

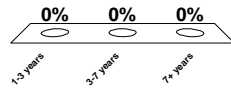
DOING DEALS 2010

Introduction

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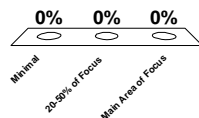
How Long Have You Practiced?

- A. 1-3 years
- B. 3-7 years
- C. 7+ years



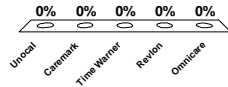
Describe Your Experience In M&A

- 1. Minimal
- 2. 20-50% of Focus
- 3. Main Area of Focus



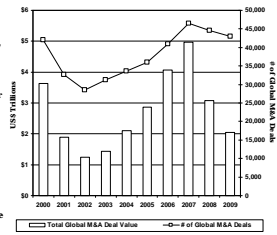
What Case Requires A Target Board In Certain Circumstances To Seek The Highest Price Available?

1. Unocal
2. Caremark
3. Time Warner
4. Revlon
5. Omnicare



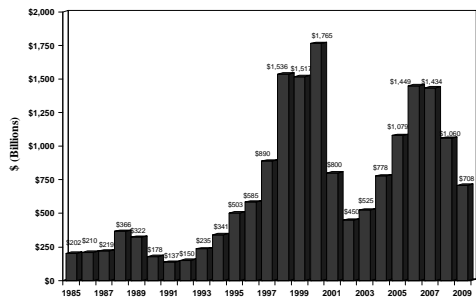
Global M&A Volume

- Global M&A volume in 2009 was approximately US\$2 trillion, down to 2004 levels
 - Down over 30% from 2008 and less than half the record volumes of 2006 and 2007
 - Number of transactions not as down as dollar volume
- Recent years have witnessed five to eight year cycles
- Signs of an up-tick in M&A activity?
 - Primary driver: return of optimism/absence of fear
 - Other possible factors:
 - Strong cash position from defensive stockpiling
 - Search for external growth to replace absence of internal growth
 - Need to access emerging markets
 - Need for consolidation to generate sales/profits



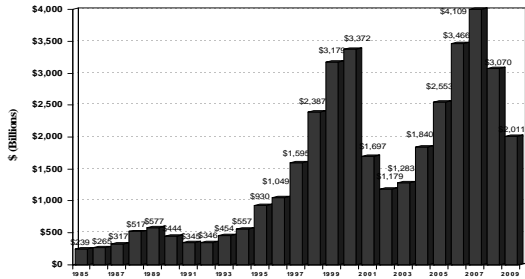
Current Takeover Environment

Announced M&A Activity - U.S. Domestic by \$ Volume



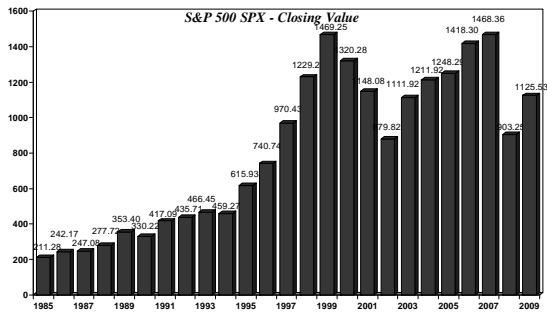
Current Takeover Environment

Announced M&A Activity - Worldwide by \$ Volume



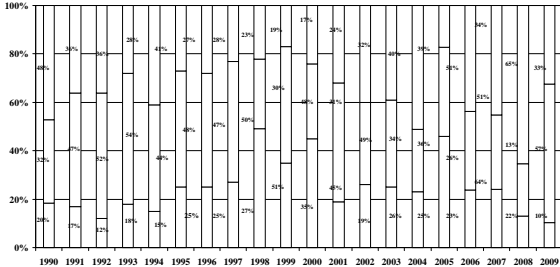
Current Takeover Environment

S&P 500 SPX - Closing Value



Current Takeover Environment

*Cash is the Consideration of Choice in the US
Types of Consideration Offered in Announced Domestic Transactions*



Factors Affecting the M&A Environment One Year Ago

- | | |
|---|---|
| <p>➤ Negative Factors</p> <ul style="list-style-type: none"> - Global recession - Severely depressed stock market - Credit crunch reduces available acquisition capital - When available, capital is more expensive and comes with more strings and conditions - Hangover from late '90s merger wave and mid '00s merger wave remains | <p>➤ Positive Factors</p> <ul style="list-style-type: none"> - Duress and distress force deals and eliminate hurdles - Bargain hunting opportunities - Strong consolidation forces remain - Private equity players still loaded with cash - Non-U.S. investors loaded with U.S. dollars - Activist shareholders with short-term outlook - Corporate governance and regulatory environment negative for small public companies |
|---|---|

Factors Affecting the M&A Environment Today

- | | |
|--|--|
| <p>➤ Negative Factors</p> <ul style="list-style-type: none"> - Post-recession rebound not strong - Stock market still depressed relative to mid '00s - Credit crunch reduces available acquisition capital - When available, capital is more expensive and comes with more strings and conditions - Prospect of regulatory change in some industries - Hangover remains from late '90s and mid '00s merger wave | <p>➤ Positive Factors</p> <ul style="list-style-type: none"> - Recession lifting / "Worst is behind us" - Need for external growth - Prospect of regulatory change in some industries - Pent-up demand - Strong consolidation forces remain - Private equity players still flush with cash - Non-U.S. investors flush with U.S. dollars - Activist shareholders with short-term outlook |
|--|--|

The Evolution of Financing and Other Conditions in Strategic and Private Equity Transactions

	Pre-Crisis	Current Environment
Strategic Deals	<ul style="list-style-type: none"> ■ Typically no financing conditionality for buyer; seller free to seek specific performance ■ While Delaware permits deal protections that are stronger than in some non-U.S. jurisdictions, entering into a "definitive merger agreement" is only one step in the sale process, with relatively low (2-4%) break-up fees, non-preclusive lock-ups and the ability to enter into discussions with potential topping bidders 	<ul style="list-style-type: none"> ■ Financing conditionality in <u>some</u> strategic deals now similar to provisions once seen only in pre-crisis private equity deals: <ul style="list-style-type: none"> - Buyers insisting on - and receiving - a variety of different forms of financing outs - Financing conditionality typically exercisable only upon payment of significant reverse break-up fee - Specific performance right sometimes limited to non-financing related failures to close
Private Equity Deals	<ul style="list-style-type: none"> ■ Significant optionality for private equity buyers: typically no specific performance right for seller; buyer right to abandon transaction upon payment of reverse break fee ■ Mixed results when economic conditions worsened/ financing did not come through: <i>Bain, THL/Clear Channel, Hexion/Huntsman, URI/Cerebrus, ADS/BioCryst, KKR, GS Capital Partners/Harman</i> 	<ul style="list-style-type: none"> ■ Hard to spot trends because very few private equity transactions in current climate ■ Several deals have used reverse termination fees for financing failures (but fees are in the 5-7% of transaction value) ■ In one recent deal (fully equity financed), essentially no optionality for private equity buyer: reverse break fee equal to purchase price; seller right to specific performance (and if SP unavailable, PE buyer guaranteed payment of damages capped at purchase price) (<i>Apax/Bankrate</i>)
