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Takeovers

M&A activity has continued at a torrid pace in 1999. If volume continues at the present pace announced deals will exceed $3 trillion.

The deals are getting bigger. Deals in excess of $50 billion are not unusual. In 1998, nine of the ten biggest deals ever were announced.

As in 1998, the deal currency is common stock. Over 80% of aggregate deal consideration has been stock. Where cash is part of the consideration, investment grade acquirors are able to arrange $20 billion and more in bank financing in less than a week.

The mega-deals have been concentrated in financial services and telecommunications. There has been a sharp increase in Internet and other high-tech deals. All industries are experiencing the need for consolidation to maintain growth and adjust to regulatory and technological change.

The pressure to arrange a strategic merger has brought to the forefront the question of how the partners can accomplish the merger without one or both becoming the target of a third party. There is no stigma attached to making a higher offer for a company that has announced a merger and no reluctance by boards to authorize such offers.

It is here that merger technology plays a crucial role. The keys are: (1) speed and secrecy in the negotiation stage, (2) avoiding leaks, (3) a well structured announcement and rollout designed to have the analysts and investors recognize the advantages of the merger, (4) structuring the exchange ratio to avoid or minimize arbitrage pressure, (5) a merger agreement that prevents an interloper from pooling and makes it difficult for an interloper to compete without paying a significantly higher price, (6) compensation, incentive and severance arrangements that deter an interloper and (7) a structure that gives consummation of the original deal a significant time advantage over an interloper.

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