November 2009

Mid-Atlantic Deal Review

from **Chessiecap, Inc.**

Editor's Note: Running late for Nov reporting, but I think you will find the Deal and News Notes sections informative. This is the 3rd Edition of the Mid-Atlantic Deal Review, a monthly review of transaction activity in the D.C.-Maryland-Virginia-West Virginia region. This edition is a Free Trial, which we hope will begin to add great value to your work and knowledge of the region. Our goal is to *measure actual transaction activity and get beneath the surface of deals, news and trends.* Your online edition is found at www.midatlanticdealreview.com.

Quick Stats[1]: ($M)	Sep 2009	Oct 2009	Nov 2009
Private Placement Volume	$124.9	$288.8	$135.2
Private Placement # of Deals	24	28	21
Private Placement Adj Volume[2]	$123.1	$285.7	$131.3
Private Placement Adj # of Deals	19	19	14
Venture Capital Volume[3]	$80.9	$268.4	$93.1
Venture Capital # of Deals	11	15	13
M&A Volume[4]	$1,279.0	$231.3	$420.6
M&A # of Deals	23	13	13
M&A Adj Volume[2]	$1,274.5	$229.4	$418.6
M&A Adj # of Deals	15	8	7
IPO Volume	$160.0	$0.0	$39.0
IPO # of Offerings	1	0	1
Follow-On/Secondary Volume	$1,083.6	$221.5	$72.0
Follow-On/Secondary # of Offerings	5	2	3

[1] D.C., Maryland, Virginia & West Virginia [2] Excluding transactions less than $1 million
[3] Institutional venture capital transactions [4] Including exclusive Chessiecap estimates

Deal lists are found at www.midatlanticdealreview.com

Stat Notes:

Quick Stats is the most comprehensive and thoroughly researched presentation of Mid-Atlantic transaction data available. Mid-Atlantic is defined as D.C., Virginia, Maryland and West Virginia. **Private placements** include all private equity investment including institutional equity, PIPEs, private investors and other forms of new investment. The **M&A** data are the first to capture true regional activity. Over 2/3 of all M&A transactions are "undisclosed," resulting in almost meaningless totals. Chessiecap reviews all reported regional transactions and uses its market knowledge and deal intelligence to assign probable deal values. The data above does not capture debt transactions, recapitalizations, non-corporate real estate financings (project financing) or purchases by local companies of companies outside this region. The primary filter is the addition or transfer of value into or within the region at the corporate level.

DEAL DATA: Nov. 2009

No signs of a reviving deal economy in the November data. November was an unusual month where Maryland (paced by a large M&A deal) captured 87% of M&A volume and 71% of private placement volume (half of which was Biotech). In general, in recent months, Maryland companies have been more in need of capital and are harvesting less value, while Virginia companies are harvesting more than they are attracting capital. I think it is fair enough to say that the Biotech focus of Maryland versus the IT/Telecom concentration in Virginia coupled with the sorry state of overall investing explains this trend. Biotechs have to have capital---you cannot walk away from a multi-year research and testing regimen. But you can always trim back software development and sales.

Private Placements: After October was dominated by several gigantic placements, November came back down to earth to $135M of volume spread across a reduced number of deals. There were only 14 placements above the $1M threshold versus 19 each in the previous two months. Venture capital quality investments (as opposed to personal, corporate or unnamed sources of capital) were 13 of the 14. That 13 is fairly representative of previous months. *The region is seeing 11 to 15 venture investments per month, with only 2 or 3 of those being new investments.* Those three November new investments totaled $22M or about 17% of total venture investments for the month. Media, Entertainment & Publishing surprisingly tied Biotech in November, each with 31% of total placement volume. Media, Entertainment & Publishing was paced by a large investment in **Motley Fool** ($25M) followed by a new round for **Millennial Media** ($16M). D.C. registered 3 small investments for the month.

M&A: The number of M&A transactions for the region in November stayed very low at only 7 above the $1M value threshold. Of these seven, one deal represented 80% of the overall volume of $421M. That was the sale of Maryland's solar company **SunEdison** for $340M to publicly traded MEMC Electronic Materials. (May I recommend a P/R firm for a basic name change if you are going to go solar?) The remaining six averaged a meager $13M per deal. Again, D.C. had several small transactions. With so few transactions, there is no real trend to observe in industry concentration.

Public Offerings: The moribund public markets showed a flicker of life locally, saved by a government sector IPO and secondary from **Global Defense Technology & Systems, Inc. (Nasdaq:GTEC)** for $39 million . Otherwise you had your obligatory small bank in need of capital (**SonaBank**) and your thirsty Biotech company (**Novavax Inc.**). That's it. One IPO/secondary and two follow-ons.

Deal Notes: Nov. 2009

BroadSoft, Inc. Takes a Pinch to Facilitate an Acquisition. 11/2/09 Private Placement.

This was the tiniest of rounds at $1.5M. The SEC filing says that the money is used for acquisition purposes. This news comes just weeks after the company announced plans to acquire Silicon Valley-based Packet Island, a maker of web-based software used to manage Internet phone and video networks. The question that comes to mind when I read about BroadSoft is why is this Gaithersburg company still around? Great idea to pioneer the VoIP software market. Good execution and market penetration. Excellent management. Why didn't this sell years ago? I presume the company is a victim of bad timing and the downturn of telecom and technology M&A. A further complication is that there is over $60M of venture equity invested in BroadSoft by the likes of Columbia, Bessemer and Grotech. It takes a big number to make everyone whole and then happy. While waiting for a market, the company must believe that the best strategy is to keep the foot on the accelerator. Hence, an acquisition.

The Motley Fool, Once Every Ten Years Whether You Need It or Not. 11/2/2009 Private Placement.

Motley Fool, the multi-faceted financial services company from Alexandria, took a whopping $25M round from BIA Digital Partners and Patriot Capital. This is the first capital taken since a $30M round in 2001 at a huge valuation then of $506M. This round says that a portion will be used for "shareholder liquidity." The Gardner brothers have been building this business for a long time and probably wanted some cash for themselves if they were going to allow in a new investment partner. BIA ($15M) is a new, supposedly mezzanine fund, as is Patriot Capital, but the press release clearly labeled this investment as equity. Most mezz funds have that flexibility to go preferred or equity.

Zyngenia Attracts NEA. 11/4/2009 Private Placement.

Thomson recorded this investment at only $3M. The press release clearly stated that it was the full $10M. Either amount falls below the normal threshold for the mighty NEA. More than likely, if this early stage investment in a Biotech company focused on cancer and autoimmune disorders works, then there will many more calls for capital. It warms the heart to see NEA takes chances and invest its fair share in companies in its home market. It would be a stretch to label NEA as an altruistic enterprise, but there is a long and rich history of partners supporting the local investment community as well as being proactive in investing in their backyard.

Millennial Media adds NEA as a New Lead Investor. 11/16/2009 Private Placement.

In its 4th round of capital since 2006, Millennial Media of Baltimore brings in NEA as a new investor and lead alongside a stellar cast of Columbia, Bessemer and Charles River. This $16M brings the mobile media provider up to a total investment to-date of $38.5M. You hear nothing but good reports about Millennial and its progress. This is a big idea that will require a home run strategy and execution to

recoup this amount of investment dollars. What caught my eye is that this is the 4th round of funding and NEA is just now showing up. Millennial is a derivative of Advertising.com, where the Millennial founders each spent time. NEA made very good money on the sale of Advertising.com to AOL. NEA should have been the first stop for Millennial founders when they were looking for start-up funds. There is a story here someplace. But the ending is found with Pat Kerins, who was the partner on Advertising.com at Grotech, the other major fund that made big money on the sale to AOL. Pat is now a partner at NEA and presumably the perfect man to put the planets back into their correct orbits. He has led the NEA investment and now joins the Millennial board.

Lighting Retrofit International Becomes 1st Investment for Arborview. 11/17/2009 Private Placement.
In an era when venture capital funds are disappearing both locally and nationally, it is worth noting that Arborview Capital of Chevy Chase made its first investment in November. Arborview is founded by Karl Khoury, previously with Columbia Capital before striking out on his own, and Joe Lipscomb, previously with Global Environment Fund and Carlyle. This is a "clean energy" fund and certainly stays true to that mission (and local) just out of the blocks. Once again, we are recommending a name change PR firm.

WellAWARE Systems Gets First Time Capital from Valhalla. 11/17/2009 Private Placement.
You have to like the way this one looks---traditional, retro venture investing from Gene Riechers at Valhalla. WellAWARE of Charlottesville "provides a monitoring solution that gathers and reports behavioral and wellness information of a cared-for individual, in their home or at a senior living facility." This investment is later stage and it involves proprietary technology, add-on services, and a growth market that takes advantage of the aging of America trend. The investment size at $7.55M is just right for two middle market funds like Valhalla and .406 Ventures. This is classic, growth sector investing. These don't come along very often. Let's hope it rings the bell for our AlwaysOn VC and all concerned.

SunEdison LLC Where Big-Time M&A Comes to Maryland. 11/23/2009 Sale of Company.
The reports on the big Wall Street bonuses that have so recently rubbed Joe Six-pack the wrong way are that the bonuses are going to the traders and not to the M&A professionals. M&A has not begun to recover as our monthly statistics for the region show. Which is why this modestly large sale of a Maryland solar energy projects company not only dominated local statistics, it also had NYC bankers on it as if the purchase price had another zero tacked onto the end of it. Times are tough, I guess, and you take whatever work you can get. Credit Suisse worked for the buyer MEMC Electronic Materials, Inc. (NYSE:WFR) and Goldman and Morgan Stanley worked for SunEdison. Of course, Goldman private equity (along with Greylock and others) had $134M invested in SunEdison---so it is natural to dish out some of the fees to your own flesh and blood. One major business line for MEMC is making chips that go into solar systems, so this is a good fit. Nevertheless, MEMC is based in Missouri. Once SunEdison took that big private equity money, it was probably destined to sell as opposed to becoming a major local public company like a MICROS Systems or a COMSCORE. Too bad---SunEdison could have anchored a regional solar industry, which is a natural for the D.C. regulatory-oriented market.

News Notes: Nov. 2009

Global Defense Technology & Systems, Inc. (Nasdaq:GTEC) Joins the Public Companies Ranks.

The public market segment for companies that do business with the U.S. Government has fared far better than the general market in the past decade---but it has a tenuous and fragile nature to it. Leaving aside the Tier I contractors such as Lockheed Martin, there has been a group of legitimate middle market companies (about 7 or so, depending on who's counting) that provide a lot of juice to the entire government market. They depend on growth, which means they feed on a steady diet of acquisitions, often funded by private equity groups. At any given time, there are least a dozen public market wannabes which may be graduated 8A's or new private equity funded companies. Having a healthy group of middle market public companies is good for the whole industry. There have been considerable 'comings and goings' in these years including the disappearance by acquisition of Veridian, Anteon, SI International, MTC Technologies and others. Others like ICF and Stanley have stepped up to replenish the numbers.

But it is not all that easy to keep the numbers up with IPO's being so difficult to accomplish and the Government sector always having its skeptics in the investment world---precisely because the end customer is the Government. So, it was good to see GTEC get the job done for $39M at the end of November---but not without pain in this mostly gun-shy IPO market. Like another stock that day, GTEC priced slightly below its range. The over-allotment granted to the underwriters (which included our own Stifel Nicolaus) was never exercised, which means that the underwriters did not have excess demand for the new stock. Despite the battle the underwriters may have fought to place the stock, GTEC stock has risen respectably and healthily since November.

The parent company and sponsor for GTEC was and is a company called Global Strategies Group. Readers get to sit in the front of the class if you can determine the exact location and domicile of Global Strategies Group. My best guess is that it is a worldwide defense-oriented conglomerate, formed by a former Royal Marine Commando, and therefore headquartered in the UK----yet registered in Luxembourg. Global Strategies sold 1.6 million secondary shares in the offering and still controls over 40% of GTEC. This is not a bad strategy for the conglomerate, because, as many of you know, when you are a foreign company owning a U.S. Defense Department provider, you have many disadvantages, not the least of which is having to maintain an insulated and separate board of directors. Global Strategies has opted for minority ownership, some cash in the pocket, and the benefits of guaranteed future cooperation in its global markets.

Finally, I had to laugh when I saw that GTEC pulled Jim Allen out of retirement last spring in order to tee up this IPO. Jim is one of the most accomplished CFO's in the region, having worked his deal magic at GRC, CACI and Veridian. No better choice to get the books and story in line for an IPO. You can also see that Ron Jones, also of Veridian ancestry and now head of corporate development, had a big role in creating GTEC. Jim has threatened permanent retirement at least three times. He will pretend to tell you that he would like to play more golf, but he has a bad back that makes that answer totally suspect. Some people have a way of never letting on that they just can't let go of the work, the camaraderie and the game.

TCS TeleCommunication Systems
Enabling Convergent Technologies®

TeleCommunication Systems, Inc. (NasdaqGM: TSYS) Swinging for the Fences.
Once upon a time there was a struggling little government contractor in Annapolis, headed by a larger-than-life Naval Academy officer who had to be out of his depth thinking that he could convert his modest foothold in the government market into a major public company. I guess the lesson is always, always to never bet against the U.S. Navy. There have been fits and starts, but Maurice Tosé's company has positioned itself in the thick of wireless communication services and is on the verge of climbing to yet another plateau. It is not enough that the company's stock has tripled over the last five years and that the little Annapolis company now has a profitable market cap of over $450 million. Something is stirring over there. In early November, the company closed on the purchase of Baltimore-based Solvern, a DoD security related company with an $18 million revenue run rate. Not two weeks later, the company announced that it had acquired Sidreal, which provides field service support for satellite communications and other IT work and has a revenue run rate of $24 million. Then in December, the company announced and completed the major purchase of Networks in Motion, a provider of mobile GPS solutions, for $170 million. Finally, in November, the company also sold $104 million of convertible senior notes to institutional buyers, obviously to help fund all of this activity. I am reminded of the old maxim that 'if you are standing still, you are falling behind.' TCS reminds me of another Maryland company FTI Consulting when it decided to take its game to a whole new level through acquisitions.

The AES Corporation---Did Anybody Notice This Little Investment?
Because AES is a power generation company with worldwide projects and operations, it does not really play in the local sandbox. Nevertheless, with revenues of over $14 billion and a market cap over $9 billion, it is easily one the largest companies headquartered in the region. And in early November, it did an eye-popping private stock sale to an investment arm of China for $1.6 billion which represents 15% of AES. That is a PIPE (Private Investment in Public Equity) to end all PIPEs for this region. In addition, AES and China Investment Corporation (CIC) are considering another $571 million investment in AES's wind energy business.

This investment is a natural consequence of the U.S. economy transferring trillions of dollars to China over the decades in exchange for goods. Obviously, much of these accumulated dollars were spent on modernizing the Chinese economy and improving the quality of life in China. But in a hard to fathom concept, China accumulated more dollars than it could spend. A large portion of this hoard has been reinvested in dollar denominated securities, which has helped keep our national economy solvent during good times and bad. There is no judgment to be made here. That is just the state of trade in the last part of the 20th Century and the first part of the 21st. We each have gotten something important from this relationship. As the Chinese market and economy mature, what we are seeing now is the willingness of China to take more risks and invest in tangible assets and corporations---not just financial instruments. Sometimes this new investing has the goal of gaining technological expertise (as in the acquisition of a teetering automobile nameplate) and sometimes it has more daring risk/reward objectives as appears to be the case with the AES investment. Of course, in the energy sector, once upon a time, U.S. companies were totally dominant in the creation of nuclear technology and electrical equipment (GE turbines, for instance). But now we see the Chinese, as the Japanese and the Koreans

did before them, advance their engineering into complex, big ticket items such as solar and wind production as well as aircraft manufacture. Although the AES investment may appear to be just that—an investment--don't be surprised to see that sales of capital goods into AES follow. He who pays the piper eventually calls the tune.

Coastal Sunbelt and MCG Capital---A Sign of Tough Times?
Here is a follow-the-trail story. At the end of November, I noticed an SEC filing of a private placement of $20 million for something called "Coastal Acquisition Corp." That is a sizeable capital raise. No press release. No indication of who this company was. So, we backed into what the answer appears to be. The Coastal filing address was Savage, Maryland, and a quick search for the Coastal name in Savage produced Coastal Sunbelt. Ah yes, that is a wonderful old name of a large produce distributor in the region. It was acquired in an LBO in 2007 by MCG Capital, a middle-market buyout and finance company based in Arlington. A little more research uncovered an MCG press release in July of 2009 announcing that MCG was selling Coastal Sunbelt back to management and another capital group, apparently only recovering MCG's cost in the investment. That is not usually a cause for issuing a press release, but these are hard times, and the real reason was stated clearly in the press release as "another step forward in our strategic plan to preserve liquidity and deleverage the balance sheet as we monetize assets at or near their fair value." You see, in the February before this July announcement, MCG had had a major restructuring exercise with its key lenders.

MCG went public in 2001 with the help of FBR. Like its local cousin American Capital, it has been under sever pressure in this market downturn. MCG and others have made loans and invested in equity over the years, accumulating assets based on certain valuations. In order to continue growing, MCG has had to borrow additional investment funds based on the current value of its portfolio, which was always going up when the economy was going up. When the market turned, most of those investments lost real or unrealized value. Not only did it become impossible to get new money to grow, the existing lenders to MCG measured that lost value in the MCG portfolio and began demanding repayment of existing credit. It is like a slack chain that suddenly pulls taut---everybody in the chain wants his money back at the same time and the higher up the chain (such as NYC money center banks), the more muscle you have to get it back. In this case, you see MCG signaling in July that it was doing what it could to avoid a disastrous capital squeeze and was "deleveraging" good assets like Coastal, assets which it would probably have held onto for an eventual profitable sale of the company. As it turns out, it took the Coastal team many additional months (from the end of February to the end of November) to raise their funds for the acquisition. Of course, this is a lot of conjecture, because there has been no announcement that the contemplated deal has yet closed.

Commentary: Nov. 2009

The Death of Black & Decker

[This commentary is based on public filings concerning the proposed merger of The Stanley Works and Black & Decker Corporation as well as other publicly available information on the two companies. It was first published by Citybizlist.com on December 18, 2009. A companion piece to this commentary entitled "Black & Decker: How Our System Rewards Failure" was published by Citybizlist on December 4, 2009 and is also found in the October 2009 Mid-Atlantic Deal Review.]

The nagging question about the "merger" of **Black & Decker Corporation** (NYSE: BDK) and **The Stanley Works** (NYSE:SWK) is, "Why is this happening?" Why is Black & Decker disappearing (becoming a division of Stanley) at the beginning of an upturn in the market? Why is the company selling for a modest premium? Why are shareholders content to receive the lower end of the range that Black & Decker traded at for four of the past ten years?

The Black & Decker board would suggest that this makes "excellent financial and strategic sense."

Strategic, yes. Financial, maybe. Premiums are paid in order to gain control of the target company---in this case Black & Decker. The implied 22.1% premium for Black & Decker shareholders is far from stellar. The long-term market average for M&A premiums is approximately 25%. But premiums in the past year have been well above the long-term average, precisely because stock prices have been so depressed. A buyer can afford a high premium on a slumped stock like Black & Decker's and still make a good financial return on the acquisition. Stanley's investment bankers, in a joint presentation to Stanley directors as reported in the Form S-4 filing, showed this spike in premiums in 2009 to be 33.8% for companies the size of Black & Decker. That was surely welcome news during Stanley's deliberations.

The Form S-4 or "joint proxy statement/prospectus" was filed with the Securities and Exchange Commission by Stanley on December 4th. As M&A filings go, this is an extraordinary one, containing a long narrative on the history of two simultaneous negotiations and transactions.

Yes, two transactions.

The first deal described is the purchase of Black & Decker by Stanley through the conversion of Black & Decker shares into Stanley shares. The second deal is the tortuous one cut by Black & Decker Chairman and CEO Nolan Archibald as he helps to move the transaction forward, negotiates away control of his own company, recommends the deal to his board, and finally secures his compensation packages. Packages is plural, because Mr. Archibald, and Mr. Archibald alone among Black & Decker executives, exacts terms and/or compensation from both companies.

To be clear, the S-4 reveals that Mr. Archibald abstained from the final board vote authorizing the sale of Black & Decker, and nothing in the S-4 or elsewhere indicates that Mr. Archibald did not act in accordance with all applicable laws and market regulations. What the S-4 does show is that Mr.

Archibald, through his negotiations with Stanley and his own board, stood to gain a great deal of money if the transaction was approved. My concern is, "Why is this in the best interests of the company and shareholders to have a CEO in a position in which he himself concedes could be seen as a conflict of interests?" There is nothing new under the sun. These situations arise all the time in the sale of U.S. corporations. That doesn't mean that they should not be questioned.

The merger transaction, despite its average reward and outcome for Black & Decker shareholders, is going to happen---and it probably should happen. Stanley has the more aggressive and forward-thinking board of directors and management team in place. Stanley appears to have the bench of executives who will execute on a strategy to make the combined companies more efficient and competitive. Wall Street loves this deal and has bid up both stock prices in anticipation of these cost savings. In a small global marketplace, where tool companies from Asia have made significant inroads into the U.S. market, there may be room for only one U.S. survivor---and Stanley it will be.

But could a better deal have been struck for Black & Decker's shareholders? This is impossible to answer, but I believe that shareholders would be better served in this transaction and others if those involved in the negotiations were independent and free from financial incentives to do the deal.

In my opinion, the die was cast for Black & Decker's demise many years ago when Mr. Archibald consolidated his power base on this board. He has been CEO and Chairman of his own board of directors for almost twenty-five years. He has no challengers or successors in sight. How does an organization refresh and revitalize itself when it has one leader for 25 years? On July 16th, as negotiations with Stanley were heating up, one wonders what the Black & Decker board saw and heard in the annual strategic business review and planning session. Was the company still competitive? Was there growth in sight? Was there a realistic plan as a standalone company to get the stock price back to $60 to $90 per share?

The Black & Decker board itself has three problems when it comes to governance that make it particularly weak and less than fully credible. First, like many U.S. boards, it appears to be handpicked by the chairman, including on it the chairman's friends and associates. Of the ten members other than Mr. Archibald, at least three have personal ties to the chairman. Two of these are former colleagues from his food industry days at Beatrice Companies. A third board member is the president of a university which is owned by a major religious group, a religion in which Mr. Archibald is a senior, nationally recognized leader.

A second related concern is the convoluted connections that exist on this board. It is enough to make your head spin. Besides the members mentioned above, another director is a highly respected former chairman and CEO of Lockheed Martin who was appointed to the Black & Decker board in 1997, the year that he retired from Lockheed Martin. Five years later, Mr. Archibald was appointed to the Lockheed Martin board where he remains a director. This same board member is listed as one of sixteen elite advisors on the Deutsche Bank Americas Advisory Board. Another Black & Decker board member with a financial background is a former Deutsche Bank executive and is also on this same elite Deutsche Bank board. Deutsche Bank, along with Goldman Sachs, is an investment banking advisor to Stanley in this

transaction and expects to receive a substantial fee if the transaction is successful. There is no reference in the merger prospectus to the Deutsche Bank connection nor is there any mention of this affiliation in the Deutsche Bank fairness opinion. These are just the connections you find by reading the filings and researching the Internet.

The stocking of a board with people that you know and trust is common U.S. corporate practice. But the practice is coming under increasing fire from shareholder organizations and institutional investors, including the U.S government which ran up against this problem when it recently became a shareholder of banks and automobile companies.

The problems with this practice are many and easy to understand. First among them is, "Who is going to challenge the CEO in times of crisis?" 'He's an old friend, I know his family, he's been a big donator to my organization, I would not normally have a seat on a board like this without him….' How do you remain objective and potentially cross swords with your CEO/benefactor in years when there is poor performance or a crisis? The board hires and fires the CEO and other senior executives. The board approves strategy and key operating decisions such as acquisitions and capital budgets. The board establishes a successor. And in this case, the board had to approve the total and definitive end of a 100 year-old corporation, which it did on November 2nd.

The final concern with this board is lack of experience. Nobody on the Black & Decker board, save for Mr. Archibald, has tool industry experience and only a couple have manufacturing experience.

How can you tell the CEO that his strategy is flawed or his arguments for a merger are weak if he is the only member with direct industry knowledge and experience? Besides the above-mentioned members, the remaining directors consist of a former media executive, a former information industry executive, a former healthcare CFO, a retired rental industry CEO, and the current head of 3M. Of the ten, only the CEO of 3M and the retired CEO of Lockheed Martin have manufacturing industry experience. Now compare that set of biographies with the Stanley board. Seven out of eight non-executive Stanley directors come from manufacturing companies, including one from the tool industry.

I believe that the key to Stanley winning Black & Decker was in winning the support of Mr. Archibald. When Stanley came calling, negotiations started with Mr. Archibald and ended with him. From the narrative account in the prospectus, you can imagine the Stanley directors questioning their CEO as he time and again brings back demands from Mr. Archibald. In the beginning, they are Black & Decker demands for operating control and board seats and better terms for shareholders. By the end of the transaction run-up, these demands are rejected and Mr. Archibald is negotiating for two things---a slightly better share conversion ratio and his personal contracts. As the board meetings increase in frequency before the final November votes, every documented board meeting on both sides of the transaction includes a discussion of the deal and a discussion of Mr. Archibald's contracts and terms.

You can read in the S-4 how Stanley struggles to find a way to get Mr. Archibald aligned with Stanley's interests. On June 9th, Mr. Lundgren, the Stanley CEO, and Mr. Archibald have their now-famous lunch where Mr. Lundgren puts forward his proposal. By the end of June, the two CEOs are talking about their respective roles in a combined company. By the end of July, Stanley has proposed the clever tactic of

making Mr. Archibald the Executive Chairman of the combined companies. Executive Chairman is relatively new nomenclature for differentiating a chairman who just oversees periodic board meetings from one who is at a desk and helping to promote and run the company. It is often employed in publicly-held companies to politely move a CEO out of operating control and into a holding position pending retirement.

In this case, the Executive Chairman title would help build the façade of a "merger of equals" (terminology used at the time), as if Mr. Archibald had negotiated for Black & Decker the top executive position. In reality, the Stanley board would know that by retaining control of the combined board of directors and investing operating control of the combined companies in Stanley management, it was not much of a give-up in negotiations to offer Mr. Archibald the title of Executive Chairman. Experience shows that this relationship is inherently unstable. I would not be surprised if Mr. Archibald does not last the full three years of his new contract and that he eventually negotiates an early retirement with full payouts and benefits.

Eventually, with negotiations between the two companies stalled, the S-4 record indicates that sometime in September, a Stanley financial advisor comes up with an idea that only an investment banker's mother could love. Why not offer Mr. Archibald a rich bonus (between $15 million and $45 million) based on the combined companies achieving "cost synergies"? This was a genius maneuver. In one fell swoop, it accomplished several objectives. First of all, it spelled out in dollars for investors exactly how much the deal would benefit them. Public companies are loath to make predictions about future performance, but here you could describe to investors a hypothetical pay package based on achieving $350 million of cost cuts. No promises---just targets. Secondly, it provided a smoke screen for delivering a huge payment to Mr. Archibald, presumably providing a rationale for the payment by assigning Mr. Archibald the task of taking costs out of the combined businesses. Finally, and perhaps most importantly, it offered Mr. Archibald a large personal incentive to complete a transaction. Negotiations moved forward.

I find it hard to believe that Mr. Archibald as Executive Chairman will be spending his days pouring over spreadsheets and wringing $350 million of costs out of the new Stanley. This work is typically a function for operating management, which will be headed by the Stanley team. That team is probably already hard at work drawing up plans and making pink slip lists. This work gets done whether Mr. Archibald is in the Executive Chairman's seat or not.

In my opinion, this "cost synergy bonus" is simply designed to put additional money into the hands of Mr. Archibald to win his support for the deal. It is a payment that both boards should be embarrassed for having endorsed.

A key question in this transaction is how much is Mr. Archibald worth and how much more will he be worth if he recommends this transaction with Stanley? As you can now understand with this Black & Decker board, if there is no support from Mr. Archibald, then there is likely no transaction. We know that Black & Decker shareholders are supposed to receive a 22% premium in the stock exchange. Let's

examine, as best as possible, Mr. Archibald's economic incentive to effect a transaction versus 'stay the course' with Black & Decker.

At this point, it gets tricky to present all of the facts accurately. The SEC and even FINRA try to create rules and regulations that encourage full and accurate disclosure, but corporate America pay packages for executives are, by design, very complex. To understand the holdings, payouts, equity grants, salary, benefits, perquisites and other money components of a typical CEO like Mr. Archibald requires forensic accounting training, benefits-management experience and a metal detector. The information is spread across multiple filings, and there are time and information gaps. You should not need two decades of finance experience and an MBA to pull back the curtain.

In his almost 25 years as CEO, Black & Decker has made Mr. Archibald a very rich man. At today's stock price, my calculations suggest that Mr. Archibald's current realizable Black & Decker holdings are worth over $110 million. This would consist of approximately $26 million in common shares, $31 million of "in the money" options, $3 million of vested restricted stock, $35 million of Accumulated Pension Benefits and $15 million in a Supplemental Savings Plan. In addition, he received approximately $10 million of salary, stock and perquisites in 2008, not including the $3.5 million value of options awarded him at the time. Not included in this $110 million estimate are $12 million worth of restricted stock that will vest in coming years and 600,000 "out of the money" stock options, some or all of which will have value if the new Stanley 's stock price grows.

Going forward, Mr. Archibald is guaranteed by a combination of both boards a full 2009 pay package of at least $13.75 million. When he becomes Executive Chairman of Stanley, he will receive in future years the same base salary of $1.5 million plus a yearly bonus up to $1.75 million plus a yearly equity award for his three year contract of $6.65 million plus a continuation of his perquisites such as a car, driver and private jet travel for him and his family, all of which add up to approximately $11 million of compensation a year for three years.

But Mr. Archibald can do the same or better by maintaining his Black & Decker employment, so he should be indifferent at this point.

The payments that could influence Mr. Archibald's objectivity are a grant of one million Stanley options at the time of the transaction as well as the infamous "cost synergy bonus". Think of the stock options in this way. They are nominally worth nothing at the time they are granted, but for every dollar that the stock price of the new Stanley rises after the transaction is completed, Mr. Archibald gains one million dollars.

Finally, there is the notorious cost synergy bonus that ranges from zero to $45 million, the latter achieved if the combined company can reduce costs by $350 million. With the cost synergy bonus and the one million of options, Mr. Archibald could reasonably hope to achieve $70 million or more in additional wealth in the coming years if the new Stanley achieves the cost cutting goals and the stock price grows at a market rate.

The questions are clearly framed in the end. When presented with these incentives, can Mr. Archibald be impartial and objective in assessing the merits of this transaction? Should he, or any executive or director, be allowed to lead negotiations when the buyer puts this level of financial incentive on the table? Why should an executive profit any more than shareholders from the sale of a company? As it stands, Mr. Archibald, by far, is the largest individual shareholder of Black & Decker and will reap a substantial reward from the current share exchange.

Here is how the prospectus describes the end of the Black & Decker board meeting where the company is voted into oblivion. "After each of the presentations had been given, Mr. Archibald advised the Black & Decker board that he had given a great deal of thought to the proposed transaction and believed that the transaction was both strategically and financially compelling from the perspective of Black & Decker and its stockholders and that he was very supportive of the transaction. Mr. Archibald indicated that in light of the position he would have as Executive Chairman of the combined company and the interest he would have by virtue of his employment arrangements following the closing, he intended to abstain on the vote on the transaction." It is no surprise to me that Mr. Archibald found it compelling.

And with that, the plug was pulled in Towson.

[One last irony and twist of the knife for Baltimore. According to this Form S-4 filing, Deutsche Bank was in the room and presumably whispering in the ear of Stanley CEO Lundgren when the idea for this transaction was first revived in February of 2009. This is the same Deutsche Bank that was the ultimate buyer of Alex. Brown & Sons. As such, Deutsche Bank was the one that shuttered the Alex. Brown headquarters and moved the remaining functions to New York. And they wonder why Wall Street has such PR problems these days.]

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