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The Effect of Delaware Doctrine on Freezeout Structure and Outcomes: Evidence on the Unified Approach

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Abstract

Historically, Delaware corporate law provided different standards of judicial review for buyouts by controlling shareholders (also known as “freezeouts”) based on what transactional form was used: deferential business judgment review for freezeouts executed as tender offers, and stringent “entire fairness” review for transactions structured as mergers. Subramanian (2005), Subramanian (2007), and Restrepo (2013) provide doctrinal and empirical evidence that transactional planners responded to these differences in standards of judicial review; that these differences in judicial scrutiny created differences in outcomes for the minority shareholders; and that differences in outcomes created a social welfare loss, not just a wealth transfer from minority shareholders to the controlling shareholder. Over the past decade, in a series of important decisions, Delaware law has migrated toward a “unified approach” to freezeouts regardless of transactional form. In this paper we present empirical evidence on all freezeouts of Delaware targets during this period of doctrinal evolution. In general, we find that deal outcomes have converged in the eight years since the Delaware Chancery Court’s decision in *Cox Communications*, but approximately half of merger freezeouts in the post-*Cox* era still did not follow the procedural template provided by the unified approach. Our findings suggest that: (1) transactional planners seem to respond to even probabilistic changes in the Delaware case law; (2) the social welfare loss identified in Subramanian (2005) seems to no longer be present; but (3) the Delaware Supreme Court may nevertheless wish to “finish the job” by endorsing the unified approach, in order to ensure adequate procedural protections to minority shareholders.

JEL classification: G30, G34, K22

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The Effect of Delaware Doctrine on Freezeout Structure and Outcomes: Evidence on the Unified Approach

1. Introduction

Historically, buyouts by controlling shareholders (also known as “going-private transactions,” “squeeze-outs,” and hereinafter “freezeouts”) were subject to different standards of judicial scrutiny under Delaware corporate law based on the transactional form used by the controlling shareholder to execute the deal. In a line of cases dating back at least to the Delaware Supreme Court’s 1994 decision in *Kahn v. Lynch Communications*¹, a freezeout executed as a statutory merger was subject to stringent “entire fairness” review, due to the self-dealing nature of the transaction. In contrast, in a line of cases beginning with the Delaware Chancery Court’s 2001 opinion in *In re Siliconix Inc. Shareholder Litigation*², a freezeout executed as a tender offer was subject to deferential business judgment review.

Subramanian (2007) presents evidence that, after *Siliconix*, minority shareholders received less in tender offer freezeouts than in merger freezeouts. Restrepo (2013) finds that these differences in outcomes occurred only after *Siliconix*, and that the incidence of tender offer freezeouts increased after this opinion, also supporting the idea that controlling shareholders took advantage of the opportunity provided by *Siliconix*. Subramanian (2005) describes why these differences in outcomes for minority shareholders create a social welfare loss and not just a one-time wealth transfer from minority shareholders to the controlling shareholder.

In *In re Cox Communications, Inc. Shareholders Litigation*,³ then-Vice Chancellor Strine, citing empirical evidence presented in the working paper version of Subramanian (2007) as well as other academic commentary, proposed in dicta a “unified approach” that would govern freezeout transactions: business judgment review for freezeouts that are approved by a special committee of independent directors and by a majority-of-the-minority shares, regardless of the transactional form used by the controller, and entire fairness review for freezeouts that do not have these procedural protections. Subsequent

¹ 638 A.2d 1110 (Del. 1994).

² 2001 WL 716787 (Del. Ch. 2001).

³ 879 A.2d 604 (Del. Ch. 2005).

decisions by the Delaware Chancery Court have both accepted (*Hammons Hotels*,⁴ *CNX Gas*,⁵ *MFW*⁶) and implicitly rejected (*Cox Radio*⁷) this unified approach. With no definitive pronouncement from the Delaware Supreme Court, transactional planners have been left without clear guidance on the standard of judicial review for freezeout transactions.

This paper presents new empirical evidence on freezeouts in the pre- and post-*Cox* era. We construct a new sample of all freezeouts of Delaware targets announced between *Siliconix* and *Cox* (n=79) and a sample of all freezeouts of Delaware targets announced since *Cox* (n=66). We find that:

- (1) the differences in outcomes during the pre-*Cox* era, as identified in Subramanian (2007) and Restrepo (2013), have disappeared since *Cox*;
- (2) the incidence of freezeout tender offers has declined since *Cox*, consistent with practitioner intuition that the unified approach proposed in that decision reduced the benefits of the freezeout tender offer form relative to the freezeout merger form; and
- (3) while the incidence of majority-of-the-minority conditions has increased since *Cox*, consistent with the intuition that more deals are attempting to fit into the unified approach blueprint, approximately half of merger freezeouts did not include MOM conditions.

Taken together, these findings suggest that:

- (1) transactional planners seem to respond to even probabilistic changes in the Delaware case law regarding standards of judicial review;
- (2) even without Delaware Supreme Court endorsement of the unified approach, the social welfare loss identified in Subramanian (2005) seems to no longer be present in the post-*Cox* era; but

⁴ In re John Q. Hammons Hotels Inc. Shareholder Litigation, 2009 WL 3165613 (Del. Ch. Oct. 2, 2009).

⁵ In re CNX Gas Corp. Shareholder Litigation, 4 A.3d 397 (Del. Ch. 2010).

⁶ In re MFW Shareholders Litigation, C.A. No. 6566-CS, 2013 (Del. Ch. May 29, 2013).

⁷ In re Cox Radio Shareholder Litigation, 2010 WL 1806616 (Del. Ch. 2010).

(3) the Delaware Supreme Court may still wish to “finish the job” by endorsing the unified approach in order to promote MOM conditions, which provide an important check against a captured or conflicted special committee in a merger freezeout process.

The remainder of this paper proceeds as follows. Part 2 presents background on freezeout doctrine, beginning with the Delaware Supreme Court’s 1983 decision in *Weinberger v. UOP*⁸ and continuing through the Delaware Chancery Court’s May 2013 decision in *In re MFW Shareholder Litigation*.⁹ Part 3 presents our methodology. Part 4 presents our empirical results. Part 5 discusses the implications of our findings for the Delaware courts and for transactional planners. Part 6 concludes.

2. Background

A freezeout (also known, with some occasional loss of precision, as a “going private merger,” a “squeeze-out,” a “parent-subsidiary merger,” a “minority buyout,” a “take-out,” or a “cash-out merger”) is a transaction in which a controlling shareholder buys out the minority shareholders for cash or the controller’s stock. The traditional route for executing a freezeout uses the process outlined by the Delaware Supreme Court in *Weinberger v. UOP*¹⁰ and *Kahn v. Lynch Communication Systems*:¹¹ the target board establishes a special committee (SC) of directors who are independent from the controller; the SC hires bankers and lawyers to advise it; and the SC negotiates with the controller over the terms of the deal, most importantly the price to be paid to the minority shareholders and whether the deal will include a non-waivable majority-of-the-minority (MOM) closing condition.¹² If

⁸ 457 A.2d 701, 709 n.7 (Del. 1983).

⁹ C.A. No. 6566-CS, 2013 (Del. Ch. May 29, 2013).

¹⁰ 457 A.2d 701, 709 n.7 (Del. 1983).

¹¹ 638 A.2d 1110 (Del. 1994).

¹² Most MOM conditions have been structured as a majority of the outstanding shares rather than majority of the voting shares, particularly after the Delaware Chancery Court’s 2006 holding in *In re PNB Holdings*, 2006 WL 2403999 (Del. Ch. Aug. 18, 2006), which strongly encouraged structuring a MOM condition as a majority of the outstanding minority. Virtually all MOM conditions are non-waivable, in order to properly emulate the shareholder vote condition in an arms-length acquisition. See, for example, *In re John Q. Hammons Hotels Inc. Shareholder Litigation*, 2009 WL 3165613 at *31 (Del. Ch. Oct. 2, 2009) (“The majority of the minority vote, however, provides the stockholders an important opportunity to approve or disapprove of the work of the special committee and to stop a transaction they believe is not in their best interests. Thus, to provide sufficient protection to the minority stockholders, the majority of the minority vote must be nonwaivable, even by the special committee.”) (Chandler, C.) (citations omitted); *In re JCC Holding Co.*, 843 A.2d 713, 724-25 n.33 (Del. Ch. 2003). Majority of the outstanding minority also tracks the

the controller and the SC reach agreement, the deal is submitted for the necessary board and shareholder approvals. If approved, the transaction is typically executed as a statutory merger or a two-step tender offer (that is, a first-step tender offer followed by a short-form merger), though occasionally it is structured as a reverse stock split or an asset acquisition by the controlling shareholder.

An alternative to the traditional route is a tender offer directly to minority shareholders. In this route, the controller announces the tender offer and seeks to get to 90% voting control. Typically the target board will appoint an SC of independent directors to evaluate the transaction, negotiate with the controller, and issue a 14D-9 recommendation to minority shareholders (approve, reject, neutral, or unable to take a position). If the controller gets to 90% voting control, it then executes a short-form merger, which under Delaware law does not require a shareholder vote, in order to eliminate the remaining (non-tendering) minority shareholders. Because 90% is the critical threshold, the controller often conditions its tender offer on getting to 90% control (a “90% condition”).

Freezeouts are generally subject to “entire fairness” review by the Delaware courts, a stringent standard of review, because of their self-dealing nature (self-dealing because the controller is the buyer and typically dominates the seller’s board). Even procedural protections such as the use of a special committee or a MOM condition only serve to shift the burden of proof on entire fairness to the plaintiff.¹³ In June 2001, however, the Delaware Chancery Court held in *In re Siliconix Inc. Shareholders Litigation*¹⁴ that entire fairness review does not apply to tender offer freezeouts “unless actual coercion or disclosure violations are shown,”¹⁵ because the Delaware corporate code does not provide a statutory role for the target board in such an offer. Just one month after *Siliconix*, the Delaware Supreme Court held in *Glassman v. Unocal Exploration Corp.*¹⁶ that a short-form merger was also not subject to entire fairness review. Taken together, *Siliconix* and *Glassman* allowed a controlling shareholder to avoid entire fairness review by executing its

procedural template for arms-length merger, which requires a majority of the shares to approve a merger. See DEL. GEN. CORP. L. 251(c).

¹³ Kahn v. Lynch Communication Systems, Inc., 638 A.2d 1110 (Del. 1994); Rosenblatt v. Getty Oil, 493 A.2d 929 (Del. 1985).

¹⁴ 2001 WL 716787 (Del. Ch. 2001).

¹⁵ In re Siliconix, Inc. Shareholders Litigation, 2001 WL 716787 at *17 (Del. Ch. 2001).

¹⁶ 777 A.2d 242 (Del. 2001).

freezeout as a tender offer followed by a short-form merger. The result was that the Delaware courts afforded different standards of judicial scrutiny to transactional forms that achieved the same result in practice, namely, the elimination of the minority shareholders.¹⁷

One year after the *Siliconix/Glassman* combination, the Delaware Chancery Court held in *In re Pure Resources Shareholder Litigation*¹⁸ that a tender offer is not coercive, and therefore the *Siliconix* safe harbor applies, only if the offer is subject to a non-waivable majority of the minority tender condition; the controller guarantees to consummate a prompt short-form merger at the same price if it obtains more than 90% of the shares; and the controller makes no “retributive threats” in its negotiations with the special committee. The court confirmed, however, that if these conditions are met, a freezeout tender offer is not subject to entire fairness review.

Conventional wisdom among practitioners suggested that these doctrinal developments would have a significant impact on freezeout transactional form and outcomes. According to the *Wall Street Journal*, *Siliconix* and *Glassman* “essentially permit those big holders to buy the minority investors out on the cheap.”¹⁹ And the *Corporate Control Alert* stated: “The current thinking on minority buyouts, many lawyers say, boils down to two words: tender offer.”²⁰

Examining all freezeouts of Delaware targets announced in the four years after *Siliconix*, Subramanian (2007) found that minority shareholders received less, as measured

¹⁷ Abramczyk, Cincilla, and Honaker (2003) and Wolfe (2002) argue that the result in *Siliconix* was dictated by the 1996 case *Solomon v. Pathe Communications*, 672 A.2d 35 (Del. 1996), in which the Delaware Supreme Court held that a tender offer made by a controlling shareholder was not subject to entire fairness review. However, Gilson and Gordon (2003) point out that *Solomon* was not a freezeout situation and therefore could have been limited to its facts. Aronstam, Balotti, and Rehbock (2004) add that the standard of review for the back-end short-form merger was only resolved by *Glassman*. Moreover, as Vice-Chancellor Laster held in *CNX*, *Solomon* did not involve a unilateral tender offer. The transaction was one of the components of a prior agreement between CLBN and Pathe, which was established when these companies negotiated the rights of CLBN as a secured creditor in the acquisition of MGM shares by Pathe. For the same reason, CLBN was acting in the deal predominantly as a third-party lender, not as a controlling shareholder: CLBN, although having a controlling position by the time of the tender offer, executed that offer in exercise and under the conditions of its contractual rights as a secured lender, and that particular position is not subject to fiduciary review. See *In re CNX Gas Corp. Shareholder Litigation*, Civ. A. 5733-VCL, 2010 WL 2291842 (Del. Ch. May 25, 2010). The results presented in this paper, Subramanian (2007), and Restrepo (2013) support the view that the *Siliconix/Glassman* combination created a new doctrinal contour.

¹⁸ 808 A.2d 421 (Del. Ch. 2002).

¹⁹ Sidel (2004, p. C3). See also Marcus (2004, p. 10) (“Most deal lawyers believe buyers pay less if they use the [tender offer] method. . .”).

²⁰ Marcus (2003, p. 20).

as the cumulative abnormal returns for the stock of the target around the announcement of the offer, in freezeout tender offers relative to freezeout mergers, thereby providing empirical support for the practitioner intuition that differences in judicial standards of review created different outcomes for the minority shareholders. Restrepo (2013) found that these differences in outcomes occurred only after *Siliconix*, and that the incidence of tender offer freezeouts increased after this opinion, also supporting the idea that controlling shareholders took advantage of the opportunity provided by *Siliconix*. Subramanian (2005) described why these differences in outcomes for minority shareholders created a social welfare loss and not just a one-time wealth transfer from minority shareholders to the controlling shareholder.

In *In re Cox Communications, Inc. Shareholder Litigation*,²¹ citing empirical evidence provided in the working paper version of Subramanian (2007) as well as other academic commentary, Vice Chancellor (now Chancellor) Leo Strine proposed in dicta a “unified approach” for freezeouts.²² Under this unified standard, a freezeout that was approved by a special committee of independent directors and was conditioned upon approval from a majority of the minority shares would receive business judgment review, regardless of the transactional form used by the controlling shareholder, while a freezeout that did not provide either or both of these procedural protections would be scrutinized under the entire fairness standard. This approach would track the approval process for arms-length mergers: approval from the disinterested directors (through a special committee), followed by approval from the disinterested shareholders (through a majority-of-the-minority condition). Vice Chancellor Strine observed that this unified standard was not necessarily in tension with the Delaware Supreme Court’s *Kahn v. Lynch* decision:

In *Lynch*, the argument that both special committee and an effective majority of the Minority Approval Condition should, as a tandem, justify invocation of the business judgment rule, was never presented. Therefore, it is arguable that the Supreme Court has never been asked to address the precise question that would be posed if a controller, from the inception of a transaction, made clear that its merger proposal was conditioned upon the use of both of these procedural protections. . . .²³

²¹ 879 A.2d 604 (Del. Ch. 2005).

²² One of the authors (GS) provided an affidavit in *Cox Communications* on behalf of plaintiffs in that matter.

²³ *In re Cox Communications, Inc. Shareholders Litigation*, 879 A.2d 604, 648 (Del. Ch. 2005).

Vice Chancellor Strine urged future defendants in freezeout transactions with these facts to request certification of the standard of review question to the Delaware Supreme Court. However, in the eight years since *Cox Communications*, no such opportunity has presented itself. As a result, Chancery Court judges have taken different approaches, the validity of the unified standard has remained unclear, and transactional planners have been left without clear guidance.

In *In re John Q. Hammons Hotels Inc. Shareholder Litigation*,²⁴ for example, Chancellor Chandler seemed to endorse at least half of the unified standard (namely, the half related to the merger freezeout mechanism), by holding that “the use of both structural protections [SC approval and a MOM condition] results in the controller standing only on one side of the transaction –as the buyer– and renders entire fairness inapplicable.”²⁵ Most recently, in *In re MFW Shareholders Litigation*,²⁶ Chancellor Strine squarely endorsed this approach, on the grounds that the unified standard “will provide a strong incentive for controlling shareholders to accord minority investors [...] a structure where stockholders get the benefits of independent, empowered negotiating agents to bargain for the best price [...] plus the critical ability to determine for themselves whether to accept any deal that their negotiating agents recommend to them.”²⁷ Some commentators predicted that the plaintiffs will appeal *MFW* to the Delaware Supreme Court,²⁸ but as of this writing no such appeal has materialized.

On the other side of the coin, freezeout tender offers, Vice Chancellor Laster similarly endorsed the unified approach in *In re CNX Gas Corp. Shareholders Litigation*.²⁹ In *In re Cox Radio, Inc. Shareholders Litigation*,³⁰ however, Vice Chancellor Parsons declined to

²⁴ 2009 WL 3165613 (Del. Ch. Oct. 2, 2009).

²⁵ *Id.* at 10.

²⁶ C.A. No. 6566-CS, 2013 (Del. Ch. May 29, 2013).

²⁷ *Id.* at 8.

²⁸ Compare Davis Polk (2013) (“remains to be seen whether plaintiffs in *MFW* will appeal”) with Paul Weiss (2013) (“likely to be appealed”).

²⁹ *In re CNX Gas Corp. Shareholder Litigation*, 4 A.3d 397 (Del. Ch. 2010). Vice Chancellor Laster added a slight adjustment to the unified standard by requiring affirmative board approval, rather than just board neutrality, in order to qualify for business judgment review. Vice Chancellor Laster analogized to the arms-length merger process, which requires affirmative approval by the board. See *In re CNX Gas* at n. 8.

³⁰ 2010 WL 1806616 (Del. Ch. 2010).

apply the unified approach in the context of a fee determination for plaintiffs' lawyers in a freezeout tender offer.

In *CNX Gas*, Vice Chancellor Laster granted the defendant's application to certify the question to the Delaware Supreme Court for interlocutory appeal:

The standard of review for a controller's unilateral two-step freeze-out . . . presents an issue of first impression for the Delaware Supreme Court. It is an issue with real-world consequences. In his study of post-*Siliconix* freeze-outs, Professor Guhan Subramanian found that stockholders received greater consideration in single-step freeze-outs and negotiated two-step freeze-outs than in unilateral two-step freeze-outs. . . . Professor Subramanian noted that "[i]nterviews as well as informal conversations with New York City and Delaware lawyers indicate that [the finding of lower returns for stockholders in *Siliconix* deals] is consistent with practitioner experience."

Controllers and their advisors take the governing legal regime into account when determining whether and how to proceed with a transaction. Professor Subramanian found that controllers moved decidedly towards unilateral two-step transactions after the blazing of the *Siliconix-Glassman* trail.

These data raise policy questions. All else equal, a legal regime that makes it easier for controllers to freeze out stockholders will increase the number of transactions but result in lower premiums. Conversely, a legal regime that imposes greater procedural requirements will enable target stockholders to receive higher premiums but reduce the overall level of transactional activity. Either approach is legitimate and defensible. Either approach could result in the greatest aggregate benefits for stockholders, depending on the typical premium and overall level of deal activity.

Only the Supreme Court can determine definitively whether different policies, duties, and standards should govern unilateral two-step freeze-outs. . . . Because the appropriate standard of review for unilateral two-step freeze-out presents a question of first impression for the Delaware Supreme Court and implicates fundamental issues of Delaware public policy, certification is appropriate.³¹

The Delaware Supreme Court nevertheless denied the appeal on the grounds that the issues raised in the case should be addressed after the entry of a final judgment.³² The next day, plaintiffs voluntarily dismissed their appeal, thereby leaving the standard of review question still unanswered. Similarly, in *Cox Radio*, the Delaware Supreme Court affirmed Vice Chancellor Parsons' ruling that rejected the unified approach, but because the

³¹ In re *CNX Gas Corp.*, 2010 WL 2705147 at *11-*12 (Del. Ch. July 5, 2010).

³² In re *CNX Gas Corp.*, 2010 WL 2690402 (Del. Supr. July 8, 2010).

settlement would have been approved under either entire fairness or business judgment review, the Court observed that “we need not and do not express any view as to the proper standard by which the underlying transactions should be reviewed.”³³

Although practitioners are unified in their request for guidance from the Delaware Supreme Court, basic questions remain unanswered in the aftermath of *Cox*. For example: (1) To what extent, if at all, has the mix of freezeout tender offers/mergers changed with the suggestion of a unified approach in *Cox Communications*? and (2) To what extent does the difference in outcomes for the minority identified by Subramanian (2007) and Restrepo (2013) persist? This paper seeks to answer such questions. The answers provide insight on whether the unified approach has become *de facto* Delaware law. If practitioners have read the tea leaves to suggest that Delaware courts will consistently apply the uniform approach, then no further pronouncement is needed from the Delaware Supreme Court. If instead there continue to be differences in process or outcomes based on transactional form, then the public policy considerations described in Subramanian (2005) would suggest that intervention from the Delaware Supreme Court is warranted.

3. Methodology³⁴

To examine the effect of *Cox*, we employ a difference-in-differences approach, in which the treatment group is the set of tender offer freezeouts of Delaware targets announced between June 19, 2001 (the date of the Delaware Chancery Court’s opinion in *Siliconix*) and May 29, 2013 (the date of the Delaware Chancery Court’s opinion in *In re MFW*), and the control group is the set of merger freezeouts announced in the same period. As suggested in the preceding section, tender offers are the treatment group in this analysis because *Cox* proposed a revision of the exemption from entire fairness review that *Siliconix* created for these transactions, and that proposed revision is expected to have produced a change in relative outcomes.

We define the outcome of each transaction as the cumulative abnormal returns (CARs) received by target shareholders in two *short-run* windows (-30,+1, and -30, +5 trading days

³³ 9 A.3d 475, 2010 WL 4721568 (Del. Supr. 2010).

³⁴ In all instances, we have made methodological choices to be as consistent as possible with Subramanian (2007) and Restrepo (2013).

relative to the announcement of the offer), and two *long-run* windows (-30,+10, -30,+30 trading days relative to announcement). Abnormal returns are defined as the daily return for the target stock relative to the CRSP value-weighted equities index. To calculate long-run returns for freezeouts that close before the post-deal time window has elapsed, we assume that target shareholder returns from the freezeout are re-invested into the CRSP value-weighted equities index.

The independent variables include target characteristics, controlling shareholder characteristics, and deal characteristics that may determine the magnitude of the CARs. Besides the additional controls described below, this analysis includes a time variable (“postCox”) set to one if the transaction was announced and completed after *Cox* and zero otherwise. It also includes a transactional form variable (“tender”) set to one if the freeze-out was executed as a tender offer and zero if as a statutory merger. The main variable of interest is an interaction between these two variables (“postCox×tender”), which yields the estimator of difference-in-differences. If *Cox* was actually a relevant factor in closing the negative gap in outcomes between tender offers and mergers that emerged after *Siliconix*, this variable should be positive and, depending on the extent to which CARs have converged, it should also be significant.

In multivariate analyses we control for the value of the transaction, the consideration offered (stock or cash), the percentage of minority shares required to approve the transaction,³⁵ and whether the negotiation process included a special committee of independent directors. Following prior work,³⁶ target characteristics include pre-deal efficiency and size variables because acquirers might be willing to pay higher prices for

³⁵ The variable Minority Approval Required (MAR) is calculated according to the following algorithm. For a tender offer with a 90% condition, $MAR = [(90 - \text{controlling pre-deal stake}) / (100 - \text{controller's pre-deal stake})] * 100$. So for example, a 40% controlling shareholder executing its offer through a tender offer with a 90% condition would have $MAR = [(90 - 40) / (100 - 40)] * 100 = 83\%$. 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. There is a 50% floor on the minority required to approve the transaction, however, if the transaction is subject to a MOM condition. For a merger freezeout with a MOM condition, $MAR = 50$ (again, reflecting the fraction of minority shares required in order to proceed with the freezeout). For a tender offer freezeout without a 90% condition or a merger freezeout without a MOM condition, $MAR = 0$. For a merger freezeout without a MOM condition, but where the controller's pre-deal stake is less than 50%, $MAR = (50 - \text{controller's pre-deal stake}) / (100 - \text{controller's pre-deal stake})$. So, for example, for a controller with a 40% pre-deal stake $MAR = (50 - 40) / (100 - 40) = 17\%$, again reflecting the fraction of minority shares required in order to proceed with the transaction.

³⁶ See, for example, Andrade et al. (2001); Loughran and Vijh (1997).

more efficient targets and when the potential for synergies is larger (given the size of the target).³⁷ In addition, we control for acquirer characteristics such as whether the controller or its parent is a public company, and whether the controller is a financial acquirer.³⁸

We begin with all transactions coded as “Acquisitions of Remaining Interest” in Thomson Financial Corporation’s Mergers & Acquisitions database, announced between June 19, 2001 and May 29, 2013, in which the target was a Delaware corporation. Although TFC uses a 50% cutoff to distinguish acquisitions of remaining interests from acquisitions of a controlling interest, as a matter of Delaware corporate law (as well as real-world practicality) a shareholder with as little as a 35% holding can be a controlling shareholder.³⁹ We therefore supplement TFC’s remaining-interest category with transactions in which the acquirer held 35-50% when the freezeout was initiated. We exclude transactions in which the acquirer held 90% or more of the target’s voting shares because such transactions can be executed as short-form mergers that do not require a shareholder vote.⁴⁰ We also exclude remaining-interest acquisitions that are the second step of a third-party tender offer because the second step is invariably at the same price as the first step and the first step was negotiated at arms-length.⁴¹ The final database includes 146 freezeouts. Of these 141, 80 were announced prior to the Delaware Chancery Court’s decision in *Cox Communications*, and the remaining 66 were announced afterwards.

For each transaction, we examine SEC filings by the controller and the target company (primarily 8-K, 14D-9, 13E-3, 13D, and 14A filings), news reports, and company press releases to collect data on the bargaining process, such as whether a special committee of

³⁷ Ideally, the controls would be the size and pre-deal efficiency of the target relative to the size and pre-deal efficiency of the controller, respectively. Since several acquirers were not companies for which there was public information available, however, the estimators are based only on the available information for the target.

³⁸ See Bargeron et. al. (2008) and Gorbenko and Malenko (2010).

³⁹ See, for example, *In re Cysive Inc. Shareholders Litigation*, 836 A.2d 531 (Del. Ch. 2003) (finding a 35% stockholder to be a controller).

⁴⁰ See, for example, Del. Gen. Corp. L. §253.

⁴¹ See Brudney and Chirelstein (1978) (“Two-step takeovers, being acquisitions by outsiders, are not properly to be viewed as freezeouts in the first place. . .”). There is a gray area in distinguishing an arms-length transaction from a freezeout if there is delay between the first and second steps of the transaction. See, for example, *Cede & Co. v. Technicolor*, 684 A.2d 289 (Del. 1996). As a practical matter, most arms-length acquirers today wish to execute the second-step tender offer as quickly as possible in order to gain 100% of the anticipated economic benefit, to avoid uncertainty in applying dissenters’ appraisal rights, to eliminate potential plaintiffs, to delist from the stock exchange, and to deregister under the 1934 Act (Subramanian 2007). Perhaps as a result, self-dealing and arms-length transactions were clearly distinguishable in our database, with no transactions in this potential gray area.

independent directors was formed to assess the transaction, the dates and sequence of offers and counter-offers, and the terms of the final agreement, if one was reached. Stock price data for each target company are taken from the Center for Research in Securities Pricing (CRSP) database, where available, and otherwise from DataStream.

With one exception, we classify each freezeout as either a statutory merger or a tender offer. The exception is the Lawrence Weissberg Trust's freezeout of the minority shareholders in Dover Investments, which began as a merger and was eventually executed as a tender offer. This observation was therefore excluded from the estimations. In two additional cases (the freezeout of the minority shareholders in Ticketmaster and the Roche's freezeout of the minority shareholders in Genentech), the transaction began as a tender offer but the parties ultimately entered into a merger agreement. These observations were classified according to the controller's initial expression of interest, since the execution of the merger agreement after the initiation of the tender offer was precisely the result of negotiations of the terms of the deal with the special committee of independent directors.

We classify twelve merger freezeouts that were executed as two-step tender offers as mergers because the Delaware Chancery Court has held that these transactions are subject to entire fairness review.⁴² Though admittedly a closer call, we also classify one freezeout that was executed as a reverse stock split (Semele Group) as a merger, because the requirement of board action that seems to distinguish mergers from tender offers is met, and because the Chancery Court has subjected reverse stock splits to fairness review in other (non-freezeout) contexts.⁴³ The findings reported in Part 4 remain unchanged if we exclude this transaction from the analysis.

⁴² *Hartley v. Peapod*, C.A. No. 19025 at 40 n.26 (Del. Ch. Feb. 27, 2002) ("About this whole idea that this is a *Siliconix* transaction. It's not. It's a negotiated transaction between a majority stockholder and a special committee."); *In re Emerging Communications Inc. Shareholders Litigation*, C.A. No. 16415 (Del. Ch. May 3, 2004) (freezeout merger structured as two-step tender offer subject to entire fairness review).

⁴³ *Applebaum v. Avaya*, 805 A.2d 209 (Del. Ch. 2002).

4. Results

4.1. Descriptive Statistics

Table 1 presents descriptive statistics. Table 1A shows that, before *Cox*, 24 out of 79 freezeouts (30%) were executed as tender offers, and Table 1B shows that, after *Cox*, 13 out of 66 freezeouts (20%) used this transactional form.⁴⁴ A difference in proportion test indicates that this difference is significant (although only at 90%), a result that generally holds in a multivariate framework (Table 10). This basic finding can be interpreted as providing some support for the intuition that *Cox* made the tender offer mechanism less attractive relative to the merger mechanism. However, the shift may have been muted by the fact that the unified approach was intended to level the playing field between transactional forms, not tilt transactional planners toward mergers and away from tender offers.

Table 1 also shows that a special committee was formed in virtually all freezeouts. The only instances in our sample (both pre- and post-*Cox*) in which a special committee was not formed were situations where the target company board did not have directors who were independent of the controlling shareholder (and therefore a special committee of independent directors could not be formed).

Both pre- and post-*Cox*, 90% conditions in tender offer freezeouts were very common (80+% incidence). In contrast, Panel A shows that MOM conditions in merger freezeouts existed in approximately one-third of pre-*Cox* transactions. As described in Subramanian (2007), this relatively low frequency of MOM conditions in merger freezeouts might be the result of the little marginal benefit that this condition brought about for the controller in terms of judicial intervention: *Kahn v. Lynch* provided a burden-shift on entire fairness for either SC approval or a MOM condition, but the combination of the two (arguably) provided no incremental benefit. In fact, the puzzle with respect to pre-*Cox* MOM conditions may be why they are so common, given their apparently negligible value, in doctrinal terms, to the controller. Conversations with practitioners pre-*Cox* suggest that

⁴⁴ Examining a sample of post-*Cox* freeze-outs announced between 2006 and 2010, Jain, Klingsberg, and Whoriskey (2011) find that 8 out of 27 (30%) were executed as tender offers. The difference between our incidence finding and theirs in the post-*Cox* period may be due to our longer timeframe for analysis, our exclusion of non-Delaware targets, their exclusion of offers that were announced but not completed, or their exclusion of what they term “situational outliers.”

MOM conditions were often inserted as part of a settlement with plaintiffs, allowing the plaintiffs' attorneys to argue for a "substantial benefit" to the plaintiff class that would then justify an attorneys' fee award.

Table 1 shows that the incidence of MOM conditions in merger freezeouts increased from 33% before *Cox* to 50% after *Cox*. This change may reflect the increased interest of transactional planners to fit their deals into the unified approach blueprint by providing both SC and MOM approval. However, if correct, this interpretation raises the puzzle as to why slightly more than half of mergers did *not* provide a MOM condition. We return to this question in Part 5 below.

With respect to CARs, the univariate statistics provide some suggestive evidence that the unified approach proposed in *Cox* has eliminated the gap between mergers and tender offers. Before *Cox*, the average CARs for tender offer freezeouts in all time windows were lower than the average CARs for merger freezeouts, and this difference was significant at 95% for the (-30,+1), (-30,+5), and (-30,+10) windows. After *Cox*, in contrast, CARs in tender offers were actually higher, but this difference was not statistically significant at conventional levels.

Although this work focuses on CARs, increases from the first offer to the final offers (the "bump") also changed pre- and post-*Cox*. Before *Cox*, the bump in merger freeze-outs (20%) was significantly greater than the bump in tender offer freezeouts (9%). After *Cox*, the bump was statistically indistinguishable between tender offers and mergers. Something similar occurred with premiums over market prices. Before *Cox*, premiums were higher in mergers and the difference was significant at 99% when average market prices are calculated for a period of 30 or 60 trading days prior to announcement, and at 95% when the period is 10 days before announcement. In contrast, after *Cox*, the differences were not significant for any definition of the premium. These results are consistent with the notion that special committees had more leverage in tender offer freezeouts under the unified approach.

4.2. Multivariate analysis

4.2.1. Baseline specification

Table 2 presents the results of multivariate regressions of CARs on characteristics of the deal, the target, and the controller. In this baseline specification we focus on transactions for which CRSP has available data ($n=100$). Availability of CRSP data proxies for the liquidity of the target stock, which in turn permits to focus the analysis on transactions for which CARs are most meaningful. Table 2 shows that the baseline model has reasonable fit ($R\text{-sq}=20+\%$) and is generally significant. Overall, the results are consistent with the idea that *Cox* had at least some positive effect on CARs in tender offers. In all the specifications, the estimator of difference-in-differences (“ $\text{postCox} \times \text{tender}$ ”) is positive and significant at 95% confidence. This indicates that, after *Cox*, CARs in tender offers actually increased relative to the specific benchmark of CARs in mergers.

In terms of economic significance, the difference-in-differences coefficients indicate that, after *Cox*, CARs in tender offers increased relative to mergers in magnitudes of 27.04, 29.38, 28.51, and 31.85 percentage points for the $(-30, +1)$, $(-30, +5)$, $(-30, +10)$, and $(-30, +30)$ time windows, respectively. In other words, the post-*Cox* difference between the average CAR in tender offers and the average CAR in mergers, after subtracting the pre-*Cox* difference between both transactional forms, is approximately equivalent to these magnitudes for each time window.

The regressions also show that the coefficient of the post-*Cox* variable is negative and significant at 90%. This indicates that the average CARs for all the pool of transactions declined after *Cox*. As the difference-in-differences coefficients and the univariate analysis indicate, this decline was driven particularly by the subgroup of mergers, since CARs in tender offers increased not only in relative terms (relative to mergers) but also in absolute terms (for all the time windows, CARs in tender offers were actually higher after *Cox* than before *Cox*).

Finally, the “tender offer” variable, which measures the effect of tender offers on CARs prior to *Cox*, is negative in all the specifications and significant at 95%. This is consistent with the results in Table 1, which also shows that CARs in tender offers were lower than CARs in mergers before *Cox*.

4.2.2. Alternative specifications

Because the foregoing analysis indicates that *Cox* appears to have had a positive and statistically significant effect on CARs in tender offer freezeouts, this section tests the stability of the results across seven alternative specifications: (1) weighting observations by the market capitalization of the target; (2) weighting observations by the difference between the incidence of each transactional form before and after *Cox*; (3) using the full sample, including relatively illiquid targets; (4) using a subsample that includes only pre-*CNX* transactions; (5) using standard errors that correct potential serial autocorrelation (Newey-West adjusted errors); (6) using standard errors that correct potential cross-sectional dependence (Discroll-Kraay regressions); and (7) using a Huber-White specification that controls for the effect of outliers or highly influential observations.

Table 3 shows the results of the regressions weighted by the market capitalization of the target. With this adjustment, the difference-in-differences estimator remains positive and significant at 95%. In unreported regressions, we also weight the observations by the logarithm of assets of the target and by the logarithm of deal value. In both instances, the sign and significance of the difference-in-differences estimator were similar to the results reported in Table 3.

Because the sample is not balanced (in the sense that the proportion of tender offers and mergers is not the same before and after *Cox*), the regressions were also run as weighted specifications in which the weight assigned to each observation was the incidence difference between the two transactional forms in the two periods examined here. The results are reported in Table 4, which shows that the estimations are similar to the baseline specification. Moreover, as an alternative to this weight, the regressions were also weighted by the logarithm of the incidence ratio and the logarithm of the odds ratio of each transactional form before and after *Cox*. With these specifications, the difference-in-differences estimator was again positive and significant at least at 95%.

Table 5 shows the results of regressions that are similar to the baseline specifications, except for the fact that illiquid companies (that is, companies with no CRSP data available) are also included in the database. The table shows that the sign of the difference-in-

differences estimator remains positive, although significant only at 90% confidence (except in one specification, in which it was not significant).

It might be argued that part of the increase in relative prices in tender offers after *Cox* was driven by *CNX Gas* because that decision explicitly endorsed, on the side of tender offers, the unified standard of review proposed in *Cox* (even though the Chancery Court ultimately deferred this aspect to the Delaware Supreme Court). As a consequence, the positive sign of the difference-in-differences estimator might be capturing the effect of these two decisions. Although most of the sample of this work is actually composed of transactions between *Siliconix* and *CNX*, the analysis was repeated only with pre-*CNX* transactions. As table 6 shows, the results were generally similar to the baseline estimations except in one specification, in which the *p*-value of the difference-in-differences estimator was 0.051 (and, therefore, the variable is reported as significant at 90%).

We also ran the model with Newey-West adjustments to the standard errors, which are robust to both serial autocorrelation and heteroskedasticity. As Table 7 shows, after the adjustment, the estimator of difference-in-differences keeps positive and significant at 95% in all the specifications. As an alternative to this adjustment, the baseline regressions were also run with lags of the dependent variable. With the lags, the results were again similar to the baseline estimations and, in addition, the lag was not significant in any of the models. This exercise was repeated, with similar results, using first to fourth-order lags, which were introduced sequentially into the regressions.

To control for cross-sectional dependence, the regressions were also run using Driscoll-Kraay standard errors. More specifically, this form of the standard errors was employed to test whether the results hold when it is assumed that the residuals of the model might be correlated not only *within* but also *between* different groups (in this case, particularly between groups of industries). The results are presented in Table 8, which shows that, with this adjustment, the sign and significance of the difference-in-differences estimator is similar to the baseline regressions.

As an alternative to the Driscoll-Kraay errors, the regressions were also run in unreported regressions using industry fixed effects. To this end, each target was classified into an economic sector based on its Thomson Financial macro-level industry classification,

which, in turn, is based on the Standard Industry Classification (SIC) and North American Industry Classification (NAIC) codes of the company. In this case again, the estimator of difference-in-differences was positive and significant at 95% in all the specifications.

Finally, to control for the effect of outliers or highly influential observations, the regressions were run again as Huber-White specifications, which weight all the observations in function of their residual: the larger the residual, the lower the weight assigned to that observation. With this specification, the regressions again produce a positive and statistically significant difference-of-differences estimator (Table 9).

Besides the concerns that the alternative specifications discussed above seek to address, one additional concern is potential selection bias. Controlling shareholders can decide what transactional form to use in a freezeout, which implies that there might be changes in the characteristics of the treatment and/or the control group as a result of *Cox* that can ultimately have an effect on CARs. The analysis presented in Section 4.2.1, however, does not reveal changes in the composition of the treatment and the control group that would clearly favor the hypothesis of a positive effect of *Cox*. In addition, there is no clear unobservable characteristic that should be expected to have changed as a result of *Cox* in a way that would increase CARs in tender offers relative to CARs in mergers. Furthermore, the mechanisms that could be used to correct for selection bias are limited here. Among possibly others, there is no clear group of transactions that has a stable composition over time, that produces similar economic outcomes, and that, therefore, could work as an alternative control group. In addition, there is no clear variable that could be used as an instrument in a two-stage regression or as a mechanism to address the endogeneity of the treatment choice via Heckman regressions, and matching on observables is problematic due to the size of the sample. In light of these considerations, merger freezeouts seem to provide the best control group available to estimate the treatment effect of *Cox*, despite the risk of self-selection and the fact that this risk cannot be conclusively ruled out here.

4.2.3. Deal incidence analysis

To test whether the incidence of tender offers decreased after *Cox* (especially because controllers might have seen that decision as a threat to the potential benefits associated with the exemption from entire fairness created by *Siliconix*), we ran a difference in proportion

test for the pre-*Cox* and post-*Cox* tranches of the database. As mentioned in Section 4.1, the test indicates that the incidence of tender offers is lower after *Cox*, although the difference is only significant at 90%. In addition, to control for characteristics of the target, the controller and the deal that might affect the choice of the transactional form, we ran a logit specification in which the dependent variable was the transactional form variable and the independent variable of interest was the post-*Cox* dummy. As shown in Table 10, the post-*Cox* variable was always negative and generally significant at 90%. This confirms that *Cox*, in fact, seems to have played at least some role in decreasing the incidence of tender offers after 2005.⁴⁵

5. Discussion

Taken as a whole, the results have several implications. First, for transactional practice, the results confirm practitioner intuitions that *Cox* reduced the benefits of the *Siliconix/Glassman* “get out of jail free card.” Post-*Cox*, practitioners used the tender offer freezeout mechanism less often, and, when it was used, minority shareholders received higher relative CARs compared to the pre-*Cox* period. Of course, this result must be interpreted with some caution, given the sample size. However, we take some comfort from the fact that our analysis includes all freezeouts of Delaware targets between *Siliconix* and *MFW*. In addition, we also try to mitigate small-sample concerns by running various robustness tests on our sample, including weighting our dataset by deal size, target size, and differences in incidence proportions before and after *Cox*.

In general, the results provide a case study on the responsiveness of transactional practice to changes in doctrine. When *Siliconix/Glassman* opened up a window, practitioners made use of it to the benefit of their controlling shareholder clients. When *Cox* suggested that the window might be closing, practitioners backed away. An unpublished

⁴⁵ The first model in Table 10 does not include the size of the deal because that factor might be endogenous to the choice of the transactional form, but specifications 2 and 4 present the results of regressions with that variable. On the other hand, although the required minority vote might be a factor that determines the choice of the transactional form, that aspect also can be endogenous to the structure of the deal. The required minority approval, in fact, is affected by the presence of a MOM condition, which in turn can be determined by the negotiation of the terms of the deal with the target (and, therefore, by the choice of the transactional structure). In light of this, the first two specifications in Table 10 present the results of regressions with the proportion of shares sought in the deal, but specifications 3 and 4 also present the results of regressions with the actual minority vote required. These two specifications thus assume that the decision to include a MOM provision in the terms of the deal precedes the choice of the deal structure.

version of Subramanian (2007) reported that more experienced law firms (based on prior M&A experience) were more likely to recommend the tender offer mechanism after *Siliconix/Glassman*, relative to less experienced firms.⁴⁶ In this paper, we have not collected data on law firms advising controlling shareholders because our non-finding on post-*Cox* differences in deal outcomes makes the choice of transactional form less important, and therefore less interesting to examine. Nevertheless, the overall picture illustrates how sophisticated transactional planners can and do respond to even probabilistic changes in Delaware corporate law.

In terms of policy, our findings have mixed implications. In response to Pritchard (2001) and others who argued that the *Siliconix/Glassman* contour merely created a one-time wealth transfer from minority shareholders to controlling shareholders, Subramanian (2005) described how the difference in judicial standards of review could create a social welfare loss by permitting opportunistic tender offer freezeouts at below the intrinsic value of minority shares, and preventing merger freezeouts even if above intrinsic value. In this paper we do not present direct evidence on whether some value-creating merger freezeouts were deterred, for the simple fact that deal deterrence is inherently non-observable. However, on the tender offer side, our results suggest that the unified approach has reduced the opportunity for (and possibility of) freezeouts at below intrinsic value. Put simply, by closing the gap (even probabilistically) between judicial review of tender offer freezeouts and merger freezeouts, the unified approach proposed in *Cox* has reduced and perhaps eliminated the social welfare loss identified in Subramanian (2005).

On the merger side, the incidence of MOM conditions has increased since *Cox*, from 33% to 50%, but this still leaves approximately half of all merger freezeouts without a meaningful shareholder approval requirement. One interpretation of this finding is that the benefit of providing a MOM condition, conditional on SC approval, has been unclear at best. As Chancellor Strine colorfully analogized in *MFW*: “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 on Saturday night if she completes her math or English homework

⁴⁶ This finding was removed at the suggestion of an anonymous referee. Nevertheless the *American Lawyer* summarized the working paper finding as follows: “In corporate law, of course, most of the elite firms are in New York, and charge accordingly. But are either their prestige or their prices merited? Guhan Subramanian provides evidence that they are.” Marcus (2004).

Saturday morning, she is unlikely to do both assignments Saturday morning.”⁴⁷ To translate to the freezeout context, *Kahn v. Lynch* offers a burden shift for either SC or MOM approval, but no further benefit for the inclusion of both procedural protections. The unified approach provides an incentive – business judgment review – for providing both.

Defenders of the status quo might argue that the SC approval process (which continues to be very common in post-*Cox* freezeouts) provides sufficient protection for minority shareholders, but Subramanian (2005) explains how SC approval and a MOM condition serve substantially different purposes: the former is a back-and-forth and typically hard-fought negotiation between the controller and representatives of the minority, while the latter provides a binary check against a captured SC.⁴⁸ For this reason, it is our view that the Delaware Supreme Court should squarely endorse the unified approach, so that controllers and SC’s have incentives to provide a MOM condition in order to fit the blueprint provided by the unified approach.⁴⁹

6. Conclusion

All good things must come to an end. The results presented in Subramanian (2007), Restrepo (2013), and this paper provide an illustration of this fact. In 2001, the combination of *Siliconix* and *Glassman* opened up a window for practitioners to execute a freezeout of minority shareholders without significant judicial scrutiny. Our evidence indicates that practitioners took advantage of this doctrinal contour by increasing the use of the tender offer mechanism, and paying lower prices to minority shareholders when they did so. *Cox* proposed a “unified approach” that would, in effect, close the window. Transactional planners responded by reducing the use of the tender offer mechanism and, when it was used, by increasing the deal price. The evidence, then, provides a case study on how

⁴⁷ In re MFW Shareholders Litigation, C.A. No. 6566-CS, 2013, at *4 (Del. Ch. May 29, 2013).

⁴⁸ See also In re MFW Shareholders Litigation at 8 (“A transactional structure with both these protections [SC approval and MOM condition] is fundamentally different from one with only one protection. A special committee alone ensures only that there is a bargaining agent who can negotiate price and address the collective action problem facing shareholders, but it does not provide stockholders with any chance to protect themselves. A majority-of-the-minority vote provides stockholders a chance to vote on a merger proposed by a controller-dominated board, but with no chance to have an independent bargaining agent work on their behalf to negotiate the merger price. . . . These protections are therefore incomplete and not substitutes, but are complementary and effective in tandem.”).

⁴⁹ Jain, Klingsberg and Whoriskey (2011) provide an important counterpoint, arguing that even endorsement of the unified standard would not cause greater use of MOM conditions due to the risk inherent in MOM conditions for the controller.

practitioners respond to even probabilistic changes in Delaware case law. The evidence also suggests that, while the Delaware Supreme Court may wish to endorse the unified approach in order to clean up the doctrine of freezeouts and to provide greater clarity for transactional planners, the efficiency loss identified in Subramanian (2005) need not be part of their motivation for doing so.

TABLE 1
SUMMARY STATISTICS: PRE AND POST COX FREEZEOUTS

Panels A and B of Table 1 report summary statistics for tender offer and merger freezeouts before and after *Cox Communications*. The pre-*Cox* tranche of the sample is the period from June 19 of 2001 to June 6 of 2005. The post-*Cox* tranche is the period from June 6 of 2001 to December of 2012. Standard deviations in parentheses. Dover Investments is not included in the summary statistics because it was not classified as a tender offer or as a merger. The measure for the pre-deal efficiency of the target is the company's ROA in the twelve months immediately preceding the announcement of the transaction and the measure of the size is the target's assets at the same point in time. CARs are winsorized at 5%. * significant at 10%, ** significant at 5%, *** significant at 1%.

PANEL A. PRE-COX FREEZEOUTS BY TRANSACTIONAL FORM

VARIABLE	TENDER OFFERS	MERGERS	ALL
TRANSACTION CHARACTERISTICS			
Transaction value	592.88 (1434.00)	298.59 (1239.06)	384.48 (1292.18)
Percentage of shares sought in transaction (%)	29.98 (11.83)	38.33 (12.82)	35.98 (13.07)
Stock consideration (%)	37.5	20	25
Special committee formation (%)	91.67	94.54	93.75
Non-waivable majority-of-the-minority or 90% tender condition (%)	83.33	32.69	48.68
Special committee and MOM or 90% condition	79.17	32.69	47.36842
TRANSACTION OUTCOMES			
CARs [-30, +1]	18.29**	41.38**	32.72
CARs [-30, +5]	17.35**	40.39**	31.75
CARs [-30, +10]	17.16**	39.57**	31.17
CARs [-30, +30]	17.62*	39.79*	31.48
Premiums over market prices			
1 day prior to announcement	30.06	36.02	33.75
10 day prior to announcement	25.26**	44.01**	36.85
30 days prior to announcement	19.18***	46.13***	35.84
60 days prior to announcement	13.10***	43.68***	32.01
Increase over first offer	9.30**	20.49**	15.92
Deal completion rate (%)	87.5	72.72	78.48
TARGET CHARACTERISTICS			
Size of the target (million dollars)	2953.31	844.87	1467.56
Pre-deal efficiency	-11.48	-31.63	-25.13
CONTROLLER CHARACTERISTICS			
Public status (%)	75	41.82	51.25
Financial acquirer (%)	8.33	10.91	10
Percentage of shares held prior to the transaction (%)	69.76 (12.41)	61.64 (12.84)	63.92 (13.20)
Number of observations	24	55	79

PANEL B. POST-COX FREEZEOUTS BY TRANSACTIONAL FORM

VARIABLE	TENDER OFFERS	MERGERS	ALL
TRANSACTION CHARACTERISTICS			
Transaction value	3872.44 (12871.19)	644.26 (1367.32)	1299.98 (5895.18)
Percentage of shares sought in transaction (%)	35.47 (14.17)	42.26 (14.30)	40.92 (14.42)
Stock consideration (%)	23.08	20.75	21.21
Special committee formation (%)	92.308	98.11	96.97
Non-waivable majority-of-the-minority or 90% tender condition (%)	84.61	50	57.38
Special committee and MOM or 90% condition	84.61	50	57.38
TRANSACTION OUTCOMES			
CARs [-30, +1]	21.74	19.87	20.31
CARs [-30, +5]	23.33	19.89	20.70
CARs [-30, +10]	22.03	19.25	19.90
CARs [-30, +30]	24.59	19.01	20.32
Premiums over market prices			
1 day prior to announcement	55.05	38.43	42.37
10 days prior to announcement	58.34	38.50	43.20
30 days prior to announcement	47.09	37.32	39.64
60 days prior to announcement	33.06	37.42	36.39
Increase over first offer (%)	21.96	16.27	17.73
Deal completion rate (%)	76.92	69.81	71.21
TARGET CHARACTERISTICS			
Size of the target (million dollars)	2899.94 (5791.04)	5556.31 (18115.51)	5016.74 (16370.76)
Pre-deal efficiency	-7.73 (23.15)	-8.43 (34.88)	-8.30 (32.75)
CONTROLLER CHARACTERISTICS			
Public status (%)	46.15	49.05	48.48
Financial acquirer (%)	7.69	13.21	12.12
Percentage of shares held prior to the transaction (%)	64.53 (14.17)	57.64 (14.05)	59.00 (14.23)
Number of observations	13	53	66

TABLE 2
MULTIVARIATE ANALYSIS

Table 2 reports regressions estimates on the association between freezeout CARs and the characteristics of the transaction, the target and the controller. The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. All models are run as ordinary least squares (OLS) with intercept (not reported here) and with heteroskedasticity-consistent standard errors (in parentheses). * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	27.04** (11.40)	29.38** (11.47)	28.51** (12.15)	31.85** (13.72)
Tender offer	-20.30** (7.85)	-21.65*** (8.25)	-21.94** (8.90)	-23.00** (10.80)
Post-Cox	-18.83** (8.20)	-18.93** (8.16)	-18.99** (8.34)	-21.36** (9.72)
Transaction value (logarithm of the value in millions)	-7.64** (3.46)	-7.63** (3.50)	-7.71** (3.53)	-8.35** (3.91)
Stock consideration	-18.92** (7.34)	-18.87** (7.38)	-20.92*** (7.62)	-25.29*** (9.53)
Minority approval required (%)	-0.06 (0.14)	-0.04 (0.14)	-0.02 (0.15)	0.02 (0.18)
Special committee formation	20.66** (10.26)	20.45** (10.26)	23.05** (11.23)	45.62** (17.53)
Size of the target (logarithm total assets)	4.67 (3.13)	4.95 (3.24)	4.43 (3.23)	4.27 (3.54)
Pre-deal efficiency (ROA)	0.00 (0.10)	0.03 (0.11)	0.07 (0.11)	0.17 (0.16)
Public status of controller or parent of controller	15.45* (8.99)	15.25* (8.99)	17.24* (9.42)	19.99* (10.92)
Financial acquirer	1.26 (9.40)	0.35 (8.77)	-0.89 (9.49)	3.44 (11.05)
R-squared	0.2071	0.2037	0.2023	0.201
F-statistic	2.16	1.97	1.8	2.12
P-value (Prob >F)	0.0238	0.041	0.0661	0.0267
Number of observations	100	100	100	100

TABLE 3
SENSITIVITY ANALYSIS
REGRESSIONS WEIGHTED BY MARKET CAPITALIZATION OF THE TARGET

Table 3 presents regression estimates after weighting each observation by the market capitalization of the target. The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. All models are run as OLS with intercept (not reported here) and heteroskedasticity-consistent standard errors. * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	25.84** (10.23)	28.51*** (10.55)	27.50** (11.15)	28.76** (12.11)
Tender offer	-20.42** (7.97)	-21.35** (8.44)	-21.33** (8.97)	-22.15** (10.42)
Post-Cox	-18.04** (7.55)	-18.23** (7.64)	-18.79** (7.76)	-20.07** (8.91)
Transaction value (logarithm of the value in millions)	-5.84* (3.27)	-5.96* (3.40)	-6.06* (3.37)	-6.55* (3.59)
Stock consideration	-17.30** (7.25)	-17.67** (7.36)	-19.60*** (7.25)	-21.79** (8.72)
Minority approval required (%)	-0.05 (0.12)	-0.05 (0.12)	-0.03 (0.13)	0.02 (0.15)
Special committee formation	19.34* (10.63)	20.00* (10.43)	24.09** (10.80)	49.18*** (14.94)
Size of the target (logarithm total assets)	3.67 (3.18)	4.17 (3.35)	3.80 (3.31)	3.71 (3.55)
Pre-deal efficiency (ROA)	0.00 (0.10)	0.03 (0.11)	0.07 (0.12)	0.17 (0.17)
Public status of controller or parent of controller	14.95* (8.06)	14.93* (8.25)	16.76** (8.38)	18.34* (9.60)
Financial acquirer	5.46 (7.36)	4.29 (7.36)	3.60 (8.05)	7.27 (9.43)
R-squared	0.205	0.1988	0.2008	0.1989
F-statistic	2.23	1.99	1.89	2.64
P-value (Prob >F)	0.0194	0.0389	0.0519	0.0058
Number of observations	99	99	99	99

TABLE 4
SENSITIVITY ANALYSIS
REGRESSIONS WEIGHTED BY DIFFERENCE IN TRANSACTIONAL FORM INCIDENCE

Table 4 reports the results of weighted regressions in which the weight is the difference in deal incidence between tender offers and mergers before and after *Cox*. The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. All models are run as ordinary least squares (OLS) with intercept (not reported here) and heteroskedasticity-consistent standard errors (in parentheses). * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	26.15** (11.61)	28.64** (11.65)	27.61** (12.27)	31.18** (13.78)
Tender offer	-21.19** (8.23)	-22.58*** (8.55)	-22.42** (9.05)	-23.92** (10.78)
Post-Cox	-19.34** (8.66)	-19.48** (8.55)	-19.39** (8.75)	-22.09** (10.20)
Transaction value (logarithm of the value in millions)	-5.70* (3.26)	-5.82* (3.29)	-5.82* (3.32)	-6.35* (3.66)
Stock consideration	-18.67** (7.32)	-18.44** (7.34)	-20.60*** (7.46)	-24.80*** (9.39)
Minority approval required (%)	-0.03 (0.13)	-0.02 (0.13)	0.00 (0.13)	0.04 (0.16)
Special committee formation	17.64* (10.63)	17.77* (10.40)	20.18* (11.29)	42.59** (17.40)
Size of the target (logarithm total assets)	3.39 (3.05)	3.80 (3.16)	3.19 (3.16)	3.16 (3.46)
Pre-deal efficiency (ROA)	-0.02 (0.10)	0.01 (0.10)	0.05 (0.11)	0.14 (0.16)
Public status of controller or parent of controller	13.91* (8.57)	13.82* (8.60)	15.68* (8.88)	18.31* (10.29)
Financial acquirer	1.04 (8.96)	0.44 (8.20)	-1.40 (8.76)	2.17 (9.90)
R-squared	0.1863	0.1809	0.1817	0.1809
F-statistic	2.04	1.9	1.74	2.05
P-value (Prob >F)	0.0335	0.0506	0.0772	0.0331
Number of observations	100	100	100	100

TABLE 5
SENSITIVITY ANALYSIS
LIQUID AND RELATIVELY ILLIQUID COMPANIES

Table 5 presents the results of running again the baseline regressions with liquid and relatively illiquid companies. Liquid companies are defined as companies for which there was CRSP information available and illiquid companies are targets for which this was not the case. The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. In all the models, CARs are winsorized at 5%. All models are run as ordinary least squares (OLS) with intercept (not reported here) and with heteroskedasticity-consistent standard errors (in parentheses). * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	16.90* (9.58)	18.24* (9.83)	17.81* (10.14)	17.04 (11.12)
Tender offer	-14.31* (7.49)	-14.98* (7.74)	-15.37* (8.07)	-13.55 (9.13)
Post-Cox	-7.45 (6.33)	-7.41 (6.39)	-7.50 (6.37)	-6.62 (7.20)
Transaction value (logarithm of the value in millions)	-5.16** (2.31)	-4.54* (2.30)	-4.15* (2.33)	-3.79 (2.78)
Stock consideration	-18.12*** (6.20)	-19.41*** (6.39)	-20.01*** (6.45)	-21.41*** (7.37)
Minority approval required (%)	0.03 (0.11)	0.03 (0.11)	0.05 (0.11)	0.09 (0.13)
Special committee formation	4.82 (13.09)	2.83 (13.07)	3.96 (13.12)	12.49 (15.62)
Size of the target (logarithm total assets)	2.09 (2.31)	1.73 (2.36)	1.15 (2.37)	0.46 (2.79)
Pre-deal efficiency (ROA)	0.01 (0.03)	0.01 (0.03)	0.02 (0.04)	0.01 (0.04)
Public status of controller or parent of controller	14.22** (6.21)	13.62** (6.33)	14.33** (6.35)	13.84* (7.12)
Financial acquirer	6.97 (7.33)	5.20 (7.31)	4.31 (7.63)	4.22 (8.23)
R-squared	0.1819	0.1748	0.1715	0.141
F-statistic	2.76	2.73	2.52	2
P-value (Prob >F)	0.0031	0.0034	0.0067	0.0334
Transactions	135	135	135	135

TABLE 6
SENSITIVITY ANALYSIS
PRE-CNX TRANSACTIONS ONLY

Table 6 presents the results of running again the baseline regressions with only the subset of pre-CNX transactions. The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. All models are run as ordinary least squares (OLS) with intercept (not reported here) and with heteroskedasticity-consistent standard errors (in parentheses). * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	26.52* (13.37)	28.93** (13.44)	28.04** (14.06)	33.06** (15.50)
Tender offer	-18.81** (8.27)	-21.12** (8.71)	-21.78** (9.39)	-23.15** (11.47)
Post-Cox	-18.40* (9.82)	-17.79* (9.80)	-17.43* (9.92)	-20.26* (11.45)
Transaction value (logarithm of the value in millions)	-8.12** (3.76)	-8.17** (3.81)	-8.39** (3.84)	-9.32** (4.17)
Stock consideration	-20.98** (7.95)	-21.53*** (8.04)	-23.31*** (8.43)	-28.86*** (10.18)
Minority approval required (%)	-0.06 (0.16)	-0.03 (0.16)	0.00 (0.17)	0.05 (0.20)
Special committee formation	19.60* (10.92)	20.07* (10.98)	23.13* (11.67)	46.39*** (17.38)
Size of the target (logarithm total assets)	4.39 (3.41)	4.84 (3.54)	4.42 (3.53)	4.32 (3.77)
Pre-deal efficiency (ROA)	0.01 (0.10)	0.04 (0.10)	0.09 (0.11)	0.19 (0.16)
Public status of controller or parent of controller	15.61 (10.62)	16.50 (10.64)	18.55 (11.20)	21.93* (12.68)
Financial acquirer	-1.40 (12.14)	-0.12 (11.31)	0.18 (12.31)	7.73 (14.07)
R-squared	0.2217	0.216	0.2133	0.2219
F-statistic	1.95	1.77	1.67	2.1
P-value (Prob >F)	0.0463	0.0738	0.098	0.0304
Transactions	87	87	87	87

TABLE 7
SENSITIVITY ANALYSIS
NEWKEY-WEST ADJUSTED REGRESSIONS

Table 7 presents the results of running the baseline specification with Newey-West standard errors (in parentheses). The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	27.04** (10.90)	29.38*** (10.66)	28.51** (11.33)	31.85** (13.02)
Tender offer	-20.30*** (7.13)	-21.65*** (7.56)	-21.94*** (8.26)	-23.00** (9.90)
Post-Cox	-18.83** (8.22)	-18.93** (8.16)	-18.99** (8.30)	-21.36** (8.94)
Transaction value (logarithm of the value in millions)	-7.64** (3.64)	-7.63** (3.68)	-7.71** (3.78)	-8.35* (4.35)
Stock consideration	-18.92** (7.37)	-18.87** (7.28)	-20.92*** (7.52)	-25.29*** (9.59)
Minority approval required (%)	-0.06 (0.16)	-0.04 (0.15)	-0.02 (0.16)	0.02 (0.19)
Special committee formation	20.66** (10.33)	20.45* (10.59)	23.05* (11.80)	45.62** (18.27)
Size of the target (logarithm total assets)	4.67 (3.06)	4.95 (3.14)	4.43 (3.08)	4.27 (3.24)
Pre-deal efficiency (ROA)	0.00 (0.12)	0.03 (0.12)	0.07 (0.13)	0.17 (0.19)
Public status of controller or parent of controller	15.45* (7.86)	15.25* (7.76)	17.24** (8.28)	19.99** (9.87)
Financial acquirer	1.26 (8.06)	0.35 (7.32)	-0.89 (7.92)	3.44 (10.73)
<i>F</i> -statistic	2.26	2.1	1.68	1.91
<i>P</i> -value (Prob >F)	0.0176	0.028	0.092	0.0489
Number of observations	100	100	100	100

TABLE 8
SENSITIVITY ANALYSIS
DRISCOLL-KRAAY REGRESSIONS

Table 8 presents the results of running the baseline specification with Driscoll-Kraay standard errors (in parentheses). The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	27.04** (10.82)	29.38*** (10.59)	28.51** (11.27)	31.85** (13.07)
Tender offer	-20.30*** (7.19)	-21.65*** (7.66)	-21.94** (8.42)	-23.00** (10.04)
Post-Cox	-18.83** (8.54)	-18.93** (8.50)	-18.99** (8.51)	-21.36** (8.84)
Transaction value (logarithm of the value in millions)	-7.64** (3.64)	-7.63** (3.71)	-7.71** (3.82)	-8.35* (4.44)
Stock consideration	-18.92*** (7.21)	-18.87*** (7.12)	-20.92*** (7.40)	-25.29*** (9.55)
Minority approval required (%)	-0.06 (0.15)	-0.04 (0.14)	-0.02 (0.15)	0.02 (0.18)
Special committee formation	20.66** (10.24)	20.45* (10.60)	23.05** (11.41)	45.62** (17.90)
Size of the target (logarithm total assets)	4.67 (3.24)	4.95 (3.36)	4.43 (3.30)	4.27 (3.52)
Pre-deal efficiency (ROA)	0.00 (0.12)	0.03 (0.12)	0.07 (0.13)	0.17 (0.19)
Public status of acquirer or parent	15.45* (8.42)	15.25* (8.40)	17.24* (8.90)	19.99* (10.51)
Financial acquirer	1.26 (8.21)	0.35 (7.58)	-0.89 (8.20)	3.44 (11.10)
R-squared	0.2071	0.2037	0.2023	0.201
F-statistic	2.37	2.24	1.74	1.95
P-value (Prob >F)	0.0119	0.0181	0.0754	0.0421
Number of observations	100	100	100	100

TABLE 9
SENSITIVITY ANALYSIS
HUBER-WHITE ROBUST REGRESSIONS

Table 9 presents the results of running the baseline specification with Huber-White standard errors (in parentheses). The dependent variables are the target's CARs over the time windows -30 to +1, -30 to +5, -30 to +10, and -30 to +30 trading days relative to the announcement of the transaction. * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	CARs [-30, +1]	CARs [-30, +5]	CARs [-30, +10]	CARs [-30, +30]
Tender offer × Post-Cox	24.78** (11.98)	30.73*** (11.56)	26.02** (12.71)	28.82** (13.42)
Tender offer	-20.29** (9.42)	-24.09*** (9.08)	-21.95** (9.99)	-24.66** (10.55)
Post-Cox	-15.95** (7.01)	-18.90*** (6.76)	-16.05** (7.43)	-18.57** (7.85)
Transaction value (logarithm of the value in millions)	-3.93 (2.67)	-3.37 (2.58)	-4.13 (2.84)	-2.26 (3.00)
Stock consideration	-16.67** (6.92)	-10.89 (6.67)	-19.72*** (7.34)	-13.36* (7.75)
Minority approval required (%)	0.03 (0.12)	0.01 (0.12)	0.06 (0.13)	0.11 (0.13)
Special committee formation	12.32 (16.40)	13.09 (15.81)	15.09 (17.39)	34.47* (18.37)
Size of the target (logarithm total assets)	3.08 (2.64)	3.78 (2.54)	2.72 (2.80)	2.24 (2.95)
Pre-deal efficiency (ROA)	-0.05 (0.06)	-0.18*** (0.06)	0.03 (0.07)	-0.15** (0.07)
Public status of acquirer or parent	18.03** (7.00)	13.57** (6.75)	20.25*** (7.42)	13.68* (7.84)
Financial acquirer	10.32 (10.57)	5.38 (10.19)	6.77 (11.21)	6.08 (11.84)
<i>F</i> -statistic	2.04	3.15	1.86	2.31
<i>P</i> -value (Prob >F)	0.0339	0.0013	0.0553	0.0153
Number of observations	100	100	100	100

TABLE 10
DEAL INCIDENCE

Table 10 presents the results of regression estimates on the association between the transactional form that controllers choose to execute a freezeout and characteristics of the deal, the controller, and the target. All the specifications are run as logit models, but the results are similar with probit specifications. Because the value of the transaction might be endogenous to the transactional form chosen by the controller, the models are run with and without that independent variable. * significant at 90% confidence; ** significant at 95% confidence; *** significant at 99% confidence.

Variable	Model 1 All targets	Model 2 All targets (including deal value)	Model 3 All targets with minority vote required	Model 4 (Minority vote and deal value included)
Post-Cox	-0.76 (0.46)	-0.76* (0.46)	-1.23* (0.65)	-1.40* (0.72)
Percentage of shares sought in transaction (natural logarithm)	-0.04** (0.02)	-0.04** (0.02)		
Minority shares required to approve the transaction			0.12*** (0.03)	0.14*** (0.03)
Deal value (natural logarithm)		0.12 (0.19)		-0.90** (0.36)
Stock consideration	-0.08 (0.53)	-0.19 (0.54)	0.65 (0.78)	1.02 (0.83)
Total assets (natural logarithm)	0.32** (0.11)	0.21 (0.20)	0.33* (0.18)	1.15*** (0.40)
Pre-deal efficiency (ROA)	0.00 (0.00)	0.00 (0.00)	0.00 (0.01)	0.01 (0.01)
Public status of acquirer or parent	0.40 (0.51)	0.41 (0.54)	0.29 (0.70)	1.19 (0.84)
Financial acquirer	0.38 (0.75)	0.60 (0.78)	0.90 (1.05)	1.49 (1.21)
Pseudo R-squared	0.1322	0.1395	0.546	0.5969
LR chi2	21.62	22.72	88.62	96.52
Prob > chi2	0.003	0.0037	0	0
Number of observations	143	142	141	140

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