



**SIDLEY**  
J.P.Morgan

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# Unsolicited Transformative M&A: Tabletop Exercise

A Presentation for the 2026 Directors Forum

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# Section I

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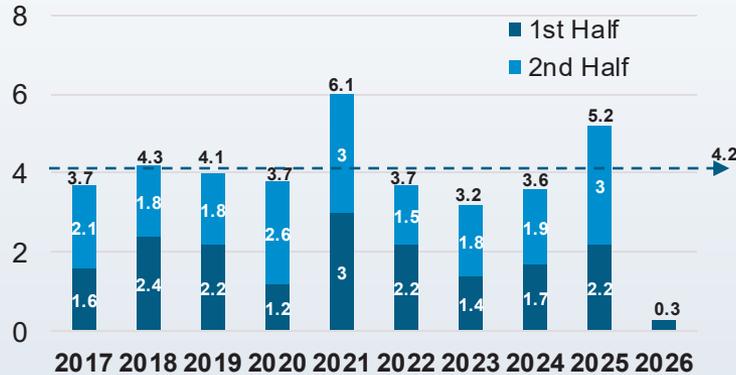
## Current M&A Environment



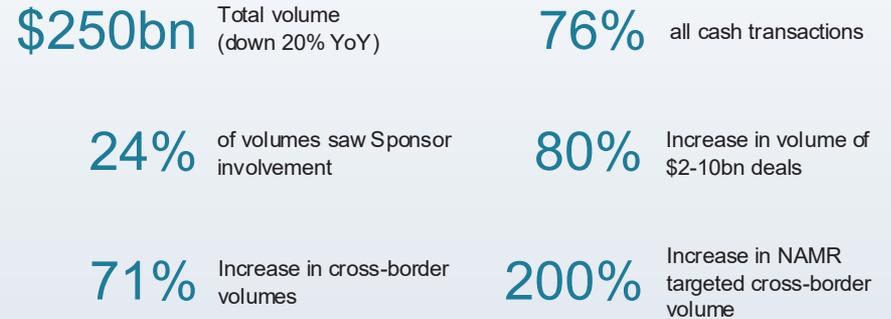
# Global M&A Performance Highlights & Outlook for 2026

**Global M&A volumes reached \$250bn in 1M '26, marking a 20% YoY decline amid macroeconomic shifts and a strong 1M '25**

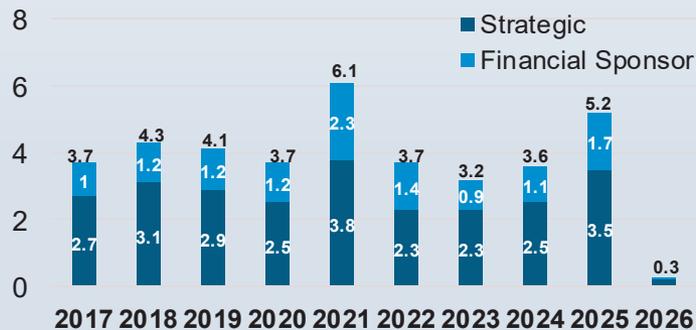
## GLOBAL M&A VOLUME (\$T)



## 1M'26 GLOBAL HIGHLIGHTS



## GLOBAL M&A VOLUME BY DEAL TYPE, 2017-2026 (\$T)



Year	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
% of Global Volume (Strategic)	72%	72%	72%	68%	63%	62%	71%	69%	67%	76%
% of Global Volume (Financial Sponsor)	28%	28%	28%	32%	37%	38%	29%	31%	33%	24%

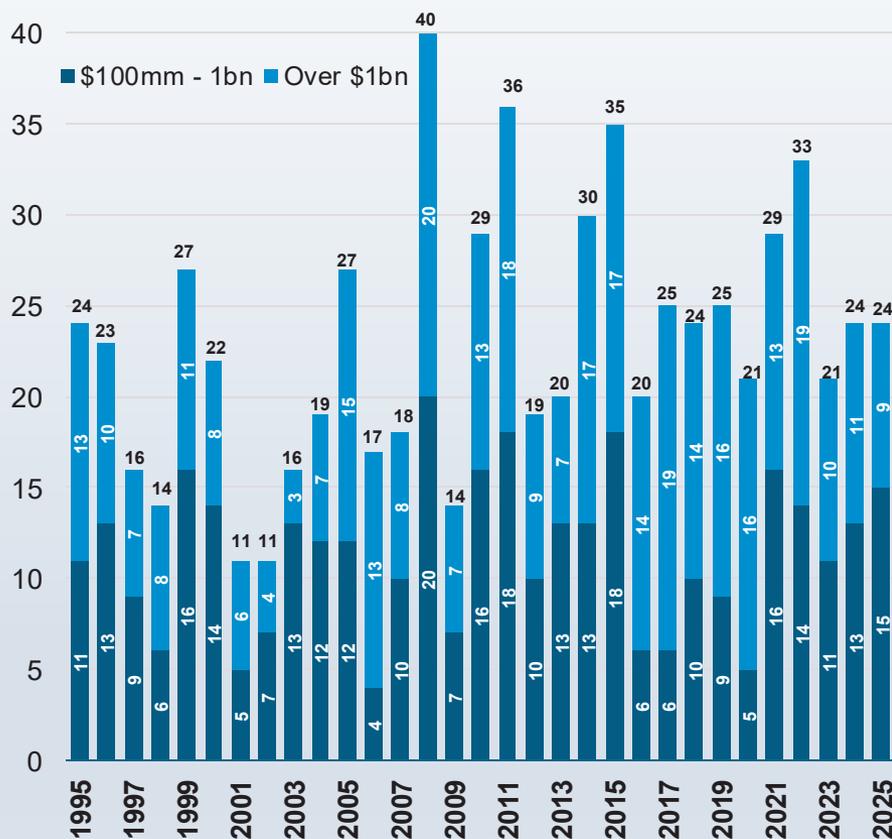
## MARKET COMMENTARY

- M&A activity is expected to maintain strong momentum through 2026, as boards and C-suites continue to pursue scale and take advantage of innovative deal structures, valuation mismatches, and favorable financing markets
- Solid fundamentals and a strategic focus on transformative transactions – particularly in technology and diversified industries – is expected to drive the market. Sponsors are seeking to exit aging assets and utilize structured solutions, secondaries, and continuation vehicles to unlock liquidity
- Headline risk remains elevated due to significant macro events, a fluid geopolitical and policy landscape, and ongoing volatility in equities and commodities. This landscape presents both opportunities and the need for decisive action. Close attention to regulatory policy and transaction administration changes is critical to ensure successful dealmaking
- Overall, while risks remain, there is confidence in the market's ability to adapt and capitalize on emerging opportunities

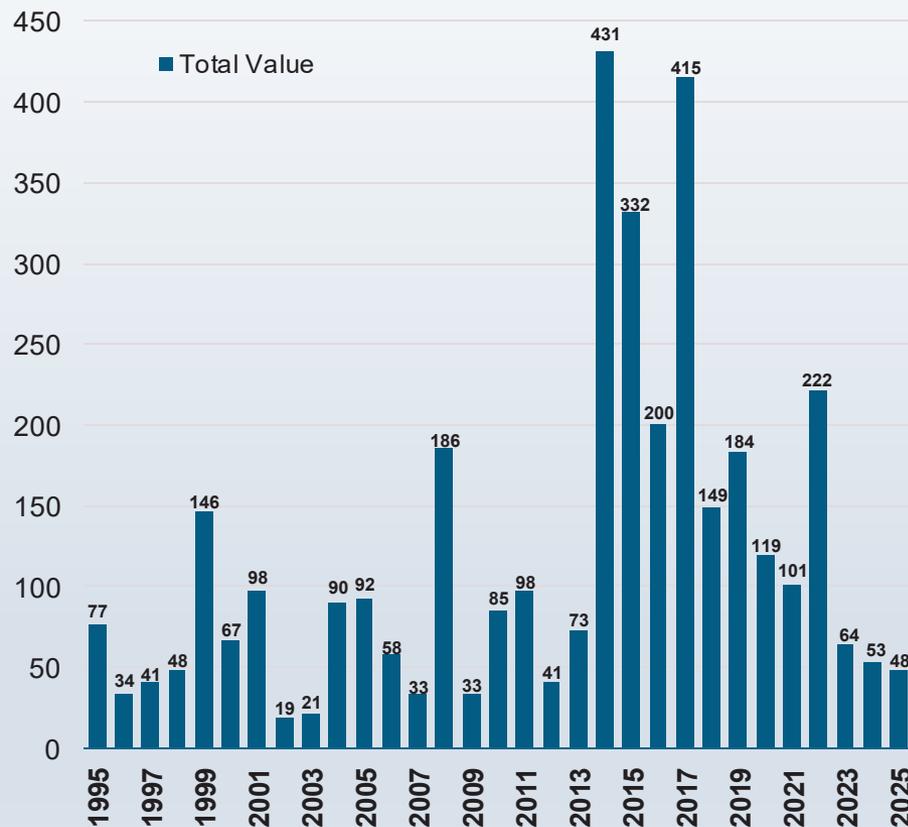
# Unsolicited Takeovers

Unsolicited takeover attempts have been a steady part of the US M&A market since the mid 1990s

Unsolicited Offers<sup>1</sup> – Number of Deals



Aggregate Value of Unsolicited Offers<sup>1</sup> (\$bn)



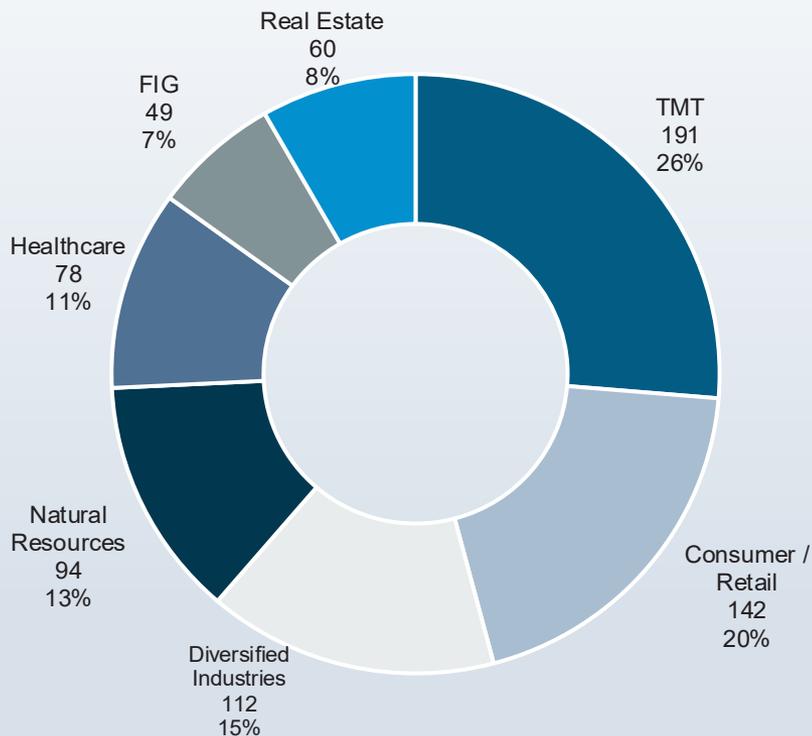
Source: J.P. Morgan M&A Research, Dealogic; Note: Includes only public deals

<sup>1</sup> US targets with deal size in excess of \$100mm; strategic and financial bidders; includes minority buy-ins, hostile and unsolicited deals where initial stake was <50% and final stake is >50%

# Unsolicited Activity

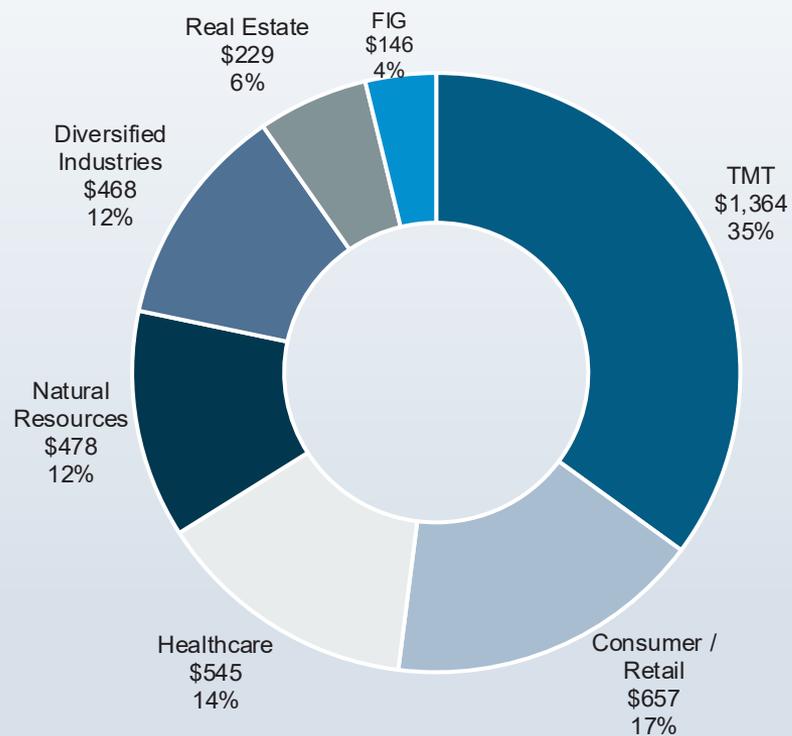
Unsolicited activity has occurred in most industries

**Total US Unsolicited Bids By Industry<sup>1</sup>, 1995 – 2025**  
Number of Unsolicited Offers



Total unsolicited offers = 726

**Total US Unsolicited Bids By Industry<sup>1</sup>, 1995 – 2025**  
Volume (\$bn)



Total volume = \$3,886bn

Source: J.P. Morgan M&A Research, Dealogic; Note: Includes only public deals

<sup>1</sup> US targets with deal size in excess of \$100mm; strategic and financial bidders; includes minority buy-ins, hostile and unsolicited deals where initial stake was <50% and final stake is >50%

# Section II

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## Tabletop Exercise



# Phase 1: Developing an Initial Approach



# Phase 1: Developing an Initial Approach

SCENARIO	TOPICS FOR DISCUSSION
<ul style="list-style-type: none"><li>■ The CEO of your company, <b>Moonshot Co.</b>, is interested in acquiring Laggard, Inc. <b>Laggard</b>, which is now half the size of Moonshot, is a strategic asset that Moonshot has long coveted but couldn't acquire due to antitrust considerations. Due to a change in US policy and a divestment by Laggard, there is now a window where such a transaction is feasible</li><li>■ A transaction for all cash is feasible but would result in Moonshot being modestly above a comfortable leverage profile</li><li>■ Moonshot and Laggard are in a tight-knit industry, and several of the Board members, including the Chairs of both companies, have connectivity with each other through prior business dealings and industry organizations</li><li>■ Laggard has an annually elected Board, and the deadline to nominate directors for Laggard's annual meeting is 6 months away</li></ul>	<ul style="list-style-type: none"><li>■ As a director, what concerns might you have about such a transaction? What are the potential obstacles that might inhibit a deal?</li><li>■ What is the best way for Moonshot to approach Laggard? What are the near-term paths to escalate to potentially spark genuine engagement? What are the objectives of the initial outreach?</li><li>■ How should Moonshot think about what offer to make? What's an appropriate premium? How should you think about cash vs. stock consideration?</li><li>■ How does the 6-month director nomination deadline affect leverage on both sides?</li></ul>

# Initial Approach Tactics

Tactics	Description	Purpose	Considerations
<p><b>Private Approach to Laggard CEO</b></p>	<ul style="list-style-type: none"> <li>Outreach from the bidder's CEO to his or her counterpart at the target</li> <li>Schedule a meeting to discuss the bidder's interest in making proposal or express interest during the initial call</li> </ul>	<ul style="list-style-type: none"> <li>This approach puts less pressure on the target's CEO and on the target's board</li> </ul>	<ul style="list-style-type: none"> <li>The target's CEO will have leeway in how the approach is characterized to the target board</li> </ul>
<p><b>Private Approach to Laggard Board Chair</b></p>	<ul style="list-style-type: none"> <li>Outreach from the bidder's CEO or board chair to the target's board chair</li> <li>Schedule a meeting to discuss the bidder's interest in making a proposal or express the interest during the initial call</li> </ul>	<ul style="list-style-type: none"> <li>If prior approaches to the target's management team have not been productive, this approach gives the bidder a more direct line of sight to the ultimate decision-makers: the target board</li> </ul>	<ul style="list-style-type: none"> <li>The target's board chair will have leeway in how the approach is characterized to the target board</li> </ul>
<p><b>Private Offer Letter</b></p>	<ul style="list-style-type: none"> <li>Written proposal to the target's CEO, possibly copying the target's board (or at least the target's board chair)</li> </ul>	<ul style="list-style-type: none"> <li>Provides a better opportunity for the bidder to "make its case" in terms of the benefits of the deal and to address any potential concerns (e.g., financing, social issues, antitrust, regulatory, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>Not required to be publicly disclosed</li> </ul>
<p><b>Private Bear Hug Letter</b></p>	<ul style="list-style-type: none"> <li>Written proposal to the target's CEO and board</li> <li>The primary difference between a bear hug and a private offer letter is the suggestion of a more aggressive path</li> </ul>	<ul style="list-style-type: none"> <li>Same purpose as the offer letter described above, but copying the entire target board will ensure more focus by the true decision-makers</li> </ul>	<ul style="list-style-type: none"> <li>Not required to be publicly disclosed</li> </ul>

## Phase 2: Delivering the Offer



## Phase 2: Initial Approach and Response

SCENARIO	TOPICS FOR DISCUSSION
<ul style="list-style-type: none"><li>■ Moonshot's CEO reaches out to Laggard's CEO to schedule a dinner. At the dinner, Moonshot's CEO raises the concept of an acquisition, to which Laggard's CEO replies: "We are not for sale." Moonshot's CEO attempts to probe at the Laggard's CEO resistance, but is unable to get any additional information or context</li><li>■ Moonshot's Chair attempts to speak with Laggard's Chair, but Laggard's Chair doesn't respond</li><li>■ Shortly thereafter, Moonshot sends a letter to the Board of Laggard to acquire Laggard for a combination of stock and cash at a 30% premium. The letter ends with a threat to "take the offer directly to shareholders"</li><li>■ Up to this point, Laggard's shareholder base has been largely supportive of its current trajectory</li></ul>	<ul style="list-style-type: none"><li>■ How should Laggard evaluate Moonshot's offer? What are the Board's fiduciary duties in the face of Moonshot's offer? Are there any practical constraints?</li><li>■ If the Laggard Board isn't interested in pursuing a transaction, what are the key near term goals they are trying to achieve?</li><li>■ What is the "minimum credible process" for Laggard to evaluate and reject this offer, without accidentally putting the company into a de facto sale process?</li><li>■ What are the key considerations for Moonshot about whether to go public? What are Moonshot's potential paths to create public pressure? What are the drawbacks of going public?</li></ul>

# How Does a Target Typically Respond to a Hostile Approach?

**A Target's response strategy typically follows careful analysis of the proposal with advisors**

## Key Considerations in Analysis of the Proposal & Assessment of Vulnerability

Moonshot's Objectives	Laggard's Objectives	Nature of Approach	Laggard's Alternatives
<ul style="list-style-type: none"> <li>▪ (Full or partial) control of Laggard</li> <li>▪ Minimize price paid</li> <li>▪ Complete successful offer</li> <li>▪ Avoid a "hostile" bidder reputation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Enhance shareholder value</li> <li>▪ Stay independent unless offer is superior to business plan or other alternatives</li> <li>▪ Determine the bidder's ability to deliver value, speed and certainty</li> <li>▪ Minimize competitive information sharing risks and potential business disruption</li> <li>▪ If bid is private, avoid premature disclosure</li> </ul>	<ul style="list-style-type: none"> <li>▪ Friendly / hostile</li> <li>▪ Private / public</li> <li>▪ Price, terms and conditions</li> <li>▪ Stock / cash and ability to fund transaction</li> <li>▪ Commercial logic &amp; credibility</li> <li>▪ Time to respond</li> <li>▪ Regulatory strategy (if applicable)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Standalone alternative                             <ul style="list-style-type: none"> <li>• Current / revised business plan</li> <li>• "White squire" investment</li> <li>• Restructuring</li> <li>• Alternative M&amp;A</li> </ul> </li> <li>▪ Run a sale process                             <ul style="list-style-type: none"> <li>• Full auction (public or private)</li> <li>• Targeted outreach with a handful of counterparties</li> <li>• "White knight" sale</li> </ul> </li> </ul>

Vulnerable; "in play"

**"Knock-out" offer**

Well conceived offer, potentially capable of being accepted

Undervalued offer

**Ill-conceived offer**

**Strong Position to Defend**

# Standard Practice for Board Response

## Keep the situation private

- Generally preferable to maintain a non-public and confidential process until a signing (if any)
- There is no duty to disclose a private takeover approach absent leaks or an anomalous share price movement. It is easier to defend against an unsolicited bid if the situation is never made public
- A focus of the pre-public defense is to persuade the bidder that a public battle will be hard
- Once public, the company's position becomes more challenging due to shareholder base churn as merger arbs and hedge funds take positions in its stock and employees begin to worry about future

## Channel communications through designated persons

- Potential acquirors may try to contact individual board members directly
- Directors and executives should refer takeover approaches, overtures and conversations with a potential bidder to the Chairman/CEO. The company must speak with one voice
- All conversations are "on the record" and any comments may be used by the potential acquiror

## Lean on advisors; use the Board's time and flexibility to respond

- Take time to review options with advisors. E.g., evaluate the standalone plan as compared to offer
- No obligation to provide due diligence to facilitate an approach or an offer; no automatic requirement to accept a proposal, or to negotiate in response; premium over market is not necessarily "fair"
- Directors can consider various factors, including company's growth potential, alternative opportunities, timing of potential transaction and macroeconomic conditions and likelihood that the proposed deal will be completed (including regulatory and shareholder risks)

## Assume everything will be made public

- *WSJ Test*. Don't say anything outside the boardroom that should not appear in the news
- Directors or management selling stock can be perceived as a sign of weakness

## Remain focused on the business

- Takeover approaches can be time-consuming for board and management, but continued strong performance of the business, though not an absolute defense, is one of the best defenses

## Phase 3: Initial Escalation

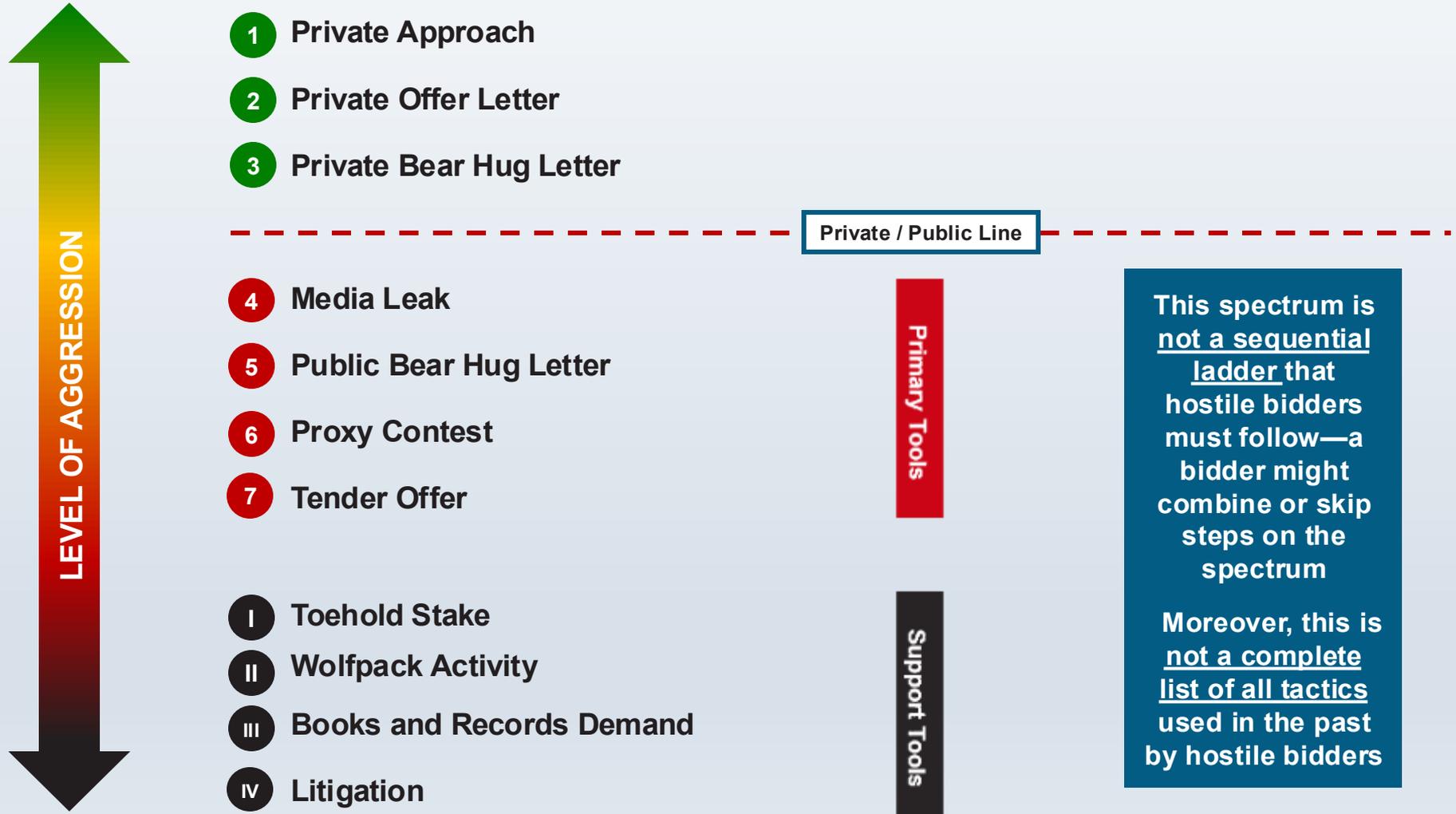


## Phase 3: Initial Escalation

SCENARIO	TOPICS FOR DISCUSSION
<ul style="list-style-type: none"> <li>■ A week later, the Wall Street Journal reports that Moonshot is pursuing a transaction with Laggard. Laggard's stock <u>jumps</u> by 15%, and Moonshot's stock <u>drops</u> by 10%</li> <li>■ Laggard's bankers reach out to Moonshot's bankers. Laggard's bankers note that the offered premium is insufficient and express concern about the antitrust risk</li> <li>■ Laggard notices substantial activity on its website by activists and is notified by its shareholder monitoring service that an activist is building a stake</li> <li>■ Several weeks later, Moonshot issues a press release announcing its proposal offering a 30% premium to Laggard's pre-leak price. The press release concludes that "Unless Laggard comes to the table, Moonshot will allow Laggard's stockholders to decide the outcome"</li> <li>■ The nomination deadline is now 1 month away</li> </ul>	<ul style="list-style-type: none"> <li>■ What are Moonshot's options to escalate further and pressure Laggard into engagement?</li> <li>■ What substantive paths might Laggard pursue facing a hostile bid? How likely are the potential outcomes for Laggard?</li> <li>■ How should Moonshot interpret Laggard's stock price jump? What about Moonshot's stock price reaction?</li> <li>■ What would be the impact of an activist in Laggard's stock?</li> </ul>

# Escalation Tactics: Overview

A bidder has multiple options to put pressure on a company and its board to respond to an offer



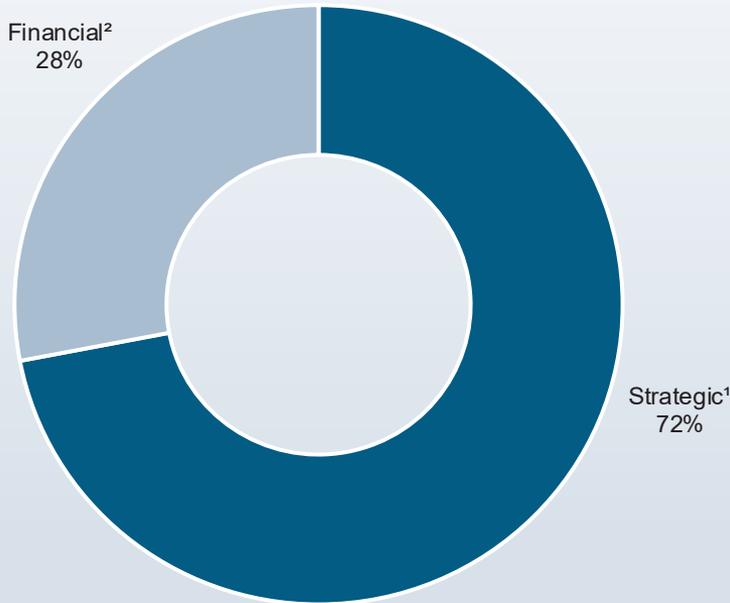
This spectrum is not a sequential ladder that hostile bidders must follow—a bidder might combine or skip steps on the spectrum

Moreover, this is not a complete list of all tactics used in the past by hostile bidders

# Drivers and Outcomes of Unsolicited Activity

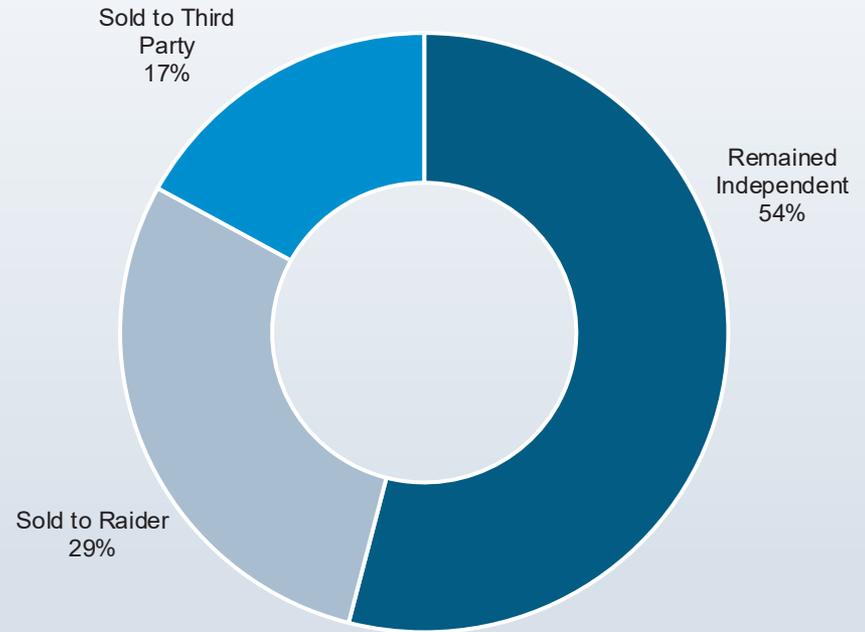
Unsolicited activity is driven by strategic interest with approximately half not remaining independent over time

Breakdown By Shareholder Type



1995–2025 unsolicited volume = \$3,659bn  
1995–2025 unsolicited offers = 714

Breakdown by Outcome



1995–2025 unsolicited volume with definite outcome = \$3,649bn<sup>3</sup>  
1995–2025 unsolicited offers with definite outcome = 709<sup>3</sup>

Source: J.P. Morgan M&A research, Dealogic; Note: Includes only public deals

Note: Analysis includes US targets with deal size in excess of \$100mm; includes minority buy-ins, hostile and unsolicited deals where initial stake was <50% and final stake is >50%

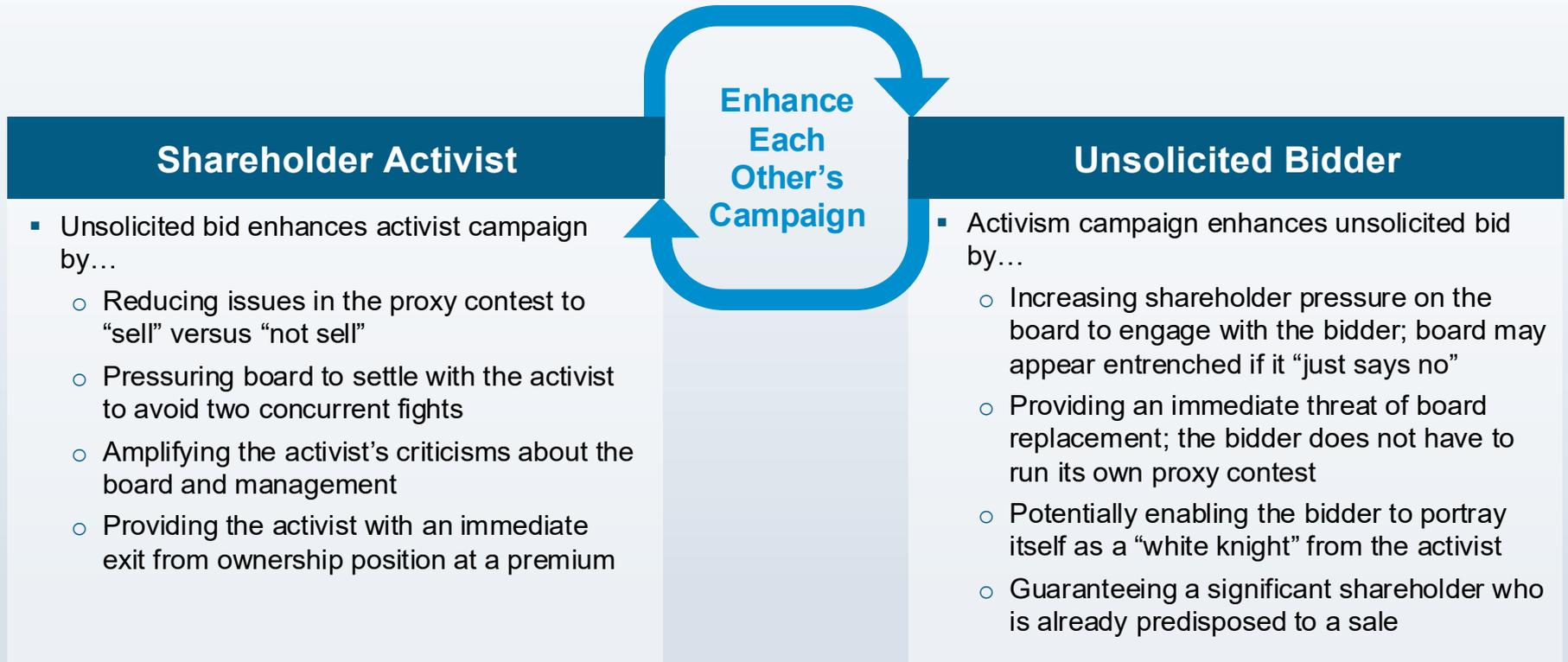
<sup>1</sup> Includes companies operating in similar services and products

<sup>2</sup> Includes private equity funds, hedge funds, individual investors

<sup>3</sup> Excludes pending transactions

# Unsolicited Takeover Bids in the Context of Activism

**Activists and hostile bidders are synergistic, enhancing the potency of each other's campaign**



**Defenses against the activist and the unsolicited bidder are also highly interrelated and must be closely coordinated to ensure success against both threats**

## Phase 4: Proxy Contest / Tender Offer



## Phase 4: Proxy Contest / Tender Offer

SCENARIO	TOPICS FOR DISCUSSION
<ul style="list-style-type: none"><li>■ Two weeks later, on a Sunday night, <i>The Wall Street Journal</i> reports that Moonshot plans to nominate director candidates and is on the cusp of commencing a formal tender offer</li><li>■ On Monday morning, Moonshot issues a press release announcing the commencement of a tender offer and disclosing that “we are ready to nominate directors who will independently assess the merits of the offer”</li><li>■ Laggard’s Board announces the adopting of a shareholder rights plan (poison pill)</li><li>■ Two major activists reveal themselves as stockholders of Laggard and demand that Laggard engage with Moonshot</li></ul>	<ul style="list-style-type: none"><li>■ How aggressive can Laggard be in deploying structural and tactical defenses against Moonshot? How will shareholders view these defenses? Are there any that are particularly problematic?</li><li>■ Laggard shareholder base has generally been supportive. How should Laggard think about how this support will translate to vote support?</li><li>■ What are the potential outcomes if only a subset of the Moonshot nominees are elected?</li><li>■ What role could shareholder activists play in this fight? If an activist were to surface in Moonshot’s shareholder base, how might that change the dynamic?</li></ul>

# Common Mistakes in Defending Against a Hostile Bid

## Engaging Prematurely with a Potential Bidder

- Unsolicited approaches can begin with a polite call, dinner or meeting with the CEO or through a director
- Directors should be aware of the potential buyer landscape to inform who might approach them and how to handle inbounds from potentially interested parties

## Failing to Deploy Takeover Defenses

- Hostile acquirors tend to approach their targets opportunistically when share prices are depressed or the company is in the midst of a crisis
- Deploying defenses provides time for the Board and management to prepare a response or demonstrate intrinsic value to shareholders
- Adopting a rights plan and delaying director elections are reasonable considerations in the right circumstances

## Hesitating to Develop Credible Alternatives

- While the standalone plan may provide more value, it can be difficult to sustain without near-term proof points
- Defense against legitimate hostile offers should include a thorough review of alternatives with the assistance of a financial and other advisors

## Overemphasizing Corporate Governance in a Public Contest

- While governance considerations are a critical part of an activist's case, the focus in hostile M&A situations is almost entirely on the economics of the offer
- The significant changeover in the shareholder base from long-only institutional investors to arbitrageurs and other hedge funds amplifies the focus on economics

# Appendix

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## Presenters



# Alfredo Porretti

Global Co-Head of Shareholder Engagement and M&A Capital Markets, J.P.Morgan



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## SELECT EXPERIENCE

- **Comerica's** defense against HoldCo (2025)
- **Rexford Industrial Realty's** defense against Elliott (2025)
- **Acadia Healthcare's** defense against Engine Capital & Khrom (2025)
- **Performance Food Group's** defense against Sachem Head (2025)
- **BlackRock's** defense against Saba Capital Management (2025, 2024)
- **Rapid7's** defense against JANA Partners (2025)
- **Veradigm's** defense against Kent Lake (2025)
- **Healthcare Realty Trust's** defense against Starboard Value (2024)
- **Matthews International's** defense against Barington (2024, 2022)
- **Cheesecake Factory's** defense against JCP Investment Mgmt. (2024)
- **MarineMax's** defense against Island Capital & Levin Capital (2024)
- **Encore Wire's** defense against Avenue Investment Mgmt. (2024)
- **BioMarin's** defense against Elliott (2023)
- **Omni's** defense against Ancora (2023)
- **MRC Global's** defense against Engine Capital (2023)
- **ContextLogic's** defense against Cannell Capital (2023)
- **IHS's** defense against Blackwells, MTN and Wendel (2023)
- **Yelp's** defense against TCS (2023)
- **Cano Health's** defense against Barry Sternlicht, Third Point (2023, 2022)
- **LL Flooring's** defense against Live Ventures / F9 (2023)
- **HF Foods Group's** defense against Irrevocable Trust (2023)
- **Japan Investment Corp. / JSR / ValueAct** (2023)
- **Semtech's** defense against Lion Point (2023)
- **Bath & Body Works's** defense against Third Point (2023, 2022)
- **IAA's** defense against Ancora (2023, 2022)
- **Pitney Bowes's** defense against Hestia Capital (2023, 2022)
- **Wix's** defense against Starboard Value (2022)
- **Radius Health's** defense against Velan Capital/Repertoire (2022)
- **Twitter's** defense against Elon Musk (2022)

Alfredo is Global Co-Head of J.P.Morgan's Shareholder Engagement and M&A Capital Markets (SEAMAC) team. Prior to joining J.P.Morgan, Alfredo was a Managing Director and Head of Greenhill's Shareholder Advisory Group and a senior member of Morgan Stanley's Shareholder Activism and Corporate Defense Team. During his tenure, Morgan Stanley became the leading shareholder advisory team on Wall Street.

Alfredo started his career in investment banking in Lazard's Financial Institutions Group and Activism Defense Group in New York. He previously was an M&A lawyer at Simpson Thacher & Bartlett in New York, focusing both on private equity and strategic transactions. Alfredo regularly speaks at conferences and leading industry events on the topic of shareholder engagement, activism, ESG and corporate defense.

Alfredo graduated from Harvard Law School (LLM), the College of Europe in Bruges–Belgium (LLM) and from the University of Milan–Italy (JD).

## Derek O. Zaba Co-Chair, Shareholder Activism & Corporate Defense



**PARTNER Palo Alto & New York**

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### SELECT EXPERIENCE

- **Texas Instruments** in its activism campaign defense against Elliott
- **US Foods** in its proxy contest defense against Sachem Head
- **Alight** in its proxy contest defense against Starboard
- **Peloton** in its activism campaign defense against Blackwells Capital
- **Nordstrom** special committee relating to a going-private transaction by the Nordstrom family
- **CytoDyn** in its proxy contest defense against Rosenbaum group
- **Enhabit** in its proxy contest defense against Arex Capital
- **Crown Castle** in its activism campaign defense against Elliott
- **Alkermes** in its proxy contest defense against Sarissa Capital
- **TreeHouse** in its proxy contest defense against JANA Partners
- **Freshpet** in its proxy contest defense against JANA Partners
- **Big Lots** in its proxy contest defense against Macellum and Ancora
- **LivePerson** in its proxy contest defense against Starboard
- **Delek US** in defense of an unsolicited takeover bid by Carl Icahn and CVR
- **Emerson Electric** in its unsolicited takeover bid for National Instruments
- **Nordstrom** in its activism campaign defense against Ryan Cohen
- **Rogers** in its proxy contest defense against Starboard
- **Hess** in its activism campaign defense against Elliott Management
- **Cubic** in defense of an unsolicited takeover bid by Elliott and Veritas
- **DuPont** in its proxy contest defense against Triam
- **Box** in its proxy contest defense against Starboard
- **BHP** in its activism campaign defense against Elliott Management
- **Hasbro** in its proxy contest defense against Alta Fox and Ancora
- **United Technologies** in its activism campaign defense against Third Point and Pershing Square
- **Zendesk** in its proxy contest defense against JANA Partners
- **Yahoo!** in its proxy contest defense against Starboard Value
- **AIG** in its proxy contest defense against Carl Icahn and Paulson

Derek co-chairs Sidley's Shareholder Activism & Corporate Defense practice. He spends 100% of his time on shareholder activism, contested and complex M&A, and corporate governance matters. With more than two decades of experience, Derek has been involved in hundreds of activist campaigns and contested M&A situations. Prior to Sidley, Derek was the head of the activism and corporate defense practice at a leading shareholder engagement and corporate governance advisory firm. He also served as an investment professional at activist and event-driven hedge funds.

*Chambers USA* has ranked Derek as a leading attorney for "Takeover Defense", noting that "Derek is one of the brightest defense attorneys in the business" and his "advice is consistently excellent and nuanced, and he delivers it with a calmness that is often important in tense activist situations." He was also named one of the leading lawyers for "Shareholder Activism – Advice to Boards" by *The Legal 500*, calling him and his partner Kai Liekefett "two of the best lawyers in America." *The American Lawyer* named Derek "West Trailblazer" in 2022. Derek has also been selected as one of the *Lawdragon 500* "Leading Dealmakers in America" in 2024.

Derek has defended against the vast majority of top-tier activist hedge funds, as well as many others including one-time and occasional activists. He has counseled management teams and directors on hundreds of engagements with proxy advisory firms and institutional investors relating to shareholder activism, contested M&A, corporate governance and other matters.

He is a highly sought-after speaker for panels on the topics of shareholder activism and related matters, is frequently quoted and regularly speaks on the topic. He teaches a class on shareholder activism, contested M&A, and corporate governance at Stanford Law School.

Derek holds a J.D. from Stanford Law School, where he graduated Order of the Coif; an MBA from the Olin School of Business at Washington University in St. Louis, concentrating in Finance; and a bachelor's degree in Systems Science and Mathematics, cum laude, from the School of Engineering and Applied Science at Washington University in St. Louis.

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