

TABLE OF CONTENTS

Volume 1

Preface	iii
Prologue	v

CHAPTER 1

Practical Aspects of Tender Offers and Acquisitions

§ 1.01	General Perspectives.....	1-4
	[1] Deal Activity	1-9
	[2] Hostile and Unsolicited M&A.....	1-11
	[3] Private Equity Trends	1-11
	[a] Fundraising.....	1-12
	[b] Investor and Regulatory Trends	1-13
	[4] Acquisition Financing	1-14
	[a] Investment Grade Acquisition Financing.....	1-14
	[b] Leveraged Acquisition Financing ...	1-14
	[5] Shareholder Litigation	1-15
	[6] Shareholder Activism and Engagement ...	1-17
	[a] Hedge Fund Activism	1-17
	[i] Large Companies and New Tactics.....	1-17
	[ii] M&A Activism and Appraisal Arbitrage	1-19
	[b] Governance Activism.....	1-22
	[i] Proxy Access	1-23
	[ii] Defensive Provisions	1-24
	[iii] Majority Voting	1-24.1
	[iv] Action by Written Consent ...	1-24.2
	[v] Special Meetings	1-24.2
	[vi] Say on Pay	1-24.3
	[c] Shareholder Engagement	1-24.3

TAKEOVERS & FREEZEOUTS

	[7]	Regulatory Trends	1-24.4
	[a]	Enforcement Trends and Issues	1-24.4
	[b]	Getting the Deal Done	1-24.7
§ 1.02		Takeover Regulation	1-24.9
	[1]	The Williams Act	1-24.9
	[2]	Other Federal Securities Laws	1-24.9
	[3]	Margin Regulations: Financing an Acquisition	1-24.9
	[4]	Regulatory Approvals	1-25
	[5]	Notification Under the Hart-Scott Act	1-25
	[6]	State Takeover Statutes	1-26
§ 1.03		The Acquiror's Decision	1-29
	[1]	Why Acquire by Tender Offer	1-29
	[2]	Identifying the Takeover Target	1-29
	[3]	Form of Offer	1-30
	[a]	Cash Tender Offer	1-30
	[b]	Exchange Offer	1-31
	[c]	The Cash Option Transaction	1-32
	[i]	Tax Considerations	1-32
	[ii]	Structuring the Transaction	1-32
	[iii]	Securities Law Questions	1-34
§ 1.04		Preparing the Attack	1-36
	[1]	Creation of a Team	1-36
	[2]	Pre-Offer Confidentiality	1-38
	[3]	Organizing for a Tender Offer	1-39
§ 1.05		[RESERVED]	1-40
§ 1.06		[RESERVED]	1-41
§ 1.07		[RESERVED]	1-42
§ 1.08		[RESERVED]	1-43
§ 1.09		[RESERVED]	1-44
§ 1.10		Structural Alternatives and Other Considerations in Business Combinations	1-45
	[1]	Preliminary Agreements: Confidentiality Agreements and Letters of Intent	1-45
	[a]	Confidentiality Agreements	1-45
	[b]	Letters of Intent	1-48
	[2]	Federal Income Tax Considerations	1-50
	[a]	Direct Merger	1-51
	[b]	Forward Triangular Merger	1-51
	[c]	Reverse Triangular Merger	1-52
	[d]	Section 351 "Double-Dummy" Transaction	1-52
	[e]	Multi-Step Transaction	1-53
	[f]	Spin-Offs Combined with M&A Transactions	1-53

TABLE OF CONTENTS

xi

	[3]	Consideration and Pricing	1-55
	[a]	All-Cash Transactions	1-55
	[b]	All-Stock Transactions	1-56
	[i]	Pricing Formulae and Allocation of Market Risk	1-56
	[ii]	Walk-Aways	1-59
	[iii]	Finding the Appropriate Pricing Structure for All-Stock Transactions	1-60
	[c]	Hybrid Transactions: Stock and Cash	1-61
	[i]	Possible Cash-Stock Combinations	1-62
	[ii]	Allocation and Oversubscription	1-64
	[d]	Contingent Value Rights	1-65
	[i]	Price Protection CVRs	1-65
	[ii]	Event-Driven CVRs	1-66
	[4]	Tender Offers	1-67
	[a]	Advantages of the Tender Offer Structure	1-68
	[i]	Speed	1-68
	[ii]	Dissident Shareholders	1-69
	[iii]	Standard of Review	1-70
	[b]	DGCL Section 251(h)	1-70
	[c]	Top-Up Options	1-72
	[d]	Dual-Track Tender Offers	1-73
	[5]	Mergers of Equals	1-73
§ 1.11		Cross-Border Transactions	1-76
	[1]	Overview	1-76
	[2]	Special Considerations in Cross-Border Deals	1-78
	[a]	Political and Regulatory Considerations	1-78
	[b]	Integration Planning and Due Diligence	1-82
	[c]	Competition Review and Action	1-83
	[d]	Deal Techniques and Cross-Border Practice	1-85
	[e]	U.S. Cross-Border Securities Regulation	1-88
	[3]	Deal Consideration and Transaction Structures	1-89
	[a]	All-Cash	1-90

TAKEOVERS & FREEZEOUTS

	[b] Equity Consideration	1-90
	[c] Stock and Depositary Receipts	1-91
	[d] “Dual Pillar” Structures.	1-91
§ 1.12	Communication with Stockholders	1-93
§ 1.13	Implications of the Sarbanes-Oxley Act of 2002. . .	1-94
	[1] General Implications of SOX for M&A . . .	1-94
	[2] CEO/CFO Certifications: Acquirors Must Certify as to Targets Post-Closing	1-96
	[3] Disclosure of Non-GAAP Financial Measures: Selling the Deal to Shareholders	1-98
	[4] Disclosure of “Off-Balance Sheet Arrangements”: Some Targets May Be Less Attractive.	1-99
	[5] Limits on Non-Audit Services: How (or Who) to Do Diligence After SOX. . .	1-100
	[6] Auditor Independence: Acquiror’s Auditor and the Target.	1-101
	[7] No Loans to Directors or Executive Officers: LBOs, Target Loans and Loan Forgiveness	1-102
	[8] Trading by Insiders: Technical Concerns with Blackout Periods	1-103
	[9] Beyond SOX—Other Recent Regulations and M&A	1-104

CHAPTER 2**The Federal Regulatory Framework**

§ 2.01	General Requirements Under the Williams Act . . .	2-6
	[1] A Summary	2-6
	[a] Section 13(d)—Acquisitions of More than Five Percent	2-6
	[b] Section 14(d)—Tender Offers	2-7
	[c] Section 13(e)—Issuer Repurchases. . .	2-8
	[d] Section 14(e)—Fraud and Manipulation.	2-8
	[e] Section 14(f)—Changes in Majority of Directors	2-9
	[f] Section 13(f)—Reports by Institutional Investment Managers.	2-9

TABLE OF CONTENTS

xiii

	[2]	Equity Securities	2-9
		[a] Definition	2-9
		[b] Exemptions	2-10
	[3]	Beneficial Ownership	2-11
		[a] Multiple Owners	2-12
		[b] Exemptions	2-13
		[i] “Street Name” Holders	2-13
		[ii] Pledgees	2-14
		[c] Disclaimer of Beneficial Ownership	2-14
	[4]	Determination of Five Percent	2-14
	[5]	Group	2-15
		[a] Agreement Necessary	2-15
		[b] Combining for the Purpose of Control	2-16
		[c] Shareholders Acting in Concert	2-17
		[d] Common Investments	2-18
		[e] Purchaser and Seller Forming a Group	2-19
		[f] Exemption for Underwriters	2-20
		[g] Management as a “Group”	2-20
§ 2.02		Tender Offer or Accumulation of Shares	2-23
	[1]	Legislative History	2-24
	[2]	The “Creeping Tender Offer” Problem	2-26
	[3]	SEC’s Changing Position	2-30.1
	[4]	The Federal Securities Code	2-31
	[5]	Integration of Purchases Followed by a Formal Tender Offer	2-32
	[6]	Nonconventional Tender Offers	2-33
		[a] Post Merger Take-Out	2-33
		[b] General Put	2-33
		[c] Dissenters’ Appraisal Rights	2-33
		[d] Class Action Settlement	2-34
§ 2.03		Required Disclosure of Five Percent Holdings	2-35
	[1]	Disclosure Statements	2-35
		[a] Schedule 13D	2-35
		[b] Amendments to Schedule 13D	2-36
		[c] Schedule 13G	2-39
		[i] Less Than 20% Holders	2-39
		[ii] Institutional Investors	2-40
		[iii] Filing and Amendments for Institutional Investors	2-41
		[iv] Aggregation of Ownership Among Affiliates	2-42

TAKEOVERS & FREEZEOUTS

	[v]	Solicitation Activities by Institutional Investors	2-43
	[vi]	Other Persons Required to File Schedule 13G	2-44
	[vii]	Reestablishing Schedule 13G Eligibility	2-44
[2]		Pre-Filing Acquisitions	2-44
[3]		Acquisitions Other than by Purchase	2-44
[4]		Filings by Multiple Owners	2-45
[5]		Effect on Other Forms	2-45
[6]		Reports by Institutional Investment Managers	2-46
§ 2.03A		Scope of Tender Offer Regulation	2-47
	[1]	Scope of Regulations	2-47
	[2]	Exemption for Cross-Border Transactions	2-47
§ 2.04		Tender Offer Filing, Disclosure and Dissemination by the Bidder	2-50
	[1]	Filing and Disclosure Requirements	2-50
	[2]	Definitions	2-50
		[a] “Bidder”	2-50
		[b] “Tender Offer Material”	2-51
		[c] “Security Holders”	2-51
		[d] “Business Day”	2-51
	[3]	Disclosure Statement	2-51
		[a] Schedule TO	2-51
		[b] Amendments	2-53
	[4]	Publication and Dissemination	2-54
		[a] Long-Form Publication	2-54
		[b] Summary Advertisement	2-54
		[c] Adequate Publication	2-55
		[d] Stockholder Lists and Security Position Listings	2-55
		[i] The Bidder’s Obligations	2-56
		[ii] The Target’s Obligations	2-56
		[iii] Updating the Lists and Disseminating Additional Material	2-56
		[iv] Practical Considerations	2-57
		[e] Other Dissemination Methods	2-57
		[f] Disseminating Changes	2-58
	[5]	Commencement and Pre-Commencement Communications	2-58

TABLE OF CONTENTS

xv

§ 2.05	Substantive Requirements of a Tender Offer	2-60
	[1] Length of the Offering Period.	2-60
	[a] Minimum Length.	2-60
	[b] Effect of Amendment on Offering Period	2-60
	[c] Self-Tenders	2-60
	[d] Procedure for Extending an Offer. . .	2-61
	[e] Continuity of Offering Period.	2-61
	[f] Subsequent Offering Period.	2-62
	[2] Withdrawal Rights	2-62.1
	[3] Proration Requirements	2-62.1
	[4] All Holders and Best Price Rule.	2-62.2
	[5] Prompt Payment.	2-65
	[6] New Offer or Amendment.	2-65
§ 2.06	Tender Offer Filing, Disclosure and Dissemination by the Target	2-71
	[1] Rule 14e-2—Target Response Required . . .	2-71
	[2] Rule 14d-9—Solicitations and Recommendations.	2-71
	[a] Persons Covered.	2-72
	[b] Stop-Look-and-Listen Exemption . . .	2-73
	[3] Relationship Between Rules 14e-2 and 14d-9	2-73
	[4] Disclosure Statement	2-75
	[a] Schedule 14D-9	2-75
	[b] Amendments.	2-76
§ 2.07	Issuer Tender Offers and Repurchases	2-77
	[1] Rule 13e-1—Repurchases During Third Party Offers	2-77
	[2] Rule 13e-4—Regulation of Issuer Tender Offers	2-77
	[a] Substantive Requirements	2-77
	[b] Schedule TO	2-78
	[3] Rule 10b-18—Regulation of Issuer Repurchases	2-79
§ 2.08	Fraud and Manipulation; Inside Information. . . .	2-81
	[1] Section 14(e)—Antifraud Provision	2-81
	[2] Rule 10b-5—General Antifraud Provision	2-83
	[3] Rule 14e-3—Tender Offer Inside Information Rule	2-86
	[a] Basic Trading Prohibition	2-86
	[b] “Chinese Wall” Exemption	2-88
	[c] Anti-Tipping Provision.	2-89
§ 2.09	Rule 14f-1—Change in Majority of Directors. . . .	2-90

§ 2.10	Additional Regulations Under the 1934 Act	2-91
	[1] Rule 10e-5—Purchases Outside a Tender Offer	2-91
	[2] Regulation M—Repurchases During a Distribution	2-93
	[3] Rule 10b-4—Short and Hedged Tendering	2-94.1
	[a] Short and Hedged Tendering Covered	2-95
	[b] Tenders Pursuant to Ownership of Options	2-97
	[c] Equivalent Securities; Proration	2-97
	[d] Tendering Through a Broker	2-98
	[e] “Indirect” Violations	2-98
	[f] Inadvertent Violations	2-98
§ 2.11	Investment Company Act	2-99
§ 2.12	Margin Regulations	2-104
	[1] Regulation U—Banks	2-104
	[a] “Margin Stock”	2-104
	[b] “Purpose Credit”	2-105
	[c] The Asset Purchase—Structural Alternative to the Cash Merger	2-105
	[d] “Indirect Security”	2-106
	[e] “Single Credit” Rule	2-109
	[f] Mixed Collateral	2-110
	[2] Regulation T—Brokers and Dealers	2-110
	[a] “Margin Security”	2-113
	[b] “Broker” or “Dealer”	2-113
	[c] “Arranging” for Purpose Credit	2-114
	[3] Regulation G—Institutional Lenders	2-115
	[a] “Ordinary Course of Business”	2-115
	[b] “Margin Security”	2-116
	[c] “Purpose Credit”	2-116
	[d] “Indirect Security”	2-116
	[e] Mixed Collateral	2-117
	[f] Foreign Lenders	2-118
	[4] Regulation X—Borrowers	2-118
§ 2.13	Section 16(b)—Short-Swing Profits	2-120
	[1] “Orthodox” and “Unorthodox” Transactions	2-121
	[a] Tender Offers	2-122
	[b] Defensive Mergers	2-122
	[2] Limiting Liability of Insiders	2-127
	[a] “Deputization” Theory	2-128
	[b] Structuring Transactions to Minimize Liability	2-129

TABLE OF CONTENTS

xvii

	[c] Shares Acquired by Tender Offer . . .	2-130
[3]	Stock Options and Stock Appreciation Rights	2-131
	[a] General Treatment	2-131
	[b] Acquisitions From and Dispositions to the Issuer.	2-132
	[c] Benefit Plans and Discretionary Transactions	2-133
	[d] Merger Planning.	2-134
[4]	Extent of Liability Under Section 16(b) . . .	2-135
§ 2.14	State, Federal and Foreign Regulation.	2-138
[1]	State and Federal Regulation of Change of Control	2-138
	[a] Use of Voting Trusts	2-139
	[b] Federal Oil and Gas Leases.	2-140
[2]	Federal Restrictions on Acquisitions of Assets	2-145
[3]	Federal Regulation of Acquisitions by Foreigners	2-146
[4]	Foreign Approvals	2-148
	[a] Canada	2-149
	[b] United Kingdom.	2-150
	[c] Sweden	2-150
	[d] Australia	2-150
	[e] Federal Republic of Germany	2-150
	[f] Mexico	2-151
	[g] Japan	2-151

CHAPTER 3

Disclosure Requirements

§ 3.01	Standards of Disclosure	3-2
[1]	Materiality	3-2
[2]	Balancing the Scope of Disclosure	3-6
[3]	Totality of Disclosure.	3-7
	[a] Disclosure of Publicly-Known Facts	3-7
	[b] Incorporation by Reference	3-10
[4]	Application Beyond Formal Offering Materials	3-12
[5]	Special Situations Involving a Stricter Standard	3-13
	[a] Conflict Transactions	3-13
	[b] Partial Offers	3-14

	[c] Going Private Transactions	3-15
	[d] Two-Step Transactions	3-15
§ 3.02	[6] Regulatory Agency Positions	3-16
	Intention and Purpose Disclosures	3-18
	[1] Control	3-22
	[2] Restructuring of Target	3-25
	[3] Change in Management or Board of Directors	3-26
	[4] Merger of Target with Offeror	3-29
	[a] Description of Second-Step Consideration	3-30
	[b] Tax Consequences	3-31
	[c] Appraisal Rights	3-31
	[d] Applicability of Going Private Rules	3-34
§ 3.03	[5] Opposition to Third Party Takeover	3-35
	Antitrust Disclosures	3-36
	[1] Possible Antitrust Violations	3-36
	[2] Hart-Scott Act	3-37
	[3] Exon-Florio	3-40
§ 3.04	Disclosure of Effect of Offer on Market and Exchange Listing	3-43
§ 3.05	Financial Disclosures	3-47
	[1] Financial Statements of Offeror	3-47
	[a] Scope of “bidder”	3-52
	[b] Requirement Limited to Reporting	3-53
	[2] Tender Offer Loans	3-54
	[3] Valuations and Projections	3-58
§ 3.06	Disclosure of Approvals for Change of Control	3-72
	[1] State Takeover Statutes	3-72
	[2] State and Federal Regulatory Approvals	3-75
	[3] Foreign Regulatory Problems	3-81
	[a] Canada	3-81
	[b] United Kingdom	3-82
	[c] Sweden	3-84
	[d] North Sea Licenses	3-85
	[e] Other Foreign Approvals	3-86
	[4] Contractual Provisions	3-86
§ 3.07	Ethics and Integrity Disclosures	3-88
	[1] Questionable Payments	3-88
	[2] Past Violations of Securities Laws	3-90
§ 3.08	Other Specific Disclosure Problems	3-92
	[1] Expected Litigation	3-92
	[2] Conditions of Offer	3-93
	[3] Dealings Between Target and Offeror	3-97

TABLE OF CONTENTS

xix

	[4]	Transactions in Target Securities	3-99
	[5]	Defensive Merger by Target	3-99
	[6]	Fee Agreement with Investment Banker	3-100
§ 3.09		Target Disclosures on Schedule 14D-9	3-102
	[1]	Target's Response to an Offer	3-102
	[2]	Conflicts of Interest	3-106
	[3]	Negotiations and Transactions	3-108
	[4]	Antitakeover Devices or Policies	3-111
§ 3.10		SEC Review of Disclosures	3-113

CHAPTER 4

Regulation by Trading Markets

§ 4.01		Requirements of the New York Stock Exchange	4-1
	[1]	Disclosure of Information	4-1
	[2]	Tender Offers	4-3
	[3]	Takeover Defenses: Charter and Bylaw Provisions	4-3
	[4]	Shareholder Approval	4-5
	[5]	Voting Rights; Dual Class Capitalization	4-7
§ 4.02		Requirements of the American Stock Exchange	4-9
	[1]	Disclosure of Information	4-9
	[2]	Tender Offers	4-9
	[3]	Takeover Defenses: Charter and Bylaw Provisions	4-9
	[4]	Shareholder Approval	4-9
	[5]	Voting Rights; Dual Class Capitalization	4-10
§ 4.03		Requirements of the Nasdaq Stock Market	4-11
	[1]	Disclosure of Information	4-11
	[2]	Tender Offers	4-11
	[3]	Takeover Defenses: Charter and Bylaw Provisions	4-11
	[4]	Shareholder Approval	4-11
	[5]	Voting Rights; Dual Class Capitalization	4-11

CHAPTER 5

State Regulation of Tender Offers

§ 5.01		Overview	5-2
§ 5.02		First Generation Statutes	5-5
	[1]	Summary of First Generation Statutes	5-5
	[2]	Early Constitutional Attacks	5-9

TAKEOVERS & FREEZEOUTS

	[3]	Conflict with SEC's Tender Offer Rules	5-12
	[a]	The Five Day Rule	5-13
	[b]	Litigation Responses to Rule 14d-2	5-13
	[c]	State Responses to Rule 14d-2	5-15
	[i]	"Safe Harbor" Provision	5-16
	[ii]	Confidential Treatment of Filed Materials	5-17
	[iii]	"Conditional" Offer	5-17
	[iv]	Elimination of Waiting Period	5-18
	[v]	Granting of Exemptions	5-18
	[4]	The <i>MITE</i> Decision	5-19
	[5]	Post- <i>MITE</i> Cases	5-22
§ 5.03		Second Generation Statutes	5-25
	[1]	Summary of Second Generation Statutes	5-25
	[a]	Business Combination Statutes	5-25
	[b]	Control Share Acquisition Statutes	5-28
	[c]	Fair Value Statutes	5-31
	[d]	Corporate Constituencies	5-32
	[e]	Anti-Greenmail Statutes	5-34
	[f]	Other Statutes	5-34
	[i]	California MBO Statute	5-34
	[ii]	Massachusetts Staggered Board Statute	5-35
	[iii]	Pennsylvania Statute	5-35
	[iv]	Wyoming Statute	5-36
	[v]	Arizona Golden Parachute Statute	5-37
	[vi]	Wisconsin Crown Jewels Statute	5-37
	[vii]	Hawaii Environmental Disclosure Act	5-38
	[2]	Constitutionality	5-38
	[a]	Decisions Before <i>CTS Corp. v. Dynamics Corp. of America</i>	5-38
	[b]	<i>CTS Corp. v. Dynamics Corp. of America</i> : Constitutionality of Control Share Acquisition Statutes	5-41
	[c]	Decisions After <i>CTS Corp. v. Dynamics Corp. of America</i>	5-47
	[i]	Constitutionality of Other Control Share Acquisition Statutes	5-47

TABLE OF CONTENTS

xxi

	[ii] Constitutionality of Business Combination Statutes	5-49
	[d] Unconstitutionality of Second Generation Statutes Regulating Foreign Corporations	5-54
§ 5.04	Constitutional Attacks on Change in Control Statutes	5-57
§ 5.05	Shareholder Lists.	5-63

CHAPTER 5A

Standards for Conduct by the Board

§ 5A.01	Board Considerations in M&A	5A-4
	[1] Directors' Duties	5A-4
	[a] Duty of Care.	5A-4
	[b] Duty of Loyalty	5A-6
	[2] The Standards of Review	5A-8
	[a] Business Judgment Rule	5A-8
	[b] Enhanced or Intermediate Scrutiny.	5A-9
	[i] Unocal Standard.	5A-10
	[ii] Revlon Standard.	5A-14
	[iii] Third-Party Overbids	5A-23
	[c] Entire Fairness	5A-25
	[3] Controlling Shareholders, Conflicts and Special Committees	5A-29
	[a] Controlling Shareholders	5A-29
	[b] Conflicts and Director Independence	5A-31
	[c] The Special Committee's Procedures and Role.	5A-33
	[d] Selecting Special Committee Advisors	5A-36
	[e] Transactions Involving Differential Consideration	5A-37
§ 5A.02	Key Aspects of the M&A Deal-Making Process	5A-40
	[1] Techniques for a Public Sale.	5A-40
	[a] Formal Auction.	5A-40
	[b] Market Check	5A-41
	[2] Valuing Stock Consideration in Acquisition Proposals.	5A-45
	[a] Short- and Long-Term Values	5A-45
	[b] Other Constituencies and Social Issues.	5A-47

TAKEOVERS & FREEZEOUTS

	[3]	Investment Bankers and Fairness Opinions	5A-48.1
	[a]	Conflicts and Fairness Opinions.	5A-48.2
	[b]	Fairness Opinions and Differential Consideration	5A-48.6
	[4]	Use and Disclosure of Financial Projections	5A-48.6
§ 5A.03		Deal Protection and Deal Certainty	5A-48.9
	[1]	Deal Protection Devices	5A-48.9
	[a]	Break-Up Fees	5A-48.10
	[b]	No-Shops,” “No Talks” and “Don’t Ask, Don’t Waive” Standstills	5A-48.13
	[c]	Board Recommendations, Fiduciary Outs and “Force-the- Vote” Provisions	5A-48.16
	[d]	Shareholder Commitments	5A-48.18
	[e]	Information Rights and Matching Rights	5A-48.21
	[f]	Other Deal Protection Devices	5A-48.22
	[i]	Issuance of Shares	5A-48.22
	[ii]	Loans and Convertible Loans	5A-48.22
	[iii]	Crown Jewels	5A-48.23
	[2]	Material Adverse Effect Clauses	5A-48.24
	[3]	Committed Deal Structures, Optionality and Remedies for Failure to Close	5A-48.27
§ 5A.04		Duties of the Board in Dealing with Management Buyout Proposals	5A-48.32
	[1]	Overview	5A-48.32
	[2]	Standards of Board Conduct in the Buyout Context	5A-48.22
	[a]	Entire Fairness	5A-52
	[i]	Fair Dealing	5A-52
	[ii]	Fair Price	5A-54
	[b]	Satisfying in Entire Fairness Review: The Use of a Special Committee	5A-56
	[3]	Structuring an Effective Special Committee	5A-57
	[a]	Understanding the Committee’s Role	5A-58
	[b]	Choosing a Committee	5A-59
	[i]	The Meaning of Independence	5A-60
	[ii]	Selecting Advisors	5A-62

TABLE OF CONTENTS

xxiii

	[iii] Information About the Transaction	5A-63
	[iv] Documenting the Process	5A-64
[4]	The Special Committee in Action	5A-65
	[a] The Power to “Just Say No”	5A-66
	[b] No Power to “Shop” the Company Required Where Controlling Shareholder is Unwilling to Sell.	5A-67
	[c] Threats to Withdraw Merger Proposal Consistent with Special Committee Process.	5A-68
	[d] What if the Special Committee Says “No”? Alternative to Special Committees	5A-68
[5]	Limitations of Use of Special Committees.	5A-70
§ 5A.05	Duties to Creditors	5A-72
	[1] General Fiduciary Duties to Creditors	5A-72
	[a] Absent Special Circumstances, No Duty to Creditors	5A-72
	[b] Where Company Insolvent, Duties to Creditors Exist	5A-116
	[2] Duty of Disclosure to Creditors	5A-118
	[3] Implied Covenants of Good Faith and Fair Dealing	5A-118
	[4] Fraudulent Conveyances	5A-120
	[a] Bases for Fraudulent Conveyance Claim.	5A-120
	[b] Potential Defendants.	5A-123
	[c] Standing to Sue	5A-126
§ 5A.06	Directors’ and Officers’ Liability Insurance	5A-128
	[1] Background.	5A-128
	[2] Liability Insurance Crisis	5A-128
	[a] Effects of Liability Crisis	5A-128
	[b] Takeover Exclusions in D&O Liability Insurance Contracts.	5A-129
	[c] Impact on Corporations.	5A-129
	[3] Corporate Responses to the Liability Crisis.	5A-130
	[a] Charter and By-law Amendments.	5A-130
	[b] Contracts.	5A-130
	[4] Legislative Solutions	5A-130
	[a] Charter Option Statutes	5A-131
	[b] Self-Executing Statutes	5A-132

TAKEOVERS & FREEZEOUTS

[c]	Cap on Money Damages	5A-133
[d]	Expansion of Indemnification in Derivative Suits	5A-134
[e]	Expansion of Nonexclusivity Provisions	5A-134
[f]	Alternative Source of Reimbursement	5A-135
[g]	Nonstockholder Constituency Statutes	5A-136

CHAPTER 6**Defending Against Takeovers**

§ 6.01	Policy Issues Relating to Takeover Activity	6-3
§ 6.02	[RESERVED]	6-5
§ 6.03	Advance Takeover Preparedness	6-6
	[1] Defensive Charter and Bylaw Provisions.	6-6
	[a] Nominations and Shareholder Business	6-7
	[b] Dissident Director Conflict/ Enrichment Schemes	6-9
	[c] Meetings	6-9
	[d] Vote Required.	6-10
	[e] Action by Shareholder Consent.	6-11
	[f] Staggered Boards	6-11
	[g] Board Adopted Bylaw Amendments	6-12
	[h] Forum Selection Provisions	6-13
	[i] Fee-Shifting Bylaws and Mandatory Arbitration Provisions	6-14
	[2] Rights Plans	6-16
	[a] The Basic Design	6-18
	[b] Basic Case Law Regarding Rights Plans	6-23
	[c] Rights Plans and Economic Evidence	6-27
	[d] “Dead Hand” Pills	6-27
	[e] “Shareholder Rights” Bylaws	6-29
	[3] “Poison Puts”	6-30
	[4] Change of Control Employment Arrangements	6-33
§ 6.04	Responding to Pre-Offer Takeover Attempts	6-77
	[1] No Duty to Negotiate	6-77

TABLE OF CONTENTS

xxv

	[2]	Responding to Bear-Hugs	6-97
	[3]	Responding to Accumulations of Shares . . .	6-99
	[4]	Public Announcement of the Raider's Approach.	6-100
	[5]	"Sandbagging" the Raider.	6-102
	[6]	Repurchase of Shares from a Raider	6-103
§ 6.05		Responding to an Actual Offer	6-115
	[1]	Prior to Taking a Position	6-115
	[2]	Requirement of Response Under Rule 14e-2.	6-115
	[3]	Suggested Procedures	6-116
	[4]	Reasonable Grounds for Rejecting an Offer.	6-118
§ 6.06		Specific Responses	6-120
	[1]	Commencement of Litigation	6-121
	[2]	Characterizing the Offer as Inadequate . . .	6-123
	[3]	Restructuring Defenses	6-125
	[a]	Sales of Attractive Assets	6-128
	[b]	Master Limited Partnerships	6-129
	[c]	Corporate Split-Ups and Spin-Offs.	6-130
	[d]	Self-Tenders	6-134
	[i]	Director Authority	6-135
	[ii]	Certain Issues	6-136
	[iii]	Applications	6-137
	[e]	Exclusionary Self-Tenders	6-138
	[i]	The SEC's Response to Exclusionary Tender Offers.	6-140
	[f]	Analysis of Cases Involving Self-Tenders.	6-141
	[g]	Large-Scale Open Market Purchases	6-147
	[i]	Trading by Ally	6-149
	[h]	Recapitalizations; Reincorporations. . .	6-150
	[i]	Structure	6-153
	[ii]	Accounting and Fraudulent Conveyance Issues	6-154
	[iii]	Tax Issues	6-156
	[iv]	Applications	6-157
	[i]	Total Liquidation	6-167
	[j]	Strategy, Tactics and Issues.	6-169
[3A]		Protect Preferred	6-170
	[a]	Protect Preferred as a Restructuring Alternative.	6-170

TAKEOVERS & FREEZEOUTS

	[b]	Basic Terms of Protect Preferred . . .	6-172
		[i] Special Dividend Feature	6-172
		[ii] Conversion Feature	6-173
		[iii] Change of Control Feature . . .	6-173
		[iv] Rank	6-174
		[v] Voting Rights	6-174
	[c]	Tax and Accounting Implications . .	6-174
	[d]	The Utilization of Protect Preferred	6-175
	[e]	Examples of Protect Preferred	6-176
[4]		White Squire and White Knight Arrangements	6-176
	[a]	Overview	6-176
	[b]	Confidentiality Agreements	6-178
	[c]	Disclosure of Merger Negotiations . .	6-179
		[i] Schedule 14d-9 Disclosure Issues	6-180
		[ii] Rule 10b-5	6-188
		[iii] Arrangements with Management	6-197
	[d]	Issuance of Stock to a Friendly Holder	6-197
	[e]	Debt with Warrants	6-208
	[f]	Rule 19c-4—One Share/One Vote . .	6-208
	[g]	Shareholder Approval Requirements	6-212
	[h]	Standstill Agreements	6-217
	[i]	Issuance of Stock to an ESOP or SECT	6-221
		[i] Tax Treatment of ESOP White Knights	6-231
	[j]	White Knight Leveraged Buyouts . .	6-232
	[k]	Lock-Up Options	6-237
[5]		The “Pac-Man” Defense	6-239
	[a]	General	6-239
	[b]	Application of the Business Judgment Rule	6-241
	[c]	The Double Subsidiary Issue	6-242
[6]		Cash or Stock Acquisitions	6-244

Chapter 6 is continued in Volume 1A

TABLE OF CONTENTS

Volume 1A

CHAPTER 6

Defending Against Takeovers

[continued]

(Sections 6.01 through 6.06 appear in Volume 1)

§ 6.07	Tender Offer Litigation.	6-249
	[1] Standing to Sue Under Section 14(e)	6-249
	[a] Suits by an Offeror	6-249
	[b] Suits by the Target	6-250
	[c] Suits by the Target's Shareholders	6-250
	[2] Standing Under Rule 10b-6	6-253
	[3] Standing Under Rule 10b-13	6-253
	[4] Standing Under Rule 10b-5 and Section 9	6-254
	[5] Penalty for Disclosure Violations	6-255
	[a] Standards for Preliminary Injunction	6-255
	[b] Amendment and Extension of Offer	6-258
	[c] New Offer	6-258
	[d] Divestiture and Rescission	6-259
§ 6.08	Section 13(d) Litigation	6-261
	[1] Standing to Seek Injunctive Relief	6-261
	[2] Damage Actions Under Section 13(d)	6-263
	[3] Equitable Relief for Violations of Section 13(d)	6-264
§ 6.09	Causes of Action	6-273
	[1] The Antitrust Defense	6-273

TAKEOVERS & FREEZEOUTS

[a]	Target Standing	6-277
[b]	Federal Agency Enforcement	6-279
[c]	State Attorneys General	6-282
[d]	Foreign Enforcement Authorities	6-284
[e]	Bases of Complaint	6-284
	[i] Clayton Act Section 7	6-284
	[ii] Other Federal Statutes	6-285
[f]	Relief	6-286
[g]	Violations of the Hart-Scott Act	6-291
[2]	Violations of Tender Offer Procedure	6-291
	[a] All Holders and Best-Price Rules	6-292
[3]	Coercive Tender Offer Theory; Fairness to Non-Tendering Shareholders	6-299
[4]	Breach of Fiduciary Duty	6-303
	[a] Investment Bankers	6-305
	[b] Commercial Banks	6-307
	[c] Directors	6-310
	[d] Bids Based Upon Inside Information	6-313
[5]	Disclosure	6-317
	[a] Section 13(d)	6-317
	[b] Identity of Bidder	6-322
	[c] Other Issues	6-324
[6]	Questionable Payments	6-325
[7]	Margin Regulations and Investment Company Act	6-326
	[a] Margin Regulations	6-326
	[b] Investment Company Act	6-329
[8]	Other Regulatory Defenses	6-329
	[a] Tied House Statutes	6-329
	[b] Exon-Florio/National Security	6-330
	[c] Insurance Regulation	6-332
	[d] Federal Reserve Board Regulation	6-334
	[e] Foreign Investors	6-335

CHAPTER 7**Practical Impact of the Antitrust Laws on Takeovers**

§ 7.01	General Considerations	7-7
	[1] Antitrust as a Factor	7-7
	[2] The Hart-Scott Act	7-8
	[3] Procedures to Preempt Problems	7-8
	[a] Application for Hart-Scott Act Early Termination	7-8

TABLE OF CONTENTS

vii

	[b] Special Submission with Hart-Scott Act Notification	7-9
	[c] Request for Agency Business Review	7-9
	[d] Divestiture Plan	7-9
§ 7.02	The Hart-Scott Act: General Summary of Pre-Acquisition Notification Requirements . . .	7-12
	[1] The Hart-Scott Act	7-12
	[a] The Act	7-12
	[b] Sources of Law	7-12
	[c] Size Tests	7-13
	[d] Commerce Test	7-13
	[e] Basic Effect	7-14
	[i] Filing Obligation	7-14
	[ii] Waiting Period	7-14
	[iii] Additional Data Request	7-14.1
	[f] Agency Authority	7-15
	[2] The Rules	7-15
	[3] Interpretations	7-16
	[4] Exemptions	7-16
	[5] Practical Effect	7-17
	[a] No Change in Antitrust Law	7-17
	[b] Certain Timing Effects	7-17
	[i] Only “Consummation” Affected	7-17
	[ii] Compatibility with SEC Tender Offer Rules	7-18
	[iii] Impact on Competing Bids	7-18
	[c] Applies to “Toe-Hold” Acquisitions	7-19
	[d] “Shelf” Filings	7-20
	[e] Acquisition by Fifty Percent Owners Exempt	7-21
	[f] Proxy Contests Not Covered	7-21
§ 7.03	The Hart-Scott Act: Classification and Treatment of Acquisitions	7-22
	[1] 801.30 and Non-801.30 Acquisitions	7-22
	[a] Definitions	7-22
	[b] Purpose of Distinction	7-22
	[2] “Secondary” Acquisitions of Third Parties	7-23
	[a] Concept	7-23
	[b] Effect on Waiting Period	7-23
	[3] Collateral Acquisitions by Third Parties	7-25

	[a]	Non-Cash Tender Offer	7-25
	[b]	Merger or Consolidation	7-26
[4]		Tender Offers	7-26
	[a]	Special Treatment of Tender Offers	7-26
	[b]	Definition	7-27
	[i]	General	7-27
	[ii]	“Cash Tender Offer”	7-28
	[iii]	Friendly Tender Offers	7-29
	[iv]	Exchange Offers	7-29
[5]		Multistep Transactions	7-29
	[a]	Offer Followed by Second-Step Merger	7-29
	[i]	Offer for Less than Fifty Percent	7-29
	[ii]	Offer for Fifty Percent or More	7-31
	[b]	Other Multistep Transactions	7-31
	[i]	“Lock-Ups”	7-31
	[ii]	Change in Acquisition Form	7-32
[6]		Joint Ventures and Newly-Formed Corporations	7-33
	[a]	General	7-33
	[b]	Mergers and Consolidations	7-34
§ 7.04		The Hart-Scott Act: “Size-of-Person” Test	7-35
	[1]	Statement of Test	7-35
	[a]	General Test	7-35
	[b]	“Entity” and Related Concepts	7-36
	[c]	Consolidation Required for Business Enterprises	7-36
	[d]	Assets and Sales of Natural Persons	7-37
	[e]	“Net Sales”	7-37
	[f]	“Total Assets”	7-37
	[2]	Uses of “Regularly Prepared” Financial Statements	7-38
	[3]	Change in Financial Condition	7-39
	[4]	Modification for Formation of New Corporation	7-40
§ 7.05		The Hart-Scott Act: “Size-of-Acquisition” Test	7-42
	[1]	Statement of Test	7-42
	[a]	General	7-42
	[b]	Treatment of Cash and Securities	7-42
	[2]	“Holding”	7-42
	[a]	General	7-42
	[b]	Beneficial Ownership	7-43

TABLE OF CONTENTS

ix

	[c] Attribution Rules	7-43
[3]	Holding “as a Result of”—Aggregation . . .	7-44
	[a] Previously-Held Voting Securities . . .	7-44
	[b] Previously-Held Assets	7-45
	[c] Exceptions to Aggregation for Exempt Acquisitions	7-45
[4]	Impact of “Acquired Person” Definition . . .	7-47
[5]	Valuation of Assets and Securities	7-48
	[a] General Principles	7-48
	[i] Previously-Acquired Voting Securities	7-48
	[ii] Previously-Acquired Assets	7-48
	[iii] Previously-Acquired Non- Corporate Interests	7-48
	[iv] Voting Securities to be Acquired	7-48
	[v] Assets to be Acquired	7-49
	[vi] Value of Non-Corporate Interests	7-49
	[b] Acquisition Price	7-49
	[c] Market Price	7-49
	[d] Fair Market Value	7-51
[6]	Calculation of Percentages	7-51
[7]	Determination at Time of Consummation . . .	7-52
[8]	Non-Reportable “Acquisitions”	7-52
§ 7.06	The Hart-Scott Act: Limitations on Size-of-Acquisition Test	7-54
	[1] Concept	7-54
	[2] The Thresholds	7-54
	[3] The Exemption and Its Condition	7-55
	[4] Operation of the Exemption	7-56
	[a] Meeting the Original Threshold	7-57
	[b] Meeting the Threshold Within One Year	7-57
	[c] Not Meeting the Threshold Within One Year	7-57
	[d] Recrossing a Threshold	7-58
	[5] Certain Aspects of the Exemption	7-58
	[a] Impact on Control Persons	7-58
	[b] Impact of Investment Exemptions . . .	7-58
	[c] Impact on Stock Purchase Programs	7-59
	[d] Impact on Asset Acquisitions	7-60
§ 7.07	The Hart-Scott Act: Exemptions	7-62
	[1] General Comments	7-62

TAKEOVERS & FREEZEOUTS

[2]	Exemptions Provided by Hart-Scott Act. . .	7-62
[a]	Goods or Realty Transferred in Ordinary Course	7-62
[b]	Non-Voting Securities	7-63
[c]	Further Acquisition by Control Persons.	7-63
[d]	Transfers to or from Government Agencies.	7-63
[e]	Antitrust Law Exemptions.	7-63
[i]	Absolute Exemption	7-63
[ii]	Conditional Exemption	7-63
[f]	Financial Institution Acquisitions . . .	7-64
[i]	Absolute Exemption	7-64
[ii]	Conditional Exemption	7-64
[iii]	Acquisitions Involving Insured Banks or Other Financial Institutions.	7-64
[g]	Acquisitions Solely for Investment Purpose.	7-65
[i]	The Rules	7-65
[ii]	FTC Interpretations.	7-66
[iii]	Enforcement Actions.	7-67
[h]	Stock Splits or Dividends	7-68
[i]	Certain Institutional Investments. . . .	7-68
[3]	Exemptions Provided by the Rules	7-68
[a]	Convertible Voting Securities; Options and Warrants	7-68
[i]	Convertible Voting Securities. . .	7-68
[ii]	Options and Warrants	7-69
[b]	Intra-Person Transactions	7-70
[c]	Acquisitions with a Foreign Element	7-70
[i]	Acquisitions of Foreign Assets by U.S. Persons	7-71
[ii]	Acquisitions of Foreign Securities by U.S. Persons . . .	7-71
[iii]	Acquisitions by Foreign Persons	7-71
[iv]	Foreign Government Acquisitions	7-72
[v]	Certain Foreign Banking Acquisitions	7-73
[d]	Acquisitions by Institutional Investors.	7-73

TABLE OF CONTENTS

xi

	[i] Definition of “Institutional Investor”	7-73
	[ii] General Rule	7-73
	[iii] Ordinary Course of Business	7-74
	[iv] Investment Purpose	7-74
	[v] Exceptions to the General Rule	7-74
	[vi] Risk Arbitrage Transactions	7-74
	[e] Acquisitions in Connection with the Formation of Certain Joint Ventures or Other Corporations	7-75
	[f] Acquisitions by Underwriters	7-75
	[g] Acquisitions by Creditors	7-76
	[h] Acquisitions by Gift, Etc.	7-77
	[i] Divestitures Subject to Order	7-77
	[j] Employee Trust Acquisitions	7-77
	[k] Formation of Not-for-Profit Corporation	7-77
	[4] <i>Ad Hoc</i> Exemptions	7-77
§ 7.08	The Hart-Scott Act: Waiting Period	7-79
	[1] Length of Waiting Period	7-79
	[a] Initial Waiting Period	7-79
	[i] Cash Tender Offer	7-79
	[ii] Other 801.30 Acquisitions	7-79
	[iii] Non-801.30 Acquisitions	7-79
	[iv] Bankruptcy Acquisitions	7-79
	[v] Acquired Person Filings	7-79
	[b] Extension by Additional Data Request	7-80
	[i] Cash Tender Offer	7-80
	[ii] Other Acquisitions	7-80
	[iii] Bankruptcy Acquisitions	7-80
	[c] Extension by Court Order	7-80
	[d] Early Termination by Agencies	7-81
	[2] Commencement and Expiration of Waiting Period	7-81
	[a] Commencement	7-81
	[b] Expiration	7-81
	[3] Pre-Filing Procedural Requirements	7-81
	[a] Notice to Acquired Person	7-81
	[b] Public Announcement of Tender Offer	7-82
	[c] Affidavits	7-82
	[4] Additional Data Requests	7-83
	[a] Scope of Agencies’ Authority	7-83

	[b]	Procedure	7-83
	[c]	Effect on Initial Waiting Period	7-85
	[5]	Early Termination.	7-86
	[a]	Scope of Agencies' Authority.	7-86
	[b]	Criteria	7-87
	[6]	Amended and Renewed Tender Offers.	7-88
	[a]	General Rule	7-88
	[b]	Change in Notification Threshold.	7-88
	[c]	Change in Consideration.	7-88
	[d]	Change of Transaction Form.	7-89
§ 7.09		The Hart-Scott Act: Procedural Aspects	7-90
	[1]	The Form	7-90
	[a]	General.	7-90
	[b]	Filing Person	7-90
	[c]	Acquired Person's Filing Obligation	7-90
	[i]	Obligation to File a Form.	7-90
	[ii]	Obligation to Respond to Additional Data Request	7-91
	[d]	Required Information.	7-91
	[i]	Summary	7-91
	[ii]	Exceptions.	7-92
	[iii]	NAICS Code Revenue Information	7-93
	[iv]	Acquisition Agreement.	7-93
	[v]	Antitrust Analyses.	7-93
	[vi]	Privileged Documents.	7-94
	[vii]	Five Percent Holders.	7-95
	[viii]	SEC Filings.	7-95
	[ix]	Incorporation by Reference	7-95
	[x]	Foreign Language Documents.	7-96
	[e]	Filing Fee.	7-96
	[2]	Compliance	7-96
	[a]	Statement of Reasons for Noncompliance	7-96
	[b]	Substantial Compliance	7-97
	[c]	Noncompliance	7-98
	[i]	Sanctions	7-98
	[ii]	Foreign Person's Refusal to Comply	7-98
	[iii]	Right of Action.	7-99
	[3]	Confidentiality	7-100
§ 7.10		The Hart-Scott Act: Certain Key Definitions	7-103
	[1]	"Control".	7-103
	[a]	General.	7-103

TABLE OF CONTENTS

xiii

	[i] Control Through 1 Voting Securities	7-103
	[ii] Contractual Control	7-103
	[iii] Control of an Entity With No Outstanding Voting Securities	7-103
	[b] Special Cases	7-104
	[i] Pension Trusts	7-104
	[ii] Natural Persons	7-104
[2]	“Entity” and Related Terms	7-105
	[a] General	7-105
	[b] “Entity”	7-105
	[c] “Ultimate Parent Entity”	7-106
	[d] “Person”	7-106
[3]	“Acquiring Person” and “Acquired Person”	7-106
	[a] “Acquiring Person”	7-106
	[i] General	7-106
	[ii] Multiple “Acquiring Persons”	7-107
	[b] “Acquired Person”	7-107
	[i] General	7-107
	[ii] Transferor of Voting Securities	7-107
	[iii] Exception	7-108
	[c] Acquiring and Acquired Person	7-108
	[i] General	7-108
	[ii] Mergers and Consolidations	7-108
	[iii] Corporate Formation Transactions	7-108
[4]	“Voting Securities”	7-109
[5]	“Assets”	7-109
	[a] General	7-109
	[b] Treatment of Cash and Securities	7-109
	[c] Accounts Receivable	7-110
§ 7.11	Merger Guidelines of Department of Justice and Federal Trade Commission	7-111
	[1] General	7-111
	[2] Policy Goals	7-111
	[3] Market Definition	7-112
	[4] Horizontal Mergers	7-112
	[5] Inadequate Defenses	7-114
	[a] Failing Firms	7-114
	[b] Efficiencies	7-114

CHAPTER 8

**The Dealer-Manager for the Bidder
and the Investment Banker for the Target**

§ 8.01	The Investment Banker/Dealer-Manager for the Bidder	8-2
	[1] Functions	8-2
	[2] Selection	8-3
	[3] Dealer-Manager Agreement	8-3
	[a] Cash Tender Offer	8-3
	[b] Exchange Offer	8-7
§ 8.02	The Investment Banker for the Target	8-9
	[1] Functions	8-9
	[2] Agreement	8-9
§ 8.03	Soliciting Dealers	8-12
	[1] Functions	8-12
	[2] Agreement	8-12
	[3] Federal and State Positions on Soliciting Dealer Fees	8-13
§ 8.04	Market Activities of Investment Bankers in Connection With Tender Offers	8-14
	[1] When Acting as Dealer-Manager	8-14
	[a] Cash Tender Offer	8-14
	[b] Exchange Offer	8-15
	[2] After Retention by or Contacts with Target or White Knight	8-15
	[3] Prior to Retention or Contact	8-15
	[4] As a Soliciting Dealer	8-16
	[a] Cash Tender Offer	8-16
	[b] Exchange Offer	8-17
§ 8.05	Special Compliance Procedures for Arbitrage Departments	8-19
	[1] Obtaining Public Information	8-19
	[2] Distinguishing Between Public and Inside Information	8-19
	[3] Contact with Other Market Professionals ...	8-20
	[4] Chinese Walls and Similar Insulating Procedures	8-20
§ 8.06	Investment Bankers' Fairness Opinions	8-24.3
	[1] Value of Fairness Opinions	8-24.3
	[2] Determination of Fairness and Fair Price ...	8-24.5
	[3] Considerations Influencing an Opinion ...	8-25
	[4] Liability for Fairness Opinions	8-27

TABLE OF CONTENTS

xv

[5]	Due Diligence in Connection with Fairness Opinions.	8-29
[6]	Procedures in Rendering Fairness Opinions	8-30
§ 8.07	Investment Bankers' Duty of Confidentiality . . .	8-32

CHAPTER 9

Freezeouts; Going Private

§ 9.01	Going Private Transaction	9-3
	[1] Types of Going Private Transactions	9-4
	[2] Motives and Justifications for Freezeouts. . .	9-4
	[3] Applicable Legal Standards	9-6
	[4] Commentary on Freezeouts	9-7
	[5] History of Freezeouts	9-9
§ 9.02	Types of Going Private Transactions.	9-12
	[1] "Pure Freezeouts"/MBOs	9-12
	[2] Second-Step Freezeouts	9-14
	[3] Parent/Subsidiary Freezeouts	9-15
§ 9.03	Methods of Going Private	9-16
	[1] Long-Form Merger or Plan of Share Exchange	9-16
	[2] Short-Form Merger.	9-17
	[3] Reverse Stock Split	9-18
	[4] Multistep Sale of Assets and Dissolution. . .	9-19
	[5] Tender Offer	9-21
	[6] Limited Partnership Roll-Up	9-22
§ 9.04	Federal Regulatory Scheme	9-23
	[1] Disclosure—Rule 13e-3	9-23
	[a] Scope of Rule 13e-3	9-23
	[i] Subject Securities	9-23
	[ii] Subject Persons	9-24
	[iii] Subject Transactions	9-25
	[b] Exceptions to Rule 13e-3	9-29
	[i] Second-Step Transactions Following a Tender Offer . . .	9-29
	[ii] Other Exceptions.	9-32
	[c] Filing Requirements.	9-33
	[d] Dissemination Requirements and Waiting Period.	9-35
	[e] Disclosure Requirements— Schedule 13E-3	9-35
	[i] Disclosures Relating to Fairness	9-37
	[ii] Fairness Opinions	9-40

	[iii] Other Disclosures	9-42
	[iv] Availability of Appraisal Rights	9-44
	[v] Disclosure of Projections	9-44
[2]	Private Rights of Action Under Rule 13e-3 and Rule 10b-5	9-46
	[a] <i>Howing v. Nationwide Corp.</i>	9-46
	[b] <i>Santa Fe v. Green</i>	9-46
	[c] <i>Goldberg v. Meridor</i>	9-47
	[d] <i>Sandberg v. Virginia Bankshares</i>	9-49
[3]	Tender Offers—Section 14(d), Section 14(e) and Rule 13e-4	9-51
[4]	Roll-Up Transactions—Securities Act Release No. 6922 and Section 14(h)	9-52
[5]	Applicability of Margin Regulations	9-52
§ 9.05	State Standards	9-54
	[1] Entire Fairness	9-54
	[a] Relationship Between Fair Dealing and Fair Price	9-55
	[b] Effect of Approval by Independent Committee or Minority Shareholders	9-57
	[2] Appraisal Rights as an Exclusive Remedy	9-57
	[a] Delaware	9-57
	[b] New York and Other States	9-61
	[3] Freezeouts as <i>Per Se</i> Fraudulent Under New York Case Law	9-64
	[4] Statutory Limitations	9-67
	[a] Wisconsin	9-67
	[b] California	9-68
§ 9.06	Fair Dealing	9-70
	[1] Approval by Independent Directors	9-71
	[a] Structuring an Effective Special Committee Process	9-72
	[i] Understanding the Committee's Role	9-72
	[ii] The Meaning of Independence	9-73
	[iii] Compensation of Committee Members	9-75
	[iv] Independent Advisors	9-75
	[v] Due Diligence and Disclosure	9-76
	[vi] Documenting the Process	9-78
	[b] Negotiations with a Special Committee—Constraints on Bargaining Tactics	9-78

TABLE OF CONTENTS

xvii

	[i]	The Power to “Just Say No” . . .	9-78
	[ii]	No Power to “Shop” the Company Required Where Controlling Shareholder Is Unwilling to Sell	9-80
	[iii]	Threats to Withdraw Merger Proposal Consistent with Special Committee Process . . .	9-81
	[c]	What If the Special Committee Says “No”?	9-82
	[d]	Federal Disclosure Requirements . . .	9-83
	[2]	Approval by Majority of Minority	9-83
	[3]	Other Factors	9-86
§ 9.07		Fair Value and Fair Price	9-87
	[1]	Current and Historical Market Prices	9-91
	[2]	Going Concern, Earnings of DCF Value . . .	9-95
	[3]	Liquidation, Net Asset or Net Book Value	9-97
	[4]	Discounts and Premiums	9-100
	[5]	Additional Factors	9-105
	[a]	Previous Purchase Prices	9-105
	[b]	Other Firm Offers	9-106
	[c]	Reports, Opinions or Appraisals	9-107
	[d]	Other Suggested Factors	9-108
§ 9.08		How to Go Private	9-109

CHAPTER 10

Tax, Accounting and ERISA Considerations in Takeovers and Freezeouts

§ 10.01		Tax Considerations—Introduction	10-3
§ 10.02		Takeovers	10-4
	[1]	Tax-Free Takeovers—General Considerations	10-4
	[2]	Tax-Free Reorganizations	10-5
	[a]	Straight Merger	10-8
	[b]	Forward Triangular Merger	10-8
	[c]	Reverse Triangular Merger	10-8
	[d]	Stock-for-Stock Exchange	10-9
	[e]	Stock-for-Assets Exchange	10-9
	[3]	Partially Taxable Transactions	10-10
	[a]	The Cash Option Merger	10-10
	[b]	Acquisitions Involving Predominantly Cash Consideration	10-12

TAKEOVERS & FREEZEOUTS

	[i] Recapitalization Coupled with a Freezeout Merger.	10-12
	[ii] Merger of the Acquiror into the Target	10-12
	[iii] Acquisitive Incorporation Transaction	10-13
	[c] Acquisitions Involving Overlap of Incorporation and Reorganization Provisions.	10-14
[4]	Tender and Exchange Offers	10-15
	[a] One-Step Exchange Offers	10-15
	[b] Exchange Offer Followed by Merger	10-15
	[c] Cash Tender Offer Followed by Merger	10-16
[5]	Taxable Transactions	10-17
	[a] Asset Acquisitions	10-17
	[b] Stock Acquisitions	10-19
[6]	Net Operating Losses and Other Carryovers	10-21
	[a] In General	10-21
	[b] Section 382	10-21
	[c] Net Operating Losses and Consolidated Returns	10-22
§ 10.03	Freezeouts	10-24
	[1] Second-Step Freezeouts	10-24
	[2] Tax-Free Freezeouts	10-25
	[3] Taxable Freezeouts: Stock Purchases by the Continuing Shareholder	10-27
	[4] Taxable Freezeouts: Redemptions	10-28
	[5] Taxable Freezeouts: Sales of Assets	10-29
§ 10.04	Leveraged Buyouts	10-30
	[1] Tax Consequences for the Target	10-31
	[2] Tax Consequences for the Acquiror	10-31
§ 10.04A	Tax-Free Spin-offs and <i>Morris Trust</i> Transactions	10-32
	[1] Spin-offs in General	10-32
	[a] Spin-off Requirements	10-32
	[b] Acquisitive Spin-offs: The <i>Morris Trust</i> Transaction	10-33
	[c] The “Anti-Morris Trust Rules”	10-34
	[d] Disguised Sales	10-35
	[2] Reorganization at the Subsidiary Level	10-35
	[3] Leveraged Partnership Dispositions	10-36

TABLE OF CONTENTS

xix

[4] Tax-Sharing Arrangements	10-36.1
§ 10.04B Operating Joint Ventures	10-36.2
[1] Choice of Entity: General Considerations . . .	10-36.2
[2] Extracting Cash from the Partnership	10-36.2
[3] Hybrid Partnership Structures	10-36.3
§ 10.04C International Corporate Reorganizations	10-36.5
[1] Foreign Corporations as Acquirors:	
Outbound Transfers	10-36.5
[a] Property Used in the Active Conduct	
of a Trade or Business	10-36.5
[b] Transfers of Stock	10-36.6
[c] Transfers of Intangible Property	10-36.6
[2] Foreign Corporations as Targets: Inbound	
Transfers	10-36.6
[3] Other Tax Considerations in International	
Acquisitions of Combinations	10-36.7
[a] Classical versus Imputation	
Systems	10-36.7
[b] Foreign Tax Credit	10-36.8
[c] Interest Deductibility and	
Withholding Mechanisms	10-36.8
[d] Stapled Stock Provisions	10-36.9
[e] Dual Holding Structures	10-36.9
§ 10.05 Greenmail	10-36.10
§ 10.06 Accounting Considerations	10-36.11
[1] Purchase Accounting: Elimination of	
Pooling-of-Interests Accounting	10-36.11
[2] Push Down Accounting	10-37
§ 10.07 Certain ERISA Considerations	10-38
[1] Qualified v. Non-Qualified Plans	10-38
[2] Form of Pension Plan: Defined Benefit v.	
Defined Contribution Plan	10-38
[3] Potential Pension Plan Liabilities	10-39
[4] Continuation of Target's Pension Plans . . .	10-41
[5] Leveraged Employee Stock Ownership	
Plans	10-43
§ 10.08 Employee Stock Options and Stock	
Appreciation Rights	10-44
[1] General Tax Considerations	10-44
[2] Treatment of Options in Acquisition	10-45
§ 10.09 Parachute Payments—Executive Compensation	
in Takeover Situations	10-47

CHAPTER 11

Acquisitions of Financial Institutions

§ 11.01	Current Developments on the Financial Institutions Landscape	11-6
[1]	Deal Environment.....	11-7
[a]	Lessons Learned from Recent Strategy Deals	11-7
[b]	Bank Mergers Continue to Present Opportunities to Banks with Sound Regulatory Positions	11-9
[c]	Asset Management Industry M&A Remains Active	11-11
[d]	Fintech Firms Evolve and Consolidate	11-12
[2]	Activists Look to Extend Disruption into the FIG Arena	11-15
[3]	Successfully Navigating Regulatory and Compensatory Considerations	11-17
[a]	The Regulatory Environment	11-17
[b]	Compensatory Matters Remain Essential to M&A	11-19
§ 11.02	Board Evaluation of M&A and Strategic Transactions.....	11-22
[1]	Qualitative Factors in Evaluating Strategic Alternatives; Short-Term Versus Long-Term Values.....	11-22
[a]	Stock Deals	11-27
[b]	Sale of Control.....	11-31
[2]	Preservation of the Company's Franchise... ..	11-36
[3]	Importance of the Evaluation Process.....	11-37
[a]	Investment Bankers: Oversight Considerations and Fairness Opinions.....	11-38
[i]	Oversight Considerations	11-38
[ii]	Fairness Opinions	11-42
[b]	The Use of Projections	11-46
[c]	Responding to Rumors, Media and Stock Exchange Inquiries and News Reports	11-49
[4]	Special Considerations in the "Going-Private" Context	11-50
[5]	Maintaining Confidentiality of Data	11-53
[6]	The M&A Litigation Landscape	11-55

TABLE OF CONTENTS

xxi

[a]	Securities Fraud Class Actions	11-55
[i]	The PSLRA	11-55
[ii]	Fraud-on-the Market Presumption of Reliance	11-58
[iii]	Securities Fraud Litigation in the Merger Context	11-59
[b]	ERISA Litigation	11-60
[c]	Fiduciary Duty Litigation	11-61
[d]	SEC Investigations and Enforcement Actions	11-65
[e]	Document Retention and Preservation	11-66
§ 11.03	Financial Institution Acquisition Agreements: Structural and Contractual Issues	11-68
[1]	Structural Alternatives for Mergers and Tender Offers	11-68
[a]	Mergers	11-68
[b]	Tender Offers	11-72
[2]	Factors Influencing Choice of Structure	11-72
[a]	Capital Requirements	11-72
[b]	Tax Considerations	11-73
[i]	Direct Merger	11-74
[ii]	Forward Triangular Merger	11-75
[iii]	Reverse Triangular Merger	11-76
[iv]	Section 351 Transaction	11-77
[c]	Other Factors	11-78
[3]	Contractual Issues	11-81
[a]	Dealing with Market Risks	11-82
[i]	Fixed Exchange Ratios	11-83
[ii]	Pricing Formulas and Collars	11-83
[iii]	Walk-Aways	11-85
[iv]	Factors Influencing Choice of Pricing Structure	11-86
[v]	Equity Price Locks in Pending Acquisitions	11-87
[vi]	Post-Closing Adjustments Mechanisms; Contingent Value Rights	11-89
[b]	Striking the Right Balance in Merger Consideration: Pricing Formulas and Allocation Procedures for Mixed Cash/Stock Consideration	11-90
[i]	Overview of the Issues	11-90
[ii]	Timing and Other Election Procedures	11-98

TAKEOVERS & FREEZEOUTS

	[iii]	Treatment of Employee Stock Options and Other Stock-Based Awards	11-100
	[iv]	One-Step Versus Two-Step Acquisition Structures	11-100
	[c]	Due Diligence	11-103
	[d]	Conditions	11-106
	[i]	Federal Regulatory Approvals	11-106
	[ii]	Shareholder Approvals	11-107
	[iii]	Material Adverse Change	11-109
	[iv]	Fiduciary Outs	11-114
	[v]	Special Considerations in Private Equity Transactions	11-117
	[vi]	Other Conditions	11-119
	[e]	Compensation and Employee Benefits	11-120
[4]		Protecting the Deal	11-122
	[a]	Break-Up Fees and Similar Arrangements	11-122
	[b]	Management/Shareholder Support Agreements	11-126.2
	[c]	Equity Positions	11-126.3
[5]		Bank Branch Sales	11-126.5
	[a]	The Purchase Agreement	11-126.6
	[b]	Pricing	11-126.6
	[c]	Assets and Liabilities	11-126.8
	[d]	Conversion and Post-Closing Transition Matters	11-126.9
	[e]	Real Estate Matters	11-126.10
	[f]	Employees	11-126.11
	[g]	Closing Conditions	11-126.12
	[h]	Non-Competition and Non-Solicitation Provisions	11-126.13
§ 11.04		Mergers of Equals	11-126.14
	[1]	The Advantages of an MOE Structure	11-128
	[2]	Resolving the Key Governance Issues	11-130
	[3]	The MOE Merger Agreement	11-132
	[4]	Fiduciary Issues and Fairness Opinions in MOEs	11-134
	[5]	Protecting the Deal	11-135
§ 11.05		Capital Raising Strategies	11-138
	[1]	Capital Continues to be a Dominant Theme	11-138
	[a]	Overview of Capital Raising Activity Since the Financial Crisis	11-138

TABLE OF CONTENTS

xxiii

	[i] Capital Raising Activity During 2008-2010	11-138
	[ii] Capital Raising Activity Since 2011	11-142
	[b] Capital as a Buffer Against Losses and Uncertainty	11-143
	[c] Capital Requirements in the Future...	11-145
	[d] A Lesson for the Future	11-146
[2]	Raising Additional Capital.....	11-148
	[a] At-the-Market Offerings	11-149
	[b] Underwritten Offering Combined with Wall Cross.....	11-150
	[c] Rights Offerings.....	11-151
	[d] Trust Preferred and Other Hybrid Securities	11-153
	[e] Contingent Capital Securities	11-155
	[f] Partial Subsidiary IPOs	11-159
[3]	Transactions by Private Equity Firms and Other Investment Vehicles	11-160
	[a] Regulatory and Structuring Considerations in Private Equity Transactions.....	11-161
	[b] Other Investment Vehicles—“Blind Pools”.....	11-163
	[c] White Squire Minority Investments and Recapitalizations.....	11-165
	[i] Business Considerations	11-165
	[ii] Recapitalization Transactions...	11-167
	[iii] Investments to Facilitate Acquisitions	11-171
[4]	Other Capital Strategies	11-172
	[a] Exchange Offers, Private Exchanges and Issuer Tender Offers	11-172
	[b] Restructurings	11-177
§ 11.06	Responding to Unsolicited Takeover Offers	11-179
	[1] Takeover Preparedness in the Current Environment	11-180
	[a] General Takeover Preparedness	11-180
	[b] The Importance of Maintaining State-of-the-Art Structural Provisions.....	11-181
	[c] Good Governance as an Important Strategic Defense.....	11-182
[2]	Notable Hostile Situations in the Financial Services Sector.....	11-183

TAKEOVERS & FREEZEOUTS

[3]	Responding to Takeover Threats	11-188
[a]	The Casual Pass	11-188
[b]	The Bear Hug Letter	11-189
[c]	Public Bear Hug Letter	11-189
[d]	Directors' Duties	11-190
[4]	Advance Preparation	11-190
[a]	Rights Plans	11-191
[i]	Rights Plans Provide an Important Structural Defense	11-191
[ii]	Rights Plans—Some Current Observations	11-194
[b]	Defensive Charter and Bylaw Provisions	11-199
[c]	Employment and Benefit Issues	11-202
[i]	Change of Control Employment and Benefit Arrangements	11-202
[ii]	Merger Agreement Provisions	11-203
[5]	Hostile Takeover Techniques	11-204
[a]	Preparation for a Hostile Bid	11-205
[b]	Steps Short of a Hostile Bid	11-206
[i]	Contacts with Target	11-206
[ii]	Contacts with Target Shareholders	11-206
[iii]	Nonpublic "Bear Hug" Letters	11-206
[iv]	Stock Accumulations	11-207
[c]	Commencing a Hostile Bid	11-209
[i]	Board and Employee Relations	11-209
[ii]	Analyst, Press, Regulatory and Community Relations	11-209
[iii]	The Public "Bear Hug" Letter	11-210
[iv]	Open Market Accumulations	11-210
[v]	Hostile Tender Offers and Exchange Offers	11-214
[vi]	Proxy Contests and Consent Solicitations	11-218
[6]	Regulatory Defenses	11-221
[7]	Structural Defenses	11-224
[a]	White Knights	11-224
[b]	White Squires	11-224
[c]	Restructuring Defenses	11-226
[d]	Examples of the Importance of Contractual Provisions in Protecting Against Hostile Interlopers	11-226

CHAPTER 12**Regulation of Financial Institutions**

§ 12.01	Federal Regulatory Framework	12-6
[1]	Overview of Different Banking Vehicles	12-6
[a]	National Banks	12-6
[b]	State-Chartered Banks	12-9
[c]	Federal Savings Associations	12-10
[d]	State-Chartered Savings Associations	12-10
[e]	Nonbank Banks	12-11
[f]	Implications of Owning a Bank Versus a Savings Association	12-13
[i]	Parent Company Regulation; Financial Holding Companies	12-13
[ii]	Branching	12-16
[iii]	The Community Reinvestment Act	12-17
[iv]	Flexibility with Respect to Equity Investments	12-17
[2]	Key Statutes Applicable to Mergers and Acquisitions	12-18
[a]	Bank Holding Company Act	12-19
[i]	Definition of “Company”	12-20
[ii]	Nature of “Control”	12-21
[b]	Change in Bank Control Act	12-26
[i]	Nature of “Control”	12-26
[c]	Bank Merger Act	12-27
[d]	Home Owners’ Loan Act	12-28
[i]	Acquisition of Control Regulations	12-28
[ii]	Savings and Loan Holding Company Regulation	12-29
[3]	Significant Consequences of “Control”	12-31
[a]	Source-of-Strength Doctrine	12-31
[b]	FIRREA Cross-Guarantee Provisions	12-31
[c]	FDICIA Capital Restoration Plans	12-32
[4]	Interstate Banking and Interstate Branching	12-32
[a]	Interstate Banking	12-33
[b]	Requirement to Be Well Managed and Well Capitalized	12-33

TAKEOVERS & FREEZEOUTS

[c]	State Prohibition of De Novo Acquisitions	12-34
[d]	Deposit and Liability Concentration Limits	12-34
[i]	10% Nationwide Deposit Cap	12-34
[ii]	Liability Cap Applicable to Financial Companies	12-34
[iii]	State-by-State 30% Deposit Cap	12-35
[iv]	Deposit Caps Imposed by State Law	12-36
[e]	Community Reinvestment Act Compliance	12-36
[f]	State Filing Requirements	12-36
[g]	Application to Foreign Banks	12-37
[h]	Interstate Branching	12-37
[i]	Interstate Branching by Banks	12-37
[ii]	Interstate Branching by Savings Associations	12-38
[iii]	LPOs, Affiliate Agency Arrangements and Other Franchise Extension Techniques	12-39
[iv]	State Regulatory Authority	12-40
[v]	Ban on “Deposit Production Offices”	12-40
[5]	Prompt Corrective Action	12-41
[a]	Capitalization Categories	12-42
[b]	Restrictions on Dividends, Distributions and Management Fees	12-43
[c]	Undercapitalized Institutions	12-43
[d]	Significantly Undercapitalized Institutions and Undercapitalized Institutions that Fail to Submit and Implement Capital Restoration Plans	12-44
[i]	Restrictive Actions	12-45
[ii]	Presumptively Mandatory Actions	12-46
[iii]	Executive Compensation	12-46
[e]	Critically Undercapitalized Institutions	12-47

TABLE OF CONTENTS

xxvii

[6]	Enforcement Actions by Federal Bank Regulators	12-47
[a]	Informal Actions	12-48
[b]	Formal Actions	12-49
[c]	Troubled Condition	12-51
[d]	Capital Directives and Safety and Soundness Plans	12-52
[e]	Special Implications for Financial Holding Companies	12-53
[f]	Conversions or Mergers of Troubled Banks or Savings Associations	12-54
§ 12.02	The Regulatory Approval Process for Acquiring Banks and Bank Holding Companies	12-56
[1]	Bank Holding Company Act Criteria	12-57
[a]	Financial Condition and Future Prospects	12-58
[i]	Capital Adequacy Guidelines and Related Measures	12-58
[ii]	Declines in Capital Strength Resulting from Acquisitions and Mergers	12-64
[b]	Management Resources	12-65
[c]	Convenience and Needs of the Community	12-67
[i]	The Community Reinvestment Act	12-68
[ii]	Fair Lending and Consumer Compliance	12-73
[d]	Risks to the Stability of the U.S. Banking or Financial System	12-74
[2]	Control Act Criteria	12-76
[3]	Bank Merger Act Criteria	12-77
[4]	Acquisitions by Foreign Banks and Bank Holding Companies	12-78
[a]	Capital Adequacy Issues	12-78
[b]	Requirement of Comprehensive Supervision	12-80
[c]	Interstate Banking Issues	12-80
[d]	Government-Owned Foreign Banks	12-81
[e]	Nonbanking Activities of Foreign Banks	12-83
[5]	Implications of Dodd-Frank for Financial Institution Mergers and Acquisitions	12-85
§ 12.03	The Post-Dodd-Frank Regulatory Landscape	12-89

[1]	The Financial Stability Oversight Council	12-89
[2]	Consumer Financial Protection Bureau....	12-91
[3]	Enhanced Supervision and Prudential Standards	12-96
[4]	Concentration Limits	12-101
[5]	The Volcker Rule.....	12-102
[a]	Prohibition of Involvement With Private Equity Funds and Hedge Funds	12-104
[b]	Prohibition of Proprietary Trading ...	12-106
[c]	Compliance Obligations	12-107
[6]	Enhanced Resolution Authority.....	12-108
[a]	FDIC's Orderly Liquidation Authority	12-108
[b]	Single Point of Entry Resolution Under Title II	12-109
[c]	Resolution Under the Bankruptcy Code: Living Wills	12-111
[7]	Derivatives	12-112
[8]	BSA/AML Enforcement; OFAC Sanctions.....	12-113
[9]	Other Notable Regulatory Rulemaking in 2016	12-118
§ 12.04	Antitrust Considerations in Bank Transactions	12-120
[1]	Basic Statutory Framework	12-120
[2]	Methodology Used by Federal Reserve Board	12-121
[a]	Geographic Market Definition	12-121
[b]	Product Market Definition.....	12-126
[3]	Department of Justice Methodology	12-131
[a]	DOJ Challenges in the Early 1990s	12-131
[b]	The 1995 "Bank Merger Competitive Review" Guidelines.....	12-133
[c]	DOJ Policies Since 1995.....	12-135
[i]	Defining the Geographic Market.....	12-135
[ii]	The "2% Test"	12-136
[iii]	Skewed Market Structures	12-138
[iv]	Deposit Reallocation and Split Relationships.....	12-139
[v]	Middle-Market Banking	12-140

TABLE OF CONTENTS

xxix

[4]	Other Federal Reserve and DOJ	
	Substantive Considerations	12-144
[a]	Headquarters Deposit Adjustments . . .	12-144
[b]	Minority Acquisitions	12-148
[5]	Federal Reserve Board and Justice	
	Department Policy Regarding	
	Divestitures	12-150
[a]	Timing and Delay: Procedural	
	Considerations	12-150
[i]	Early Triage of Geographic	
	Markets	12-152
[ii]	Begin Compiling Branch Data	
	Immediately	12-153
[iii]	Begin Immediately Assembling	
	a Divestiture Package that	
	Meets the DOJ's Qualitative	
	Criteria	12-153
[iv]	Choose a Divestiture Buyer	
	Likely to be Acceptable to	
	the DOJ as Early in the	
	Process as Possible	12-153
[v]	Method of Settlement	12-154
[vi]	Executed Divestiture Contracts	
	Required Before	
	Consummation	12-155
[vii]	No "Double-Conversions" of	
	Divestiture Branches	12-155
[viii]	Operate Branch as the Target	
	Has in the Past	12-156
[b]	Divestiture Branch Selection	12-156
[i]	The DOJ's Information	
	Request	12-156
[ii]	The DOJ's Preference that	
	Divestiture Branches be	
	Chosen from the Party	
	Whose Name is Leaving the	
	Market	12-157
[iii]	Branches in Small Business	
	Areas	12-158
[iv]	Countervailing Considerations . .	12-159
[c]	Selecting Divestiture Buyers	12-159
[i]	Out-of-Market Versus	
	In-Market Buyers	12-160
[ii]	One Buyer or Multiple	
	Buyers	12-160

TAKEOVERS & FREEZEOUTS

[iii]	Commercial Banks, Thrifts and Investor Groups as Buyers . . .	12-161
[iv]	Seller Financing of Divestitures	12-162
[d]	Other Considerations and Policies . .	12-162
[i]	Lease Covenant Restrictions on Closed Offices Are Prohibited	12-162
[ii]	No Solicitation of Former Customers	12-163
[6]	State Attorney General Involvement	12-163
[7]	Potential Competition	12-164
[8]	Nonbank Acquisitions	12-165
[a]	Thrift Acquisitions	12-165
[b]	Other Nonbank Acquisitions	12-167
[9]	Transactions Subject to Review Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976	12-168
TABLE OF CASES		TC-1
INDEX		I-1

TABLE OF CONTENTS

VOLUME 2

Forms and Primary Sources

APPENDIX A

Accumulation of Shares and Target Responses

A(1)	Form of Schedule 13D	A-3
A(2)	Officers and Directors 13D Questionnaire	A-10
A(3)	Schedule 13D's	A-21
(a)	Excerpt from Schedule 13D filed by The Dow Chemical Company with respect to Rorer Group Inc. (April 4, 1984)	A-21
(b)	Excerpt from Schedule 13D filed by Dia Investment (Antilles) N.V. and certain affiliates with respect to St. Regis Corporation (February 7, 1984)	A-23
(c)	Excerpt from Amendment No. 1 to Schedule 13D filed by Dia Investment (Antilles) N.V. and certain affiliates with respect to St. Regis Corporation (March 11, 1984)	A-27
(d)	Excerpt from Schedule 13D filed by Western Pacific Industries Inc. with respect to Cone Mills Corporation (October 27, 1983)	A-28
(e)	Excerpt from Amendment No. 4 to Schedule 13D filed by Western Pacific Industries Inc. with respect to Cone Mills Corporation (November 30, 1983)	A-32
(f)	Excerpt from Amendment No. 6 to Schedule 13D filed by Western Pacific Industries Inc. with respect to Cone Mills Corporation (December 23, 1983)	A-33

TAKEOVERS & FREEZEOUTS

	(g) Excerpt from Amendment No. 7 to Schedule 13D filed by Western Pacific Industries Inc. with respect to Cone Mills Corporation (March 27, 1984)	A-35
	(h) Excerpt from Schedule 13D filed by Unicorp American Corporation, Unicorp Canada Corporation and George S. Mann with respect to Valley Federal Savings and Loan Association (August 17, 1983)	A-36
	(i) Excerpt from Schedule 13D filed by Hepplewhite Limited Partnership and certain affiliates with respect to Trans World Corporation (December 1, 1982)	A-38
	(j) Excerpt from Schedule 13D filed by The Henley Group, Inc. with respect to Santa Fe Southern Pacific Corporation (October 19, 1987)	A-40
	(k) Excerpt from Amendment No. 5 to Schedule 13D filed by Pinault-Printemps-Redoute S.A. with respect to Gucci Group N.V. (September 9, 2001)	A-40.17
A(4)	Buy-Backs	A-40.30
	(a) Letter dated March 19, 1984 to shareholders of St. Regis Corporation describing buy-back of Sir James Goldsmith's block of common stock	A-40.30
	(b) Press release dated March 6, 1984 Of Texaco relating to buy-back of Bass Brothers' block of common stock	A-41
	(c) Stock Disposition Agreement dated as of December 16, 1996 between American Standard Companies Inc. and Kelso & Company, L.P. and Annex A	A-42.1
A(5)	Standstill Agreements	A-43
	(a) Memorandum dated December 21, 1982	A-43
	(b) Stock Purchase Agreement dated July 29, 1983 among Ideal Basic Industries, Inc. and Philip F. Anschutz and the Anschutz Corporation	A-55
	(c) Agreement between Cities Service Company and Mesa Petroleum Co. dated June 18, 1982	A-76

TABLE OF CONTENTS

vii

	(d) Agreement between The Seagram Company, Ltd. and E.I. du Pont de Nemours and Company dated October 2, 1981	A-79
A(6)	13D Litigation	A-92
	(a) Rorer Group Inc. v. Oppenheimer & Co., Inc. Civ. 7906 (TPG), Amended Complaint (filed December 7, 1982 S.D.N.Y.)	A-92
	(b) Cities Services Company v. Nu-West Group Limited, No. 81-C-242-C, Amended Complaint (filed June 18, 1981 N.D. Ok.)	A-108

APPENDIX B

Tender Offers, Exchange Offers and Related Documents

B(1)	Tender Offers	B-1
	(a) Offer to Purchase shares of Carter Hawley Hale Stores, Inc. by The Limited, Inc. (April 4, 1984)	B-5
	(b) Excerpts from Supplement to Offer to Purchase shares of Carter Hawley Hale Stores, Inc. by The Limited, Inc. (April 26, 1986)	B-28
	(c) Offer to Purchase shares of Sperry Corporation by Burroughs Corporation (May 8, 1986)	B-31
	(d) Supplement to Offer to Purchase shares Sperry Corporation by Burroughs Corporation (May 28, 1986)	B-65
	(e) Supplement to Offer to Exchange by Turner Broadcasting System, Inc. for CBS Inc. (June 21, 1985)	B-84
	(f) Excerpts from Offer to Purchase shares of Warner Communications Inc. by Time Incorporated (June 16, 1989)	B-139
	(g) Offer to Purchase shares of NCR Corporation by AT&T (December 6, 1990)	B-148.45
	(h) Reserved	B-148.102
	(i) Reserved	B-148.103
	(j) Reserved	B-148.104
	(k) Reserved	B-148.105
	(l) Reserved	B-148.106

	(m)	Offer to Purchase shares of Paramount Communications Inc. by QVC Network, Inc. (October 27, 1993)	B-148.107
	(n)	Reserved	B-148.248
	(o)	Reserved	B-148.249
	(p)	Offer to Purchase shares of ITT Corporation by Hilton Hotels Corporation (January 31, 1997)	B-148.250
	(q)	Supplement to Offer to Purchase shares of ITT Corporation by Hilton Hotels Corporation (August 7, 1997)	B-148.411
	(r)	Supplement to Offer to Purchase shares of ITT Corporation by Hilton Hotels Corporation (November 3, 1997)	B-148.428
	(s)	Excerpts from Offer to Purchase shares of Cyprus Amax Minerals Company by Phelps Dodge Corporation (September 7, 1999)	B-148.445
	(t)	Excerpts from Offer to Purchase shares of Normandy Mining Limited by Newmont Mining Corporation (January 10, 2002)	B-148.551
	(u)	Offer to Exchange shares of Aventis by Sanofi-Synthelabo (April 9, 2004)	B-148.725
	(v)	Offer to Purchase shares of Gucci Group N.V. by Pinault-Printemps-Redoute S.A. (April 1, 2004)	B-148.891
	(w)	Offer to Purchase shares of ALARIS Medical Systems, Inc. by Cardinal Health, Inc. (May 28, 2004)	B-148.993
B(2)		Pac-Man Tender Offers	B-149
	(a)	Excerpts from Offer to Purchase shares of The Coastal Corporation by Houston Natural Gas Corporation (February 1, 1984)	B-149
	(b)	Excerpts from Offer to Purchase shares of The Bendix Corporation by Martin Marietta Corporation (August 31, 1982)	B-156
	(c)	Memorandum dated September 29, 1982—Bendix-Marietta: Some Afterthoughts	B-163
B(3)		Checklists and Timetables	B-173
	(a)	Hostile Tender Offer	B-173
	(b)	Negotiated Tender Offer and Merger	B-176

TABLE OF CONTENTS

ix

B(4)	Form of Dealer Manager Agreement (with Opinion)	B-183
B(5)	Form of Depository Agreement	B-195
B(6)	Form of Forwarding Agent Agreement	B-199
B(7)	Letter of Transmittal	B-203
B(8)	“To Our Clients” Letter	B-216
B(9)	“To Brokers” Letter	B-219
B(10)	Notice of Guaranteed Delivery	B-222
B(11)	Tax Information Sheet	B-224.1
B(12)	Form of Schedule TO (14D-1)	B-224.3
B(13)	Officers and Directors 14D-1 Questionnaire . . .	B-225
B(14)	Schedule 14D-1	B-235
	(a) Schedule 14D-1 filed by Hilton Hotels Corporation with respect to ITT Corporation (January 31, 1997)	B-235
	(b) Amendment No. 23 to Schedule 14D-1 filed by Hilton Hotels Corporation with respect to ITT Corporation (August 7, 1997)	B-243
B(15)	Bear-Hug Letters	B-245
	(a) Letter from Hanson Industries Inc. to U.S. Industries dated April 2, 1984	B-245
	(b) Letter from The Limited, Inc. to Carter Hawley Hale Stores, Inc. dated April 2, 1984	B-247
	(c) Letter from The Herald Company to Booth Newspapers, Inc. dated October 24, 1976	B-250
	(d) Letter from Burroughs Company to Sperry Corporation dated May 5, 1986	B-252
	(e) Letter from Diamond Lands Corporation to The Continental Group Inc. dated June 5, 1984	B-253
	(f) Letter from Pan American Properties to RAM-PAC dated December 12, 1983	B-254
	(g) Letter from IC Industries, Inc. to Sunbeam Corporation dated September 18, 1981 . . .	B-255
	(h) Letter from Eaton Corporation to CAPCO Automotive Products Corporation dated March 13, 1996	B-258
	(i) Letter from Worldcom for MCI dated October 1, 1997	B-260.1
	(j) Letter from GTE for MCI dated October 15, 1997	B-260.5

TAKEOVERS & FREEZEOUTS

	(k)	Letter from Bank of New York Company to Mellon Bank Corporation dated April 22, 1998	B-260.8
	(l)	Letter from Alcoa for Reynolds dated August 11, 1999	B-260.10
B(16)		Letter from Raider to Target	B-261
	(a)	Letter from The Limited, Inc. to Carter Hawley Hale Stores, Inc.	B-261
B(17)		Tender Offer Tombstone	B-262.2
B(18)		Press Releases	B-262.6
	(a)	Press Releases of Burroughs Corporation relating to tender offer for Sperry Corporation	B-262.6
	(b)	Press Releases of Diamond Shamrock Corporation relating to its tender offer for Natomas Company	B-263
	(c)	Press Releases of AT&T relating to its tender offer for NCR	B-268
B(19)		Form of Rule 14d-5 stockholder list and security position listing request	B-272
B(19.1)		Response to Rule 14d-5(a) Request	B-274
B(20)		Bidding Procedures	B-274.2
	(a)	Exemption Agreement dated as of December 22, 1993 between Paramount Communication Inc. and QVC Network, Inc. (effective as of January 21, 1994) and First Amendment to Exemption Agreement dated as of January 27, 1994	B-274.2
B(21)		Litigation	B-291
	(a)	Brief of QVC Network, Inc. in Paramount Communications Inc. v. QVC Network, Inc., Nos. 427 and 428 1993 (Delaware Supreme Court, December 4, 1993)	B-291

TABLE OF CONTENTS

Volume 3

Forms and Primary Sources

APPENDIX C

Target Responses and Related Documents

C(1)	Takeover Response Checklist.	C-5
C(2)	Forms of Engagement Letters for Target's Investment Bankers	
	(a) Form of Engagement Letter with respect to target offer defense	C-15
	(b) Form of Indemnification Agreement.	C-18
	(c) Form of Engagement Letter with respect to target tender offer defense.	C-20
	(d) Form of Engagement Letter with respect to certain antitakeover matters.	C-24
	(e) Form of Engagement Letter with respect to certain antitakeover matters.	C-26
	(f) Form of Engagement Letter with respect to leveraged buyout proposal.	C-30
	(g) Form of Engagement Letter with respect to leveraged buyout proposal.	C-35
C(3)	Investment Bankers' Opinion Letters to Target	
	(a) Letter dated August 26, 1985 from Lazard Freres & co. to Revlon, Inc.	C-38
	(b) Reserved	C-45
	(c) Letter dated December 22, 1982 from The First Boston Corporation to General American Oil Company of Texas	C-46
C(4)	Forms of minutes of board of directors meeting rejecting takeover proposal	
	(a) Rejecting hostile offer	C-48

	(b) Rejecting hostile offer and authorizing certain defensive actions	C-54
C(5)	Letter to Raider rejecting Offer	
	(a) Letter dated January 15, 1979 from McGraw-Hill, Inc. to American Express Company.....	C-67
C(6)	Reverse Bear Hug	
	(a) Letter dated February 6, 1984 from Houston Natural Gas Corporation to The Coastal Corporation	C-71
C(7)	Letters to Shareholders	
	(a) Letter to shareholders of McGraw-Hill, Inc. dated January 22, 1979.....	C-73
	(b) Letter to shareholders of General American Oil Company of Texas dated December 23 and 30, and January 4, 1982...	C-77
	(c) Letters to shareholders of Houston Natural Gas Corporation dated February 1 and 6, 1984	C-81
	(d) Letter dated February 6, 1984 from Houston Natural Gas Corporation to The Coastal Corporation	C-71
	(e) Letter to shareholders of Revlon, Inc. dated August 27, 1985.....	C-88
	(f) Letter to shareholders of SCM Corporation dated September 16, 1985	C-89
	(g) Letter to shareholders to Crown Zellerbach Corporation (undated)	C-90
	(h) Letter to shareholders of NCR.....	C-91
	(i) Letters to shareholders of ITT Corporation. . .	C-102.1
C(8)	Reserved	C-103
C(9)	Form of Schedule 14D-9	C-109
C(10)	Schedule 14D-9's	
	(a) Schedule 14D-9 filed by Phillips Petroleum Company with respect to Offer to Purchase by Icahn Group Inc. (February 15, 1985)	C-112
	(b) Schedule 14D-9 filed by Safeway Stores, Incorporated with respect to Offer to Purchase by Dart Group Corporation (July 22, 1986)	C-118
	(c) Excerpt from Schedule 14D-9 filed by Great Northern Nekoosa Corporation with respect to Offer to Purchase by Georgia-Pacific Corporation (November 13, 1989).....	C-132.1

TABLE OF CONTENTS

vii

	(d)	Excerpt from Amendment No. 4 to Schedule 14D-9 filed by Great Northern Nekoosa Corporation (November 22, 1989) . . .	C-132.8
	(e)	Excerpt from Amendment No. 30 to Schedule 14D-9 filed by Great Northern Nekoosa Corporation (February 14, 1990) . . .	C-132.11
	(f)	Excerpt from Amendment No. 32 to Schedule 14D-9 filed by Great Northern Nekoosa Corporation (February 20, 1990) . . .	C-132.15
	(g)	Excerpt from Amendment No. 33 to Schedule 14D-9 filed by Great Northern Nekoosa Corporation (February 21, 1990) . . .	C-132.18
	(h)	Schedule 14D-9 filed by Square D Company with respect to Offer to Purchase by Schneider S.A. (March 11, 1990)	C-133
	(i)	Schedule 14D-9 filed by Durr-Fillauer Medical, Inc. with respect to Offer to Purchase by Bergen Brunswick Corporation (July 17, 1992)	C-152.3
	(j)	Amendment No. 6 to Schedule 14D-9 filed by Durr-Fillauer Medical, Inc. with respect to Offer to Purchase by Bergen Brunswick Corporation (July 30, 1992)	C-152.26
	(k)	Amendment No. 10 to Schedule 14D-9 filed by Durr-Fillauer Medical, Inc. with respect to Offer to Purchase by Bergen Brunswick Corporation (August 17, 1992)	C-152.30
	(l)	Amendment No. 19 to Schedule 14D-9 filed by Durr-Fillauer Medical, Inc. with respect to Offer to Purchase by Bergen Brunswick Corporation (September 8, 1992)	C-152.47
	(m)	Schedule 14D-9 filed by ITT Corporation with respect to Offer to Purchase by Hilton Hotels Corporation (February 12, 1997)	C-152.55
	(n)	Amendment No. 20 to Schedule 14D-9 filed by ITT Corporation with respect to Offer to Purchase by Hilton Hotels Corporation (July 16, 1997)	C-152.66
C(11)		Forms of Confidentiality Letters	C-152.86
C(12)		14D Litigation	
	(a)	Houston Natural Gas Corporation v. The Coastal Corporation, C.A. No. H-84-537, Complaint (filed January 31, 1984 S.D. Tex.)	C-152.94

	(b) The Limited, Inc. v. Carter Hawley Hale Stores, Inc., CV84-2200-AWT (JRx), First Amended Counterclaim (filed April 21, 1984 C.D. Cal.)	C-167
C(13)	Crown Jewel and Lock-Up Agreements	
	(a) Food Business Option Agreement dated as of May 24, 1984 between Esmark, Inc. and Beatrice Foods Co.	C-203
	(b) Stock Option Agreement dated as of May 18, 1984 between Esmark, Inc. and Beatrice Foods Co.	C-210
	(c) Stock Option Agreement dated as of April 16, 1984 among General Cinema Corporation, Carter Hawley Hale Stores, Inc., CHH Holdings, Inc. and Walden Book Company, Inc.	C-215
	(d) Stock Purchase Agreement dated April 16, 1984 between Carter Hawley Hale Stores, Inc. and General Cinema Corporation.	C-237
	(e) Agreement dated February 13, 1982 between Brunswick Corporation and American Home Products Corporation. . .	C-254
C(14)	Rule 13e-1 Transaction Statement	
	(a) Rule 13e-1 Transaction Statement filed by Carter Hawley Hale Stores, Inc. (April 16, 1984)	C-317
C(15)	Press Releases	
	(a) Press releases of Houston Natural Gas Corporation relating to the tender offer for its shares by The Coastal Corporation	C-320
	(b) Press release of Revlon, Inc. relating to the tender offer for its shares by Pantry Pride, Inc.	C-329

APPENDIX D

Issuer Tender Offers and Exchange Offers

D(1)	Issuer Tender Offers	
	(a) Excerpt from Offer to Purchase shares of General American Oil Company of Texas (December 23, 1982)	D-3
	(b) Excerpt from Supplement to Offer to Purchase shares of General American Oil Company of Texas (January 4, 1983)	D-8

TABLE OF CONTENTS

ix

	(c) Excerpt from Supplement to Offer to Purchase shares of General American Oil Company of Texas (January 7, 1983)	D-10
	(d) Excerpt from Offer to Purchase shares of Houston Natural Gas Corporation (February 6, 1984)	D-13
	(e) Offer to Purchase shares of Phillips Petroleum Company (March 4, 1985)	D-18
	(f) Excerpt from Offer to Purchase shares of Revlon, Inc. (August 29, 1985)	D-18.71
	(g) Offer to Purchase shares of Unocal Corporation (April 17, 1985)	D-18.105
	(h) Offer to Purchase Shares of ITT Corporations (July 17, 1997)	D-19
D(2)	Reserved	D-93
D(3)	Schedule of 13E-4	
	(a) Schedule 13E-4 filed by Houston Natural Gas Corporation (February 6, 1984)	D-98

APPENDIX E

Leveraged Buy-Outs and Related Documents

E(1)	Agreements in Principle	
	(a) Form of Business combination proposal . . .	E-3
	(b) Letter of Intent between Lazard Freres & Co. and TI-CARO, INC. dated December 2, 1983	E-6
	(c) Agreement in Principle between Forstmann Little & Co. and Dr. Pepper Company dated November 17, 1983	E-9
E(2)	Tender Offers	
	(a) Offer to Purchase shares of Levi Strauss & Co. by HHF Corp. (August 2, 1985)	E-13
	(b) Excerpt from Offer to Purchase shares of AMSTED Industries Incorporated by AMSTED Industries Incorporated and its Employees' Stock Ownership Plan (February 5, 1986)	E-51
	(c) Excerpt from Offer to Purchase shares of Payless Cashways, Inc. by PCI Acquisition Corp. (July 7, 1988)	E-98.1

E(3)	Proxy Statements	
	(a) Excerpts from Proxy Statements dated January 28, 1984 of Dr. Pepper Company. . .	E-99
	(b) Excerpts from Proxy Statement dated May 21, 1984 of Metromedia, Inc.	E-136
	(c) Excerpts from Proxy Statement dated May 23, 1986 of R.H. Macy & Co., Inc . . .	E-192.1
E(4)	Form of Schedule	E-193
E(5)	Schedule	
	(a) Schedule 13E-3 filed by Levi Strauss & Co. (July 19, 1985).	E-203
E(6)	Investment Bankers' Fairness Opinion Letters	
	(a) Letter from Goldman, Sachs & Co. to Levi Strauss & Co. dated August 2, 1985. . .	E-233
E(7)	Press Releases	
	(a) Press release relating to leveraged buy-out of Levi Strauss & Co.	E-235

TABLE OF CONTENTS

Volume 4

Forms and Primary Sources

APPENDIX F

Merger Proxy Statements and Related Documents

F(1)	Business Combinations	
(a)	Agreement and Plan of Merger and Reorganization by and among SoFi Technologies, Inc., Technisys S.A., Atom New Delaware, Inc., Atom Merger Sub Corporation and Fortis Advisors LLC, as the Representative, dated as of February 19, 2022	F-5
(b)	Agreement and Plan of Merger by and among Dick's Sporting Goods, Inc., RJS Sub LLC and Foot Locker, Inc. dated as of May 15, 2025	F-80.45
(c)	Agreement and Plan of Merger by and among Barnes Group Inc., Goat Holdco, LLC and Goat Merger Sub, Inc., dated as of October 6, 2024	F-81
(d)	Agreement and Plan of Merger by and between United Community Banks, Inc. and ANB Holdings, Inc., dated as of December 2, 2024	F-84.88(13)

TAKEOVERS & FREEZEOUTS

- (e) Agreement and Plan of Merger
among Juniper Networks, Inc.,
Hewlett Packard Enterprise
Company and Jasmine
Acquisitions Sub, Inc., dated as of
January 9, 2024 F-84.89
- (f) Agreement and Plan of Merger
by and between Huntington
Bancshares Incorporated and
Veritex Holdings, Inc. Dated as
of July 13, 2025 F-84.120(71)
- (g) Agreement and Plan of Merger
by and among Discover Financial
Services, Capital One Financial
Corporation and Vega Merger
Sub, Inc., dated as of
February 19, 2024 F-84.120(175)
- (h) Agreement and Plan of Merger
by and among Galileo Parent,
Inc., Galileo Bidco, Inc., Galileo
Topco, Inc., and Maxar
Technologies Inc. dated as of
December 15, 2022 F-84.120(273)
- (i) Purchase Agreement by and
among LB Super Holdco LLC,
LB Holdco, Inc., Cryovac
International Holdings, Inc.,
LB Jersey Holdco Limited, and
Sealed Air Corporation dated
October 31, 2022 F-84.120(375)
- (j) Agreement and Plan of Merger
dated as of August 3, 2022
among Chemocentryx, Inc.
Amgen Inc. and Carnation
Merger Sub, Inc. dated as of
August 3, 2022..... F-84.120(397)
- (k) Agreement and Plan of Merger
by and among Evo Payments,
Inc., Global Payments Inc.
and Falcon Merger Sub Inc.
dated as of August 1, 2022 F-84.120(477)

TABLE OF CONTENTS

vii

(l)	Agreement and Plan of Merger by and among Prologis, Inc., Prologis, L.P., Compton Merger Sub LLC, Compton Merger Sub OP LLC, Duke Realty Corporation, and Duke Realty Limited Partnership dated as of June 11, 2022	F-84.120(567)
(m)	Agreement and Plan of Merger by and between Independent Bank Group, Inc. and Southstate Corporation dated May 17, 2024	F-84.120(689)
(n)	[Reserved]	F-84.120(691)
(o)	[Reserved]	F-84.120(693)
(p)	[Reserved]	F-84.120(695)
(q)	[Reserved]	F-84.120(697)
(r)	Agreement and Plan of Merger by and among Regency Centers Corporation, Hercules Merger Sub, LLC, Urstadt Biddle Properties Inc., UB Maryland I, Inc. and UB Maryland II, Inc., dated as of May 17, 2023	F-84.120(699)
(s)	[Reserved]	F-84.120(817)
(t)	[Reserved]	F-84.120(1381)
(u)	[Reserved]	F-84.120(1383)

Appendix F is continued in Volume 5

TABLE OF CONTENTS

Volume 5

Forms and Primary Sources

APPENDIX F

Merger Proxy Statements and Related Documents

[continued]

F(1)	(v)	Agreement and Plan of Merger by and among Star Holding LLC, Star Merger Co. and U.S. Silica Holdings, Inc. dated as of April 26, 2024	F-84.120(1536.69)
	(w)	Agreement and Plan of Merger by and among Ventas, Inc., Cadence Merger Sub LLC and New Senior Investment Group Inc., dated as of June 28, 2021	F-84.120(1537)
	(x)	Agreement and Plan of Merger by and between Sterling Bancorp and Webster Financial Corporation, dated as of April 18, 2021	F-84.120(1629)
	(y)	Agreement and Plan of Merger, dated as of September 21, 2025 and Amendment No. 1, dated as of November 7, 2025, among Pfizer Inc., Mayfair Merger Sub, Inc. and Metsera, Inc.	F-84.120(1713)

TAKEOVERS & FREEZEOUTS

- (z) Business Combination Agreement by and between Social Capital Suvretta Holdings Corp. III and Prokidney LP, dated as of January 18, 2022 F-84.120(1823)
- (aa) Offer to Purchase All Outstanding Shares of Common Stock of Decibel Therapeutics, Inc. by Symphony Acquisition Sub, Inc. a wholly owned subsidiary of Regeneron Pharmaceuticals, Inc., August 25, 2023 F-84.120(2069)
- (bb) Agreement and Plan of Merger among: Decibel Therapeutics, Inc., a Delaware corporation; Regeneron Pharmaceuticals, Inc., a New York corporation; and Symphony Acquisition Sub, Inc., a Delaware corporation, dated as of August 8, 2023 F-84.120(2177)
- (cc) Agreement and Plan of Merger by and among Prysmian S.p.A. Applause Merger Sub Inc., sole as provided in Section 9.12 of this Agreement, Prysmian Cables and Systems USA, LLC and Encore Wire Corporation dated as of April 14, 2024. F-84.120(2295)
- (dd) Agreement and Plan of Merger among Abbvie Inc., Athene Subsidiary LLC, Athene Merger Sub Inc. and Immunogen, Inc., dated as of November 30, 2023 F-84.120(2297)
- (ee) Agreement and Plan of Merger by and among Sunoco LP, Saturn Merger Sub, LLC, Nustar Energy L.P., Nustar GP, LLC, Riverwalk Logistics, L.P. and Sunoco GP LLC, dated as of January 22, 2024 F-84.120(2373)
- (ff) Agreement and Plan of Merger by and among Salesforce, Inc., Phoenix I Merger Sub, Inc., and Informatica Inc. dated as of May 26, 2025 F-84.120(2553)

TABLE OF CONTENTS

vii

(gg)	Equity Purchase Agreement by and among EPIC Y-Grade Holdings, LP, Dos Rios Y-Grade Holdings LLC, SCM EPIC, LLC and Phillips 66 Company, dated January 6, 2025	F-84.120(2661)
(hh)	[Reserved]	F-84.120(2773)
(ii)	Securities Purchase Agreement by and among Masonite Corporation, The Company Stockholders, The Company Warrant Holders, EPI Holdings, Inc., and Bruce E. Procton, as Company Equityholders' Representative Dated as of November 2, 2022	F-84.120(2873)
(jj)	[Reserved]	F-84.120(2875)
(kk)	[Reserved]	F-84.120(2877)
(ll)	[Reserved]	F-84.120(2879)
(mm)	[Reserved]	F-84.120(2881)
(nn)	[Reserved]	F-84.120(2883)
(oo)	[Reserved]	F-84.120(2885)
(pp)	[Reserved]	F-84.120(2887)

TABLE OF CONTENTS

Volume 6

Forms and Primary Sources

APPENDIX G

Defense Charter and By-Law Amendments

G(1)	Fair Price and Related Charter Amendments . . .	G-3
(a)	Excerpts from Proxy Statement dated May 24 1989 of Morton Thiokol, Inc. . .	G-3
(b)	Certificate of Incorporation of Thiokol Corporation	G-27
(c)	[Reserved]	G-41
(d)	[Reserved]	G-41
G(2)	Antigreenmail Charter Amendments	G-42
(a)	Excerpts from Proxy Statement dated March 21, 1988 of martin Marietta Corporation	G-42
G(3)	Dual Class Capitalization	G-64
(a)	Excerpts from Proxy Statement dated April 2, 1985 of Kaufman and Broad, Inc.	G-64
(b)	Letter to shareholders of Kaufman and Broad, Inc. dated June 19, 1985	G-82
G(4)	Indemnification of Directors and Officers	G-83
(a)	Excerpts from Proxy Statement dated August 13, 1986 of Burroughs Corporation	G-83
(b)	Charter provision of Burroughs Corporation providing for indemnification of directors and officers	G-88
(c)	Form of contract providing for indemnification of directors and officers	G-90
(d)	Proposed Legislation Regarding the Scope of Liability of Directors, Officers and Employees of Public Corporation	G-96

TAKEOVERS & FREEZEOUTS

G(5)	By-Law Provision	G-101
(a)	Model by-law provisions with respect to nomination of directors and notice of stockholder business	G-101

APPENDIX H**Share Purchase Rights Plan**

H(1)	Memorandum describing Share Purchase Rights Plan	H-2
H(2)	Form of Rights Amendment	H-10
H(3)	Form of Board Resolutions adopting a Rights Plan	H-61
H(4)	Form of press release announcing adoption of a Rights Plan	H-66
H(5)	Form of letter to shareholders with respect to adoption of a Rights Plan	H-68

APPENDIX I**Recapitalizations and Related Documents**

I(1)	Proxy Statements	I-3
(a)	Excerpts from Proxy Statement dated January 31, 1985 of Phillips Petroleum Company	I-3
(b)	Excerpts from Proxy Statement dated August 20, 1985 of Multimedia, Inc.	I-71
(c)	Excerpts from Proxy Statement dated May 2, 1986 of FMC Corporation	I-166.1
(d)	Excerpts from Proxy Statement dated April 4, 1986 of Warnaco, Inc.	I-166.145
(e)	Excerpts from Proxy Statement dated January 7, 1997 Kindercare Learning Centers, Inc.	I-166.229
I(2)	Spin-Offs	I-167
(a)	Excerpts from Proxy Statement dated May 24, 1989 of Morton Thiokol, Inc. relating to spin-off of Morton International, Inc.	I-167

TABLE OF CONTENTS

vii

	(b) Excerpts from Information Statement of NL Industries, Inc. dated July 14, 1986 relating to proposed spin-off of NL Chemicals	I-205
	(c) Excerpts from Proxy Statement dated February 7, 1992 of The Dial Corp relating to reincorporation merger and spin-off of GFC Financial Corporation	I-238
I(3)	Master Limited Partnerships	I-239
	(a) Excerpts from Preliminary Prospectus of Crown Zellerbach Corporation dated July 10, 1985	I-239
I(4)	Letters to Shareholders	I-282
	(a) Letters to Shareholders of Phillips Petroleum Company	I-282
I(5)	Disclosure Statement	I-286
	(a) Prepackaged Bankruptcy Solicitations Disclosure Statement dated November 20, 1991 of Edgell Communications, Inc.	I-286

APPENDIX J

Proxy Contests

J(1)	Insurgents Proxy Statements	J-3
	(a) Excerpts from Proxy Statement dated March 31, 1983 of Odyssey Partners relating to Trans World Corporation	J-3
	(b) Excerpts from Proxy Statement dated May 6, 1986 of The Committee to Revitalize Leaseway Transportation Corp.	J-17
	(c) Excerpts from Proxy Statement dated February 12, 1991 of AT&T relating to NCR Corporation	J-32.1
	(d) Proxy Statement dated April 9, 1990 of Torchmark Corporation relating to American General Corporation and Supplement dated April 13, 1990	J-32.11
J(2)	Letter to Shareholders	J-33
	(a) Letters to shareholders of TransWorld Corporation dated April 8, 1983 and April 20, 1983	J-33
	(b) Letters to shareholders of Leaseway Transportation Corp. dated May 2, 1986	J-43

(c)	Letters to shareholders of Irving Bank Corporation dated March 5, 1990, March 9, 1990, March 16, 1990 and March 23, 1990	J-47
(d)	Letters to shareholders of Lockheed Corporation dated March 5, 1990, March 9, 1990, March 16, 1990 and March 23, 1990	J-63
(e)	Letters to shareholders of NCR dated December 28, 1990 and February 12, 1991	J-73
(f)	Letters to shareholders of American General Corporation dated April 9, April 13, April 17, April 24 1990	J-89