The Cost of Supermajority Target Shareholder Approval:
Mergers versus Tender Offers

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Abstract

Obtaining target shareholder support for an acquisition is a central tenant of corporate governance, yet there is little empirical work studying how variation in the required level of shareholder support affects acquisition outcomes. Shareholder approval – especially supermajority – could constrain managerial self-dealing, but it can also holdup a beneficial deal. To investigate this tradeoff we take advantage of a 2013 Delaware law lowering the authorization threshold for two-step tender-offers. We find that lower authorization requirements result in an increase in tender-offers for Delaware targets. Even though the law reduces target shareholders' voting rights, they do not appear to be harmed by the change. Indeed, acquisition premiums and target cumulative abnormal returns are higher for Delaware targets acquired after passage of the new law. Our results suggest that the supply of equity is not perfectly elastic and caution that supermajority voting can increase the risk of shareholder holdup and lead to inefficient choice of deal structure.

1. Introduction

The sale of a firm is a critical event that implicates multiple layers of corporate governance protection.[1] Focusing on decision-making rights, an acquisition requires support from at least two groups at the target firm: (i) the board of directors (including key executives), and (ii) shareholders. While there is an extensive literature examining manager's and director's use of this power to holdup an efficient sale (e.g. Bebchuk & Cohen, 2005; Brickley, Coles, & Terry, 1994; Harris & Raviv, 1988) or bargain for private benefits (Hartzell, Ofek, & Yermack, 2004), shareholder approval has received less attention. Prior studies have examined the relatively atypical use of voting by shareholders of the *acquiring* firm as a possible check on empire-building and on overpayment (Becht, et al. 2014; Kamar, 2011). But the ever-present requirement of target shareholder approval has been overlooked. In particular, prior work has not examined how variation in the threshold level of required shareholder support affects the structure and economic terms of acquisition.

Though it is often presumed that shareholders will support any sale that includes a significant premium, this need not follow. Even when bidders offer large premiums, shareholders can sometimes benefit by withholding support. For example, if a sale creates acquirer surplus a target shareholder may withhold support to seek judicial appraisal or to hold a minority position alongside the acquirer after the offer closes, freeriding on the acquirer's effort to add value (Grossman & Hart, 1980). As evidence of this, hedge funds have become increasingly willing to vote against acquisitions if they believe they can garner higher valuation in a judicial appraisal proceeding than the price offered by a bidder.[2] Recent efforts to engage in appraisal arbitrage (Korsmo & Myers, 2015) compound this concern. Thus, even if shareholders believe a proposed sale is better than no deal, they might still withhold support.

The risk of shareholder holdup increases in deals which require supermajority support.[3] In such cases holdup could also arise because shareholders have heterogeneous views regarding valuation (Bagwell,

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[1] In addition to target decision-making rights – the focus of this study – acquisitions also require SEC disclosure, antitrust review, and in some cases regulatory approval.

[2] See Latham & Watkins M&A Commentary, *Shareholder pushback on M&A Deals*, December 2007 (https://www.lw.com/upload/pubContent/_pdf/pub2065_1.pdf). The model in Grossman & Hart (1981) primarily applies to tender offers, but with the prospect of appraisal litigation the model's intuition is also relevant to mergers more broadly. A shareholder might decline to vote for a sale to preserve her right to appraisal. She may believe, for instance, that she can capture a larger fraction of the merger surplus by bringing an appraisal suit and arguing that the intrinsic value of the target exceeds the acquisition price. The threat of appraisal encourages free-riding unless the entire surplus goes to the target firm.

[3] Separate class voting also increases the risk of holdup, as it allows a single class of shareholders to block a transaction favored by the vast majority of investors. In the context of separate class voting, however, the holdup problem can sometimes be solved by renegotiating the financial claims of each class (Broughman & Fried, 2010).

1992) or because of difficulty collecting votes (tenders) from retail investors.[4] Indeed, modern corporate law statutes that allow a firm to be sold with a majority shareholder vote were originally passed as a response to holdup problems that arose under the 19th century common law rule that required unanimous shareholder support to sell or liquidate a firm.[5]

To address the risk of shareholder holdup, we exploit variation in shareholder approval thresholds for the two primary methods of acquisition in the US: (i) merger and (ii) two-step tender offer. Prior to August 2013, two-step tender offers required support from 90% of outstanding shareholders, compared to mergers that only require 50% shareholder support. In August 2013, however, Delaware's legislature passed a new code provision, section 251(h) of the Delaware General Corporation Law (the DGCL), enabling bidders to effectuate a two-step tender offer with only 50% shareholder approval. Importantly, the new law only applies to target firms incorporated in Delaware, thus giving us a treatment group (Delaware targets) and a control group (non-Delaware targets) for testing the impact of shareholder authorization requirements on deal structure and acquisition premiums.

We consider two hypotheses. The first we label "Manager Self-Dealing," which posits that reducing shareholder authorization thresholds increases the scope for self-dealing by senior management. Executives of the target firm might be willing to accept a lower premium in a two-step tender offer provided they receive a merger bonus or a retention contract (see e.g. Hartzell, Ofek, and Yermack, 2004). The new rules under DGCL § 251(h) could facilitate this type of collusion, since the acquirer no longer needs to convince 90% of shareholders to tender their shares, and thus can allocate fewer funds to the merger premium and more to executive side-payments. Also, the speed of a two-step tender offer increases the difficulty for an alternative acquirer to make a topping bid (Offenberg & Pirinsky, 2015), removing one of the primary constraints limiting merger side-payments to target executives (Broughman, 2015). Thus, relaxing authorization thresholds could result in lower acquisition premiums and increased use of executive side-payments in tender offers.

The second hypothesis we label "Shareholder Holdup." It suggests that lowering the authorization threshold could collectively benefit shareholders by reducing the risk that a minority of target shareholders

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[4] A 2014 report by Broadbridge, for example, indicates that the voting rate for individual retail investors is about a 30%, compared to 80 to 94% for institutional shareholders.

[5] See Thompson (1995) and Thompson & Edelman (2009). The common law unanimity requirement was based on the view that a corporate charter was a contract between the firm and its shareholders, and like other contracts the charter could not be amended without consent of all parties. The unanimity requirement may have been sensible for businesses with a small number of shareholders. But, as equity became more widely held in the early 20th century the unanimity requirement became unworkable, as it gave a single shareholder the ability to block a transaction desired by most shareholders.

can effectively holdup a beneficial tender offer or force it to be inefficiently structured as a long-form merger instead. Provided shareholders have heterogeneous valuations (Bagwell, 1992), only the most successful acquisitions could be structured as tender offers, as these would be the only deals creating a large enough surplus to justify paying the reservation price demanded by the 90th percentile shareholder.[6] This highlights an alternative explanation – selection on deal surplus – for the finding that tender offer acquisitions are associated with higher acquisition premiums than mergers (Schwert, 1996; Officer, 2003; Moeller et al 2004; Offenberg & Pirinsky, 2015). The shareholder holdup hypothesis predicts that reducing authorization requirements causes a substitution from long-form mergers to two-step tender offers because targets and bidders are now able to choose the more efficient structure rather than being forced into a merger due to potential hold-up problems with a tender offer. Furthermore, as authorization thresholds are relaxed tender offers become feasible for deals with a smaller surplus, and consequently premiums for tender offers and mergers should begin to converge.

To test these predictions we use Merger Metrics to construct a sample of all acquisitions for publicly-held US targets from 2003 to 2015. Our sample includes 2,508 acquisitions of which 2,071 are structured as traditional mergers and 437 as tender offers. For each acquisition we collect data on the acquisition premium, target and acquirer abnormal returns, the target's state of incorporation, and other key features of each deal.

Consistent with both hypotheses we find an increase in tender offers for Delaware targets acquired after passage of DGCL § 251(h). This effect is pronounced when compared to the infrequent use of tender offers outside Delaware over the same time period. For example, after August 2013 we find that 34% of acquisitions involving Delaware targets are tender offers, compared to only 3% for targets incorporated outside Delaware. Put another way, after August 2013 a Delaware target is more than ten times as likely to be acquired via tender offer as compared to a typical target from the control group.

Even though DGCL § 251(h) reduces voting rights, shareholders do not appear to be harmed by the change. Indeed, acquisition premiums and target cumulative abnormal returns are significantly higher and deal completion times significantly faster for Delaware targets acquired after passage of the new law. We also find that bidders' cumulative abnormal returns are significantly higher and bidders capture a larger relative share of the combined gains when acquiring a Delaware corporation after passage of 251(h). The fact that both groups of shareholders appear to benefit from the new law suggests that the parties are able to choose a more efficient deal structure when the threat of holdup is reduced. We do not find evidence

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[6] Consistent with this view, Dong et al. (2006) find that tender offers are more likely to be used for acquisitions of undervalued firms, and Offenberg, Straska and Waller (2014) find that synergies are larger in tender offer deals compared to mergers.

supporting the manager self-dealing hypothesis. The CEO of the target firm is no more likely to be retained or receive a merger side-payment after shareholder authorization requirements are relaxed.

On average, DGCL § 251(h) leads target shareholders to receive a higher acquisition premium. However, this result is not due to premiums increasing for tender offers, but rather because tender offers, which typically have a higher premium than mergers, are more common in Delaware after passage of DGCL § 251(h). Interestingly, premiums for tender offers and mergers have begun to converge somewhat for Delaware targets since 2013. These results are broadly consistent with the shareholder holdup hypothesis.

Our study makes several contributions to the existing literature. First, we contribute to the literature on deal structuring (tender offers vs mergers), expanding on the recent work by Offenberg & Pirinsky (2015). They argue that tender offers are associated with higher deal premiums because of asymmetric information. Under their model the choice of a bidder to use a tender offer signals a desire to avoid an auction and a strong synergistic component. In response to this signal, the target raises its reservation price, leading to higher premiums in tender offer deals. We find that the difference in average premiums between tenders and mergers is driven, at least in part, by higher deal authorization thresholds that historically applied to tender offers. Since the removal of the supermajority authorization requirement, the premiums on tender offers and mergers involving Delaware targets have begun to converge.

Relatedly, Grossman and Hart (1980) provide an alternative explanation for higher premiums in tender offer deals. They suggest that tender offers are subject to a free-rider problem as each shareholder of the target firm would rather hold its shares and capture the entire value added by the bidder than tender at any lower price. Grossman and Hart (1980) has been followed up by a number of other "free-riding" models for tender offer pricing (Marquez & Yilmaz, 2008; 2012; Holmstrom & Nalebuff, 1992; Cornelli and Li, 2002; Bagnoli & Lipman, 1988). Our analyses suggest that the hold-out problem in tender offers could be driven as much by supermajority authorization requirements as by strategic freeriding.

Second, we add to the literature on shareholder voting in acquisitions. Prior studies have examined voting by shareholders of the acquiring firm as a check on empire-building and on overpayment (Becht, et al. 2014; Kamar, 2011; Burch, et. al. 2004). Scholars have also explored tradeoffs associated with managerial ownership of a target's voting stock (Stulz, 1988) and the effect that dual-class common or other deviations from one share–one vote can have on corporate control contests (Grossman & Hart, 1988; Harris & Raviv, 1988). But to our knowledge, prior studies have not investigated the impact of different levels of target shareholder authorization. We find that supermajority authorization may lead to undesirable holdup or inefficient deal restructuring.

Our analyses also speaks to whether Delaware laws improve firm value. There is an extensive debate whether Delaware corporate law maximizes shareholder value, or possibly benefits managers at shareholder expense.[7] Empirical studies find some shareholder benefits associated with Delaware incorporation (Daines, 2001), but also note various aspects of Delaware takeover law that undermine shareholder value (Choi et. al. 1989) and suggest that businesses migrate to Delaware because it provides laws which entrench managers of target firms (Bebchuk and Cohen, 2003). By contrast, our results suggest that DGCL § 251(h) has a net positive effect for target shareholders of firms incorporated in Delaware, and facilitates improved deal structuring.

Finally, we contribute to the literature on the supply curve for equity. The efficient market hypothesis assumes that all shareholders have the same reservation price, and consequently, a flat supply curve (perfect elasticity). Some studies have questioned this view, finding evidence from Dutch Auctions (Bagwell, 1992; Comment and Jarrel, 1991) suggesting an upward slopping supply curve for corporate equity. Our findings add further evidence consistent with upward slopping supply. This result suggests particular caution when considering supermajority authorization requirements as they may increase risk of holdup and lead to inefficient deal structuring.

The remainder of this article is organized as follows. Section 2 provides background regulations affecting the choice between mergers and two-step tender offers. Section 3 covers the theoretical background on mergers and the motivation for our hypotheses. We discuss our data in Section 4 and empirical results in Section 5. Section 6 provides additional discussion and concludes the paper.

2. Merger Structure and Shareholder Approval

In the US there are two basic methods to acquire a publicly-held company: merger and tender offer. This section describes background rules and regulations, with particular emphasis on the shareholder approval requirements that apply to each method of acquisition.

In a traditional merger (a.k.a. a long-form merger) the target firm must file a proxy statement – a disclosure document – with the SEC and hold a shareholder vote. The particular level of shareholder approval required depends on state corporate law and on the terms of the corporate charter. The charter

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[7] The former view is often referred to as the "race-to-the-top" suggesting that competition drives Delaware to provide laws which benefit shareholders (Winter, 1977; Romano 1985), while the later view is referred to as the "race-to-the-bottom" suggesting that managers control the incorporation decision and they select Delaware because it protects their interests, possible at the expense of shareholders (Cary, 1974; Bebchuk, 1992; Bar-Gill, Barzuza, and Bebchuk, 2006).

cannot lower the minimum threshold vote required by state law (typically 50%),[8] but it can require supermajority approval to authorize a merger. Despite this freedom, publicly-traded firms rarely modify their charter to opt into supermajority authorization (Hansmann, 2006). The result is that deal planners typically need to obtain an affirmative vote from a simple majority of outstanding shareholders to authorize a long-form merger.

By contrast, tender offer acquisitions are structured to avoid the need for a shareholder vote altogether. In what is referred to as a "two-step" deal, the bidder will (i) make a tender offer conditional on the participation on a high fraction (historically 90%) of the existing target-firm shares, and will (ii) then use a short-form merger on the backend to acquire all remaining non-tendered shares at the tender offer price. Unlike a long-form merger, a short-form merger does not require a shareholder vote or proxy statement filing with the SEC. Rather, the short-form merger is a simplified process that removes the need for a shareholder vote if the acquirer already owns a large supermajority (at least 90%) of the target's stock. The 90% ownership threshold was required for short-form mergers in all US states prior to August 2013.

Historically, tender offers were used in hostile takeovers as a mechanism to bypass an unreceptive board of directors. However, judicial acceptance of the poison pill, state antitakeover laws, and use of staggered boards have subsequently forced bidders to negotiate with the board of directors even when conducting a tender offer (Schwert, 2000; Andrade, Mitchell, and Stafford, 2001). Today tender offers primarily function as an alternative structure for a friendly acquisition, used primarily for faster completion times. By avoiding the need for a proxy statement filing and accompanying shareholder vote,[9] two-step deals on average close 73 days faster than traditional mergers (Offenberg & Pirinsky, 2015). Quicker completion is particularly valuable as a way to preempt a topping bid from a rival acquirer.

Despite this benefit, tender offers were relatively uncommon from 1990 to 2006. One reason is that prior to 2006 tender offers could not provide retention or side-payments to key executives of the target firm without risking a costly violation of the SEC's best-price rule. The best-price rule was amended in 2006 to allow side-payments to target executives. Even after this change, however, to complete a two-step tender offer, the acquirer still needed to convince 90% of target shareholders to tender their shares at the offering price. If more than 50% but less than 90% of target shareholders participate in a first step tender offer, the bidder could elect to use a traditional (i.e. long-form) merger to acquire the remaining shares, but this would defeat the purpose of using a tender offer as it would impose both the delay and cost associated with a shareholder vote, proxy statement filing, and SEC review. Indeed, if this situation arises it would have been

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[8] By contrast many countries outside the US require supermajority approval for mergers. For example Germany and the UK require a 75% vote; France and Japan require a 66% vote (See Kraakman, The Anatomy of Corporate Law at page 197 (Sec. 7.4)).
[9] According to the Williams Act (SEC Rule 14d-1) a tender offer must be held open for at least 20 business days.

faster for the bidder to have simply used a long-form merger from the start. Consequently, if a bidder were uncertain whether 90% of shareholders would participate in the first step tender offer it may be better off simply using a long-form merger from the start.

In the early 2000s practitioners developed an alternative strategy, the top-up option, for circumventing the 90% ownership threshold. The top-up option takes advantage of the fact that many firms have a large number of authorized, but unissued shares. Using these unissued shares the target's board grants the bidder an option to purchase additional stock from the target immediately following its tender offer such that in aggregate the bidder will own 90% of the target's shares, and can thus take advantage of the short form merger. For example, a bidder may acquire 82% of a target's equity through its tender offer and then use a top-up option to purchase enough shares to get from 82% to 90% ownership. With a top-up option an acquirer can functionally sidestep the 90% threshold requirement.

In theory, the top-up option could substantially lower the authorization threshold for a two-step tender offer, but due to various considerations the actual impact of the top-up option appears more limited. First, lawyers caution that top-up-options add uncertainty and increase the risk of deal litigation. Indeed, by exercising a top-up option the parties basically admit that the price is inadequate to obtain 90% shareholder support, a point which seems to fuel appraisal litigation.[10] Second, the potential benefit of a top-up option is constrained by the number of authorized shares in the target's pre-deal charter, which caps the number of shares which can be issued through a top-up option.[11] Third, even if the target has a large number of authorized shares, practitioner commentary warns that a top-up options can only be used to purchase a small portion of the needed shares before becoming legally problematic.[12] Consistent with this point, we find that even when top-up options are exercised, bidders still purchase the vast majority (84%) of shares through the tender offer itself not through the top-up option (6%). On the one hand this illustrates that top-up options are in fact able to lower the shareholder approval requirement below 90%, but it also suggests that even with a top-up option the de facto approval thresholds for a two-step deals remain substantially higher than for a long-form merger.

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[10] See for example, In re Cogent, Inc. S'holder Litig., Consol. C.A. No. 578-VCP (Del. Ch. Oct. 5, 2010); Olson v. EV3, Inc., C.A No. 5583-VCL (Del. Ch. June 25, 2010); In re ICX Techs., Inc. S'holder Litig., C.A. No. 5769-VCL (Del. Ch. Sept. 17, 2010); In re Protection One, Inc. S'holders Litig., C.A. No. 5468-VCS (Del. Ch. Oct. 6, 2010).

[11] Even if the number of authorized shares is significantly larger than the number outstanding, this may have less effect than anticipated. Issuing new shares increases both the numerator and the denominator, and consequently a firm must issue a *lot* of new shares to substantially change it approval requirement for a two-step deal. Furthermore, the number of authorized shares can only be increased through an amendment to the corporate charter, which would require a proxy statement filing with the SEC and a shareholder vote and would ultimately create a similar delay to a long-form merger.

[12] See for example DLA Piper, Mergers and Acquisitions Alert (US), April 15 2013 at www.dlapiper.com/en/us/insights/publications/2013/04/will-impending-delaware-law-changes-mean-a-seism__/, suggesting that an acquirer should only purchase up to 5% or so of the needed equity through a top-up option.

Finally to facilitate tender offers and avoid the complexities and uncertainty associated with top-up options, Delaware passed a new code provision, DGCL § 251(h), in August 2013. The new provision allows buyers who, following the consummation of a tender offer, own at least 50% of the target's outstanding shares, to effectuate a second-step short-form merger without a vote of the target's stockholders. The result is a significant reduction in the authorization threshold – from 90% down to 50% – for a two-step tender offer involving a Delaware target. It is important to note that DGCL § 251(h) only applies to target firms incorporated in Delaware. This fact lets us use a differences-in-differences research design, with a treatment (Delaware targets) and a control group (non-Delaware targets) for testing the impact of authorization requirements on deal outcomes.

3. Hypotheses on Shareholder Voting Threshold

In this section we propose two alternative hypotheses for the effect of lowering tender offer authorization requirements on merger outcomes. Our null-hypothesis is based on a standard assumption of market efficiency, namely that the supply curve for equity is perfectly elastic. Under this view there is no heterogeneity in shareholder valuations, and consequently the 50th percentile shareholder and the 90th percentile shareholder sell at the same reservation price. Put simply, the null hypothesis predicts that the change from a 90% threshold to a 50% threshold will have no effect on the M&A process, because either all or no investors are willing to sell.

Alternatively, if we drop the assumption of homogeneous valuations the picture becomes more complicated. On the one hand, lowering the approval threshold increases the scope for self-dealing by senior management. Target executives may be willing to accept a lower acquisition premium in a two-step tender offer in exchange for a merger bonus or a retention contract (see e.g. Hartzell, Ofek, and Yermack, 2004). Prior to the regulatory shift, such behavior was limited by the parties needing to set the acquisition premium sufficiently high to obtain 90% shareholder support. But under DGCL § 251(h) the acquirer and target executives can collude by allocating fewer funds to the deal premium and more to target executives. Furthermore, the speed of a two-step tender reduces the risk that an alternative bidder upsets this bargain and drives up the price (Offenberg & Pirinsky, 2015), and thereby reduces the market's ability to constrain excessive side-payments. Indeed, the use of two-step tender offers to preemptively knock-out competing bidders provides some justification for setting shareholder approval thresholds higher in this setting as opposed to a traditional merger. According to this account, DGCL § 251(h) will lead to lower acquisition premiums, a larger fraction of the merger surplus going to the acquiring firm, and increased use of executive side-payments (the *Manager Self-Dealing Hypothesis*)

On the other hand, lowering authorization thresholds could benefit shareholders as a group by reducing the risk that a minority of target shareholders can effectively holdup a beneficial tender offer or force it to be inefficiently structured as a long-form merger instead. In terms of social welfare some deals may be more efficiently structured as a tender offer, while others as a merger. However, deal planners face a constrained choice. In particular, they may be forced to use a merger for some deals that would be more efficiently structured as a tender offer. For example, the merger surplus might be inadequate to justify paying the reservation price demanded by the 90th percentile shareholder, but may be large enough to obtain approval from 50% of shareholders.

This highlights a problem of selection bias. Under the old rule, only the best deals are eligible to be structured as tender offers, as only these deals create a large enough surplus to justify paying the reservation price demanded by the 90th percentile shareholder. Selection on deal surplus provides an alternative explanation for the finding that tender offer acquisitions are associated with higher acquisition premiums than mergers (Schwert, 1996; Officer, 2003; Moeller et al 2004; Offenberg & Pirinsky, 2015). Conversely, by setting the tender offer authorization threshold at the same level as for mergers, DGCL § 251(h) gives deal planners the freedom to choose the most efficient acquisition structure. As authorization thresholds are relaxed tender offers become feasible for deals with a smaller surplus, and consequently premiums for tender offers and mergers should begin to converge, with merger premiums increasing and tender offer premiums decreasing for Delaware targets acquired after August 2013. Furthermore, the shareholder holdup hypothesis predicts that DGCL § 251(h) will lead to higher unconditional acquisition premiums as acquirers are willing to pay more for an efficient structure (the *Shareholder Holdup Hypothesis*).

4. Data and Summary Statistics

In this section we discuss our sample selection process and provide summary statistics. We then examine the number of deals structured as mergers versus tenders over the sample period.

4.1 Data and sample description

To provide a broad picture, we collect data on acquisitions over a twelve year period, 2003 to 2015. Our regression analysis, however, focuses on a narrower period of time – 2010 to 2015 – that surrounds the passage of DGCL § 251(h). We obtain our sample by searching the FactSet's Merger Metrics database for acquisitions of U.S. public targets announced by financial and strategic acquirers January 1, 2003 through June 15 2015. We require that the bidder seeks to acquire more than 50% ownership of the target. Our initial

sample consists of 3,586 Mergers and Acquisitions (M&A) transactions. After restricting our sample to U.S. strategic acquirers our sample consists of 2,508 M&A transactions. We obtain stock return and accounting data for the universe of U.S. publicly listed firms from Center for Research in Security Prices (CRSP) and COMPUSTAT as of the prior year before the announcement date. We then require that the target size is at least $1 million and that the relative size of the target is at least 1% of the acquirer. In addition, we also hand code data from SEC filings on the number of shares tendered after a top-up option is exercised, on the outstanding and authorized common shares, on target CEO retention, and on side-payments to the target CEO. For some analysis, the sample size declines based on data availability.

Table 1 (Panel A) describes the main control variables in our analysis[13] and Appendix A defines such variables. Relative to mergers, tender offers have larger acquirers, smaller targets, and both parties have a higher Tobin's Q. In addition, targets acquired via tender have higher levels of institutional ownership, are less likely to be in a regulated industry, and more likely to be incorporated in Delaware. We do not find any statistical difference between mergers and tender offers in the outstanding-to-authorized shares ratio.

In Panel B of Table 1 we present performance measures sorted by tender and merger. We measure the target and acquirer cumulative abnormal returns as the cumulative return in their stock in excess of the CRSP equal-weighted index. We calculate the short term return (*ST CAR)* over a seven-day window centered at the announcement date and the long term return (*LT CAR)* over a 180-day window (i.e., from two months before the announcement date up to 4 months after the announcement date or withdrawal or completion, whatever occurs first).[14] We compute the combined gain as the sum of the acquirer's and target's dollar gains (over the short-term window and the long-term window) divided by the sum of the acquirer's and target's market value of equity (Moeller et al., 2004) and the relative gain, estimated as the difference between the target- minus the bidder-dollar gain divided by the sum of target and bidder market capitalization (Ahern 2012) estimated four weeks before the announcement date for the short term window and 8 weeks for the long-term window.

The inclusion of *LT CARs* provides a more complete picture of the wealth changes that an acquisition accrues to both the target and the bidder. More importantly, examining *LT CAR* allows us to assess the total combined gain in a twofold manner. First, *LT CARs* include the run-up premium, potentially also due to transaction rumors, before the public announcement of the acquisition (Schwert 1996, 2000, and Betton et al. 2012, Mulherin and Simsir, 2015) and, second, they exclude the effect of a muffled market

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[13] The number of observations for each variable varies depending on data availability.
[14] Prior research including Bradley et al. (1988) and Dittmar et al. (2012) use this measure of long-term returns.

reaction as reflected in arbitrage spreads (See, Brown and Raymond 1986; Mitchell, Pulvino, and Stafford 2004; and Denis and Macias 2013).[15]

Panel B in Table 1 shows that tenders have larger premiums, larger target *ST CARs*, larger acquirer *ST CARs*, smaller relative *ST Gain* to the target (significant only at the 10% level), and larger target *LT CAR*. Over our full sample tender offers appear to be more profitable than mergers for both target and acquiring shareholders.

[Insert Table 1 about here]

4.2 Acquisition Structure over Time

Table 2 describes the sample as a function of the number of M&A transactions and its sale mechanism. To examine the passing of DGCL § 251(h) in August 2013, we split the year 2013 into the months of January to July and the months of August to December. Panel A presents the annual figures. Panel B and C report the number and proportion of M&A transactions within three clusters of interest, namely, (i) between 2003 and 2006 (before the 2006 amendment to the SEC best-price rule), (ii) between 2007 and July-2013, and (iii) between August-2013 and March-2015 (after passage of DGCL § 251(h)).

Panel C shows that the proportion of tenders has doubled since 2006, when the SEC amended its best-price rule. Between 2007 and July 2013 the vast majority of the tenders included a top-up option (88%). During this second cluster a relatively large proportion of top-up options (43%) were exercised. This point is illustrated in Figure 1, which shows for each year the percent of tender offers that include a top-up option and the percent where such option is actually exercised. Top-up options, though included, were rarely exercised prior to 2008. But then from 2009 to 2012 top-up options were frequently exercised to purchase extra shares (& frequently litigated by dissenting shareholders[16]). Finally, the use of top-up options drastically declined after August 2013, largely replaced by DGCL section 251(h).[17] After August 2013, 68% of all tender offers rely on DGCL § 251(h) and only 15% use a top-up option.

[Insert Table 2 and Figure 1 about here]

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[15] The arbitrage spreads - the difference between the price offered to target shareholders and the current market price of the target's shares – disappear as the acquisition reaches its completion (see, e.g., Brown and Raymond 1986; Mitchell, Pulvino, and Stafford 2004; and Denis and Macias 2012).

[16] See e.g., In re Cogent, Inc. S'holder Litig., Consol. C.A. No. 578-VCP (Del. Ch. Oct. 5, 2010); Olson v. EV3, Inc., C.A No. 5583-VCL (Del. Ch. June 25, 2010); In re ICX Techs., Inc. S'holder Litig., C.A. No. 5769-VCL (Del. Ch. Sept. 17, 2010); In re Protection One, Inc. S'holders Litig., C.A. No. 5468-VCS (Del. Ch. Oct. 6, 2010).

[17] The only case recorded as using DGCL § 251(h) in the period before August 2013 was initially announced in July 2013, but then amended - between announcement and completion – to include DGCL § 251(h) after it was passed.

We further collect data on the percentage of shares tendered after a top-up option is exercised. This information was generally unobservable before the 2006 SEC best-price rule amendment because in such tenders the acquirers would have simply stated that the tender did not reach the minimum 90% threshold required for the supermajority approval before conducting a subsequent freeze-out. In contrast, when the acquirer exercises the top-up option, the acquirer files a report stating both the number of tendered shares at the expiration of the tender offer and the intention of exercising the top-up option to reach the supermajority needed to complete the two-step tender offer.

Table 3 presents the percentage of shares tendered after a tender offer and whether the top-up-option is exercised. Target shareholders tendered an average of 84% (and median of 86%) of the total shares when a tender offer expired and the acquirer exercised the top-up option. This finding implies that top-up options are used to purchase on average 6% of the outstanding shares when exercised. The gap between the observed average of 84% and the 90% threshold[18] highlights how the risk of obtaining shareholder approval is real and significant as 39% of the top-up options are exercised. Without the top-up option in these 114 tender offers, the risk of holdup could have threatened what could have been a beneficial deal for target shareholders. Yet, even when top-up options are exercised, bidders still purchase the vast majority (84%) of shares through the tender offer itself not through the top-up option, suggesting that even with a top-up option the de facto approval threshold for a two-step deals remain substantially higher than for a long-form merger.

[Insert Table 3 about here]

4.3 Impact of Delaware Incorporation

In Table 4 we compare M&A transactions of targets incorporated in Delaware with those incorporated outside Delaware. Within each category, Panel A and Panel B present the proportion of M&A transactions that are tender offers vs. mergers at the annual detail and at the time cluster level, respectively. In both panels we find that the proportion of tender offers vs. mergers of targets incorporated in Delaware increases since 2007, and even further since August 2013. In contrast, the proportion of tender offers versus mergers in other states (i.e., Non-Delaware) increases between 2007 and August 2013 and then declines following August 2013.

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[18] Note that few tender offers and top-up options in our sample define a threshold different than 90% to trigger the exercise of a top-up option.

Panel C in Table 4 presents the proportion of M&A transactions (i.e., total, mergers and tender offers) with targets incorporated in Delaware at the cluster level. We find that the proportion of Delaware targets for the total number of M&A transactions has remained constant around 57%. The proportion of Delaware mergers and Delaware tender offers within the two first time clusters has also remained relatively constant around 55% and 73%, respectively. In the third time cluster, however, while the proportion of mergers with targets incorporated in Delaware has decreased from 55% to 47%, the proportion of tender offers for targets incorporated in Delaware has increased from 74% to 94%.

Figure 2 visually confirms that the proportion of M&A transactions that are tender offers for targets incorporated in Delaware has significantly increased in the latest years in comparison to targets incorporated in other states. The difference is particularly marked after August 2013 when DGCL § 251(h) was passed.

These findings on differences between targets incorporated in Delaware and targets incorporated in other states complement and enrich the debate whether incorporation in Delaware benefits firms, at least in the takeover market.[19] The combination of both effects, time trends and Delaware incorporation, suggest that the difference-in-difference research design provides enough heterogeneity to examine whether lowering the authorization threshold for tender offers affects the M&A transaction dynamics.

[Insert Table 4 and Figure 2 about here]

5. Difference-in-Difference Results

This section uses multivariate regression analysis to test the Manager Self-Dealing and Shareholder Holdup hypotheses. In section 5.1 we setup the basic regression model, and then in subsequent sections we estimate the model for a variety of outcome measures. In particular we explore the effect of DGCL § 251(h) on deal structure (§ 5.2); acquisition premiums and abnormal returns (§ 5.3); and target CEO benefits (§ 5.4). Section 5.5 provides robustness checks.

5.1 Difference-in-Differences Equation

The passage of DGCL § 251(h) in August 2013 reduced the shareholder approval threshold for tender offers involving Delaware targets (treatment group), but had no effect on approval thresholds for

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[19] See Daines (2001), Subramanian (2004), and Cain and Davidoff-Solomon (2015) among others.

target firms incorporated outside Delaware (control group). To measure the effect of DGCL § 251(h) on deal structure and performance outcomes, we estimate the following equation:

$$DV = \alpha + \beta_1 * DE + \beta_2 * AfterAug2013 + \beta_3 * (DE * AfterAug2013) + \boldsymbol{\beta} * \boldsymbol{X} + \varepsilon \qquad (1)$$

where *DV* represents one of several dependent variables (described below); *DE* equals 1 if the target firm is incorporated in Delaware at the time of the acquisition and 0 otherwise; *AfterAug2013* equals 1 if the acquisition occurred after August 2013 and 0 otherwise; $\boldsymbol{X}$ is a vector of included control variables; and ε is the error term. The key explanatory variable is the interaction term *DE*AfterAug2013* which takes values equal to 1 for acquisitions of Delaware targets after August 2013, and the corresponding coefficient β_3 is the difference-in-differences estimate. In the regressions below, we limit our analysis to the period of time – 2010 to 2015 – immediately surrounding passage of DGCL § 251(h).[20]

An advantage of the difference-in-differences approach is that it removes biases due to unobserved time-constant differences between Delaware and non-Delaware targets, as well as biases that may arise from time-trends that apply to the entire M&A landscape. By including a control group of acquisitions that are not subject to DGCL § 251(h) we are able to better isolate the effect of treatment. For identification purposes, difference-in-differences assumes that the average post-event change in outcome for the control group and treatment group would be the same if the later had not been treated. Because acquisition outcomes are primarily driven by market forces, which apply equally to firms incorporated in Delaware and elsewhere, we believe this is a reasonable assumption for our setting. Nonetheless, as a further robustness check, in section 5.5 below, we also employ entropy balancing (Hainmueller & Xu, 2013) to improve covariate balance and make sure there is sufficient overlap between the treatment and control group.

5.2 Choice of Deal Structure

We first estimate equation (1) with *Tender* as the dependent variable. *Tender* is a binary variable that equals 1 if the acquisition is structured as a tender offer and 0 otherwise. In addition to the above listed variables we also include control variables for the market cap and Tobin's Q of both the target and acquirer, for the presence of a controlling target firm shareholder, for the target's outstanding-to-authorized shares ratio and whether the deal was completed.[21] Logit coefficient estimates are reported in Table 5. Model (1)

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[20] By selecting a narrow time period we reduce concern that there may be unobserved time-varying differences between Delaware and non-Delaware targets occurring within our event window. The choice of 2010 to 2015, however, does not drive our results. In unreported regressions we find similar results using a broader event window.
[21] In Table 5 we do not control for whether the acquisition was hostile, as this determination may be endogenous to the deal structure itself; however, in unreported regressions we find that adding a control for hostile acquisition does not change our main results.

includes all control variables. Model (2), (3), and (4) exclude different sets of control variables to make sure our results are not driven by data availability in SDC Platinum, COMPUSTAT, or CRSP and to increase the sample size.

[Insert Table 5 about here]

In each model we find that DGCL § 251(h) increases the likelihood that a deal is structured as a tender offer. The coefficient on "*DE * AfterAug2013*" is positive and highly significant (1% level) in each model. This finding mirrors the graph in Figure 2, illustrating a large increase in tender offers involving Delaware targets after Aug 2013. We can reject the null hypothesis that the supply of equity is perfectly elastic. Instead, the 90% approval threshold appears to be a significant barrier to completing a two-step tender offer. Deal attorneys that we spoke with made similar comments, noting that DGCL § 251(h) has allowed them to use tender offers for acquisitions that they expect would have otherwise been structured as a merger. We also find evidence that tender offers are more likely when the acquirer is small relative to the target, for targets with higher Tobin's Q and higher levels of institutional ownership. Tender offers are less likely for targets in regulated industries, as they may be unable to take advantage of the faster completion times that tender offers allow due to the need for regulatory approval.

5.3 Performance Effects of DGCL § 251(h)

In this section we estimate equation (1) with various performance measures as the dependent variable. Our first dependent variable is the acquisition premium, which we compute as the difference between the offer price and the target share price four weeks prior to the formal merger announcement date. We next consider short-term and long-term cumulative abnormal returns for the target, the acquirer, and their combined gains. Combined gains are weighted by the relative market value of the target and bidder. Short-term returns are measured over a [-3, +3] window centered on the announcement date, while longer-run returns are measured over the [-60, +120) to capture both potential run-up and mark-up. We also look at the relative gains between the acquirer and the target to assess whether one party to the deal captures more of the gains after the passage of the new regulation. Results are presented in Table 6.

[Insert Table 6 about here]

For our sample period, acquirer short-term CARs and combined gains (both short- and long-term) are significantly higher for deals involving Delaware targets. After August 2013 there is an overall decline

in the acquisition market, with significantly lower target acquisition premiums and lower short-run and long-run target CARs. Importantly, however, the difference-in-differences term (*DE*AfterAug2013*) has a positive effect on acquisition premiums and on Target short-term CARs. In other words, targets incorporated in Delaware saw positive increases in certain short-run wealth measures after the passage of DGCL § 251(h) relative to firms that were not incorporated in Delaware. Combined with the coefficient on *DE*, the interaction term indicates that Delaware targets after August 2013 are offered acquisition premiums that are about 12% greater than premiums for non-Delaware targets over the same period. Acquirer returns were also higher over the short-run window. Overall, our results are consistent with the notion that deals could be more efficiently structured after the shareholder voting threshold was reduced, resulting in more gains accruing to the shareholders of both parties undertaking the merger.

Importantly, the difference-in-differences results in Table 6 are not conditional on whether a deal is structured as a tender offer or as a merger. To avoid endogeneity concerns, we intentionally did not include *Tender* as an explanatory variable in Table 6. Consequently, the positive coefficient that we find on the interaction term (*DE*AfterAug2013*) is an average effect for the pool of both mergers and tender offers. Thus, while shareholders of Delaware targets appear to gain from the passage of DGCL § 251(h), we cannot say whether such benefit is coming through tender offers or through mergers or both.

To investigate this tradeoff, we re-estimate the models from Table 6 but now with *Tender* and its interactions included as additional explanatory variables. Because choice of tender or merger is likely endogenous, we cannot infer that the choice of deal structure is creating (or destroying) value. But we can use these additional variables to at least describe how the gains in acquisition premium and abnormal returns identified in Table 6 are distributed between mergers and tender offers. These additional models are reported in Table 7. Looking at acquisition premium (model 1 of Table 7), we find a significant positive coefficient for *DE*AfterAug2013* and a negative coefficient (p-value = .118) for the triple interaction term *Tender * DE * AfterAug2013*. The first of these two estimates applies to mergers and the second to tender offers. These results show that there has been some convergence in premiums for mergers and tender offers involving Delaware targets purchased after August 2013. Premiums are still higher on tender offers, but the gap has narrowed in Delaware.

This point is illustrated by Figure 4, which graphs a lowess estimation of the offered premium by method of sale and state of incorporation. The premium in tender offers for Delaware targets (dashed red line) has decreased since August 2013, while it has increased for mergers involving Delaware targets (dashed black line) over the same period. While this convergence in deal premiums is still relatively tentative, the pattern is broadly consistent with the shareholder holdup hypothesis.

[Insert Table 7 and Figure 4 about here]

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5.4 CEO Retention and Merger Side-Payments

Finally, to test the manager self-dealing hypothesis we examine extra benefits received by the target CEO in connection with the sale. The CEO of the target firm may trade a lower premium for a merger bonus or a retention contract, benefiting the target CEO at the expense of target shareholders (Hartzell, Ofek, and Yermack, 2004). DGCL § 251(h) potentially facilitates this form of collusion, as the acquirer no longer needs to convince 90% of shareholders to tender their shares, and thus can allocate fewer funds to acquisition premium and more to executive side-payments. Thus, the manager self-dealing hypothesis predicts an increase in CEO retention and side-payments in connection with tender offers involving a Delaware target acquired after August 2013.

To test this prediction we estimate equation (1) first using *CEO retained* – which equals one if the target CEO is employed by the surviving entity following the sale and zero otherwise – as the dependent variable; and then using *CEO deal bonus* – which equals one if the target CEO receives at least an additional bonus during the acquisition process and zero otherwise. *CEO deal bonus* includes payment for signing a non-compete or a consulting agreement, or bonus payment for closing the deal; however, it does not include "change in control" payments (i.e. golden parachutes) as these are existing contractual entitlements of the CEO which must be paid-out regardless how the acquisition is structured, and are not bargained over in connection with a specific acquisition proposal.

To measure *CEO retained* and *CEO deal bonus* we hand code SEC filings made by the target company in connection with the sale. In particular, for tender offers we find the solicitation/ recommendation statement filed under SEC Rule 14d-9 [Form SC 14D9], and for mergers we use the definitive proxy statement [Form DEFM–14A]. These filings require disclosure of any material benefits – including retention agreements & side-payments – that will be received by the target CEO (& other key executives) in connection with the sale.[22] We collect the appropriate filing for all tender offers and – because data collection is labor intensive – half (randomly selected) of the mergers announced from Jan-2010 to Jun-2015, giving us a subsample of composed of 129 tender offers and 134 mergers. In the regression analysis below we use sample weights based on the true proportions of tender offers and mergers in the full sample to adjust for the fact that tender offers are overrepresented in our subsample relative to mergers.

For this subsample of acquisitions, Table 8 reports the likelihood that the target CEO receives either an acquisition bonus or a retention contract. Data are sorted by time (pre-event vs post-event), type of

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[22] It is possible that the acquirer may decide to retain the target CEO after making the respective SEC filing, which would cause our measurement to understate CEO retention.

acquisition (merger vs. tender offer) and state of incorporation (Delaware vs. other state). Over the 2010 to 2015 period, approximately 28% of acquisitions provide retention and 30% provide an acquisition bonus. We find some notable differences between Delaware and Non-Delaware targets with respect to acquisition bonuses. In particular, deals involving non-Delaware targets are significantly more likely award the CEO an acquisition bonus. Yet, among Delaware targets we do not find a significant increase in retention or acquisition bonuses associated with the new law. Indeed, limited to the subset of tender offers involving Delaware targets we find a small and insignificant decline in the likelihood of both *CEO retention* and *CEO deal bonus*. This result is opposite the prediction of the manager self-dealing hypothesis. Overall, Table 8 suggests that DGCL § 251(h) had little (if any) effect on CEO retention or deal bonuses.

Table 9 reports multivariate regression analysis. Similar to the univariate analysis, the passage of DGCL § 251(h) seems to have had no impact on the likelihood that the target CEO is retained or receives an acquisition bonus. The difference-in-differences term (DE * AfterAug2013) is not statistically significant for any of the models reported in Table 9, and the coefficient estimates are negative instead of positive. Shareholders may have some impact on CEO acquisition benefits. We find, for example, that CEOs of targets with higher levels of *Institutional Ownership* are less likely to be retained and less likely to receive a deal bonus, suggesting that institutional shareholders monitor payouts to the CEO. But, the change in authorization threshold brought about by DGCL § 251(h) does not seem to increase the risk of manager self-dealing.

[Insert tables 8 and 9 about here]

To be sure, shareholders have a number of other protections against self-dealing that may be more important than the authorization threshold. In this context, shareholders are also protected by (i) the threat of a second bidder and the board's obligation to get the best price for shareholders (i.e. so-called *Revlon* duties), (ii) the prospect of appraisal litigation if the price is inadequate, (iii) tax penalties associated with large acquisition side-payments, and (iv) disclosure provided by securities regulation.[23] Recognizing that there are multiple layers of shareholder protection against manager self-dealing, supermajority shareholder approval may be superfluous.

5.5 Robustness Checks

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[23] For a summary of legal constraints related to side-payments to target executives see Broughman (2015).

For identification purposes we use a differences-in-differences research design, based on an exogenous shock – DGCL § 251(h) – that applies to Delaware targets acquired after August 2013. This section considers potential objections to our empirical analysis.

5.5.1 Endogenous Acquisition Timing

Our analysis assumes that the timing of each acquisition is exogenously given, and that deal planners do not adjust the acquisition date in anticipation of the new law. Yet, the passage of DGCL § 251(h) in August 2013 was not a complete surprise. The Corporate Law section of the Delaware Bar proposed the law to the state legislature in March 2013. Delaware's Corporate Law committee is particularly influential and its recommendations are often followed by the legislature (Macey & Miller, 1987). Thus, deal planners may have anticipated DGCL § 251(h) several months prior to official enactment.

In the preceding months, it is possible that acquirers may have delayed making a tender offer till after August 2013 so that they could take advantage of the new law and the lower approval threshold it allows. If such behavior were to occur it could bias our results, as it would show up as a drop in tender offer for Delaware targets in the months immediately preceding August 2013, followed by an increase – due to strategically delayed deals – in tender offers for Delaware targets shortly thereafter. Since tender offer deals tend to have higher premiums, endogenous acquisition timing could also bias our results with respect to acquisition premium and abnormal returns.

To address such concerns we drop deals announced during a period when strategic acquisition timing is most likely and then re-estimate our basic regression models. In particular, we drop observations announced during an eight month window surrounding August 2013, starting April 2013 and ending November 2013. We then re-estimate model 1 from Table 5 and all models from Table 6 on this reduced sample. Results are reported in Table 10 (panel B). We find _____[no significant change] ____ in coefficient estimates, suggesting that our results are not driven by strategic timing of acquisitions.

To further illustrate, we report, in panel A of Table 10, the number of tender offers and mergers announced each month of 2013, sorted by state of incorporation. There were only five Delaware tender offers between committee recommendation (March 2013) and legislation (August 2013), but this appears to simply be a low baseline rate of tender offers in 2013, rather than strategic delay. As evidence of this, there was only one tender offer involving a non-Delaware target in all of 2013, and even in Delaware the baseline rate of tender offers was about one per month in the first three months of 2013 (prior to committee recommendation). Acquisition timing appears to be based on factors other than the authorization threshold.

[Insert table 10 about here]

5.5.2 Covariate Balancing Weights

[Insert table 11 about here]

5.5.3 Selection vs. Substitution Effect

We find that reducing shareholder authorization thresholds appears to benefit to benefit Delaware shareholders by lowering the threat of holdup. This benefit could come through one of two channels. One possibility is a *substitution* effect between mergers and tender offers. Under this view, some deals which prior to August 2013 would have been mergers, are now structured as tender offers. Deal planners choose the more efficient structure rather than being forced into a merger to evade the 90% authorization threshold.

A second possibility is a *selection* effect between no sale and tender offer. Under this view, some deals are only feasible if structured as a tender offer, but the 90% authorization threshold may have blocked such transactions from occurring at all prior to August 2013. This suggests that DGCL § 251(h) may not have simply caused a substitution from merger to tender offer, but may have actually increased the number of acquisitions involving Delaware targets.

These are not mutually exclusive explanations. It certainly possible that § 251(h) could lead to both a substitution effect and a selection effect. Our results, however, are more consistent with a substitution effect. Table 4 (panel C) shows that the overall percent of deals involving Delaware targets is fairly stable before and after August 2013. In particular, from 2007 to August 2013 we find that 58% of all acquisitions involved Delaware targets compared to 56% after August 2013. We do not see an increase in the percent of deals involving a Delaware target. By contrast, we observe a large substitution effect. Delaware's fraction of all tender offer deals jumped from 74% prior to August 2013 to 94% thereafter, while Delaware's fraction of merger deals dropped from 54% to 47% over the same period.

6. Discussion and Conclusion

Regardless how an acquisition is structured, it generally requires approval by both the target's board of directors (including key executives[24]) and by target shareholders. There is an extensive literature

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[24] Senior executive approval is not legally required to sell a firm, but for practical purposes, senior management can holdup a deal by refusing to cooperate. Put another way at least some key members of senior management generally need to support a deal for it to be feasible.

examining manager's and director's use of this power to block an efficient sale, entrenching themselves at shareholder expense.[25] By contrast, the threat that target shareholders may holdup a sale has been largely overlooked. This gap in the literature exists despite incentives that encourage target shareholders to withhold support from a sale that creates acquirer surplus (Grossman & Hart, 1980).

To address the risk of shareholder holdup, we take advantage of a change in the approval threshold for tender offers. Higher shareholder approval can have two opposing effects. On the one hand it could constrain self-dealing behavior by managers. On the other hand, it could also increase the risk of holdup by a minority of shareholders that seek to extract greater rents from the deal.

The passage of DGCL § 251(h) in August 2013 reduced the required level of shareholder approval from 90% to 50% for tender offer acquisitions of a Delaware target. Using a differences-in-differences research design, we find that lower authorization requirements lead to a significant increase in tender-offers for Delaware targets (as opposed to long-form mergers). Target shareholders do not appear to be harmed by the change as we find that acquisition premiums and target cumulative abnormal returns are higher for Delaware targets acquired after passage of the new law. These results are consistent with the notion that higher target shareholder approval thresholds can increase the risk of shareholder holdup and lead to inefficient choice of deal structure.

Furthermore, the change in authorization threshold does not increase the risk of manager self-dealing. The target CEO is no more likely to be retained or receive a merger side-payment after enactment of DGCL § 251(h). To be sure, the absence of manager self-dealing may be due to the availability of other shareholder protections. Shareholders of a publicly-held Delaware target have several layers of protection – fiduciary obligations, appraisal, competition from rival bidders, securities fraud and tax penalties – against manager self-dealing in connection with the sale of a firm, reducing the need for supermajority shareholder approval. In other jurisdictions, however, robust shareholder protections may be unavailable and supermajority voting requirements may be more valuable as a way to minimize managerial opportunism.

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[25] For example see Bebchuk & Cohen, 2005; Brickley, Coles, & Terry, 1994; Bates, Becher & Lemmon (2008).

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Table 1. Sample characteristics 2003-2015

This table presents descriptive statistics of the sample of 2,508 M&A transactions of U.S. public targets announced by public strategic acquirers during 1-January-2003 to 15-June-2015. Appendix A defines the variables. The table reports the descriptive statistics after splitting the sample between mergers and tender offers. The asterisks ***, **, * denote significance at the 1%, 5%, and 10% levels respectively, based on a t-test of difference in means.

Panel A: Descriptive Statistics

	Total			Merger			Tender			Diff.	
	mean	N	sd	mean	N	sd	mean	N	sd	T-M	
Acquirer Mkt cap (bln $)	13,067	1,703	20,013	11,259	1,386	18,972	20,969	317	22,423	9,710	***
Acquirer Tobin's Q	1.769	1,703	1.049	1.684	1,386	1.011	2.142	317	1.127	0.459	***
Relative size (Acq/Trg)	0.309	1,454	0.586	0.358	1,160	0.641	0.115	294	0.185	-0.243	***
Target Mkt cap (bln $)	1,545	1,931	4,720	1,698	1,547	5,145	928	384	2,221	-770	***
Target Tobin's Q	1.825	1,929	1.288	1.708	1,545	1.176	2.299	384	1.582	0.591	***
Controlling Shrhldr: Majority shareholder (>=50%)	0.032	2,508	0.176	0.034	2,071	0.181	0.023	437	0.150	-0.011	
Controlling Shrhldr: Less than Majority (>=30%<50%)	0.044	2,508	0.206	0.043	2,071	0.204	0.048	437	0.214	0.005	
Institutional Ownership (sub-sample 2009-2015)	0.420	763	0.228	0.399	561	0.234	0.479	202	0.202	0.080	***
Institutional Ownership >= 15% (sub-sample 2009-15)	0.843	763	0.364	0.811	561	0.392	0.931	202	0.255	0.120	***
CEO retained (reduced sub-sample)	0.278	263	0.449	0.284	134	0.452	0.271	129	0.446	-0.012	
CEO deal bonus (red. sub-sample)	0.302	262	0.460	0.343	134	0.477	0.258	128	0.439	-0.085	
Regulated industry	0.326	2,508	0.469	0.380	2,071	0.486	0.069	437	0.253	-0.312	***
Hostile	0.037	2,508	0.190	0.019	2,071	0.136	0.126	437	0.332	0.107	***
Completed	0.828	2,508	0.377	0.822	2,071	0.382	0.856	437	0.352	0.034	*
Pending	0.040	2,508	0.197	0.045	2,071	0.207	0.018	437	0.134	-0.027	***
Duration announcement to completion / withdrawal	129	2,407	83	141	1,978	82	72	429	63	-69	***
Target incorporated in Delaware	0.574	2,508	0.495	0.533	2,071	0.499	0.771	437	0.421	0.239	***
Offered premium	41.675	2,112	42.433	38.225	1,700	39.252	55.911	412	51.250	17.687	***
Outstanding To Auth shares ratio	0.369	2,165	0.195	0.365	1,749	0.196	0.382	416	0.190	0.017	

Panel B: Performance Measures

	Total			Merger			Tender			Diff.	
	mean	N	sd	mean	N	sd	mean	N	sd	T-M	
Acquisition Premium	41.67	2112	42.43	38.22	1700	39.25	55.91	412	51.25	17.69	***
Target ST CARs [-3, +3]	27.10	1721	25.59	24.08	1368	23.20	38.82	353	30.60	14.74	***
Acquirer ST CARs [-3, +3]	-0.63	1556	7.11	-0.83	1276	7.27	0.27	280	6.25	1.10	***
Combined gains [-3 , +3]	2.62	1241	6.96	2.55	990	7.02	2.91	251	6.74	0.36	
Relative gain Trg-vs-Acq [-3, +3]	3.63	1241	7.53	3.81	990	7.72	2.90	251	6.70	-0.91	*
Target LT CARs [-60, +120]	33.17	1678	40.62	28.01	1333	35.50	53.08	345	51.63	25.07	***
Acquirer LT CARs [-60, +120]	-0.54	1536	22.41	-0.81	1259	22.56	0.70	277	21.72	1.50	
Combined gains [-60, +120]	3.36	1201	20.08	3.25	959	20.04	3.80	242	20.27	0.56	
Relative gain Trg-vs-Acq [-60, +120]	3.71	1201	17.33	3.83	959	16.99	3.25	242	18.66	-0.58	

Table 2. Sample Descriptive Statistics

This table presents the total number of M&A transactions, the number of mergers, tender offers, tender offers that include top-up options, tender offers in which the top-up option was exercised, and tender offers that use DGCL § 251(h). Since Delaware passed DGCL § 251(h) in August 2013, we split 2013 into two segments. Panel A presents the figures by year. Panel B and Panel C present the number and the proportion of M&A transactions within three time clusters.

Panel A. Statistics by year

	M&A transactions	Mergers	Tenders	Top-up Option	Exercised Top-up option	section 251h = "Yes"
Total	2,508	2,071	437	292	114	49
2003	88	71	17	5	0	0
2004	227	209	18	6	0	0
2005	264	240	24	9	0	0
2006	271	248	23	13	2	0
2007	293	240	53	49	4	0
2008	210	160	50	46	11	0
2009	150	107	43	33	18	0
2010	198	148	50	45	25	0
2011	175	132	43	35	20	0
2012	177	142	35	33	21	0
Jan-Jul 2013	96	87	9	7	7	1
Aug-Dec 2013	65	49	16	4	1	14
2014	198	165	33	5	3	23
2015	96	73	23	2	2	11

Panel B. Statistics by time cluster detail

	M&A transactions	Mergers	Tenders	Top-up Option	Exercised Top-up option	section 251h = "Yes"
Total	2,508	2,071	437	292	114	49
2003-2006	850	768	82	33	2	0
2007 to Jul-2013	1,299	1,016	283	248	106	1
After Aug-2013	359	287	72	11	6	48

Panel C. Proportion of M&A transactions by time cluster

	M&A transactions	Mergers / All	Tenders / All	Top-up Option / Tenders	Exercised Top-up option / Top-up Options	section 251h = "Yes" / Tenders
Total		0.83	0.17	0.67	0.39	0.11
2003-2006		0.90	0.10	0.40	0.06	0.00
2007 to Jul-2013		0.78	0.22	0.88	0.43	0.00
After Aug-2013		0.80	0.20	0.15	0.55	0.68

Table 3. Percentage of shares tendered after a tender offer and the Top-up-option is exercised
Using the sub-sample of the 114 tender offers in which the top-up option was exercised, this table presents the annual descriptive statistics on the percentage of shares tendered after a tender offer and the top-up-option is exercised. Since Delaware passed DGCL § 251(h) in August 2013, we split 2013 into two segments.

	N	mean	min	p10	p50	p90
Total	114	0.84	0.57	0.74	0.86	0.90
2003	0	.	.	.	.	.
2004	0	.	.	.	.	.
2005	0	.	.	.	.	.
2006	2	0.87	0.86	0.86	0.87	0.88
2007	4	0.86	0.83	0.83	0.87	0.89
2008	11	0.82	0.74	0.75	0.84	0.89
2009	18	0.87	0.63	0.83	0.88	0.90
2010	25	0.83	0.57	0.73	0.87	0.90
2011	20	0.82	0.64	0.69	0.87	0.89
2012	21	0.84	0.69	0.74	0.86	0.90
Jan-Jul 2013	7	0.84	0.65	0.65	0.86	0.90
Aug-Dec 2013	1	0.86	0.86	0.86	0.86	0.86
2014	3	0.78	0.70	0.70	0.80	0.83
2015	2	0.87	0.82	0.82	0.87	0.92

Table 4. Targets incorporated in the state of Delaware

This table presents the number of M&A transactions (total, mergers and tender offers) for targets incorporated in Delaware, (DE), and those in other states, (Other). Columns (1) and (2) in each panel report the proportion of M&A transactions that are tender offers for the targets incorporated in Delaware and those in other states, respectively. The rightmost column in each panel reports the difference (Gap) in the proportion of tenders between the targets incorporated in Delaware and the targets incorporated in other states. Panel A presents the figures by year. Panel B presents the number of M&A transactions within three time clusters. Panel C present the proportion of M&A transactions for targets incorporated in Delaware based on the total M&A transactions, mergers and tender offers within three time clusters.

Panel A. Tender Offers vs. Mergers - Annual detail

| Year | *Delaware* | | | | *Non Delaware* | | | | Gap |
	Total	Mergers	Tenders	Percent Tenders	Total	Mergers	Tenders	Percent Tenders	DE – NonDE
All Years	1,440	1,103	337	23%	1,068	968	100	9%	14%
2003	63	49	14	22	25	22	3	12	10
2004	131	119	12	9	96	90	6	6	3
2005	145	128	17	12	119	112	7	6	6
2006	144	128	16	11	127	120	7	6	6
2007	149	110	39	26	144	130	14	10	16
2008	135	96	39	29	75	64	11	15	14
2009	100	63	37	37	50	44	6	12	25
2010	120	88	32	27	78	60	18	23	4
2011	100	69	31	31	75	63	12	16	15
2012	103	80	23	22	74	62	12	16	6
Jan-Jul 2013	48	39	9	19	48	48		0	19
Aug-Dec 2013	35	20	15	43	30	29	1	3	40
2014	108	77	31	29	90	88	2	2	26
2015	59	37	22	37	37	36	1	3	35

Panel B. Tender Offers vs. Mergers – Time cluster detail

| Year | *Delaware* | | | | *Non Delaware* | | | | Gap |
	Total	Mergers	Tenders	Percent Tenders	Total	Mergers	Tenders	Percent Tenders	DE – NonDE
All Years	1,440	1,103	337	23%	1,068	968	100	9%	14%
2003-2006	483	424	59	12	367	344	23	6	6
2007-Jul2013	755	545	210	28	544	471	73	13	14
AfterAug2013	202	134	68	34	157	153	4	3	31

Panel C. Delaware vs. other states – Time cluster detail

Year	DETotal / Total	(1) DEMergers / Mergers	(2) DETenders / Tenders	Gap (1)-(2)
	57%	53%	77%	24%
2003-2006	57	55	72	17
2007 to Jul2013	58	54	74	21
AfterAug2013	56	47	94	48

Table 5: Multivariate analysis: Logit models on Probability of Tender

The table presents Logit models on the probability of tender offer as opposed to a merger. Variable definitions are in Appendix A. The sample is based on the M&A transactions that are announced on or after 1-January-2010. The sample size varies depending on data availability for the control variables. Model (1) includes all control controls variables. Model (2), (3), and (4) exclude different sets of control variables to increase the sample size. Inferences are based on White (1980) standard errors corrected for year dependence. The asterisks, *** $p<0.01$, ** $p<0.05$, * $p<0.1$, describe the significance level of the coefficients.

Period	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015
Dep Variable	Tender =1	Tender =1	Tender =1	Tender =1	Tender =1	Tender =1
Logit model	(1)	(2)	(3)	(4)	(5)	(6)
	b/p	b/p	b/p	b/p	b/p	b/p
Target inc. in DE	-0.190	0.419	-0.314	-0.087	0.160	0.291
	(0.567)	(0.170)	(0.332)	(0.752)	(0.654)	(0.366)
After Aug2013	-1.699***	-1.653***	-1.896***	-1.970***	-1.632***	-1.381***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.001)	(0.000)
Target inc. in DE * After Aug2013	2.362***	2.145***	2.321***	2.338***	2.122***	1.870***
	(0.000)	(0.000)	(0.000)	(0.000)	(0.001)	0.000
Acquirer Mkt cap (bln $)	-0.001				0.001	0.002*
	(0.197)				(0.101)	(0.056)
Acquirer Tobin's Q	-0.004				0.113	0.021
	(0.961)				(0.213)	(0.725)
Relative size (Acq/Trg)	-2.228***					
	0.000					
Target Mkt cap (bln $)	-0.101***		-0.180***	-0.071***		
	(0.001)		(0.000)	(0.000)		
Target Tobin's Q	0.339***		0.388***	0.327***		
	(0.000)		(0.000)	(0.000)		
Controlling Shrhldr: Majority shareholder (>=50%)	-0.224	-1.102**	-0.516	-0.531	-0.442	-0.599
	(0.785)	(0.033)	(0.604)	(0.416)	(0.557)	(0.285)
Controlling Shrhldr: Less than Majority (>=30%<50%)	0.208	-0.255	0.064	-0.214	0.095	-0.262
	(0.652)	(0.360)	(0.889)	(0.519)	(0.832)	(0.440)
Institutional Ownership	1.854***		1.685***		1.117**	
	(0.008)		(0.010)		(0.045)	
High Outst. To Auth shares ratio	0.713		0.750		0.710	
	(0.306)		(0.205)		(0.125)	
Completed	0.691	0.848***	0.901*	0.543*	1.347***	1.032***
	(0.248)	(0.000)	(0.067)	(0.087)	(0.008)	(0.001)
Regulated industry	-1.591***	-1.883***	-1.637***	-1.679***	-1.836***	-2.118***
	(0.002)	(0.000)	(0.000)	(0.000)	(0.001)	(0.000)
Intercept	-2.052***	-1.870***	-2.479***	-1.535***	-2.760***	-1.906***
	(0.009)	(0.000)	(0.000)	(0.000)	(0.000)	(0.000)
Pseudo R2	0.271	0.155	0.23	0.187	0.175	0.187
Log likelihood	-220	-434	-286	-340	-252	-301
N	518	1,005	648	741	526	693

Table 6: Diff-in-Diff Regressions on premiums other wealth change measures

This table presents OLS regressions on the acquisition premium, target returns, acquirer returns, combined gains, and relative gains. The acquisition premium is calculated as the difference between the offer price and the target share price 4 weeks before the announcement date. The short term (ST) returns are estimated using a 7-day window centered at the announcement date, [-3 days, +3 days]. The long-term (LT) returns are estimated using a 6-month window, starting 60 days before the announcement date up to 120 days after the announcement date or completion or withdrawal, whatever occurs first. Detailed variable definitions are in Appendix B. We report the coefficients and the p-values in parentheses. Inferences are based on White (1980) standard errors corrected for within-industry and year dependence. The asterisks, *** p<0.01, ** p<0.05, * p<0.1, describe the significance level of the coefficients. Time period: Jan-2010 to Jun 2015

Dep Variable	Acquisition Premium	Target ST CARs [-3, +3]	Acquirer ST CARs [-3, +3]	Combined ST gains [-3 , +3]	Relative ST gain Trg-vs-Acq [-3 , +3]	Target LT CARs [-60, +120]	Acquirer LT CARs [-60, +120]	Combined LT gains [-60, +120]	Relative LT gain Trg-vs-Acq [-60, +120]
Time Period	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p
DE	2.426	-0.588	0.653**	0.653	0.816	-1.581	2.072	2.171	-1.366
	(0.309)	(0.813)	(0.032)	(0.243)	(0.148)	(0.716)	(0.415)	(0.162)	(0.495)
AfterAug2013	-18.290***	-10.052***	0.255	1.355	0.847	-22.242***	-0.480	-0.131	-1.672
	(0.001)	(0.002)	(0.735)	(0.331)	(0.219)	(0.006)	(0.898)	(0.969)	(0.606)
DE * AfterAug2013	9.445**	7.887**	1.752**	0.171	-2.725**	14.504*	2.990	2.567	-3.188
	(0.047)	(0.022)	(0.021)	(0.860)	(0.013)	(0.070)	(0.508)	(0.539)	(0.382)
Acquirer Mkt cap (bln $)	0.029	0.006	-0.002	-0.009**	-0.005	0.020	-0.009	-0.017	-0.001
	(0.202)	(0.305)	(0.488)	(0.012)	(0.190)	(0.262)	(0.400)	(0.105)	(0.889)
Acquirer Tobin's Q	0.285	-1.202	-1.473**	-1.522**	0.064	-3.687	0.508	-1.720	-0.389
	(0.894)	(0.514)	(0.029)	(0.038)	(0.732)	(0.195)	(0.641)	(0.368)	(0.687)
Relative size (Acq/Trg)	-7.025**	-8.580**	0.467	2.992**	3.799**	-9.444*	1.537	4.262	3.114
	(0.017)	(0.030)	(0.806)	(0.041)	(0.015)	(0.058)	(0.668)	(0.280)	(0.113)
Target Mkt cap (bln $)	-0.031	-0.354***	-0.165***	-0.106	0.108**	-0.594***	-0.155	-0.129	0.163
	(0.785)	(0.004)	(0.005)	(0.188)	(0.032)	(0.001)	(0.327)	(0.422)	(0.166)
Target Tobin's Q	3.013	1.801	-0.199	-0.328	0.036	7.073	-0.179	-0.100	-0.568
	(0.141)	(0.293)	(0.112)	(0.106)	(0.865)	(0.110)	(0.800)	(0.910)	(0.383)
Majority Controlling Shrhldr	-12.431	-4.613	3.022	3.801	-1.889	-15.176*	7.494	7.404	-4.825
Majority shareholder (>=50%)	(0.295)	(0.192)	(0.349)	(0.111)	(0.641)	(0.073)	(0.190)	(0.338)	(0.575)
Minority Controlling Shrhldr	3.330	6.307	-0.325	2.027	3.632**	8.959	4.935	4.556	3.709
Less than Majority (>=30%<50%)	(0.790)	(0.393)	(0.825)	(0.342)	(0.017)	(0.627)	(0.677)	(0.644)	(0.295)
Institutional Ownership	-46.220***	-17.276**	4.960	7.915***	-1.399	-33.066*	3.118	6.869	-3.160
	(0.006)	(0.035)	(0.122)	(0.002)	(0.654)	(0.058)	(0.722)	(0.431)	(0.735)
High Outst. To Auth shares ratio	24.299*	3.020	3.320	4.422*	-1.640	2.347	4.596	4.376	-1.502
	(0.060)	(0.543)	(0.108)	(0.090)	(0.215)	(0.740)	(0.381)	(0.175)	(0.778)
Hostile	15.795	2.676	0.530	2.132	1.085	1.079	-9.674*	-4.939	10.042*
	(0.173)	(0.708)	(0.566)	(0.398)	(0.404)	(0.625)	(0.098)	(0.303)	(0.055)
Completed	8.104*	5.807	-0.131	1.218	1.659	-0.613	-8.057**	-5.496	5.867*
	(0.091)	(0.199)	(0.867)	(0.491)	(0.229)	(0.839)	(0.044)	(0.260)	(0.078)
Regulated industry	-6.667*	-2.910	-0.055	-0.355	-0.773	-1.834	0.361	-1.196	-0.696
	(0.059)	(0.335)	(0.917)	(0.661)	(0.599)	(0.460)	(0.929)	(0.799)	(0.779)
Intercept	57.140***	39.796***	0.983	1.338	0.951	57.793***	5.887	8.456	1.511
	(0.002)	(0.000)	(0.329)	(0.356)	(0.633)	(0.003)	(0.199)	(0.230)	(0.726)
Adjusted R2	0.112	0.096	0.048	0.150	0.058	0.119	0.003	0.024	0.023
Log likelihood	-2,535	-2,155	-1,543	-1,445	-1,477	-2,326	-1,993	-1,822	-1,753
N	500	465	459	437	437	459	453	425	425

Table 7. Regressions on other wealth change measures including triple interaction

This table presents OLS regressions on the acquisition premium, target returns, acquirer returns, combined gains, and relative gains. The acquisition premium is calculated as the difference between the offer price and the target share price 4 weeks before the announcement date. The short term (ST) returns are estimated using a 7-day window centered at the announcement date, [-3 days, +3 days]. The long-term (LT) returns are estimated using a 6-month window, starting 60 days before the announcement date up to 120 days after the announcement date or completion or withdrawal, whatever occurs first. Detailed variable definitions are in Appendix B. We report the coefficients and the p-values in parentheses. Inferences are based on White (1980) standard errors corrected for within-industry and year dependence. The asterisks, *** p<0.01, ** p<0.05, * p<0.1, describe the significance level of the coefficients. Time period: Jan-2010 to Jun 2015.

Dep. Variable	Acquisition Premium	Target ST CARs [-3, +3]	Acquirer ST CARs [-3, +3]	Combined ST gains [-3 , +3]	Relative ST gain Trg-vs-Acq [-3, +3]	Target LT CARs [-60, +120]	Acquirer LT CARs [-60, +120]	Combined LT gains [-60, +120]	Relative LT gain Trg-vs-Acq [-60, +120]
Model	(1)	(2)	(3)	(4)	(5)	(6)	(6)	(7)	(8)
	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p
DE	2.495	-1.743	1.382**	1.331**	0.119	-4.869	2.237	2.574***	-1.127
	(0.318)	(0.381)	(0.037)	(0.036)	(0.693)	(0.388)	(0.342)	(0.007)	(0.477)
AfterAug2013	-19.417***	-10.811***	0.623	1.360	0.021	-23.808**	-0.218	-0.350	-2.401
	(0.001)	0.000	(0.530)	(0.375)	(0.967)	(0.012)	(0.958)	(0.923)	(0.494)
DE * AfterAug2013	9.136***	7.056	1.120	-0.555	-1.905**	15.423*	2.263	0.486	-2.656
	(0.001)	(0.120)	(0.160)	(0.576)	(0.044)	(0.073)	(0.598)	(0.898)	(0.475)
Tender	1.740	-2.688	2.158*	0.583	-3.699**	-0.736	-0.032	-0.670	-0.500
	(0.769)	(0.633)	(0.052)	(0.492)	(0.021)	(0.889)	(0.994)	(0.898)	(0.924)
Tender * DE	0.770	5.173	-3.104**	-2.585**	3.304**	13.917**	-0.758	-0.944	-0.496
	(0.195)	(0.168)	(0.019)	(0.036)	(0.015)	(0.034)	(0.843)	(0.854)	(0.904)
Tender * AfterAug2013	29.558**	5.769	-1.962	2.018	8.444***	22.977*	-5.431	2.235	13.685*
	(0.013)	(0.467)	(0.169)	(0.265)	(0.001)	(0.058)	(0.427)	(0.736)	(0.054)
Tender * DE * AfterAug2013	-26.777**	-2.543	2.873	0.194	-8.444***	-24.231*	6.796	4.036	-13.057**
	(0.040)	(0.793)	(0.114)	(0.907)	(0.002)	(0.053)	(0.234)	(0.546)	(0.041)
Acquirer Mkt cap (bln $)	0.028	0.005	-0.002	-0.009**	-0.006	0.018	-0.009	-0.017	-0.002
	(0.198)	(0.354)	(0.521)	(0.013)	(0.175)	(0.264)	(0.416)	(0.106)	(0.855)
Acquirer Tobin's Q	0.298	-1.244	-1.455**	-1.500**	0.054	-3.784	0.497	-1.755	-0.362
	(0.892)	(0.499)	(0.031)	(0.043)	(0.746)	(0.181)	(0.650)	(0.358)	(0.704)
Relative size (Acq/Trg)	-6.720**	-8.395**	0.483	2.913**	3.617**	-8.615**	1.501	4.270	3.051
	(0.026)	(0.031)	(0.807)	(0.044)	(0.020)	(0.045)	(0.675)	(0.268)	(0.110)
Target Mkt cap (bln $)	-0.010	-0.319**	-0.168***	-0.110	0.106**	-0.504***	-0.151	-0.111	0.153
	(0.941)	(0.020)	(0.004)	(0.181)	(0.024)	(0.010)	(0.319)	(0.478)	(0.183)
Target Tobin's Q	2.722	1.515	-0.168*	-0.254	0.056	6.118	-0.153	-0.148	-0.529
	(0.154)	(0.353)	(0.089)	(0.124)	(0.722)	(0.169)	(0.833)	(0.852)	(0.433)
Majority Controlling Shrhldr	-12.239	-4.186	2.839	3.758*	-1.888	-14.246*	7.505	7.570	-4.880
Majority shareholder (>=50%)	(0.292)	(0.242)	(0.383)	(0.098)	(0.642)	(0.078)	(0.174)	(0.322)	(0.574)
Minority Controlling Shrhldr	3.128	6.343	-0.345	1.995	3.766**	9.310	4.950	4.565	3.652
Less than Majority (>=30%<50%)	(0.805)	(0.375)	(0.823)	(0.369)	(0.015)	(0.616)	(0.677)	(0.642)	(0.285)
Institutional Ownership	-47.264***	-17.193**	4.804	7.722***	-1.185	-33.748**	3.222	6.714	-3.439
	(0.004)	(0.029)	(0.133)	(0.002)	(0.704)	(0.049)	(0.715)	(0.437)	(0.709)
High Outst. To Auth shares ratio	24.356*	2.915	3.206	4.553*	-1.222	1.544	4.614	4.760	-1.237
	(0.065)	(0.538)	(0.129)	(0.094)	(0.417)	(0.806)	(0.411)	(0.181)	(0.830)
Hostile	14.013	1.402	0.520	2.663	1.803	-4.757	-9.554*	-5.080	10.519**
	(0.303)	(0.860)	(0.743)	(0.346)	(0.264)	(0.227)	(0.077)	(0.251)	(0.034)
Completed	6.980	5.232	-0.111	1.270	1.672	-2.249	-7.985*	-5.700	5.765*
	(0.153)	(0.260)	(0.870)	(0.472)	(0.183)	(0.479)	(0.052)	(0.261)	(0.085)

Regulated industry	-5.936*	-2.951	0.074	-0.366	-1.051	-0.978	0.218	-1.273	-0.557
	(0.058)	(0.278)	(0.902)	(0.644)	(0.522)	(0.631)	(0.956)	(0.793)	(0.835)
Intercept	58.216***	41.246***	0.485	1.145	1.722	60.547***	5.826	8.936	1.701
	(0.002)	(0.000)	(0.695)	(0.451)	(0.377)	(0.003)	(0.200)	(0.207)	(0.642)
Adjusted R2	0.107	0.091	0.044	0.150	0.060	0.123	-0.005	0.018	0.017
Log likelihood	-2,534	-2,154	-1,541	-1,443	-1,475	-2,323	-1,993	-1,822	-1,753
N	500	465	459	437	437	459	453	425	425

Table 8: Target CEO retention and side payments – descriptive statistics

For a subsample of acquisitions announced between 2010 and 2015, the following table reports the likelihood that the target CEO receives either a bonus payment or a retention contract. Data are sorted by time (pre-event vs post-event), type of acquisition (merger or tender) and state of incorporation. For each comparison the rightmost columns and bottom rows report the statistical significance (*** $p<0.01$, ** $p<0.05$, * $p<0.1$) from a difference of means t-test.

	Full Period (2010 to 2015)			Pre-event (2010 to Jul-2013)			Post-event (Aug-2013 to 2015)			Diff. Pre-Post	
	Total #	retention	bonus	Total #	retention	bonus	Total #	retention	bonus	retention	bonus
All Deals	262	.278	.302	184	.283	.283	78	.266	.346		
DE	177	.258	.237	122	.287	.230	55	.196	.255		
NonDE	85	.318	.435	62	.274	.387	23	.435	.565		
Diff. DE vs NonDE			***			**		*	**		
All mergers	134	.284	.343	93	.258	.280	41	.342	.488		**
DE mergers	75	.267	.240	55	.291	.200	20	.200	.350		
NonDE mergers	59	.305	.475	38	.211	.395	21	.476	.619	*	
Diff. Mergers: DE vs NonDE			***			*		*	*		
All tenders	128	.271	.258	91	.308	.286	37	.184	.189		
DE tenders	102	.252	.235	67	.284	.254	35	.194	.200		
NonDE tenders	26	.346	.346	24	.375	.375	2	.000	.000	*	*
Diff. Tenders: DE vs NonDE											
Diff. mergers vs tenders								***			
Diff. DE: mergers vs tenders											
Diff. Non DE: mergers vs tenders								*	**		

Table 9. Regressions on Target CEO Retention and Additional Bonuses to Target CEO

This table presents logit regressions on target CEO retention and on additional bonuses to target CEO indicators. *CEO retained* equals one if the target CEO is employed by the surviving entity following the sale and zero otherwise. *CEO deal bonus* equals one if the target CEO receives at least one additional bonus (e.g., payment for signing a non-compete, consulting agreement, or for closing the deal, etc.) during the acquisition process and zero otherwise. We collect data for all tender offers in our sample occurring from Jan-2010 to Jun-2015, but due to limitations on data collection we only collect data for half of the mergers (randomly selected) over this same time period, giving us a subsample composed of 129 tenders and 134 mergers. We use weighted logit regressions based on the true proportions of tenders vs. mergers in the whole sample. Detailed variable definitions are in Appendix B. We report the coefficients and the p-values in parentheses. Inferences are based on White (1980) standard errors corrected for within-industry and year dependence. The asterisks, *** $p<0.01$, ** $p<0.05$, * $p<0.1$, describe the significance level of the coefficients.

Dep. Variable	CEO retained	CEO retained	CEO retained	CEO retained	CEO deal bonus	CEO deal bonus	CEO deal bonus	CEO deal bonus
Time Period	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p
DE	0.299	0.301	0.283	0.292	-0.628	-0.544	-0.584	-0.606*
	(0.570)	(0.579)	(0.618)	(0.551)	(0.101)	(0.132)	(0.105)	(0.091)
AfterAug2013	0.889*	0.792**	0.860	0.801***	0.729	0.853*	0.761*	0.881*
	(0.088)	(0.041)	(0.113)	(0.008)	(0.113)	(0.072)	(0.096)	(0.059)
DE * AfterAug2013	-1.367	-1.331	-1.385	-1.296	-0.653	-0.829	-0.732	-0.797
	(0.189)	(0.151)	(0.194)	(0.116)	(0.440)	(0.380)	(0.395)	(0.382)
Acquirer Mkt cap (bln $)	0.001			0.001	0.002			0.001
	(0.128)			(0.201)	(0.239)			(0.293)
Acquirer Tobin's Q	0.096			0.136	0.243			0.245
	(0.594)			(0.476)	(0.227)			(0.305)
Relative size (Acq/Trg)	-0.029				0.489			
	(0.962)				(0.268)			
Target Mkt cap (bln $)	-0.052		-0.049		0.019		0.030	
	(0.491)		(0.426)		(0.533)		(0.398)	
Target Tobin's Q	0.023		0.054		0.043		0.081	
	(0.636)		(0.250)		(0.591)		(0.325)	
Majority Controlling Shrhldr Majority shareholder (>=50%)	-0.010	-0.087	0.080	-0.154	-1.158	-0.822	-0.956	-1.000
	(0.995)	(0.952)	(0.956)	(0.915)	(0.372)	(0.540)	(0.425)	(0.467)
Minority Controlling Shrhldr Less than Majority (>=30%<50%)	-0.019	0.025	-0.010	0.015	-0.503*	-0.447	-0.501	-0.480*
	(0.961)	(0.954)	(0.981)	(0.968)	(0.087)	(0.195)	(0.215)	(0.077)
Institutional Ownership	-0.901	-1.281*	-1.049	-1.151*	-2.253***	-1.997***	-2.130**	-1.996***
	(0.232)	(0.051)	(0.151)	(0.059)	(0.010)	(0.009)	(0.021)	(0.004)
High Outst. To Auth shares ratio	1.358**	1.389*	1.343*	1.359*	0.510	0.642	0.563	0.568
	(0.044)	(0.082)	(0.082)	(0.053)	(0.189)	(0.174)	(0.162)	(0.147)
Regulated industry	0.570	0.381	0.572	0.420	0.321	0.304	0.297	0.433
	(0.332)	(0.343)	(0.282)	(0.390)	(0.604)	(0.438)	(0.547)	(0.420)
Intercept	-1.136**	-0.713	-0.861	-1.115**	-0.332	0.253	0.121	-0.281
	(0.040)	(0.181)	(0.117)	(0.046)	(0.563)	(0.543)	(0.786)	(0.622)
Adjusted R2	0.050	0.045	0.053	0.043	0.076	0.079	0.077	0.078
Log likelihood	-222	-228	-225	-225	-221	-227	-224	-223
N	246	251	248	249	245	250	247	248

Table 10: Robustness to Strategic Timing of Acquisition

Panel A presents the number of acquisitions for each month of 2013 sorted by the target's state of incorporation and type of acquisition (merger or tender). The rightmost column reports the difference (Gap) in the proportion of tenders between the targets incorporated in Delaware and the targets incorporated in other state. Panel B presents Logit and OLS models on a series of dependent variables after dropping observations from a window of 8 months (Apr-2013 to Nov-2013) centered in August 2013, the date of the passing of DGCL § 251(h). Variable definitions are in Appendix A. Inferences are based on White (1980) standard errors corrected for year dependence. The asterisks, *** p<0.01, ** p<0.05, * p<0.1, describe the significance level of the coefficients.

Panel A. Tender Offers vs. Mergers – Monthly detail for year 2013

Year 2013	Delaware				Non Delaware				Gap
	Total	Mergers	Tenders	Percent Tenders	Total	Mergers	Tenders	Percent Tenders	DE – NonDE
Whole year	83	59	24	29%	78	77	1	1%	28%
January	7	4	3	43%	4	4		0%	43%
February	10	10		0%	4	4		0%	0%
March	3	2	1	33%	7	7		0%	33%
April	6	4	2	33%	7	7		0%	33%
May	4	4		0%	10	10		0%	0%
June	8	6	2	25%	8	8		0%	25%
July	10	9	1	10%	8	8		0%	10%
August	6	5	1	17%	4	4		0%	17%
September	10	5	5	50%	8	8		0%	50%
October	7	6	1	14%	8	8		0%	14%
November	5		5	100%	5	5		0%	100%
December	7	4	3	43%	5	4	1	20%	23%

Panel B: Logit and OLS regressions excluding observations from Apr-2013 to Nov-2013

Dep Variable	Tender =1	Acquisition Premium	Target ST CARs [-3, +3]	Acquirer ST CARs [-3, +3]	Combined ST gains [-3 , +3]	Relative ST gain Trg-vs-Acq [-3, +3]	Target LT CARs [-60, +120]	Acquirer LT CARs [-60, +120]	Combined LT gains [-60, +120]	Relative LT gain Trg-vs-Acq [-60, +120]
Time Period	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015
Method of Estimation	Logit	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p
Target inc. in DE	-0.533***	5.115**	1.188	0.775**	0.523*	1.463**	2.832	3.413	3.994*	-1.819
	(0.008)	(0.012)	(0.616)	(0.036)	(0.092)	(0.014)	(0.428)	(0.220)	(0.064)	(0.424)
After Aug2013	-0.599*	-9.857***	-10.152*	-0.226	2.016*	2.938**	-19.653**	-0.606	2.261	-0.377
	(0.075)	(0.003)	(0.053)	(0.838)	(0.086)	(0.013)	(0.037)	(0.857)	(0.343)	(0.889)
Trgt in DE * After Aug2013	1.224**	2.828	6.448*	2.537*	-0.380	-5.397***	9.450*	2.124	-0.825	-4.423
	(0.037)	(0.140)	(0.075)	(0.056)	(0.809)	(0.000)	(0.087)	(0.600)	(0.741)	(0.149)
Acquirer Mkt cap (bln $)	0.001	0.049**	0.000	-0.003	-0.013	-0.004	0.038*	-0.007	-0.015	-0.005
	(0.514)	(0.035)	(0.988)	(0.511)	(0.188)	(0.321)	(0.052)	(0.607)	(0.391)	(0.309)
Acquirer Tobin's Q	-0.210*	0.991	-4.654	-3.007**	-3.355**	-0.005	-7.454	-1.745	-4.355*	-1.182**
	(0.072)	(0.422)	(0.209)	(0.031)	(0.034)	(0.990)	(0.107)	(0.465)	(0.084)	(0.034)
Relative size (Acq/Trg)	-2.593***	-5.705**	-11.350**	0.234	3.425*	5.794***	-10.630	3.080	6.117	1.570
	(0.000)	(0.039)	(0.046)	(0.902)	(0.062)	(0.009)	(0.125)	(0.478)	(0.308)	(0.214)
Target Mkt cap (bln $)	-0.270	-0.069	-0.238	-0.120**	-0.035	0.120*	-0.618***	-0.106	-0.094	0.204
	(0.121)	(0.635)	(0.255)	(0.033)	(0.740)	(0.076)	(0.007)	(0.467)	(0.600)	(0.161)
Target Tobin's Q	0.404***	0.959	1.509	-0.369	-0.226	0.265	6.332	-1.313	-0.749	0.055
	0.000	(0.658)	(0.409)	(0.238)	(0.606)	(0.241)	(0.129)	(0.322)	(0.655)	(0.951)
Majority Controlling Shrhldr Majority shareholder (>=50%)	1.637*	-24.893**	-2.968	1.058	4.770	-2.025	-15.927	8.114**	9.184	-5.377
	(0.058)	(0.045)	(0.390)	(0.752)	(0.112)	(0.598)	(0.174)	(0.045)	(0.250)	(0.528)
Minority Controlling Shrhldr Less than Majority (>=30%<50%)	0.579	-5.584	3.910	-1.430	0.514	3.237*	5.349	10.171	5.451	1.082
	(0.195)	(0.631)	(0.544)	(0.232)	(0.874)	(0.053)	(0.763)	(0.462)	(0.612)	(0.683)
Institutional Ownership	3.068***	-39.561**	-20.398**	5.394	7.051***	-0.547	-23.659	-1.505	5.002	0.134
	(0.000)	(0.018)	(0.010)	(0.131)	(0.001)	(0.892)	(0.134)	(0.871)	(0.622)	(0.991)
High Outst. To Auth shares ratio	1.443	40.177*	3.957	3.337	2.877	-2.333	8.908	-0.447	1.951	3.742
	(0.112)	(0.083)	(0.256)	(0.374)	(0.435)	(0.257)	(0.130)	(0.896)	(0.695)	(0.211)
Hostile	21.396***	12.314	-6.887	-0.154	0.217	-0.260	-3.205	-6.962	-2.831	6.572
	0.000	(0.196)	(0.528)	(0.867)	(0.940)	(0.849)	(0.402)	(0.151)	(0.423)	(0.175)
Completed	15.883***	12.859**	2.790	0.463	2.549*	2.573	-3.035	-5.813	-2.952	5.198
	(0.000)	(0.017)	(0.605)	(0.655)	(0.068)	(0.174)	(0.589)	(0.153)	(0.516)	(0.222)
Regulated industry	-0.841*	-9.155*	-6.017	-1.397**	-1.740	-0.737	-5.858	-0.918	-1.807	-2.303
	(0.080)	(0.080)	(0.200)	(0.032)	(0.190)	(0.652)	(0.146)	(0.805)	(0.690)	(0.445)
Intercept	-17.352***	49.756***	51.296***	3.451	3.988***	-1.363	60.818***	10.007*	10.488	2.612
	(0.000)	(0.006)	(0.001)	(0.252)	(0.009)	(0.622)	(0.003)	(0.070)	(0.167)	(0.657)
Pseudo R2 / Adjusted R2	0.337	0.120	0.144	0.204	0.268	0.132	0.158	0.038	0.083	0.018
Log likelihood	-245	-2,202	-1,874	-1,336	-1,256	-1,263	-1,989	-1,741	-1,591	-1,525
N	457	442	409	403	384	384	404	398	374	374

Table 11: Entropy Balanced Weights

This table uses entropy balanced weights (Hainmueller & Xu, 2013) to match the first moment (i.e., mean) of the covariates from the control and treatment groups. Panel A presents the mean, standard deviation and skewness of the covariates both unweighted and after applying entropy balancing weights to the control group. Panel B presents Logit and OLS regressions models. Variable definitions are in Appendix B. We report the coefficients and the p-values in parentheses. Inferences are based on White (1980) standard errors corrected for within-industry and year dependence. The asterisks, *** p<0.01, ** p<0.05, * p<0.1, describe the significance level of the coefficients. Time period: Jan-2010 to Jun 2015

Panel A. Descriptive statistics using raw and entropy-balanced weights

	Delaware			Other State		
	mean	variance	skewness	mean	variance	skewness
Before: without weighting						
After Aug2013	0.288	0.206	0.936	0.290	0.207	0.927
Acquirer Mkt cap (bln $)	48.940	9,161	4.642	33.750	12,035	5.931
Acquirer Tobin's Q	1.881	0.903	2.209	1.426	0.485	3.640
Relative size (Acq/Trg)	0.279	0.334	6.048	0.356	0.310	4.963
Target Mkt cap (bln $)	3.098	53.500	5.073	2.131	12.980	2.937
Target Tobin's Q	2.029	2.153	2.193	1.376	0.630	4.111
Majority Controlling Shrhldr	0.035	0.034	5.087	0.009	0.009	10.200
Minority Controlling Shrhldr	0.069	0.065	3.391	0.042	0.040	4.563
Institutional Ownership	0.468	0.044	-0.158	0.355	0.057	0.120
High Outst. To Auth shares ratio	0.027	0.026	5.876	0.037	0.036	4.877
Hostile	0.048	0.046	4.229	0.023	0.023	6.311
Completed	0.885	0.102	-2.419	0.879	0.107	-2.317
Regulated industry	0.203	0.162	1.479	0.551	0.249	-0.207
After: entropy balanced weight adj.						
After Aug2013	0.288	0.206	0.936	0.288	0.206	0.936
Acquirer Mkt cap (bln $)	48.940	9,161	4.642	48.930	10,775	5.126
Acquirer Tobin's Q	1.881	0.903	2.209	1.881	1.352	2.648
Relative size (Acq/Trg)	0.279	0.334	6.048	0.279	0.136	1.832
Target Mkt cap (bln $)	3.098	53.500	5.073	3.098	25.300	2.096
Target Tobin's Q	2.029	2.153	2.193	2.028	1.901	2.406
Majority Controlling Shrhldr	0.035	0.034	5.087	0.035	0.034	5.088
Minority Controlling Shrhldr	0.069	0.065	3.391	0.069	0.065	3.391
Institutional Ownership	0.468	0.044	-0.158	0.468	0.055	-0.436
High Outst. To Auth shares ratio	0.027	0.026	5.876	0.027	0.026	5.876
Hostile	0.048	0.046	4.229	0.048	0.046	4.230
Completed	0.885	0.102	-2.419	0.885	0.102	-2.419
Regulated industry	0.203	0.162	1.479	0.203	0.163	1.477

Panel B. Logit and OLS regressions using entropy-balanced weights

Dep Variable	Tender	Acquisition Premium	Target ST CARs [-3, +3]	Acquirer ST CARs [-3, +3]	Combined ST gains [-3 , +3]	Relative ST gain Trg-vs-Acq [-3, +3]	Target LT CARs [-60, +120]	Acquirer LT CARs [-60, +120]	Combined LT gains [-60, +120]	Relative LT gain Trg-vs-Acq [-60, +120]
Time Period	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015	2010-2015
Method of Estimation	Logit	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS	OLS
Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p	b/p
Target inc. in DE	-0.116	7.112***	2.202	0.527*	0.199	1.067*	2.906	1.982	2.553	-1.042
	(0.771)	(0.010)	(0.330)	(0.066)	(0.616)	(0.059)	(0.350)	(0.456)	(0.234)	(0.621)
After Aug2013	-0.768*	-9.056**	-8.608*	-0.620	1.045	2.185*	-18.522**	-2.370	0.021	0.308
	(0.098)	(0.040)	(0.069)	(0.472)	(0.513)	(0.084)	(0.013)	(0.468)	(0.995)	(0.919)
Trgt in DE * After Aug2013	1.433**	0.320	6.420*	2.526**	0.317	-4.208**	11.000*	4.965	2.532	-5.403*
	(0.033)	(0.863)	(0.095)	(0.014)	(0.830)	(0.023)	(0.050)	(0.293)	(0.577)	(0.090)
Acquirer Mkt cap (bln $)	0.000	0.036*	0.005	-0.005	-0.012	-0.001	0.024	-0.011	-0.018	0.001
	(0.964)	(0.082)	(0.694)	(0.337)	(0.134)	(0.667)	(0.197)	(0.389)	(0.216)	(0.936)
Acquirer Tobin's Q	-0.261**	0.282	-4.388	-2.783**	-3.023*	0.108	-6.897	-1.248	-3.723	-1.340**
	(0.019)	(0.844)	(0.196)	(0.048)	(0.066)	(0.656)	(0.112)	(0.618)	(0.171)	(0.044)
Relative size (Acq/Trg)	-2.561***	-5.432**	-9.795**	0.096	3.703**	6.373**	-10.677*	2.729	5.726	2.592
	0.000	(0.035)	(0.033)	(0.960)	(0.049)	(0.014)	(0.084)	(0.534)	(0.325)	(0.224)
Target Mkt cap (bln $)	-0.064	0.082	-0.252	-0.146**	-0.074	0.119*	-0.568***	-0.192	-0.172	0.229
	(0.364)	(0.682)	(0.207)	(0.018)	(0.474)	(0.051)	(0.009)	(0.197)	(0.326)	(0.108)
Target Tobin's Q	0.268***	1.087	0.815	-0.306	-0.152	0.337	5.912	-1.074	-0.592	-0.017
	(0.002)	(0.596)	(0.652)	(0.284)	(0.711)	(0.165)	(0.113)	(0.370)	(0.690)	(0.983)
Majority Controlling Shrhldr	1.620*	-22.153*	-3.709	1.229	4.397	-2.231	-14.125	7.661*	9.320	-5.765
Majority shareholder (>=50%)	(0.066)	(0.052)	(0.359)	(0.709)	(0.109)	(0.586)	(0.113)	(0.057)	(0.248)	(0.511)
Minority Controlling Shrhldr	0.282	-3.776	4.942	-1.410	0.365	2.915**	4.153	7.531	2.460	2.527
Less than Majority (>=30%<50%)	(0.558)	(0.728)	(0.430)	(0.270)	(0.903)	(0.030)	(0.801)	(0.568)	(0.802)	(0.412)
Institutional Ownership	1.634*	-39.844***	-20.739***	7.361**	8.520***	-2.577	-25.115*	1.911	7.546	-2.262
	(0.081)	(0.010)	(0.006)	(0.049)	(0.005)	(0.509)	(0.095)	(0.796)	(0.349)	(0.814)
High Outst. To Auth shares ratio	1.448*	36.921*	4.617	4.133	3.981	-2.650	6.638	2.472	2.743	1.465
	(0.071)	(0.073)	(0.165)	(0.161)	(0.167)	(0.135)	(0.244)	(0.620)	(0.534)	(0.724)
Hostile		12.426	-7.274	-0.408	-0.387	-0.363	-2.085	-7.924*	-3.568	7.617*
		(0.191)	(0.478)	(0.666)	(0.886)	(0.779)	(0.574)	(0.076)	(0.201)	(0.087)
Completed		13.366**	3.056	0.032	1.566	2.122	-2.196	-7.164**	-4.636	5.768
		(0.012)	(0.520)	(0.975)	(0.317)	(0.232)	(0.627)	(0.036)	(0.213)	(0.135)
Regulated industry	-1.264***	-10.931**	-6.238	-1.005	-1.283	-0.779	-5.806	0.081	-1.007	-2.225
	(0.007)	(0.050)	(0.155)	(0.191)	(0.295)	(0.591)	(0.112)	(0.982)	(0.804)	(0.386)
Intercept	-1.667*	49.235***	50.374***	3.023	3.885**	-0.526	60.351***	10.547*	11.416*	1.847
	(0.057)	(0.005)	(0.001)	(0.352)	(0.032)	(0.848)	(0.002)	(0.062)	(0.058)	(0.719)
Pseudo R2 / Adjusted R2	0.192	0.112	0.133	0.199	0.253	0.136	0.147	0.030	0.075	0.025
Log likelihood	-331	-2,487	-2,134	-1,527	-1,437	-1,439	-2,254	-1,983	-1,809	-1,732
N	518	500	465	459	437	437	459	453	425	425

Figure 1. Percent of tender offers with top-up options

Percent of Tender Offers with Top-Up Option
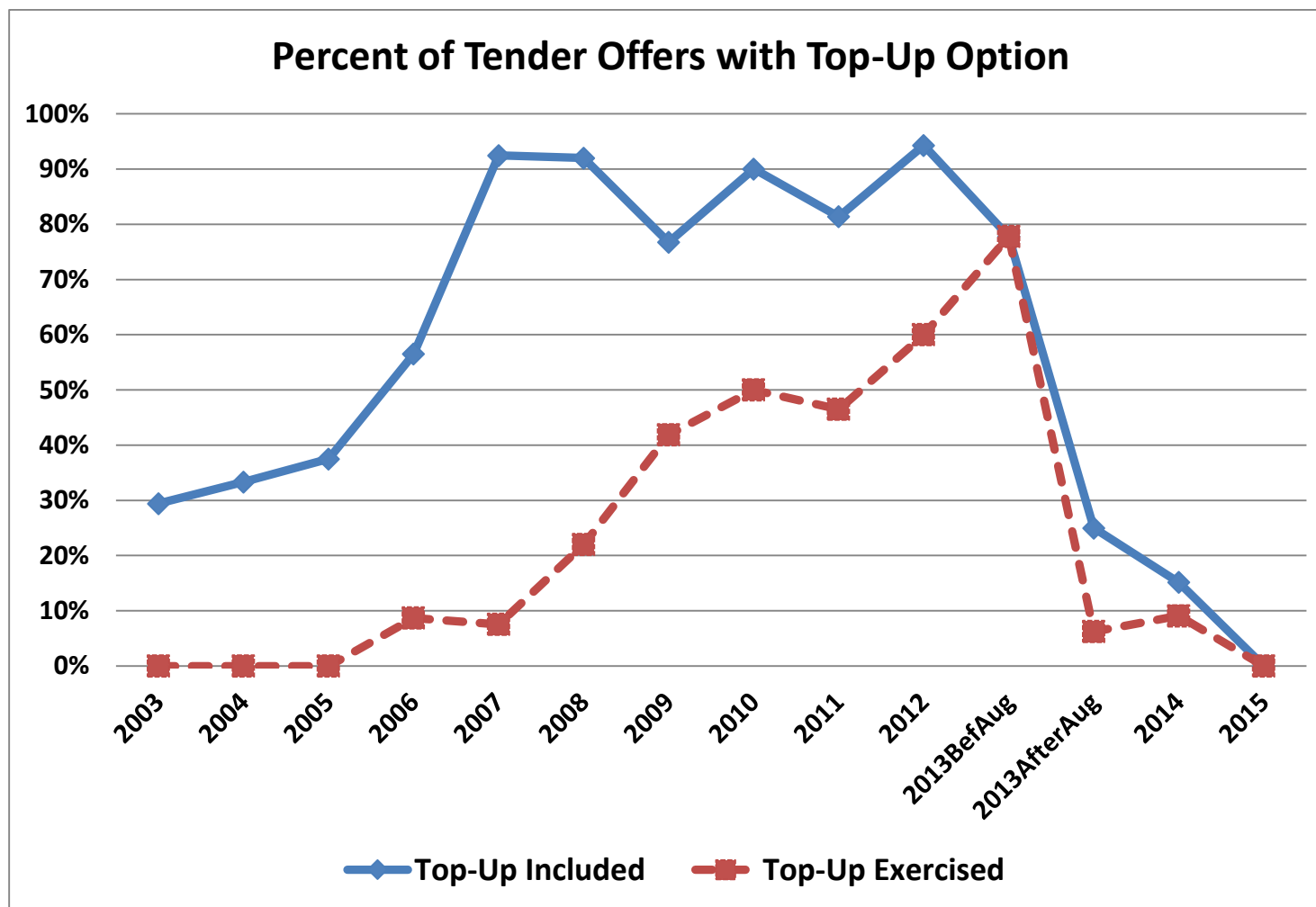
Figure 2. Percent of deal structures as tender offers

Percent of Deals Structured as Tenders Offers

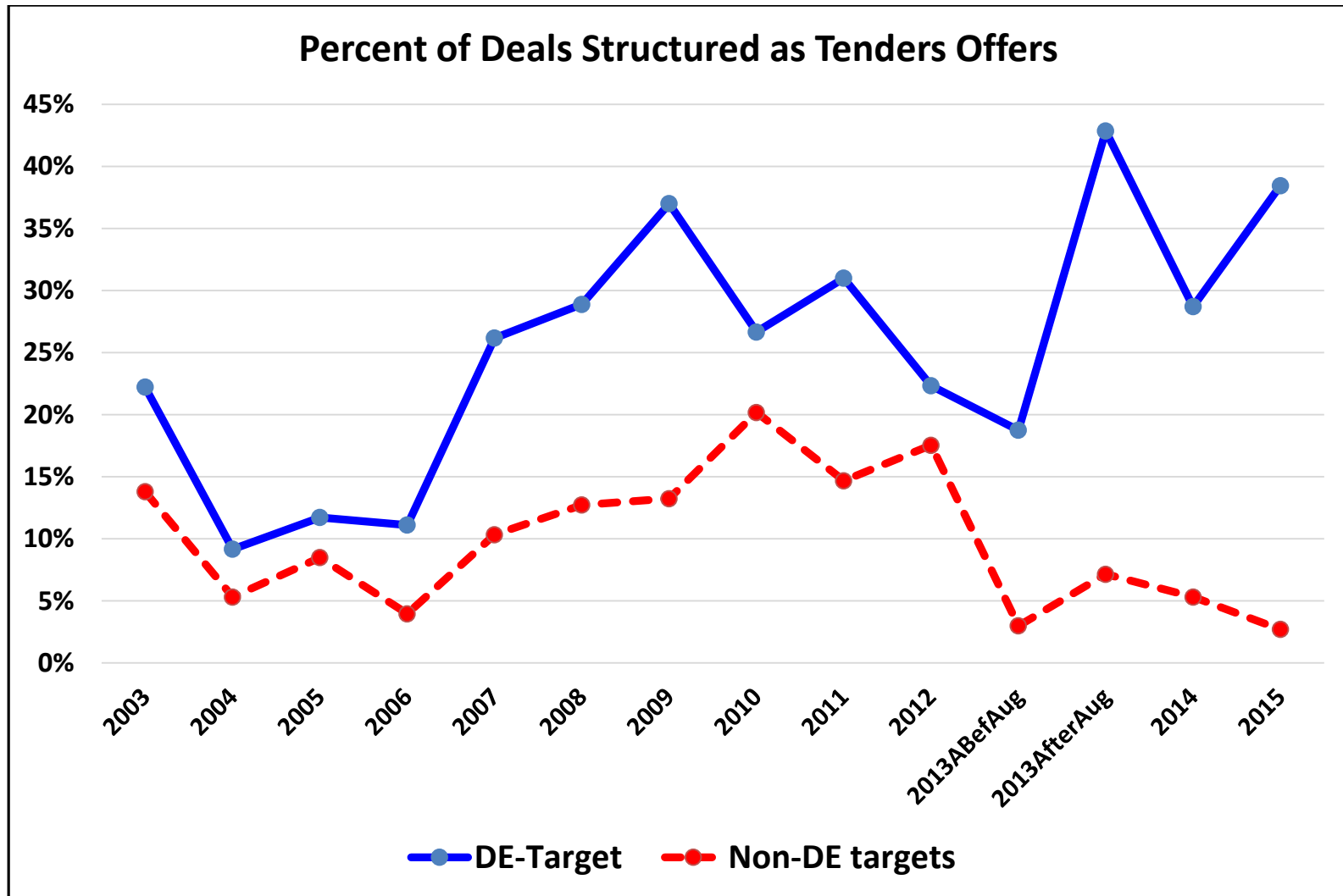Legend: DE-Target, Non-DE targets

Figure 3 Number of M&A transactions by method of sale and Average offered premium
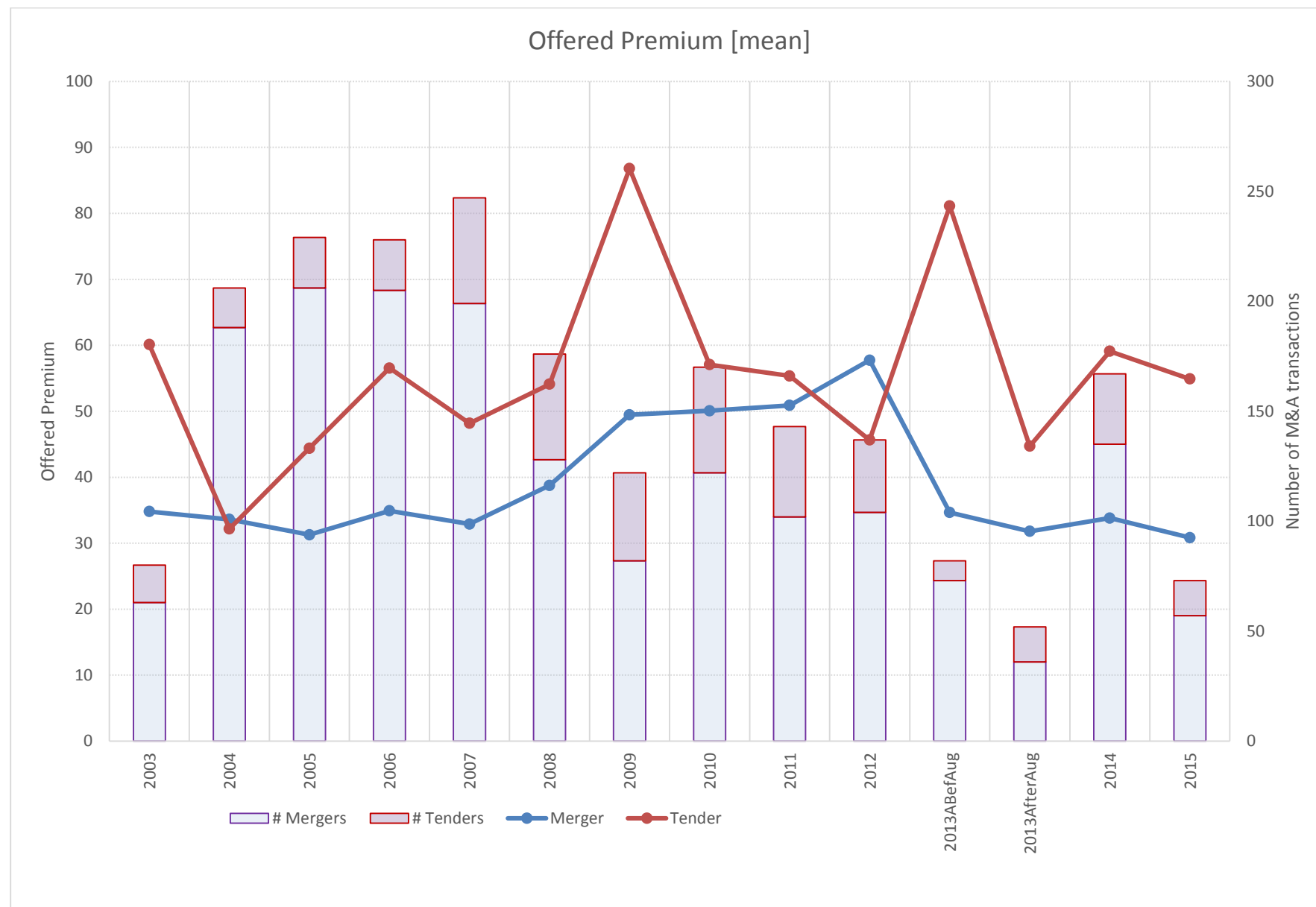
Figure 4. Lowess estimations on Premium by method of sale and target state of incorporation (DE vs non DE)

Legend:
- Mergers (non DE)
- Mergers (DE only)
- Tenders (non DE)
- Tenders (DE only)
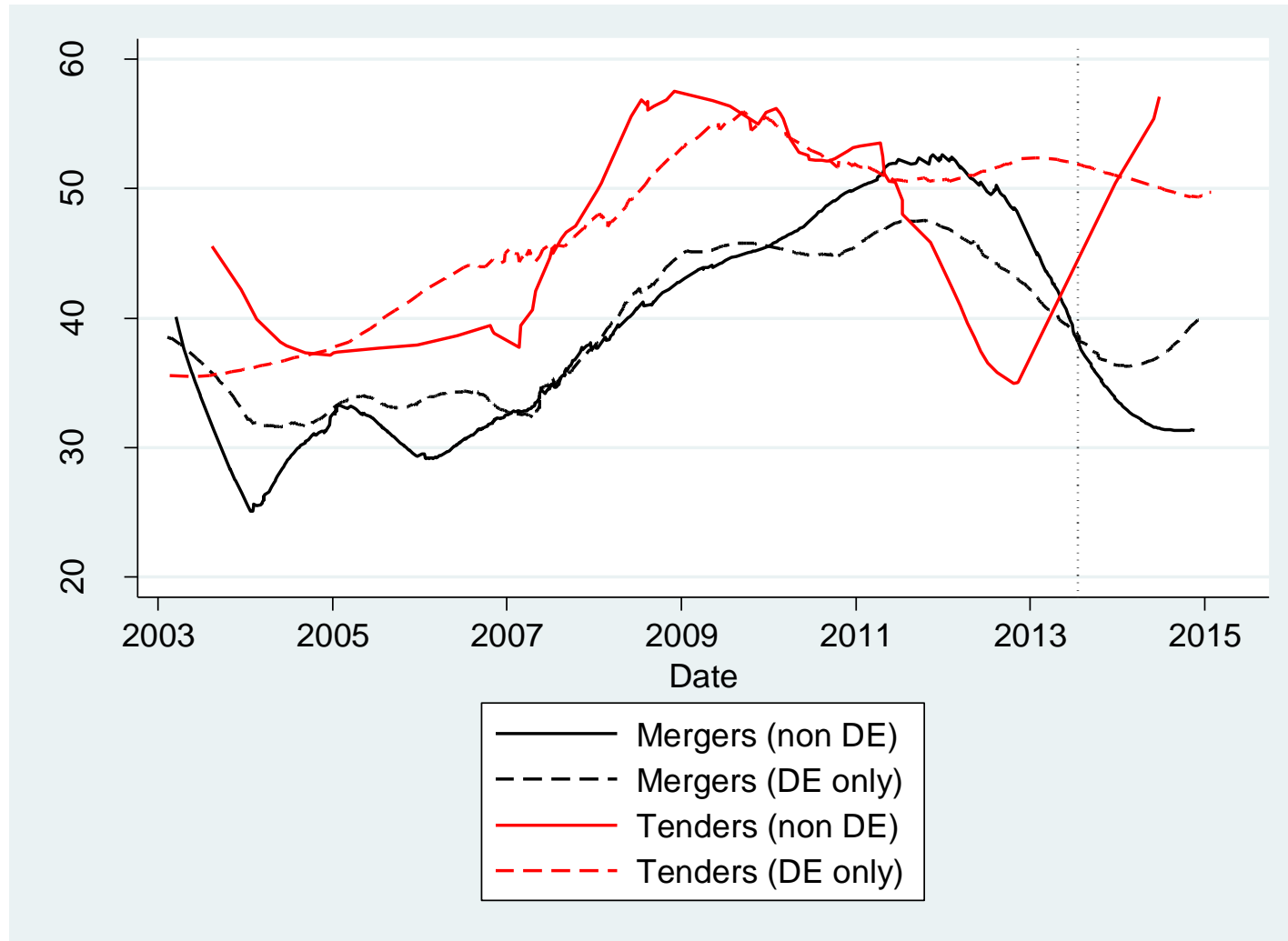
Appendix A: Variable definitions

Variable	Description
Mkt Value (Acquirer and Target)	Market value of assets = (book_value_assets - book value of equity + common shares outstanding* Fiscal Year closing price). Source: Compustat
Tobin's Q (Acquirer and Target)	Calculated as follows: [book_value_assets + common shares outstanding * Fiscal Year closing price - book value of equity - deferred taxes book_value_assets]. Source: Compustat
Relative size (Trg/Acq)	Target Mkt Value. / Acquirer Mkt Value. Source: Compustat
DE	Binary variable = 1 if target is incorporated in the state of Delaware. Source: Fact Set's Merger Metrics
Tender	Binary variable = 1 if the method of sale is a tender offer. Source: Fact Set's Merger Metrics
Merger	Binary variable = 1 if the method of sale is a merger. Source: Fact Set's Merger Metrics
Top-up option	Binary variable = 1 if the tender offer includes a Top-up option. Source: Fact Set's Merger Metrics
DGCL § 251(h)	Binary variable = 1 if the tender offer relies on DGCL § 251(h). Source: Fact Set's Merger Metrics
Majority Controlling Shrhldr / Majority shareholder (>=50%)	Binary variable = 1 if there is a controlling shareholder with more than 50% ownership of the target firm. Source: Fact Set's Merger Metrics
Minority Controlling Shrhldr / Less than Majority (>=30%<50%)	Binary variable = 1 if there is a controlling shareholder with ownership between 30% and 50% of the target firm. Source: Fact Set's Merger Metrics
Outstanding-To-Authorized shares ratio	The ratio of number of outstanding shares to the number of authorized shares as of the closest annual report prior to the announcement date of the M&A transaction. Source: SEC proxy filings (e.g. 10-k)
High Outst. To Auth shares ratio	Equals 1 if the Outstanding-To-Authorized shares ratio is equal or larger than 0.7, zero otherwise.
Hostile	Binary variable = 1 if the attitude of the M&A transaction is hostile. Source: Fact Set's Merger Metrics and SDC
Completed	Binary variable = 1 if the M&A transaction has been completed. Source: Fact Set's Merger Metrics and SDC
Acquisition Premium	Estimated as the offered price compared to the stock price of the target as of 4 weeks before the announcement date. Source: SDC
ST CARs [-3, +3] (Acquirer and Target)	measured with cumulative abnormal returns in excess of the CRSP equal-weighted index at the announcement date, calculated over a short-window of 7-day window centered at the announcement date. Source: CRSP
LT CARs [-60, +120] (Acquirer and Target)	measured with cumulative abnormal returns in excess of the CRSP equal-weighted index at the announcement date, calculated over a 180-day window (i.e., from two months before the announcement date up to 4 months after the announcement date or withdrawal or completion, whatever occurs first). Source: CRSP
Combined gains	measured with the sum of the acquirer's and target's dollar gains (over the short-term window and the long-term window) divided by the sum of the acquirer's and target's market value of equity. Source: CRSP
Relative gain Trg-vs-Acq	estimated as the difference between the target- minus the bidder-dollar gain divided by the sum of target and bidder market capitalization (Ahern 2012) estimated 4 weeks before the announcement date for the short term window and 8 weeks for the long-term window). Source: CRSP

Table Appendix 1. Information on Offered Premium
Panel A. (# of M&A transactions with information on premium)) and Panel B (Avg. premium)

	All			Merger = Yes			Tender = Yes Total			Tender = Yes Topup Option =No			Tender = Yes Topup Option =Yes		
	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE
Total	2077	1242	835	1672	930	742	405	312	93	128	105	23	277	207	70
2003to2007	990	567	423	861	472	389	129	95	34	52	36	16	77	59	18
2008toJul2013	830	523	307	611	359	252	219	164	55	29	22	7	190	142	48
AfterAug2013	257	152	105	200	99	101	57	53	4	47	47		10	6	4

Premium offered
trgincstatede

	All			Merger = Yes			Tender = Yes Total Tenders			Tender = Yes Topup Option =No			Tender = Yes Topup Option =Yes		
	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE	Total	DE	Non-DE
Total	42.00	43.61	39.60	38.55	39.39	37.49	56.23	56.17	56.42	60.45	57.55	73.70	54.28	55.48	50.75
2003to2007	35.29	36.50	33.68	33.31	34.39	32.00	48.54	47.01	52.81	56.60	50.26	70.87	43.09	45.03	36.75
2008toJul2013	50.93	51.97	49.16	47.31	47.06	47.68	61.03	62.73	55.96	77.44	76.57	80.16	58.53	60.59	52.43
AfterAug2013	38.98	41.35	35.54	34.35	35.48	33.24	55.20	52.30	93.60	54.24	54.24		59.73	37.15	93.60