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Sterling Cooper Inc. Newsletter June-2025

US M&A Slows in May Amid Tariff Uncertainty, Tech Remains a Bright Spot

New York, NY – May 20, 2025 – US merger and acquisition (M&A) activity experienced a notable decline in May 2025, primarily due to rising economic and trade uncertainties, including the impact of recent tariff announcements. While overall deal volume and value saw a downturn, the technology sector continued to demonstrate resilience, acting as a key driver of deal making.

Key Takeaways:

- **Overall Downturn:** The volume of US M&A deals exceeding \$100 million fell by 18.7% from March, and deal value plunged by 51.3%. Year-over-year, volume dropped 24.8% and value decreased 8.6%.
- **Tariff Impact:** President Donald Trump's early April tariff announcements introduced significant uncertainty, prompting business leaders to adopt a "wait-and-see" approach to investment decisions. This lack of clarity on implementation timelines and potential retaliatory measures, coupled with financial market volatility, contributed to the slowdown.
- **Economic Headwinds:** The US economy contracted by 0.3% in Q1 2025, marking the first quarterly decline since early 2022. Economic growth forecasts for 2025 and 2026 have been revised downward, further impacting M&A momentum.
- **Tech Sector Resilience:** Despite the broader challenges, the technology sector remained a bright spot, particularly in high-value deals. Technology transactions accounted for roughly 56% of last month's billion-dollar-plus deals. Companies are prioritizing investments in AI, cloud infrastructure, and cybersecurity for long-term growth.
- **Divestment Trends:** Businesses are increasingly using strategic divestments to streamline portfolios, focus on core operations, and enhance financial stability in response to tariff-induced volatility and activist investor pressure.



- **Private Equity Outlook:** While approximately 25% of private equity (PE) general partners reported deal disruptions due to tariff concerns, PE firms remain well-capitalized and motivated to expand. Forecasts project flat corporate M&A volumes for 2025 but modest growth (around 1%) for PE deal volume.
- **Risks Ahead:** Uncertainty surrounding interest rates, rising core inflation projections (expected to close 2025 between 3.5%-4%), and escalating trade tensions from new tariff policies pose ongoing risks to deal making momentum.

M&A activity could see a rebound in the coming months if greater clarity emerges regarding US tariff policy. The continued drive for innovation in technology, strategic divestments, and consolidative deal making in sectors like healthcare, technology, and financial services are expected to remain key drivers. Opportunities may also arise for funds focused on distressed assets in sectors such as logistics, energy transition, and digital infrastructure.

HOSTILE TAKEOVERS & PROXY CONTESTS

1. Phillips 66 Boardroom Battle: Elliott Secures Two Seats, Signals Shareholder Desire for Change

Houston, TX – May 22, 2025 – The highly anticipated boardroom contest between **Phillips 66 (NYSE: PSX)** and activist investor **Elliott Investment Management** has concluded with shareholders electing two of Elliott's four nominated directors to the oil refiner's board. This outcome signals that while shareholders desired change, they did not fully endorse Elliott's call for a comprehensive board overhaul.



Q1: What was the core of Elliott Investment Management's campaign against Phillips 66?

A1: Elliott, a significant shareholder in Phillips 66 with a stake exceeding **\$2.5 billion**, initiated its activist campaign in late 2023, advocating for strategic improvements. Its core demands centered on the divestiture or spin-off of Phillips 66's **midstream business** which Elliott estimated could be worth over \$40 billion—and the company's **chemicals joint venture with Chevron**. Elliott argued that these actions would allow Phillips 66 to streamline its operations and focus on its core refining business, which it claimed had underperformed peers like Valero Energy and Marathon Petroleum.

Q2: How did Phillips 66 respond to Elliott's demands and what was the company's defense strategy?



A2: Phillips 66 leadership strongly resisted Elliott's proposals, labeling them "misguided" and asserting that pursuing such divestitures would expose shareholders to "unnecessary risk in pursuit of uncertain and speculative valuations." **Phillips 66 CEO Mark Lashier** emphasized the company's belief in its "integrated strategy" and its long-term potential. The company also highlighted its own proactive measures to optimize its portfolio, including the recent **\$1.6 billion sale of a majority stake in its German and Austrian gasoline stations**. Phillips 66 engaged in a contentious public exchange with Elliott, questioning the activist's motives, the independence of its proposed directors, and the clarity of its disclosures, particularly regarding a purported monetary agreement with nominee Gregory Goff and a proposal to declassify the board.

Q3: What was the outcome of the shareholder vote, and what does it indicate about shareholder sentiment?

A3: The shareholder vote resulted in a split decision. **Elliott's nominees, Sigmund Cornelius and Michael Heim**, were elected to the board, securing two of the four contested seats. Phillips 66 retained its preferred directors, Bob Pease (who had previously joined the board with Elliott's support before their falling out) and Nigel Hearne. This outcome suggests that while shareholders acknowledged the need for some level of change and new perspectives, they ultimately did not grant Elliott the sweeping board makeover it sought. The vote indicates a desire for increased accountability and operational focus, but also a degree of confidence in Phillips 66's current integrated strategy.

Q4: How did external factors and key investor groups influence the proxy battle?

A4: Several external factors and investor dynamics played a role. Elliott received favorable recommendations from prominent proxy advisers, including **Institutional Shareholder Services (ISS), Glass Lewis, and Egan-Jones**, which lent credibility to its arguments. However, Elliott notably achieved its partial victory without the backing of the "big three" institutional investors—**BlackRock, Vanguard, and State Street**—who collectively own approximately 23% of Phillips 66 shares. This suggests that the significant support from **retail shareholders**, who account for about 25% of the register, was crucial in swaying the vote in Elliott's favor for its two nominees. Additionally, Elliott's proposal to declassify Phillips 66's staggered board failed to secure the necessary 80% shareholder support, further illustrating the nuanced nature of shareholder sentiment.

Q5: What are the broader implications of this proxy battle for Phillips 66 and corporate activism?

A5: For Phillips 66, the addition of two Elliott-backed directors to its board means new voices and perspectives will be actively involved in strategic discussions, particularly regarding the company's midstream and chemicals assets. The company will likely face continued pressure to demonstrate value creation from its integrated strategy and to



enhance operational performance. For the broader landscape of corporate activism, this case marks a significant moment, being Elliott's first U.S. proxy fight to go all the way to a shareholder vote. It reinforces the growing influence of activist investors and the increasing scrutiny companies face regarding their strategic direction and governance from their shareholder base.

2. Victoria's Secret & Co. Deploys Poison Pill Amidst Share Accumulation

Illinois, May 25, 2025

In the intricate world of corporate finance and strategic maneuvers, the recent action taken by Victoria's Secret & Co. (NYSE: VSCO) to adopt a limited-duration shareholder rights plan, commonly known as a "poison pill," warrants close examination. This move is a direct response to the significant accumulation of VS&Co. shares by BBRC International Pte



Limited, an entity controlled by Australian businessman Brett Blundy. The following Q&A dissects the key aspects of this defensive posture.

Q1: What is the underlying situation that led to Victoria's Secret & Co. implementing this strong defensive measure?

A1: The primary driver for VS&Co.'s decision was the notable and continuous increase in common stock ownership by BBRC International. Commencing in March 2025, BBRC significantly grew its position to approximately 13% of the outstanding shares. A crucial detail is BBRC's shift, after nearly two years of reporting its beneficial ownership as a "passive investor" on Schedule 13G, to filing on Schedule 13D in February 2024, indicating a more active investment stance.

Additionally, the Board considered several factors that heightened their concern: BBRC's history of acquiring controlling interests in various retail companies; and its recent launch of Léays, a new global lingerie, sleepwear, and beauty brand, which directly competes with Victoria's Secret. These factors collectively suggested a potential attempt by BBRC to take over the company or exert significant influence without offering a fair premium to all shareholders. The Board also took note of the "current period of substantial market dislocation in the retail sector" and its potential impact on the company's share trading value, which they believe does not reflect VS&Co.'s inherent value or long-term prospects.

Q2: Were there any prior legal issues involving BBRC International that intensified the Board's concerns and influenced their defensive strategy?



A2: Yes, the Board's decision was heavily influenced by BBRC's past non-compliance with U.S. antitrust laws. For nearly three years, BBRC acquired shares of VS&Co.'s common stock without making the required filings under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act and observing the mandatory regulatory waiting period. This omission constitutes a violation of U.S. antitrust law. While BBRC has since made corrective filings that would, upon expiration of the waiting period (expected at 11:59 p.m., Eastern Time, on May 21, 2025), allow them to acquire up to 49.99% of VS&Co.'s voting stock, this prior disregard for regulatory requirements undoubtedly heightened the Board's apprehension regarding BBRC's intentions and approach.

Q3: Can you explain the mechanics of the shareholder rights plan adopted by Victoria's Secret & Co.? What are its main features and intended effects?

A3: Victoria's Secret & Co. has implemented a **limited-duration shareholder rights plan**, which became effective on Tuesday, May 20, 2025. Here's how it works: one right will be issued for each share of common stock as of the close of business on **May 29, 2025**. These rights are initially inactive and will trade with the common stock. They become exercisable if any person or group acquires 15% (or 20% for certain passive investors) or more of the outstanding common stock. If this "triggering event" occurs, all rights holders, except the acquiring person, will be entitled to purchase shares of common stock at a substantial **50% discount**. Alternatively, VS&Co. has the option to exchange each right held by non-acquiring shareholders for one share of common stock. Importantly, any shareholder who currently owns more than the triggering percentage can maintain their existing shares but cannot acquire more without activating the plan. The plan does not include "dead-hand," "slow-hand," or "no-hand" features, meaning a future board can still redeem the rights. This plan is temporary, set to expire in one year, specifically on **May 18, 2026**.

Q4: What is the primary strategic reason behind the Board's decision to implement this "poison pill," and how does it align with their responsibilities?

A4: The Board's rationale is deeply rooted in its fiduciary duties to all shareholders. As stated by Donna James, Chair of the Board, the rights plan was deemed "necessary to adopt a rights plan to protect the long-term interests of all Victoria's Secret shareholders and guard against tactics to gain control of the Company without paying all shareholders an appropriate premium for that control."

The plan is designed to empower all shareholders to realize the intrinsic long-term value of their investment and ensure they receive fair and equal treatment in the event of any prospective takeover. It serves to diminish the likelihood of an individual or group gaining control through open-market accumulation or other surreptitious tactics, thereby compelling any aspirant acquirer to engage with the Board and offer a control premium reflective of the company's true worth. The plan was not adopted in response to any specific proposal to acquire control of the company and is not intended to deter offers or



preclude the Board from considering offers that are fair and otherwise in the best interest of the shareholders. While Victoria's Secret has engaged in "open and constructive dialogue with Mr. Blundy and other representatives of BBRC over the past three years," and "value[s] Mr. Blundy's input as a shareholder," the Board felt this protective measure was necessary to maintain control and protect shareholder value.

3. Shareholder Rights Plans in Closed-End Funds: A Landmark Ruling Upholds Legality but Limits Successive Adoption

New York, May 20, 2025

A recent decision by the U.S. District Court for the Southern District of New York (SDNY) has significantly shaped the legal landscape surrounding the use of "poison pills" by closed-end funds. This ruling, stemming from a case initiated by hedge fund Saba Capital Master Fund, Ltd. (Saba) against ASA Gold and Precious Metals Ltd. (ASA), validates the use of shareholder rights plans as a defensive tool but introduces important limitations on their successive implementation.



Q1: What was the core legal question before the SDNY court regarding closed-end funds and poison pills?

A1: The central legal question was whether the adoption of a shareholder rights plan by a closed-end fund, specifically to fend off an activist hedge fund seeking control, violated Sections 18(d) and 23(b) of the Investment Company Act of 1940 (1940 Act). Section 18(d) generally prohibits registered funds from issuing warrants or rights to purchase securities that expire later than 120 days after issuance, unless issued exclusively and ratably to a class of shareholders. Section 23(b) generally prohibits a closed-end fund from selling its common stock below its net asset value (NAV), with an exception for rights issued in accordance with Section 18(d). Saba's challenge argued that ASA's series of poison pills contravene these statutory provisions.

Q2: What was the court's definitive ruling on the legality of poison pills for closed-end funds under the 1940 Act?

A2: The SDNY court unequivocally affirmed the legality of a closed-end fund's use of a shareholder rights plan to defend against control-seeking hedge funds. The court explicitly stated that a shareholder rights plan, in itself, does not violate the 1940 Act. It endorsed the "legitimate role" of these plans in providing a board with "an opportunity to consider alternatives" when confronted with a hostile tender offer, creeping control, or similar threats.



The court specifically held that because ASA's rights plans "issued a Plan Right, per share, to Saba just as it issued them to other shareholders," it did not violate Section 18(d)'s requirement for rights to be "issued exclusively and ratably to a class or classes of the fund's shareholders." The court reasoned that Section 18(d) only demands proportional allocation. Furthermore, the court distinguished rights plans from control share provisions (which have been successfully challenged by Saba), noting that rights plans affect a shareholder's "economic interests by differentiating their ability to purchase discounted shares" rather than impairing their voting ability. As long as the impairment applies to the exercise of a right, not its *issuance*, it does not violate the "ratably" requirement. This aligns with the 2004 *Neuberger I* decision, which similarly rejected arguments that a rights plan violated Section 18(d).

Q3: Despite upholding their general legality, what specific limitation did the court impose on the use of poison pills by closed-end funds?

A3: While affirming the general legality of poison pills, the court imposed a significant restriction on their continuous application. It ruled that "a single rights plan, in continuous operation through materially identical extensions, violates the 120-day expiration requirement" of Section 18(d). The court reasoned that allowing a closed-end investment company to "remain in a rights plans state *ad infinitum*" would render the expiration requirement meaningless. This part of the ruling diverges from *Neuberger II*, a 2007 case that upheld a fund's serial renewal of a rights plan. The SDNY court distinguished its decision by noting that, unlike the *Neuberger II* rights plans, the ASA plans were: (1) "not distinct in form or substance," (2) "adopted during the pendency of the prior plan, such that it never actually expired," and (3) in the court's view, adopted for the "same purpose." The SDNY court did not address whether successive rights plans adopted *after* a prior one expired would violate the 120-day requirement.

Q4: How do "poison pills" operate in the context of closed-end funds, and what distinguishes closed-end fund activism?

A4: Shareholder rights plans typically function by granting each outstanding share the right to purchase newly issued shares at a discounted price. This right is "triggered" when an entity accumulates a specified percentage of the company's shares. At that point, all shareholders, except the control-seeking entity, can exercise their right to purchase additional shares, economically diluting the control-seeking entity's stake. This mechanism incentivizes the control-seeking entity to negotiate with the board, enhancing the board's bargaining power and time to consider alternatives.

Closed-end fund activism, exemplified by firms like Saba Capital, often exploits a unique feature of these funds: they trade on exchanges in the secondary market, and their price can deviate significantly from their net asset value (NAV). Activists like Saba invest in funds trading at a discount to NAV and use their concentrated voting power to force "liquidity events" (e.g., tender offers, liquidation, or conversion to an open-end fund) to



sell their shares at or near NAV for a profit. They may also seek to elect hand-picked directors to gain control, potentially forcing the existing manager's resignation or hiring an affiliated manager, thereby changing the fund's investment strategy for new fee revenue. These tactics can be detrimental to the long-term interests of the funds and their typically retail shareholders.

Q5: Who were the legal advisors involved in this significant case, and what are the key takeaways for closed-end fund boards?

A5: In this pivotal case, **Skadden, Arps, Slate, Meagher & Flom LLP** represented ASA Gold and Precious Metals Ltd. in the implementation of the rights plan and in briefing its legality under the 1940 Act. The court's ruling validates a crucial defensive mechanism for closed-end fund boards, providing them with enhanced bargaining power, flexibility, and time to address arbitrage activity from activist hedge funds or other potential acquirers. Boards may consider proactively developing shareholder rights plans to have "on the shelf" in anticipation of activist threats. However, it is paramount for boards to adhere to the court's strict interpretation of the 120-day rule regarding successive plans. Boards should consider changing the terms of any successive plan, allowing a brief period between plans, or otherwise structuring their approach to align with the court's specific ruling to avoid identical, continuous plans.

**4. Hostile Takeover Defense: TrueBlue Activates Poison Pill Against HireQuest Bid
Oregon, May 25, 2025**

In a significant development in the competitive specialized workforce solutions sector, TrueBlue (NYSE: TBI) has activated a shareholder rights plan, commonly known as a "poison pill," in response to an unsolicited acquisition proposal from HireQuest, Inc. (Nasdaq: HQL). This defensive maneuver underscores the intricate strategies at play in corporate mergers and acquisitions, particularly when faced with a hostile overture.



Q1: What is the current status of HireQuest's bid for TrueBlue, and what prompted TrueBlue's defensive action?

A1: HireQuest has made an unsolicited proposal to acquire all common stock of TrueBlue at **\$7.50 per share**. This bid has been met with rejection from TrueBlue's Board of Directors. In an effort to bypass the Board, HireQuest has escalated its proposal directly to TrueBlue's shareholders by approaching the U.S. Securities and Exchange Commission (SEC). Despite HireQuest's CEO labeling the offer as "compelling and fair," there is speculation that HireQuest may need to "sweeten its bid" with a cash incentive to



gain shareholder support. TrueBlue, in turn, has responded by unanimously adopting a "limited duration shareholder rights agreement" – the aforementioned poison pill – to protect its shareholder interests and gain strategic flexibility.

Q2: What are the key mechanics and terms of the shareholder rights agreement adopted by TrueBlue?

A2: TrueBlue's Board of Directors unanimously adopted a limited duration shareholder rights agreement. Under this plan, TrueBlue will issue, by means of a dividend, **one preferred share purchase right (a "Right") for each outstanding share of TrueBlue common stock** to shareholders of record on a date yet to be announced. Initially, these rights will not be exercisable and will trade with, and be represented by, the shares of TrueBlue common stock. The Rights Agreement will generally become exercisable if a person or a group of persons (an "acquiring person") acquires beneficial ownership of **15% (or 20% for certain investors filing on Schedule 13G)** or more of the outstanding shares of TrueBlue common stock in a transaction not approved by the Board. If this threshold is crossed, each holder of a right (excluding the acquiring person, whose rights become void) will be entitled to purchase, at the then-current exercise price, **additional shares of TrueBlue common stock at a 50% discount**. Furthermore, if TrueBlue is acquired in a merger or other business combination after an unapproved party crosses the 15% (or 20%) threshold, each right holder would then be entitled to purchase shares of the acquiring company's stock at a 50% discount. The Board also has the option to exchange each valid right for one share of TrueBlue common stock, subject to adjustment, or to redeem the rights at \$0.01 per right. The Rights Agreement is set to expire on **May 13, 2026**, but can be extended with shareholder approval or earlier redeemed/exchanged by the company. A "grandfathering" provision exists for entities that already owned 15% or more prior to the announcement, allowing them to maintain their existing ownership but not increase it without triggering the plan.

Q3: What is the strategic objective behind TrueBlue's adoption of this poison pill?

A3: TrueBlue's adoption of the Rights Agreement is primarily intended to **"reduce the likelihood that any entity, person or group is able to gain control of TrueBlue through open market accumulation without paying all shareholders an appropriate control premium or providing the Board with sufficient opportunity to make informed judgments and take actions in the best interests of all shareholders."** In essence, it is a defensive tactic designed to prevent a hostile takeover by making it financially prohibitive for an unwelcome bidder to acquire a controlling stake without the Board's approval. By diluting the stake of any acquiring person, the poison pill aims to force the bidder to negotiate directly with the Board, thereby enhancing the Board's bargaining power and ensuring that all shareholders receive a fair value for their shares in any potential transaction.



Q4: Who are the legal advisors involved in True Blue's defense, and what are the immediate market reactions to this development?

A4: Sidley Austin LLP is acting as legal advisor to TrueBlue in its defense against HireQuest's unsolicited bid.

Upon the news of TrueBlue's poison pill adoption, market reactions reflected the uncertainty surrounding the acquisition saga. TrueBlue shares experienced a modest increase, edging up 1.3%, while HireQuest shares saw a slight decline, slipping 1.7%. This indicates that investors are treading carefully, monitoring whether TrueBlue's defensive strategy will compel HireQuest to sweeten its offer or if the acquisition attempt will be abandoned. The ongoing "dance around the merger proposal" has market participants keenly watching the potential impacts on labor market dynamics and the broader implications for corporate strategy and shareholder engagement in competitive fields.

5. Restaurant Roundup: Unsolicited Bid for El Pollo Loco Sparks Hostile Takeover Defense

Houston, TX – May 7, 2025 – El Pollo Loco Holdings Inc. (NASDAQ: LOCO), the fire-grilled chicken restaurant chain, has found itself at the center of an unsolicited acquisition bid from activist investor Sardar Biglari's Biglari Capital Corp. This development has brought the concept of hostile takeovers, and the defensive "poison pill," to the forefront of the restaurant industry's M&A landscape.



Q1: Is Biglari Capital's bid for El Pollo Loco a friendly or hostile transaction?

A1: Biglari Capital's bid for El Pollo Loco is explicitly a hostile transaction. The key indicator is the term "unsolicited" bid, meaning the offer was made directly to the company without prior invitation or mutual agreement from El Pollo Loco's board of directors. Furthermore, El Pollo Loco's historical actions—namely, the adoption and extension of a "poison pill" shareholder rights plan—clearly demonstrate a defensive posture against Biglari's accumulating stake and perceived aggressive intentions.

Q2: What is a "poison pill" and how has El Pollo Loco used this defense mechanism against Biglari Capital?

A2: A **poison pill**, formally known as a Shareholder Rights Plan, is a common defensive tactic used by target companies to prevent or deter hostile takeovers. It makes the acquisition prohibitively expensive or dilutive for an unwanted bidder.

El Pollo Loco has actively deployed and adjusted its poison pill against Biglari Capital:



- **Initial Adoption (2023):** El Pollo Loco's board unanimously adopted a poison pill in 2023 when Biglari Capital's stake exceeded 12%. This initial pill was designed to dilute the holdings of any investor acquiring 12.5% or more of the company's shares without board approval. Under this plan, all other shareholders would gain the right to purchase additional shares at a significant discount (50%), making it costly and complicated for Biglari to reach a controlling interest.
- **Extension and Threshold Hike (2024):** As Biglari continued to accumulate shares, reaching approximately 15% ownership, El Pollo Loco extended the duration of its poison pill and raised its trigger threshold to 15%. This continuous adjustment demonstrates the company's persistent effort to fend off Biglari's increasing influence and potential for a hostile takeover.

The use of a poison pill is a clear signal that the target company's board views the bidder's intentions as potentially disruptive or not in the best interest of all shareholders, hence the "hostile" nature of the transaction.

Q3: What is the current status of Biglari Capital's bid, and what are the key issues surrounding it?

A3: As of April 7, 2025, Biglari Capital has submitted an **unsolicited, non-binding indication of interest** to acquire all shares of El Pollo Loco it does not already own. In response, El Pollo Loco's Board of Directors is **carefully evaluating the proposal** in consultation with independent financial and legal advisors. A **confidentiality agreement** with a customary standstill provision has been entered into, allowing Biglari Capital to access non-public information while temporarily restricting further share accumulation.

Key issues surrounding this bid include:

- **Board's Fiduciary Duty:** The Board's primary responsibility is to act in the "best interests of the Company and its stockholders." Their evaluation will determine if Biglari's offer truly maximizes shareholder value.
- **Biglari's Activist History:** Biglari's known history of aggressive involvement in other public restaurant companies, including a "years-long proxy battle with Cracker Barrel," raises concerns for El Pollo Loco's board about potential disruptions and strategic alignment.
- **El Pollo Loco's Turnaround Plan:** The Company is currently in the first year of a "three-year turnaround plan," focusing on brand standards, labor systems, remodels, and cost-saving initiatives. The board must assess whether Biglari's acquisition would support or derail these ongoing efforts.
- **Valuation:** El Pollo Loco's shares had dropped 30% over the past six months, which may have made it an attractive target for Biglari. The Board will need to determine if Biglari's offer adequately reflects the company's intrinsic value and future potential, especially considering the recent improvements in contribution margins and system wide comparable sales.



Q4: What are the primary deal structuring considerations and potential outcomes in this situation?

A4: In this type of hostile situation, the deal structuring considerations are complex, focusing on both the bid itself and the defense:

- **Biglari's Bid Structure:** Biglari's initial approach is an "indication of interest," which is non-binding. If the Board rejects it, Biglari could proceed with a **tender offer**, directly approaching shareholders to buy their shares. They would likely offer a premium over the market price to entice shareholders to tender their stock.
- **El Pollo Loco's Defenses:** Beyond the poison pill, El Pollo Loco has other options:
 - **"Just Say No":** The board could simply reject the offer, arguing it undervalues the company.
 - **Seeking a "White Knight":** The company could look for a friendly third-party acquirer to make a competing, more attractive offer.
 - **Recapitalization/Restructuring:** They could explore financial restructuring to increase shareholder value and make the company less attractive to the hostile bidder.
 - **Shareholder Communication:** El Pollo Loco will likely continue to communicate with its shareholders, explaining its strategic plan and why Biglari's offer may not be in their best long-term interests.
- **Potential Outcomes:**
 - **Negotiated Acquisition:** Despite the initial hostility, the parties could eventually negotiate a mutually agreeable deal if Biglari raises its offer or makes concessions.
 - **Successful Hostile Takeover:** If Biglari garners enough shareholder support, even against the board's wishes and the poison pill's deterrents (potentially through legal challenges to the pill), they could gain control.
 - **Biglari Sells Its Stake:** If the bid fails and the board remains resistant, Biglari might eventually sell its accumulated stake, potentially at a profit, and move on.
 - **Continued Activism:** Even if the full acquisition doesn't occur, Biglari, as a major shareholder, could continue to exert activist pressure, seeking board seats or influencing strategic decisions.

The current confidentiality agreement represents a crucial, albeit temporary, pause in the direct conflict, allowing both sides to assess their positions before the next move in this high-stakes battle for El Pollo Loco.

6. The "Geopolitical Poison Pill": How National Security is Reshaping M&A



Washington, D.C. – MAY 18, 2025 –

Investment controls are increasingly becoming a potent, and controversial, tool in the corporate defense playbook against hostile takeovers, with the concept of a "geopolitical poison pill" setting a new precedent. The 2018 attempt by Singapore-based Broadcom to acquire U.S. tech giant Qualcomm provides a stark illustration of how national security concerns are reshaping the landscape of corporate takeovers, moving beyond traditional financial defenses.



Q1: What is a "geopolitical poison pill," and how did Qualcomm utilize it to fend off Broadcom's hostile bid?

A1: A "geopolitical poison pill" is a novel defense strategy in which a target company, facing an unsolicited or hostile takeover bid, invokes national security concerns to trigger government intervention and block the acquisition. Unlike traditional poison pills (which dilute shares), this method leverages the increasing scrutiny by investment control authorities over foreign direct investments deemed to pose risks to national security or public order.

Qualcomm brilliantly utilized this strategy in January 2018 when facing a hostile \$117 billion takeover bid from Broadcom. Just 48 hours before a crucial shareholder meeting, Qualcomm's leadership proactively requested the **Committee on Foreign Investment in the United States (CFIUS)** to review the proposed acquisition. Given the Trump administration's heightened focus on economic nationalism and national security (especially against Chinese tech companies like Huawei), and Qualcomm's critical patents in the 5G area, the timing was impeccable. The initiation of the CFIUS review, coupled with the administration's broader geopolitical agenda, disrupted Broadcom's plans. Ultimately, even before CFIUS issued a final report, **President Trump directly prohibited the acquisition**, effectively using national security as a decisive "poison pill" against the hostile bid.

Q2: How do geopolitical investment controls differ from traditional M&A defense mechanisms, and what advantages do they offer?

A2: Geopolitical investment controls offer distinct advantages compared to traditional M&A defense mechanisms like stock buybacks, issuing new shares, or seeking a "white knight" investor:

- **Governmental Authority vs. Corporate Action:** Unlike traditional defenses that rely on corporate actions or financial maneuvers, geopolitical controls involve direct governmental intervention based on national security mandates. This can



provide a more formidable and often insurmountable barrier to an unwanted takeover.

- **Low Direct Costs:** For the target company, the direct costs associated with triggering a geopolitical review are often minimal, especially when compared to the significant financial outlays required for stock buybacks or other dilutive strategies.
- **Preservation of Shareholder Structure:** Crucially, a geopolitical poison pill allows the existing shareholder structure to remain largely unchanged. Traditional defenses often involve share dilution or transfers, which can be complex and may not be favored by all shareholders.
- **Broadening Scope of "National Security":** The definition of "national security" has expanded considerably in recent years, encompassing not just defense but also critical infrastructure, sensitive technologies (like 5G), data security, and even strategic economic capabilities. This broader scope makes it easier for companies to argue for governmental intervention.

The Qualcomm case established a powerful precedent, demonstrating that appealing to national security concerns can be a highly effective, low-cost, and less dilutive way to fend off a hostile takeover compared to conventional methods.

Q3: How have investment controls evolved globally, and what are the implications for transatlantic relations?

A3: Investment controls have become a central element of geopolitically motivated regulation and great power competition, evolving significantly since 2018:

- **U.S. Focus on China:** Since 2018, direct investments from Chinese companies into the U.S., particularly in tech, have sharply declined due to increased scrutiny and perceived geopolitical risk. The U.S. continues to push for stricter controls.
- **European Tightening:** European nations, notably Germany, have also tightened their investment control mechanisms. Following cases like the 2016 acquisition of German robotics company Kuka by Chinese firm Midea, Germany amended its Foreign Trade and Payments Act. Intervention is now possible if foreign direct investments are deemed to "affect security or public order," a lower threshold than the previous "threat to public order or security."
- **Rising Predictability Concerns:** The increasing prevalence and unpredictability of these screenings (as seen in the US Steel / Nippon Steel case) pose significant process risks for companies attempting cross-border M&A. The broadened scope of "national security" makes it difficult to predict which investments might be scrutinized.
- **Transatlantic Tensions:** The article warns that what began as controls primarily aimed at China could strain transatlantic relations. Given lingering European resentment over U.S. subsidy programs (like the Inflation Reduction Act) and past/present tariffs from the Trump administration, there's a risk that European countries might increasingly use investment controls to block U.S. direct investments into Europe. Such a move, especially against U.S. companies by a



German government, could trigger "a transatlantic crisis" and prompt retaliatory measures from the U.S., creating irony where a tool designed for geopolitical competition becomes a source of friction among allies.

Q4: What is the primary controversy surrounding the rise of "geopolitical poison pills" and heightened investment controls?

A4: The primary controversy surrounding the invention and increased use of the "geopolitical poison pill" and broader investment controls lies in the **potential for national security concerns to be weaponized or opportunistically invoked by companies to simply fend off unwanted takeovers**, rather than purely addressing genuine national security risks.

The concern is that this strategy allows target companies to circumvent the market-based mechanisms of M&A, where shareholders typically decide the fate of a bid. By leveraging government intervention, companies can block acquisitions that might otherwise be financially beneficial for their shareholders, simply because they are "unfriendly." This blurs the lines between legitimate national security interests and corporate defense tactics, potentially leading to unpredictable regulatory environments and political tensions, even among allies, as discussed regarding potential U.S.-Europe conflicts. It raises questions about transparency, fairness, and the true motivations behind invoking such powerful governmental tools in commercial transactions.

FRIENDLY MERGERS & ACQUISITIONS

1. The Convergence of Cable Giants: An Examination of the Charter-Cox Merger Agreement

New York, May 25, 2025

The landscape of the American telecommunications industry is poised for a significant transformation following the definitive agreement reached between Charter Communications, Inc. (NASDAQ: CHTR) and Cox Communications to combine their formidable operations. This landmark transaction, one of the largest in the sector in the past year, merits a comprehensive review, particularly concerning its structural intricacies, legal implications, and the cadre of advisors instrumental in its orchestration.



Q1: What is the fundamental structure and valuation of this significant merger agreement between Charter and Cox?

A1: The transaction, valued at approximately **\$34.5 billion on an enterprise basis**, signifies a transformative alignment of two of the largest U.S. cable companies. This valuation is in line with Charter's recent enterprise value based on its 2025 estimated



adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) multiple. The enterprise value is comprised of **\$21.9 billion in equity** and **\$12.6 billion in net debt and other obligations** assumed by the combined entity.

Structurally, Charter will acquire Cox Communications' commercial fiber and managed IT and cloud businesses. Simultaneously, Cox Enterprises, the privately held parent of Cox Communications, will contribute Cox Communications' residential cable business to Charter Holdings, an existing subsidiary partnership of Charter. As consideration for this contribution, Cox Enterprises will receive a multifaceted package:

- **\$4 billion in cash.**
- **\$6 billion notional amount of convertible preferred units** in Charter's existing partnership, carrying a 6.875% coupon, convertible into Charter partnership units, and subsequently exchangeable for Charter common shares.
- Approximately **33.6 million common units** in Charter's existing partnership, with an implied value of \$11.9 billion, also exchangeable for Charter common shares.

Upon the closing of the merger, Cox Enterprises is projected to own approximately **23% of the combined entity's fully diluted shares outstanding**, on an as-converted, as-exchanged basis, and pro forma for the concurrent closing of the Liberty Broadband merger.

Q2: Beyond the financial consideration, what are the key operational and strategic aspects of this proposed combination?

A2: The merger aims to create an industry leader in mobile and broadband communications services, seamless video entertainment, and high-quality customer service. Operationally, Charter's "Spectrum" brand will become the consumer-facing brand across all customers in the combined footprint. The combined company will change its name to "Cox Communications" within a year after the deal closes, while retaining Charter's current headquarters in Stamford, Connecticut, and a significant presence in Cox's home base in Atlanta, Georgia.

Strategically, the combined entity's network will span approximately **46 states**, serving nearly **70 million homes and businesses** with a total of **38 million customers**. This provides significant scale to compete more aggressively with wireless competitors, 5G home internet options, and global video distribution platforms. Charter expects to realize approximately **\$500 million in annualized cost synergies** within three years of closing, primarily from procurement and overhead savings. The deal is also touted as a move to "return jobs from overseas and create new, good paying customer service and sales careers" by adopting Charter's U.S.-based workforce model for Cox's customer service functions.

Q3: What are the primary legal and regulatory considerations pertinent to this merger, and how are the parties addressing potential antitrust scrutiny?



A3: The merger is subject to customary closing conditions, including the receipt of regulatory and Charter shareholder approvals. Given the scale of the transaction, which would create the largest U.S. cable TV and broadband provider with around 38 million subscribers, it is anticipated to undergo a "fulsome process" of regulatory review. This will likely involve the U.S. Department of Justice's antitrust division.

Concerns have been raised by figures such as U.S. Senator Amy Klobuchar, who urged antitrust enforcers to conduct an "in-depth look at this merger to ensure it will not raise prices or create additional barriers to internet access." While direct competition between Charter and Cox may be limited across their overall footprints, mitigating some antitrust concerns, regulators will likely scrutinize whether the merged company gains undue leverage over rivals. The DOJ's past actions, such as imposing conditions on Charter's acquisition of Time Warner Cable in 2016, suggest a focus on preventing restrictions on programming providers from entering distribution deals with streaming services. Charter's CEO Chris Winfrey emphasized the "good for America" aspect of the deal, including the stated intention to onshore jobs, which some analysts view as an attempt to bolster its antitrust appeal.

Q4: Which prominent legal and financial advisory firms were engaged by Charter and Cox in the consummation of this merger agreement?

A4: The legal and financial advisory roles for this complex transaction were distributed among several highly regarded firms:

- **For Charter Communications:**
 - **Financial Advisors:** Citi and LionTree
 - **Legal Counsel:** Wachtell, Lipton, Rosen & Katz
- **For Cox Enterprises:**
 - **Financial Advisor:** Allen & Company
 - **Legal Advisor:** Latham & Watkins LLP (with a corporate deal team led by Chicago partner Bradley Faris and Washington, D.C. partner Victoria VanStekelenburg, providing comprehensive advice on communications, antitrust, tax, executive compensation and benefits, finance, capital markets, intellectual property, and real estate matters).
- **For Cox Communications:**
 - **Financial Advisors:** BDT & MSD Partners, Evercore, and Wells Fargo

Q5: Are there any concurrent or related transactions impacting the structure and timing of this merger?

A5: Yes, the merger agreement with Cox is expected to close contemporaneously with Charter's previously announced all-stock acquisition of Liberty Broadband. This concurrent closing is designed to simplify cable pioneer John Malone's portfolio. As a result of this combined closing, Liberty Broadband will cease to be a direct shareholder



in Charter and will no longer designate directors for election to the Charter Board. Liberty Broadband shareholders will receive direct interests in Charter.

Upon closing, Charter, Cox Enterprises, and Advance/Newhouse (another cable innovator which contributed its operations to Charter's partnership in 2016) will enter into an amended and restated stockholders agreement. This agreement will govern matters such as preemptive rights, voting caps, required participation in Charter common share repurchases, and transfer restrictions, outlining key shareholder governance matters for the combined entity.

2. PepsiCo's Strategic Acquisition of Poppi: A Deep Dive into the "Better-For-You" Beverage Market

Montana, May 25, 2025

In a significant move reinforcing its commitment to evolving consumer preferences, PepsiCo Inc. (NASDAQ: PEP) has successfully completed its acquisition of Poppi, the rapidly growing prebiotic soda brand. This nearly \$2 billion transaction underscores PepsiCo's aggressive M&A strategy to enhance its portfolio with functional and health-conscious offerings.



Q1: What are the key financial and structural details of PepsiCo's acquisition of poppi?

A1: PepsiCo announced on May 19, 2025, the finalization of its purchase of Poppi or **\$1.95 billion**. This figure includes an estimated **\$300 million in anticipated cash tax benefits**, bringing the net purchase value of the deal to **\$1.65 billion**. The transaction also features a performance-based earnout component, contingent upon Poppi achieving certain performance metrics post-acquisition. Notably, while PepsiCo is headquartered in New York with a major corporate campus in Plano, Texas (where Frito-Lay Inc. is based), Poppi, originally founded in Dallas, will maintain its headquarters in Austin, Texas, following the acquisition.

Q2: What is the strategic rationale behind PepsiCo's acquisition of Poppi, and how does it fit into the broader beverage market trends?

A2: PepsiCo's acquisition of Poppi is a clear manifestation of its "Positive Choices Growth Strategy" and a strategic response to the booming "better-for-you" beverage market. Poppi, a prebiotic soda brand known for its gut health benefits through a blend of fruit juice, apple cider vinegar, and inulin prebiotics, represents a "compelling strategic fit" within PepsiCo's vision for the future of beverages.



Analysts highlight that probiotic and prebiotic sodas constitute the fastest-growing beverage category. This acquisition allows PepsiCo to increase its exposure to this rapidly expanding segment and is consistent with its disciplined "tuck-in M&A" approach, aimed at revamping its overall portfolio. The deal is seen as a move to counter ongoing pressures within PepsiCo's North America Beverages segment and aligns with broader industry trends where consumers are increasingly prioritizing health and wellness, driving demand for less sugary, functional drink alternatives. Competitors like Coca-Cola have also recently invested in this space with their Simply Brand, demonstrating a clear industry-wide shift.

Q3: What are the anticipated benefits of this acquisition for Poppi, and what impact is expected on its market presence?

A3: For Poppi, the acquisition by PepsiCo represents a significant validation of its brand and mission. Allison Ellsworth, co-founder of Poppi, expressed enthusiasm for "this next chapter with PepsiCo to bring our soda to more people." The partnership provides Poppi with access to PepsiCo's immense resources and capabilities, which are expected to be instrumental in scaling its momentum and unlocking new growth opportunities.

Industry experts, such as Jefferies analysts, see positives from the deal, noting that Poppi, a \$400 million brand at retail, has been growing nicely (reportedly +100% in the last four weeks prior to the announcement), with growth expected to accelerate with PepsiCo's scale. Evercore ISI specifically anticipates that Poppi will gain **additional shelf space at major retailers** such as Walmart, Target, Stop & Shop, and Kroger due to PepsiCo's substantial influence and distribution network. This strategic integration into PepsiCo's portfolio is poised to significantly expand Poppi's reach and market penetration.

Q4: Who were the financial and legal advisors involved in facilitating this acquisition?

A4: The successful completion of this acquisition involved a robust team of financial and legal advisors for both PepsiCo and Poppi:

- **For PepsiCo:**
 - **Lead Financial Advisor:** Centerview Partners LLC
 - **Financial Advisor:** J.P. Morgan Securities LLC
 - **Legal Advisor:** Cravath, Swaine & Moore LLP
 - **Tax Counsel:** Davis Polk & Wardwell LLP
- **For Poppi:**
 - **Financial Advisor:** Goldman Sachs & Co. LLC
 - **Legal Advisor:** Cooley LLP

Q5: How does this acquisition fit within PepsiCo's recent M&A activity, and what does it suggest about its future strategy?



A5: This acquisition of Poppi is consistent with PepsiCo's active and strategic approach to mergers and acquisitions, particularly since 2018. The company has a notable track record of "tuck-in M&A deals" aimed at diversifying and strengthening its portfolio to meet evolving consumer demands. Prior acquisitions include Siete Family Foods in October 2024 for \$1.2 billion, a significant stake in Celsius Holdings in 2022, Rockstar Energy Drink for approximately \$3.85 billion in March 2020, and SodaStream for \$3.2 billion in August 2018, among others.

This pattern suggests that PepsiCo is committed to leveraging strategic acquisitions to drive growth and innovation, particularly in categories that align with health, wellness, and functional benefits. The Poppi acquisition further solidifies PepsiCo's position in the booming functional beverage market, indicating a continued focus on expanding its offerings beyond traditional soft drinks to adapt to changing consumer preferences and maintain its competitive edge.

3. Merck KGaA Fortifies Rare Tumor Portfolio with \$3.9 Billion SpringWorks Therapeutics Acquisition

Washington DC, May 25, 2025

In a strategic move to bolster its Healthcare sector and establish a leadership position in rare tumors, Germany's Merck KGaA has announced its definitive agreement to acquire SpringWorks Therapeutics for \$47 per share in cash. This deal, with an equity value of approximately \$3.9 billion, represents a significant investment in a specialized and high-growth segment of the pharmaceutical market.



Q1: What are the primary motives and strategic synergies driving Merck KGaA's acquisition of SpringWorks Therapeutics?

A1: Merck KGaA's acquisition of SpringWorks Therapeutics is driven by several key strategic motives and anticipated synergies:

- **Sharpening Focus on Rare Tumors:** This acquisition is a major step in Merck KGaA's portfolio strategy to position itself as an innovation and technology powerhouse, specifically sharpening its focus on rare tumors where there is a large unmet medical need.
- **Accelerating Growth and Immediate Revenue Contribution:** SpringWorks brings two FDA-approved medicines, nirogacestat (Ogsiveo®) for desmoid tumors and mirdametinib (Gomekli™) for neurofibromatosis type 1 (NF1)-associated plexiform neurofibromas. These marketed therapies are expected to immediately



contribute to Merck KGaA's revenues and accelerate mid- to long-term growth for its Healthcare business.

- **Strengthening U.S. Presence:** The acquisition aligns with Merck KGaA's strategic objective of strengthening its presence in the United States, the world's largest pharmaceutical market.
- **Complementary Portfolio and Pipeline:** SpringWorks' rare tumor portfolio complements Merck KGaA's existing progress in rare tumors, including its recent option for worldwide commercialization rights for pimicotinib (ABSK021) for tenosynovial giant cell tumor (TGCT). This integration aims to create a strong foundation for further investments in the rare oncology space and bring therapeutic innovations to more patients globally.
- **External Innovation and Early Value Creation:** The transaction is fully aligned with Merck KGaA's M&A priorities of pursuing external innovation and focused acquisitions that promise early value creation, as outlined during its Capital Markets Day in October 2024.

Q2: What are the key financial terms of the deal, and what are the expectations regarding its financial impact and funding?

A2: Merck KGaA will purchase SpringWorks Therapeutics for **\$47 per share in cash**. This represents an equity value of approximately **\$3.9 billion**, or an enterprise value of **\$3.4 billion (€3.0 billion)** when accounting for SpringWorks' cash balance as of December 31, 2024. The offer price also represents a **26% premium** to SpringWorks' unaffected 20-day volume-weighted average price of \$37.38 on February 7, 2025, the day prior to initial market speculation.

The acquisition will be funded with a combination of **available cash and new debt**. Upon closing, the business combination is expected to **immediately contribute to Merck KGaA's revenues** and is projected to **be accretive to the company's earnings per share pre (EPS pre) in 2027**. Merck KGaA has stated its commitment to preserving its strong investment-grade credit rating and will retain the ability to pursue larger transactions across its three sectors, with Life Science remaining a priority.

Q3: What are the post-closing issues, including integration and employee considerations, as highlighted by the companies?

A3: The transaction is expected to close in the **second half of 2025**, subject to customary closing conditions, including approval of SpringWorks' shareholders and receipt of required regulatory approvals. Until the closing, both companies will continue to operate separately.

Saqib Islam, CEO of SpringWorks Therapeutics, emphasized that joining forces with Merck KGaA will allow SpringWorks to "leverage their resources and expertise to build a brighter future for the patient communities we seek to serve while also creating new opportunities for SpringWorks employees as part of a global organization." This indicates



a focus on **smooth integration** that seeks to retain talent and build upon SpringWorks' existing operational successes. The acquisition provides SpringWorks with a significant opportunity to **expand its reach into markets beyond the U.S.**, utilizing Merck KGaA's global Healthcare organization.

Q4: What are the legal aspects of the transaction, including approvals and advisory roles?

A4: The acquisition has received unanimous approval from the Boards of Directors of both Merck KGaA and SpringWorks Therapeutics. The completion of the merger is contingent upon the satisfaction of customary closing conditions, notably approval from SpringWorks' shareholders and the receipt of required regulatory approvals.

Legal and Financial Advisors:

- **For Merck KGaA:**
 - **Financial Advisor:** J.P. Morgan
 - **Legal Counsel:** Sullivan & Cromwell LLP
- **For SpringWorks Therapeutics:**
 - **Joint Financial Advisors:** Centerview Partners LLC and Goldman Sachs & Co. LLC
 - **Legal Counsel:** Goodwin Procter LLP

Q5: How might this acquisition be treated from a tax and accounting perspective, and what potential future implications are there?

A5: From an accounting perspective, the acquisition is expected to **immediately contribute to Merck KGaA's revenues** and become **accretive to its earnings per share pre (EPS pre) in 2027**. This implies that while there will be an initial impact on earnings due to acquisition-related costs and integration, the long-term financial benefits are anticipated to materialize within a few years. Acquisitions of this nature typically involve significant **purchase accounting adjustments**, where the assets and liabilities of SpringWorks will be revalued to their fair market value on Merck KGaA's balance sheet. This can lead to the recognition of goodwill and intangible assets (such as the value of the approved drugs and pipeline candidates).

Regarding **tax implications**, the all-cash consideration means that SpringWorks shareholders will likely recognize a capital gain or loss for tax purposes upon receiving the cash for their shares. For Merck KGaA, the acquisition will involve careful consideration of the tax deductibility of goodwill and intangible assets, as well as the tax treatment of the acquired intellectual property and operations, particularly given SpringWorks' U.S. base and Merck KGaA's German origins. The mentioned "\$300 million of anticipated cash tax benefits" in the original deal value suggests some tax advantages or synergies that Merck KGaA expects to realize from the transaction, likely related to the



deductibility of acquisition-related expenses or tax benefits associated with SpringWorks' existing assets or operations.

4. Skechers Goes Private in \$9.4 Billion Deal with 3G Capital

Los Angeles, CA – May 7, 2025 – Skechers U.S.A., Inc., the global footwear company, has announced its agreement to be acquired by private equity firm 3G Capital in a deal valued at approximately \$9.4 billion. This landmark transaction, one of the largest in the footwear industry's history, will take Skechers private after 26 years on public markets, as the company navigates significant macroeconomic challenges, including the impact of new U.S. tariffs.



Q1: What was the total purchase price of the Skechers merger, and how do concepts like total consideration, enterprise value, and net purchase price relate to this deal?

A1: The **total purchase price (or equity value)** of the Skechers merger is approximately **\$9.4 billion**. This figure is based on 3G Capital's offer of **\$63 per share in cash** for all outstanding Skechers shares.

To clarify other related concepts:

- **Total Consideration:** This refers to the full value that the buyer (3G Capital) is paying to the seller's shareholders (Skechers' shareholders) to acquire their shares. In this case, it's primarily cash (\$63 per share), though there's an alternative option of \$57 cash plus an unlisted equity unit. The aggregate of all payments made to shareholders constitutes the total consideration.
- **Enterprise Value (EV):** This represents the total value of a company, including its equity, interest-bearing debt, and minority interest, minus its cash and cash equivalents. It's often seen as the theoretical cost to acquire the entire business, free of its debt and cash. While the article states the equity value, the precise enterprise value would require knowing Skechers' debt and cash balances, which aren't fully disclosed in the provided text. Analysts use EV to compare companies regardless of their capital structure.
- **Net Purchase Price:** This term is less formally defined but can refer to the total cash outflow from the buyer. In an all-cash deal, it might be the total purchase price less any cash received from the acquired company, or the enterprise value adjusted for specific transaction costs or other balance sheet items.

These financial concepts are critical for evaluating the cost, structure, and ultimate financial impact of an acquisition for both the buyer and the seller.

Q2: Why did 3G Capital primarily use cash to acquire Skechers, rather than stock or a combination?



A2: 3G Capital's decision to offer primarily cash for Skechers is a strategic choice, influenced by several factors, including legal, accounting, and tax considerations:

- **Legal & Deal Certainty:** An all-cash offer significantly simplifies the transaction. It removes the complexities of valuing the acquirer's stock, avoids potential shareholder dilution for 3G Capital's existing investors, and often leads to a faster closing time. Crucially, a cash offer provides immediate and certain value to Skechers' shareholders, which is highly attractive, especially when the target company (Skechers) was facing "uncertainty on the multi-year margin outlook due to tariffs" and market volatility. This certainty helps in securing shareholder approval.
- **Accounting Implications:** From an accounting perspective, a cash acquisition simplifies the integration process. The difference between the purchase price and the fair value of Skechers' net identifiable assets will primarily be recognized as goodwill on 3G Capital's books. This clean accounting treatment, with goodwill subject to impairment testing rather than amortization, is often preferred by private equity firms focused on long-term investment horizons.
- **Tax Advantages for 3G Capital (Buyer):**
 - **Taxable Event for Sellers:** While the cash offer means Skechers' shareholders will incur a capital gains tax, this is generally simpler for the buyer.
 - **Potential Tax Basis Step-Up:** In a cash acquisition, 3G Capital may be able to "step up" the tax basis of Skechers' acquired assets to their fair market value. This can lead to higher future depreciation and amortization deductions, reducing the combined entity's taxable income and enhancing post-tax returns.
 - **Leveraged Buyout (LBO) Structure:** Private equity firms frequently finance acquisitions with substantial debt. The interest payments on this debt are typically tax-deductible, creating a valuable "tax shield" that improves the overall economics of the deal for the equity investors. An all-cash consideration fits seamlessly into this common LBO financing strategy.

Q3: What were the key strategic drivers behind this acquisition for 3G Capital, and what challenges was Skechers facing?

A3: For 3G Capital, a firm known for its "owner-operator approach" to consumer brands, the acquisition of Skechers represents a strategic opportunity to:

- **Acquire an Iconic Brand:** Skechers is described as a "global powerhouse" and "iconic, founder-led brand" with a strong track record in lifestyle and performance footwear, boasting \$9 billion in annual sales.
- **Navigate Industry Challenges:** The deal comes at a time when the footwear industry is under intense pressure due to President Trump's "dramatic global trade war" and 145% import tariffs on Chinese goods, which significantly impact companies like Skechers that manufacture a large portion of their products abroad. Going private allows Skechers to "navigate the challenges without being under Wall Street's scrutiny," as suggested by analysts.



- **Leverage 3G's Playbook:** 3G Capital's history with companies like Kraft Heinz suggests a playbook focused on boosting margins through cost-cutting and efficiencies. This private environment will allow them to implement strategic changes away from public market pressures.
- **Support Management Transition:** The acquisition ensures the continued leadership of Skechers' founding father-son duo, Robert and Michael Greenberg, and the existing management team. This continuity is seen as vital for the business's success.

Q4: What legal and advisory firms were involved in facilitating this massive transaction?

A4: The Skechers acquisition involved a consortium of prominent legal and financial advisors for all parties:

- **For Skechers U.S.A., Inc.:**
 - **Exclusive Financial Advisor:** Greenhill (a Mizuho affiliate)
 - **Lead Legal Counsel:** Latham & Watkins LLP
- **For 3G Capital (Acquirer):**
 - **Exclusive Financial Advisor:** J.P. Morgan Securities LLC
 - **Lead Legal Counsel:** Paul, Weiss, Rifkind, Wharton & Garrison LLP
 - **Financing Legal Counsel:** Kirkland & Ellis LLP

The involvement of these top-tier firms underscores the complexity and significant value of this transaction, which marks the largest buyout in the footwear industry's history. The deal was unanimously approved by the Skechers Board of Directors, including an independent committee, and has already received written consent from Skechers stockholders holding approximately 60% of the voting power, simplifying the path to regulatory approvals and expected closing in the third quarter of 2025.

5. OpenAI's \$3 Billion Windsurf Bet: Key Issues in a Landmark AI Acquisition

May 25, 2025 – The reported \$3 billion acquisition of Windsurf, an AI-native integrated development environment (IDE), by OpenAI represents a pivotal transaction in the rapidly evolving artificial intelligence landscape. This deal, while still in preliminary stages, offers a compelling lens through which to examine the complex strategic, legal, accounting, and tax considerations shaping high-stakes tech M&A today.



Q1: What are the primary strategic motives driving OpenAI's acquisition of Windsurf, particularly given Windsurf's relatively modest current revenue?



A1: OpenAI's pursuit of Windsurf for a reported \$3 billion, despite Windsurf's current annualized revenue of approximately \$40 million, is underpinned by deep strategic imperatives rather than immediate financial returns. This acquisition is driven by several critical objectives:

- **Intensified Competitive Position:** OpenAI is operating in an increasingly competitive environment, particularly in AI-assisted coding, where entities like Google's Gemini models and Anthropic's Claude series have made significant advancements. This acquisition serves as a strategic maneuver to strengthen OpenAI's market share and technological leadership.
- **Capture of the Developer Ecosystem:** A core motivation is to secure a dominant position within the developer workflow. Developers extensively utilize AI coding tools for code generation and deployment, making this user base highly valuable. Windsurf reported "several hundred thousand daily active users" and traction with large enterprises provide OpenAI with an immediate and substantial foothold in this critical ecosystem.
- **Accelerated Market Entry and Innovation:** In a rapidly evolving market, the acquisition of an established and specialized entity like Windsurf offers a crucial advantage in accelerating product development and market penetration. This approach allows OpenAI to integrate advanced capabilities swiftly, bypassing potentially lengthy internal development cycles.
- **Paving the Way for Agentic AI:** Beyond direct coding tools, the transaction aligns with the broader strategic objective of positioning OpenAI as a primary interface for the emerging "agentic AI world." Integrating Windsurf's capabilities is anticipated to enhance platforms such as ChatGPT, transforming them into central hubs for orchestrating complex tasks through autonomous AI agents.
- **Enhancing Strategic Autonomy:** The acquisition also reflects a move towards increased strategic autonomy for OpenAI. As key partners adopt more "open garden" approaches and support cross-platform protocols, securing direct channels to the developer ecosystem becomes paramount for OpenAI to manage its own distribution and gather first-party usage telemetry.

Q2: From a deal structuring perspective, what are the key considerations and challenges in this acquisition?

A2: The reported \$3 billion valuation for Windsurf, expected to be an all-cash acquisition funded by OpenAI's recently closed \$40 billion financing round, involves critical deal structuring considerations:

- **Valuation Justification:** The significant premium paid relative to Windsurf's current revenue requires a robust justification. Due diligence will be pivotal in validating Windsurf's proprietary technology, active user base, enterprise adoption, and its long-term strategic value to OpenAI.



- **Purchase Agreement Terms:** The specifics of the definitive merger agreement will be paramount. This will include customary representations and warranties, indemnification provisions, and closing conditions (e.g., regulatory approvals). Given the dynamic nature of the AI market, particular attention will be paid to covenants governing Windsurf's operations between signing and closing.
- **Talent Retention:** The continued engagement of Windsurf's founders (Varun Mohan and Douglas Chen) and core engineering talent is integral to the transaction's success. The deal structure will likely incorporate robust retention mechanisms, including significant equity incentives in OpenAI or the combined entity, to ensure their sustained involvement and successful integration.
- **Integration Strategy:** The successful integration of Windsurf's distinct technology (e.g., "Cascade," "Flows") and its user base will be crucial. An initial strategy involving operation as a relatively distinct unit within OpenAI, followed by a phased integration into broader platforms, may be considered to preserve Windsurf's unique attributes and minimize disruption to its existing developer community. This aims to maintain Windsurf's brand identity and operational agility while strategically leveraging its capabilities.

Q3: What are the key accounting and tax considerations for OpenAI in this cash acquisition?

A3: For OpenAI, acquiring Windsurf for \$3 billion primarily with cash presents several important accounting and tax implications:

- **Accounting - Goodwill Recognition:** A substantial portion of the \$3 billion purchase price will likely be allocated to goodwill. This represents the excess of the consideration paid over the fair value of Windsurf's identifiable net assets acquired (assets minus liabilities). This goodwill will not be amortized but will be subject to annual impairment testing, which could result in non-cash charges against future earnings if the acquired assets' value declines.
- **Accounting - Identifiable Intangible Assets:** Beyond goodwill, OpenAI will identify and value other specific intangible assets acquired, such as Windsurf's proprietary technology, customer relationships (the developer base), its brand name, and any existing intellectual property. These identifiable intangibles will be amortized over their estimated useful lives, impacting OpenAI's future income statements.
- **Tax Basis Step-Up:** In an all-cash acquisition, OpenAI will generally receive a "stepped-up" tax basis in Windsurf's assets. This means the tax basis of the acquired assets will be adjusted to their fair market value as of the acquisition date. A higher tax basis can generate increased depreciation and amortization deductions for tax purposes in future periods, thereby reducing OpenAI's taxable income and cash tax payments.
- **Transaction and Integration Costs:** While not directly part of the purchase price, the various costs associated with the transaction, including legal, advisory,



restructuring, and system integration expenses, will require careful accounting and management.

- **Cross-Border Considerations:** If Windsurf has any international operations or a global user base, the transaction would necessitate an intricate analysis of cross border tax implications, including transfer pricing rules and foreign tax credits, to optimize the overall tax structure of the combined enterprise.

Q4: How does this acquisition reflect the changing competitive landscape in AI, and what are the broader implications for enterprise technical decision-makers?

A4: The OpenAI/Windsurf acquisition serves as a strong indicator of the "completely shifted" and intensified competitive landscape in AI, particularly regarding AI-powered coding and the emerging "agentic AI world."

- **Shift from Model Supremacy to Ecosystem Control:** The deal signifies a strategic pivot from merely developing superior foundational models to actively "capturing the developer workflow" and controlling the "ecosystem." OpenAI, despite its large ChatGPT user base, recognized its need to strengthen its position in specialized enterprise coding tools against competitors. The acquisition aims to gain "first-party usage telemetry" and reduce reliance on external platforms.
- **Rise of Agentic Development:** The "race to become the primary interface for an increasingly agentic AI world" is the ultimate objective. This involves AI agents autonomously performing complex tasks. Windsurf's "fully agentic IDE" with features like "Cascade" (deep context awareness) and "Flows" (real-time AI collaboration) directly addresses this future, enabling advanced reasoning capabilities.
- **Evolving Openness and Interoperability:** While major players strive to establish dominant "starting points" for AI interaction, the industry's simultaneous push for interoperability and open protocols (e.g., Model Context Protocol - MCP) suggests a more fragmented, yet highly integrated, future. This implies that even a "winning" starting point must embrace openness.

For enterprise technical decision-makers, the implications are profound:

- **Platform Stability and Reliability:** The intense competition and strategic maneuvers among AI leaders necessitate a rigorous evaluation of the long-term stability and reliability of chosen AI platforms.
- **Adapting to Agentic AI:** Teams must prepare for AI tools that offer multi-step reasoning, project-wide context awareness, and autonomous task execution. This requires fostering new skills in areas like prompt engineering and agent orchestration.
- **Embracing Sandbox Environments:** To foster innovation safely, providing secure and governed sandbox environments for experimentation with powerful AI tools is crucial. This allows domain experts ("makers") to build custom software



solutions without deep coding expertise, driving innovation while managing data security and compliance.

This acquisition underscores that the future of enterprise AI lies not only in developing advanced models but also in controlling the intelligent tools and environments that empower developers and knowledge workers to leverage AI seamlessly and efficiently.

6. Powering the Future: An In-Depth Look at NRG Energy's \$12 Billion Acquisition of LS Power Assets

Houston, TX & New York, NY – May 13, 2025 – In a significant move poised to reshape the North American energy landscape, **NRG Energy Inc. (NYSE: NRG)** has entered into a definitive agreement to acquire a premier power generation portfolio and a commercial and industrial virtual power plant (C&I VPP) platform from **LS Power Equity Advisors, LLC**, for an approximate **\$12.0 billion enterprise value**. This transformative transaction, announced during NRG's Q1 results, underscores the dynamic shifts occurring within the power sector, driven by unprecedented demand growth.



Q1: What are the core strategic motivations behind NRG Energy's acquisition of LS Power's generation portfolio, and how does it align with current market trends?

A1: NRG Energy's acquisition is primarily driven by a strategic imperative to capitalize on what it terms an "early stage of a power demand supercycle," particularly fueled by the escalating energy needs of **data centers and other large load customers**. Key motivations include:

- **Doubling Generation Capacity:** The acquisition will double NRG's overall generation capacity to 25 GW, adding 18 modern, flexible natural gas-fired facilities totaling approximately 13 GW, alongside CPower, a leading C&I VPP platform with 6 GW of capacity. This significantly enhances NRG's ability to serve growing demand.
- **Meeting Hyperscaler Demand:** The increased capacity and strategic locations (Northeast and Texas, major data center markets) position NRG to directly support the energy requirements of hyperscalers and other large industrial consumers.
- **Fleet Transformation:** The deal transforms NRG's generation fleet with "irreplicable natural gas assets," optimizing its ability to serve customers, simplify risk management, and lower cost-to-serve.
- **"Additionality" Offerings:** NRG gains enhanced "additionality" offerings through potential uprates of over 1 GW, additional sites for development, and a differentiated C&I VPP platform, crucial for meeting evolving customer energy strategies.



- **Confidence in Natural Gas:** The acquisition is a strong vote of confidence in the natural gas sector's leading role in powering new data center developments and providing firm, flexible power to balance the grid amidst increasing intermittent renewable resources.

Q2: Detail the financial consideration and deal structuring of this \$12 billion transaction.

A2: The transaction, valued at an enterprise value of approximately **\$12.0 billion**, is structured as a combination of cash and common stock, along with assumed debt:

- **Cash Consideration:** NRG will pay **\$6.4 billion in cash**.
- **Stock Consideration:** LS Power will receive **\$2.8 billion in NRG common stock**, equating to 24.25 million shares (based on a 10-day trailing VWAP of \$114.98). This stock component represents approximately 23% of the total purchase price or 30% of LS Power's net consideration after debt assumption, reflecting LS Power's "strong conviction in NRG's post-acquisition value."
- **Assumed Net Debt:** NRG will assume **\$3.2 billion of net debt** from the acquired portfolio at closing.
- **Tax Benefits:** The deal also accounts for approximately **\$0.4 billion in net present value (NPV) of tax benefits** generated directly as a result of the transaction.
- **LS Power's Equity Stake:** LS Power is expected to own approximately **11% of the pro forma NRG shares outstanding**. To manage voting concentration, a portion of LS Power's shares will be held in a voting trust, ensuring it controls less than 10% of NRG's overall voting rights at all times. LS Power has also committed to a 6-month lock-up period for its equity ownership.

This mixed consideration structure allows NRG to manage its cash outlay while providing LS Power with a significant equity stake in the combined entity, aligning interests.

Q3: What are the anticipated accounting and tax implications for NRG Energy post-acquisition, and how will its financial profile be impacted?

A3: The acquisition is expected to have a significant and positive impact on NRG Energy's financial profile:

- **Immediate Accretive to EPS:** The transaction is anticipated to be **immediately and highly accretive to NRG's Adjusted Earnings Per Share (EPS)**. This means that, from an accounting perspective, the acquisition is expected to boost NRG's earnings per share from the outset.
- **Increased EPS CAGR Target:** Given the visible and sustained growth expected from the acquisition, NRG is increasing its stated long-term compounded annual growth rate (CAGR) target for Adjusted EPS from +10% to at least **+14%**, even before considering additional upside opportunities from data centers or tightening markets.



- **Enhanced Credit Profile and Deleveraging:** NRG expects to maintain a strong balance sheet, with its current credit ratings affirmed. The acquisition enhances its credit profile, supporting an increase in its target investment-grade leverage ratio to below 3.0x Net Debt to Adjusted EBITDA (from 2.50x-2.75x). NRG is committed to achieving this target leverage ratio within 24 to 36 months post-closing, driven by robust pro forma cash flows.
- **Capital Allocation and Returns:** The deal supports NRG's commitment to substantial and consistent capital returns, including **\$1 billion in annual share repurchases** until the <3.0x leverage target is reached, alongside 7-9% annual dividend per share growth.
- **Tax Considerations:** The mentioned **\$0.4 billion NPV of tax benefits** generated directly from the transaction suggests favorable tax implications, potentially related to the structure of the deal (e.g., asset step-up in basis) or the utilization of tax attributes from the acquired entities.

Q4: What are the key legal and regulatory hurdles for this transaction, and what are the broader risks and opportunities in large-scale M&A within the energy sector?

A4: The acquisition is expected to close in the first quarter of 2026, subject to customary closing conditions and critical regulatory approvals, including:

- **Hart-Scott-Rodino (HSR) Antitrust Clearance:** Required by the U.S. Department of Justice and Federal Trade Commission to assess potential anti-competitive effects.
- **Federal Energy Regulatory Commission (FERC) Approval:** Essential for transactions involving electric power generation and transmission assets.
- **New York State Public Service Commission (NYSPSC) Approval:** Necessary due to the assets located within New York's jurisdiction.

Conclusion: Navigating the M&A Landscape

Ultimately, engaging in mergers and acquisitions is a high-stakes endeavor offering both considerable upside and significant challenges. Deals can accelerate **growth**, amplify **market presence**, and enhance **operational efficiency** by bringing together complementary assets and expertise. They provide a rapid path to scale that organic growth simply can't match, allowing companies to seize emerging opportunities and optimize their portfolios for the future.

However, these benefits come with inherent complexities. Companies must contend with rigorous **regulatory oversight**, which can introduce delays and unforeseen conditions. The successful **integration** of disparate cultures and systems is notoriously difficult, posing a major risk to realizing projected synergies. Furthermore, deals are always exposed to broader market **volatility** and the rapid pace of **technological change**, which can impact valuations and long-term strategic fit.



In essence, while M&A remains a powerful tool for strategic transformation, its successful execution hinges on meticulous planning, robust due diligence, and a clear-eyed understanding of both its transformative potential and its inherent risks.

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