideration, but with limits typically placed on the aggregate amount of one or both types of consideration to be provided with pro rata treatment if one or the other form of consideration is oversubscribed. Recent prominent examples of this structure are IntercontinentalExchange, Inc.'s pending 2012 acquisition of NYSE Euronext, set forth in Annex I, in which the stock and cash elections of NYSE Euronext stockholders are subject to proration such that the overall mix of consideration would be comprised of 33% cash and 67% stock; Kinder Morgan's 2011 acquisition of El Paso, set forth in Annex H, where the cash and stock elections of El Paso stockholders were subject to proration to achieve a 57/43 cash-stock split (excluding warrants); Ecolab Inc.'s 2011 acquisition of Nalco Holding Company, set forth in Annex H, in which the stock and cash elections of Nalco stockholders were subject to proration and reallocation in order to achieve a 30/70 cash-stock split; Tyco International's 2010 acquisition of Brink's Home Security Holdings, set forth in Annex G, in which stock elections were uncapped but cash elections were subject to proration and limited to approximately 30% of total merger consideration; Berkshire Hathaway's 2009 acquisition of Burlington Northern Santa Fe, set forth in Annex F, in which the cash and stock elections of Burlington Northern Santa Fe stockholders were subject to proration and reallocation in order to achieve a 60/40 cash-stock split; Microsoft's unsuccessful proposal to acquire Yahoo! in 2008, set forth in Annex E, where stockholders would have been offered the opportunity to choose between a fixed ratio of stock and an amount in cash (representing 50% of the total consideration), subject to strict proration limits on both; News Corp.'s 2007 acquisition of Dow Jones, set forth in Annex D, which involved only one-way proration, being essentially an all-cash deal (with cash being available to all of the Dow Jones stockholders), but permitting up to 250 Dow Jones stockholders (with election priority going to the largest electing holders), accounting for up to 10% of the company's stock, to swap their shares on a tax-free basis for non-trading class B units of a newly formed News Corp. subsidiary, which shares are then ultimately convertible into News Corp. common stock; and Barrick Gold's acquisition of Placer Dome announced in late 2005 (which resulted from a negotiated resolution to Barrick's original unsolicited exchange offer with a similar structure), set forth in Annex B, where stockholders were offered the opportunity to choose between a fixed ratio of stock and an amount in cash (representing 13% of the total consideration), subject to strict proration limits on both.

There are different techniques to address an oversubscription if more holders choose one type of consideration than there is available under the terms of the deal. The simplest solution is to provide for a straight proration of the oversubscribed form, resulting in the holders who selected the oversubscribed pool being cut back proportionately to the aggregate limit and put into the undersubscribed pool for the excess portion. The vast majority of the transactions listed in the annexes hereto employing an election structure used this method. Another solution is to correct the oversubscription using random selection or another equitable basis to reach the desired percentages, but these alternatives are more unusual.

An interesting twist is the use of the election mechanism in situations where the election process is combined with a "fixed ratio" structure on the stock component of the transaction, as opposed to a "fixed value"/floating ratio structure. In addition to the 2006 Mittal Steel/Arcelor SA transaction set forth in Annex C, a significant number of the 2005 transactions set forth in Annex B and the 2004 Harrahs/Caesars and Kmart/Sears transactions set forth in Annex A, all of the 2007, 2008, 2009, 2010, 2011 and 2012 election transactions set forth in Annexes D, E, F, G, H and I respectively, used this form (with the exceptions of News Corp./Dow Jones, Berkshire Hathaway/Burlington Northern, Tyco International/Brink's and Priceline/KAYAK). In addition, the 2012 Freeport-McMoRan/Plains Exploration deal described in Annex I notably employs a type of hybrid election structure that permits shareholders to choose between a "fixed ratio" plus stock base unit, or a prorated cash or stock election having an equalized value determined to be equal to the base unit (the value of which in part is fixed and part itself floats). The combination of the election process with a "fixed ratio" structure is potentially less "effective," and historically less typical, as a pure choice of form (although as noted above, many transactions have been structured this way recently). As discussed below, in a "fixed ratio" deal (as opposed to a "fixed value"/floating ratio deal), the value of the stock consideration rises and falls daily with the value of the purchaser's stock. As such, the value of the cash and stock prices are likely to diverge by the closing, making the election not one of form, but likely one of value. Thus, most holders (ignoring their tax and liquidity circumstances) will make the election that will yield the higher value. After giving effect to proration, the end result of the election will probably look much like the "unit" that would have been set at the beginning at any event! (Interestingly, in the 2010 Tyco/Brink's deal, the parties provided the additional choice of an upfront election for the equivalent of the blended cash/stock "unit.") Furthermore, while most sophisticated investors will elect to take the same higher value choice, holders who miss the election deadline or who are away on vacation or who are very unsophisticated (the so-called "widows and orphans") may end up in the lower value choice, thereby making this a less "friendly" technique to such holders than a unit structure.

Although typically an election mechanism allows a target's shareholders to choose between cash or stock consideration, in rare instances the shoe is on the other foot and an acquiror is given the ability to modify the consideration mix post-signing.[2] The PNC

[2] These types of acquiror driven economic elections are in addition to the circumstances where the acquiror may have an election or a mandatory cash-stock substitution provision in order to keep the percentage of the stock issued in the transaction below the threshold that would trigger either an

Financial Services Group/RBC Bank (USA) transaction announced on June 20, 2011, as set forth in Annex H, provided PNC, the buyer, with the option to pay up to $1 billion of the purchase price using its common stock (based on the volume-weighted average trading price of PNC common stock for each of the last 10 trading days immediately preceding the closing date), with the remainder of the purchase price to be paid in cash. While PNC's CEO has explained that banking regulations surrounding capital requirements influenced this unusual transaction structure, the option to determine the cash-stock mix prior to closing provided PNC the ability to select the ideal consideration mix among a spectrum of options based on its share price prior to closing and the impact of utilizing some amount of shares as consideration on its pro forma earnings per share and overall capital structure. Similarly, in the terminated 2011 AT&T/T-Mobile transaction, as set forth in Annex H, AT&T had the right to increase the cash portion of the purchase price by up to $4.2 billion with a corresponding reduction in the stock component of the purchase price based on the volume-weighted average price of AT&T common stock during the 30 trading days ending on the third business day prior to the closing. The 2005 NRG Energy/Texas Genco agreement, as set forth in Annex B, also utilized a buyer election mechanism where NRG, the buyer, had the option to pay a portion of the purchase price with additional shares of common stock, additional cash, shares of new series of preferred stock or combination of the foregoing within the context of an overall unit structure.

Amendments to the SEC's cross-border tender offer rules in 2008 facilitated the ability of U.S. investors to elect different forms of consideration in cross-border tender offers that included an election option. Many cross-border tender offers feature a default unit structure but allow stockholders the option to elect a different proportion of cash and securities, to the extent that other tendering security holders make opposite elections (often referred to as a "mix and match facility"). The bidder typically sets a maximum amount of cash or securities that it will issue in the offer; to the extent that more tendering target stockholders elect cash or bidder stock, their elections are prorated to the extent they cannot be satisfied through "offsetting elections" made by other target stockholders. As described in the SEC's May 2008 release discussing certain proposed cross-border tender offer rule changes ultimately adopted in September 2008, mix and match offers have traditionally conflicted with U.S. requirements applicable to the subsequent offering period. First, those rules provide that a bidder may offer a choice of different forms of consideration in the subsequent offering period, but only if there is no ceiling on any form of consideration offered. In addition, the rules require a bidder to offer the same form and amount of consideration to tendering stockholders in both the initial and subsequent offering periods. Both requirements present difficulties in the context of mix and match offers. In these kinds of offers, bidders want to impose a maximum limit on either (or both) the amount of stock or the amount of cash they will be obligated to deliver if the offer is successful. In addition, the offset feature characteristic of mix and match offers is inconsistent with the prohibition on offering

acquiror shareholder vote or have a regulatory adverse effect. See the examples described in FN 9 below.

different forms and amounts of consideration in the initial and subsequent offering periods. Because of the prompt payment and other requirements of U.S. rules and the requirements of foreign law or practice in cross-border offers, bidders in mix and match offers historically requested relief from the SEC to use two different proration and offset pools in their offers: one for stock tendered during the initial offering period and another for stock tendered in the subsequent offering period with the result that the mix of consideration provided to tendering stockholders would likely be different in the initial and subsequent offering periods – for example, in its unsuccessful 2007 bid for ABN AMRO. Barclays plc received an SEC exemption to offer U.S.-based ABN AMRO stockholders the opportunity to participate in its mix and match facility. The 2008 amendments permitted bidders to use separate offset "pools" for securities tendered during the initial and subsequent offering periods in the context of mix and match cross-border tender offers and also eliminated the prohibition on a ceiling for the form of consideration in a mix and match offer. Kraft's 2010 acquisition of Cadbury took advantage of these rule changes and included a mix and match component.

One less used but available approach is the so-called "equalizer" method that tracks the blended value of the cash/stock package, pays all stockholders that same blended value, but permits elections of cash or stock in amounts that follow agreed upon limits on the aggregate amount of cash and/or number of shares to be issued. The SunTrust Bank/National Commerce Financial transaction set forth in Annex A, the Capital One Financial/North Fork Bancorp and CBOT Holdings/Chicago Mercantile Exchange transactions set forth in Annex C, the CME Group/NYMEX transaction set forth in Annex E and the Aon/Hewitt Associates transaction set forth in Annex G are examples of this approach, insofar as the total per share value is a blend of a fixed cash amount and the trading value of a fraction of the purchaser's stock, and the aggregate amount of cash and/or number of shares to be issued is specified in the agreement. Holders could then elect to get that per share value in cash or stock subject to a cap on the aggregate cash and/or number of shares to be issued in the deal and proration mechanisms. The NYSE Group/Euronext SA transaction set forth in Annex C and the Freeport-McMoRan/Plains Exploration transaction set forth in Annex I employed a similar approach by choosing a default unit structure but allowing stockholders to mix and match their individual allocations of cash and stock based on a blended value of the cash/stock package. In these cases, the proration mechanisms of the original unit structure effectively capped the overall amounts of cash and stock available in the mix and match election.

Other issues arising in drafting election mechanisms include the timing of the election (pre-meeting, pre-closing, etc.), deciding how to treat stockholders that do not submit an election and dealing with options and convertible securities.

RELEVANCE OF CONSIDERATION FORM ON REQUIREMENTS FOR TAX-FREE TREATMENT

For an acquisition to qualify as a tax-free "reorganization," it must satisfy both statutory requirements as well as meet certain judicial requirements, including the "continuity of interest" (COI) requirement.[3] COI requires that the target stockholders retain a continuing stock interest in the target corporation.

In order to determine whether the amount of consideration is adequate to satisfy COI, the stock consideration received by the target's stockholders as a group relative to the total consideration furnished by the acquiror must meet a certain threshold percentage. Legal tax practitioners are generally comfortable with COI amounts in the 40-45% range.[4]

COI is analyzed by looking at stockholders as a group, i.e. it would be acceptable for some stockholders to receive only cash and for others to receive only stock, so long as the overall percentage of stock consideration meets the required threshold percentage.[5] Also, COI is determined by analyzing what the target stockholders received relative to the value of what is being transferred, not to the percentage of consideration received relative to all of the acquiring corporation's stock.

In general, the percentage of stock consideration is determined at the time of closing, thereby presenting the risk that where the number of shares of stock to be provided as merger consideration is fixed, a decrease in the value of the stock could affect COI.[6] When the COI is

3 There are a myriad of other rules and considerations that must be taken into account when structuring a transaction as a tax-free reorganization, including the structure of the acquisition (i.e., asset versus stock and whether by way of merger or not), which can impose additional requirements on the amount of stock and cash consideration.

4 Treasury regulations recently finalized by the Internal Revenue Service contain an example that concludes COI was satisfied where stock represented 40% of the value of the consideration.

5 Please note that a stockholder who receives cash and stock in a given transaction will recognize gain (but not loss) up to the amount of the cash received, and a stockholder who receives only cash in a given transaction will recognize gain or loss.

6 In cases where consideration will be furnished post-closing, e.g., pursuant to escrow arrangements or earn-outs, COI will not be known at the time of closing, so care should be taken to make sure the type of consideration that can be received will not adversely impact the tax-free nature of the transaction. Regulations finalized in late 2011 that are applicable only to contracts with fixed consideration provide a safe harbor for consideration placed in escrow to secure target's performance of customary covenants. These rules also allow for contingent consideration so long as the non-contingent consideration meets COI and the contingency does not prevent (to any extent) the target's shareholders from being subject to the economic benefits and burdens of ownership of the acquiring corporation's stock after the last business day before the first date the contract is a binding contract (as discussed below).

close to the line and there is a risk that the requirement may not be satisfied, there is often a provision in the underlying agreement to change consideration or change the structure if it could be undertaken to preserve tax-free reorganization status.

Under Treas. Reg. §1.368-1(e)(2), in determining whether COI is met, consideration is valued on the last business day before the date of a binding agreement if the amount of consideration in the contract is fixed.[7] The consideration is considered fixed if the number of shares and the amount of money to be exchanged for the stock in the target is fixed, as in a "fixed ratio" structure. The consideration is not considered fixed if only the percentage of target's stock to be exchanged for the acquiring corporation's stock is fixed. Additionally, the consideration is not considered fixed when the target's shareholders are permitted to elect between stock and cash, unless the determination of the number of shares to be provided to a target shareholder is determined using the value of the acquiring corporation's stock on the last business day before the date there is a binding contract.

These rules offer the parties the potential for certainty with respect to COI at the time of signing and generally eliminate the need to provide for alternative transaction structures in case of interim changes in consideration value.[8] The COI rules applicable to Morris Trust transactions and tax-free spin offs generally are different than the COI rules described above and as a result these rules will not help alleviate similar issues that arise in Morris Trust transactions or tax-free spin offs related to merger transactions.

RISK ALLOCATION IN ALL-STOCK OR MIXED CONSIDERATION TRANSACTIONS

In all-stock or mixed consideration transactions, there are inherent risks on both sides that the agreed upon value may vary, sometimes substantially, between the signing and closing of the transaction as a result of changes in the price of the purchaser's stock. Such risks must be dealt with (or at least considered) in the pricing mechanism chosen for the transaction. The

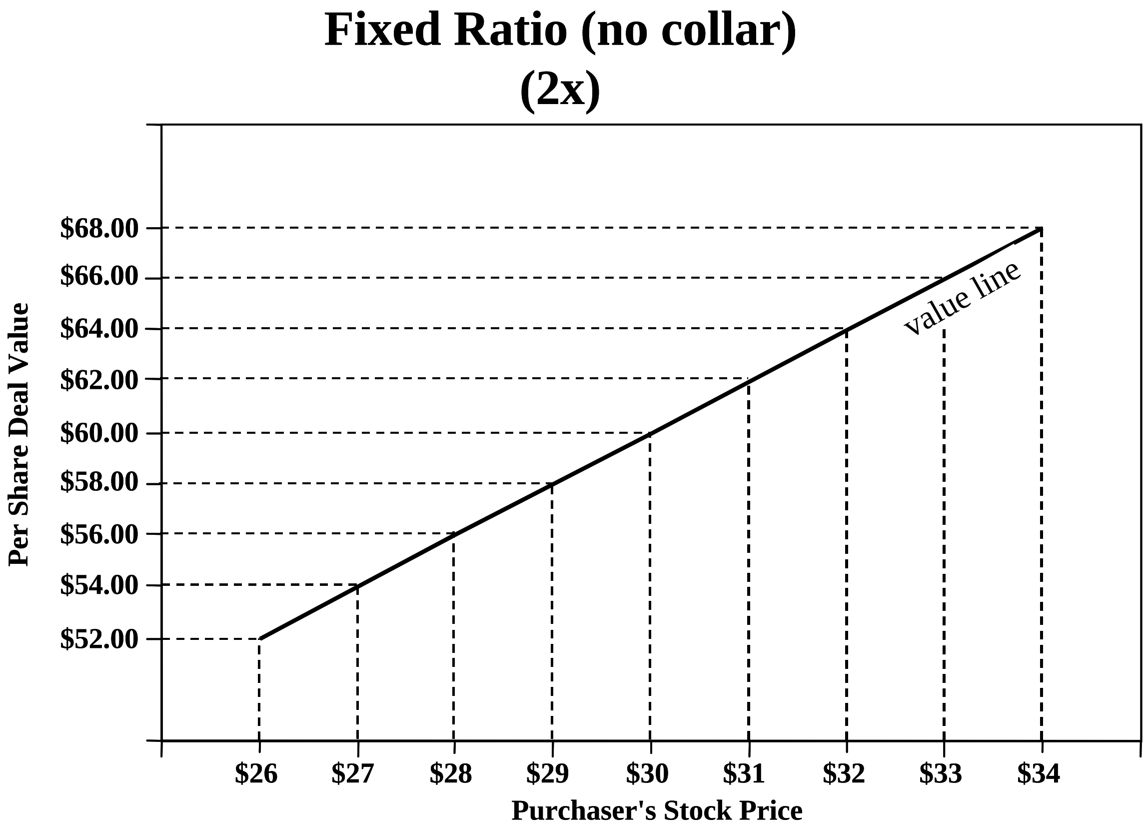
[7] For an agreement to be considered "binding," it must be enforceable under applicable law. The presence of a condition outside of the parties' control, such as regulatory agency approval, will not prevent a contract from being considered binding. In addition, if insubstantial terms remain to be negotiated or customary conditions remain to be satisfied, the contract is nonetheless considered binding. However, if a term relating to the amount or type of consideration to be received is modified prior to the closing date, and the modified contract is a binding contract, the date of the modification shall be treated as the first date there is a binding contract. A modification will not result in a new valuation date, however, if the sole effect of the modification is to provide for additional shares of the acquiring corporation, to decrease the amount of money or other property to be delivered to the target's shareholders or a combination of the foregoing.

[8] As noted above, COI is only one requirement that must be satisfied in structuring a tax-free reorganization. Depending on the acquisition structure, the parties may still need to address potential interim changes in value (*e.g.*, in a reverse subsidiary merger, the acquiring corporation must issue at least 80% of the value of the consideration as stock). For this purpose, the value determination is made at closing, not signing.

purchaser and the target must select between a "fixed ratio" deal (the number of purchaser's shares to be exchanged for target's shares does not change) and a "fixed value" deal (the number of purchaser's shares to be exchanged for target's shares fluctuates inversely with price movement in purchaser's shares in order to maintain a fixed value). Empirically, the attached charts show that, at least among the largest transactions, the vast majority of deals announced over the last nine years have utilized a fixed ratio as opposed to a fixed value structure. In part, the predominance of fixed ratio deals can be attributed to the emphasis on ownership split that is typical in larger transactions, but the paucity of fixed value deals may also reflect the fact that in the stable, consistently rising bull market prior to the meltdown of 2008 target companies may have been happy to trade market risk for a more aggressive valuation. However, in the context of structuring a transaction that uses stock as consideration, a volatile market can be anathema to deal-making because in addition to the fundamental question of value, it accentuates the inherent tension between a seller's desire for certainty of value and a purchaser's desire to eliminate the risk of an unknown dilutive effect of a possible unexpected decline in its share price by fixing its potential stock issuance at signing. In practice, in an uncertain market the deals in which stock consideration would be particularly exposed to market swings are far less likely to emerge from the boardroom in the first place. Instead, as the transactions announced in the latter half of 2008 and 2009 listed in Annexes E and F, respectively, demonstrate, the transactions that can get done in a challenging environment are overwhelmingly between companies in similar, relatively stable industries (pharmaceuticals, energy, transportation, consumer goods, etc.), where the relative price movements of the two companies' stocks are likely to be tied to the same market forces. The following discussion highlights certain strategies to bridge this gap and help ensure that the bargain the parties made at signing is the same one they receive at closing.

Fixed Ratio Transactions

A fixed ratio transaction is one in which the purchaser and the seller agree at the time of signing on a specified ratio at which the parties' respective stock will exchange. The fixed ratio mechanism is frequently used in merger of equals transactions and large transactions generally where the business deal and valuation is more focused on fixing the ownership split of the resulting company between the two constituencies based on fundamentals, rather than on the possible deviations in trading value that market movements in the purchaser's stock will engender. It allows the purchaser to determine precisely how much stock it will issue in the transaction at the outset.



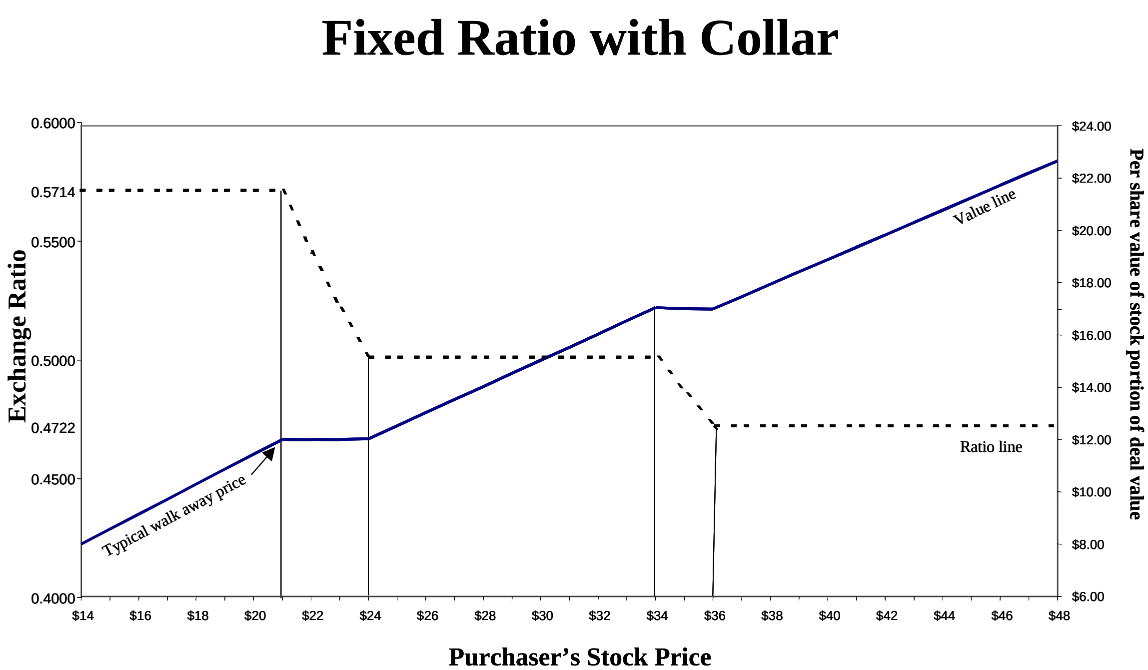
Although a fixed ratio without the protections described below may appear to present unacceptable risk to both the target and purchaser during a period of increased volatility or general economic uncertainty if the purchaser's stock price should rise or fall significantly from its value at signing, the parties to a merger of equals transaction or a transaction where the parties are otherwise in the same industry may find that their share prices have historically moved in unison. If that is the case, market-wide or industry-specific price movements should not impact the fundamental split in ownership reflected in the exchange ratio and its relative fairness to either party's stockholders. For example, at the height of the market dislocation in October 2008, Embarq Corporation agreed to a fixed exchange ratio with no protections in its merger with CenturyTel, Inc. The two companies primarily provided local telephone services but in different geographical areas, and over the two years prior to the transaction announcement their share prices moved in relative harmony. Such similarly situated companies, then, can have confidence that market gyrations will not disrupt the fundamental value split agreed upon at signing and that any significant deviation in share performance will likely be the result of company-specific events that can be addressed elsewhere in the merger agreement. In the distressed M&A context, such fears are largely irrelevant because targets have either had no bargaining leverage and been eager to recoup any value for stockholders (Bear Stearns) or otherwise operated from such a weakened state that the stock of potential purchasers was almost certain to weather the economic storm better than the depressed target (Wachovia and Merrill Lynch).

Each of the largest announced or proposed transactions from 2004 through 2012 on Annexes A through I, given the termination of the AT&T/T-Mobile transaction, were all-stock examples of this form or included a fixed ratio stock component (e.g., in the January 2004 JPMorgan Chase/Bank One transaction, each share of Bank One common stock was exchanged for 1.32 shares of JPMorgan Chase common stock; in the January 2005 Procter & Gamble/Gillette transaction, each share of Gillette common stock was exchanged for 0.975 shares of Procter & Gamble common stock; in the March 2006 AT&T/BellSouth transaction, each share of BellSouth common stock was exchanged for 1.325 shares of AT&T common stock; in the November 2007 proposed but ultimately abandoned BHP Billiton/Rio Tinto transaction, each share of Rio Tinto common stock would have been exchanged for three shares of BHP Billiton common stock; in the September 2008 Bank of America/Merrill Lynch transaction, each share of Merrill Lynch common stock was exchanged for 0.8595 shares of Bank of America common stock; in the January 2009 Pfizer/Wyeth transaction, each share of Wyeth common stock was exchanged for 0.985 shares of Pfizer common stock and $33.00 cash; in the April 2010 CenturyLink/Qwest transaction, each share of Qwest common stock was exchanged for 0.1664 shares of CenturyLink common stock; in the July 2011 Express Scripts/Medco Health transaction, each share of Medco common stock was exchanged for 0.81 shares of Aristotle Holding, Inc., a direct wholly owned subsidiary of Express Scripts, and $28.80 cash; and in the Softbank/Sprint transaction announced in October 2012, each share of Sprint common stock will be exchanged for one share of common stock in a new publicly traded Sprint parent entity ("New Sprint") or $7.30 in cash).

Although a fixed ratio is simpler, the value of the transaction will fluctuate based upon changes in the value of the purchaser's stock (i.e., as the value of the purchaser's stock increases, the target's stockholders receive greater value for their shares and vice versa). To protect the seller's stockholders from a decline in the purchaser's stock price (and the purchaser's stockholders from having to issue shares in aggregate exceeding the target's value in the case where the purchaser's stock price increases following announcement), the parties can agree to include collar features in the pricing mechanism. In such cases, the seller's stockholders would receive a fixed number of shares of the purchaser's stock unless the price of the purchaser's stock falls or rises beyond the specified collar range during the valuation period. If the purchaser's stock price moves outside of the specified collar range during the valuation period, there would be, within limits, an adjustment in the number of shares of the purchaser's stock to be delivered to the seller's stockholders. It should be noted that if the transaction is a mixture of cash and stock, the cash portion of the consideration already serves to mitigate the value impact arising from movements in the purchaser's stock price.

The precise contours of these deals are only limited by the imagination of the participants, and they can get quite complicated. Southwest's 2011 acquisition of AirTran demonstrates how elements of both fixed and floating value structures can be combined and that the structuring choices available in these transactions represent a full spectrum of options rather than twin poles of fixed or floating value. The Southwest/AirTran transaction set forth in Annex G provided for a fixed ratio on the stock component of the consideration (which represented between 48.4% and 51.7% of the value of the cash/stock unit, assuming no cash "top-up" as described below) but only within a narrow collar range (1.4% above and 12.5% below the Southwest closing price on the day prior to the transaction announcement). Outside of this range, the exchange ratio floated in a manner that ensured that AirTran shareholders would always receive between $7.25 and $7.75 per share. This adjustment effectively provided AirTran shareholders with a fixed value transaction that employed a fixed ratio within a very tight band resulting in some modest fluctuation in transaction value. While AirTran shareholders were protected from any significant decline in Southwest's share price through the collar mechanism, Southwest could have suffered unlimited dilution in connection with the adjustment in the exchange ratio needed to achieve at least $7.25 in per share value to the extent its stock price were to decline significantly between signing and closing. In order to eliminate that risk, Southwest had the option of substituting cash in lieu of issuing the incremental shares that would have been needed to provide AirTran shareholders with their minimum guaranteed value. Based on the average of $11.90 of Southwest's closing prices for the 20 trading days ending three trading days prior to the closing date of May 2, 2011, each share of AirTran common stock was exchanged for $3.75 in cash and 0.321 shares of Southwest's common stock. The transaction valued AirTran common stock at approximately $7.57 per share, or approximately $1.0 billion in the aggregate, excluding shares issuable upon conversion of AirTran's outstanding convertible notes.

As indicated in Annex B, a transaction that utilized the fixed ratio with collar mechanism is the 2005 Inco/Falconbridge transaction. Another illustration of how a collar mechanism can work in such a deal is reflected in the terms of the Jones Apparel/Nine West transaction from 1999 (where the consideration was a unit of cash plus stock) which is represented by the graph below:

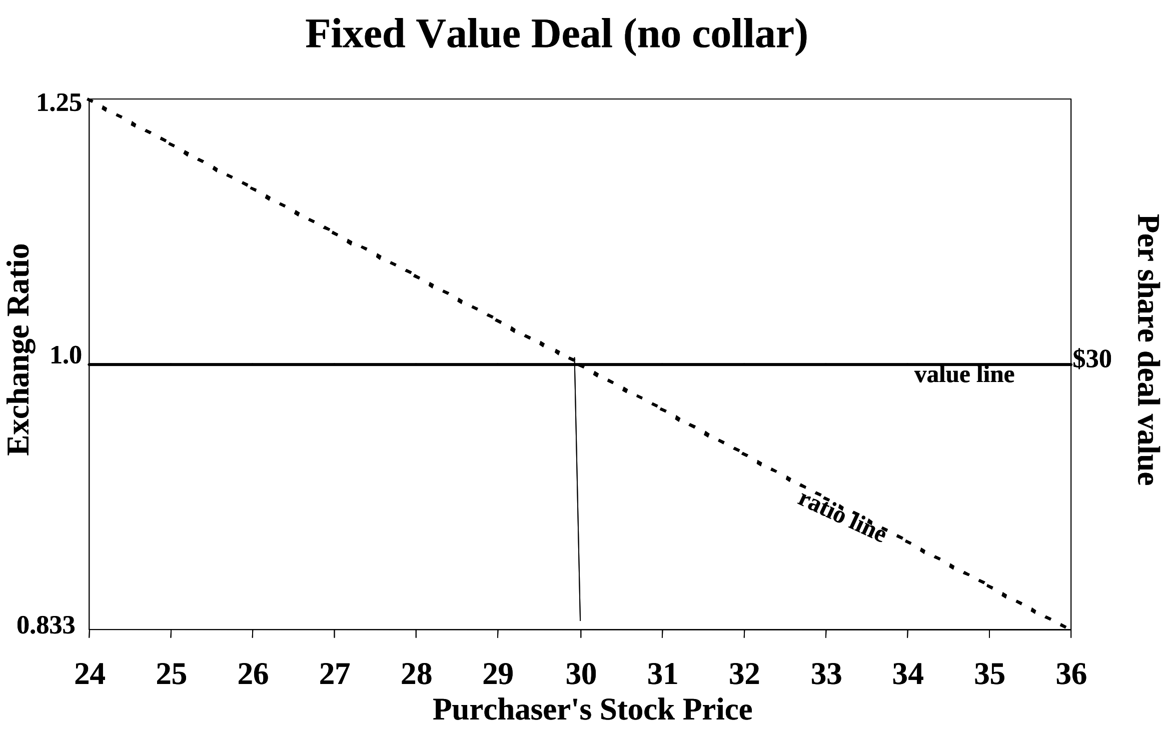


This illustration shows the relationship between the exchange ratio and the per share value of the stock portion of the deal as the purchaser's stock price rises or falls. Please note that in this transaction, the stock portion is part of a unit to which a per share cash consideration of $13 is added.

Fixed Value Transactions

The fixed value structure applies where parties to the transaction decide to deliver the seller's stockholders a fixed dollar value for each of their shares of the seller's stock, essentially using the purchaser's stock as a currency and deemphasizing the fundamental split in ownership that would have been arrived at in a "fixed ratio" deal. In this mechanism, the exchange ratio is set only at the closing, based on the average market price of the purchaser's stock for a period shortly prior to the closing date of the transaction, using a formula that would deliver an overall value agreed upon at the signing based on such average stock price (hence, it is said that the value is "fixed" and that the exchange ratio "floats"). It should be noted that even this type of structure will sometimes not achieve a perfect agreed upon value because the very act of using an average stock price to determine the ratio means that in a market that is consistently either rising or falling during the pricing period, the closing spot price would likely be higher or lower than the average price used for the formula.

In fixed value transactions without any caps and floors, the purchaser's stockholders bear all of the market risks in the transaction in the case of declines in the price of the purchaser's stock, but will also reap all of the benefits in the case of any price appreciation in the purchaser's stock between signing and closing, since the ratio will rise and fall to reflect the change in the stock price.



** This graph represents a segment of the relationship between the ratio and the purchaser's stock price at various spot prices. The same relationship will exist at other spot prices for the purchaser's stock.*

The core problem with a pure floating ratio mechanism is that the purchaser can experience massive dilution from a significant decline in its stock price, no matter the cause. As such, these deals are quite unusual unless there is some other protective mechanism to stem at some level the dilution that would result as the purchaser's stock price declines. One such mechanism is the standalone walk-away mechanism discussed below.

To provide protection against this sort of dilution, the purchaser is likely to place a collar or cap on the maximum number of its shares that may be issued in the transaction, and the seller may request a minimum number of shares that may be issued in the transaction (to be able to participate at some point in a meaningful upward tick, if any, in the seller's stock).[9] There may be other reasons for a purchaser to place a collar or a maximum on the number of shares issuable in a transaction, for example to satisfy the NYSE or Nasdaq rules that an issuer not issue 20% of its stock without a vote.[10] Examples of this "fixed value with collar" structure are the J&J/Guidant transaction (which was trumped by the Boston Scientific/Guidant transaction) set forth in Annex A, the MetLife/Travelers transaction set forth in Annex B, the Berkshire Hathaway/Burlington Northern transaction set forth in Annex F, the Tyco International/Brink's transaction set forth in Annex G and the ultimately terminated AT&T/T-Mobile transaction and the J&J/Synthes transaction set forth in Annex H. Since the maximum share cap would result in a reduction in the deal value if the purchaser's stock falls below the cap, the target may negotiate to have a so-called "walk-away right" either at that point or at a

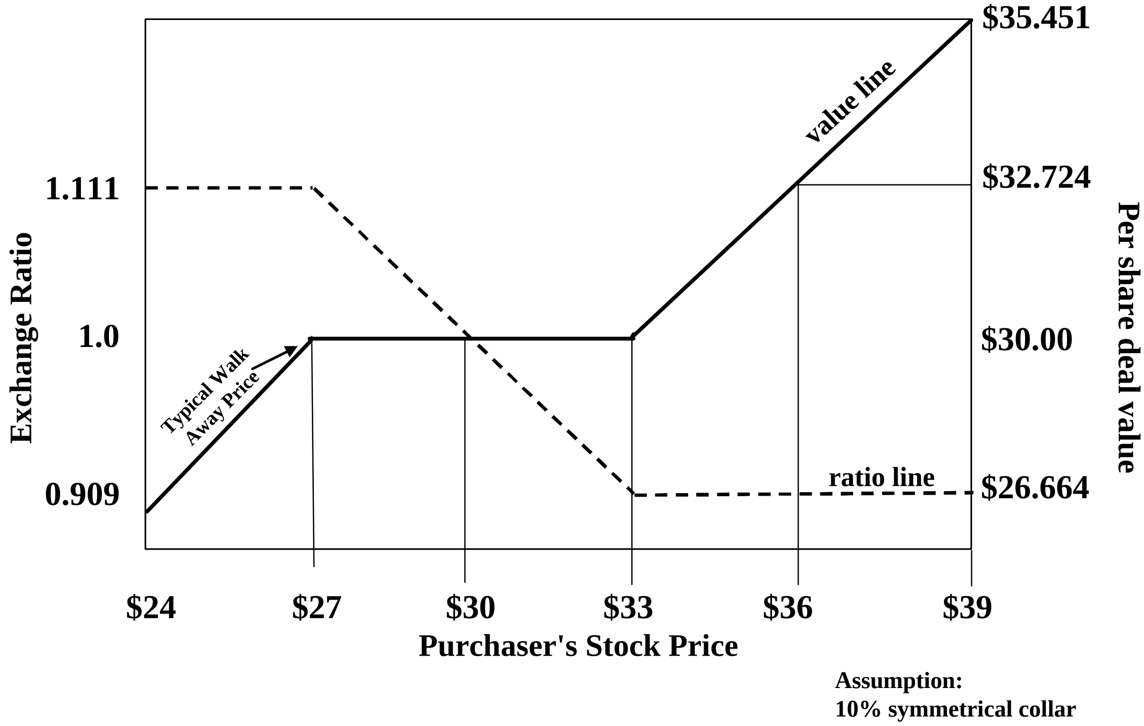
9 Whether or not employing the protective mechanisms discussed in this article (and especially in a volatile market that subjects a purchaser to additional market risk), a purchaser may seek to structure the transaction as an exchange offer in order to benefit from the timing advantage of exchange offers over mergers and reduce the time period between signing and closing.

10 For example, in Smithfield Foods' 2007 acquisition of Premium Standard Farms, each share of Premium Standard Farms stock was exchanged for (i) 0.678 shares of Smithfield stock and (ii) $1.25 in cash; however, the merger agreement provided that Smithfield could increase, by up to $1.00 per share, the amount of cash to be included in the merger consideration and decrease the fraction of a share of Smithfield stock by an amount having an equivalent value (based on a pre-closing trading formula), if Smithfield reasonably determined that those actions were necessary in order to avoid a shareholder vote under the NYSE rule for the additional shares to be issued in the transaction. In a similar protective measure incorporated into Pfizer's 2009 acquisition of Wyeth in order to avoid the NYSE's share issuance vote requirements, the Pfizer stock portion of the merger consideration would have been reduced to the minimum extent necessary so that the number of shares of Pfizer common stock issued as a result of the merger would equal no more than 19.9% of its outstanding common stock and the cash portion of the merger consideration would have been increased by an equivalent value.

In a competitive auction or "deal-jump" situation, a stock component that does trigger a purchaser shareholder vote (or SEC filing requirements) may be a significant liability. For example, in the early 2007 competition for Equity Office Properties Trust between Blackstone Real Estate Partners and Vornado Realty Trust, Vornado's mixed consideration offer, which would have required a Vornado shareholder vote, was rejected by Equity Office despite its higher overall compensation value to shareholders. Blackstone successfully argued that its lower, all-cash bid was superior because the Vornado vote effectively gave Vornado shareholders an option on the deal and provided far less certainty of closing in comparison.

pre-negotiated level below such point to allow it to terminate the deal if the value that was originally bargained for should erode as a result of the buyer's stock price falling (although, not in the J&J/Guidant failed transaction, the successful Boston Scientific/Guidant, Berkshire Hathaway/Burlington Northern, Tyco International/Brink's, the J&J/Synthes transaction and the terminated AT&T/T-Mobile transaction). The buyer will often negotiate a "top-up right" to be able to elect to cancel the "walk-away right" and keep the deal alive if it is willing to add shares or cash into the deal that will bring its value back up to the walk-away value for the target's stockholders. As with the discussion of a fixed ratio deal above, the presence of a significant cash component in the transaction can partially mitigate the value impact of a fall in the purchaser's stock, and thereby affect the walk-away negotiations.

This type of exposure to market risk is also tempered in the context of the unusual "reverse fixed value" consideration structure employed in the 2012 Hudson City/M&T Bank transaction set forth in Annex I. This fairly unique twist on both the fixed value and fixed ratio structures presents Hudson City shareholders with a choice between a fixed ratio of shares of M&T stock or a cash amount that is equal to a product of this fixed ratio and the average market price of the purchaser's stock before closing, subject to proration. Unlike a typical cash/stock election, both components here effectively "float" in value with the value of the acquiror's stock, which has pros and cons to all concerned. The seller's shareholders appear to have downside and upside risk on both the cash and stock components, and while the purchaser has the risk of the cash value going up, that only comes when the value of its stock has risen (a good thing!) and the amount of total cash exposure is capped by proration.



Fixed Value with Collar

**Please note that the chart does not show all the monetary combinations possible. The relationship will continue as the purchaser's stock price rises and falls.*

Although collars are typically symmetrical (providing protection at a standard deviation up or down), they can also be asymmetrical where the circumstance of the deal makes such a result logical. For example, in the acquisition of Frontier Corporation by Global Crossing in 1999, because Global Crossing's stock had rapidly increased in value immediately prior to entering into the merger agreement, Frontier wanted to ensure that it received adequate protection in the event of a precipitous decline in the value of Global Crossing's stock. Accordingly, Frontier's stockholders had "downside" price protection of approximately 30% on Global Crossing's signing date stock price with a floating ratio formula that adjusted the ratio upward to the full extent of an approximately 30% drop in Global Crossing's stock. In return Frontier's stockholders had to give up 10% of their "upside" since the formula "fixed" the ratio only after a 10% increase in Global Crossing's stock price. After the downside protection of approximately 30% was reached, the ratio stopped adjusting upward. Frontier also had a walk-away right and Global Crossing a "top-up" if the potential value of the deal was to fall below such point. Much later in the transaction, after Global Crossing stock in fact experienced a significant decline and had fallen through the entire downside layer, the parties decided to negotiate a revision of the transaction into a higher fixed ratio deal prior to the deal being voted upon by stockholders. This avoided the sometimes dysfunctional game of "chicken" that can occur at the end game of a "walk-away"/"top-up" negotiation, and provided much greater certainty to the companies' respective stockholders.

Although the vast majority of the transactions listed in the annexes hereto employ a straightforward, fixed ratio structure, in a volatile market or uncertain economy where it is difficult to secure financing and agree upon relative values, parties to M&A transactions increasingly may have to rethink ways to deliver value to stockholders. Fixed value transactions employing some of the value-protection mechanisms discussed above may provide an opportunity for a target to secure a minimum price for stockholders while preserving the flexibility that stock consideration provides purchasers in the current environment. Parties may also consider utilizing equity instruments other than stock such as contingent value rights (CVRs), which protect target stockholders from market risk once a transaction closes. In addition to the payment of cash and/or stock at closing, a purchaser utilizing the CVR structure would also issue target stockholders a security (the CVR) that would entitle the holder to receive a cash payment (or alternatively, additional shares of the purchaser) in the event that the price of the purchaser's shares does not meet a certain target or falls below a certain price at a specified future date. The advantages of the CVR are that a purchaser can promise fixed value to target stockholders but avoid excessive dilution at closing if the purchaser’s stock has traded down from the time of signing and potentially avoid or postpone the payment of cash consideration and allow target shareholders to share in the risk and reward of the transaction or a specific component thereof, such as obtaining required regulatory approvals or favorable trial results in the pharmaceutical industry. The disadvantage is that if the company underperforms following the acquisition, the purchaser must provide additional cash or suffer further dilution while saddled with an already depressed stock price. Although relatively rare, alternative equity instruments like CVRs and warrants were utilized in the 2008 Invitrogen Corp./Applied Biosystems transaction, as set forth in Annex E, the 2010 Celgene/Abraxis Bioscience transaction, as set forth in Annex G, and in Kinder Morgan’s 2011 acquisition of El Paso, as set forth in Annex H. In the Kinder Morgan/El Paso transaction, stockholders were offered the choice to elect among a package of cash, stock and warrants, subject to proration and reallocation in order to achieve a 57/43 cash-stock split (excluding warrants).[11]

Standalone Walk-Away Rights

Distinct from the collar-related walk-away rights discussed above are standalone walk-away rights found in some transactions. Such a provision may grant a seller without a price adjustment mechanism the right to terminate and walk away from the transaction if the purchaser’s stock price declines below a certain percentage during a specified measuring period, thereby protecting the seller from excess diminution in value. In some fixed value/floating ratio agreements where there is no cap on the number of shares to be issued by the purchaser, a purchaser may try to protect itself from excessive dilution by negotiating a termination right if its stock price decreases below an agreed percentage during the measuring period, which would result in the issuance of an unacceptable number of shares. In this way, the walk-away right works as an alternative to having a cap in the number of shares to be issued. Some purchasers occasionally suggest a walk-away if their stock prices rise above

[11] While the scope of this article does not encompass all cash deals, it is interesting to note that in Sanofi-Aventis’ 2011 all-cash acquisition of Genzyme, in addition to $74 in cash per share, Genzyme stockholders received a CVR for each share that entitles the holder to cash payments if specified milestones relating to certain drugs are achieved over time.

specified thresholds, but these usually are met with significant resistance as an unsympathetic position. In any event, the required approval by a target's stockholders (and sometimes the purchaser's stockholders depending on the amount of newly issued stock) operates as a de facto walk-away right prior to the stockholder meeting.

An example of an agreement with this type of a purchaser's standalone walk-away is the Tyco/Mallinckrodt transaction in 2000 which had an uncapped "fixed value" exchange ratio ($47.50 divided by the average stock price of Tyco), but permitted Tyco to terminate the transaction if the average price of Tyco stock was less than a floor price of $37 (or lower if Tyco at its discretion so agreed) and Mallinckrodt had not delivered a notice to Tyco agreeing to fix the exchange ratio at $47.50 divided by the floor price.

Particular care should be taken when crafting a walk-away provision in a volatile market. Just as material adverse effect definitions in a merger agreement typically carve-out changes that result from general economic conditions, walk-away provisions may be a single trigger or a double trigger, such that the walk-away would only apply in the event of a decline that meets the percentage *over and above* the decline experienced by a negotiated basket of peer companies or other market indices.

Absolute walk-aways are quite unusual and from the standpoint of getting deals done, not as effective as carefully drafted adjustments that try to address the same problems through formulaic ratio changes, as opposed to brinksmanship.[12]

Interrelationship with Board of Directors Recommendations

Another factor that may implicitly create a quasi-walk-away right for the seller's board of directors is its fiduciary obligation arising under various state corporate law statutes to not

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12 A noteworthy development beginning in early 2009 has been the increased use of "reverse termination" or "reverse break-up" fees beyond the ranks of private equity buyers. A number of prominent strategic transactions with a significant cash component have employed the reverse termination fee model to allocate financing risk between buyer and seller. The convergence of the strategic and private equity deal models with respect to financing risk in certain deals (most notably Mars/Wrigley in 2008 (all cash) and Pfizer/Wyeth and Merck/Schering-Plough in 2009) has introduced some of the typical private equity-deal concerns regarding optionality and closing certainty into the world of strategic transactions. Although the particular issues underlying the incorporation of a reverse termination fee in a merger agreement are beyond the scope of this article, the risks to a seller of a reverse termination fee must be considered when negotiating the form of consideration in a strategic transaction. To date, the use of reverse termination fees in prominent strategic transactions has been generally tailored to the particular circumstances of each transaction without the "off-the-rack", precedent-based implementation characteristic of the private equity boom from 2005-2007. Whether strategic buyers increasingly seek to "commoditize" reverse deal protections on buyer-friendly terms or parties instead selectively employ the structure to address particular deal risks will be an issue to continue to watch going forward but to date these provisions have largely been negotiated on a deal-by-deal basis and a recent non-comprehensive survey we did of 153 strategic deals for U.S. public companies with equity value over $1 billion between January 2008 and April 2012 indicated that approximately 13% contained some form of financing optionality.

recommend (or even recommend against) a transaction to the stockholders under circumstances which could include a substantial decline in the value of the transaction due to a decline in the purchaser's stock price. Depending upon the drafting of the section in a merger agreement giving the board the ability to modify its recommendation, a significant drop in the value of the purchaser's stock might give the board the ability to withdraw its recommendation, thus encouraging the stockholders to vote the transaction down. In one recent deal where there was a shareholder agreement containing a generally binding obligation for a significant shareholder to vote in favor of the transaction, the agreement released the shareholder from voting a portion of its stock if the board had changed its recommendation.[13]

DRAFTING ISSUES WITH COLLARS, WALK-AWAY RIGHTS AND TOP-UP PROVISIONS

As a byproduct of including these types of provisions in a merger agreement, there are certain related important drafting issues that practitioners must keep in mind:

> *How do you define the price of purchaser's stock?* The period over which the value is measured prior to closing (10 - 20 days is typical, and sometimes it is limited to random days in a selected period) and the mechanism of valuation (e.g., average closing price versus weighted average trading price) in order to prevent manipulation of value by traders are key negotiating points, but remember that the spot value at closing may not match the formulaic average price, particularly in a consistently rising or falling market.

> *How do you define the "closing date"?* Collars and walk-away rights are not tested throughout the time period between signing and closing; they are typically only tested at the closing. Consequently, once the mechanism to determine the price of the purchaser's stock is determined, a time frame to determine when the collar, walk-away right or top up provision should be measured is required and when the closing actually occurs.

[13] In the case of *In re Southern Peru Shareholder Derivative Litigation*, C.A. No. 961-CS (Del. Ch. Oct. 14, 2011), Chancellor Strine of the Delaware Chancery Court seemingly criticized a special committee of Southern Peru Copper Corporation for not reassessing its recommendation that stockholders vote in favor of the proposed acquisition of a privately held mining company controlled by Southern Peru's controlling stockholder. Southern Peru had agreed to a fixed exchange ratio in the transaction and the Court found that, after signing the merger agreement, Southern Peru outperformed its EBITDA projections and its stock price rose leading up to the stockholder vote. The Court found that Southern Peru's special committee did not reassess or change its recommendation. Because Southern Peru's second largest stockholder had entered into a voting agreement that required it to vote in accordance with the special committee's recommendation, the Court apparently believed that a change in the special committee's recommendation would have likely led to a rejection of the transaction.

What is the timing of the actual walk-away mechanism? Typically a target has the right to terminate and walk away subject to a right to withdraw its termination notice within X hours and the purchaser has the right to tell the target whether it will elect to top-up within Y hours. The crucial issue in this mechanism is whether this time period will be the same or whether the target will have a longer period and then actually have the ultimate control whether to terminate the deal and walk away. If the time periods for the target to walk away and the purchaser to top up are the same, it can make this a game of "chicken". On the other hand, if the time period for the purchaser to elect to top up is shorter than the target's right of withdrawal, then the target might give a walk-away notice trying to induce a top up, and will ultimately withdraw the notice at the final hour unless the top-up occurs.

IMPLICATIONS OF WALK-AWAY RIGHTS ON FAIRNESS OPINIONS

Counsel to an Investment Bank Representing the Purchaser

In a fixed value transaction in which the investment bank will be required to provide a fairness opinion to the purchaser, there generally must either be a cap creating a maximum number of shares to be issued, or be a walkway right for the purchaser (which the opinion will assume is exercised), so that the investment bank can base its opinion on fixed assumptions as to prospective dilution. It would be very difficult for an investment bank to provide a fairness opinion without these protections, since in theory the purchaser could, in the worst-case scenario, have to issue an extremely high and unexpected percentage of its shares to the target (resulting in the target's stockholders potentially gaining control of the purchaser).

Counsel to an Investment Bank Representing the Target

In a transaction in which the investment bank will be required to provide a fairness opinion to the target and which contains a target walk-away right, the investment bank should always insist that the opinion contain an assumption that the walk-away right will be exercised. Providing this assumption in the opinion protects the investment bank in the event that the target elects not to exercise its walk-away right and does the deal at a lower value. In such event, the target would be required to come back to the investment bank and request that the bank reevaluate the fairness of the transaction (or forgo an opinion), rather than being able to rely upon the existing opinion (which the target might try to do in the absence of this assumption, depending upon the other protective wording of the opinion).

R.E.S.

SIMPSON THACHER & BARTLETT LLP

Annex A

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2004

	Acquiror	Target	Deal Value ($ mill)[14]	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	JP Morgan Chase & Co.	Bank One Corporation	58,760.6	1/14/04	Common Stock	--	Yes	No	No	No
2.	Sprint Corporation	Nextel Communications, Inc.	38,975.1	12/15/04	Common stock and cash	Unit	Yes	No	No	No
3.	Johnson & Johnson	Guidant Corporation [15]	25,856.3	12/15/04	Common stock and cash	Unit	No	Yes	Yes	No
4.	Wachovia Corp.	South Trust Corp.	14,155.8	6/21/04	Common stock	--	Yes	No	No	No
5.	Symantec Corporation	Veritas Software Corporation	13,519.7	12/16/04	Common stock	--	Yes	No	No	No
6.	Exelon Corporation	Public Service Enterprise Group Incorporated	12,293.6	12/20/04	Common stock	--	Yes	No	No	No
7.	Kmart Holding Corporation	Sears, Roebuck and Co.	10,901.3	11/17/04	Common stock or cash	Election, pro rata	Yes	No	No	No
8.	SunTrust Banks, Inc.	National Commerce	7,025.1	5/09/04	Common stock or cash	Election, equalizer	Yes	No	No	No

[14] The deal value for substantially all of the transactions contained in this and the following annexes was obtained from Thomson One, from the stated "Deal Value," which appears to be in most cases the equivalent of equity value as opposed to enterprise value.

[15] On April 21, 2006, Boston Scientific successfully completed its deal jump of Johnson & Johnson's proposed transaction. Boston Scientific's acquisition of Guidant used a similar common stock and cash fixed value structure, with an aggregate deal value of approximately $27.2 billion.

	Acquiror	Target	Deal Value ($ mill)[14]	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
		Financial Corporation								
9.	Harrah's Entertainment, Inc.	Caesars Entertainment, Inc.	6,332.3	7/15/04	Common stock or cash	Election, pro rata	Yes	No	No	No
10.	North Fork Bancorporation, Inc.	Greenpoint Financial Corp.	6,270.2	2/16/04	Common stock	--	Yes	No	No	No
11.	Regions Financial Corporation	Union Planters Corporation	5,846.1	1/23/04	Common stock	--	Yes	No	No	No
12.	UnitedHealth Group Incorporated	Oxford Health Plans, Inc.	4,961.2	4/26/04	Common stock and cash	Unit	Yes	No	No	No
13.	Simon Property Group, Inc.	Chelsea Property Group, Inc.	4,861.1	6/21/04	Common stock, preferred stock, and cash	Unit	Yes	No	Yes	No
14.	Juniper Networks, Inc.	NetScreen Technologies, Inc.	4,173.4	2/6/04	Common stock	--	Yes	No	No	No
15.	Mylan Laboratories Inc.	King Pharmaceuticals, Inc.	4,026.6	7/26/04	Common stock	--	Yes	No	No	No

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2005

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	Proctor & Gamble Co.	Gillette Co.	54,906.8	1/27/05	Common stock	--	Yes	No	No	No
2.	Bank of America Corp.	MBNA Corp.	35,810.3	6/30/05	Common stock and cash	Unit	Yes	No	No	No
3.	ConocoPhillips	Burlington Resources Inc.	35,600.0	12/12/05	Common stock and cash	Unit	Yes	No	No	No
4.	ChevronTexaco Corporation	Unocal Corp.	18,718.5	4/4/05	Common stock or cash	Election, pro rata	Yes	No	No	No
5.	Federated Department Stores Inc.	May Department Stores Co.	16,465.9	2/27/05	Common stock and cash	Unit	Yes	No	No [16]	No
6.	SBC Communications Inc.	AT&T Corp	14,732.6	1/30/05	Common stock	--	Yes	No	No	No
7.	Pernod Ricard S.A.	Allied Domecq PLC	14,414.1	4/21/05	Common stock and cash	Unit[17]	Yes	No	No	No

[16] The agreement contained provisions allowing the acquiror to increase the fixed ratio, essentially acting as a bottom collar, to ensure the transaction would qualify as a "reorganization" for tax purposes or otherwise increase the cash consideration by $1.00 per share.

[17] Although the consideration was structured using the "unit" mechanic, the deal provided stockholders the right to make a "Mix and Match Election," whereby the stockholder was able to elect to alter the mix of cash and stock consideration to be used (i.e., for every 125 pence in cash, the stockholder would receive an addition 0.0158 shares of common stock, subject to pro ration).

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
8.	MetLife Inc.	Citigroup Inc.'s Travelers Life & Annuity Co. and international insurance business	11,694.7	1/31/05	Common stock and cash	Unit	No	Yes	Yes	Yes
9.	Inco Ltd.	Falconbridge Ltd.	10,968.6	10/11/05	Common stock or cash	Election, pro rata	Yes	No	Yes	No
10	Barrick Gold Corporation	Placer Dome Inc.	10,400.0	12/22/05	Common stock or cash	Election, pro rata	Yes	No	No	No
11.	R.H. Donnelley Corporation	Dex Media, Inc.	9,449.4	10/3/05	Common stock and cash	Unit	Yes	No	No	No
12.	Valor Communications Group Inc.	ALLTEL Corporation's Wireline Business	9,096.0	12/9/05	Common stock	--	Yes	No	No	No
13.	Duke Energy Corp.	Cinergy Corp.	8,832.9	5/9/05	Common stock	--	Yes	No	No	No
14.	Valero Energy Corp.	Premcor Inc.	8,521.6	4/24/05	Common stock or cash	Election, pro rata	Yes	No	No	No
15.	Verizon Communications Inc.	MCI Inc.	8,495.6	2/14/05	Common stock and cash[18]	Unit	Yes	No	Yes	No
16.	NRG Energy, Inc.	Texas Genco LLC	8,325.0	9/30/05	Common stock and cash[19]	Unit	No	Yes	Yes	No

[18] The cash portion of the consideration was subject to downward adjustment for certain liabilities, including bankruptcy and tax claims. In the event such adjustment brought the cash consideration to zero, the fixed ratio would have been adjusted.

[19] The agreement allowed NRG Energy, Inc. to pay a portion of the consideration in cash and a minimum number of shares of common stock and elect to pay the remaining consideration in additional shares of common stock, additional cash, shares of a new series of preferred stock or a combination of the foregoing.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2006

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	AT&T Inc.	BellSouth Corp.	72,671.0	3/5/06	Common stock	--	Yes	No	No	No
2.	Mittal Steel Co NV	Arcelor SA	32,240.5	6/25/06	Common stock or cash	Election, pro rata[20]	Yes	No	No	No
3.	Freeport-McMoRan Copper & Gold	Phelps Dodge Corp.	25,833.7	11/19/06	Common stock and cash	Unit	Yes	No	No	No
4.	Wachovia Corp.	Golden West Financial Corp	25,500.9	5/7/06	Common stock and cash	Unit	Yes	No	No	No
5.	CVS Corp.	Caremark RX Inc.	22,981.1	11/1/06	Common stock	--	Yes	No	No	No
6.	Investor Group[21]	Albertson's	17,073.8	1/22/06	Common stock and cash	Unit	Yes	No	No	No
7.	Bank of New York	Mellon Financial	15,679.6	12/4/06	Common Stock[22]	--	Yes	No	No	No
8.	Capital One	North Fork	15,132.9	3/12/06	Common stock	Election,	Yes	No	No	No

[20] The Arcelor shareholders were entitled to tender their shares in either the "primary offer" or the "secondary offer." The primary offer consisted of a unit of cash and stock for Arcelor shares, while in the secondary offer, the Arcelor shareholders could elect between stock and cash, with stock comprising 75% of the consideration in the secondary offer and cash 25% of the consideration.

[21] Investor Group included Supervalu Inc., CVS Corporation and a consortium of investors including Cerberus Capital Management, L.P., Kimco Realty Corporation, Lubert-Adler Management, Inc., Klaff Realty, LP, and Schottenstein Stores Corporation. The consideration described above related to the consideration received by Albertson's shareholders in the initial Albertson's/Supervalu merger.

[22] Bank of New York's shareholders received 0.9434 shares of the combined entity for each Bank of New York share. Mellon's shareholders exchanged their stock on a one-for-one basis.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
	Financial	Bancorp			or cash	equalizer				
9.	Alcatel SA	Lucent Technologies	13,591.2	3/24/06	Common Stock	--	Yes	No	No	No
10.	Thermo Electron	Fisher Scientific	10,291.8	5/8/06	Common stock	--	Yes	No	No	No
11.	NYSE Group	Euronext SA	10,203.4	5/22/06	Common stock and cash	Unit[23]	Yes	No	No	No
12.	Regions Financial	AmSouth Bancorp	10,020.8	5/25/06	Common Stock	--	Yes	No	No	No
13.	CBOT Holdings	Chicago Mercantile Exchange	8,007.1	10/17/06	Common stock or cash	Election, equalizer	Yes	No	No	No
14.	Mercantile Bankshares	PNC Financial Services	5,981.8	10/9/06	Common stock and cash	Unit	Yes	No	No	No

[23] Although the consideration was structured using the “unit” mechanic, the deal provided stockholders the right to make a “Mix and Match Election,” whereby the stockholder was able to elect to alter the mix of cash and stock consideration to be used, subject to proration.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2007

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	BHP Billiton Ltd.	Rio Tinto PLC	189,751.94	11/8/07[24]	Common Stock[25]	--	Yes	No	No	No
2.	RFS Holdings BV[26]	ABN AMRO Holding NV	99,364.81	4/25/07	Common stock and cash	Unit	Yes	No	No	No
3.	Unicredito Italiano SpA	Capitalia SpA	29,528.09	5/15/07	Common Stock	--	Yes	No	No	No
4.	Thomson Corp.	Reuters Group PLC	17,628.12	5/7/07	Common stock and cash	Unit	Yes	No	No	No
5.	Transocean Inc.	GlobalSantaFe Corp.	17,298.66	7/23/07	Common stock and cash	Unit	Yes	No	No	No
6.	BBVA SA	Compass Bancshares Inc.	9,870.56	2/16/07	Common stock or cash	Election, pro rata	Yes	No	No	No
7.	Ingersoll-Rand	Trane Inc.	9,750.75	12/17/07	Common stock	Unit	Yes	No	No	No

24 On November 8, 2007, BHP Billiton made an informal proposal for Rio Tinto, offering three of its shares for every one Rio Tinto share (subsequently formalized and increased to 3.4 BHP shares for each Rio Tinto share in February 2008), which initially valued Rio Tinto on an equity basis at approximately $140 billion and which Rio Tinto immediately rejected. On November 25, 2008, BHP Billiton abandoned its hostile bid to acquire Rio Tinto, at which time the revised offer was worth only $66 billion after a steep decline in BHP's share price. BHP explained that turmoil in financial markets, uncertainty about the global economic outlook and regulatory concerns in Europe meant the deal was no longer in its shareholders' best interest.

25 BHP's offer contemplated a share buy-back on completion of the merger aimed largely at Rio Tinto's London-listed shares, which would have effectively introduced a cash-component for Rio Tinto's shareholders in the transaction.

26 A new company formed by Royal Bank of Scotland Group PLC, Fortis Group NV and Santander Central Hispano SA in connection with the consortium's acquisition of ABN AMRO. The stock component of the transaction consisted of Royal Bank of Scotland ordinary shares.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
	Co. Ltd.				and cash					
8.	Toronto-Dominion Bank	Commerce Bancorp	8,638.21	10/2/07	Common stock and cash	Unit	Yes	No	No	No
9.	National Oilwell Varco Inc.	Grant PrideCo Inc.	7,513.45	12/17/07	Common stock and cash	Unit	Yes	No	No	No
10.	Wachovia Corp.	AG Edwards Inc.	6,944.36	5/31/07	Common stock and cash	Unit	Yes	No	No	No
11.	Marathon Oil Corp.	Western Oil Sands Inc.	6,185.32	7/31/07	Common stock or cash	Election, pro rata	Yes	No	No	No
12.	News Corp.	Dow Jones & Co. Inc.	5,109.65	5/1/07	Common stock or cash	Election, pro rata[27]	No	Yes	No	No
13.	Vulcan Materials Co.	Florida Rock Industries Inc.	4,658.67	2/19/07	Common stock or cash	Election, pro rata	Yes	No	No	No
14.	State Street Corp.	Investors Financial Services Corp.	4,533.04	2/5/07	Common Stock	--	Yes	No	No	No

[27] Dow Jones shareholders were given the option to exchange their shares on a tax-free basis for non-trading class B units of a newly formed News Corp. subsidiary ("Newco"), which shares are then ultimately convertible into News Corp. common stock. The News Corp./Dow Jones election structure was unusual in that it limited not only the aggregate number of shares that could elect unit consideration (approximately 10% of outstanding Dow Jones shares subject to typical proration) but also the number of actual stockholders who could make that election (no more than 250 stockholders, determined by giving priority to the 250 stockholders who made elections for the greatest number of units). According to the proxy statement, the limitation on number of stockholders allowed to make a unit election addressed News Corp.'s desire to ensure that there would be fewer than 300 record holders of Newco units so that Newco would not become an SEC filer.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2008

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	Bank of America Corp.	Merrill Lynch & Co. Inc.	48,766.15	9/14/08	Common Stock	--	Yes	No	No	No
2.	Microsoft Corp.	Yahoo! Inc.	43,711.60	2/1/08[28]	Common stock or cash	Election, pro rata	Yes	No	No	No
3.	Lloyds TSB Group PLC	HBOS PLC	25,439.45	9/17/08	Common Stock	--	Yes[29]	No	No	No
4.	Wells Fargo & Co.	Wachovia Corp.	15,111.99	10/3/08	Common Stock	--	Yes	No	No	No
5.	Teck Cominco Ltd.	Fording Canadian Coal Trust	13,599.13	7/29/08	Common stock and cash	Unit	Yes	No	No	No
6.	CenturyTel, Inc.	Embarq Corp.	11,559.41	10/27/08	Common Stock	--	Yes	No	No	No
7.	Cleveland-Cliffs	Alpha Natural	9,089.25	7/16/08[30]	Common stock	Unit	Yes	No	No	No

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28 On February 1, 2008, Microsoft made an unsolicited, $44.6 billion cash and stock bid for Yahoo!. The offer represented a 62 percent premium above the closing price of Yahoo! common stock on January 31, 2008. On May 3, 2008, Microsoft withdrew its bid, after having previously increased its offer by $5 billion, which was still rejected by Yahoo! as too low. Microsoft had threatened to pursue a hostile takeover if it could not come to an agreement with Yahoo! management. The information reflected in the above chart is based on information from Microsoft's initial letter to the board of directors of Yahoo! setting forth its proposal, which was included in Microsoft's press release issued on February 1, 2008.

29 The original agreement provided that HBOS shareholders would receive 0.833 LloydsTSB share for every 1 HBOS share. However, as a result of a recapitalization of the UK retail banking sector by the British government and the extraordinary deterioration in the overall UK banking sector, the parties agreed on October 13, 2008 to amend the merger ratio for the acquisition such that HBOS shareholders will receive 0.605 LloydsTSB share for every 1 HBOS share.

30 On November 18, 2008, the companies terminated their merger agreement, with Cleveland Natural Resources (f/k/a Cleveland-Cliffs) agreeing to pay Alpha Natural Resources $70m as a termination fee ($30 million less than their agreement required). The friendly deal ran into trouble shortly

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
	Inc.	Resources Inc.			and cash					
8.	Teva Pharmaceutical Industries	Barr Pharmaceutical Inc.	8,810.21	7/18/08	Common stock and cash	Unit	Yes	No	No	No
9.	CME Group Inc.	NYMEX Holdings Inc.	7,555.37	1/28/08	Common stock or cash	Election, equalizer	Yes	No	No	No
10.	Invitrogen Corp	Applied Biosystems Group	6,683.46	6/10/08	Common stock or cash or combination	Election, pro rata	Yes	No[31]	No	No
11.	Exelon Corp.	NRG Energy Inc.[32]	6,260.76	10/19/08	Common Stock	--	Yes	No	No	No

after it was announced when Cleveland Natural Resources' largest shareholder, Harbinger Capital Management, announced that it opposed the transaction.

31 While this transaction was structured as an election between a fixed ratio of 0.8261 shares of Invitrogen common stock, $38.00 in cash and a unit combination of cash and Invitrogen common stock, subject to proration, there was a limited amount of pre-closing price protection for Applied Biosystems' stockholders on their portion of merger consideration comprising Invitrogen common stock. This price protection essentially functioned as a pre-closing contingent value right, which would compensate Applied Biosystems' stockholders who elected (or received through proration) shares of Invitrogen common stock with additional consideration per Applied Biosystems share of up to the product of $2.31 multiplied by the portion of a share of Invitrogen common stock which such holder had a right to receive, but only if the volume-weighted average price of Invitrogen common stock on each trading day during the 20 consecutive trading days immediately preceding the third business day prior to the closing date was less than $46.00 per share (the value of a share of Invitrogen common stock implied by both the fixed ratio and cash election options on the signing date). Beyond this narrow range of downside price protection for Applied Biosystems' stockholders, the agreement included no adjustment on the upside if Invitrogen shares traded above $46.00 and no additional adjustment on the downside if Invitrogen shares traded below $43.69 (the "CVR" floor), including no walk-away right.

32 On November 11, 2008, two days after NRG rejected Exelon's then $6.2 billion unsolicited offer, Exelon launched an exchange offer for all the outstanding shares of NRG at a fixed exchange ratio of 0.485 Exelon shares for each NRG share. Exelon's offer represented a 37 percent premium over NRG's closing price before the proposal was announced in October 2008. On January 7, 2009, Exelon announced that NRG shareholders had tendered 106.3 million shares, representing 45.6 percent of the company's outstanding common stock, and that Exelon would extend its offer to

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
12.	Republic Services Inc.	Allied Waste Industries Inc.[33]	6,113.97	6/23/08	Common Stock	--	Yes	No	No	No
13.	PNC Financial Services Group	National City Corp.	5,617.67	10/24/08	Common stock	--	Yes	No	No	No
14.	Bank of America Corp.	Countrywide Financial Corp.	4,143.85	1/11/08	Common Stock	--	Yes	No	No	No
15.	Ashland Inc.	Hercules Inc.	3,323.25	7/11/08	Common stock and cash	Unit	Yes	No	No	No
16.	Delta Air Lines Inc.	Northwest Airlines Inc.	2,958.29	4/14/08	Common Stock	--	Yes	No	No	No

February 25, 2009. Even though more than a majority of the NRG shareholders conditionally accepted Exelon's offer at the end of February, the offer was further extended. Exelon ultimately increased its bid to .545 Exelon shares for each NRG share, but notwithstanding such increase the NRG shareholders voted against the Exelon sponsored board nominees for election to the NRG board in late July. Thereafter, Exelon formally abandoned its hostile bid.

33 Following the announcement of Republic Services' agreement to purchase Allied Waste, Waste Management initiated an unsolicited takeover attempt of Republic Services (with its offer subsequently increased), which was rejected by Republic and its largest stockholder, Bill Gates, through his investment vehicle Cascade Investment LLC, as an attempt to derail the Republic-Allied transaction. Waste Management abandoned its effort to acquire Republic on October 13, 2008, and the Republic/Allied transaction closed on December 5, 2008.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2009

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	Pfizer Inc.	Wyeth	67,285.70	1/26/09	Common stock and cash	Unit	Yes	No	No[34]	No
2.	Exxon Mobil Corp.	XTO Energy Inc.	40,298.14	12/14/09	Common stock	--	Yes	No	No	No
3.	Merck & Co. Inc.	Schering-Plough Corp.	38,406.36	3/9/09	Common stock and cash	Unit	Yes	No	No	No
4.	Berkshire Hathaway Inc.	Burlington Northern Santa Fe	36,724.00[35]	11/3/09	Common stock or cash	Election, pro rata[36]	No	Yes	Yes	No

[34] In the event that common stock issued by Pfizer would have exceeded 19.9% of the outstanding shares of common stock of Pfizer immediately prior to the effective time of the merger, the stock portion of the merger consideration would have been reduced to the minimum extent necessary so that the number of shares of Pfizer common stock issued as a result of the merger would have equaled no more than 19.9% of its outstanding common stock and the cash portion of the merger consideration would have been increased by an equivalent value.

[35] The $36 billion transaction value represented the value of consideration to be paid to non-Berkshire holders of Burlington Northern stock (approximately $26 billion) and the assumption of Burlington Northern debt (approximately $10 billion). Including Berkshire's 23% existing stake, the total deal value was approximately $44 billion.

[36] The cash and stock elections that Burlington Northern stockholders made with respect to their shares were subject to proration and reallocation to achieve a 60/40 cash-stock split.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
5.	Suncor Energy Inc.	Petro-Canada	15,581.71	3/23/09	Common stock	--	Yes	No	No	No
6.	DirecTV Group Inc.	Liberty Entertainment Inc.	15,243.05	5/4/09	Common stock	--	Yes	No	No	No
7.	Xerox Corp.	Affiliated Computer Services Inc.	8,374.20[37]	9/28/09	Common stock and cash	Unit	Yes	No	No	No
8.	Agrium Inc.	CF Industries Holdings Inc.	5,597.30	2/25/09	Common stock and/or cash	Election, pro rata[38]	Yes	No	No	No
9.	PepsiCo Inc.	Pepsi Bottling Group Inc.	5,421.63	4/20/09	Common stock or cash	Election, pro rata	Yes	No	No	No
10.	Baker Hughes Inc.	BJ Services Co.	5,240.49	8/31/09	Common stock and cash	Unit	Yes	No	No	No
11.	Walt Disney Co.	Marvel Entertainment Inc.	3,958.35	8/31/09	Common stock and cash	Unit	Yes[39]	No	No	No

[37] Part of the deal value included approximately $2 billion in debt that Xerox assumed under the agreement.

[38] In March of 2010, Agrium abandoned its long-running attempted hostile takeover of CF Industries. Agrium's proposed exchange offer would have allowed CF shareholders to elect to receive cash consideration or stock consideration subject to proration to ensure that no more than 47% of the shares tendered were exchanged for cash and no more than 53% of the shares tendered were exchanged for Agrium common shares.

[39] Marvel stockholders were entitled to receive (i) $30.00 in cash and (ii) 0.7452 shares of Disney common stock for each share of Marvel common stock. However, the fixed exchange ratio was subject to revision (although no revision ultimately took place) in order to ensure that the aggregate stock consideration was no less than 40% of the total deal consideration payable at closing, in which case the exchange ratio would have been

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
12.	Stanley Works	Black & Decker Corp.	3,469.75	11/2/09	Common stock	--	Yes	No	No	No
13.	Pulte Homes Inc.	Centex Corporation	3,105.76	4/9/09	Common stock	--	Yes			
14.	Fidelity National Information Services Inc.	Metavante Technologies Inc.	2,978.30	4/1/09	Common stock	--	Yes	No	No	No

increased, and the amount of cash paid per share of Marvel common stock would have been correspondingly decreased, until the total stock consideration equaled 40% of the aggregate merger consideration.

Annex G

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2010

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	CenturyLink Inc.	Qwest Communications International Inc.	22,276.24	4/22/10	Common Stock	--	Yes	No	No	No
2.	Kraft Foods Inc.	Cadbury PLC	18,769.00	1/19/10	Common stock or cash	Election, pro rata[40]	Yes	No	No	No
3.	Schlumberger Ltd.	Smith International, Inc.	11,041.61	2/21/10	Common Stock	--	Yes	No	No	No
4.	FirstEnergy	Allegheny Energy, Inc.	8,500.00	2/11/10	Common Stock	--	Yes	No	No	No
5.	Aon Corporation	Hewitt Associates, Inc.	4,804.32	7/12/10	Common Stock and/or Cash	Election, equalizer[41]	Yes	No	No	No
6.	Northeast Utilities	NSTAR	4,198.44	10/18/10	Common Stock	--	Yes	No	No	No

40 Although the unit form of consideration in the tender offer was the default consideration available to Cadbury shareholders, Cadbury shareholders tendering into the offer were able elect to mix and match the cash and stock portions of the consideration under a mix and match facility. On January 19, 2010, the board of directors of Cadbury unanimously agreed to recommend that Cadbury shareholders accept the terms of a revised, final offer from Kraft. Cadbury had previously resisted Kraft's takeover bid since the offer was made public in September 2009.

41 The cash and stock elections that Hewitt stockholders made with respect to their shares were subject to proration and reallocation to achieve an approximate 50/50 cash-stock split.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
7.	BMO Financial Group (Bank of Montreal)	Marshall & Ilsley Corp.	4,094.98	12/17/10	Common Stock	--	Yes	No	No	No
8.	Apache Corp.	Mariner Energy, Inc.	3,916.29	4/15/10	Common Stock or Cash[42]	Election, pro rata	Yes	No	No	No
9.	UAL Corp.	Continental Airlines, Inc.	3,170.00	5/3/10	Common Stock	--	Yes	No	No	No
10.	Celgene Corporation	Abraxis Bioscience Inc.	2,900.00	6/30/10	Common Stock and Cash[43]	Unit	Yes	No	No	No
11.	AGL Resources Inc.	Nicor Inc.	2,382.46	12/7/10	Common Stock and Cash	Unit	Yes	No	No	No

[42] The cash and stock elections that Mariner stockholders made with respect to their shares were subject to proration and reallocation to achieve an approximate 30/70 cash-stock split. Under the merger agreement, Mariner stockholders were entitled elect to receive consideration consisting of cash, shares of Apache common stock or a combination of both in exchange for their shares of Mariner common stock, subject to a proration feature. Mariner stockholders electing to receive a mix of cash and stock consideration and non-electing stockholders received $7.80 in cash and 0.17043 shares of Apache common stock in exchange for each share of Mariner common stock. Subject to proration, Mariner stockholders electing to receive all cash received $26.00 in cash per Mariner share and Mariner stockholders electing to receive only Apache common stock received 0.24347 shares of Apache common stock in exchange for each share of Mariner common stock. Since the Apache common stock consideration was oversubscribed, Mariner stockholders who made valid elections to receive all stock consideration ultimately received, for each share subject to election, approximately 81.4 percent of the merger consideration in common stock, or 0.198113 of a share of Apache common stock and $4.84 in cash.

[43] In addition to a cash/stock unit, each Abraxis share also received one tradeable Contingent Value Right, which entitles its holder to receive payments for future regulatory milestones and commercial royalties.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
12.	Tyco International Ltd.	Brink's Home Security Holdings, Inc.	1,946.58	1/18/10	Common stock and/or Cash	Election, pro rata[44]	No	Yes	Yes	No
13.	RRI Energy, Inc.	Mirant Corporation	1,700.00	4/11/10	Common Stock	--	Yes	No	No	No
14.	SandRidge Energy, Inc.	Arena Resources, Inc.	1,660.72	4/4/10	Common Stock and Cash	Unit	Yes	No	No	No
15.	MSCI Inc.	RiskMetrics Group Inc.	1,543.45	3/1/10	Common Stock and Cash	Unit	Yes	No	No	No
16.	First Niagara Financial Group	NewAlliance Bancshares Inc.	1,447.21	8/19/10	Common Stock or Cash	Election, pro rata[45]	Yes	No	No	No
17.	Hertz Global Holdings, Inc.	Dollar Thrifty Automotive Group, Inc.[46]	1,200.00	4/25/10	Common Stock and Cash	Unit	Yes	No	No	No

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44 The deal provided that the stock election was unlimited, but the cash election had a cap of approximately 30% of the total merger consideration and was subject to proration to achieve the 30% limitation. In addition, Brink's stockholders were entitled to receive a combination of cash and stock, which was blended to provide for approximately 30% cash.

45 The cash and stock elections that NewAlliance stockholders made with respect to their shares were subject to proration and reallocation to achieve a 14/86 cash-stock split.

46 In October 2010, Dollar Thrifty's shareholders rejected the proposed acquisition by Hertz following the announcement of a competing offer by Avis. After subsequent competing offers, Avis and Hertz withdrew their final offers on September 24, 2011 and October 27, 2011, respectively. Hertz resumed its acquisition attempt in 2012, and was successful in signing a Merger Agreement with Dollar Thrifty (along with HDTMS, Inc., Hertz's wholly owned subsidiary) on August 26 of that year. Pursuant to the terms of the agreement, HDTMS commenced a tender offer to purchase all outstanding shares of Dollar Thrifty's stock for $87.50 per share in September, thereby acquiring approximately 99.6% of Dollar Thrifty's outstanding shares. On November 19, the acquisition was completed via short-form merger when HDTMS exercised its "top-up" option

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
18.	Southwest Airlines Co.	AirTran Holdings, Inc.	1,041.69	9/27/10	Common Stock and Cash	Unit	Yes[47]	No[46]	Yes	No

under the Merger Agreement to purchase additional shares directly from Dollar Thrifty.

[47] AirTran shareholders were entitled to receive 0.321 common shares of Southwest and $3.75 in cash for each share they own. If the average closing price of Southwest common shares for the 20 consecutive trading day period prior to the closing date of the merger was greater than $12.46, then the exchange ratio would have been adjusted to equal $4.00 divided by the average Southwest share price. If the Southwest average share price was less than $10.90, then the exchange ratio would have been adjusted to equal $3.50 divided by the average Southwest share price. The exchange ratio adjustment mechanism provided at least $7.25 in value and up to $7.75 in value (based on the Southwest average share price) per share of AirTran common stock. If the Southwest average share price was less than $10.90, Southwest would have been required to deliver, at its election, an additional amount of cash, an additional number of shares of Southwest common stock or a combination thereof (as elected by Southwest) such that the aggregate value of the cash and shares of Southwest common stock (valuing Southwest common stock based on the Southwest average share price) into which each share of AirTran common stock has been converted would be equal to $7.25 – this option to "top up" with cash to provide AirTran shareholders with $7.25 of value protected Southwest against unlimited dilution as a result of a floating exchange ratio. Based on the average of of $11.90 of Southwest's closing prices for the 20 trading days ending three trading days prior to the closing date of May 2, 2011, each share of AirTran common stock was exchanged for $3.75 in cash and 0.321 shares of Southwest's common stock.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2011

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	AT&T Inc.	T-Mobile USA, Inc.	39,000.00	3/20/2011	Common stock and cash[48]	Unit[47]	No	Yes[47]	Yes[47]	No
2.	Express Scripts, Inc.	Medco Health Solutions, Inc.	29,370.07	7/21/11	Common stock and cash	Unit	Yes	No	No	No
3.	Duke Energy Corporation	Progress Energy, Inc.	25,818.33	1/10/11	Common stock	--	Yes	No	No	No

48 AT&T was to acquire from Deutsche Telekom all of the outstanding capital stock of T-Mobile in exchange for approximately $39 billion, consisting of (i) $25 billion in cash and (ii) approximately $14 billion of AT&T common stock, subject to adjustment. The exact number of shares of common stock to be issued was to be determined prior to the closing based on the volume-weighted average of trading prices of AT&T common stock during the 30 trading days ending on the third business day prior to the closing, except that the volume-weighted average of the trading prices would not be deemed less than $26.0165 or more than $30.2354 for purposes of this formula. In addition, AT&T had the right to increase the cash portion of the purchase price by up to $4.2 billion and decrease the number of shares of common stock to be issued based on the volume-weighted average price of common stock. On December 19, 2011, AT&T announced that AT&T and Deutsche Telekom had agreed to abandon the transaction after U.S. antitrust regulators announced their intention to oppose the deal.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
4.	Kinder Morgan Inc.	El Paso Corporation	24,002.09	10/16/11	Mixed combination of common stock, cash and warrants[49]	Election, pro rata[48]	Yes	No	No	No
5.	Johnson & Johnson	Synthes, Inc.	22,765.64	4/18/11	Common stock and cash	Unit[50]	No	Yes	Yes	No

49 El Paso shareholders were given the option to receive (i) $25.91 in cash and 0.64 common stock purchase warrants of Kinder, (ii) $14.65 in cash, 0.419 Kinder common shares and 0.64 common stock purchase warrants of Kinder, or (iii) 0.964 Kinder common shares and 0.64 common stock purchase warrants of Kinder for each of their El Paso common shares subject to pro−ration with respect to the stock and cash portions so that approximately 57% of the aggregate merger consideration (excluding the warrants) were paid in cash and at least 43% (excluding the warrants) were paid in Kinder common stock. The aggregate deal value of approximately $24.002 billion included the assumption of $3.841 billion in debt from El Paso Pipeline Partners LP.

50 Pursuant to the transaction terms, Synthes shareholders were entitled to receive a combination of CHF (Swiss Francs) 55.65 in cash and a number of shares of J&J common stock calculated based on the average of the volume weighted average trading prices of J&J common stock during the ten trading days ending two trading days prior to the effective time of the merger, as converted into Swiss Francs on each day in this valuation period, as provided by the formula set forth below. If such average of the volume weighted average trading prices was:

(i) between CHF 52.54 and CHF 60.45 per share, then Synthes shareholders would receive CHF 103.35 in shares (based on such average) of J&J common stock in exchange for each share of Synthes common stock;
(ii) greater than CHF 60.45, then Synthes shareholders would receive 1.7098 shares of J&J common stock in exchange for each share of Synthes common stock; or
(iii) less than CHF 52.54, Synthes shareholders would receive 1.9672 shares of J&J common stock in exchange for each share of Synthes common stock.

The ultimate calculation resulted in Synthes shareholders receiving 1.717 shares as the stock component for the transaction.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
6.	NASDAQ OMX Group Inc. and Intercontinental Exchange Inc.	NYSE Euronext	11,513.96	4/1/11	Common stock and cash[51]	Unit	Yes	No	No	No
7.	Deutsche Börse AG	NYSE Euronext	10,164.26	2/9/11	Common stock	--	Yes[52]	No	No	No
8.	Capital One Financial Corporation	ING Direct USA	8,875.93	6/16/11	Common stock and cash	Unit	Yes	No	No	No
9.	AMB Property Corporation	ProLogis	8,364.71	1/26/11	Common stock	--	Yes	No	No	No
10.	Ecolab Inc.	Nalco Holding Company	8,111.84	7/20/11	Common stock and/or cash	Election, pro rata[53]	Yes	No	No	No

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51 In an attempt to "deal-jump" the previously announced NYSE/Deutsche Börse transaction (see FN 49), on April 1, 2011, NASDAQ and IntercontinentalExchange offered to acquire all outstanding shares of NYSE for a combination of $14.24 in cash, 0.4069 shares of NASDAQ stock and 0.1436 shares of IntercontinentalExchange stock per NYSE share. On May 16, 2011, NASDAQ and IntercontinentalExchange withdrew its offer to acquire NYSE.

52 NYSE and Deutsche Börse entered into an agreement providing for a combination of their businesses under Holdco, a new Dutch holding company. Deutsche Börse's business would be brought under the new holding company through an exchange offer and NYSE's business would be brought under the new holding company through a merger. In the merger, each NYSE share would be entitled to receive 0.47 Holdco share. Upon completion of the combination, and assuming that all of the outstanding Deutsche Börse shares are exchanged in the exchange offer, former Deutsche Börse shareholders and former NYSE shareholders would own approximately 60% and 40%, respectively, of the outstanding Holdco shares. The merger was ultimately blocked by the European Commission in early 2012, on the grounds that it would effect a "near monopoly"in European exchange-traded derivatives.

53 Nalco stockholders were entitled to elect to receive either 0.7005 shares of Ecolab common stock or $38.80 in cash per share of Nalco common stock, provided that approximately 70% of the issued and outstanding shares of Nalco common stock immediately prior to the effective time converted into the right to receive Ecolab common stock and approximately 30% of the issued and outstanding shares of Nalco common stock immediately

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
11.	Exelon Corporation	Constellation Energy Group, Inc.	7,840.11	4/28/11	Common stock	--	Yes	No	No	No
12.	Ensco plc	Pride International, Inc.	7,306.40	2/7/11	Common stock and cash	Unit	Yes	No	No	No
13.	Alpha Natural Resources, Inc.	Massey Energy Company	7,165.24	1/29/11	Common stock and cash	Unit	Yes	No	No	No
14.	Ventas, Inc.	Nationwide Health Properties, Inc.	5,793.48	2/28/11	Common stock	--	Yes	No	No	No
15.	ITC Holdings Corp.	Entergy Corporation - Electric Transmission Business	5,575.29	12/5/11	Common stock	--	Yes	No	No	No
16.	Energy Transfer Equity, L.P.	Southern Union Company	5,560.76	6/16/11	Common stock and/or cash	Election, pro rata[54]	Yes	No	No	No

prior to the effective time converted into the right to receive cash. In order to achieve this 70%/30% stock–cash mix of consideration, the merger agreement provided for pro rata adjustments to and reallocation of the stock and cash elections made by Nalco stockholders.

[54] Southern Union stockholders could elect to receive, for each outstanding Southern Union share they hold, either $44.25 in cash or 1.00 ETE common unit. This election was subject to the following limits:
(i) 60% of the aggregate merger consideration would consist of cash; and
(ii) the aggregate ETE common unit consideration could fluctuate between 40% and 50% of the aggregate merger consideration.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
17.	Martin Marietta Materials, Inc.	Vulcan Materials Company[55]	4,740.90	12/12/11	Common stock	--	Yes	No	No	No
18.	Rock-Tenn Company	Smurfit-Stone Container Corporation	3,948.17	1/23/11	Common stock and cash	Unit	Yes	No	No	No
19.	Alleghany Corporation	Transatlantic Holdings, Inc.	3,685.58	11/21/11	Common stock and cash	Unit	Yes	No	No	No
20.	Validus Holdings, Ltd.[56]	Transatlantic Holdings, Inc.	3,458.02	7/12/11	Common stock and cash	Unit	Yes	No	No	No

55 Beginning in early 2010, Martin Marietta and Vulcan engaged in private negotiations regarding a potential friendly merger. But as Vulcan was unwilling to move towards a definitive agreement, on December 12, 2011, Martin Marietta delivered a proposal to Vulcan and commenced a hostile exchange offer to effect a business combination with Vulcan pursuant to which each outstanding share of Vulcan would be exchanged for 0.50 Martin Marietta shares (summarized in #17 of Annex H above). On December 22, 2011, the Vulcan board announced that it had unanimously determined to reject Martin Marietta's exchange offer and recommended to its shareholders to reject the offer; Martin Marietta responded that day with a press release reiterating its interest in acquiring the company. Martin Marietta's exchange offer remained open until May 14, 2012, when it terminated the exchange offer and withdrew the related registration statement as required by a decision rendered May 4 by the Delaware Chancery Court. The crucial finding in this Delaware decision, which Martin Marietta lost on appeal, was that in the course of its hostile takeover attempt, Martin Marietta failed to comply with confidentiality agreements struck during earlier friendly merger negotiations with Vulcan. As a result, Martin Marietta was enjoined from pursuing an acquisition of the company for four months, which injunction expired September 14, 2012. Despite some speculation that Martin Marietta may again resume friendly merger negotiations, no such deal has been announced.

56 On June 12, 2011, Allied World Assurance Company Holdings, Ltd. and Transatlantic Holdings, Inc. agreed to a merger of equals transaction, with stockholders of Transatlantic receiving 0.88 Allied common stock for each Transatlantic share held (Allied and Transatlantic subsequently terminated the transaction on September 15, 2011). In an attempt to "deal-jump" this transaction, on July 12, 2011, Validus announced its unsolicited proposal to acquire all outstanding shares of Transatlantic in exchange for 1.5564 shares of Validus common stock and $8.00 in cash pursuant to a one-time special dividend from Transatlantic for each share of Transatlantic common stock (Validus withdrew this offer on November 28, 2011). Transatlantic did not accept Validus' offer and subsequently entered into an agreement to be acquired by Alleghany

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
21.	The PNC Financial Services Group, Inc.	RBC Bank (USA)	3,450.00	6/20/11	Common stock and/or cash, at the election of the acquiror[57]	Unit[56]	No	Yes	Yes[56]	No

Corporation, pursuant to which Transatlantic stockholders would receive 0.145 Alleghany common stock and $14.22 in cash for each Transatlantic share held, as summarized in #19 of Annex H above.

57 PNC, the acquiror, had the option to pay up to $1.0 billion of the consideration in common stock (based on the volume-weighted average trading price of PNC common stock for each of the last 10 trading days immediately preceding the closing date), with the remainder of the purchase price to be paid in cash. In no event was the number of shares of PNC common stock, if any, issued to RBC to exceed either (i) $1 billion worth of such shares (according to a weighted average valuation of such shares determined prior to closing) or (ii) 4.9% of the total number of shares of PNC common stock issued and outstanding immediately following the closing.

Pricing Formulas and Forms of Consideration: Selected Stock for Stock and Mixed Consideration Transactions Announced in 2012

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
1.	SoftBank Corp.	Sprint Nextel Corporation	20,140.00	10/15/2012	Common stock and/or cash[58]	Election, pro rata	Yes	No	No	No
2.	Eaton Corporation	Cooper Industries plc	11,460.74	5/21/2012	Common stock and cash[59]	Unit	Yes	No	No	No
3.	Intercontinental Exchange, Inc.	NYSE Euronext	8,052.28	12/20/2012	Common stock and / or cash	Election, pro rata[60]	Yes	No	No	No

[58] The SoftBank/Sprint transaction is notable in that the cash/stock election presented to Sprint shareholders represents a choice to exchange each Sprint share for either $7.30 in cash or one share of common stock in a new publicly traded entity that is the successor to Sprint ("New Sprint") rather than stock in the acquiring company itself. Utilizing this consideration structure (subject to proration) will permit SoftBank to effect the purchase of a desired 70% stake in the equity of New Sprint using cash, with 30% of New Sprint's stock to remain outstanding (and, immediately after closing, held by current Sprint stockholders).

[59] This acquisition by Eaton of Cooper Industries employed a "double dummy" acquisition structure whereby the surviving entity would be incorporated in the target's country, Ireland. Under this approach, the acquiror (Eaton) created a holding company ("New Eaton") and two subsidiaries, then merged with one of the subsidiaries, its shareholders exchanging their stock in Eaton for stock in New Eaton. The target (Cooper) simultaneously merged into the other subsidiary of the holding company: Cooper shareholders exchanged each share of Cooper common stock for 0.77479 shares of New Eaton common stock and $39.15 in cash.

[60] NYSE Euronext stockholders may elect to receive, for each NYSE Euronext share they hold, either (i) $33.12 in cash, (ii) 0.2581 IntercontinentalExchange shares or (iii) $11.27 in cash plus 0.1703 IntercontinentalExchange shares, subject to proration such that:
(i) the maximum cash consideration is approximately $2.7 billion; and
(ii) or the maximum aggregate number of shares is approximately 42.5 million.
The overall mix of the merger consideration to be paid is approximately 67% shares and 33% cash.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
4.	Freeport-McMoRan Copper & Gold Inc.	Plains Exploration & Production Company	6,450.39	12/5/2012	Common stock and /or cash	Election, equalizer, pro rata[61]	Yes	Yes	No	No
5.	Aetna Inc.	Coventry Health Care, Inc.	5,695.42	8/20/2012	Common stock and cash	Unit	Yes	No	No	No
6.	Energy Transfer Partners, L.P.	Sunoco, Inc.	5,260.68	4/30/2012	Common stock and / or cash[62]	Election, pro rata	Yes	No	No	No
7.	SXC Health Solutions, Corp.	Catalyst Health Solutions, Inc.	4,086.49	4/18/12	Common stock and cash	Unit	Yes	No	No	No
8.	M&T Bank Corporation	Hudson City Bancorp, Inc.	3,810.83	8/27/12	Common stock and / or cash	Election, pro rata[63]	Yes	No	No	No

[61] Plains Exploration shareholders may elect to receive, for each Plains Exploration share they hold,
(i) $25 in cash plus 0.6531 Freeport-McMoRan shares; OR
(ii) for each share of Plains Exploration share they hold, subject to proration whereby the value of cash and common shares will be equalized at closing:
(a) cash; or
(b) Freeport-McMoRan stock,
such that the value of either the pure stock or pure cash consideration is equal to the value of the merger consideration outlined in (i) as of the closing of the merger.

[62] Shareholders of Sunoco could elect to receive (i) $25 in cash plus 0.5245 Energy Transfer common units per Sunoco share (the "standard mix of consideration"), (ii) $50 in cash per Sunoco share or (iii) 1.0490 Energy Transfer common units per Sunoco share. The election to receive pure cash or pure stock as consideration was subject to proration, such that the total amount of cash paid and the total number of common units issued in the merger would reflect the ratio that would have been effective had all Sunoco shareholders received the standard mix of consideration.

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
9.	Eastman Chemical Company	Solutia Inc.	3,404.80	1/27/12	Common stock and cash	Unit	Yes	No	No	No
10.	Chicago Bridge & Iron Company N.V.	The Shaw Group Inc.	3,133.19	7/30/12	Common stock and cash	Unit	Yes	No	No	No
11.	PVH Corp.	The Warnaco Group, Inc.	2,796.48	10/31/12	Common stock and cash	Unit	Yes	No	No	No
12.	ASML Holding N.V.	Cymer, Inc.	2,614.37	10/16/12	Common stock and cash	Unit	Yes	No	No	No
13.	Leucadia National Corporation	Jefferies Group, Inc.	2,561.04	11/12/12	Common stock[64]	--	Yes	No	No	No
14.	Realty Income Corporation	American Realty Capital Trust, Inc.	1,937.87	9/6/12	Common stock and cash[65]	Unit	Yes	No	No	No

[63] Pursuant to the merger agreement, Hudson City shareholders may elect to receive, for each Hudson City share of common stock, 0.08403 shares of M&T common stock or cash having a value equal to 0.08403 shares (calculated by multiplying the per share stock consideration by the average closing price of M&T common stock for the ten trading days immediately preceding the completion of the merger). These elections will additionally be prorated and adjusted such that in the aggregate approximately 60% of Hudson City's outstanding shares of common stock will be converted into the right to receive shares of M&T common stock and the balance (40%) into the right to receive cash consideration.

[64] In the merger, outstanding shares of Jefferies common stock will be exchanged for 0.81 Leucadia common shares. In addition, Jefferies' outstanding convertible debentures are to be convertible into common shares of Leucadia following the merger, giving effect to the 0.81 exchange ratio.

[65] Under the original Merger Agreement, each American Realty share would convert into 0.2874 Realty Income shares. The agreement was amended on January 6, 2013, to increase the consideration received per American Realty share: shareholders will now receive 0.2874 Realty Income common

	Acquiror	Target	Deal Value ($ mill)	Date Announced	Consideration	Unit vs. Election, Allocation Procedure	Fixed Exchange Ratio	Fixed Value	Cap/ Collar	Walk-away
15.	priceline.com Incorporated	KAYAK Software Corporation	1,805.56	11/8/12	Common stock and / or cash	Election, pro rata	No	Yes	Yes[66]	No
16.	NRG Energy, Inc.	GenOn Energy, Inc.	1,693.56	7/22/12	Common stock	--	Yes	No	No	No

shares and $0.35 in cash per share. Realty Income also announced that it intended to increase its annualized dividend to Realty Income stockholders by approximately $0.35 per share once the merger has closed.

[66]KAYAK shareholders have the choice to receive $40 in cash per KAYAK share, or a portion of a share of priceline.com that is determined by dividing $40 by the aggregate volume weighted average price per share of priceline.com common stock for the 30 day trading period ending two days prior to the closing, provided that:
(i) if the average trading price is above $698.32 per share, the pertinent exchange ratio will be 0.05728; and
(ii) if the average trading price is below $571.35, then the exchange ratio will be 0.07001.
The cash/stock consideration will additionally be subject to proration such that the consideration will consist of 33% cash and 67% priceline stock.