



With the rebound in M&A activity over 2013, target companies have begun exhibiting greater power in negotiations with suitors. As competitive forces enable targets greater negotiating leverage, **Matterhorn** has tracked the latest trends in negotiated deal terms to analyze industry fluctuations. This whitepaper highlights a key trend based on the most current M&A transactions, focusing on an area where Targets' resurgence is increasingly pronounced: reverse termination fees.

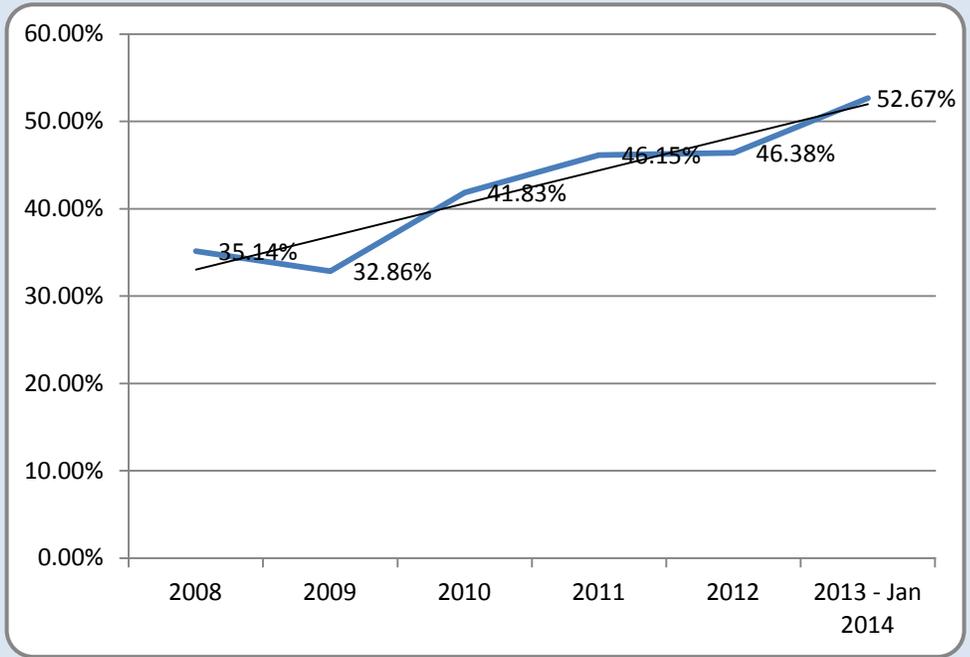
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Breaking up is hard to do . . .

REVERSE TERMINATION FEES: MARKEDLY INCREASED PREVALENCE

Viewing the prevalence of reverse termination fees in mergers dating back to 2008, we find a clear upward trend as the markets recover.

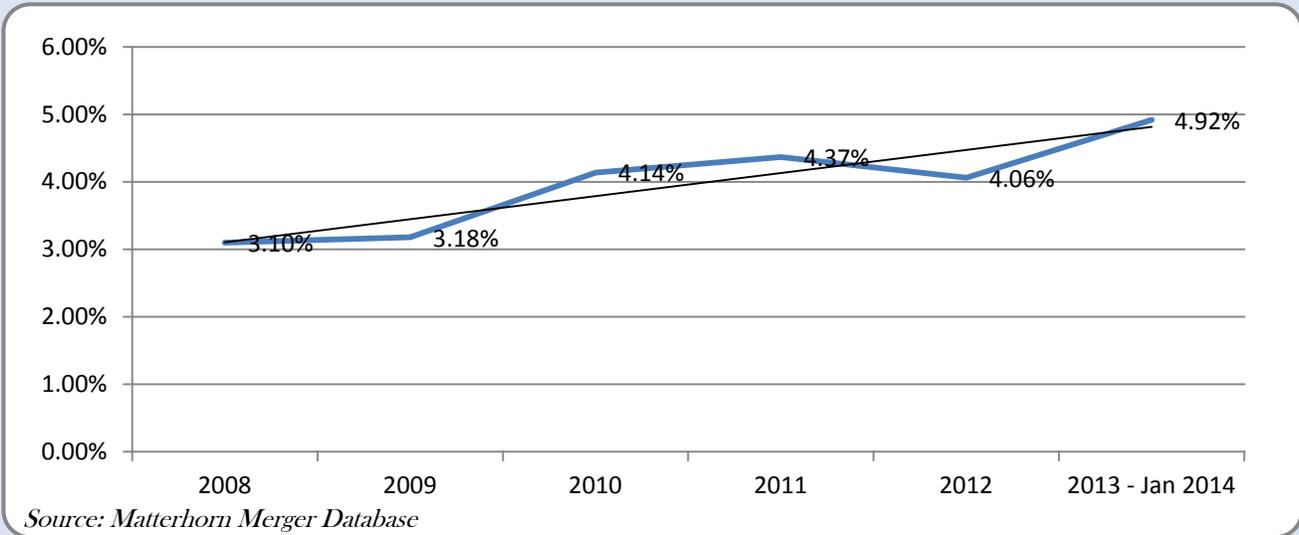
As the graph at right indicates, reverse termination fees were present in less than a third of deals in 2009, but a majority of deals in 2013, representing a 60.3% increase over 2009's low. This chart includes data from January 2014 in order to provide the most up to date analysis.



Source: Matterhorn Merger Database



INCREASED FEES



Just as reverse termination fees have increased in prevalence, they have increased in amount. Depicted above, the amount of the fees as a percentage of enterprise value has increased 58.4% from 3.1% in 2008 to 4.92% over the past 13 months (January 1, 2013 through January 31, 2014).

This whitepaper focuses on reverse termination fees but more in depth analysis of over 1,300 M&A deal points, as well as 400 Credit transaction fields, are available:

The screenshot shows the Matterhorn database interface. On the left, there are search filters for 'Form of buy-out payment' (Cash, Equity securities, Debt securities, Forgiveness of debt, Other) and 'Form of escrow' (Securities, Total number of escrowed shares of Acquirer stock in escrow fund, Total number of escrowed shares of Acquirer stock as percentage of total consideration, Number of escrowed shares in adjustment escrow fund, Number of escrowed shares in indemnification escrow fund, Cash, Total amount of cash in escrow fund, Total amount of cash in escrow fund as a percentage of total cash consideration, Amount of cash in adjustment escrow fund). The main area displays a list of transactions, including 'Accenture plc / Procurian Inc.', 'ACE Limited / Rain and Hail Insurance Ser...', 'Advance Auto Parts, Inc. / General Parts...', 'Affinion Group, Inc. / Webloyalty Holdings...', 'Affymetrix, Inc. / eBioscience Holding Co...', 'AGCO Corporation / GSI Holdings Corp.', 'Akamai Technologies, Inc. / Prolexic Tec...', 'Alexander & Baldwin, Inc. / Grace Pacific...', 'Alexion Pharmaceuticals, Inc. / Enobia Ph...', 'Alexion Pharmaceuticals, Inc. / Taligen T...', 'Allergan, Inc. / SkinMedica, Inc.', 'Amazon.com, Inc. / Zappos.com, Inc.', 'American Campus Communities, Inc. / C...', 'American Family Insurance / Homesite G...', 'American Realty Capital Properties, Inc. / American Realty Capital Trust III, Inc.', and 'American Tower Corporation / GTP Investments I I C...'. A 'Statistics' window is open over the 'Securities' field, showing a pie chart with two segments: 84.15% (No) and 15.85% (Yes). Below the chart is a table:

	Count	%
No	138	84.15%
Yes	26	15.85%

SAMPLE NEGOTIATED REVERSE TERMINATION FEE LANGUAGE

AGREEMENT AND PLAN OF MERGER

Dated as of January 9, 2014

among

FLAMINGO PARENT CORP.,

FLAMINGO MERGER SUB CORP.

and

AMERICAN PACIFIC CORPORATION

(b) In the event that:

(i) the Company shall terminate this Agreement pursuant to Section 8.1(d)(i);

(ii) the Company shall terminate this Agreement pursuant to Section 8.1(d)(iii) or (iv); or

(iii) Parent shall terminate this Agreement pursuant to Section 8.1(b)(i) and, at the time of such termination, this Agreement is terminable by the Company pursuant to Section 8.1(d)(i) or (d)(iii);

then in any such event under clause (i), (ii) or (iii) of this Section 8.3(b), then Parent shall pay to the Company a termination fee of \$21,500,000 in cash (the "Parent Termination Fee"), it being understood that in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion. In the event that Company shall receive full payment of the Parent Termination Fee pursuant to this Section 8.3(b), the receipt of the Parent Termination Fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by the Company or any other Person in connection with this Agreement, the Financing Letters or the Guaranty

AGREEMENT AND PLAN OF MERGER

among

GRCY HOLDINGS, INC.,

GRCY ACQUISITION, INC.

and

ARDEN GROUP, INC.

Dated as of December 20, 2013

(c) If this Agreement is terminated by the Company pursuant to Section 9.01(d)(i) and at the time the Company is not permitted to terminate this Agreement pursuant to Section 9.01(d)(iii), then Parent shall pay or cause to be paid to the Company or its designees promptly (but in any event no later than three (3) Business Days) after the date of such termination a termination fee (the "Parent Breach Termination Fee") of an amount equal to Thirty One Million Two Hundred Thousand Dollars (\$31,200,000), such payment to be made in immediately available funds, by wire transfer to an account or accounts designated in writing by the Company. If this Agreement is terminated by the Company pursuant to Section 9.01(d)(iii), then Parent shall pay or cause to be paid to the Company or its designees, promptly (but in any event no later than three (3) Business Days) after the date of such termination, a termination fee (the "Parent Non-Breach Termination Fee") of an amount equal to Nineteen Million Five Hundred Thousand Dollars (\$19,500,000), such payment to be made in immediately available funds, by wire transfer to an account or accounts designated in writing by the Company.



Matterhorn provides comprehensive databases, analyses and reports of publicly filed information—transforming the way research is integrated into deal strategy, structure, planning and negotiation.

Matterhorn's proprietary data analysis provides legal and financial professionals with unparalleled capabilities to search for and compare the market terms of mergers and acquisitions, capital markets, and other transactions.

In order to address previously un-met needs of investment banks, transactional attorneys, and financial advisors, our experienced team developed technology that allows deal professionals to easily access both consolidated information on market terms as well as detailed legal language used for specific deal provisions, based upon the underlying legal agreements and financial disclosures.

Matterhorn enables its clients to know precisely the frequency, form, and language of transaction terms and provisions - tying each deal term to the actual documentation.

Its unprecedented level of granularity allows deal professionals to learn everything from what provisions an individual professional has historically negotiated to the market frequency of hundreds of different provisions in a diverse range of deal types. Matterhorn's simple search interface provides complete and accurate information on historical deals and is an invaluable guide in assisting professionals in their future negotiations.

For more information about Matterhorn's solutions, please contact Logan Beirne at (203) 545-3388, or LBeirne@Matterhorndata.com

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