

Vulnerability and Resistance: An Evaluation of Hostile Takeover Defenses Proposed By: Carissa Wilson, International Business & Business Economics (https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1050&context=senior_theses)

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Abstract

Within the context of mergers and acquisitions (“M&A”), hostile takeovers comprise a complex and pivotal area of study. It is hostile takeovers, rather than friendly ones, that give rise to the need for most buy- and sell-side tactics related to strategic M&A. This paper focuses primarily on sell-side tactics, or “target defenses,” used to deflect undesired takeover attempts and prevent changes in corporate control. It will attempt to present a high level, comprehensible, and comprehensive listing of defensive tactics in the target arsenal, with references to related case law.

Target defenses developed preemptively, or before an official takeover offer has been made, are often called “preventive defenses,” while those created to combat a current, specified takeover attempt are dubbed “active defenses.” Both types of defenses have been debated as regards both their effectiveness and, perhaps more interestingly, their acceptability according to the various constructs of managerial and general business ethics.

These constructs include, firstly, Milton Friedman’s views on the business director’s exclusive obligation to maximize shareholder welfare in all situations; it can be argued that directors who choose to fight a lucrative buyout offer using target defenses may be unethically depriving shareholders of possible gains to which they are unexceptionally entitled. Next, the business judgment rule describes circumstances in which directors are due certain decision-making license; in those cases where directors do not qualify for protection

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