GLASS LEWIS

Approach to Financial Transactions

Covering Mergers & Acquisitions, Contested Meetings, and Other Financial Proposals

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Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over $40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

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The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

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Mergers & Acquisitions

Some of the most important votes an investor will consider and cast are on mergers and acquisition transactions. These are economic events when the value of a stock can be substantially increased or damaged.

Glass Lewis evaluates proposed mergers and acquisitions transactions based on all relevant facts and circumstances related to both the process and substance of the transaction. In particular, in analyzing these transactions, Glass Lewis looks for four hallmarks of a good transaction: (i) an independent board of directors (or, where perceived or actual conflicts of interest dictate, an independent committee of the board) has recommended the transaction; (ii) the process followed to develop the transaction was one that was reasonably likely to yield the best deal; (iii) an independent financial adviser has rendered a favorable opinion predicated on economically and financially sound assumptions and methodologies; and (iv) an appropriate value has been offered to shareholders. In short, we seek to determine whether a proposed transaction is fair overall to all investors.

Independent Board or Committee Recommendation

We believe a board of directors should provide a recommendation as to whether shareholders should vote for or against a proposed transaction. In addition, we believe the board should disclose sufficient details supporting such a recommendation, including the strategic and financial rationale behind the transaction. Ideally, we like to see the formation of a special committee of independent directors or, at the very least, that interested directors (such as executive officers or other conflicted board members) have recused themselves from discussions and voting. If the deal is considered a related party transaction, it is imperative that the board take adequate and appropriately disclosed steps to ensure that the process is fair for unaffiliated shareholders, including through the establishment of an independent committee and the engagement of an independent financial adviser.

Process

In considering a strategic transaction such as a merger or acquisition, a board and shareholders must decide whether it is the right time to pursue such an alternative. For instance, an acquiring company should consider whether the business has exhausted its organic growth opportunities, and whether the acquisition will bolster the company's competitive position or possibly yield compelling synergies. A target company should consider whether shareholders are being offered an appropriate value in exchange for their shares. If the target company is receiving equity as consideration, it should further consider whether the opportunity for greater value as holders of the enlarged and combined company are improved relative to maintenance of the status quo. Moreover, we consider the appropriateness of the timing of such an agreement, including whether the company is in good health or under operational or financial duress. In our view, the sale of a company which has recently struggled operationally, or suffered a nontypical, short-term impact to its share price, may not garner the highest valuation in a quick sale. In such cases, we consider whether greater value could be achieved as a stand-alone entity or by pursuing a similar sale process at a later time.

When a company considers a change in control transaction, we generally believe shareholders are best served by a process engineered to solicit and invite expressions of interest from multiple likely suitors on a pre-execution basis. In our opinion, all things being equal, such a sale process yields the highest possible valuation for a company.

We recognize there are some cases in which a company's size may inherently deter multiple suitors, or when an ownership structure (such as a controlling shareholder), may prohibit potential third-party bidders. In addition, we occasionally see transactions in which existing commercial relationships between the target and acquirer may provide strategic benefits to the parties that would likely be absent in a transaction with an outside third party. These factors are necessarily considered as part and parcel of our broader review.

With respect to the negotiation process, we scrutinize transactions in which members of management have participated in negotiations with the acquirer, or their own employment and/or change of control agreements will be materially affected by the transaction. When executive officers have interests in the transaction that differ from unaffiliated shareholders, we believe shareholders would be better served by a process in which negotiations are conducted solely by independent directors.

Independent Financial Opinion

We believe an independent financial adviser's opinion can provide important information regarding the value and fairness of a transaction. We look closely at the adviser's assumptions, data selection, and methodology to determine if the opinion letter has been reasonably prepared and is conclusive. In addition, we judge whether the results of the adviser's analyses paint a favorable picture of the deal for the company's shareholders.

Appropriate Value

In addition to evaluating the aforementioned advisory opinion, we potentially may conduct our own valuation analyses to evaluate a proposed transaction. Such analyses can be valuable information to both buyers and sellers in determining whether to support a proposed merger agreement.

For example, in undertaking an examination of the premium value being offered to equityholders in a transaction (from both a buyer and seller perspective), we consider the offer price over multiple measures of the company's trading history (ex., one-day, 10-day, 30-day volume weighted average price, etc.). In addition, we pay particular attention to the company's true unaffected share price date and whether it differs from the formal transaction announcement date when evaluating implied premiums.

While premiums are perhaps the most universally cited quantitative measure of a deal's purported attractiveness to shareholders, we also examine the underlying valuation multiples implied by any executed agreement. In this respect, we may consider the proposed consideration as a function of the company's trailing and projected financial metrics. Under such analyses, we compare the resulting implied transaction multiples to the company's historical stand-alone trading valuation and the valuations of the company's closest peers.

We may also undertake a precedent transactions analysis to review valuations offered in comparably sized, similarly structured industry deals over specific time periods. In addition to implied valuation multiples, we may consider the appropriateness of the observed equity premiums relative to those paid in the precedent set of transactions.

Other Factors

We closely examine the following aspects of these proposed transactions, among other considerations:

- Does the strategic rationale appear sound?
- Is the transaction expected to be accretive or dilutive to financial metrics? For what time frame?
- What is the value of potential executive/director payments relative to the transaction's equity value and the premium offered to shareholders? Is this relative value so high that these payments could represent a serious conflict of interest?
- What is the value of termination fees relative to the total deal value? Is this relative value so high that it could deter a third party from approaching the board with a competing offer?
- Was there a significant favorable or unfavorable stock price reaction to announcement of the deal relative to the index? How have the companies' shares performed relative to peers and indices since announcement? If stock consideration is being offered, has the implied value of the consideration changed substantially since announcement?
- Are there any lawsuits, shareholder opposition or significant regulatory concerns related to the transaction?

Contested Meetings

When a dissident shareholder decides to nominate one or more candidates to a company's board in opposition to management nominees, the relevant meeting of shareholders is considered "contested." In these instances, we expect the dissident shareholder to disclose detailed information regarding its rationale for initiating a proxy contest and its plan for improvement at the company. Such disclosure is especially relevant in those situations in which a dissenting investor seeks to replace a sitting CEO, reconstitute at least a majority of the board, or both.

We generally believe incumbent management, with access to more and better information regarding the company, should be given the benefit of the doubt regarding its strategic business decisions. As a rule, we are reluctant to recommend the removal of incumbent directors, or in favor of dissident nominees, unless one of the following two things has occurred: (i) there are serious problems at the company and the newly proposed nominees have a clear and realistic plan to solve these problems; or (ii) the current board has undertaken an action clearly contrary to the interests of shareholders (or failed to undertake an action clearly to the benefit of shareholders).

In addition to carefully evaluating the dissident's and board's respective arguments and proposed changes, we conduct our own detailed analyses concerning the company's historical operating and stock performance relative to peers and/or indices. We also consider corporate governance issues, such as the company's governance and compensation practices and the board's historical responsiveness to shareholders. Equally, we evaluate a dissident's arguments and appropriateness of the changes sought as well as the nominees it puts forward for election.

In the case of contested merger agreements, we necessarily consider a separate set of unique factors, beginning with nature of the dissent. We consider whether the transaction is being opposed by an existing investor, a collection of investors dissatisfied with the executed terms or, alternatively, a separate bidder seeking to obstruct a given arrangement in favor of advancing its own bid. Often, these situations can involve a combination of: dissenting shareholders and alternative suitors / combination of these factors. In these respects, we would emphasize the board should still establish, in clear terms, the very same procedural, strategic, and quantitative bases we would otherwise anticipate in the absence of a contested solicitation. We would further expect the board, in seeking to defend an executed arrangement, to provide investors with reasonably contextualized responses to the core criticisms levelled by a given dissident.

Vote Recommendations

We recognize information disclosure requirements vary across markets and trading exchanges. Nonetheless, in formulating our vote recommendations to clients, Glass Lewis will consider recommending an abstain or against vote on a proposal if shareholders are unable to locate adequate public disclosure of key aspects of the transaction, supporting rationale, or supporting evaluations as outlined in the relevant section of this policy. That being said, mere disclosure of stated qualitative and quantitative rationale for a transaction does not mean the terms are satisfactory, in our view. We believe boards can bolster investor support by providing transparency to the strategic reasoning for a transaction, showing it was arrived at through a rigorous process conducted by independent directors, and proving the beneficial quantitative aspects for the company and shareholders.

Additional Proposal Types

Divestitures

In addition to evaluating divestitures based on the above framework, we evaluate the relevant company's remaining operations following the transaction to determine if the company will continue to have a viable business going forward. We also seek to identify any significant changes to the company's risk profile. To this end, we calculate the historical contribution of the disposed assets to the group's income statement and balance sheet. Additionally, we consider the planned use of proceeds from the transaction, whether it be to align the company's capital structure, for working capital purposes, or for return to shareholders.

Spin-offs

Strategically, the spin-off and public listing of a portion of a company's operations which diverges from the core business can allow the spun-off entity to achieve its full valuation potential. From a quantitative perspective, we expect that shareholders will receive shares in the spun-off entity on a *pro rata* basis. If the company is also conducting a concomitant private or public offering of shares in the newly spun-off entity, we assess whether shareholders will retain sufficient shares in the spun-off entity to benefit from the publicly listed status. We also look at the company's remaining operations following the spin-off to determine if the company will continue to have a viable business going forward or if there will be a significant change in the company's risk profile. To this end, we calculate the historical contribution of the spun-off assets to the group's income statement and balance sheet. We may also consider the resulting capital structure of the company post-closing.

Private Placements

In the absence of any pre-emptive rights architecture, we recognize private placement transactions will necessarily dilute the equity stake held by existing shareholders who do not participate in the placement. Capital raising of this nature is frequently varied and complex, including by virtue of region-by-region regulatory provisions and listing rules. Bearing that in mind, to the extent the placement does not clearly result in a change of control, either by virtue of a simple majority or as an extension of some lower control threshold governed by applicable regulation, the M&A team will generally defer to the codified policy positions of each regional research team, providing input as requested.

To the extent the placement in question will result in a change of control, the M&A group will undertake a separate review. In principle, we are inclined to take a rather dim view of equity capital raisings which transfer control of the company to a new or existing investor in a manner that does not contemporaneously transfer a clear and tangible premium to the remainder of the company's investors. Nevertheless, this perspective may be partially or wholly mitigated by a number of contextual considerations, including the possible presence of exigent circumstances, including extreme funding shortfalls driven by exogenous factors or the possibility of near-term insolvency. Reviews of these transactions will necessarily consider an assessment of codified financial terms and implied dilution, but will not be subject to bright line tests in those regards.

Debt Restructurings

Depending on the nature of the debt restructuring (e.g. debt to equity conversion, refinancing, straight bond converted to convertible bond), we examine the effects of the restructuring on ordinary shareholders, such as potential equity dilution and, most particularly, the degree to which such a restructuring may result in a change of control of the company. We also look at the board's rationale, the board's review of alternative transactions (if disclosed), and whether a conclusive opinion from a financial adviser has been obtained. In general, we offer increased policy flexibility to the extent rejection of a proposed restructuring would be expected to result in insolvency for the subject firm.

Fund Mergers

When one or more funds within a fund family are merged into funds within a different fund family, we want to establish that the merger will not have a negative impact on shareholders. Typically, shareholders will receive shares in the acquiring fund with an aggregate net asset value equal to those currently held in the existing fund. In our view, the acquiring fund should have an investment objective and investment strategies/policies/restrictions that are the same or substantially similar to the existing fund.

In addition, we believe that the total annual fund operating expense ratio for a given share class of the existing fund should not increase by more than 10% following the merger. In some cases, the acquiring fund's adviser will agree to waive fees or reimburse expenses for a specified period of time so that the acquiring fund's net operating expense ratio is the same as the existing fund. However, if the waiver is set to expire on a certain date and it is unclear whether the adviser would continue to waive the fees/reimburse expenses, then we do not believe that an interim waiver is automatically sufficient in addressing an increase in the fund's total annual operating expense ratio.

When the acquiring fund is not newly created (i.e., already exists within the acquiring fund family), we compare the financial performance of the existing fund to that of the acquiring fund. For U.S. funds, if the acquiring fund is incorporated in a different state from the existing fund, we conduct a comparison of shareholder rights and note any points of concern.

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