

Go-Shops: Market Check Magic or Mirage?

A “go-shop” is a provision in a merger agreement that permits a target company, after executing a merger agreement, to continue to actively solicit bids and negotiate with other potential bidders for a defined period of time. Where a target has engaged in a thorough pre-signing market canvass, a go-shop has little or no utility. However, when a target has not undertaken any form of pre-signing market canvass before signing up a deal (typically either because the buyer professed an unwillingness to bid if the target commences a market canvass or because the target was concerned that an auction process would result in employee and/or customer defections¹), a go-shop theoretically should produce the best possible transaction for the target company and its stockholders. While the authors are not aware of any empirical analysis of go-shops, our practical experience suggests that while go-shops may be beneficial in some circumstances, they may serve as mere window dressing in other cases. If so, then judicial skepticism of the benefit of a go-shop is warranted in the latter cases.

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Running the Sales Process

In considering a transaction involving a change of control, directors of Delaware corporations are charged with obtaining the best transaction reasonably available for the corporation and its stockholders.² The phrase “*Revlon* duties” refers to (i) the standard of review that a Delaware court will utilize in reviewing transactions involving a sale, break-up or change of control of a corporation and (ii) the contextually-specific obligations that are imposed on a board of directors in such transactions. While there is no “blueprint” for running a sales process, the board of directors of a target company generally may satisfy its fiduciary duties to obtain the best transaction reasonably available under the circumstances for the corporation and its stockholders by engaging in one of the following types of transactions: (i) a transaction with the highest bidder after a full public auction of the target company, i.e., a pre-agreement market check; (ii) a transaction with the highest bidder after a more limited pre-agreement market check in which multiple

¹ The authors have surveyed each of the reported transactions in the past four years that included a go-shop provision (the results of which are attached hereto). An overwhelming majority of the sixty-two (62) transactions analyzed in the survey involved targets that did not engage in a market canvass before entering into a merger agreement with a private equity buyer.

² *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) (finding that once directors have decided to sell control of the company “[t]he directors’ role changed from defenders of the corporate bastion to auctioneers charged with getting the best price for the stockholders at a sale of the company”).

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potential bidders are contacted and participate in the bidding; or (iii) a transaction with a single bidder where the target board has reliable evidence sufficient to allow it to assess the fairness of the bid (and, by extension, whether it has obtained the best transaction reasonably available).³

The Post-Signing Market Check

During the late 1980s, Delaware courts considered whether target company directors who had forsaken an open auction process in favor of negotiating with a single bidder had satisfied their heightened duties in a sale of control when they agreed to a transaction with a post-signing market check. A post-signing market check, it was argued, was effective because it established a “floor” for the transaction and, by providing for a limited period of time after the announcement of the transaction for a competing bidder to emerge, allowed a transaction’s reasonableness to be tested.⁴

The Delaware courts first considered the post-signing market check in the case of *In re Fort Howard Corp. S’holders Litig.*⁵ In *Fort Howard*, plaintiffs, shareholders of Fort Howard Corporation, the target company, sought a preliminary injunction against the closing of a tender offer for up to all of the outstanding shares of the company. The tender offer was the first step of a two-step leveraged management buyout transaction. The shareholders alleged, among other things, that the Fort Howard directors favored the management-led buyers and did not seek the best transaction reasonably available under the circumstances.

The transaction at issue in *Fort Howard* included a number of features that came to define the post-signing market check. In particular, the Fort Howard board approved a transaction with a single bidder, but provided a mechanism by which competing bidders could later emerge. The transaction contained (i) a “window-shop” provision allowing the company to receive and consider alternative proposals but not to actively to solicit such proposals; (ii) a press release stating that Fort Howard had the right to consider alternative proposals and would consider alternative proposals; (iii) a window of forty

³ A transaction that follows a full auction or involves multiple bidders may warrant more restrictive deal protections, such as a higher termination fee, a matching right and a more limited no shop provision, because the market has been canvassed for potential bidders. By contrast, when a target board lacks sufficient reliable evidence to permit it to conclude that a transaction with a single bidder is the best transaction reasonably available, the use of a post-signing market check (coupled with modest deal protection provisions) will permit interested competing bidders to emerge, thus ensuring that the target company obtains the best transaction reasonably available under the circumstances. *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1286-87 (Del. 1989).

⁴ Evelyn Sroufe, *A Bird in the Hand or Pie in the Sky: The Market Checks in the ‘90’s*, 5 No. 10 Insights 12, 12 (Oct. 1991).

⁵ 1988 WL 83147 (Del. Ch. Aug. 8, 1988).

(40) calendar days between the announcement of the transaction and the anticipated closing of the tender offer; and (iv) a modest termination fee (1.9% of the equity value of the transaction).⁶

The Court of Chancery concluded that the rationale for adopting this approach – “permitting the negotiations with the management affiliated buyout group to be completed before turning to the market in any respect – ma[de] sense.”⁷ The Court of Chancery noted that “[t]o start a bidding contest before it was known that an all cash bid for all shares, could and would be made, would increase the risk of a possible takeover attempt at less than a ‘fair’ price or for less than all shares.”⁸ The Court also determined that the “alternative ‘market check’ that was achieved was not so hobbled by lock-ups, termination fees or topping fees, so constrained in time or so administered (with respect to access to pertinent information or manner of announcing ‘window shopping’ rights) as to permit the inference that this alternative was a sham designed from the outset to be ineffective or minimally effective.”⁹ Rather, it found the device “reasonably calculated to (and did) effectively probe the market for alternative possible transactions.”¹⁰ Having reached the conclusion that the Fort Howard board acted in a good faith pursuit of company and shareholder interests by structuring the transaction in this manner, the Court concluded that the board had not violated its *Revlon* duties.

Following *Fort Howard*, a board was able to satisfy its *Revlon* duties – to pursue shareholder interests upon sale of the company, in good faith and advisedly, in an effort to obtain the best price reasonably available – even when involved only with a single bidder, provided that the procedure it adopted to structure a transaction and the negotiations surrounding that transaction were “sufficient to inform the exercise of judgment that board [will have] made in entering the merger agreement.”¹¹

⁶ *Id.* at *6-8.

⁷ *Id.* at *13.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* On a number of occasions, the Court has reiterated both the rationale and factors relied upon in the Fort Howard decision. See, e.g., *Kohls v. Duthie*, 765 A.2d 1274 (Del. Ch. 2000); *Braunschweiger v. American Home Shield Corp.*, 1989 WL 128571 (Del. Ch. Oct. 26, 1989); *Roberts v. General Instrument Corp.*, 1990 WL 118356 (Del. Ch. Aug. 13, 1990).

The Post-Signing Market Check Redux

In recent years, the Delaware courts have revisited what characterizes an adequate post-signing market check. In each of *In re Pennaco Energy Inc.*¹² and *In re MONY Group Inc.*¹³, the Court of Chancery approved a post-signing market check that differed in several important respects from the post-signing market checks previously condoned by the Court of Chancery. First, in *Pennaco* and *MONY*, the target board of directors agreed to a termination fee that appeared to be significantly higher (3.0% and 3.3%, respectively) than might have been expected in the context of a sale of control (in the absence of an auction or a pre-signing market check) to a single bidder. (In several earlier decisions, the Court of Chancery had approved transactions involving post-signing market checks that had termination fees ranging from 1.9% to 2% of the equity value of the deal.¹⁴) Citing precedent decided in the context of stock-for-stock mergers or liquidated damages provisions, the Court of Chancery approved the higher termination fees in both cases.¹⁵ Interestingly, however, the Court did not analyze whether the higher termination fee was reasonable in comparison to the fees previously approved by the Court of Chancery in earlier decisions involving single bidders and post-agreement

¹² 787 A.2d 691 (Del. Ch. 2001).

¹³ 852 A.2d 9 (Del. Ch. 2004).

¹⁴ Compare *Pennaco*, 787 A.2d at 707 (approving a termination fee amounting to 3% of the equity value in the context of a transaction involving a third party single bidder and a post-agreement market check) and *MONY*, 852 A.2d at 18 (approving a termination fee amounting to 3.3% of the equity value in the context of a transaction involving a third party single bidder and a post-agreement market check) with *Kohls*, 765 A.2d at 1285 (refusing to enjoin a transaction involving a termination fee amounting to 2.2% of the equity value of the transaction), *Fort Howard*, 1988 WL 83147, at *13 (refusing to enjoin a transaction involving a termination fee amounting to 1.9% of the equity value of the transaction), *Braunschweiger*, 1989 WL 128571, at *7 (refusing to enjoin a transaction involving a termination fee amounting to 1.9% of the equity value of the transaction) and *Roberts*, 1990 WL 118356, at *9 (refusing to enjoin a transaction involving a termination fee amounting to 2% of the equity value of the transaction). In two cases, the Court of Chancery either approved or declined to enjoin a transaction with higher termination fees, but in each case the post-signing market check followed a pre-signing market check of some length. See, e.g., *In re KDI Corp. Shareholders Litig*, 1988 WL 116448, *3 (Del. Ch. Nov. 1, 1988) (refusing to enjoin a transaction involving a three month pre-agreement market check and a post-agreement market check and containing a termination fee amounting to 4.3% of the equity value); *In re Formica Corp. Shareholders Litigation*, 1989 WL 25812 (Del. Ch. Mar 22, 1989) (approving a transaction involving an active pre-agreement market check and a post-agreement market check and containing a termination fee amounting to 4.5% of the equity value).

¹⁵ *Pennaco*, 787 A.2d at 707 n.27 (citing *McMillan v. Intercargo Corp.*, C.A. No. 16963, Strine, V.C. (Apr. 20, 2000), *Matador Capital Management Corp. v. BRC Holdings, Inc.*, 729 A.2d 280 (Del. Ch. 1998) and *Goodwin v. Live Entertainment, Inc.*, 1999 WL 64265 (Del. Ch. Jan. 25, 1999)); *MONY*, 852 A.2d at 24 (citing *Kysor Indus. v. Margaux, Inc.*, 674 A.2d 889 (Del. Super. 1996)).

market checks. Second, although the press releases issued by the *Pennaco* and *MONY* boards both failed to explicitly invite competing proposals, this difference did not cause the Court any pause.¹⁶

Before the *Pennaco* and *MONY* decisions, if a target had negotiated with a single bidder and then agreed to be acquired by that bidder, the availability of a post-agreement market check, coupled with a press release inviting competing bids and a modest termination fee (approximately 2% or less of the equity value) would likely have provided the target board with reliable evidence sufficient to assess the fairness of the initial bid. Moreover, in such cases, other deal protections, such as a matching right, were generally kept to a minimum. However, in *Pennaco* and *MONY*, the Delaware courts seemed to relax several of those requirements when it permitted a higher termination fee (closer to the amount generally seen in transactions that have been subject to at least a limited market check) and matching rights and it did not require the target to issue a press release that expressly invited competing bids.

Emergence of Go-Shop Provisions

After the *Pennaco* and *MONY* decisions, post-agreement market checks began fading into the background and a new approach – the go-shop provision – started to take hold. A typical go-shop provision¹⁷ permits a target company to solicit proposals and enter into discussions or negotiations with other potential bidders during a limited period of time (typically 30-50 days) following the execution of the merger agreement.¹⁸ The target company is permitted to exchange confidential information with a potential bidder, subject to the execution of a confidentiality agreement that is substantially on the same terms and conditions as the confidentiality agreement executed by the initial bidder. Any non-public information provided or made available to a competing bidder typically also must be provided or made available to the initial bidder.

¹⁶ *Pennaco*, 787 A.2d at 703 (noting that the target company filed a form 8-K and attached the merger agreement which “gave the marketplace knowledge of Pennaco’s ability to speak with rival bidders and the standard nature of the termination fee”); *MONY*, 852 A.2d at 18 (noting that the transaction was announced on September 17, 2003). The Court’s comfort on this point perhaps may be attributed to the notion that in 2007 the terms of the merger agreement are more readily available to and digestible by the financial markets than they were nearly twenty years ago (when the *Fort Howard* case was decided).

¹⁷ Examples of more than sixty (60) go-shop provisions are set forth in the document entitled “Transactions Containing Go-Shop Provisions,” a copy of which is attached hereto.

¹⁸ The length of the go-shop period has increased over time. The average go-shop period for transactions announced in 2007 was nearly 40 days. By comparison, for transactions prior to 2007, the average go-shop period was 33 days.

Increasingly, go-shops also provide for a bifurcated termination fee – a lower fee payable if the target terminates for a competing bidder who is identified during the go-shop period and a traditional termination fee if the target terminates for a competing bidder who is identified after the go-shop period ends. For example, while only 67% of the 2006 go-shop transactions surveyed by the authors also included a bifurcated termination fee, every 2007 go-shop transaction included a bifurcated termination fee. Moreover, the termination fees during the go-shop period are, on average, between one-third and two-thirds of the full termination fee payable after the go-shop ends.

Depending upon the merger agreement, the actions that a topping bidder must take during the go-shop period in order to avail itself of the lower termination fee vary widely. Some agreements merely require that (i) the target board conclude before the end of the go-shop period that the topping bidder has submitted an acquisition proposal that constitutes or is reasonably likely to lead to a superior proposal, and (ii) the target board terminate the initial proposal (whether before or after the end of the go-shop period). When this type of provision (commonly referred to as “open” go-shop) is used, the target has the entire go-shop period to solicit a competing proposal and the topping bidder has ample time to pull together its competing proposal. Other merger agreements, however, take a markedly different approach and require, prior to the end of the go-shop, that (i) the jumping bidder must sign a confidentiality agreement, resolve all due diligence concerns, and prepare and submit a topping bid and form of merger agreement, and (ii) the target board must determine that the topping bid is a “superior proposal,” wait for the initial bidder’s match right to expire, accept the topping bid, approve the merger agreement and terminate the initial merger agreement. When the parties agree to this type of provision (commonly known as a “closed” go-shop), the go-shop period, for all practical purposes, is shorter than an “open” go-shop because it requires the jumping bidder to submit its initial bid early in the process to allow enough time for the target to take the remaining actions.

The Intended Benefits of Go-Shops

The target’s desire for a bifurcated fee with a significantly lower termination fee payable during the go-shop should not be surprising – it enhances the effectiveness of the target’s go-shop by making the potential competing bidder’s “entry costs” lower than would exist with a traditional no-shop provision and corresponding full termination fee. If the reduced termination fee generates more interest in the target company than a traditional no-shop provision, then a superior offer may be more likely to emerge during the go-shop period.

By virtue of its ability to canvass the market following the execution of a definitive agreement, the board of directors may be in a better position to gauge the level of interest of other potential bidders, using the agreed upon purchase price as a floor. As a result, the target company's board of directors should have a greater level of comfort that they have satisfied their fiduciary obligations to the company and its stockholders, including their duty under *Revlon* to secure the best transaction reasonably available. (If a superior offer fails to materialize during the go-shop period, the board of directors presumably would point to such failure as reliable evidence of the fairness of the initial bid.) Moreover, as noted above, a go-shop also permits the target company to agree to be acquired without having to conduct a full auction or pre-agreement market check, thus avoiding a number of undesirable consequences.¹⁹

A go-shop provision may also hold some appeal for potential bidders. For example, by agreeing to include a go-shop provision, a bidder avoids engaging in a potentially costly auction process. In addition, in many cases target companies have been willing to provide the initial bidder with the right to match any competing bid, whether made during or after the go-shop period.²⁰ Finally, since a go-shop actively encourages jumping bids, the transaction (assuming it is not jumped) may be more defensible than a transaction that is simply subject to a traditional no-shop provision.²¹

¹⁹ In general, auctions and pre-agreement market checks give rise to a certain amount of uncertainty. For example, there is a risk that if the company conducts an open auction that either results in no bidders or the submission of bids at a lower than expected price, the market value of the company could be negatively affected. In addition, there may be important business reasons for forgoing a pre-agreement market check, such as customer and employee retention and preventing the disclosure of confidential information to potential strategic bidders in an auction process. See, e.g., *Van de Walle v. Unimation, Inc.*, 1991 WL 29303, at *18 n.15 (Del. Ch. May 7, 1991) ("Plaintiff argues that there was no valid market test, because there was no public invitation to bid for Unimation. However, there is no rule requiring Unimation's directors to sell the company according to a standard formula ...To publicly announce that Unimation was for sale would have created no added benefit and could well have been detrimental."). Finally, private equity bidders frequently insist that the target not engage in a pre-agreement market check.

²⁰ In one recent transaction (Triad Hospitals), the merger agreement denied the initial buyer a matching right during the go-shop period. A number of subsequent transactions (but not all) have adopted the same approach and one might expect targets to start insisting on such a limitation. Since go-shops are generally used when a target has not been fully shopped, a target might reasonably argue that a matching right, if included, would unfairly give the initial bidder a "leg up" that would chill the interests of other potential competing bidders.

²¹ Cf. *In re Netsmart Technologies, Inc. S'holders Litig.*, 2007 WL 926213 (Del. Ch. March 14, 2007).

Go-Shop Provisions: Effective Tools or Window Dressing?

Increasingly, both private equity firms and their targets have become comfortable with the exclusive negotiation/go-shop model.²² In fact, the transactions announced so far this year account for more go-shops than all prior years combined. Target companies, for their part, have had success negotiating go-shops with longer solicitation periods and lower termination fees for competing transactions proposed during the go-shop period. The question remains, however, whether such provisions provide an effective alternative to the traditional pre-agreement market canvass. Moreover, how should one measure the effectiveness of a go-shop? By the way in which they are structured and implemented? By reference to the theoretical possibility of a topping bid that they present? Or, by reference to the actual number of jumping bids that have occurred during a go-shop period? In the latter case, would a small number of jumping bids suggest that the original bid was “fully priced” or that go-shops are, for some reason, ineffectual? While we have not undertaken an empirical analysis of all the transactions with go-shops,²³ we will offer three observations with respect to the questions we have posed.

First, the effectiveness of a go-shop may be compromised by the mechanics of the go-shop (for example, is it an “open” or “closed” go-shop) or by the manner in which the target board applies the mechanics of the go-shop. Several recent decisions of the Delaware Court of Chancery offer guidance on each of these points.²⁴ For example, in *Lear*, the merger agreement between Lear and Carl Icahn provided for a “closed” go-shop – that is, it provided that the lower termination fee was available only if the target approved a superior proposal and terminated the original transaction before the end of the go-shop period. Criticizing the “truncated” nature of the go-shop, the Court observed that the go-shop:

²² For the reasons that follow, this result is not surprising. An effective go-shop right (together with a right to terminate for a superior proposal) should provide the target board with sufficiently reliable evidence to permit it assess the fairness of the initial bid. If so, then the target board (and a court reviewing the transaction) should be able to determine that the target board has satisfied its obligation to secure the best price reasonably available under the circumstances. See *Barkan v. Amsted Indus., Inc.*, 567 A.2d at 1286-87. From the bidder’s perspective, a go-shop may minimize (or eliminate) the risk that the transaction will be enjoined without creating a significant risk of a jumping bid during the go-shop period (and, in the event that the target terminates the initial transaction for the topping bid, the risk of a significantly lower termination fee).

²³ An academic review of the empirical data may provide interesting insights on the utility of a go-shop. For example, such an analysis may be able to demonstrate whether a go-shop alters the behavior of competing bidders and whether it has a positive or negative impact on transaction value for the target stockholders.

²⁴ *In re Topps Co. S’holders Litig.*, 2007 WL 1732586 (Del. Ch. June 14, 2007); *In re Lear Corp. S’holders Litig.*, 2007 WL 1732588 (Del. Ch. June 15, 2007).

left a bidder hard-pressed to do adequate due diligence, present a topping bid with a full-blown draft merger agreement, have the Lear board make the required decision to declare the new bid a superior offer, wait Icahn's ten-day period to match, and then have the Lear board accept that bid, terminate its agreement with Icahn, and 'substantially concurrently' enter into a merger agreement with it. All of these events had to occur within the go-shop period for the bidder to benefit from the lower termination fee.... It is conceivable, I suppose, that this could occur if a ravenous bidder had simply been waiting for an explicit invitation to swallow up Lear. But if that sort of Kobayashi-like²⁵ buyer existed, it might have reasonably been expected to emerge before the Merger Agreement with Icahn was signed...²⁶

Because the go-shop required a topping bidder to "get the whole shebang done" during the go-shop, the Court gave "little weight" to the primary benefit of the go-shop – the bifurcated termination fee.²⁷

In contrast to *Lear*, where the mechanics of the go-shop were at issue, the mechanics of an "open" go-shop were not criticized in the *Topps* decision. However, in *Topps*, the Court was troubled by the manner in which the target board implemented certain aspects of the go-shop:

Because of the final-hour nature of the bid, the Topps board had to determine whether to treat Upper Deck as an Excluded Party under the Merger Agreement so that it could continue negotiations with it after the close of the Go Shop Period. The Topps board's decision not to do so strikes me as highly questionable...Upper Deck was offering a substantially higher price, and rather than respond to Upper Deck's proposal by raising these legitimate concerns, the Topps board chose to tie its hands by failing to declare Upper Deck an Excluded Party in a situation where it would have cost Topps nothing to do so. Eisner would have had no contractual basis to complain about

²⁵ For those unfamiliar with V.C. Strine's penchant for including references to contemporary pop culture icons in his opinions, Takeru "Tsunami" Kobayashi is a Japanese competitive eater who won six straight Nathan's Famous hot dog eating contests before losing this year to Joey "Jaws" Chestnut. In July, "Jaws" set a new world record by downing 66 Nathan's Famous hot dogs and buns in 12 minutes, while "Tsunami" managed to eat "only" 63 hot dogs and buns (eight more than his personal best). See <http://www.nathansfamous.com/nathans/contest>.

²⁶ *In re Lear Corp. S'holders Litig.*, 2007 WL 1732588.

²⁷ *Id.*

a Topps board decision to treat Upper Deck as an Excluded Party in light of Upper Deck's 10% higher bid price.²⁸

By failing to treat Upper Deck as an Excluded Party, the Topps board assured that the initial bidder would receive a higher termination fee in the event that a superior proposal from Upper Deck ultimately prevailed. The Court was "troubled" by the board's decision to opt for that approach, when "the downside of [declaring Upper Deck to be an Excluded Party] is hard to perceive."²⁹

The *Lear* and *Topps* decisions, considered together, demonstrate that the manner in which a go-shop is drafted and implemented will impact the effectiveness of the go-shop and, in turn, will be considered by the Court when it assesses whether the target board has met its burden to obtain the best price reasonably available.

Second, when we surveyed the transactions that have utilized a go-shop, we noted just four transactions (of the sixty-two transactions we reviewed) that were successfully jumped during a go-shop period.³⁰ In two of the four transactions, a private equity bidder made a jumping bid during a go-shop period (the Aeroflex and Catalina deals), while the other two transactions (the Triad and Everlast deals) involved jumping bids by a strategic buyer. In light of the prevalence of single bidder deals (generally involving private equity bidders), the low incidence rate of jumping bids by strategic bidders strikes one as surprising. However, it is unclear from the data whether strategic bidders fail to show more interest because (i) the initial bid fully priced the target, (ii) certain strategic bidders are unable to muster internal support quickly enough to generate a bid, or (iii) strategic bidders conclude that, in light of the timing delay, deal protections, management preferences, board inertia, etc., the "deck is stacked" against their competing bid. While private equity buyers generally do not suffer from the same set of internal limitations as strategic bidders, they are nevertheless no more willing to make a jumping bid during the go-shop (doing so in only 3% of the surveyed transactions), which may lend some credence to the argument that private equity firms are generally unwilling to jump another private equity buyer's deal. In light of these statistics, one may ask whether practitioners, buyers and sellers

²⁸ *In re Topps Co.S'holders Litig.*, 2007 WL 1732586

²⁹ *Id.*

³⁰ In our survey, we note two other transactions with go-shops in which successful jumping bids occurred. In 2004, Hollywood Entertainment Corporation agreed to be acquired by Movie Gallery after initially executing a merger agreement with Carso Holdings Corporation. However, the go-shop provision in that transaction provided that the Hollywood could solicit superior offers **until the date of the stockholder meeting**. In 2005, Maytag Corporation agreed to be acquired by Whirlpool after initially executing a merger agreement with a consortium of private equity bidders led by Ripplewood Holdings. In the Maytag transaction, Whirlpool submitted its bid **after** the expiration of the go-shop period.

– and more importantly, the courts – should be willing to draw any favorable inference from the existence of a go-shop when the reality is that competing bidders (of all kinds) are unlikely to submit a superior offer during a go-shop period. Put another way, why should one assume that a go-shop will serve to effectively canvass the market (and attain the best possible value for the target company and its stockholders) if that effort so rarely produces a competing bid?

Third, a go-shop may merit additional examination (and perhaps skepticism of its value) if it is used in a transaction in which a private equity buyer has negotiated material terms of the transaction with the CEO or other key executives of a target company before the board of directors becomes involved. While a jumping bid remains possible, will the fact that the initial bidder has reached agreement with the CEO increase the reluctance of other potential bidders to bid because they perceive that management may be less willing to fairly negotiate with a third-party? In such cases, is it reasonable to expect that a go-shop provision adds anything meaningful? Will the go-shop serve to cleanse the process flaws? One recent Delaware decision suggests, rather firmly, answers to each of these questions.

In *In re SS&C Technologies, Inc., Shareholders Litigation*, the CEO of a Delaware corporation, with the assistance of investment bankers hired by the company, discussed a possible acquisition of the company with six private equity firms, subject to the CEO's right to "make a significant investment in the acquisition entity."³¹ The CEO presented the board of directors with the preferred bidder's offer, which was subsequently negotiated and accepted by the special committee. When considering a proposed settlement of the litigation, Vice Chancellor Lamb observed that the CEO's and board's conduct raised a number of questions regarding "whether, given [the CEO's] precommitment to a deal with [acquiror], the board of directors was ever in a position to objectively consider whether or not a sale of the enterprise should take place."³² The Court also expressed its skepticism whether, given the CEO's agreement to consummate a transaction with the initial bidder, the special committee was in a position to solicit competing bids, particularly from potential bidders that would not have been interested in retaining management. Where a CEO's conduct corrupts the sales process, as it did in SS&C, it seems unlikely that the existence of a go-shop will provide any meaningful additional comfort to the Court.

³¹ 911 A.2d 816, 818 (Del. Ch. 2006).

³² *Id.* at 820.

Conclusion

Ultimately, the value of a go-shop provision is directly tied to the context in which the target board of directors determines to negotiate for it. Assuming the target company's board of directors has a thorough knowledge of the market and a corresponding belief that the go-shop will make a material difference,³³ a go-shop provision may be a valuable (and viable) alternative to the traditional post-agreement market check.³⁴ However, the target board should negotiate for a go-shop that provides potential bidders with a meaningful opportunity to make a topping bid while the lower termination fee remains available.³⁵ In addition, where the initial transaction is the result of negotiations that have been tainted by the actions of overreaching management, practitioners and directors should be hesitant to draw much comfort from the use of a go-shop.

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³³ For example, if the target board concluded that a post-signing market check would be unlikely to stimulate a hostile bid for a poorly covered microcap company in the same way that it has worked to attract topping bids in large-cap strategic deals, then a go-shop provision may make a material difference in the effectiveness of the target board's sales process. Cf. *In re Netsmart Technologies, Inc. S'holders Litig.*, 2007 WL 926213 (Del. Ch. March 14, 2007) (target negotiated for, but failed to obtain, go-shop period, even though the target was a poorly covered microcap company and management had previously received little interest from potential acquirors).

³⁴ *Barkan*, 567 A.2d at 1287 ("When, however, the directors possess a body of reliable evidence with which to evaluate the fairness of a transaction, they may approve that transaction without conducting an active survey of the market.").

³⁵ Whether a bidder has a meaningful opportunity to make a topping bid (and, by extension, the effectiveness of the go-shop provision) will be affected by, among other things: (i) whether there is an "open" or "closed" go-shop, (ii) whether the initial bidder has a match right generally, or just one after the go-shop ends, (iii) whether management makes itself generally available during the go-shop period, (iv) the length of the go-shop, (v) the size of the termination fee for superior proposals generated within the go-shop period, (vi) whether the target engaged in a pre-signing market check and, if so, to what extent, (vii) whether the target board will use the status of "Excluded Party" as a tool to generate interest or as a shield to protect the initial transaction, and (viii) whether the transaction includes other deal protections that complement the go-shop (for example, a provision enabling the target board to agree to cover the expenses of a topping bidder if the target board ultimately concludes that they have made a "Superior Proposal") or compromise the go-shop (for example, an onerous termination fee).



Transactions Containing Go-Shop Provisions

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
PRA International	Genstar Capital, LLC	07-25-2007	50	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., New York City time, on the fiftieth (50th) day following the date hereof (the "Go-Shop Period End Date"), the Company and Company Subsidiaries and their respective Representatives shall have the right (acting under the direction of the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals, including by way of public disclosure and by way of providing access to non-public information to any Person (each a "Solicited Person") pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements; <u>provided</u> , that the Company shall provide to Parent any material non-public information concerning the Company or Company Subsidiaries that it has provided to any Solicited Person given such access which was not previously provided to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with, assist or participate in, facilitate, or take any other action in connection with any such inquiries, proposals, discussions or negotiations. Within 48 hours following the Go-Shop Period End Date, the Company shall notify Parent of the material terms and conditions of the Company Acquisition Proposal (including any amendments or modifications thereof) received from any Excluded Party and the identity thereof. The Company shall immediately cease any discussions with any Person (other than Parent and any Excluded Party) that are ongoing as of the Go-Shop Period End Date and that relate, or may reasonably be expected, to lead to a Company Acquisition Proposal, except as otherwise expressly provided in Sections 7.03(b) and 7.03(c).	33.33	3.65%	\$649.03	\$703.39	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Ryerson Inc.	Platinum Equity LLC	07-24-2007	25	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. New York City time on August 18, 2007 (the "No-Shop Period Start Time"), the Company and its Subsidiaries and their respective officers, directors, employees and other Representatives shall have the right to: (i) initiate, solicit and encourage, whether publicly or otherwise, Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more confidentiality agreements; <u>provided</u> that (A) the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and (B) the Company shall not disclose (and shall not permit any of its Representatives to disclose) the terms of the Financing Commitments to any Person, except to the extent such terms are otherwise publicly available; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	60	2.73%	\$914.81	\$1,887.91	Pending
Cumulus Media Inc.	Management Led Buyout Merrill Lynch Global Private Equity	07-23-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EDST) on September 6, 2007 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (collectively, "Representatives") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals, including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements; <u>provided</u> that the Company shall promptly provide or make available to Parent any material non-public information concerning the Company or its Subsidiaries that is provided or made available to any Person given such access which was not previously provided or made available to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	50	3.21%	\$467.48	\$1,248.33	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
United Rentals, Inc.	Cerberus Capital Management, L.P.	07-23-2007	40	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. New York City time on August 31, 2007 (the " <u>No-Shop Period Start Date</u> "), the Company and its subsidiaries and their respective Representatives shall have the right to, directly or indirectly: (i) initiate, solicit and encourage, whether publicly or otherwise, the submission of any inquiries, proposals or offers or any other efforts or attempts that constitute or may reasonably be expected to lead to, any Acquisition Proposal, including by way of providing access to non-public information pursuant to (but only pursuant to) an executed confidentiality agreement on terms no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement (except for such changes specifically necessary in order for the Company to be able to comply with its obligations under this Agreement and it being understood that the Company may enter into a confidentiality agreement without a standstill provision or with a standstill provision less favorable to the Company if it waives or similarly modifies the standstill provision in the Confidentiality Agreement); <i>provided</i> that the Company shall promptly provide to Parent and Merger Sub any material non-public information concerning the Company or its subsidiaries that is provided to any person given such access which was not previously provided or made available to Parent and Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Acquisition Proposals or otherwise facilitate any inquiries, proposals, discussions or negotiations with respect to Acquisition Proposals.	40	3.55%	\$2,817.37	\$5,429.38	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Neoware, Inc.	Hewlett-Packard Company	07-23-2007	26	(b) <u>Solicitation Period</u> . Notwithstanding anything to the contrary contained in <u>Section 5.3(a)</u> , during the period beginning on the date of this Agreement and continuing until 12:01 am, New York City time, on August 18, 2007 (the "Solicitation Period End Date"), Company, its Subsidiaries and its and their respective Representatives shall be permitted to directly or indirectly (i) solicit, initiate, encourage and facilitate the making or submission of any Acquisition Proposals and (ii) participate in discussions and negotiations regarding, and furnish non-public information with respect to, and take any other action to facilitate inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to, an Acquisition Proposal; <i>provided</i> that (A) Company shall not, and shall cause its Subsidiaries and its and their respective Representatives, not to provide any nonpublic information with respect to Company or any of its Subsidiaries to any Person unless (x) Company receives from such Person an executed confidentiality agreement, the terms of which are at least as restrictive as the terms contained in the Confidentiality Agreement (an "Acceptable Confidentiality Agreement") and (y) promptly after furnishing to any such Person any nonpublic information that has not been previously furnished or made available to Parent, Company furnishes Parent copies of such nonpublic information, (B) in no event shall Company, its Subsidiaries or its and their respective Representatives engage in any of the actions described in clause (i) or clause (ii) above with more than eight (8) Persons (each of such eight (8) Persons, a "Solicited Person") and (C) Company shall notify Parent in writing, as promptly as reasonably practicable (and, in any event, within twenty-four (24) hours of the initial contact with any Solicited Person), of the identity of each Solicited Person and the date of first contact. Subject to <u>Section 5.3(d)</u> , on the Solicitation Period End Date, Company shall immediately cease any existing solicitation, encouragement, facilitation, discussion, negotiation or other action permitted by this <u>Section 5.3(b)</u> conducted by Company, its Subsidiaries or any of its and their respective Representatives.		3.07%	\$325.22	\$234.93	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Williams Scotsman International, Inc.	TDR Capital LLP	07-19-2007	30	(a) During the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on the 30th day after the date of this Agreement (the "Exclusivity Period Start Date"), the Company and its Subsidiaries and their respective Representatives shall have the right (acting under the direction of the Board of Directors) to: (i) initiate, solicit and encourage, whether publicly or otherwise, Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> that the Company shall promptly provide to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations. Within 24 hours following the Exclusivity Period Start Date, the Company shall notify Parent of (i) the number of Excluded Parties and the identity of each such Excluded Party and (ii) the material terms and conditions of each Excluded Party's indication of interest or acquisition proposal and any documents and related correspondence provided in connection therewith (including any amendment and modifications to the foregoing) received from each Excluded Party.	62.5	3.26%	\$1,227.78	\$2,158.9	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
DJO Incorporated	The Blackstone Group	07-16-2007	50	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (New York City time) on the 51st day following the date of this Agreement (the " <u>No-Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the " <u>Company Representatives</u> ") shall have the right to: (i) initiate, solicit, facilitate and encourage Takeover Proposals, including by way of providing access to non-public information to any other Person or group of Persons pursuant to an Acceptable Confidentiality Agreement; <u>provided</u> that the Company shall promptly make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is made available to any Person given such access which was not previously made available to Parent and Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any inquiries, proposals, discussions or negotiations regarding a Takeover Proposal. For purposes of this Agreement, " <u>Acceptable Confidentiality Agreement</u> " means a confidentiality agreement that contains provisions that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement (it being understood and agreed that such confidentiality agreement need not prohibit the making or amendment of any Takeover Proposal). From the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with <u>Article VIII</u> , the Company shall use commercially reasonable efforts (it being understood such efforts do not include an obligation to commence litigation) to enforce the employee non-solicit/no-hire provisions of any confidentiality agreement entered into with any Person whether prior to, on or after the date of this Agreement and the provision thereof requiring the other party thereto to keep confidential any proprietary, confidential information about the Company obtained by such Person pursuant to such confidentiality agreement (it being understood that the Company may provide any consent and grant any approval contemplated by any such confidentiality agreement).	50	3.16%	\$1,183.75	\$1,503.46	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Sequa Corporation	The Carlyle Group LLC	07-09-2007	45	(b) Notwithstanding the restrictions set forth in Section 6.04(a), during the period beginning on the date of this Agreement and continuing until 12:01 a.m. (Eastern Time) on August 23, 2007 (the "Solicitation Period End Date"), the Company and the Company Representatives shall be permitted to (under the direction of the Company Board or the Transaction Committee): (i) directly or indirectly solicit, initiate or encourage the submission of an Acquisition Proposal, and (ii) directly or indirectly participate in discussions or negotiations regarding, and, subject to the prior execution by the relevant Person of a confidentiality agreement on terms not materially more favorable to such Person than those contained in the Confidentiality Agreement, furnish to any Person information with respect to the Company, and (iii) take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal; <u>provided, however</u> , that the Company shall provide to Parent any material non-public information concerning the Company or any Subsidiary that is provided to such Person which was not previously provided to Parent substantially concurrently with the time it is provided to such Person.	50	3.04%	\$1,993.58	\$2,647.89	Pending
Reddy Ice Holdings, Inc.	GSO Capital Partners LP	07-02-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the Solicitation Period End-Date, the Company and its Representatives shall have the right (acting under the direction of the Board of the Company or, if then in existence, the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Takeover Proposals, including by way of providing access to non-public information, but only pursuant to one or more Acceptable Confidentiality Agreements; <i>provided that</i> the Company shall promptly provide to the Parents any non-public information concerning the Company or the Company Subsidiaries that is provided or made available to any Person given such access which was not previously provided to the Parents; and (ii) enter into and maintain discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations regarding a Takeover Proposal. Solicitation Period End-Date. "Solicitation Period End-Date" means 11:59 p.m., Eastern time, on the date that is 45 days after the date of this Agreement.	33.33	3.08%	\$681.54	\$677.84	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Nuveen Investments, Inc.	Investment Group Deutsche Bank Aktiengesellschaft Citigroup Inc. Wachovia Corporation Merrill Lynch & Co., Inc. Madison Dearborn Partners LLC Morgan Stanley	06-20-2007	30	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 5:00 p.m., New York City time, on July 19, 2007 (the " <u>Solicitation Period End-Time</u> "), the Company and its Representatives shall have the right (acting under the direction of the Special Committee, if in existence, and otherwise under the direction of the Company Board) to directly or indirectly: (i) initiate, solicit and encourage, whether publicly or otherwise, Takeover Proposals, including by way of providing access to non-public information (but only pursuant to one or more Acceptable Confidentiality Agreements); <u>provided</u> that the Company shall promptly provide to Parent any non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent or Merger Sub; and (ii) enter into and maintain discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations or the making of any Takeover Proposal.	50	3.87%	\$5,163.86	\$5,651.66	Pending
Penn National Gaming, Inc.	Investment Group Centerbridge Partners, L.P. Fortress Investment Group LLC	06-15-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., New York City Time, on the 45th day thereafter (the " <u>No-Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, Affiliates and other representatives (" <u>Representatives</u> ") shall have the right to: (i) initiate, solicit and encourage, whether publicly or otherwise, Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more confidentiality agreements that are on terms, with respect to the maintenance of confidentiality of the Company's information, which are consistent with the Confidentiality Agreements; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations or the making of any Company Acquisition Proposal.	50	3.49%	\$5,732.69	\$8,355.31	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
James River Group, Inc.	The D. E. Shaw Group	06-11-2007	55	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., New York time, on August 5, 2007 (the "Go-Shop Period End Date"), the Company and its Representatives shall have the right (in consultation with or acting through the Board of Directors of the Company or any committee thereof), directly or indirectly, to: (i) initiate, solicit or encourage the submission of Takeover Proposals from one or more Persons, including (A) by way of contacting third parties and (B) providing access to non-public information pursuant to the prior execution of a Qualifying Confidentiality Agreement with any such Person; <u>provided</u> , that the Company shall promptly provide to Parent any non-public information concerning the Company or any Company Subsidiary that is provided to any such Person or its Representatives which was not previously provided to Parent; and (ii) participate in discussions or negotiations regarding, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or could reasonably be expected to lead to, a Takeover Proposal.	62.51	2.2%	\$522.2	\$547.22	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Horizon Offshore, Inc.	Cal Dive International, Inc.	06-11-2007	45	<p>(a) Notwithstanding anything contained herein to the contrary, during the period beginning on the date of this Agreement and continuing until 12:01 a.m. (prevailing Central time) on the No-Shop Period Start Date, the Company and its Subsidiaries and their respective Representatives (collectively, the "Company Representatives"), shall have the right to, directly or indirectly: (i) initiate, solicit, encourage, or seek, directly or indirectly, any inquiries relating to or the making or implementation of any Acquisition Proposal; (ii) continue or otherwise engage or participate in any negotiations or discussions with any third party, with respect to, Acquisition Proposals, including providing or otherwise making available information to any Person, provided that, prior to doing so, such third party has entered into an Acceptable Confidentiality Agreement with the Company; provided further, that all such information (to the extent such information has not been previously provided or otherwise made available to Cal Dive) is provided or otherwise made available to Cal Dive substantially concurrently with the time it is provided or otherwise made available to such Person subject to the right of the Company to withhold such portions of information relating to pricing or other matters that are highly sensitive if the exchange of such information, as reasonably determined by the Company's outside legal counsel, would be reasonably likely to result in antitrust difficulties for the Company or in connection with the Merger; and (iii) release any third party from, or waive any provision of, any confidentiality or standstill agreement to which it is a party to the extent necessary to permit the Company to conduct the activity set forth in clauses (i) and (ii) above; provided that the Company will promptly (in any event within one calendar day) notify Cal Dive of its receipt of any Acquisition Proposal including the general terms of any such Acquisition Proposal, and will keep Cal Dive apprised of the status of any such Acquisition Proposal. Within two Business Days following the beginning of the No-Shop Period Start Date, the Company shall notify Cal Dive of the number of Excluded Parties and the material terms and conditions of each Excluded Parties' Acquisition Proposal; provided, however, that notwithstanding anything to the contrary contained in this Section 5.4, the Company shall not be required to provide the identity of any Excluded Party or other Person who has submitted an Acquisition Proposal unless and until the Company terminates this Agreement in accordance with Section 7.1(h).</p> <p>"No-Shop Period Start Date" means July 27, 2007.</p>	50	3.01%	\$628.29	\$665.46	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Avaya Inc.	Investment Group TPG Inc. Silver Lake Partners	06-04-2007	50	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (New York City time) on the 50th day following the date of this Agreement (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives retained in connection with the Transactions (collectively, "Representatives") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Takeover Proposals (as defined herein) (or inquiries, proposals or offers or other efforts or attempts that may lead to a Takeover Proposal), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as defined herein); provided that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent or its Representatives; and (ii) enter into, engage in, and maintain discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations. For the purposes of this Agreement, "Acceptable Confidentiality Agreement" means (i) any confidentiality agreement between the Company and any such Person existing as of the date of this Agreement and (ii) any confidentiality agreement entered into after the date of this Agreement that contains provisions that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement.	32	3.17%	\$7,891.68	\$7,004.68	Pending
Everlast Worldwide Inc.	The Hiday Group LLC	06-01-2007	30	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., New York City time, on July 1, 2007 (the "Go-Shop Period End Date"), the Company and its Subsidiaries and their respective Representatives shall have the right, acting under the direction of the Board, to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of public disclosure and by way of providing access to non-public information to any person (each a "Solicited Person") pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements; provided, that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Solicited Person given such access which was not previously provided to Parent; and (ii) enter into and maintain, or participate in, discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	66.67	4.17%	\$107.9	\$136.22	Original deal terminated. Jumping bid by strategic bidder during go-shop.

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
CKX, Inc.	Management Led Buyout	05-31-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on the 45th day after the date of this Agreement (the "Exclusivity Period Start Date"), the Company and its Subsidiaries and their respective Representatives shall have the right (acting under the direction of the Special Committee) to, directly or indirectly: (i) initiate, solicit and encourage, whether publicly or otherwise, Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> that the Company shall promptly provide to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided or made available to Parent and Merger Sub; (ii) enter into and maintain or continue discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations, and (iii) accept a Company Acquisition Proposal that the Board of Directors of the Company (acting through the Special Committee) believes in good faith is bona fide and is reasonably expected to result in a Company Acquisition Agreement that constitutes a Superior Proposal, or approve or recommend, or (provided that the Company has exercised its termination right under Section 8.1(f)) execute or enter into, a Company Acquisition Agreement that constitutes a Superior Proposal; it being understood and agreed that the Company (acting through the Special Committee) shall have the right (but not the obligation) to inform Parent of its intention to enter into a Company Acquisition Agreement, including the material terms and conditions thereof.			\$854.95	\$1,330.53	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
CDW Corporation	Madison Dearborn Partners LLC	05-29-2007	30	<p>(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (Eastern Time) on the 31st day following the date of this Agreement (the "<u>No-Shop Period Start Date</u>"), the Company and its Subsidiaries and their respective officers, directors, coworkers, agents, advisors and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the "<u>Company Representatives</u>") shall have the right to:</p> <p>(i) initiate, solicit, facilitate and encourage Takeover Proposals, including by way of providing access to non-public information to any other Person or group of Persons pursuant to a Qualifying Confidentiality Agreement; <u>provided</u> that the Company shall promptly make available to Parent and Sub any material non-public information concerning the Company or its Subsidiaries that is made available to any Person given such access which was not previously made available to Parent and Sub; and</p> <p>(ii) enter into and maintain or continue discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any inquiries, proposals, discussions or negotiations regarding a Takeover Proposal.</p>	50	2.1%	\$6,947.26	\$6,761.89	Pending
Bausch & Lomb Incorporated	Warburg Pincus Partners LLC	05-16-2007	50	<p>Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11 :59 p.m. New York City time on July 5, 2007 (the "SOLICITATION PERIOD END-TIME"), the Company and its Representatives shall have the right (acting under the direction of the Special Committee, if in existence, and otherwise under the direction of the Board of Directors of the Company) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information (but only pursuant to one or more Acceptable Confidentiality Agreements); PROVIDED that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent or Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations.</p>	33.33	3.39%	\$3,534.84	\$3,870.34	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Axiom Corporation	Investment Group ValueAct Capital Partners, L.P. Silver Lake Partners	05-16-2007	60	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period commencing with the execution and delivery of this Agreement and continuing until 12:01 a.m. (Eastern time) on July 16, 2007 (the " <u>No Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective affiliates, directors, officers, employees, investment bankers, attorneys, accountants, consultants, advisors, agents and other representatives (" <u>Representatives</u> ") shall have the right (acting under the direction of the Special Committee) to directly or indirectly (i) solicit, initiate and/or, propose, induce or encourage the making, submission or announcement of one or more Acquisition Proposals from one or more Persons, including by furnishing to any Person any non-public information relating to the Company or any of its Subsidiaries or by affording to any Person access to the business, properties, assets, books, records or other non-public information, or to the personnel, of the Company or any of its Subsidiaries pursuant to an Acceptable Confidentiality Agreement; <i>provided, however</i> , that the Company shall provide to Newco any non-public information concerning the Company or its Subsidiaries that is provided to any Person which was not previously provided to Newco, and afford to Newco the same access to the business, properties, assets, books, records and other non-public information, and to the personnel, of the Company and its Subsidiaries as provided to such Person, (ii) continue, enter into, participate in and/or engage in any discussions or negotiations with one or more Persons with respect to one or more Acquisition Proposals or any other proposals that could lead to an Acquisition Proposal, or otherwise encourage, facilitate or assist an Acquisition Proposal or any inquiries, proposals or offers that could lead to an Acquisition Proposal, and (iii) otherwise cooperate with, assist or take any action to facilitate one or more Acquisition Proposals or any other proposals that could lead to an Acquisition Proposal. Notwithstanding the foregoing, during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to <u>Article VIII</u> and the No Shop Period Start Date, the Company shall not (A) approve, endorse or recommend an Acquisition Transaction, or (B) enter into any letter of intent, memorandum of understanding or other Contract contemplating or otherwise relating to an Acquisition Proposal (other than an Acceptable Confidentiality Agreement and, to the extent a Acquisition Proposal involves the issuance of securities to Company Stockholders, other than an appropriate confidentiality agreement that allows the Company to receive and review confidential information with respect to the proposed issuer of any such securities) or requiring the Company to abandon, terminate or fail to consummate the transactions contemplated by this Agreement or breach its obligations hereunder. Subject to the terms of <u>Section 5.2(c)</u> , on the No Shop Period Start Date the Company shall cease and cause to be terminated any activities that are prohibited by <u>Section 5.2(b)</u> .	33.33	3.66%	\$1,825.97	\$2,802.68	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Harman International Industries, Incorporated	Investment Group Kohlberg Kravis Roberts & Co. L.P. Goldman Sachs Capital Partners	04-26-2007	50	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on June 15, 2007 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (collectively, "Representatives") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals (as defined herein) (or inquiries, proposals or offers or other efforts or attempts that may lead to a Company Acquisition Proposal), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as defined herein); <i>provided</i> that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent or its Representatives; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	33.33	2.86%	\$7,860.36	\$7,831.62	Pending
Myers Industries, Inc.	Goldman Sachs Capital Partners	04-24-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. on the date that is 45 days after the date of this Agreement (the "No-Shop Period Start Date"), the Company, its Subsidiaries and its and its Subsidiaries' Representatives shall have the right (acting through the Special Committee) to: (i) initiate, solicit or encourage (including by way of providing information, but only pursuant to an Acceptable Confidentiality Agreement) or facilitate any inquiries, proposals or offers with respect to, or the making, or the completion of, a Takeover Proposal; <i>provided</i> that the Company shall concurrently disclose to Parent the same non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access if such non-public information has not previously been disclosed to Parent; and (ii) participate or engage in discussions or negotiations with respect to a Takeover Proposal, or otherwise cooperate with or assist any Person in connection with a Takeover Proposal.		3.16%	\$789.98	\$984.85	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Symbion, Inc.	Crestview Partners, L.P.	04-24-2007	30	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EDT) on May 25, 2007 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (the "Representatives") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals (including by way of providing access to non-public information, but only pursuant to one or more Acceptable Confidentiality Agreements solely to the extent such Persons receive confidential information about the Company and its Subsidiaries); <u>provided</u> that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and (ii) enter into and maintain or continue discussions or negotiations with any Person or group of Persons with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	40	2.56%	\$487.88	\$599.42	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
AVP, Inc.	Shamrock Holdings, Inc.	04-05-2007	45	(a) During the period commencing on the date hereof and ending, as of the close of business, on the date forty-five (45) days thereafter (such forty-five (45) day period being the "Go-Shop Period" and such date being the "Go-Shop Expiration Date"), Company Board shall have the right to, directly or indirectly, (i) solicit, initiate or knowingly encourage (including by way of furnishing information or assistance) any inquiry in connection with or the making of any proposal from any Person that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal (as defined in Section 5.08(d)), or (ii) enter into, explore, maintain, participate in or continue any discussion or negotiation with any Person regarding an Acquisition Proposal, or furnish to any Person any non-public information pursuant to (but only pursuant to) a customary confidentiality agreement (with terms no less favorable to Company than those contained in the Confidentiality Agreement (versions of such agreements with the parties names redacted shall be provided to Parent for information purposes)); <u>provided</u> , that Company shall promptly make available to Parent and Acquisition Corp. any material non-public information concerning Company or any AVP Subsidiary made available to any Person given such access that was not previously made available to Parent and Acquisition Corp., or otherwise assist or participate in, facilitate or encourage, any known effort or attempt by any other Person to make or effect an Acquisition Proposal or (iii) cause Company to enter into any agreement, arrangement or understanding with respect to, or otherwise endorse, any Superior Proposal; <u>provided, however</u> , that (A) Company Board, based upon the recommendation of Special Committee, shall have determined in good faith after consultation with financial advisors and outside legal advisors, that such action is necessary for Company Board to comply with its fiduciary duties to Company's stockholders under applicable Law, and (B) Company shall give Parent and Acquisition Corp. written notice at least five (5) Business Days prior to entering into such agreement, arrangement or understanding with respect to, or otherwise endorsing, any Superior Proposal.	62.5	7.4%	\$24.32	\$19.27	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Ablest Inc.	Koosharem Corporation	04-04-2007	15	(e) Until the Nonsolicitation Commencement Date, the Company, and its officers, directors, employees, agents or representatives shall be permitted to, and shall have the right to, directly or indirectly (acting under the direction of the Company Board or any committee thereof) (i) solicit, initiate or encourage any inquiry with respect to, or the making, submission or announcement of, any Company Acquisition Proposal, and (ii) participate in discussions or negotiations regarding, and furnish to any party (which party the Company Board (or any committee thereof) determines in good faith may submit a Superior Acquisition Proposal) information with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may lead to, a Company Acquisition Proposal; <u>provided, however,</u> that the Company shall not, and shall not authorize or permit any of its officers, directors, employees, agents or representatives to, provide to any third party any material non-public information unless the Company receives from such third party an executed confidentiality agreement in form and substance not materially more favorable to such Person than the terms of the Confidentiality Agreement are to Parent and the Company Board (or any committee thereof) notifies Parent promptly of any such inquiry, proposal or offer received by the Company or any of its officers, directors, employees, advisors and agents indicating, in connection with such notice, the material terms and conditions of the Company Acquisition Proposal and the identity of the Person making such Company Acquisition Proposal. The Company agrees that it shall keep Parent reasonably informed of the status of such discussions and will notify Parent promptly of any determination by the Company Board (or any committee thereof) that a Company Superior Proposal (as hereinafter defined) has been made.		3.11%	\$32.2	\$29.16	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
First Data Corporation	Kohlberg Kravis Roberts & Co. L.P.	04-02-2007	50	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (New York City time) on the 51st day following the date of this Agreement (the " <u>No-Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the " <u>Company Representatives</u> ") shall have the right to: (i) initiate, solicit, facilitate and encourage Takeover Proposals, including by way of providing access to non-public information to any other Person or group of Persons pursuant to an Acceptable Confidentiality Agreement; <u>provided</u> that the Company shall promptly make available to Parent and Sub any material non-public information concerning the Company or its Subsidiaries that is made available to any Person given such access which was not previously made available to Parent and Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any inquiries, proposals, discussions or negotiations regarding a Takeover Proposal. For purposes of this Agreement, " <u>Acceptable Confidentiality Agreement</u> " means a confidentiality agreement that contains provisions that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement (it being understood and agreed that such confidentiality agreement need not prohibit the making or amendment of any Takeover Proposal). From the date of this Agreement until the Effective Time or, if earlier, the termination of this Agreement in accordance with <u>Article IX</u> , the Company shall use commercially reasonable efforts (it being understood such efforts do not include an obligation to commence litigation) to enforce the employee non-solicit/no-hire provisions of any confidentiality agreement entered into with any Person whether prior to, on or after the date of this Agreement and the provision thereof requiring the other party thereto to keep confidential any proprietary, confidential information about the Company obtained by such Person pursuant to such confidentiality agreement (it being understood that the Company may provide any consent and grant any approval contemplated by any such confidentiality agreement).	35.71	2.73%	\$25,601.71	\$24,302.74	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Vertrue Incorporated	Management Led Buyout Rho Ventures One Equity Partners LLC	03-22-2007	25	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EDT) on April 16, 2007 (the " <i>No-Shop Period Start Date</i> "), the Company and its Subsidiaries and their respective directors, officers, employees, investment bankers, attorneys, accountants and other advisors and representatives (such directors, officers, employees, investment bankers, attorneys, accountants and other advisors and representatives, collectively, the " <i>Representatives</i> ") shall have the right to directly or indirectly: (i) initiate, solicit and encourage any inquiries or the making of any inquiry, proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal from (and only from), in each case, "strategic" (as opposed to "financial") potential buyers (the " <i>Strategic Buyers</i> "; <i>provided, however</i> , that no "strategic" buyer shall be deemed to be a "financial" buyer solely because it is owned or controlled by any financial buyer, any private equity firm, any hedge fund or any other investment company or fund so long as such buyer is a bona fide strategic buyer) (including by way of providing access to non-public information pursuant to one or more confidentiality agreements on customary terms (<i>provided</i> that the Company at least concurrently provides to Parent any non-public information provided to such Strategic Buyer which was not previously provided to Parent)); it being understood that such confidentiality agreement need not prohibit the making, or amendment, of an Acquisition Proposal), (ii) engage in, continue or otherwise participate in any discussions or negotiations with any Strategic Buyer or group of strategic buyers regarding any proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal from a Strategic Buyer and (iii) otherwise cooperate with or assist in, or facilitate, any effort or attempt by a Strategic Buyer to make any proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal from a Strategic Buyer.	77.78	4.64%	\$484.85	\$665.7	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Spirit Finance Corporation	Investment Group Macquarie Bank Limited Kaupthing Bank hf.	03-13-2007	28	During the period beginning on the date of this Agreement and continuing until 11:59 p.m. (New York time) on the date that is 28 days after the date hereof (the "Solicitation Period End Date"), the Company, its Subsidiaries, and their respective Representatives shall be permitted to, and shall have the right to, directly or indirectly (acting under the direction of the Company Board) (i) solicit, initiate or encourage any inquiry with respect to, or the making, submission or announcement of, any Alternative Proposal and (ii) participate in discussions or negotiations regarding, and furnish to any person information with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may lead to, an Alternative Proposal; <i>provided, however</i> , that the Company shall not, and shall not authorize or permit any of its Subsidiaries or any Representative of the Company or its Subsidiaries to, provide to any third party any material non-public information unless the Company receives from such third party an executed confidentiality agreement with confidentiality and standstill provisions in form no more favorable to such person than those confidentiality and standstill provisions contained in the Confidentiality Agreement and simultaneously provides to Parent any non-public information provided to such third party not previously made available to Parent.		1.87%	\$1,654.23	\$3,401.29	Completed
The Topps Company, Inc.	Investment Group The Tornante Company Madison Dearborn Partners LLC	03-06-2007	40	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the Effective Date and continuing until 11:59 p.m. (New York time) on the 40th day thereafter (the "Solicitation Period End-Date"), the Company and its directors (to the extent acting in their capacity as such), officers, employees, Affiliates, investment bankers, attorneys, accountants and other advisors or representatives (collectively, "Representatives") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements, provided that the Company shall promptly provide to Parent any non-public information relating to the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to or made available to Parent; and (ii) enter into and maintain discussions or negotiations with respect to potential Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate, any such inquiries, proposals, discussions or negotiations.	66.67	3.18%	\$377.5	\$349.03	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
K&F Industries Holdings, Inc.	Meggitt PLC	03-06-2007	20	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date hereof and continuing until 11:59 P.M. (New York time) on the Solicitation Period End Date (as defined below), the Company and its Subsidiaries and each of their Representatives shall have the right to, directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more Acceptable Confidentiality Agreements; <u>provided</u> that the Company shall, subject to Section 5.1, promptly provide to Parent and Purchaser any material non-public information concerning the Company and its Subsidiaries that is provided to any Person given such access that was not previously made available to Parent or Purchaser or any of their respective Representatives; and (ii) enter into and maintain discussions or negotiations with respect to potential Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate, any such inquiries, proposals, discussions or negotiations. The "Solicitation Period End Date" shall mean March 25, 2007 (or, if applicable, the date two calendar days prior to the Extended EGM Date).		1.4%	\$1,070.36	\$1,775	Completed
Bristol West Holdings, Inc.	Zurich Financial Services Group	03-02-2007	30	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on March 31, 2007 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their employees, investment bankers, attorneys, accountants and other advisors or representatives (such directors, officers, employees, investment bankers, attorneys, accountants and other advisors or representatives, collectively, "Representatives") shall have the right directly or indirectly to: (i) initiate, solicit and encourage Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	66.67	3.16%	\$664.08	\$714.79	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Aeroflex Incorporated	Investment Group General Atlantic LLC Francisco Partners	03-02-2007	43	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the Solicitation Period End-Date, the Company and its Representatives shall have the right (acting under the direction of the Company Board) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more confidentiality agreements on terms no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreements and with a standstill of duration no shorter than and with exceptions to such standstill not materially broader than those contained in the Confidentiality Agreement between Francisco Partners II, L.P. and the Company, except that any such standstill may explicitly permit the other party to submit an Acquisition Proposal to the Company Board at the invitation of the Company Board (" <u>Acceptable Confidentiality Agreements</u> "); <u>provided</u> , that the Company shall promptly provide or make available to Parent any non-public information concerning the Company or any Company Subsidiary that is provided or made available to any Person given access which was not previously provided or made available to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations. For purposes of this Agreement, " <u>Acquisition Proposal</u> " means any proposal or offer (whether or not binding) from any Person or group (other than Parent and its Affiliates) relating to any direct or indirect acquisition or purchase of 15% or more of the assets of the Company and the Company Subsidiaries, taken as a whole, or 15% or more of any class of equity securities of the Company or Company Subsidiary then outstanding, any tender offer or exchange offer that if consummated would result in any Person beneficially owning 15% or more of any class of equity securities of the Company or any Company Subsidiary then outstanding, and any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, other than the transactions contemplated by this Agreement. For purposes of this Agreement, " <u>Solicitation Period End-Date</u> " means 11:59 p.m. (EST) on April 18, 2007.	50	3.02%	\$994.15	\$983.23	Original deal terminated. Jumping bid by private equity bidder during go-shop.

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
TXU Corp.	Investment Group Lehman Brothers Holdings Inc. Citigroup Inc. Morgan Stanley The Goldman Sachs Group, Inc. Kohlberg Kravis Roberts & Co. L.P. Texas Pacific Group	02-26-2007	50	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on April 16, 2007 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective directors, officers, employees, investment bankers, attorneys, accountants and other advisors or representatives (collectively, "Representatives"), shall have the right to: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information to any Person pursuant to an Acceptable Confidentiality Agreement, <u>provided</u> that the Company shall promptly make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously made available to Parent or Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	37.5	3.14%	\$31,802.41	\$44,159.41	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
SEMCO Energy, Inc.	Cap Rock Holding Corporation	02-23-2007	35	SECTION 5.02. <u>Solicitation</u> . (a) Notwithstanding any other provision of this Agreement to the contrary, during the period from the date of this Agreement until 11:59 p.m. (New York City time) on March 29, 2007 (" <u>Last Call</u> "), the Company and any Company Subsidiary and their respective officers, directors, employees, investment bankers, agents, attorneys and other advisors and representatives (collectively, " <u>Representatives</u> ") may (i) directly or indirectly solicit, initiate or encourage, whether publicly or otherwise, the submission of a Company Takeover Proposal, including by way of providing access to non-public information pursuant to one or more Acceptable Confidentiality Agreements, (ii) directly or indirectly enter into and maintain discussions or negotiations regarding, and furnish to any person information pursuant to one or more Acceptable Confidentiality Agreements with respect to, any Company Takeover Proposal, and (iii) take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a Company Takeover Proposal; <u>provided, however</u> , that the Company shall promptly provide to Parent any material non-public information concerning the Company or any Company Subsidiary that is provided to any person given such access which was not previously provided to Parent. Without limiting the foregoing, the Company may take any of the actions described in clause (ii) above with respect to any person that the Company Board has prior to Last Call determined to have made a Superior Company Proposal until the later of Last Call and 11:59 p.m. (New York City time) on the tenth calendar day following the day on which the Company Board made such determination. The Company shall immediately advise Parent of any determination by the Company Board that any proposal constitutes a Superior Company Proposal and the day of such determination. In this Agreement, any person with whom the Company may take any of the actions described in clause (ii) above after Last Call by reason of the immediately preceding sentence is referred to as an " <u>Extension Party</u> " and the period of time after Last Call during which such actions may be taken is referred to as an " <u>Extension Period</u> ".	45.16	5.37%	\$288.73	\$761.8	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Catalina Marketing Corporation	ValueAct Capital Partners, L.P.	02-21-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the No-Solicitation Period Start Date, the Acquired Corporations and their respective Representatives shall have the right to, directly or indirectly, (i) initiate, solicit, facilitate and encourage Acquisition Proposals, (ii) enter into agreements relating to Acquisition Proposals, (iii) continue or otherwise participate in any discussions or negotiations regarding any Acquisition Proposal, (iv) furnish to any Person any information or data with respect to the Company, including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements; and (v) otherwise cooperate with or take any other action to facilitate any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal. Within 24 hours following the No-Solicitation Period Start Date, the Company shall notify Parent of (i) the number of Excluded Parties, (ii) the identity of each Excluded Party and (iii) the material terms and conditions of each Excluded Party's Acquisition Proposal and any documents and related correspondence provided in connection therewith (including any amendments or modifications to any of the foregoing) received from any Excluded Party. The Company shall immediately cease any discussions with any Person (other than Parent) that are ongoing as of the No-Solicitation Period Start Date and that constitute an Acquisition Proposal, except as may be expressly provided for in Sections 4.3(b) and 4.3(c), and except in respect of any Excluded Party.	16.67	4%	\$1,265.35	\$1,572.2	Original deal terminated. Jumping bid by private equity bidder during go-shop.
Lear Corporation	American Real Estate Partners, L.P.	02-05-2007	45	(aa) " <u>Solicitation Period End-Date</u> " means 11:59 p.m. (EST) on the date that is 45 days after the date of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the Solicitation Period End-Date, the Company and its Representatives shall have the right (acting under the direction of the Board of Directors of the Company or, if then in existence, the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more Acceptable Confidentiality Agreements; provided, that the Company shall promptly provide or make available to Parent any non-public information concerning the Company or its Subsidiaries that is provided or made available to any Person given such access which was not previously provided or made available to Parent; and (ii) participate in discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations.	86.24	3.56%	\$2,393.58	\$5,042.69	Withdrawn

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Triad Hospitals, Inc.	Investment Group Goldman Sachs Capital Partners CCMP Capital Advisors, LLC	02-05-2007	40	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on the fortieth day following the date hereof (the " <u>Go-Shop Period End Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (" <u>Representatives</u> ") shall have the right (acting under the direction of the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals (as hereinafter defined), including by way of public disclosure and by way of providing access to non-public information to any Person (each a " <u>Solicited Person</u> ") pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> , that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that it has provided to any Solicited Person given such access which was not previously provided to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	16.67	2.7%	\$4,439.99	\$5,881.79	Original deal terminated. Jumping bid during go-shop by Community Health Systems.
Laureate Education Inc.	Management Led Buyout Southern Cross Capital Torreal S.A. SPG Partners, LLC Makena Capital Management LLC Caisse de depot et placement du Quebec Bregal Investments, Inc. Citigroup Private Equity Kohlberg Kravis Roberts & Co. L.P. SAC Capital Partners	01-28-2007	45	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m., Eastern Time on March 14, 2007 (the " <u>No-Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (" <u>Representatives</u> ") shall have the right (acting under the direction of the Special Committee) to: (i) initiate, solicit and encourage, whether publicly or otherwise, Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> that the Company shall promptly provide to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and Merger Sub; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations or the making of any Company Acquisition Proposal.	50	3.42%	\$3,215.04	\$3,457.65	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Blair Corporation	Golden Gate Capital	01-18-2007	30	Provided further that nothing contained in this <u>Section 5.09</u> shall prohibit or in any way limit or restrict the Company and the Company Representatives, during the period commencing as of the date hereof and ending as of 11:59 p.m. New York time on the 30th calendar day immediately following the date of this Agreement (the " <u>Go Shop Period</u> "), from furnishing information to, or engaging in discussions or negotiations with, any Person that the Company concludes may make an offer to acquire the Company which would be deemed to be Acquisition Proposal (which did not result from a breach of this <u>Section 5.09</u>) if prior to furnishing such information to, or engaging in discussions or negotiations with, such Person, the Company receives from such Person an executed confidentiality agreement (which agreement shall be provided to Parent for information purposes) with terms no less favorable to the Company than those contained in that certain Confidentiality Agreement dated January 20, 2007 between the Company and Parent.	56.92	3.45%	\$150.52	\$126.9	Completed
United Surgical Partners International, Inc.	Welsh, Carson, Anderson & Stowe	01-08-2007	40	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on February 17, 2007 (the " <u>No-Shop Period Start Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (the " <u>Representatives</u> ") shall have the right to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals (including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements; <u>provided</u> that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and (ii) enter into and maintain or continue discussions or negotiations with any Person or group of Persons with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	34.59	3.06%	\$1,387.97	\$1,734.18	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Realogy Corporation	Apollo Management, L.P.	12-17-2006	45	SECTION 5.02. <u>Solicitation</u> . (a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until the Solicitation Period End-Date, the Company and its Representatives shall have the right (acting under the direction of the Board of Directors of the Company or, if then in existence, the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more Acceptable Confidentiality Agreements; <u>provided</u> that the Company shall promptly provide or make available to Parent any non-public information concerning the Company or its Subsidiaries that is provided or made available to any Person given such access which was not previously provided or made available to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such discussions or negotiations.	46.15	3.35%	\$6,431.27	\$8,976.27	Completed
Station Casinos, Inc.	Management Led Buyout Colony Capital, LLC	12-04-2006	30	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (PST) on the 30th Business Day thereafter (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, Affiliates and other representatives ("Representatives") shall have the right (acting under the direction of the Special Committee) to: (i) initiate, solicit and encourage, whether publicly or otherwise, Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more confidentiality agreements that are consistent with the Company's past practice for transactions involving unaffiliated third-parties; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations or the making of any Company Acquisition Proposal.	66.25	3.88%	\$4,121.81	\$8,467.14	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Clear Channel Communications, Inc.	Management Led Buyout Thomas H. Lee Partners L.P. Bain Capital, LLC.	11-16-2006	21	(a) Notwithstanding any other provision of this Agreement to the contrary, commencing on the date of this Agreement and continuing until 11:59 p.m., Eastern Standard Time, on December 7, 2006 (the "No-Shop Period Start Date"), the Company and its subsidiaries and their respective Representatives shall have the right to directly or indirectly (i) initiate, solicit and encourage Competing Proposals from third parties, including by way of providing access to non-public information to such third parties in connection therewith; <u>provided</u> , that the Company shall enter into confidentiality agreements with any such third parties and shall promptly provide to the Parents any material non-public information concerning the Company or its subsidiaries that is provided to any such third party which has not been previously provided to the Parents; and (ii) participate in discussions or negotiations regarding, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a Competing Proposal. On the No-Shop Period Start Date, the Company shall advise the Parents orally and in writing of the number and identities of the parties making a bona fide written Competing Proposal that the Board of Directors of the Company or any committee thereof believes in good faith after consultation with the Company's outside legal and financial advisor of nationally recognized reputation, that such Competing Proposal constitutes or could reasonably be expected to lead to a Superior Proposal (any such proposal, an "Excluded Competing Proposal") and provide to the Parents (within two (2) calendar days) written notice which notice shall specify the material terms and conditions of any such Excluded Competing Proposal (including the identity of the party making such Excluded Competing Proposal).	60	2.59%	\$19,294.62	\$27,313.26	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Golf Galaxy, Inc.	Dick's Sporting Goods, Inc.	11-13-2006	21	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. local Minneapolis, Minnesota time on the twenty-first (21st) calendar day after the date of this Agreement (the " <u>Solicitation Period End Date</u> "), the Company and its subsidiaries, and their respective officers, directors and employees, and any investment banker, financial advisor, attorney or other representative of them (such individuals, the " <u>Representatives</u> ") shall be permitted to, with respect to no more than eight (8) Persons (each such Person, an " <u>Excluded Person</u> "), solicit, engage in discussions or negotiate, or take any other action intended or designed to facilitate (including by way of furnishing information, subject to furnishing the same information to Parent, and subject also to execution of a customary confidentiality agreement, the benefits and terms of which, if more favorable than the confidentiality agreement in place with Parent, shall be extended to Parent) any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to, any Takeover Proposal (as hereinafter defined). Subject to the preceding sentence and Section 5.1.8(b), until the earlier of the Effective Time or the date this Agreement is terminated pursuant to Section 7.1 hereof, the Company shall not, nor shall it authorize or permit any Company subsidiaries to, and the Company shall direct and use its reasonable best efforts to cause the Representatives of the Company or any Company subsidiary not to, directly or indirectly, (i) solicit, engage in discussions or negotiate, or take any other action intended or designed to facilitate (including by way of furnishing information) any inquiries or the making of any proposal which constitutes, or may reasonably be expected to lead to, any Takeover Proposal (as hereinafter defined) or (ii) enter into any agreement with respect to a Takeover Proposal. On the Solicitation Period End Date, the Company shall immediately terminate any pending discussions or negotiations regarding any Takeover Proposal (other than with Parent or Subsidiary or their respective affiliates or any of their representatives) and the provisions of Section 5.1.8(b) shall govern all aspects of any discussions and/or negotiations related to any Takeover Proposal after such date. Any violation of the restrictions set forth in this Section 5.1.8(a) by any Representative of the Company or any Company subsidiary, whether or not such Person is purporting to act on behalf of the Company or any Company subsidiary or otherwise shall be deemed to be a breach of this Section 5.1.8(a) by the Company.		3.86%	\$207.47	\$197.62	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
OSI Restaurant Partners, Inc.	Management Led Buyout Bain Capital Catterton Partners	11-06-2006	50	During the period beginning on the date of this Agreement and continuing until 11:59 p.m. (New York time) on the date that is fifty (50) days after the date of the public announcement of this Agreement (the " <u>Solicitation Period End Date</u> "), the Company, its Subsidiaries, and their respective Representatives shall be permitted to, and shall have the right to, directly or indirectly (acting under the direction of the Special Committee) (i) solicit, initiate or encourage any inquiry with respect to, or the making, submission or announcement of, any Alternative Proposal and (ii) participate in discussions or negotiations regarding, and furnish to any person information with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may lead to, an Alternative Proposal; <u>provided, however</u> , that the Company shall not, and shall not authorize or permit any of its Subsidiaries or any Representative of the Company or its Subsidiaries to, provide to any third party any material non-public information unless the Company receives from such third party an executed confidentiality agreement with confidentiality provisions in form no more favorable to such person than those confidentiality provisions contained in the Confidentiality Agreement. Parent agrees that neither it nor any affiliate or Subsidiary of Parent shall, and that it shall use its reasonable best efforts to cause its and their respective Representatives not to, directly or indirectly, contact, discourage, interfere with or participate in discussions with, any person that, to Parent's knowledge, has made, or is considering or participating in discussions or negotiations with the Company, its Subsidiaries or their respective Representatives regarding, an Alternative Proposal.	55.56	1.48%	\$3,048.17	\$3,373.34	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Open Solutions Inc.	Investment Group Providence Equity Partners Inc. The Carlyle Group LLC	10-16-2006	26	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on November 8, 2006 (the " <u>Solicitation Period End Date</u> "), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives (" <u>Company Representatives</u> ") shall have the right (acting under the direction of the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more customary confidentiality agreements on terms no more favorable to any third party than those contained in a Confidentiality Agreement; <u>provided</u> , that such confidentiality agreements may permit the third party to disclose information concerning the Company and its Subsidiaries received thereunder to debt (but, subject to Section 6.04(b)(B), not equity) financing sources; and <u>provided further</u> , that the Company shall provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent concurrently with the time it is provided to such Person; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	40	3.82%	\$784.73	\$1,233.1	Completed
Harrah's Entertainment, Inc.	Investment Group Texas Pacific Group Apollo Management, L.P.	10-02-2006	25	Section 5.02 (a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on the date that is twenty-five (25) days after the date hereof, <i>i.e.</i> , January 13, 2007 (the " <u>Solicitation Period End-Date</u> "), the Company and its Representatives shall have the right (acting under the direction of the Special Committee if it still exists) to directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to one or more Acceptable Confidentiality Agreements, <u>provided</u> that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously made available to Parent; and (ii) enter into and maintain discussions or negotiations with respect to potential Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate, any such inquiries, proposals, discussions or negotiations.	100	2.99%	\$16,723.66	\$26,924.26	Pending

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Freescale Semiconductor, Inc.	Investment Group Texas Pacific Group The Carlyle Group LLC The Blackstone Group Permira	09-15-2006	50	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on November 3, 2006 (the "No-Shop Period Start Date"), the Company and its Representatives may (acting under the direction of the Special Committee) directly or indirectly: (i) initiate, solicit or encourage the submission of Company Takeover Proposals (as hereinafter defined) from one or more Persons, including by way of providing access to non-public information pursuant to the prior execution of an Acceptable Confidentiality Agreement with any such Person; provided, that the Company shall promptly provide to Parent any non-public information concerning the Company or any of its Subsidiaries that is provided to any such Person or its Representatives which was not previously provided to Parent; and (ii) participate in discussions or negotiations regarding, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a Company Takeover Proposal.	50	1.85%	\$16,226.86	\$17,105.86	Completed
Giant Industries, Inc.	Western Refining, Inc.	08-28-2006	30	(a) During the period beginning on November 13, 2006 (the " <u>Commencement Date</u> ") and continuing until 12:01 a.m. Central Time on December 13, 2006 (the " <u>Go-Shop Period</u> "), the Company and its officers, directors, employees, agents and representatives, including any investment banker, attorney or accountant retained by the Company, shall have the right to: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information to any other Person pursuant to a confidentiality agreement in reasonably customary form and which does not contain terms that prevent the Company from complying with its obligations under this Section 5.2; provided that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent; and (ii) enter into and maintain or continue discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	100	3.02%	\$1,127.23	\$1,311.53	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Aleris International, Inc.	Texas Pacific Group	08-08-2006	30	<p>(b) Notwithstanding the restrictions set forth in Section 5.02(a) and subject to the prior execution by the relevant Person of a confidentiality agreement which is substantially similar to the Confidentiality Agreement (except for such changes specifically necessary in order for the Company and its Subsidiaries to be able to comply with its obligations under this Agreement):</p> <p>(i) from date hereof until the 12:01 a.m. (EST) on September 7, 2006 (the Solicitation Period End Date), the Company and its Representatives may directly or indirectly (A) solicit, initiate or encourage the submission of an Acquisition Proposal from any Strategic Bidder and (B) directly or indirectly participate in discussions or negotiations regarding, and provide access to its properties, books and records and provide confidential information or data to any Person with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a bona fide Acquisition Proposal from any Strategic Bidder; and</p> <p>(ii) (A) from the date hereof until receipt of the Required Stockholder Vote, the Company may, in response to an unsolicited bona fide Acquisition Proposal which did not result from a breach of Section 5.02(a), provide access to its properties, books and records and provide confidential information or data in response to a request therefor by any such Person, and/or enter into discussions or negotiations with or, (B) in the case of a bona fide solicited Acquisition Proposal permitted by Section 5.02(b)(i), continue to provide access to its properties, books and records and provide confidential information or data to or continue any such discussions or negotiations after the Solicitation Period End Date with, any Person that has made such bona fide Acquisition Proposal; <u>provided, that</u>, in any such case, (x) the Board of Directors of the Company (after consultation with the Company's outside counsel and financial advisor) determines in good faith that such Acquisition Proposal constitutes, or would be reasonably likely to constitute a Superior Proposal, (y) the Board of Directors of the Company determines in good faith, after consultation with outside counsel, that such action is required in order for the Board of Directors of the Company to comply with its fiduciary duties under applicable Law and (z) the Company has provided Parent prior written notice of its intent to take any such action least three (3) Business Days prior to taking such action.</p>	100	2.43%	\$1,646.72	\$2,266.62	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
HCA Inc.	Investment Group Bain Capital Merrill Lynch Global Private Equity Kohlberg Kravis Roberts & Co. L.P.	07-24-2006	50	(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (EST) on September 12, 2006 (the "No-Shop Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, consultants, agents, advisors, affiliates and other representatives ("Representatives") shall have the right (acting under the direction of the Special Committee) to directly or indirectly: (i) initiate, solicit and encourage Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); provided that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent; and (ii) enter into and maintain discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	60	2.4%	\$20,811.15	\$31,739.15	Completed
PETCO Animal Supplies, Inc.	Investment Group Texas Pacific Group Leonard Green & Partners, L.P.	07-14-2006	21	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on the twenty first (21 st) Business Day after the date of this Agreement (the "Exclusivity Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the "Company Representatives") shall have the right (acting under the direction of the Independent Committee) to: (i) initiate, solicit and encourage Third Party Acquisition proposals, including by way of providing access to non-public information pursuant to (but only pursuant to) a customary confidentiality agreement (which, except for any confidentiality agreement entered into prior to the date hereof, expressly permits the Company to fulfill its obligations set forth in the penultimate sentence in Section 6.4(b)); <u>provided</u> , that the Company shall promptly make available to Parent and Merger Sub, subject to the terms and conditions of the Confidentiality Agreement, any material non-public information concerning the Company or its Subsidiaries made available to any Person given such access that was not previously made available to Parent and Merger Sub; and (ii) maintain or continue discussions or negotiations with respect to Third Party Acquisition proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	60	3.02%	\$1,657.63	\$1,793.7	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
ACE Cash Express, Inc.	Management Led Buyout JLL Partners Fund V, L.P.	06-07-2006	30	Notwithstanding the foregoing, for a period ending on the thirtieth (30th) day following the date hereof, the Company may directly or indirectly through advisors, agents or other intermediaries (i) solicit and encourage a Company Acquisition Proposal from any Person, (ii) provide non-public information or data to any Person with which it has entered into a confidentiality agreement containing terms no less restrictive on such Person than the terms contained in the Confidentiality Agreement and (iii) engage in discussions or negotiations concerning a Company Acquisition Proposal with any such Person; provided that (A) the Company shall promptly provide to Parent and Merger Sub any material non-public information that is provided to any such Person which has not previously been provided to Parent and Merger Sub and (B) the Company shall keep Parent reasonably informed on a reasonably prompt basis of the status of any such discussions or negotiations.	66.67	3.56%	\$420.77	\$362.26	Completed
West Corporation	Investment Group Thomas H. Lee Partners L.P. Quadrangle Group LLC	05-31-2006	21	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. Eastern Time on June 21, 2006 (the <u>No-Shop Period Start Date</u>), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors (including financial advisors), affiliates and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the <u>Company Representatives</u>) shall have the right to: (i) initiate, solicit and encourage Takeover Proposals, including by way of providing access to non-public information to any other Person pursuant to a confidentiality agreement on terms no more favorable to such Person than those contained in the Confidentiality Agreement; <u>provided</u> that the Company shall promptly provide to Newco any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Newco; and (ii) enter into and maintain or continue discussions or negotiations with respect to Takeover Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	100	2.71%	\$3,436.01	\$3,617.68	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Jameson Inns, Inc.	JER Partners	05-22-2006	25	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on the date that is 25 days after the execution of this Agreement (the <u>Solicitation Period End Date</u>), the Company and any officer, director or employee of, or any investment banker, attorney or other advisor or representative (collectively, <u>Representatives</u>) of, the Company or any Company Subsidiary shall be permitted to (i) directly or indirectly through another person solicit, initiate or encourage the submission of a Company Takeover Proposal and (ii) directly or indirectly through another person participate in discussions or negotiations regarding, and furnish to any person information with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a Company Takeover Proposal: <u>provided, however</u> , that (A) the Company shall not, nor shall it authorize or permit any Company Subsidiary to, nor shall it authorize or permit any Representative of the Company or any Company Subsidiary to, provide to any person any non-public information (other than any immaterial non-public information) with respect to the Company or any Company Subsidiary without first entering into a confidentiality agreement with such person which is not less restrictive than the Confidentiality Agreement; (B) the Company shall promptly provide to Parent any non-public information concerning the Company or any Company Subsidiary that is provided to such person or its Representatives which was not previously provided to Parent; (C) in no event shall the Company, any Company Subsidiary or their respective Representatives engage in any of the actions described in clause (i) or clause (ii) above with more than seven persons (it being understood that the term <u>person</u> for this purpose may not include any person who is a Covered Affiliate nor may any such Covered Affiliate Participate in such person or a Company Takeover Proposal made by such person) (each of such seven persons, a <u>Solicited Person</u>); and (D) the Company shall notify Parent in writing, on a reasonably prompt basis, of the identity of each Solicited Person.	50	2.95%	\$169.27	\$361.55	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
The Sports Authority, Inc.	Management Led Buyout Leonard Green & Partners, L.P.	01-23-2006	21	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on the 21st day after the date of this Agreement (the "EXCLUSIVITY PERIOD START DATE"), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors, affiliates and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the "COMPANY REPRESENTATIVES") shall have the right (acting under the direction of the Special Committee) to: (i) initiate, solicit and encourage Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); PROVIDED that the Company shall promptly provide to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.	100	3.05%	\$983.46	\$1,333.95	Completed
Beverly Enterprises, Inc.	Fillmore Capital Partners, LLC	11-21-2005	23	Notwithstanding anything in this Section 6.4 or this Agreement to the contrary, during the Suspension Period: the operation of the prior provisions of this Section 6.4 and Section 8.1(d)(ii) shall be suspended; such provisions shall have no force or effect; and none of the Company, the Company Subsidiaries, the Company Representatives nor any other Person shall be required to comply therewith nor shall Parent or Merger Sub have any rights thereunder.		4.38%	\$1,369.15	\$1,696.01	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
CRIIMI MAE Inc.	Caisse de depot et placement du Quebec	10-06-2005	55	(a) It is understood and agreed that the Company, together with Citigroup, will continue the Company's auction process for the Company's assets (the "Asset Auction") until November 30, 2005. From and after December 1, 2005, however, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it authorize or permit any officer, director or employee of or any investment banker, attorney, accountant, agent or other advisor or representative of the Company or any of its Subsidiaries to, (i) solicit, initiate, encourage or take any other action for the purpose of facilitating (including by way of furnishing or disclosing information), any Takeover Proposal (as defined below), (ii) except to the extent permitted by this Section 4.10, enter into any agreement, arrangement or understanding (including any letter of intent, agreement in principle, memorandum of understanding or confidentiality agreement) with respect to any Takeover Proposal or requiring the Company to abandon, terminate or fail to consummate, or which is intended to or would reasonably be expected to result in the abandonment or termination of, or failure to consummate, the Merger or any other transaction contemplated by this Agreement, (iii) initiate or participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate or in furtherance of any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Takeover Proposal or (iv) grant any waiver or release under any standstill or similar agreement with respect to a class of the equity securities of the Company;		2.56%	\$311.97	\$863.85	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
Maytag Corporation	Investment Group Goldman Sachs Capital Partners RHJ International Ripplewood Holdings LLC J. Rothschild Group of Companies	05-19-2005	30	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on June 18, 2005 (the "SOLICITATION PERIOD END DATE"), the Company and any officer, director or employee of, or any investment banker, attorney or other advisor or representative (collectively, "REPRESENTATIVES") of, the Company or any Company Subsidiary shall be permitted to (i) directly or indirectly solicit, initiate or encourage the submission of a Company Takeover Proposal and (ii) directly or indirectly participate in discussions or negotiations regarding, and furnish to any person information with respect to, and take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, a Company Takeover Proposal; PROVIDED, HOWEVER, that (A) the Company shall not, nor shall it authorize or permit any Company Subsidiary to, nor shall it authorize or permit any Representative of the Company or any Company Subsidiary to, provide to any person any non-public information (other than any immaterial non-public information) with respect to the Company or any Company Subsidiary without first entering into a customary confidentiality agreement with such person that is not less restrictive of the other party than the Confidentiality Agreement (excluding the provisions of the eleventh paragraph thereof) and (B) the Company shall promptly provide to Parent any non-public information concerning the Company or any Company Subsidiary that is provided to such person or its Representatives which was not previously provided to Parent.	100	3.58%	\$1,115.77	\$1,992.26	Terminated after Whirlpool made jumping bid after go-shop ended.
Select Medical Corporation	Management Led Buyout Thoma Cressey Equity Partners Welsh, Carson, Anderson & Stowe	10-18-2004	21	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on November 6, 2004 (the "Exclusivity Period Start Date"), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors, affiliates and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the "Company Representatives") shall have the right (acting under the direction of the Special Committee) to (i) initiate, solicit and encourage Company Acquisition Proposals (as hereinafter defined), including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); provided that the Company shall promptly provide to Parent any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and (ii) enter into and maintain or continue discussions or negotiations with respect to Company Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.		2.18%	\$1,835.81	\$2,041.42	Completed

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
The Chalone Wine Group, Ltd.	Domaines Barons de Rothschild (Lafite) SCA	05-17-2004		(a) At any time prior to obtaining the approval of Company shareholders as provided in Section 4.1 (Shareholder Approval), either the Company s Board of Directors or a special committee thereof may, to the extent necessary to inform itself with respect to a potential Acquisition Proposal that such Board of Directors or special committee determines in good faith may lead to a Superior Proposal, directly or indirectly through advisors, agents or other intermediaries, (i) engage in negotiations or discussions with any Third Party that has made an Acquisition Proposal and (ii) furnish to any Third Party in connection with a potential Acquisition Proposal nonpublic information relating to the Company or any of its Subsidiaries pursuant to a confidentiality agreement with terms no less favorable to the Company than those contained in the Confidentiality Agreements, except that such confidentiality agreement need not have standstill provisions comparable to the Confidentiality Agreements. The Company shall be entitled to disclose the substance of its rights under this Section 4.4 and to solicit and encourage Acquisition Proposals.		3.23%	\$76.69	\$200.67	Withdrawn
Hollywood Entertainment Corporation	Leonard Green & Partners, L.P.	03-29-2004	Open until date of stockholders meeting	(a) The Company shall not, and the Company shall cause its Subsidiaries and its and their respective officers, directors, employees, attorneys, accountants, advisors, representatives and agents ("Representatives") not to, (i) solicit or initiate or knowingly encourage any proposal that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, (ii) participate or engage in discussions or negotiations with, or disclose or provide any non-public information relating to the Company or its Subsidiaries to, or afford access to any of the properties, books or records of the Company or its Subsidiaries to, any Person with respect to an Acquisition Proposal, (iii) enter into any agreement or agreement in principle with any Person with respect to an Acquisition Proposal, or (iv) grant any waiver or release under any standstill or similar agreement by any Person who has made an Acquisition Proposal, provided, however, that the parties hereby expressly acknowledge and agree that, prior to obtaining the Company Shareholder Approval, the Company, its Subsidiaries and their respective Representatives may (without any or all such actions being deemed, individually or in the aggregate, a breach of this Agreement or any of the Ancillary Agreements) take any of the actions described in clauses (i) and (ii) of this subsection (a) if, in the case of clause (ii), prior to, or substantially concurrently with disclosing or providing any such non-public information, (A) such Person shall have entered into a confidentiality agreement with the Company on terms that are no less favorable to the Company than the Confidentiality Agreement and (B) the Company shall disclose or provide all such information to Acquiror; provided, further, that the Company, its Subsidiaries and their respective Representatives may only disclose or provide any non-public information as described in clause (ii) of this subsection (a) only in response to any Person that has made a bona fide written Acquisition Proposal.	No termination fee Expense reimbursement only	n/a	\$624.38	\$821.56	Terminated after both Movie Gallery and Blockbuster made jumping bids

Target Company Name	Acquirer Company Name	Announcement Date	Go-Shop Window (days)	Go-Shop Language	Go-Shop Termination Fee as % of Termination Fee	Target Termination Fee as % of Transaction Value	Transaction Value	Enterprise Value	Transaction Status
US Oncology, Inc.	Welsh, Carson, Anderson & Stowe	03-22-2004	18	(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on April 6, 2004 (the <u>Exclusivity Period Start Date</u>), the Company and its Subsidiaries and their respective officers, directors, employees, agents, advisors, affiliates and other representatives (such Persons, together with the Subsidiaries of the Company, collectively, the <u>Company Representatives</u>) shall have the right to (i) initiate, solicit and encourage (including by way of providing access to non-public information pursuant to (but only pursuant to) one or more Acceptable Confidentiality Agreements (as hereinafter defined); <u>provided</u> that the Company shall promptly provide to Parent (x) any non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously provided to Parent and (y) the identity of any Person executing an Acceptable Confidentiality Agreement) inquiries with respect to, or the making or submission of, Company Acquisition Proposals (as hereinafter defined) and (ii) enter into and maintain or continue discussions or negotiations with any Person or group of Persons in furtherance of any such inquiries and to induce the making or submission of Company Acquisition Proposals.	100	1.1%	\$1,089.67	\$1,445.52	Completed

All values in \$ million

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