SUMMARY

NO-SHOPS: TERMINATION AND FORCING THE VOTE

No-Shops: Termination and Forcing the Vote

Termination

- If the target company's board changes its recommendation, the *buyer* has the right to terminate the merger agreement.
- If the board determines that a competing bid actually is a Superior Proposal (not just one that could be) and changes its recommendation, then the *target* often has the right to terminate the agreement too.

Force the Vote

- Sometimes, instead of letting the target terminate the deal to take a Superior Proposal, the buyer may negotiate for a "force the vote" provision.
  - This requires that the target board put the original transaction in front of its shareholders, so they can decide whether to take it despite the board's changed recommendation.
    - The principal impact is that it grants a timing and tactical advantage over the competing bid.

Break-up Fees

- If either the target *or* the buyer does terminate the deal, then the *target* must pay the buyer a break-up fee.
  - Fees aren't very high, usually ranging around 2% to 4% of the deal value.
    - That's because of case law developed over the years to ensure that fees don't preclude competing bids.

This course also includes interview footage with Jenny Hochenberg from Freshfields Bruckhaus Deringer and Igor Kirman from Wachtell, Lipton, Rosen & Katz.

www.hotshotlegal.com • info@hotshotlegal.com • 79 Madison Avenue, 2nd Floor • New York, NY 10016