

# Corporate Dealmaking and Shareholders: Trust but Verify

By Marlon E. Kimpson

**T**he market for mergers and acquisitions (M&A) is currently robust. Financing and credit markets have significantly improved as we emerge from the financial crisis while corporate and financial buyers have hordes of cash they seek to deploy.

Arguably, these factors are positive developments for our financial markets and our economy in general. However, with respect to acquisitions of publicly listed U.S. companies, investors should remain cautious about getting swept up in the M&A euphoria.

Pricewaterhouse-Coopers (PwC) attributes some of the increased deal volume to strong stock prices used as currency to make acquisitions, as well as historically unprecedented amounts of cash on corporate balance sheets. As of mid year, the available cash on S&P 500 company balance sheets exceeded \$1 trillion, and some estimate that total cash on corporate balance sheets exceeds \$2 trillion. Private equity buyers also have a considerable amount of cash on the sidelines, and those financial buyers deployed some \$70 billion on M&A through the first five months of 2011, according to PwC.

The ultimate price offered to shareholders in M&A transactions is equally as important as the process by which the board of directors of the target company agrees to the acquisition. No one knows the true value of a company more than

the directors and officers. These players possess information unknown to the market, and that information is often the focus of litigation surrounding the acquisition, so called "Deal Litigation." In certain circumstances, litigation is appropriate and can create significant value for the shareholders of the target company—either through enhanced disclosure of the negotiation process that enables shareholders to have better information prior to voting or through increased compensation for target company shareholders.



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While our general economy appears to be having a difficult time getting into stride, factors suggest that the M&A market will continue to thrive. Shareholders must remain vigilant about their rights when their companies are going through mergers and acquisitions. As one Commander in Chief was fond of saying, "Trust, but verify." This is good advice for shareholders evaluating whether an announced deal provides adequate

financial consideration. 

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- According to Bloomberg's Mergers & Acquisitions Legal Advisory Rankings report, there have been **3,747** deals announced in the United States through the second quarter of **2011**.
- The total volume of the deals announced during the same period is more than **\$420 billion** with an average deal size of **\$235.7 million** and average premiums of about **35 percent**.
- Globally, there were **13,075** deals announced valued at more than **\$1.2 trillion**. This represents a **33.62 percent** increase in deal volume during the same period in **2010**.

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