Judicial Deference, Procedural Protections, and Deal Outcomes in Freezeout Transactions: Evidence from the Effect of *MFW*

Fernán Restrepo*

Abstract

For several years, merger freezeouts were invariably subject to entire fairness review, a demanding standard of judicial review that enables courts to revise the price of a transaction when the price is challenged by the shareholders of the selling company. But this changed in 2013. In an attempt to incentivize the simultaneous use of independent director approval and majority-of-the-minority conditions, the Delaware Chancery Court held in *In re MFW Shareholders Litigation* (2013) that when a merger freezeout is subject to those procedural protections, the transaction would subsequently be reviewed under the deferential business judgment rule rather than under entire fairness. This paper examines the impact of *MFW* on transactional practice and deal outcomes. The results show that majority-of-the-minority conditions increased significantly after the opinion, from an incidence rate below 40% to a rate of more than 80%. Special committees were already the norm before 2013 and their incidence did not change after *MFW*. The increase in majority-of-the-minority conditions, however, was not followed by significant changes in deal premiums, target returns, changes from the controller's first offer to the final offer, or deal completion rates. The results therefore suggest that deferential judicial review is an effective way to incentivize procedural protections in freezeout transactions and that the increase in shareholder approval conditions did not come at the cost of higher frustration rates. In addition, the results suggest that procedural protections and entire fairness review seem to have a similar effect on the gains of the target shareholders. Taken together, these results present an assessment of *MFW* in particular and also shed light on the role of shareholder voting in freezeout transactions more generally.

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* Assistant Professor of Law, University of California – Los Angeles; Affiliated Scholar, Rock Center for Corporate Governance, Stanford University. Email: fernan.restrepo@law.ucla.edu. For very helpful comments, I am very grateful to Lucian Bebchuk, Joseph Grundfest, Colleen Honigsberg, Amir Licht, Guhan Subramanian, two anonymous referees, and the editors of the Journal of Law, Finance, and Accounting that reviewed this paper – John Armour and Oren Sussman.

Judicial Deference, Procedural Protections, and Deal Outcomes in Freezeout Transactions: Evidence from the Effect of *MFW*

1. Introduction

Prior to 2013, buyouts by controlling shareholders (also known as "freezeouts") were invariably subject to entire fairness review, a stringent standard of judicial review that enables courts to revise the price of a transaction when the price is challenged by the target shareholders. Even if the transaction was approved by a special committee of independent directors ("SC") or by the majority-of-the-minority ("MOM") shareholders, entire fairness would still be the applicable standard – although the presence of either of these procedural protections would shift the burden of proof from the defendants to the plaintiffs (see *Kahn v. Lynch Communication Systems, Inc.*, 638 A.2d 1110, 1117 (Del.1994)). This situation, however, changed in 2013. That year, the Delaware Chancery Court held in its *MFW* opinion that when a freezeout is simultaneously conditioned on SC and MOM approval, the court would subsequently review the transaction using the deferential business judgement rule rather than entire fairness. According to the court, this policy was intended to incentivize the concurrent use of the two procedural protections, which could in turn help emulate deals between unrelated parties and thus save valuable judicial resources (see *In re MFW Shareholders Litigation*, 67 A.3d 496 (Del. Ch. May 29, 2013)). Then Vice Chancellor of the Chancery Court Leo Strine explained the rationale behind *MFW* as follows:

> "[S]tatements in this decision [*Lynch*] could be, and were, read as suggesting that a controlling stockholder who consented to both procedural protections for the minority would receive no extra legal credit for doing so (…) [This] left controllers with an incentive system all of us who were adolescents (or are now parents or grandparents of adolescents) can understand. Assume you have a teenager with math and English assignments due Monday morning. If you tell the teenager that she can go to the movies Saturday night if she completes her math or English homework Saturday morning, she is unlikely to do both assignments Saturday morning. She is likely to do only that which is necessary to get to go to the movies—i.e., complete one of the assignments—leaving her parents and siblings to endure her stressful last-minute scramble to finish the other Sunday night. (…) For controlling stockholders who knew that they would get a burden shift if they did one of the procedural protections, but who did not know if they would get any additional benefit for taking the certain business risk of assenting to an additional and potent procedural protection for the minority stockholders, the incentive to use both procedural devices and thus replicate the key elements of the arm's-length merger process was therefore minimal to downright discouraging" (*In re MFW Shareholders Litigation*,

67 A.3d 496, 500, 528 (Del. Ch. May 29, 2013)).

This paper examines the impact of *MFW* on transactional practice and, more specifically, on three aspects. The first is the incidence of SC and MOM conditions, and especially MOM conditions. SCs were already the norm before *MFW* because the Delaware Supreme Court strongly recommended their use back in 1984, which implies that if *MFW* had any effect on the use of procedural protections, then this effect should take the form of an increase in MOM conditions (see *Weinberger v. UOP*, 457 A.2d 701, 711 (Del. 1983); Subramanian, 2007, 3, 11; Restrepo, 2013, 344-43; Restrepo and Subramanian, 2015, 226-27). As further discussed in Section 4, the results in fact show that *MFW* was successful in incentivizing procedural protetions and, as a result, MOM clauses have now become almost ubiquitous in merger freezeouts.

Second, this paper explores the effect of *MFW* on the gains of the target shareholders (that is, the premium over market prices, the cumulative abnormal returns around the announcement of the transaction, and the change from the buyer's first offer to the final offer). This part of the analysis considers two hypotheses. The first predicts that the gains of the target should be higher after *MFW* because shareholder voting acts as a check against negligent or captured boards, and even if the board discharged appropriately its fiduciary duties, the target shareholders can use the threat of a veto to push acquirers to raise their offer (Subramanian, 2005, 15; Edelman and Thomas, 2015, 468; Jiang, Li, and Mei, 2016). The second hypothesis suggests, in contrast, that the gains of the target should not be affected by *MFW* either because shareholder approval is simply inconsequential (see Cox, Mondino, and Thomas, 2019) or because freezeouts were subject to judicial scrutiny before 2013 – and judicial scrutiny appears to be an effective substitute for procedural protections (Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015). Overall, the results presented in Section 4 are consistent with the second hypothesis.

Third, this paper explores the impact of *MFW* on the likelihood of deal completion. The main hypotheses behind this part of the analysis is that frustration rates might have increased after *MFW* due to the greater risk of shareholder holdup problems (the "holdup" hypothesis) or simply because shareholders have greater ability post-*MFW* to block

undesirable transactions (the "efficient voting" hypothesis). Higher frustration rates are a cause for concern particularly if they are explained by shareholders holding up a desirable transaction, a phenomenon that could arise for various reasons: because the target shareholders have less information than managers do (Levit, 2014), because the shareholders decide to strategically withhold support to pursue appraisal rights (Korsmo and Myers, 2015; Jiang et al, 2016), or simply because there are administrative difficulties associated with gathering retail investor votes (Kastiel and Nili, 2015) (see also Boone, Broughman, and Macias, 2016, p. 1 for a review of these arguments). The results presented in Section 4 show, however, that frustration rates did not increase significantly after *MFW*, which rules out both the holdup and efficient voting hypotheses.

And fourth, although this paper focuses on the impact of legal doctrine on procedural protections and deal outcomes, I also examine whether *MFW* had any effect on the choice of the transactional form made by the controlling shareholders (that is, merger versus tender offer freezeouts). Specifically, this part examines the hypothesis that controlling shareholders used the merger route more often after *MFW* because the decision provided a clear blueprint to avoid entire fairness review – and, consistent with this prediction, previous empirical evidence suggests that judicial deference is in fact a meaningful determinant of the choice of the transactional form (see Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015). As shown in Section 4, this paper's data lends additional support to this hypothesis.

Taken together, these results not only provide an assessment of *MFW* in particular, but also contribute to the existing literature more generally on three dimensions. First, they add to the legal literature on the standard of judicial review that should govern freezeouts and on the responsiveness of transactional practice to changes in doctrine. One of the central assumptions of the hybrid standard of judicial review adopted in *MFW* and in the literature that motivated it is that the use of procedural protections in a deal is responsive to different levels of judicial deference (see Gilson and Gordon, 2003; Subramanian, 2005). By showing that MOM conditions in fact increased significantly after *MFW*, the results presented here validate this assumption.

Second, the results provide new evidence on the effect of shareholder voting on deal outcomes in the particular context of freezeouts. Prior studies have examined this relationship in other contexts (that is, in the context of third-party acquisitions or management buyouts) and they also have examined the impact of voting by the buyer's shareholders (see Boone, Boughman, and Macias, 2016; Burch, Morgan, and Wolf, 2004; Cain and Davidoff, 2011; Cox, Mondino, and Thomas, 2019; Hsieh and Wang, 2008; Kamar, 2011; Becht, Polo, and Rossi, 2016; Li, Liu, and Wu, 2017; Mason, Stegemoller, and Utke, 2017). However, none of these papers focus on the context of freezeouts – a particularly sensitive context due to the inherent conflicts of interests that characterize these transactions. In addition, this paper exploits a unique empirical setting in that *MFW* provides a source of exogenous variation in the incentives of controlling shareholders to adopt MOM conditions.

And third, the results also add to the legal literature on the relationship between judicial scrutiny and deal outcomes in freezeouts. As mentioned, the data indicate that the increase in MOM conditions after *MFW* did not result in higher gains for the target shareholders, which can be interpreted as suggesting that enhanced judicial scrutiny was an effective protection of minorities before 2013. If this interpretation is correct, then these results confirm prior empirical works that also suggest, based on changes in the law of tender offer freezeouts, that entire fairness review exerts an upward pressure on the gains of the target shareholders (Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015).

It is worth emphasizing, however, that the evidence presented here is necessarily preliminary because this work only covers the first years of transactional practice after *MFW*. As a result, the questions examined here should continue to be studied in future research.

The remainder of this work is organized as follows. Section 2 provides background on the law protecting minority shareholders in freezeouts and the prior literature. Section 3

presents the methodology. Section 4 presents the results. Section 5 discusses the results and Section 6 concludes.

2. Background

2.1. Minority protection in freezeout transactions

A freezeout is, as mentioned, a transaction in which a controlling shareholder acquires the remaining shares of a corporation for cash or stock. These transactions, which are typically executed as merger agreements (but can also be executed as tender offers directly to the minority shareholders), are characterized by their self-dealing nature and resulting risk of minority exploitation: since the controlling shareholder stands on both sides of the transaction because he is the buyer and typically also dominates the seller's board, the deal could be used as a mechanism to obtain a disproportionate benefit for the controller at the expense of the minority shareholders (see, e.g., Subramanian, 2005, pp. 9-10).

In response to this risk, the Delaware courts have historically subjected merger freezeouts to "entire fairness," a stringent standard of judicial review in which the court examines whether there was "fair dealing" and "fair price." As the Delaware Supreme Court explained in *Weinberger v. UOP*, 457 A.2d 701, 711 (Del. 1983), "[fair dealing] embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, and disclosed to the directors, and how the approvals of the directors and the stockholders were obtained. [Fair price] relates to the economic and financial considerations of the proposed [transaction]." The court also suggested in this decision that the likelihood of satisfying the two prongs of entire fairness would increase if the target board formed a special committee of independent directors to negotiate the terms of the deal with the controlling shareholder – and most likely as a result of this suggestion, special committees became common in the 1990s and the 2000s (Subramanian, 2007, 11).

Until 2013, even if a special committee of independent directors and the majority-of-the-minority approved a merger freezeout, the transaction would still be subject to entire fairness review. The Delaware Supreme Court delineated the contours of this policy in *Rosenblatt v. Getty Oil Co*., 493 A.2d. 929, 937 (Del. 1985) and *Kahn v. Lynch*

Communication Systems, Inc., 638 A.2d 1110, 1117 (Del.1994). In *Rosenblatt*, the court held that approval of the transaction by the majority-of-the-minority shifted the burden on entire fairness from the defendant to the plaintiff but did not shift the standard of review to deferential business judgment – and approximately a decade later, *Lynch* adopted a similar approach for deals approved by an SC. These two decisions, therefore, rewarded controlling shareholders that implemented *either* an SC or an MOM condition, but they did not provide any additional benefit for controllers that implemented both procedural protections (*In re MFW Shareholders Litigation*, 67 A.3d 496, 500 (Del. Ch. May 29, 2013) [discussing this interpretation]).

Even subsequent pronouncements of the Delaware Chancery Court suggested in dicta that the incentive structure created by *Lynch* was not a satisfying treatment of freezeouts. In *In re Cox Communications, Inc. Shareholders Litigation*, 879 A.2d 604, 618–19 (Del. Ch. 2005), for example, then Vice Chancellor Strine noted:

> "Initially, it cannot be ignored that *Lynch* created a strong incentive for the use of special negotiating committees in addressing mergers with controlling stockholders. This is a very useful incentive (…) But *Lynch* also created other unintended (…) incentive effects (…) [T]he absence of any additional standard of review-affecting benefit for a Minority Approval Condition, has made the use of that independent, and functionally distinct, mechanism less prevalent. From a controller's standpoint, accepting this condition from the inception of the negotiating process added an element of transactional risk without much liability-insulating compensation in exchange."

However, in an attempt to incentivize the simultaneous use of SCs and MOM conditions, the Delaware Chancery Court held, in *In re MFW Shareholders Litigation*, 67 A.3d 496 (Del. Ch. May 29, 2013), that merger freezeouts conditioned on both SC and MOM approval would subsequently be reviewed under business judgment and not under entire fairness. The court explicitly held that the goal of this policy was to provide "a strong incentive" for the use of these conditions and, in that way, replicate the protections that target shareholders have in arm's-length transactions (*In re MFW Shareholders Litigation*, 67 A.3d 496, 500, 528 (Del. Ch. May 29, 2013)). On appeal, the Delaware Supreme Court affirmed the Chancery Court's decision and endorsed the policy goals behind it (*Kahn v. M&F Worldwide Corp.*, 88 A.3d 635, 643 (Del. Supr., 2014).

One important caveat is that *MFW* involved a merger and therefore its holding does not apply to freezeouts executed as tender offers. In *In re Siliconix Inc. Shareholders Litigation*, Civ. A. No. 18700, *7 2001 WL 716787 (Del. Ch. June 19, 2001), the Delaware Chancery Court exempted tender offer freezeouts from entire fairness, arguably because the minority shareholders are sufficiently protected in those transactions by the tender decision itself; and while subsequent Chancery Court opinions have questioned this reasoning and applied the *MFW* standard,[1] this doctrinal bifurcation has not been resolved yet by the Delaware Supreme Court.

2.2. Academic commentary

The academic literature has historically been somewhat divided on the standard of review that should apply to freezeouts. On one side of the spectrum, some commentators argue that, regardless of the transactional form used (merger or tender offer), freezeouts should always be reviewed under entire fairness because those transactions involve a conflict of interests and Delaware's general approach to conflicted transactions is to subject them to entire fairness (Levy, 345; Cannon, 241-43; Resnick, 278-83). In response to this position, however, other commentators argue that an indiscriminate application of entire fairness review underestimates the cost of judicial intervention, the fact that courts are not well positioned to engage in the difficult task of valuation, and the fact that applying entire fairness to all transactions, regardless of the procedural protections used, might deter value-creating deals (Subramanian, 2005, 23, 45-46).

Other commentators take the view that the application of entire fairness should depend on the transactional form. As mentioned above, this was the position that Vice Chancellor Noble took in *Siliconix*, which was based on the idea that minority shareholders are sufficiently protected in the tender offer context by the tender decision itself. According to Vice Chancellor Noble, the target shareholders can simply choose whether or not to sell their shares, and if they decide not to tender, they still own shares in the company (*In re Siliconix Inc. Shareholders Litigation*, Civ. A. No. 18700, 2001 WL 716787 at *6, *7 (Del.

[1] See *In re Pure Resources, Inc., Shareholders Litigation*, 808 A.2d 421, 443 (Del. Ch. 2002); *In re Cox Communications, Inc. Shareholders Litigation*, 879 A.2d 604, 607 (Del. Ch. 2005); *In re CNX Gas Corp. Shareholder Litigation*, 4 A.3d 397, 407 (Del. Ch. 2010).

Ch. June 19, 2001)). The problem with this argument, however, is that the decision not to tender leaves a minority shareholder in a more thinly traded stock that is subject to a short-form merger at a later time, which in turn suggests that the risk of retaliatory actions by the controlling shareholder is actually present in tender offers (*In re Pure Resources, Inc., Shareholders Litigation*, 808 A.2d 421, 441 (Del.Ch., 2002)).[2]

The empirical evidence is also inconsistent with the notion that the tender decision is a functional substitute of entire fairness review. Using a sample of freezeouts announced between 2001 and 2005, Subramanian (2007) found that the minority shareholders received lower cumulative abnormal returns (CARs) when the deal was executed as a tender offer than when it was executed as a merger – and, moreover, the incidence of tender offers increased in relation to the incidence of mergers after *Siliconix*. As a result, Subramanian concludes, entire fairness appears to exert a positive pressure on the target's gains (which pressure is not substituted by the tender decision) and controlling shareholders do perceive enhanced judicial review as a material transactional risk. In addition, consistent with this result, Restrepo (2013) examined a sample of transactions announced before and after *Siliconix*, and found that CARs in tender offer freezeouts actually decreased after the opinion. [3] Restrepo and Subramanian (2015) also examined the effect of *Cox Communications*, which, as mentioned before, criticized the approach adopted in *Siliconix* and proposed in dicta the hybrid standard ultimately adopted in *MFW*. This study indicates that *Cox* in fact appears to have had the opposite effect of *Siliconix*: the gains of the minority shareholders in tender offers increased relative to the gains in mergers and the relative incidence of tender offers declined.

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[2] See also Bebchuk (1982, 1039-40); Bebchuk (1985a); Bebchuk (1985b, 1695-96); *Cf.* Bebchuk (1987, 917-31); Bebchuk and Hart (2001); Prentice and Langmore (1990, 440-42); Lowestein (1983, 307-09).

[3] A related paper by Bates, Lemmon, and Linck (2006, 681-708) also studied CARs in freezeouts in the 1988-2003 period, and concluded that *Siliconix* was not associated with lower CARs. However, that paper includes in the regressions Delaware and non-Delaware targets, even though *Siliconix* does not necessarily apply outside of Delaware. In addition, the paper classifies tender offers that were executed as part of a merger agreement as pure tender offers even though the Delaware Chancery Court has held that the presence of a merger agreement triggers entire fairness review. See *Hartley v. Peapod, Inc.*, No. Civ.A. 19025-NC, 2002 WL 31957458, at *1 (Del. Ch. Feb. 27, 2002). And finally, the post-*Siliconix* tranche of the dataset is based on a shorter period than the one examined by Subramanian (2007) and Restrepo (2013). Other studies also have examined the gains of the target shareholders in freezeouts, but those papers predate *Siliconix* and do not compare differences in the target gains in tender offers and mergers. See Dodd and Ruback (1977); DeAngelo, DeAngelo, and Rice (1984); and Holderness and Sheehan (1988).

Some commentators also have suggested that the standard of judicial review that applies to freezeouts is not relevant for the gains of the target shareholders because minority investors will simply price the applicable standard ex ante. In this sense, if business judgment is the standard that applies, minority investors will simply pay less for their shares when they decide to invest in a company (Pritchard, 2004, 101-03). In response, however, Subramanian (2005, 32) argues that this argument does not address the fact that a regime that invariably applies business judgment to a freezeout, even when the transaction was not subject to sufficient procedural protections to emulate an arm's-length deal, can promote inefficiencies. The reason is that, in the absence of the threat of entire fairness review, the only remaining constraint on the deal price is the market price. The market price, however, is an insufficient floor for the deal price because the controlling shareholder might engage in two forms of opportunistic behavior: freezing out the minority when the market price of the target is lower than its intrinsic value, and influencing the value of the target with the purpose of creating a downward pressure on its market price and using that lower baseline for the transaction.[4]

A final strand of the literature proposed the hybrid standard ultimately adopted in *MFW*. This line of commentary emphasizes the distinct but complementary roles that SCs and MOM conditions serve. According to these commentators, an SC is important because it provides a bargaining agent for the shareholders and therefore mitigates collective action problems. MOM conditions, on the other hand, provide a check against captured or negligent SCs by giving the minority the opportunity to reject their agent's negotiation

[4] See also Harford, Stanfield, and Zhang (2019) (providing circumstantial empirical evidence on this point). A potential response to this argument might be that in the absence of entire fairness, the appraisal remedy would be a sufficient substitute. However, as various commentators have noted, the appraisal remedy is significantly less strong than entire fairness for at least three reasons. First, in entire fairness actions, the claim is brought on behalf of all subsidiary shareholders regardless of how they voted or whether they accepted payment for their shares. This in turn implies that the deal price is exposed to judicial revision with respect to all the shares acquired in the transaction; in contrast, in the appraisal remedy, the shareholders that accepted the consideration offered cannot bring an appraisal claim, and if the price is revised by the court, the revision only applies to the shares of the petitioners. Second, the petitioners in appraisal claims bear the costs associated with the proceeding, but that is not the case in class actions for entire fairness. Third, if the deal consideration is stock in a publicly traded corporation, the minority shareholders do not receive the protection of appraisal. See Gilson and Gordon (2003, 799). See also Subramanian (2005, 30-31); Coffee (1996, 319, 412); Thomson (1995, 48).

outcomes. When these two procedural conditions are present, therefore, the transaction emulates an arm's-length deal, which should make entire fairness review unnecessary (Gilson and Gordon, 2003, 785, 818, 837–38; Subramanian, 2005, 50, 53, 59-61).

Because, as mentioned, SCs were already typical since *Weinberger*, the proponents of the *MFW* standard predicted that, if the Delaware courts adopted the standard, then MOM conditions would increase significantly (Subramanian, 2005, 61). This was also emphasized in *MFW* itself: "Without any clear benefit to controllers for the clear costs of agreeing upfront to a majority-of-the-minority condition (…) those conditions are now much less common than special committees. Under an approach where the business judgment rule standard is available if a controller uses a majority-of-the-minority condition upfront, minority investors will have an incentive for this potent fairness protection to become the market standard and to be able more consistently to protect themselves in the most cost-effective way, at the ballot box" (*In re MFW Shareholders Litigation*, 67 A.3d 496, 535 (Del. Ch. May 29, 2013)).

The literature has not examined yet, however, whether *MFW* actually achieved its stated goal of promoting MOM conditions – and whether those conditions have any effect of the wealth of the target shareholders. This paper, therefore, contributes to filling these gaps.[5]

3. Methodology

To examine the effect of *MFW* on MOM conditions, this work uses a difference-in-differences (DiD) methodology. It seems unlikely that a significant increase in MOM conditions in merger freezeouts after 2013 could be explained by events other than *MFW*.

[5] Prior studies have examined related questions, though. Cain and Davidoff (2011, 889-90) examined a sample of management buyouts announced between 2003 and 2009, and found that conditioning the deal on approval by the majority of the target shareholders that were unaffiliated with the buyer was not associated with higher premiums. Boone, Broughman, and Macias (2016), on the other hand, find that when the Delaware legislature reduced from 90% to 50% the shareholding threshold that a buyer needs to reach in order to execute a short-form merger after a tender offer, the incidence of tender offers increased and premiums and CARs also increased, suggesting that qualified majorities were in fact negatively associated with the gains of the target. According to the authors, this result could be explained by the fact that a shorter timeframe to complete the deal reduces the uncertainty related to not closing, which in turn enables the buyer to pay more up front (see also Bhagwat et al., 2016). These studies, however, do not examine the effect of qualified majority voting in the specific context of freezeouts or the relationship between judicial deference and the use of MOM conditions. This work therefore contributes to the literature on these dimensions.

However, to rule out with greater certainty that possibility, I rely on a DiD framework, which compares changes over time (before and after *MFW*) between the transactions affected by the opinion (the "treatment group") and a set of transactions not affected by it (the "control group"). I also employ a DiD approach because, as mentioned before, this work examines changes around *MFW* in the gains of the target shareholders and completion rates, which may be more likely to be affected by general time trends in merger activity.

The treatment group in the DiD setting is the group of merger freezeouts announced during the January 2000 – June 2020 period. To classify a deal as a freezeout, the buyer must have at least 30% of the shares in the target prior to announcement and the target must be a public corporation incorporated in Delaware. Corporate control is generally clear if a shareholder has more than 50% of the company's shares, but the Delaware Chancery Court has held that a shareholder with a holding of approximately 30% could be a controlling shareholder.[6] In addition, I only keep Delaware targets in the treatment group because that is when *MFW* unequivocally applies to the case. Transactions in which the acquirer held 90% or more of the target's voting shares prior to announcement are excluded from the sample because those transactions can be executed as short-form mergers that do not require a shareholder vote (Del. Gen. Corp. L. §253). Freezeouts executed as tender offers are also excluded from the sample because, as discussed in Section 2, *MFW* does not apply to tender offers. However, tender offers that were executed pursuant to a merger agreement are treated as mergers freezeouts because the Delaware Chancery Court has held that those transactions are subject to entire fairness review (*Hartley v. Peapod*, C.A. No. 19025 at 40 n.26 (Del. Ch. Feb. 27, 2002); *In re Emerging Communications Inc. Shareholders Litigation*, C.A. No. 16415 (Del. Ch. May 3, 2004)). Finally, reverse stock splits are also classified as merger freezeouts because, in situations that are not freezeouts, the Chancery

[6] See, for example, *In re Cysive Inc. Shareholders Litigation*, 836 A.2d 531 (Del. Ch. 2003) (finding a 35% stockholder to be a controller). In more exceptional circumstances, the court has also found a shareholder to be a controller with even smaller stakes. See *Calesa Associates, L.P. v. American Capital, Ltd.*, 2016 WL 770251, at *10 (Del.Ch., 2016) (finding that a 25% shareholder can be a controlling shareholder); *In re Zhongpin Inc. Stockholders Litigation*, 2014 WL 6735457, at *9 (Del.Ch., 2014) (finding that a 17.3% shareholder can be a controlling shareholder, although that stake is "much smaller than a typical controller's").

Court has also subjected those deals to entire fairness (*Applebaum v. Avaya*, 805 A.2d 209 (Del. Ch. 2002)).[7]

The control group consists of merger freezeouts in which the target company was an LP (a limited partnership) or an LLC (a limited liability company), and acquisitions in which the buyer had a significant but non-controlling toehold in the target – that is, a toehold of more than 10% but less than 20%.[8] This choice of the control group is motivated by two considerations. One is that merger freezeouts involving LP and LLC targets are transactions that are similar to the treatment group in that they involve an acquisition of the minority shares of a company, but they are not subject to *MFW* because they are not subject to corporate law in general; and the other reason is that a toehold acquisition in which the buyer had a significant but non-controlling participation in the target is the type of non-freezeout transaction that most closely resembles a freezeout – but, again, *MFW* does not apply to such an acquisition.[9] However, to ensure that the results are not driven by the choice of the control group, I also run the regressions separately with each subset of that group – as well as with third-party acquisitions, when those acquisitions can be appropriately used as a benchmark.[10] Moreover, running the estimations with each subset of the control group has the added benefit of mitigating the inherent limitations of each subset.[11]

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[7] As discussed in more detail in Section 4, I perform sensitivity analyses that use a 50% shareholding threshold to define a controlling shareholder and that exclude tender offers executed in accordance with a merger agreement and reverse stock splits.

[8] I use the 20% cap because shareholdings under that threshold generally do not give rise to control under exchange rules. See, for example, Nasdaq Staff Interpretative Letters 2007-25, 2008-3 and 2008-5. Discussing the application of these rules in practice, see Harmetz and Eiger (2017, 3).

[9] In fact, like in freezeouts, buyers in a toehold deal already had some participation in the target before the initiation of the transaction, which implies that those transactions could include (and, in fact, as shown in Table S.1 of the Supplementary Materials, often do include) MOM conditions.

[10] Despite the fact that third-party deals are less similar to the treatment group than the baseline control group, using those deals as a benchmark is a meaningful robustness check in the analyses of deal outcomes and the choice of the transactional form. This is not the case, in contrast, in the analysis of MOM conditions because non-toehold third-party deals generally do not involve such a procedural protection.

[11] There are two limitations that are worth noting. First, unincorporated business entities might be qualitatively different from corporations on dimensions that I do not observe – and for which dimensions, therefore, I cannot include controls in the regressions. A feature that illustrates this possibility, in fact, is that LLCs and LPs freezeouts tend to concentrated in the utilities sector – while other acquisitions tend to concentrate in the industrial and services sector. And second, in the case of toehold acquisitions, those transactions might be potentially affected by the *MFW* doctrine. On the one hand, as mentioned before, the Delaware Chancery Court has found in some cases that a shareholder with as little as 17.3% of the outstanding

The dependent variables in the difference-in-differences estimations include MOM conditions ("*MOM*"), the target's gains ("*Gains*"), and deal completion rates ("*Closed*"). As mentioned earlier, I also examine the transactional form used by the buyer, but as explained below, the DiD analysis in this case is slightly different. *MOM* equals one if a deal included an MOM condition and zero otherwise. I also run the regressions, however, with *MOM&SC* as the dependent variable, which equals one if the deal included an MOM condition and an SC, and zero otherwise.[12] *Gains* is the target shareholders' gains associated with the deal, which I measure, as mentioned earlier, in three alternative ways. The first is the premium paid by the controller relative to the market price for the stock of the target the day immediately preceding the announcement of the transaction; the second is $CAR_{(-1,+1)}$, the cumulative abnormal returns for the target's stock around the announcement of the transaction;[13] and the third is *ΔOffer*, the percentage increase from the controller's first offer to the final offer. Finally, in the analysis of completion rates, *Closed* equals one if the deal closed and zero otherwise.

The independent variables include *Treat*, which is set to one for the treatment group and zero for the control group; *PostMFW*, which equals one if the transaction was announced

shares of a company can have control, which implies that using deals in which the buyer had a toehold between 10% and 20% as control observations might be over-inclusive. See *In re Zhongpin Inc. Stockholders Litigation*, 2014 WL 6735457, at *9 (Del.Ch. 2014). And on the other hand, the use of qualified voting conditions in acquisitions by a buyer with a non-controlling toehold might be affected by court decisions that were contemporaneous to *MFW* and that also granted greater judicial deference to third-party deals approved by the majority of the target shareholders unaffiliated with the buyer. In particular, in *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 305-6 (Del. 2015), the Delaware Supreme Court held, approximately two years after *MFW*, that the business judgment rule applies to post-closing damages actions when a transaction that is not subject to entire fairness review has been approved by "a fully informed, uncoerced majority of the disinterested stockholders" (*Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 305-6 (Del. 2015)). And in *Martha Stewart Living*, the Delaware Chancery Court extended this principle to third-party acquisitions in which the target has a controlling shareholder. See *In re Martha Stewart Living Omnimedia, Inc. Stockholder Litigation*, 2017 WL 3568089, at *2 (Del.Ch., 2017) (holding that the *MFW* standard applies to "conflicted one-side controller transactions," in which the controller is seller only, and then reviewing the transaction under the business judgment rule).

[12] When I code for the "MOM" condition in toehold deals, I code more specifically for the condition that the *majority of the shareholders unaffiliated with the buyer* approve the transaction (since, in these acquisitions, the selling shareholders may not technically be *minority* shareholders).

[13] I compute CARs as the difference between the daily return for the target's stock relative to the returns of the Center for Research in Securities Pricing (CRSP) index over a period of one day around a deal's announcement. The results are qualitatively similar, however, if the CRSP value-weighted index is replaced with the equal-weighted CRSP index.

after May 29, 2013 (the date of the Delaware Chancery Court decision in *MFW*) and zero otherwise; and the interaction between these two variables (*Treat*×*PostMFW*), which yields the difference-in-differences estimator. If *MFW* was successful in encouraging the use of MOM conditions (or if it improved the gains of the target), this variable should be positive and statistically significant.

The remaining independent variables are controls for characteristics of the transaction, the controller, and the target company. These variables include the size of the deal; the consideration structure (all cash versus other consideration structures); a dummy variable for deals that included an SC in the negotiation process (except when *MOM&SC* is the dependent variable); the percentage of minority shares required to approve the transaction;[14] the size and profitability of the target (measured by the natural logarithm of total assets and return on assets, respectively); dummy variables for acquirers that are publicly traded companies or financial acquirers; a dummy variable for the attitude of the buyer (friendly versus unsolicited or hostile); a dummy for negotiations in which there was a competing bidder; a dummy for breakup fees; and industry fixed effects.[15]

In the analysis of the transactional form used by the controller, I examine changes in the incidence of merger freezeouts relative to tender offer freezeouts of Delaware corporations before and after *MFW*, and then I compare that figure with changes in the incidence of mergers to tender offers in the control group. The methodology for this part of the analysis is then similar to the methodology described above, but the sample is different due to the

[14] This variable, defined here as "Minority Approval Required" (MAR), is calculated as follows. For a merger freezeout with an MOM condition, MAR = 50% (reflecting the fraction of minority shares required in order to proceed with the freezeout). For a merger freezeout without an MOM condition, but where the controller's pre-deal stake is less than 50%, MAR = [(50 – controller's pre-deal stake) / (100 – controller's pre-deal stake)]×100. In merger freezeouts without an MOM condition and where the controller's pre-deal stake is more than 50%, MAR = 0. For a tender offer with a 90% condition, MAR = [(90 – controlling pre-deal stake) / (100 – controller's pre-deal stake)]×100. This is the fraction of the minority shares that the controller would need in order to satisfy the 90% condition and proceed with its back-end short-form merger. If there is an MOM condition, however, there is a 50% floor for MAR. A similar logic applies to other threshold conditions in tender offers (which in some instances were subject to a 50% condition and not a 90% condition). As mentioned, only tender offers that are part of a merger agreement are considered in the analysis.

[15] Given the size of the sample, the industry fixed effects are based on three general industry categories: industrial, utilities, and financial services and other services. The results are qualitatively similar, however, if the industry dummies are defined at the one-digit level of the target's Standard Industry Classification Code (SIC).

inclusion of tender offers. The dependent variable in these regressions is a merger dummy (*"Merger"*), which takes the value of one for mergers and zero for tender offers; and the main independent variables of interest are the *PostMFW* variable, the *CorporateFreezeout* variable (which takes the value of one for corporate freezeouts and zero for the control group), and *CorporateFreezeout*×*PostMFW*, the DiD estimator.

To facilitate the interpretation of the results, I run all the regressions using ordinary least squares (OLS) with heteroscedasticity-consistent standard errors. However, in the models in which *MOM*, *MOM&SC*, *Closed*, and *Merger* are the dependent variables, I also ran the regressions using logit models – and the results were similar. In addition, in the models in which *ΔOffer* is the dependent variable, I ran the regressions using Tobit, zero-inflated gamma (ZIG), zero-inflated log-normal (ZILN), and two-part models – which, again, yielded similar results.[16]

The data for this project come from the Thomson Financial Mergers and Acquisitions database, and include, as mentioned, all the deals announced between January 2000 and June 2020. In addition, I supplement the list of transactions with Factset. I collected the information on the bargaining process, and especially on whether a special committee of independent directors was formed and whether the deal included a majority-of-the-minority condition, from SEC filings by the target company and the controller (especially 8-K, 14D-9, 13-E, 13-D, and 14A filings). Only observations for which the terms of the transaction were disclosed are part of the sample. The stock price data are from the Center

[16] I run a Tobit model because *ΔOffer* is a continuous variable with excess of zeros rather than a normally distributed variable. However, I also run the ZIG and ZILN models for three reasons. First, in addition to the fact that *ΔOffer* has excess of zeros, the positive values of the variable are right-skewed (the null hypothesis of no skewness was rejected at the 1% level under the test proposed by D'Agostino, Belanger, and D'Agostino [1990]). The distribution of the data, therefore, resembles a zero-inflated gamma distribution – thus making the ZIG model relevant. Second, although the positive values of the *ΔOffer* variable resemble a gamma distribution, they can be normalized by taking the natural logarithm of those values – thus making the ZILN model relevant. And third, in the Tobit model, the coefficient of the independent variables can be interpreted as the expected change in *ΔOffer* given a one-unit change in the corresponding independent variable, weighted by the probability that *ΔOffer* will be above zero. In the two-part models, however, this estimation is disaggregated into (i) the effect of the corresponding independent variable on the likelihood that *ΔOffer* will be positive, and (2) the effect of the independent variable on *ΔOffer conditional on ΔOffer being positive*.

for Research in Securities Pricing (CRSP) and, when not available, from Datastream. The final sample includes 288 observations.

4. Results

4.1. Univariate results

Table 1 presents descriptive statistics. Panel A shows that MOM conditions increased significantly after *MFW* in the treatment group, with an estimated change of 44 percentage points: before *MFW*, approximately 37% of all merger freezeouts of public corporations incorporated in Delaware included an MOM condition, but after the opinion, the incidence increased to approximately 81% (and a difference in proportions test indicates that this difference was statistically significant at the 1% level). Something similar occurred with the *MOM&SC* variable, which, as mentioned before, equals one if the transaction included an MOM condition and an SC, and zero otherwise. In contrast, the incidence of MOM conditions did not change significantly in the control group. On average, 25% of the control deals included an MOM condition before *MFW* and this percentage actually dropped to 18% after the opinion (but the change was not statistically significant at conventional levels).

Panel A also shows that SCs were prevalent in the treatment group both before and after *MFW*, with an incidence rate above 90%. This further confirms the increased interest of controlling shareholders to fit their deals into the *MFW* blueprint, since MOM conditions were not adopted as substitutes for SCs. SCs were also common in the control group, with an incidence rate around 70% before and after *MFW*.

In contrast to the significant increase in MOM conditions, there were no significant changes in deal outcomes among the treated observations after *MFW*. These results therefore provide preliminary evidence that minority approval does not seem to be meaningfully associated with deal premiums, abnormal returns or frustration rates.[17]

[17] The results also show that there were no significant changes in the control variables, which suggests that those variables do not seem to explain the changes in the incidence of MOM conditions after *MFW*. The only exception was the incidence of breakup fees, which also increased after *MFW*. However, potential

In the control group, as shown in Panel B, there was a decline in premiums, which was significant at the 10% level and which may therefore be interpreted as suggesting that *MFW* had some protective effect; however, as shown in Section 4.2, the relative decline in premiums in the control group does not hold in the multivariate analysis.[18]

Panel C shows the overall correlation among the variables. One noteworthy aspect of the table is the correlation between the MOM condition and the remaining variables. The condition was significantly and positively correlated with the presence of an SC, cash-only deals, and the target's return on assets. However, as shown in the multivariate analyses in Table 2, these correlations only held for the SC and cash-only variables. As mentioned before, the result for the SC variable is in part explained by the fact that, after *MFW*, controlling shareholders employed the two protections as complements rather than substitutes – most likely to obtain greater judicial deference. However, even before *MFW*, the condition might have been seen as a complement to SCs in the controlling shareholders' attempt to make a case that, in the event of litigation, the transaction should satisfy entire fairness review. The correlation between all-cash deals and MOM conditions, on the other hand, might be explained by the fact that, when the consideration is only cash, the target shareholders do not maintain any participation in the consolidated business and therefore those deals might be perceived as posing a greater risk of litigation (or a greater risk of the court finding that the controller used the freezeout to obtain a personal benefit at the expense of the minority shareholders) (see Subramanian, 2007, p. 16 (arguing that cash-only deals are "end-game" deals that might affect how the controlling shareholder treats the minority shareholders).

With respect to the choice of the transactional form, Panel D shows that the incidence of merger freezeouts increased in relation to the tender offer route. Something similar

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confounding effects from changes in the fees are mitigated in the multivariate analyses in the form of controls for that variable.

[18] There were also significant changes in some of the control variables in the control group. As discussed before, I mitigate this limitation by including those variables in the multivariate estimations and, as mentioned in Section 3, by running the regressions separately with each subset of the control group. Table S.1 of the Supplementary Materials shows separate descriptive statistics for each of these subsets.

happened in the control group, but in a much lower proportion. The table also highlights, however, that the frequency of tender offers was quite low in the control group both before and after *MFW* – which reinforces the usefulness, as mentioned earlier, of using third-party acquisitions as a benchmark in the robustness checks.

4.2. Regression results

Panel A of Table 2 presents the multivariate DiD analysis for MOM conditions (*MOM*) and the simultaneous use of MOM conditions and SC formation (*MOM&SC*). Models 1 and 4 present the results of parsimonious regressions that include only the *Treatment*×*PostMFW*, *Treatment*, and *PostMFW* variables; Models 2 and 5 present estimations that include all the financial controls but do not include industry fixed effects; and Models 3 and 6 present the regressions with all the financial controls and industry fixed effects. As shown in the table, the estimator of difference-in-differences (*Treatment*×*PostMFW*) was positive and statistically significant at 1% in all the specifications – thus indicating that, even after controlling for other deal, target, and buyer characteristics, MOM conditions increased significantly after *MFW* relative to the control group.[19]

Panel B of Table 2 presents the results of the DiD analysis for the gains of the minority shareholders and completion rates. Models 1 to 3 examine the effect of *MFW* on the deal premium, Models 4 to 6 examine the effect on the cumulative abnormal returns for the target's stock ($CARs_{(-1,+1)}$), Models 7 to 9 examine the effect on the change from the first offer to the final offer (*ΔOffer*), and Models 10-12 show the effect on deal completion. As shown in the table, the DiD estimator was not significant in any of the models, which is

[19] An important assumption of the DiD analysis is the parallel trends assumption – that is, the assumption that the treatment and control groups followed similar trends before the legal change. The small sample size in this paper limits a conclusive test of the parallel trends assumption. However, to provide suggestive evidence on this point, I performed a DiD analysis that divides the sample in three periods: the pre-*Cox* period (2000-2005); the post-*Cox* - pre-*MFW* period (2005-2013); and the post-*MFW* period (2013-2020). In these analyses, therefore, I replaced the DiD estimator in Table 2 (i.e., *Treat*×*PostMFW*) with interactions between the *Treat* variable and each subperiod (excluding the baseline period). Consistent with Restrepo and Subramanian (2015), I found that there was an increase in MOM conditions after *Cox*. However, I also found that the strongest increase in MOM clauses only came after *MFW*. These results, therefore, lend additional support to the notion that the increase in MOM conditions documented in this paper is in fact attributable to *MFW*. I show the post-*Cox* effect of *MFW* in the robustness checks.

once again consistent with the notion that MOM approval does not seem to be meaningfully associated with the target's gains or frustration rates.[20]

Table 3 presents sensitivity analyses. Panel A shows the results from alternative control groups and Panel B shows the estimations using subsamples. In Panel A, Models 1 through 3 show the results using freezeouts of unincorporated business entities as a control group and Models 4 through 6 show the results using toehold acquisitions. As shown in the table, the results of these estimations are similar to the baseline regressions, yielding a positive and statistically significant DiD estimator at the 1% level.

In Panel B, Models 1 through 3 include only deals announced after June 6, 2005 (the date of the Delaware Chancery Court opinion in *Cox Communications*); Models 4 through 6 include in the treatment group only merger freezeouts in which the controlling shareholder had a pre-deal stake of at least 50% (rather than 30%); and Models 7 through 9 exclude from the treatment group tender offer freezeouts that were executed pursuant to a merger agreement. I run these tests for three reasons. First, as discussed in Section 3, in *Cox*, then Vice Chancellor Strine argued in dicta for the *MFW* standard; but he suggested that this standard should apply not only to tender offers, but also to mergers – and, in fact, Restrepo and Subramanian (2015) found that MOM conditions increased after this opinion. Using only observations announced after *Cox*, therefore, would remove the effect of the opinion and thus provide a more conservative estimation of the effect of *MFW*. Second, I run the regressions using only deals in which the controlling shareholder had at least 50% of the target because, although the Delaware Chancery Court has held that a shareholder with a 30% participation can have control, control is more conclusive if a shareholder has a participation greater than 50%. And third, although the Delaware Chancery Court has held that tender offers made pursuant to a merger agreement are treated as mergers, tender offers have historically been subject to the condition that at least 90% of the shares be tendered –

[20] These results, moreover, are consistent with the evidence presented in a contemporaneous paper, which finds that, post-*MFW*, hedge funds did not exploit the more important role of MOM conditions to block more frequently merger freezeouts. See Rock (2019).

which often involves an MOM condition; as a result, the effect of *MFW* may be smaller among these deals.

As shown in the table, similar to the analyses with alternative control groups, the DiD estimator was consistently negative and statistically significant at conventional levels throughout all the subsamples.[21]

Table 4 shows sensitivity analyses of the effect of *MFW* on the variables that capture the gains of the target shareholders and completion rates. To save space, the table shows only the estimations that rely on the full regression model (the model with all the controls, including industry fixed effects), but the results are similar if I use the more parsimonious models that do not include industry fixed effects or that only include the *Treatment*, *Post-MFW*, and *Treatment×PostMFW* variables. Similar to Table 3, Panel A employs alternative control groups and Panel B examines subsamples.[22] As shown, consistent with the baseline results, Panel A indicates that the gains of the target shareholders and deal completion rates did not change in the treatment group relative to any of the alternative control groups after *MFW*; and Panel B shows that something similar occurs when run the regressions using subsamples.

In addition to these robustness checks, the Supplementary Materials show results from alternative estimation methods,[23] regressions that exclude reverse stock splits from the

[21] It is worth noting, however, that the DiD estimator in the analysis of the MOM condition becomes somewhat stronger when I use the 50% threshold to classify the buyers as controlling shareholders and when I exclude tender offers made pursuant to a merger agreement from the treatment group. The first result then appears to suggest that buyers reacted somewhat more strongly to *MFW* when their control of the target company was more certain; and similarly, the second result confirms the intuition that tender offers made in accordance with a merger agreement would be somewhat less sensitive to *MFW*. But in contrast to these results, the DiD estimator was smaller (but still statistically significant) in the post-Cox sample, which confirms that the baseline regression might be picking up part of the effect of *Cox*.

[22] As mentioned in Section 3, these alternative control groups include not only the ones that I used for the analysis of MOM conditions (i.e., freezeouts of non-corporate targets and toehold deals), but also third-party acquisitions.

[23] These alternative specifications include the following. First, since the variables for MOM conditions and deal completion are dichotomous variables, I ran the regressions using a logit model instead of the OLS model (Models 1 and 5). Second, to capture the effect of runups before the announcement of the merger, I computed the deal premium using the target's average market price during a 5-day window prior to announcement instead of using the baseline 1-day window (Model 2). Third, also to capture the run-ups in the computation of abnormal returns, Model 3 uses 5 days instead of 1 day around the announcement of the

treatment group,[24] and regressions in which the Delaware Supreme Court decision in *MFW* (rather than the Chancery Court decision) marks the cutoff to classify the deals as pre- or post-*MFW*.[25] As shown in Table S.2, in all these estimations, the results were qualitatively similar to the baseline results.

As discussed in Section 1, although this paper focuses on the relationship between *MFW* and the use of procedural protections and deal outcomes, I also examined the impact of the decision on the incidence of merger freezeouts relative to tender offer freezeouts. Table 5 shows the results. As shown in the table, the DiD estimator (i.e., *CorporateFreezeouts*×*PostMFW*) was positive but not statistically significant at conventional levels when I used the baseline control group. However, when I ran the regressions using third-party acquisitions, the estimator became consistently significant. As anticipated in Section 3, this difference may be explained by the low statistical power provided by the baseline control group, since the incidence of tender offers in that group was very low both before and after *MFW* (see Panel D of Table 1). Therefore, although not conclusively, the evidence seems to lend support to the idea that *MFW* was in fact positively associated with the use of mergers.

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deal to compute the returns (Model 3). Fourth, as discussed earlier, in a large proportion of deals there is no increase from the initial to the final offer and therefore the *ΔOffer* variable has excess of zeros (213 out of 288 observations); therefore, I ran the regression for that dependent variable using a Tobit model instead of an OLS model (Model 4). In all these analyses, the results were consistent with the estimations reported in the text. Moreover, untabulated estimations indicate that the results are also similar if I run the regressions for MOM and deal competition rates using a probit model instead of a logit model; if I use 30 days prior to announcement instead of 5 days to compute the deal premium; or if, in the analysis of *ΔOffer*, I use a zero-inflated gamma (ZIG) model, a zero-inflated log-normal (ZILN) model, or a two-part model (which, as explained in Section 3, separates the impact of *MFW* on (i) the likelihood that *ΔOffer* will be positive, and (ii) the magnitude of *ΔOffer* conditional on *ΔOffer* being positive).

[24] I perform this test because, although reverse stock splits have been subjected to entire fairness review and therefore I classify them as treatment observations (see Section 3), those transactions are potentially different from regular mergers on dimensions I do not observe. However, this sensitivity analysis does not change significantly the sample, as only 2% of the treatment deals were reverse stock splits.

[25] This test is motivated by the possibility that buyers only gained full certainty regarding the enforceability of the *MFW* standard when the Delaware Supreme Court endorsed the standard. As in the case of reverse stock splits, though, this test does not change the composition of the sample significantly, as only 2% of the treatment deals were announced between the dates of the Delaware Chancery Court decision and the Delaware Supreme Court decision. However, I note that 50% percent of these deals included an MOM condition – which is lower than the 81% incidence in the entire post-*MFW* sample. Although, of course, I cannot draw strong conclusions from this observation, this difference may suggest that controlling shareholders in fact had less certainty regarding the applicability of *MFW* before the pronouncement of the Delaware Supreme Court.

This finding is consistent with the prediction explained earlier that the greater judicial deference and clarity provided by *MFW* might have made the merger route more attractive than the tender offer route. And this prediction, in turn, is consistent with previous evidence indicating, in the context of tender offers, that when *Siliconix* granted greater judicial deference to those transactions, their incidence increased; but when *Cox* suggested that the transactions should receive greater judicial scrutiny in the form of the *MFW* standard, their incidence declined (see Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015).[26]

Before closing this section, it is important to note that the fact that *MFW* was associated with a significant increase in MOM conditions raises a natural question: why did some buyers adopt the condition and others did not? In particular, it is possible that controlling shareholders that anticipated that their transaction would close (that is, the relatively less "problematic" deals) were more likely to follow the *MFW* blueprint; but it may also be the case that some buyers were simply unaware of the benefits created by the decision.

[26] There is, however, an alternative interpretation for the significant increase in the relative incidence of mergers post-*MFW*. In particular, it may be possible that the increase is not explained by *MFW*, but rather by the fact that *CNX* applied the same standard to tender offers just three years before *MFW*. In this sense, it may be the greater scrutiny of tender offers, not the greater deference in mergers, what drives the results. See *In re CNX Gas Corp. Shareholder Litigation*, 4 A.3d 397, 407 (Del. Ch. 2010). Although the small sample size limits a conclusive analysis of time trends to determine which interpretation is correct, in untabulated results, I performed an analysis along the lines of the time series analysis I performed in the context of MOM conditions – that is, I examined the relative incidence of mergers to tender offers in four periods: before *Cox*; after *Cox* but before *CNX*; between *CNX* and *MFW*; and after *MFW*. Similar to the results on MOM conditions, these estimations are consistent with Restrepo and Subramanian (2015) in the sense that there was a relative increase in the incidence of mergers after *Cox* (of approximately 19 percentage points), which was statistically significant at the 10% level; but the strongest increase occurred after *MFW*, when the frequency of this transactional form became 40 percentage points larger than in the pre-*Cox* period – and the increase was statistically significant at the 1% level. These results, therefore, give support to the idea that *MFW* was in fact an important driver of the relative increase in mergers after 2013. This conclusion, moreover, is reinforced by the theoretical observation that *MFW* appears to offer a more predictable roadmap than *CNX* to avoid entire fairness review, since there are Chancery Court pronouncements that are inconsistent with *CNX* and there is no decision of the Delaware Supreme Court closing this gap. See *In re* Cox Radio Shareholder Litigation, 2010 WL 1806616 (Del. Ch. 2010) (declining to apply the *MFW* standard in the context of a fee determination for plaintiffs' lawyers in a freezeout tender offer).

Answering this question is difficult because the reasons that motivate a buyer to implement or not implement procedural protections are generally unobservable[27] and because the small sample size in this paper prevents a conclusive analysis of heterogeneity in the treatment effects (as noted earlier, there are 42 post-*MFW* treatment deals and 34 of them implemented SC and MOM conditions). But with these caveats in mind, to provide at least suggestive evidence on this point, I performed two types of analyses.

In the first analysis, I examined the law firms that advised the buyers, which provides indirect evidence on whether or not lack of awareness of *MFW* may explain differences in MOM conditions in the treatment group. This analysis, however, reveals that this is a very implausible explanation for the differences: in nearly all the deals, the buyers were advised by top M&A law firms (which, in all likelihood, were aware of *MFW*);[28] and consistent with this observation, a regression predicting the use of MOM conditions after *MFW* shows that the rank of the buyer's legal counsel was not a statistically significant predictor (see Table S.5 of the Supplementary Materials).

In the second level of analysis, I performed a series of tests of heterogeneity in the treatment effects, which I report in Table S.3 of the Supplementary Materials. The following are worth noting:

[27] I inspected the negotiation documents to determine whether controlling shareholders stated why they did or did not adopt MOM conditions – and, as may be expected, this analysis did not provide information on the question, even when there was significant tension between the buyer and the lawyers on the adoption of the condition. This is illustrated by Kyocera's acquisition of the minority float in AVX. In this case, the initial draft of some of the negotiation documents provided by the special committee of independent directors' legal advisor (Wachtel, Lipton, Rosen & Katz) included a requirement that the transaction would be conditioned on the approval of the majority of the minority. After the buyer rejected this condition, the special committee indicated on various occasions that they would be unwilling to recommend approval of the deal without the condition – but the buyer remained firm in his initial position without revealing why he was unwilling to adopt the conditions. Ultimately, the deal proceeded without the condition. See Offer to Purchase for Cash Any and All Outstanding Shares of Common Stock Of AVX Corporation At $21.75 Net per Share by Arch Merger Sub Inc. a wholly owned subsidiary of Kyocera Corporation (March 2, 2020). Of course, this analysis is based entirely on the negotiation documents disclosed by the parties, but it may be possible that buyers reveal more confidentially why they adopt or do not adopt procedural protections.

[28] Most firms (67%) were "tier 1" firms. Tier 1 and 2 firms represented 76% of the sample – and the remaining firms were generally leading firms regionally or in non-M&A rankings.

First, all-cash deals in the treatment group were somewhat more likely to have an MOM condition after *MFW* – although, unlike in the overall cross-sectional correlation described in Section 4.1, this result was not statistically significant. As discussed earlier, this result could be explained by the fact that, in all-cash deals, the target shareholders do not maintain any participation in the merged entity, which may increase the risk of litigation or a negative outcome in court (Subramanian, 2007, p. 16). Therefore, to minimize these risks, controlling shareholders might be willing to accept greater execution risks in the form of an MOM condition.

Second, public buyers were less likely, and financial buyers more likely, to adopt MOM conditions after *MFW*. A possible interpretation of the higher incidence of MOM conditions among financial buyers is that those buyers may be more concerned about proving in litigation that the price they paid was fair because, unlike deals involving strategic buyers, buyouts by financial acquirers generally do not involve synergies.[29] And the lower incidence of MOM conditions among public buyers may have a similar interpretation: public buyers are generally operating companies and therefore they are more likely to be strategic buyers than financial buyers; as a result, as in the case of any other strategic buyer, a public buyer may be less concerned than other buyers about facing an entire fairness proceeding (see, e.g., Bargeron et al., 2008).[30]

And third, deals that involved a competing bidder were slightly less likely than other deals to follow the *MFW* blueprint. Although this result was not statistically significant,

[29] Consistent with this view, there is evidence suggesting that synergies lead strategic buyers to value the target company more than financial buyers do (see, e.g., Gorbenko & Malenko, 2014 (discussing the evidence). If this evidence is correct at least to some point, then it may be possible that the price paid by financial buyers will be more likely to be targeted by litigation – or to be closely watched by the judiciary. An important clarification on this point is that although synergies are typically seen as a potential outcome of third-party deals, freezeouts can also generate important synergies. In fact, controlling shareholders who hold less than all the shares in a corporation may bear the entire costs of pursuing new projects or lines of business, but they are entitled only to part of the gain. In this scenario, therefore, the controller does not have full incentives to explore unexploited synergies, which implies that a freezeout may fix those incentives. See, e.g., Coates (1999).

[30] An alternative interpretation, however, is that public buyers are more reluctant to bear execution risks in the form of an MOM condition because failure of the deal might lead to a drop in the buyer's stock price – possibly as a result of a loss of reputation. Empirical evidence, in fact, indicates that the stock of bidders trades at a lower price after an attempted merger fails. See Malmendier, Opp, and Saidi (2016).

it may be interpreted as suggesting that, in the presence of competing bidders, execution risks are higher, so in these cases the controlling shareholder is willing to accept a somewhat higher level of judicial scrutiny in exchange for greater completion certainty.

In sum, although the results are only suggestive, they nonetheless provide some support to the notion that buyers are somewhat more likely to follow the *MFW* standard when they are more concerned about not closing the deal or about facing a more difficult process in court. In contrast, lack of awareness of *MFW* is a highly unlikely explanation for the variance in the adoption of MOM conditions.[31]

5. Discussion

The results presented in the previous section show that the Delaware Chancery Court's goal of stimulating the simultaneous use of SC and MOM conditions in merger freezeouts was achieved. After the court granted deferential business judgment review to transactions that are subject to both procedural protections, the use of MOM conditions increased by more than 40 percentage points, from an incidence rate of 37% before *MFW* to an incidence rate above 80% after the opinion. In contrast, deal premiums, CARs, bumps from the first to the final offer, and deal completion rates did not change significantly. SCs were already ubiquitous before *MFW* and therefore there were no significant changes in the incidence of this protection after the opinion.

The increase in MOM conditions provides empirical support to the notion that procedural protections in freezeouts are sensitive to different standards of judicial review, as hypothesized by the literature that proposed the standard adopted in *MFW* (Subramanian, 2005, 61). Even though an MOM condition creates uncertainty for controlling shareholders

[31] Besides the analyses of heterogeneity in the treatment effects described above, another possible way to assess whether controlling shareholders were more likely to implement the *MFW* blueprint in instances in which they foresaw less approval problems is to study closing rates and minority shareholder voting patterns among the deals that did and did not implement MOM conditions. Specifically, if closing rates or shareholder approval rates are higher among the deals that followed the *MFW* standard, then this result may be interpreted as an indication that controllers tend to adopt the standard when closing is likely anyway. As mentioned earlier, however, I did not find significant changes in closing rates in the treatment group after *MFW* (see Table 3); and, in addition, in untabulated results, I do not find significant differences in closing rates or voting patterns between the treatment deals that followed and that did not follow the *MFW* standard.

regarding the consummation of the deal and, in addition, the condition might eventually create pressure on a buyer to "put more money on the table" (*In re MFW Shareholders Litigation*, 67 A.3d 496, 535 (Del. Ch. May 29, 2013)), controllers have still preferred to face those risks rather than be subject to the back-end risk of entire fairness review.

Some practitioners suggested that the *MFW* approach would not lead to a significant increase in MOM conditions for various reasons (see Lewkow, Klingsberg, and Whoriskey, 2013 (proposing these arguments)). The first is precisely the greater execution risk that arises from subjecting the transaction to qualified voting and the fact that the *MFW* safeguards limit the flexibility of the controlling shareholder – since he must commit to an MOM condition in his initial proposal. Moreover, execution risks are exacerbated in recent times by the rise of deal activism, which can take the form of hedge funds buying a blocking position and then threatening to vote against the deal unless the buyer increases the price (see, for example, Stone and Schwartz, 2013; Halper et al., 2014; Jiang, Li, and Mei, 2016).

Second, even if the transaction is conditioned on SC and MOM approval, the costs of discovery in this scenario might be similar to a deal that did not include the two procedural protections. This is so because there are several ways in which plaintiffs can insulate their complaints from a motion to dismiss before extensive discovery takes place – including, most notably, challenging the independence of the directors on the special committee, the adequacy of the disclosures in the proxy statement, the fulfillment of fiduciary duties by the members of the special committee, and the criteria for determining which shareholders are minority shareholders for the purposes of the MOM condition (see also Halper et al., 2014).[32]

[32] Other practitioners noted that, after *MFW*, there was uncertainty regarding the claims that would be necessary for a court to reject dismissal of a case at the pleading stage when the transaction involved SC approval and an MOM condition. These commentators observed that the Delaware Supreme Court's decision in *MFW* indicated that any pleadings alleging "any reasonably conceivable set of facts" that call into question the price or disclosures would survive dismissal at the pleading stage. See *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635, 645 (Del.Supr.,2014). As a result, "it was uncertain what [MFW's] actual impact would be". See Epstein, Richter, Shine, and Weinstein (2015). These practitioners also noted, however, that in the Chancery Court's post-*MFW* opinion in *SynQor*, Vice Chancellor Laster dismissed claims at the pleading stage that appeared to be "reasonably specific and compelling." See Joanna SWOMLEY and Lawrence Brocchini, Plaintiffs, v. Martin SCHLECHT, Joseph Martin, Kenneth Bradley and Synqor Holdings, LLC,

Third, the costs of settling entire fairness claims may be similar to the costs of settling business judgment rule claims. This argument is based on the observation that plaintiffs are often quick to settle even if the transaction is subject to entire fairness review, particularly when there are indications that the SC discharged its fiduciary duties in an adequate manner.

And fourth, there are precedents in which controlling shareholders and target directors that went to trial to defend against entire fairness claims have actually been successful despite the fact that the transaction was not conditioned on an MOM condition.[33]

Despite these considerations, however, the results presented here indicate that controlling shareholders give significant weight to avoiding entire fairness review when deciding which procedural protections to implement.

There are at least three possible explanations for the fact that, despite the large increase in MOM conditions post-*MFW*, the gains of the target shareholders did not increase. One is that the combination of SC and MOM approval may be a functionally equivalent protection to entire fairness review. This interpretation is based on the theoretical observation that shareholder approval may work as a check against ineffective SCs (Subramanian, 2005, 15; Edelman and Thomas, 2015, 468; Jiang, Li, and Mei, 2016**)**, as well as prior empirical evidence from the context of tender offer freezeouts that suggests that entire fairness review in fact appears to exert upward pressure on the gains of the target shareholders (Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015).[34]

Defendants., 2014 WL 4470947 (Del.Ch.). Given this ruling, these practitioners concluded, *MFW* could in fact have a significant impact (Epstein, Richter, Shine, and Weinstein, 2015).

[33] To support this statement, the authors cite *In re Cysive Inc. Shareholders Litigation*, 836 A.2d 531 (Del. Ch. 2003) and *In re John Q. Hammons Hotels Inc. Shareholder Litigation*, 2009 WL 3165613 (Del.Ch.,2009). *Hammons*, however, involved a third-party acquisition in which the target company had a controlling shareholder, not a freezeout.

[34] It is important to emphasize, however, that the deal premium and the target shareholders' returns are imperfect proxies for the extent to which minority shareholders are or are not exploited by the controller. As mentioned in Section 2, a controlling shareholder may initiate a freezeout when he perceives that the intrinsic value of the target is higher than its market value, so even if the deal premium is high in relation to the target's market price, it might still be low in relation to the target's intrinsic value (Subramanian, 2005; Harford,

Another possible explanation is the fact that freezeout transactions are not very common, which constrains the sample size. The data available, however, shows that the gains of the target shareholders were quite similar before and after *MFW*, and therefore it is unclear that a larger sample would change significantly the conclusions presented here. As shown in Table 1, the premiums over pre-deal market prices were 30% and 34% before and after *MFW*, respectively; the cumulative abnormal returns were 21% and 19%, respectively; and the increase over the first offer was 6% and 5%, respectively.

The third possible interpretation is that MOM conditions simply do not have any significant effect on the gains of the target shareholders. This interpretation would be consistent with Cain and Davidoff's (2011, 889-90) study, which, as discussed earlier, finds in a cross-section of management buyouts (MBOs) that qualified voting by the target shareholders was not associated with deal premiums. In addition, this interpretation would be consistent with Cox, Mondino, and Thomas' (2019) finding that, in the context of third-party acquisitions, shareholder voting does not appear to be meaningfully associated with the gains of the target shareholders.

A possible response to this interpretation, however, is that if qualified voting conditions were immaterial, then the target's gains should probably have declined after *MFW* because the decision relaxed entire fairness in exchange for the combined use of SC and MOM approval – and prior empirical evidence suggests that entire fairness has a positive effect on the gains of the target shareholders (Subramanian, 2007; Restrepo, 2013; Restrepo and Subramanian, 2015).[35] This argument is consistent with empirical research from other

Stanfield, and Zhang, 2019). This limitation, therefore, implies that neither this paper nor previous works cleanly capture the relationship between shareholder protection and actual exploitation.

[35] Some works suggest, however, that entire fairness is unrelated to the target shareholders' gains. Cain and Davidoff (2011, 890-92, 897), for example, compare premiums in freezeout MBOs (which are subject to entire fairness) and non-freezeout MBOs (which are not subject to enhanced scrutiny), and find that premiums were similar in both subsamples. The authors then interpret this result as suggesting that entire fairness is unrelated to premiums. Although that is certainly a possibility, the problem with this interpretation is that non-freezeout MBOs involve a control premium and therefore the cross-sectional comparison might mute the effect of entire fairness review. Bates, Lemmon and Linck (2006, 681-708), on the other hand, find that CARs in tender offer freezeouts did not decrease after *Siliconix* exempted those transactions from entire fairness. But as discussed before, Bates, Lemmon and Linck's sample includes deals of targets incorporated

contexts, which also suggests that MOM conditions can be an effective constraint on the behavior of controlling shareholders,[36] and is even more plausible in light of the fact that there are important differences in context between this work and the papers finding an insignificant relationship between shareholder voting and deal outcomes. On the one hand, as discussed earlier, those papers do not examine freezeouts but rather MBOs or third-party acquisitions, where the implications of the absence of shareholder approval are potentially less meaningful (Cain and Davidoff, 2011; Cox, Mondino, and Thomas, 2019);[37] and on the other hand, the previous papers do not examine doctrinal changes or other sources of exogenous variation in qualified voting conditions (or in the incentives of buyers to adopt those conditions), which implies that the correlations they identify might not correspond to the causal effect of shareholder voting.

In addition to these considerations, to provide additional elements to interpret the results, I examined the cross-sectional correlation between the various levels of shareholder protection and the target's gains in the entire sample of freezeouts. There are three possible groups in this analysis: freezeouts that were subject only to entire fairness review but not to the combination of SC and MOM approval; deals that were subject to MOM and SC approval but not to entire fairness review; and deals that received both protections. Table S.2 of the Supplementary Materials shows the results. As shown there, there were no significant differences between the deals that received *only entire fairness review* and the deals that received *only the combination of SC and MOM approval*; but in contrast to this finding, the deals that were subject to both protections did have larger gains. The first thus provides additional support to the notion that enhanced judicial scrutiny and the

outside of Delaware (where *Siliconix* may not apply); and the paper classifies tender offers executed as part of a merger agreement as pure tender offers even though the presence of a merger agreement triggers entire fairness. Potentially as a result of those characteristics of the sample, entire fairness might appear not to have an effect on CARs. In any case, the relationship between judicial scrutiny and the gains of the target shareholders in freezeouts is a relationship that has not been conclusively established. See Restrepo (2013) and Restrepo and Subramanian (2015) (discussing limitations in their data and therefore in the conclusion that entire fairness is positively and significantly related to the gains of the target shareholders).

[36] See Fried, Kamar, and Yafeh (2016) (finding, in the context of Israel, that minority shareholder approval significantly constrains controlling shareholders' executive compensation).

[37] See also Anabtawi (2016) and Subramanian (2017) (critically examining the implications of the absence of shareholder voting in MBOs); *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 305-6 (Del. 2015) (laying out the implications of shareholder approval in third-party acquisitions post-2015).

combination of SC and MOM approval offer similar levels of protection; but since the presence of the two safeguards was correlated with higher gains for the target, the data also suggest that the safeguards are not similar simply because both of them are innocuous.

In sum, although it is not possible to offer conclusive evidence on the interpretation that best explains the lack of a significant effect of *MFW* on the gains of the target shareholders, the data provide suggestive support to the notion that enhanced judicial scrutiny and the presence of procedural protections offer similar levels of protection. Addressing this point in a more conclusive way, however, is left for future research.

Normatively, the results presented here suggest that the *MFW* standard has an overall positive effect on social welfare. First, because the results show that MOM conditions became more common after the Delaware courts offered greater judicial deference in exchange (and that the gains of the target shareholders did not decline as a result), then the *MFW* standard reduces the cost of judicial intervention without reducing the protection afforded to minority shareholders. And second, as shown earlier, there is no evidence that holdup problems increased after *MFW*. In this sense, as then Vice Chancellor Strine hypothesized in *MFW*, the hybrid standard adopted in the opinion in fact appears to be a "cost-effective" system against minority exploitation (*In re MFW Shareholders Litigation*, 67 A.3d 496, 535 (Del. Ch. May 29, 2013)).

6. Conclusion

In *MFW*, the Delaware Chancery Court granted the benefit of deferential business review to merger freezeouts that were approved by a special committee of independent directors and the majority-of-the-minority shareholders, hoping that MOM conditions would become a standard complement to the already ubiquitous protection of SCs. This work provides empirical evidence that this goal was achieved: the incidence of MOM conditions increased more than 40 percentage points after *MFW*, from an incidence rate of 37% before the opinion to an incidence rate of more than 80% after, and this result held after controlling for other deal characteristics.

This work also finds that, despite the increase in MOM conditions, the gains of the target shareholders and completion rates did not change significantly after *MFW*. Although other interpretations are also plausible, the first result appears to suggest that the combination of SC and MOM conditions is a protection that is functionally similar to entire fairness review; and the second result indicates that holdup problems (and, more generally, frustration rates) are not meaningfully associated with qualified majority voting. In addition, the data also show that the incidence of tender offer freezeouts declined in relation to merger freezeouts after *MFW*, which seems to be explained by the clear blueprint offered by the decision to avoid entire fairness review.

Taken together, the results not only provide an assessment of the effect of *MFW* in particular, but also shed light more generally on (1) the significance of judicial deference in incentivizing procedural protections in conflicted transactions, (2) the effect of qualified shareholder voting on deal outcomes, and (3) the impact of judicial deference on the controlling shareholders' choice of the transactional form.

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Table 1
Summary statistics

The table presents summary statistics on procedural protections, deal outcomes, and other deal characteristics before and after *MFW*. The variables are defined in the appendix. The differences between pre- and post-*MFW* values are based on *t*-tests for the continuous variables and difference-in-proportions tests for the dichotomous variables. The continuous variables are winsorized at 5% to reduce the influence of outliers. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Panel A. Treatment group

Variable	Pre-MFW				Post-MFW				Difference
	Mean	Median	Std. Dev.	N	Mean	Median	Std. Dev.	N	(Post-Pre)
Procedural protections									
Majority-of-the-minority (MOM)	0.37	0.00	0.49	142	0.81	1.00	0.40	42	0.44***
Special committed formed (SC)	0.94	1.00	0.24	142	0.95	1.00	0.22	42	0.02
MOM & SC	0.37	0.00	0.49	142	0.81	1.00	0.40	42	0.44***
Deal outcomes									
Premium	0.30	0.23	0.43	142	0.34	0.28	0.41	42	0.04
$CARs_{(-1,+1)}$	0.21	0.18	0.27	142	0.19	0.16	0.20	42	-0.02
Increase over first offer	0.06	0.00	0.11	142	0.05	0.00	0.09	42	-0.01
Completed	0.82	1.00	0.38	136	0.79	1.00	0.41	38	-0.03
Deal characteristics									
Deal value	418.27	39.97	911.80	142	516.38	135.96	865.07	42	98.11
Total assets	1788.50	171.83	4359.17	142	2995.84	440.91	5399.13	42	1207.34
ROA	-0.09	0.01	0.24	142	-0.07	0.00	0.24	42	0.02
Cash-only deal	0.68	1.00	0.47	142	0.64	1.00	0.48	42	-0.03
Public buyer	0.44	0.00	0.50	142	0.45	0.00	0.50	42	0.02
Financial buyer	0.11	0.00	0.32	142	0.17	0.00	0.38	42	0.05
Breakup fee	0.16	0.00	0.37	142	0.36	0.00	0.48	42	0.20***
Friendly deal	0.94	1.00	0.24	142	0.83	1.00	0.38	42	-0.10
Competing bid	0.01	0.00	0.12	142	0.05	0.00	0.22	42	0.03

Panel B. Control group

Variable	Pre-MFW				Post-MFW				Difference
	Mean	Median	Std. Dev.	N	Mean	Median	Std. Dev.	N	(Post-Pre)
Procedural protections									
Majority-of-the-minority (MOM)	0.25	0.00	0.43	53	0.18	0.00	0.39	51	-0.07
Special committed formed (SC)	0.60	1.00	0.49	53	0.75	1.00	0.44	51	0.14
MOM & SC	0.21	0.00	0.41	53	0.16	0.00	0.37	51	-0.05
Deal outcomes									
Premium	0.27	0.20	0.36	53	0.14	0.08	0.21	51	-0.13**
$CARs_{(-1,+1)}$	0.15	0.13	0.21	53	0.10	0.07	0.15	51	-0.05
Increase over first offer	0.05	0.00	0.09	53	0.02	0.00	0.06	51	-0.03
Completed	0.90	1.00	0.30	50	0.76	1.00	0.43	51	-0.14*
Deal characteristics									
Deal value	547.23	136.71	817.19	53	1173.75	523.20	1300.89	51	626.52***
Total assets	1686.59	306.30	3376.49	53	3898.61	1600.28	5421.39	51	2212.02**
ROA	-0.14	-0.01	0.30	53	-0.01	0.03	0.19	51	0.13***
Cash-only deal	0.70	1.00	0.46	53	0.43	0.00	0.50	51	-0.27***
Public buyer	0.47	0.00	0.50	53	0.69	1.00	0.47	51	0.21**
Financial buyer	0.32	0.00	0.47	53	0.22	0.00	0.42	51	-0.11
Breakup fee	0.51	1.00	0.50	53	0.18	0.00	0.39	51	-0.33***
Friendly deal	0.91	1.00	0.30	53	0.82	1.00	0.39	51	-0.08**
Competing bid	0.08	0.00	0.27	53	0.08	0.00	0.27	51	0.00

Panel C. Correlation matrix

	MOM	SC	Premium	$CAR_{1,1}$	Bump	Closed	Deal value	Assets	ROA	Cash	Public buyer	Fin. buyer	Break fee	Friendly	Comp bid
MOM	1.00														
SC	0.28***	1.00													
Premium	0.08	0.07	1.00												
$CAR_{1,1}$	0.14*	0.06	0.64***	1.00											
Bump	0.15*	0.12	0.40***	0.09	1.00										
Closed	0.03	-0.02	0.09	0.08	0.11	1.00									
Deal Value	0.05	0.08	-0.10	-0.04	0.00	0.07	1.00								
Assets	0.05	0.13*	-0.07	-0.05	0.05	0.07	0.73***	1.00							
ROA	0.13*	0.13*	-0.18**	-0.156**	0.03	-0.06	0.19**	0.19**	1.00						
Cash-only	0.15*	-0.05	0.24***	0.221***	0.22***	0.03	-0.21***	-0.09	-0.03	1.00					
Public buyer	-0.12*	-0.04	-0.18**	-0.12	-0.13*	0.11	0.26***	0.16**	0.02	-0.54***	1.00				
Fin. buyer	0.01	-0.04	0.02	0.04	-0.07	-0.11	0.05	0.00	0.05	0.11	-0.27***	1.00			
Break fee	0.04	-0.09	0.09	0.05	-0.07	0.19**	0.04	0.00	-0.14*	0.07	0.05	0.05	1.00		
Friendly	0.00	0.146*	-0.04	0.03	-0.04	0.30***	0.05	0.05	0.00	-0.04	0.03	-0.03	0.10	1.00	
Comp. bid	-0.05	-0.07	0.00	0.04	0.11	-0.15*	0.06	0.01	0.00	0.08	-0.05	0.10	0.13*	-0.05	1.00

Panel D. Univariate analysis on the choice of the transactional form

Group	Mergers	Tender offers	Incidence of mergers	Mergers	Tender offers	Incidence of mergers	Difference (Post – Pre)
Treatment: freezeouts of corporate targets	142	60	0.70	42	3	0.93	0.23***
Control group: non-corporate freezeouts and toehold deals	41	12	0.77	46	5	0.90	0.13

Table 2
Multivariate analysis

The table presents the baseline regression results. In Panel A, the dependent variable is the presence of an MOM condition (Models 1-3) or the simultaneous use of an SC and an MOM condition (Models 4-6). In Panel B, the dependent variables are proxies for the wealth of the target shareholders and deal completion. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Panel A. Analysis of MOM conditions

Model	(1)	(2)	(3)	(4)	(5)	(6)
Variable	MOM	MOM	MOM	MOM&SC	MOM&SC	MOM&SC
Treat×PostMFW	0.505***	0.491***	0.502***	0.487***	0.444***	0.468***
	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)
Treat	0.128*	0.101	0.110	0.166**	0.232***	0.243***
	(0.07)	(0.08)	(0.08)	(0.07)	(0.07)	(0.07)
Post-MFW	-0.069	-0.105	-0.113	-0.051	-0.061	-0.080
	(0.08)	(0.09)	(0.09)	(0.08)	(0.08)	(0.08)
Log(deal value)		0.063***	0.063***		0.065***	0.065***
		(0.02)	(0.02)		(0.02)	(0.02)
Cash-only		0.143**	0.148**		0.108*	0.120*
		(0.06)	(0.06)		(0.06)	(0.06)
Special committee		0.253***	0.243***			
		(0.06)	(0.06)			
Log(assets)		-0.024	-0.026		-0.017	-0.021
		(0.02)	(0.02)		(0.02)	(0.02)
ROA		0.113	0.111		0.107	0.099
		(0.11)	(0.11)		(0.11)	(0.11)
Public buyer		-0.095	-0.102		-0.105	-0.121*
		(0.07)	(0.07)		(0.06)	(0.07)
Financial buyer		-0.024	-0.029		0.009	-0.003
		(0.07)	(0.07)		(0.07)	(0.07)
Breakup fee		0.021	0.027		0.028	0.043
		(0.07)	(0.07)		(0.07)	(0.07)
Friendly deal		-0.028	-0.036		-0.004	-0.025
		(0.07)	(0.07)		(0.07)	(0.07)
Competing bid		-0.077	-0.072		-0.150	-0.139
		(0.14)	(0.14)		(0.12)	(0.12)
Industry dummies	No	No	Yes	No	No	Yes
R-squared	0.160	0.267	0.268	0.177	0.252	0.260
N	288	288	288	288	288	288

Panel B. Analysis of target gains and deal completion

Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Variable	Premium	Premium	Premium	$CARs_{-1,+1}$	$CARs_{-1,+1}$	$CARs_{-1,+1}$	ΔOffer	ΔOffer	ΔOffer	Closed	Closed	Closed
Treat×PostMFW	0.177*	0.081	0.098	0.027	-0.017	-0.010	0.015	0.019	0.023	0.101	0.039	0.044
	(0.09)	(0.10)	(0.10)	(0.05)	(0.06)	(0.06)	(0.03)	(0.02)	(0.02)	(0.10)	(0.10)	(0.10)
Treat	0.028	0.063	0.078	0.067*	0.097**	0.103**	0.025	0.007	0.011	-0.076	-0.032	-0.030
	(0.06)	(0.07)	(0.07)	(0.04)	(0.04)	(0.04)	(0.03)	(0.02)	(0.02)	(0.05)	(0.06)	(0.06)
Post-MFW	-0.135**	-0.068	-0.080	-0.046	-0.013	-0.018	-0.020	-0.035**	-0.038**	-0.135*	-0.060	-0.061
	(0.06)	(0.06)	(0.06)	(0.03)	(0.04)	(0.04)	(0.02)	(0.02)	(0.02)	(0.07)	(0.07)	(0.07)
Log(deal value)		0.041**	0.042**		0.020**	0.020**		0.009**	0.009**		0.017	0.018
		(0.02)	(0.02)		(0.01)	(0.01)		(0.00)	(0.00)		(0.02)	(0.02)
Cash-only		0.131***	0.140***		0.105***	0.109***		0.044***	0.046***		0.092	0.094
		(0.05)	(0.05)		(0.03)	(0.03)		(0.01)	(0.01)		(0.06)	(0.06)
Special committee		0.093	0.075		0.016	0.010		0.028**	0.024*		-0.044	-0.049
		(0.07)	(0.07)		(0.04)	(0.04)		(0.01)	(0.01)		(0.07)	(0.07)
Log(assets)		-0.024	-0.028*		-0.006	-0.008		-0.001	-0.002		0.000	-0.003
		(0.02)	(0.02)		(0.01)	(0.01)		(0.00)	(0.00)		(0.02)	(0.02)
ROA		-0.289**	-0.289**		-0.166**	-0.167**		-0.008	-0.009		-0.091	-0.077
		(0.13)	(0.13)		(0.08)	(0.08)		(0.02)	(0.02)		(0.10)	(0.10)
Public buyer		-0.098*	-0.107*		0.001	-0.003		-0.015	-0.018		0.075	0.084
		(0.06)	(0.06)		(0.03)	(0.03)		(0.01)	(0.01)		(0.06)	(0.06)
Financial buyer		-0.015	-0.022		0.024	0.021		-0.031**	-0.033**		-0.092	-0.086
		(0.06)	(0.06)		(0.04)	(0.04)		(0.01)	(0.01)		(0.07)	(0.07)
Breakup fee		0.039	0.050		-0.004	0.000		-0.025*	-0.022		0.119***	0.116**
		(0.05)	(0.05)		(0.03)	(0.03)		(0.01)	(0.01)		(0.05)	(0.05)
Friendly deal		-0.074	-0.086		0.011	0.006		-0.019	-0.022		0.346***	0.349***
		(0.07)	(0.07)		(0.05)	(0.05)		(0.02)	(0.02)		(0.09)	(0.09)
Competing bid		0.005	0.010		0.029	0.032		0.073*	0.075*		-0.307**	-0.315**
		(0.12)	(0.12)		(0.06)	(0.06)		(0.04)	(0.04)		(0.13)	(0.13)
Industry dummies	No	No	Yes	No	No	Yes	No	No	Yes	No	No	Yes
R-squared	0.043	0.142	0.151	0.034	0.104	0.107	0.012	0.138	0.143	0.013	0.177	0.182
N	288	288	288	288	288	288	288	288	288	275	275	275

Table 3
Sensitivity analyses on *MFW* and MOM conditions

The table presents sensitivity analyses on the relationship between *MFW* and MOM conditions. Panel A shows the results from alternative control groups and Panel B uses subsamples. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Panel A. Analyses using alternative control groups

Analysis	Control group: non-Corporate freezeouts			Control group: toehold deals		
Model	(1)	(2)	(3)	(4)	(5)	(6)
Treat×PostMFW	0.651***	0.618***	0.625***	0.391***	0.373**	0.373**
	(0.16)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)
Treat	0.016	-0.014	-0.001	0.168**	0.162	0.160
	(0.14)	(0.13)	(0.13)	(0.08)	(0.10)	(0.10)
Post-MFW	-0.214	-0.250*	-0.254*	0.045	0.011	0.010
	(0.14)	(0.14)	(0.13)	(0.13)	(0.13)	(0.13)
Log(deal value)		0.053**	0.053**		0.077***	0.077***
		(0.02)	(0.02)		(0.02)	(0.02)
Cash-only		0.143*	0.146*		0.172**	0.170**
		(0.08)	(0.08)		(0.07)	(0.07)
Special committee		0.323***	0.318***		0.242***	0.244***
		(0.07)	(0.07)		(0.08)	(0.08)
Log(assets)		-0.016	-0.017		-0.038	-0.037
		(0.02)	(0.02)		(0.02)	(0.02)
ROA		0.149	0.148		0.127	0.123
		(0.13)	(0.13)		(0.12)	(0.12)
Public buyer		-0.083	-0.088		-0.090	-0.091
		(0.08)	(0.08)		(0.07)	(0.07)
Financial buyer		-0.030	-0.035		-0.001	-0.002
		(0.08)	(0.08)		(0.08)	(0.08)
Breakup fee		0.104	0.109		0.000	0.000
		(0.08)	(0.08)		(0.08)	(0.08)
Friendly deal		-0.097	-0.102		-0.043	-0.043
		(0.10)	(0.10)		(0.08)	(0.08)
Competing bid		-0.160	-0.157		-0.074	-0.072
		(0.21)	(0.21)		(0.15)	(0.15)
Industry dummies	No	No	Yes	No	No	Yes
R-squared	0.166	0.282	0.283	0.154	0.281	0.281
N	233	233	233	239	239	239

Panel B. Analyses using sub-samples

Analysis	Post-Cox deals			Controller pre-deal stake >= 50%			Excluding tender offers made pursuant to a merger agreement		
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Treat×PostMFW	0.330**	0.331**	0.359***	0.567***	0.560***	0.571***	0.577***	0.552***	0.570***
	(0.13)	(0.13)	(0.13)	(0.12)	(0.12)	(0.12)	(0.11)	(0.12)	(0.11)
Treat	0.303***	0.253**	0.260**	0.109	0.083	0.098	0.042	0.026	0.039
	(0.10)	(0.11)	(0.11)	(0.07)	(0.09)	(0.08)	(0.07)	(0.08)	(0.08)
Post-MFW	-0.011	-0.019	-0.039	-0.069	-0.098	-0.106	-0.069	-0.088	-0.100
	(0.09)	(0.10)	(0.10)	(0.08)	(0.09)	(0.09)	(0.08)	(0.09)	(0.09)
Log(deal value)		0.059**	0.059**		0.058***	0.059***		0.047**	0.048**
		(0.03)	(0.03)		(0.02)	(0.02)		(0.02)	(0.02)
Cash-only		0.115	0.122		0.186***	0.196***		0.112	0.119*
		(0.09)	(0.09)		(0.07)	(0.07)		(0.07)	(0.07)
Special committee		0.286***	0.264***		0.251***	0.234***		0.225***	0.206***
		(0.08)	(0.08)		(0.06)	(0.06)		(0.06)	(0.06)
Log(assets)		-0.016	-0.018		-0.027	-0.031		-0.012	-0.016
		(0.03)	(0.03)		(0.02)	(0.02)		(0.02)	(0.02)
ROA		0.016	0.016		0.111	0.116		0.099	0.096
		(0.15)	(0.15)		(0.12)	(0.12)		(0.11)	(0.11)
Public buyer		-0.097	-0.119		-0.042	-0.049		-0.115*	-0.128*
		(0.09)	(0.09)		(0.07)	(0.08)		(0.07)	(0.07)
Financial buyer		0.007	-0.013		-0.065	-0.068		0.012	0.004
		(0.08)	(0.08)		(0.07)	(0.07)		(0.07)	(0.07)
Breakup fee		0.043	0.056		0.018	0.029		0.025	0.036
		(0.08)	(0.08)		(0.08)	(0.08)		(0.07)	(0.07)
Friendly deal		-0.058	-0.073		-0.005	-0.013		0.039	0.027
		(0.08)	(0.08)		(0.08)	(0.08)		(0.07)	(0.07)
Competing bid		-0.079	-0.068		0.034	0.033		-0.059	-0.053
		(0.15)	(0.15)		(0.16)	(0.16)		(0.14)	(0.14)
R-squared	0.265	0.357	0.363	0.161	0.266	0.270	0.174	0.272	0.276
N	176	176	176	244	244	244	265	265	265

Table 4
Sensitivity analyses on *MFW* and deal outcomes

The table presents sensitivity analyses on the relationship between *MFW* and deal outcomes. As in Table 3, Panel A shows the results from alternative control groups and Panel B uses subsamples. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Panel A. Analyses using alternative control groups

Analysis	Control group: non-corporate freezeouts				Control group: toehold acquisitions				Third-party acquisitions			
Dependent variable	Premium	$CARs_{-1,+1}$	ΔOffer	Closed	Premium	$CARs_{-1,+1}$	ΔOffer	Closed	Premium	$CARs_{-1,+1}$	ΔOffer	Closed
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Treat×PostMFW	0.121	-0.064	0.059	-0.055	0.087	0.011	0.009	0.177	0.038	-0.002	-0.004	-0.073
	(0.98)	(-1.12)	(1.37)	(-0.36)	(0.70)	(0.13)	(0.20)	(1.35)	(0.61)	(-0.15)	(-0.17)	(-1.15)
Treat	0.048	0.153***	-0.011	-0.017	0.099	0.066	0.061*	-0.013	-0.041	0.065***	0.061***	0.247***
	(0.41)	(3.29)	(-0.25)	(-0.14)	(1.12)	(1.20)	(1.77)	(-0.18)	(-1.07)	(10.54)	(3.88)	(5.96)
Post-MFW	-0.100	0.041	-0.073**	0.025	-0.069	-0.033	-0.027	-0.195*	0.007	-0.001	-0.001**	0.023**
	(-1.01)	(1.00)	(-1.98)	(0.19)	(-0.71)	(-0.48)	(-0.73)	(-1.75)	(0.55)	(-1.37)	(-2.14)	(2.07)
Log(deal value)	0.037*	0.012	0.016*	0.023	0.044**	0.014	0.021**	0.020	-0.009	0.000	0.001	0.015**
	(1.71)	(1.21)	(1.76)	(0.98)	(2.09)	(1.26)	(2.18)	(0.92)	(-1.27)	(0.52)	(0.99)	(2.18)
Cash-only	0.187***	0.123***	0.073***	0.134**	0.142**	0.112***	0.076***	0.101	0.077***	0.004***	0.006***	0.062***
	(3.18)	(3.65)	(3.20)	(2.01)	(2.40)	(3.05)	(3.34)	(1.52)	(5.36)	(3.34)	(3.00)	(4.52)
Special committee	0.181*	0.071	0.023	-0.016	0.062	0.030	0.018	-0.059	0.008	0.001	0.001**	0.013
	(1.77)	(1.22)	(1.01)	(-0.16)	(0.72)	(0.56)	(0.72)	(-0.80)	(0.60)	(1.48)	(2.15)	(1.06)
Log(assets)	-0.028	-0.003	-0.003	-0.007	-0.034	-0.004	-0.008	-0.011	-0.016**	0.000	0.000	-0.013*
	(-1.43)	(-0.36)	(-0.55)	(-0.29)	(-1.64)	(-0.39)	(-0.94)	(-0.45)	(-2.27)	(0.38)	(0.33)	(-1.94)
ROA	-0.161	-0.146	0.041	-0.045	-0.299**	-0.170*	-0.018	-0.064	-0.253***	-0.002	0.002	0.069**
	(-1.03)	(-1.46)	(1.33)	(-0.35)	(-2.18)	(-1.84)	(-0.46)	(-0.59)	(-6.08)	(-0.68)	(0.43)	(2.05)
Public buyer	-0.069	0.001	-0.033	0.117*	-0.109*	0.008	-0.032	0.056	0.016	-0.001	-0.005**	0.008
	(-1.01)	(0.03)	(-1.33)	(1.82)	(-1.73)	(0.21)	(-1.33)	(0.90)	(0.98)	(-0.51)	(-2.08)	(0.56)
Financial buyer	-0.058	0.018	-0.060***	-0.115	-0.021	0.031	-0.035	-0.122	-0.056***	-0.001	-0.009***	-0.092***
	(-0.77)	(0.39)	(-2.92)	(-1.43)	(-0.26)	(0.63)	(-1.50)	(-1.54)	(-2.90)	(-0.68)	(-3.16)	(-4.83)
Breakup fee	0.101	-0.009	0.006	0.157***	0.064	-0.006	-0.004	0.150***	0.019	0.002	0.001	0.377***
	(1.60)	(-0.22)	(0.24)	(2.70)	(1.03)	(-0.14)	(-0.14)	(3.22)	(0.76)	(0.95)	(0.28)	(12.79)
Friendly deal	-0.014	0.001	-0.011	0.338***	-0.107	0.012	-0.034	0.337***	-0.050*	0.000	-0.001	0.398***
	(-0.15)	(0.01)	(-0.25)	(3.28)	(-1.32)	(0.22)	(-0.89)	(3.61)	(-1.73)	(0.06)	(-0.15)	(11.90)
Competing bid	-0.002	0.098	0.032	-0.376	0.007	0.016	0.089*	-0.218*	0.073***	0.003*	0.001	-0.280***
	(-0.01)	(1.01)	(0.85)	(-1.48)	(0.05)	(0.24)	(1.76)	(-1.66)	(3.58)	(1.75)	(0.61)	(-9.65)
Industry dummies	No	No	Yes	No	No	Yes	No	No	Yes	No	No	Yes
R-squared	0.155	0.135	0.124	0.155	0.114	0.071	0.117	0.214	0.100	0.323	0.108	0.474
N	233.	233	233	221	239	239	239	228	2588	2588	2588	2578

Panel B. Analyses using sub-samples

Analysis	Post-Cox deals				Controller pre-deal stake >= 50%				Excluding tender offers made pursuant to a merger agreement			
Dependent variable	Premium	$CARs_{-1,+1}$	ΔOffer	Closed	Premium	$CARs_{-1,+1}$	ΔOffer	Closed	Premium	$CARs_{-1,+1}$	ΔOffer	Closed
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Treat×PostMFW	0.130	-0.023	0.016	-0.070	0.076	0.033	0.015	0.094	0.099	-0.004	0.015	0.062
	(0.11)	(0.06)	(0.04)	(0.13)	(0.11)	(0.07)	(0.04)	(0.12)	(0.10)	(0.06)	(0.03)	(0.11)
Treat	0.055	0.120**	0.040	0.075	0.071	0.092**	0.048	-0.065	0.071	0.096**	0.032	-0.049
	(0.10)	(0.05)	(0.04)	(0.10)	(0.08)	(0.05)	(0.04)	(0.07)	(0.07)	(0.04)	(0.03)	(0.07)
Post-MFW	-0.130*	-0.028	-0.056**	0.010	-0.089	-0.018	-0.029	-0.077	-0.083	-0.026	-0.033	-0.045
	(0.07)	(0.04)	(0.03)	(0.10)	(0.06)	(0.04)	(0.03)	(0.08)	(0.06)	(0.04)	(0.02)	(0.08)
Log(deal value)	0.041*	0.011	0.019***	-0.003	0.041**	0.023**	0.017*	0.021	0.047**	0.025**	0.018**	0.015
	(0.02)	(0.01)	(0.01)	(0.03)	(0.02)	(0.01)	(0.01)	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)
Cash-only	0.100	0.050	0.082***	0.060	0.118**	0.106***	0.074***	0.124*	0.139**	0.116***	0.067***	0.080
	(0.06)	(0.04)	(0.02)	(0.08)	(0.05)	(0.04)	(0.02)	(0.07)	(0.05)	(0.03)	(0.02)	(0.07)
Special committee	0.070	0.030	0.018	-0.095	0.051	-0.007	0.034	-0.050	0.068	0.002	0.029	-0.068
	(0.08)	(0.05)	(0.03)	(0.08)	(0.07)	(0.04)	(0.02)	(0.07)	(0.07)	(0.04)	(0.02)	(0.07)
Log(assets)	-0.030	-0.005	-0.005	0.017	-0.017	-0.011	-0.003	-0.004	-0.033*	-0.011	-0.005	-0.001
	(0.02)	(0.01)	(0.01)	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)
ROA	-0.216	-0.110	-0.027	-0.186*	-0.289**	-0.172*	-0.031	-0.067	-0.295**	-0.151*	-0.027	-0.118
	(0.19)	(0.10)	(0.05)	(0.11)	(0.15)	(0.09)	(0.04)	(0.12)	(0.14)	(0.09)	(0.04)	(0.11)
Public buyer	-0.239***	-0.088**	-0.028	0.121	-0.122*	-0.012	-0.033	0.080	-0.098	0.000	-0.026	0.068
	(0.07)	(0.04)	(0.03)	(0.08)	(0.06)	(0.04)	(0.03)	(0.06)	(0.06)	(0.04)	(0.02)	(0.06)
Financial buyer	-0.132*	-0.026	-0.051*	0.010	-0.032	0.008	-0.028	-0.108	-0.011	0.024	-0.030	-0.074
	(0.07)	(0.04)	(0.03)	(0.07)	(0.06)	(0.04)	(0.02)	(0.08)	(0.06)	(0.04)	(0.02)	(0.07)
Breakup fee	0.000	-0.008	-0.032	0.141**	0.051	-0.014	0.005	0.072	0.033	-0.020	-0.011	0.132**
	(0.06)	(0.04)	(0.03)	(0.06)	(0.07)	(0.04)	(0.03)	(0.06)	(0.05)	(0.03)	(0.02)	(0.05)
Friendly deal	-0.080	-0.027	0.015	0.415***	-0.125*	0.003	-0.020	0.352***	-0.077	0.012	-0.012	0.404***
	(0.07)	(0.05)	(0.04)	(0.10)	(0.07)	(0.05)	(0.04)	(0.10)	(0.08)	(0.05)	(0.03)	(0.09)
Competing bid	0.127	0.033	0.086	-0.314**	-0.086	0.050	0.068	-0.411***	0.012	0.037	0.074	-0.309**
	(0.12)	(0.06)	(0.06)	(0.13)	(0.14)	(0.07)	(0.06)	(0.14)	(0.12)	(0.06)	(0.05)	(0.12)
Industry dummies	No	No	Yes	No	No	Yes	No	No	Yes	No	No	Yes
R-squared	0.211	0.168	0.164	0.241	0.155	0.135	0.124	0.155	0.114	0.071	0.117	0.214
N	176	176	176	165	233	233	233	221	239	239	239	228

Table 5
Choice of the transactional form: Merger versus tender offer freezeouts

The table presents analyses of changes in the incidence of merger freezeouts relative to tender offer freezeouts after *MFW*. The dependent variable in all the models is an indicator variable that takes the value of one for mergers and zero for tender offers. The inferences are based on comparisons of changes in the incidence of mergers among corporate freezeouts and changes in the incidence of mergers in the control group. I run the estimations using the baseline control group (i.e., non-corporate freezeouts, "NCF," and toehold deals, "TA") and third-party acquisitions. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Analysis	Control group: baseline (NCF & TA)			Control group: third-party deals		
Model	(1)	(2)	(3)	(4)	(5)	(6)
Freezeouts×PostMFW	0.103	0.045	0.038	0.286***	0.308***	0.309***
	(0.09)	(0.09)	(0.09)	(0.05)	(0.06)	(0.06)
Freezeouts	-0.072	-0.096	-0.101	-0.089***	-0.209***	-0.204***
	(0.07)	(0.07)	(0.07)	(0.03)	(0.04)	(0.04)
PostMFW	0.128*	0.165**	0.171**	-0.055***	-0.064***	-0.062***
	(0.07)	(0.07)	(0.07)	(0.02)	(0.02)	(0.02)
Log(deal value)		-0.008	-0.008		-0.029***	-0.026***
		(0.01)	(0.01)		(0.01)	(0.01)
Cash-only		-0.232***	-0.235***		-0.280***	-0.277***
		(0.05)	(0.05)		(0.02)	(0.02)
Special committee		0.215***	0.221***		0.024	0.019
		(0.07)	(0.07)		(0.02)	(0.02)
Log(assets)		-0.016	-0.016		0.039***	0.035***
		(0.01)	(0.01)		(0.01)	(0.01)
ROA		0.026	0.028		0.238***	0.227***
		(0.09)	(0.09)		(0.05)	(0.05)
Public buyer		-0.178***	-0.171***		-0.123***	-0.118***
		(0.06)	(0.06)		(0.02)	(0.02)
Financial buyer		-0.040	-0.038		0.050**	0.046**
		(0.05)	(0.05)		(0.02)	(0.02)
Breakup fee		0.164***	0.157***		-0.107***	-0.103***
		(0.05)	(0.05)		(0.02)	(0.02)
Friendly deal		0.163**	0.167**		0.139***	0.133***
		(0.07)	(0.07)		(0.03)	(0.03)
Competing bid		-0.073	-0.078		-0.030	-0.028
		(0.13)	(0.13)		(0.03)	(0.03)
Control group	NCF & TA	NCF & TA	NCF & TA	TPA	TPA	TPA
Industry dummies	No	No	Yes	No	No	Yes
R-squared	0.049	0.198	0.200	0.008	0.145	0.148
N	350	350	350	2754	2754	2754

Appendix
Variable definitions

Variable	Description
Breakup fee	Binary variable that takes the value of 1 if the target must pay a termination fee if the deal is terminated for certain contractual reasons, and 0 if there was no breakup fee.
Cash-only	Binary variable that equals 1 for deals in which the consideration structure consisted only of cash and 0 otherwise.
$CARs_{(-t,+t)}$	Cumulative abnormal returns for the stock of the target company around *t* days relative to the announcement of the transaction.
Competing bid	Binary variable that equals 1 if there was a competing bid in the sale process and 0 otherwise.
Delta offer (*ΔOffer*)	(*final deal price – first price offered*)/*first price offered*
Financial buyer	Binary variable that equals 1 if the buyer is a financial company, the target's main industry is not financial, and the acquisition was for financial rather than strategic reasons, and 0 otherwise.
Friendly deal	Binary variable that equals 1 if the attitude of the buyer was friendly and not hostile or unsolicited.
Log(assets)	Natural log of the target's total assets, measured at the fiscal year immediately prior to the announcement year of the transaction.
Log(deal value)	Natural log of the deal value, which in turn is defined as the number of shares multiplied by the price per share.
MOM	Binary variable that equals 1 if the deal was conditioned on approval by the majority-of-the-minority shareholders (or, in the case of toehold deals, the majority of the target shareholders unaffiliated with the buyer), and 0 otherwise.
Post-*MFW*	Binary variable that equals 1 if the transaction was announced after the Delaware Chancery Court opinion in *MFW* (May 29, 2013) and 0 otherwise.
$Premium_t$	(*Price Paid – Market Price*)/*Market Price*, where *Price Paid* is the deal price and *Market Price* is the average market price for the target's stock over a window of *t* days prior to announcement. In the baseline specifications, $t = 1$.
Public buyer	Binary variable that equals 1 if the buyer is a publicly traded company and 0 otherwise.
ROA	Return on assets (ROA) for the target company, measured at the fiscal year immediately prior to the announcement year of the transaction.
Special committee	Binary variable that equals 1 if the transaction with the controlling shareholder was negotiated by a special committee of independent directors of the target company, and 0 otherwise.
Treat	Binary variable that equals 1 for the treatment group (merger freezeouts of public corporations incorporated in Delaware) and 0 for the control group (merger freezeouts of Delaware LPs and LLCs, and acquisitions of public companies by buyers with a non-controlling toehold, that is, $10\% \leq \text{Toehold} \leq 20\%$).

Supplementary Materials

Table S.1
Additional descriptive statistics

The table presents summary statistics for the two subsets of the baseline control group (i.e., non-corporate freezeouts and toehold acquisitions) (Panel A) and over time (Panel B). To produce the summary statistics over time, I divided the sample into three important periods: pre-*Cox*, post-*Cox* and pre-*MFW*, and post-*MFW*. As explained in the text, more granular summary statistics (e.g., by year) would not produce meaningful information by period due to the small size of the sample.

Panel A. Descriptive statistics for each subset of the control group

Panel A.1. Toehold acquisitions

Variable	Pre-MFW				Post-MFW				Difference
	Mean	Median	Std. Dev.	N	Mean	Median	Std. Dev.	N	(Post-Pre)
Procedural protections									
Majority-of-the-minority (MOM)	0.21	0.00	0.42	42	0.20	0.00	0.41	20	-0.01
Special committed formed (SC)	0.50	0.50	0.51	42	0.55	1.00	0.51	20	0.05
MOM & SC	0.17	0.00	0.38	42	0.15	0.00	0.37	20	-0.02
Deal outcomes									
Premium	0.28	0.20	0.35	42	0.22	0.19	0.30	20	-0.06
$CARs_{(-1,+1)}$	0.17	0.14	0.21	42	0.12	0.05	0.20	20	-0.05
Increase over first offer	0.04	0.00	0.09	42	0.03	0.00	0.06	20	-0.01
Completed	0.93	1.00	0.27	40	0.65	1.00	0.49	20	-0.28***
Deal characteristics					0.22	0.19	0.30	20	-0.06
Deal value	601.23	122.93	896.87	42	925.05	443.34	1133.15	20	323.82
Total assets	1642.39	236.62	3678.47	42	2840.74	1028.04	3622.84	20	1198.36
ROA	-0.15	-0.01	0.31	42	-0.10	0.00	0.27	20	0.05
Cash-only deal	0.79	1.00	0.42	42	0.65	1.00	0.49	20	-0.14
Public buyer	0.43	0.00	0.50	42	0.50	0.50	0.51	20	0.07
Financial buyer	0.33	0.00	0.48	42	0.25	0.00	0.44	20	-0.08
Breakup fee	0.62	1.00	0.49	42	0.30	0.00	0.47	20	-0.32**
Friendly deal	0.88	1.00	0.33	42	0.65	1.00	0.49	20	-0.23**
Competing bid	0.10	0.00	0.30	42	0.15	0.00	0.37	20	0.05

Panel A.2 Freezeouts of unincorporated business entities

Variable	Pre-MFW				Post-MFW				Difference
	Mean	Median	Std. Dev.	N	Mean	Median	Std. Dev.	N	(Post-Pre)
Procedural protections									
Majority-of-the-minority (MOM)	0.36	0.00	0.50	11	0.16	0.00	0.37	31	-0.20
Special committed formed (SC)	1.00	1.00	0.00	11	0.87	1.00	0.34	31	-0.13
MOM & SC	0.36	0.00	0.50	11	0.16	0.00	0.37	31	-0.20
Deal outcomes									
Premium	0.27	0.23	0.42	11	0.09	0.07	0.11	31	-0.18**
$CARs_{(-1,+1)}$	0.06	0.08	0.15	11	0.09	0.08	0.09	31	0.03
Increase over first offer	0.07	0.00	0.12	11	0.02	0.00	0.05	31	-0.05**
Completed	0.80	1.00	0.42	10	0.84	1.00	0.37	31	0.04
Deal characteristics									
Deal value	341.04	184.67	340.01	11	1334.20	606.10	1392.65	31	993.16**
Total assets	1855.35	628.33	1940.72	11	4581.10	1619.10	6280.61	31	2725.75
ROA	-0.10	-0.01	0.26	11	0.05	0.04	0.06	31	0.16***
Cash-only deal	0.36	0.00	0.50	11	0.29	0.00	0.46	31	-0.07
Public buyer	0.64	1.00	0.50	11	0.81	1.00	0.40	31	0.17
Financial buyer	0.27	0.00	0.47	11	0.19	0.00	0.40	31	-0.08
Breakup fee	0.09	0.00	0.30	11	0.10	0.00	0.30	31	0.01
Friendly deal	1.00	1.00	0.00	11	0.94	1.00	0.25	31	-0.06
Competing bid	0.00	0.00	0.00	11	0.03	0.00	0.18	31	0.03

Panel B. Descriptive statistics by more granular periods

Panel B.1. Treatment group

Variable	Pre-*Cox* (2000-2005)				Post-*Cox*, Pre-*MFW* (2005-2013)				Post-*MFW* (2013-2020)			
	Mean	Median	S.D.	N	Mean	Median	S.D.	N	Mean	Median	S.D.	N
Procedural protections												
Majority-of-the-minority	0.31	0.00	0.46	91	0.49	0.00	0.50	51	0.81	1.00	0.40	42
Special committee	0.91	1.00	0.28	91	0.98	1.00	0.14	51	0.95	1.00	0.22	42
MOM & SC	0.31	0.00	0.46	91	0.49	0.00	0.50	51	0.81	1.00	0.40	42
Deal outcomes												
Premium	0.28	0.22	0.44	91	0.35	0.26	0.41	51	0.34	0.28	0.41	42
$CARs_{(-1,+1)}$	0.19	0.16	0.29	91	0.25	0.20	0.24	51	0.19	0.16	0.20	42
ΔOffer	0.05	0.00	0.10	91	0.08	0.00	0.13	51	0.05	0.00	0.09	42
Completed	0.80	1.00	0.40	90	0.87	1.00	0.34	46	0.79	1.00	0.41	38
Deal characteristics												
Deal value	278.97	26.84	729.98	91	666.83	96.13	1134.47	51	516.38	135.96	865.07	42
Total assets	1188.76	115.28	3719.55	91	2858.63	375.75	5182.75	51	2995.84	440.91	5399.13	42
ROA	-0.11	0.00	0.26	91	-0.06	0.01	0.21	51	-0.07	0.00	0.24	42
Cash-only deal	0.64	1.00	0.48	91	0.75	1.00	0.44	51	0.64	1.00	0.48	42
Public buyer	0.43	0.00	0.50	91	0.45	0.00	0.50	51	0.45	0.00	0.50	42
Financial buyer	0.09	0.00	0.28	91	0.16	0.00	0.37	51	0.17	0.00	0.38	42
Breakup fee	0.12	0.00	0.33	91	0.24	0.00	0.43	51	0.36	0.00	0.48	42
Friendly deal	0.96	1.00	0.21	91	0.90	1.00	0.30	51	0.83	1.00	0.38	42
Competing bid	0.02	0.00	0.15	91	0.00	0.00	0.00	51	0.05	0.00	0.22	42

Panel B.2. Control group

Variable	Pre-*Cox* (2000-2005)				Post-*Cox*, Pre-*MFW* (2005-2013)				Post-*MFW* (2013-2020)			
	Mean	Median	S.D.	N	Mean	Median	S.D.	N	Mean	Median	S.D.	N
Procedural protections												
Majority-of-the-minority	0.33	0.00	0.48	21	0.19	0.00	0.40	32	0.18	0.00	0.39	51
Special committee	0.48	0.00	0.51	21	0.69	1.00	0.47	32	0.75	1.00	0.44	51
MOM & SC	0.24	0.00	0.44	21	0.19	0.00	0.40	32	0.16	0.00	0.37	51
Deal outcomes												
Premium	0.25	0.20	0.36	21	0.29	0.21	0.37	32	0.14	0.08	0.21	51
$CARs_{(-1,+1)}$	0.17	0.19	0.24	21	0.13	0.12	0.19	32	0.10	0.07	0.15	51
ΔOffer	0.03	0.00	0.07	21	0.06	0.00	0.11	32	0.02	0.00	0.06	51
Completed	1.00	1.00	0.00	20	0.83	1.00	0.38	30	0.76	1.00	0.43	51
Deal characteristics												
Deal value	586.63	140.91	880.99	21	521.37	122.93	785.94	32	1173.75	523.20	1300.89	51
Total assets	1479.36	228.82	2868.63	21	1822.58	462.67	3710.33	32	3898.61	1600.28	5421.39	51
ROA	-0.20	-0.02	0.34	21	-0.10	0.01	0.27	32	-0.01	0.03	0.19	51
Cash-only deal	0.71	1.00	0.46	21	0.69	1.00	0.47	32	0.43	0.00	0.50	51
Public buyer	0.52	1.00	0.51	21	0.44	0.00	0.50	32	0.69	1.00	0.47	51
Financial buyer	0.14	0.00	0.36	21	0.44	0.00	0.50	32	0.22	0.00	0.42	51
Breakup fee	0.57	1.00	0.51	21	0.47	0.00	0.51	32	0.18	0.00	0.39	51
Friendly deal	0.90	1.00	0.30	21	0.91	1.00	0.30	32	0.82	1.00	0.39	51
Competing bid	0.00	0.00	0.00	21	0.13	0.00	0.34	32	0.08	0.00	0.27	51

Table S.2
Additional robustness checks

The table presents additional robustness checks. Panel A presents alternative estimation methods and Panel B presents results that exclude reverse stock splits or that use the Delaware Supreme Court in *MFW* as the time cutoff for the *Post-MFW* variable.. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Panel A. Alternative estimation methods

Dependent variable	MOM	Premium 5-day	$CARs_{-5,+5}$	ΔOffer	Closed
Model	(1)	(2)	(3)	(4)	(5)
Treat×PostMFW	2.630***	0.134	-0.062	0.116	0.863
	(3.51)	(1.04)	(-0.27)	(1.48)	(0.96)
Treat	0.523	0.067	0.099	-0.029	-0.630
	(1.13)	(0.69)	(0.54)	(-0.57)	(-0.90)
Post-MFW	-0.592	-0.144	0.189	-0.148**	-0.880
	(-1.05)	(-1.63)	(1.26)	(-2.40)	(-1.24)
Log(deal value)	0.355***	0.029	0.095***	0.036***	0.187
	(2.92)	(1.27)	(2.64)	(2.75)	(1.26)
Cash-only	0.868**	0.134*	0.246	0.177***	0.979**
	(2.28)	(1.89)	(1.62)	(3.88)	(2.07)
Special committee	1.984***	0.053	-0.145	0.169***	-0.558
	(2.97)	(0.57)	(-1.11)	(2.68)	(-0.89)
Log(assets)	-0.163	-0.042*	0.073*	-0.011	-0.085
	(-1.46)	(-1.95)	(1.82)	(-0.90)	(-0.62)
ROA	0.703	-0.240	-1.011***	0.014	-0.709
	(0.98)	(-1.46)	(-3.27)	(0.18)	(-0.74)
Public buyer	-0.536	-0.183**	0.133	-0.063	0.914*
	(-1.39)	(-2.39)	(0.82)	(-1.52)	(1.76)
Financial buyer	-0.148	-0.059	-0.142	-0.089*	-0.790*
	(-0.36)	(-0.68)	(-0.67)	(-1.87)	(-1.69)
Breakup fee	0.129	0.061	-0.033	-0.072*	1.435**
	(0.35)	(0.87)	(-0.24)	(-1.73)	(2.28)
Friendly deal	-0.195	-0.163*	0.313	-0.082	2.046***
	(-0.37)	(-1.73)	(1.32)	(-1.55)	(4.08)
Competing bid	-0.319	-0.047	0.249*	0.186***	-2.430***
	(-0.43)	(-0.33)	(1.84)	(2.63)	(-2.80)
Estimation method	Logit	OLS	OLS	Tobit	Logit
Industry dummies	Yes	Yes	Yes	Yes	Yes
R-squared		0.145	0.131		
Pseudo R-squared	0.231			0.303	0.200
N	288	288	288	288	275

Panel B. Alternative subsample and time cutoff

Dependent variable	Subsample: excluding reverse stock splits					Delaware Supreme Court decision as time cutoff				
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Treat×PostMFW	0.477***	0.114	-0.005	0.019	0.037	0.484***	0.094	-0.021	0.023	0.070
	(0.10)	(0.10)	(0.06)	(0.03)	(0.10)	(0.11)	(0.10)	(0.06)	(0.03)	(0.10)
Treat	0.136*	0.076	0.099**	0.034	-0.006	0.158**	0.085	0.108***	0.032	-0.038
	(0.07)	(0.07)	(0.04)	(0.03)	(0.06)	(0.07)	(0.07)	(0.04)	(0.03)	(0.06)
Post-MFW	-0.102	-0.081	-0.017	-0.036	-0.069	-0.077	-0.061	-0.004	-0.033	-0.072
	(0.08)	(0.06)	(0.04)	(0.02)	(0.07)	(0.08)	(0.06)	(0.04)	(0.02)	(0.07)
Log(deal value)	0.059***	0.038**	0.019**	0.017**	0.012	0.058***	0.041**	0.019**	0.017**	0.018
	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)
Cash-only	0.144**	0.127***	0.104***	0.070***	0.090	0.132**	0.141***	0.110***	0.070***	0.094
	(0.06)	(0.05)	(0.03)	(0.02)	(0.06)	(0.06)	(0.05)	(0.03)	(0.02)	(0.06)
Special committee	0.308***	0.062	0.008	0.033	-0.088	0.288***	0.073	0.010	0.033	-0.049
	(0.05)	(0.07)	(0.04)	(0.02)	(0.06)	(0.05)	(0.07)	(0.04)	(0.02)	(0.07)
Log(assets)	-0.022	-0.025	-0.008	-0.003	0.003	-0.020	-0.028*	-0.008	-0.004	-0.003
	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)	(0.02)	(0.02)	(0.01)	(0.01)	(0.02)
ROA	0.070	-0.276**	-0.159*	-0.022	-0.088	0.080	-0.290**	-0.168**	-0.020	-0.076
	(0.11)	(0.13)	(0.08)	(0.03)	(0.10)	(0.11)	(0.13)	(0.08)	(0.03)	(0.10)
Public buyer	-0.103	-0.096*	0.003	-0.028	0.077	-0.101	-0.107*	-0.003	-0.026	0.084
	(0.06)	(0.06)	(0.03)	(0.02)	(0.06)	(0.06)	(0.06)	(0.03)	(0.02)	(0.06)
Financial buyer	-0.004	-0.016	0.024	-0.035*	-0.093	-0.009	-0.023	0.022	-0.035*	-0.090
	(0.07)	(0.06)	(0.04)	(0.02)	(0.07)	(0.07)	(0.06)	(0.04)	(0.02)	(0.07)
Breakup fee	0.044	0.049	0.000	-0.010	0.120**	0.052	0.053	0.002	-0.009	0.115**
	(0.07)	(0.05)	(0.03)	(0.02)	(0.05)	(0.06)	(0.05)	(0.03)	(0.02)	(0.05)
Friendly deal	-0.071	-0.080	0.007	-0.026	0.352***	-0.055	-0.081	0.007	-0.024	0.352***
	(0.07)	(0.07)	(0.05)	(0.03)	(0.09)	(0.07)	(0.07)	(0.05)	(0.03)	(0.09)
Competing bid	-0.140	0.013	0.032	0.074	-0.311**	-0.116	0.006	0.028	0.070	-0.320**
	(0.11)	(0.12)	(0.06)	(0.05)	(0.13)	(0.10)	(0.12)	(0.06)	(0.05)	(0.13)
R-squared	0.299	0.125	0.100	0.112	0.196	0.302	0.137	0.106	0.109	0.183
N	285	285	285	285	272	288	288	288	288	275

Table S.3
Analysis of heterogeneity in the treatment effects

The table presents the analysis of heterogeneous effects. I examine six *mediating variables*: cash consideration, public status of the buyer, financial v. strategic buyer, friendly deal, the presence of competing bids, and indicator variables for large deals (i.e., above-the-median value of the deal), large targets (i.e., above-the-median assets), and high performance (i.e., above-the-median ROA). Due to space limitations, I only report the triple interactions from each model (i.e., *Treat×PostMFW×MediatingVariable*), which capture the heterogeneity in the treatment effects; however, all the models also include the second-order interactions and the stand-alone variables. Due to the small sample size, I run all the models using a parsimonious specification that includes only a control for the size of the deal (but the results are similar if I do not include any control). *significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Treat×PostMFW×CashOnly	0.168								
	(0.21)								
Treat×PostMFW×PublicBuyer		-0.453**							
		(0.20)							
Treat×PostMFW×FinancialBuyer			0.491**						
			(0.23)						
Treat×PostMFW×BreakFee				-0.347					
				(0.24)					
Treat×PostMFW×Friendly					0.024				
					(0.24)				
Treat×PostMFW×CompetingBid						-0.217			
						(0.58)			
Treat×PostMFW×LargeDeal							0.115		
							(0.24)		
Treat×PostMFW×LargeAssets								0.201	
								(0.23)	
Treat×PostMFW×HighROA									0.302
									(0.22)
		(0.20)							
R-squared	0.247	0.250	0.225	0.226	0.224	0.220	0.223	0.223	0.220
N	288	288	288	288	288	288	288	288	288

Table S.4
Cross-sectional analysis on legal protections and deal outcomes

This table examines the cross-sectional correlation between different levels of legal protection and deal outcomes in freezeouts of Delaware corporations. To this end, I classify the deals based on three types of protection: *Procedural & Judicial* (if the deal was subject to MOM and SC approval and also to entire fairness review); *Procedural only* (if the deal was subject to MOM and SC approval but not to entire fairness review); and *Judicial only* (if the deal was subject to entire fairness review but not to MOM and SC approval). The base category is the *Judicial only* category – which is therefore omitted from the regression. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Procedural & Judicial Protection	0.148***	0.116**	0.118**	0.113***	0.104***	0.104***	0.075***	0.046*	0.048*
	(0.05)	(0.05)	(0.05)	(0.03)	(0.04)	(0.03)	(0.03)	(0.02)	(0.03)
Procedural Protection only	0.090	0.058	0.064	0.035	0.041	0.044	0.032	0.011	0.013
	(0.08)	(0.08)	(0.08)	(0.04)	(0.05)	(0.05)	(0.03)	(0.03)	(0.03)
Log(value)		0.025	0.027+		0.001	0.002		0.013*	0.015*
		(0.02)	(0.02)		(0.01)	(0.01)		(0.01)	(0.01)
Cash-only		0.152***	0.173***		0.106***	0.115***		0.062**	0.071***
		(0.06)	(0.05)		(0.03)	(0.03)		(0.02)	(0.02)
Log(assets)		-0.012	-0.021		-0.000	-0.004		0.001	-0.003
		(0.02)	(0.02)		(0.01)	(0.01)		(0.01)	(0.01)
ROA		-0.282**	-0.254*		-0.165*	-0.154*		-0.002	0.010
		(0.13)	(0.14)		(0.08)	(0.09)		(0.05)	(0.05)
Public buyer		-0.051	-0.045		0.019	0.021		-0.032+	-0.028
		(0.06)	(0.06)		(0.04)	(0.04)		(0.02)	(0.02)
Financial Acquiror		-0.075	-0.074		0.015	0.016		-0.060***	-0.060***
		(0.08)	(0.09)		(0.05)	(0.05)		(0.02)	(0.02)
Break fee		0.099+	0.109+		-0.006	-0.002		0.002	0.004
		(0.07)	(0.07)		(0.04)	(0.04)		(0.03)	(0.03)
Friendly		0.055	0.037		0.053	0.045		0.010	0.002
		(0.07)	(0.07)		(0.05)	(0.05)		(0.03)	(0.03)
Competing Bidder		0.012	0.032		0.076	0.085		0.035	0.043+
		(0.21)	(0.20)		(0.09)	(0.09)		(0.04)	(0.03)
R-squared	0.029	0.108	0.129	0.044	0.110	0.119	0.039	0.101	0.118
N	247	247	247	247	247	247	247	247	247

Table S.5
MOM adoption and ranking of buyer's legal advisor among post-*MFW* freezeouts

The table shows regression models in which the buyer's rank of the legal advisor predicts the adoption of MOM conditions after *MFW* (only the treatment observations are considered). To code the legal advisors' positions, I relied on the U.S. News ranking of M&A firms. * significant at 0.10, ** significant at 0.5, and *** significant at 0.01.

Model	(1)	(2)	(3)
Buyer's legal advisor rank	-0.041	-0.041	-0.038
	(0.04)	(0.05)	(0.05)
Log(value)		0.037	0.036
		(0.05)	(0.05)
Cash-only		-0.103	-0.098
		(0.19)	(0.19)
SC		0.689***	0.691***
		(0.18)	(0.20)
Log(assets)		-0.036	-0.037
		(0.04)	(0.04)
ROA		0.239	0.255
		(0.33)	(0.34)
Public buyer		-0.248	-0.239
		(0.16)	(0.15)
Financial Acquiror		0.241	0.228
		(0.14)	(0.15)
Break fee		-0.086	-0.074
		(0.14)	(0.15)
Friendly		0.014	0.015
		(0.13)	(0.13)
Competing Bidder		-0.364	-0.383
		(0.31)	(0.33)
Industry dummies	No	No	Yes
R-squared	0.042	0.423	0.425
N	42	42	42