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# RISE OF MERGER OF EQUAL DEALS

*By Matthew Friestedt, Amanda Toy and Katherine Nemeth**

There has been a recent spate of large "merger of equal" ("MOE") deals. Some examples include BB&T/SunTrust, Harris/L3 Technologies and Praxair/Linde.[1] In this article, we review and summarize these deals to see what is common practice today and how things have changed over time, both in terms of governance and compensation terms. We also identify the critical decisions that need to be made in these deals.

## MOE Versus Acquisition

The initial question is whether a transaction is an "acquisition" or an MOE. An acquisition often involves some combination of the following: the payment of a deal premium for the target, an unequal board split, no CEO transition, keeping the buyer's name and headquarters and more robust representations and interim operation covenant restrictions on the target than the buyer. Whereas an MOE often involves some combination of the following: the payment of no deal premium (or a very small deal premium) for the target, an equal board split, some agreed CEO transition and reciprocal representations and interim operation covenants for both parties. The BB&T/SunTrust, Harris/L3 Technologies, and Praxair/Linde mergers are classic MOEs, while the Fiserv/First Data (with a six-four board split and 29% premium) and the Stanley Works/Black & Decker (with a nine-six board split and 22% premium) mergers would be classified as acquisitions. This distinction is important because in the MOE context there are often more expansive governance and compensation details spelled out in the merger agreement.

## Big Decisions

In these deals there are a host of important business points that need to be resolved that we catalog and summarize below, but there are several key overarching decisions that will guide how these business point are resolved. These key decisions include: (1) will the board of directors of the combined company be one big happy family or will there be an "us versus them" feel, (2) is there a formal CEO succession plan and if so is it highly specific or loose, (3) will change in control compensation treatment be harmonized between the two parties and (4) will new equity awards be granted to address reload, retention and integration issues.

***Board Approach.*** In the classic "big happy family" approach after the board of the combined company is constituted, the committee chairs, committee representation and vacancies are filled by the full board in the ordinary course. In the extreme "us versus them" approach, committee chairs and committee representation are pre-set and split equally and vacancies are filled by each respective side for an extended period of time. Although the "us versus them" approach does preserve a fixed 50/50 split (which can be optically desirable), it can create unwanted division within the board.

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***CEO Transition.*** In many MOEs, an important driver of the deal is the transition of one company's CEO out of that role and the other company's CEO remaining in that role. How formally or informally this transition is effected can greatly impact how the company is run and who people look to for leadership.

***CIC Harmonization.*** Sometimes the "change in control" ("CIC") treatment (i.e., is a CIC triggered, is there single-trigger or double-trigger equity vesting and cash CIC severance levels) for the two sides is identical per the existing plan terms, but more often than not the CIC treatment differs. In this circumstance, when the parties know that senior executives from both companies will be working together side by side after closing and that some executives may be let go, the question is whether the CIC treatment be harmonized between the two sides.

***Equity Reloads.*** In many MOEs it is common for outstanding performance share units (PSUs) to have performance measured at closing. This means that the outstanding PSUs no longer have an ongoing performance measurement feature. It is also often common in MOEs that a premise of the transaction is to create cost savings synergies. As a result, it is not uncommon for the resulting company to grant a reload or integration award to senior management to help motivate them to achieve the desired synergy savings.

## Governance Terms

In terms of post-closing governance and operations, the following details can be negotiated, among others: board and committee splits, chair/lead director, CEO and chair positions (and any transition plans), company name and headquarters. These points can be spelled out in the bylaws, merger agreement or both, and can include a supermajority voting requirement to change them. There can also be specific rules for filling board or committee vacancies. Our review noted the following observations concerning these governance details.

***Board Split and Committee Membership***. For the transactions we reviewed, the board of directors of the successor company was generally split evenly for true MOEs. The same was often true where committee membership was specified. In some cases, the parties even stipulated that each company would have the same number of committee chairs on the combined company board. Such clear delineations with respect to board and committee membership and leadership lends the appearance (at least superficially) of equality in MOEs.

***CEO, Chairman and Succession***. Roughly half of the MOE transactions examined designated one party's CEO as the new CEO of the combined entity, with the other party's CEO serving as the Chairman or Executive Chairman, and did not otherwise have a specified succession plan. The remaining deals we surveyed put in place various locked-in succession plans with respect to the Chairman and CEO positions. For example, a number of transactions made use of fixed arrangements to ultimately make the active CEO both the Chairman and CEO (*e.g.*, Northeast Utilities/NSTAR and UAL (United)/Continental Airlines) or to remove the initial Executive Chairman after a set period, usually between one to three years (*e.g.*, Envision Healthcare/AmSurg and INC Research/inVentiv).

Also common were transactions designating one party's CEO as both the CEO and Chairman for a limited time frame, after which the other party's CEO would serve in both roles (*e.g.*, Harris/L3 Technologies, IHS/Markit, Johnson Controls/Tyco, Mirant/RRI and Regions Financial/Union Planters). With respect to these transition plans, the next in line might either be

guaranteed a spot on the board (*e.g.*, BB&T/SunTrust) or serve as Vice Chairman of the board (*e.g.*, Harris/L3 Technologies) prior to the succession date.

With respect to CEO succession plans, six of the surveyed deals kept one party's CEO in place for approximately 18–24 months, whereupon the sitting CEO would be replaced by the other party's CEO. In the interim, the second CEO often serves as the President and COO of the combined company (*e.g.*, Harris/L3 Technologies). In lieu of the above arrangements, a few transactions created Co-CEO positions (*e.g.*, Publicis/Omnicom and ProLogis/AMB Property) or explicitly defined certain shared duties between the Executive Chairman and CEO. In Dow/DuPont, for instance, the merger agreement delineated joint responsibilities between the CEO and Executive Chairman; for example, among other things, the Executive Chairman and the CEO were jointly responsible for the corporate-wide synergies of DowDuPont and media relations matters.

***Lead Independent Director***. In some MOEs there were specific provisions regarding the Lead Independent Director position meant to engender equality: INC Research/inVentiv selected a Lead Independent Director through a majority of non-affiliated directors; BB&T/SunTrust prescribed a SunTrust Lead Independent Director for three years, followed by a BB&T director for not less than two years; Dow/DuPont instituted co-Lead Independent Directors; and Duke/Progress had Duke designate the Lead Independent Director, but only following reasonable consultation with Progress.

***Governance Protections***. In the transactions we surveyed, the governance terms described above were usually memorialized in the merger agreement or organizational documents (*e.g.*, charter or bylaws) of the surviving company. Additionally, in surveying MOEs, we noticed a trend in protections for governance provisions over time. In the earlier transactions, many companies *either* adopted a "trust me" approach with respect to governance (*e.g.*, Northeast/NSTAR and UAL (United)/Continental), whereby no specific voting thresholds were set for replacing a Chairman or CEO, or instead implemented a supermajority voting system but varied widely in terms of the minimum threshold necessary for a successful vote (*e.g.*, Mirant/RRI (66% threshold), FPL/Constellation (70% threshold) and CVS/Caremark (75% threshold)). Yet Duke/Progress presented the paradigm case for why governance provision protections are important; while the Duke/Progress merger agreement specified the Progress CEO would lead the combined company, the day after closing, the new majority Duke board ousted the Progress CEO and installed the former Duke CEO in his place. In the years following Duke/Progress, most of the MOEs we reviewed contained supermajority voting provisions for replacing the CEO or Chairman shortly after closing.

***Company Name***. In 20 out of the 23 deals reviewed, the combined company either operated under the existing name of one of the parties or adopted a joint name. For example, following their mergers, Harris/L3 Technologies and IHS/Markit opted for joint names, adopting the names "L3Harris Technologies" and "IHS Markit," respectively. By contrast, following the Praxair/Linde merger, the combined company operated as Linde, exemplifying a merger in which the companies opted to use an existing name. In three MOEs, however, the parties chose to assume an entirely new name. For example, Mirant and RRI Energy selected "GenOn Energy," concluding that "what was most appropriate would be to come up with a new name for a new company signaling a new beginning" and BB&T and SunTrust agreed to "Truist Financial Corporation" after signing the deal.

***Company Headquarters***. Of the deals surveyed, over half opted to use one of the parties' pre-merger headquarters as the headquarters of the combined company. We observed this in both smaller and larger deals. On the other hand, two of the largest MOE transactions (*i.e.*, Dow/Du Pont at $70 billion and Heinz/Kraft Foods at $55 billion) settled on dual headquarters, as did four other deals in the $7 billion to $15 billion range (*e.g.*, Northeast/NSTAR at $7 billion, Envision/AmSurg at $8 billion, ProLogis/AMB at $15 billion and FPL/Constellation at $15 billion).[2] Some transactions used hybrid models. Four of the reviewed transactions (*i.e.*, Praxair/Linde, Regions Financial/Union Planters, Johnson Controls/Tyco and UAL (United)/Continental Airlines) chose one party's headquarters as the new consolidated home base, but retained the other party's offices as regional (*e.g.*, Johnson Controls became the North American headquarters) or divisional (*e.g.*, Continental's headquarters became the operations center) hubs or headquarters. Finally, in some transactions, such as BB&T/SunTrust, the companies established new headquarters altogether, with hubs at each party's former headquarters.

## Compensation Details

In terms of the merger-related compensation, the following details are applicable: is a CIC of one, both, or neither company triggered and if so, what are the CIC consequences? Is the CIC treatment across both companies harmonized, are transition or retention awards granted and are any other enhancements made?

***Triggering or Waiving CIC Protections***. A threshold question is whether a CIC is triggered (or deemed triggered) in one, both, or neither company as a result of the transaction. In a true MOE, it is possible that a CIC is triggered for both companies, such as in the Harris/L3 Technologies merger. While in an acquisition, a CIC will often only be triggered for the target, but this is highly fact specific. Whether or not a CIC is triggered is significant in that it may, in turn, mandate certain treatment pursuant to a party's severance arrangements and equity compensation awards. A CIC can trigger single-trigger vesting of equity awards at closing (*e.g.*, Harris/L3 Technologies) or double-trigger equity vesting protection (where the equity awards accelerate only upon an involuntary termination after closing). It is also possible that single-trigger vesting can be waived in return for other protections (*e.g.*, ProLogis/AMB where the executives waived their single-trigger equity vesting in exchange for double-trigger vesting protection and additional compensation upon a qualifying termination). The most common treatment of equity awards was to roll over and convert the awards into corresponding combined company awards, subject to double-trigger vesting in the event of a qualifying termination following the closing.

In transactions with an agreed CEO succession, the impacted executives typically agree to waive any "good reason" rights in connection with the closing of the merger and agreed succession, but preserve their CIC severance rights in the event that the succession does not occur as planned. For example, in Harris/L3 Technologies, both CEOs agreed to waive good reason under their existing CIC severance arrangements as a result of the succession/transition, but the L3 Technologies CEO (who became the President and COO immediately after closing, with a contemplated CEO transition after two years) saw his CIC protection period extended for two additional years. It is also not uncommon to add an additional succession-related "good

reason" trigger in the event that a succession does not occur as planned (*e.g*., BB&T/SunTrust, Harris/L3 Technologies and IHS/Markit).

***New Equity Awards***. The majority of transactions established retention programs and/or granted retention or integration awards to employees, including executive officers, in connection with the deal. Since 2016, four transactions (Fiserv/First Data, Harris/L3 Technologies, INC/inVentiv and IHS/Markit) granted performance-based integration awards to executive officers, but the most common vehicle for pre-2016 transactions was cash and/or time-vested restricted stock units.

***Compensation Enhancements***. We also noted that, in some instances, parties agreed to certain changes to harmonize the CIC treatment across the two companies. For example, both BB&T/SunTrust and Harris/L3 Technologies increased the CIC severance multiplier for the SunTrust and L3 CEOs (both of whom will initially serve as the President and COO of the combined company before the contemplated CEO succession plan), and Dow was permitted to adopt a new executive severance plan with terms that were substantially comparable to the preexisting DuPont executive severance plan. Other compensation enhancements are not uncommon but are highly fact specific.

The following tables first show the "governance terms" for the listed deals and then show the applicable "compensation terms."

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[1] For this purpose, our review focused on deals where the smaller company's shareholders received more than 40% of the stock of the resulting company that were signed between January 2004 and February 2019 and where the smaller company had an enterprise value greater than $2 billion. We reviewed 23 specific transactions over this period.

[2] ***Note***, for purposes of this article, deal size is measured by the enterprise value of the smaller company.

**Governance Terms**

| Parties[1]<br>Signing Date<br>Closing Date<br>Value[2] | Ownership<br>Board | Chairman / Lead Independent Director | Board Committees | CEO | Company Name<br>Description<br>Premium[3]<br>Headquarters | Notable Governance Provisions |
|---|---|---|---|---|---|---|
| BB&T<br>SunTrust<br>February 2019<br>December 2019<br>$56B | 57% BB&T<br>43% SunTrust<br>11 BB&T<br>11 SunTrust | • BB&T CEO as Chairman for 3 years, then SunTrust CEO<br>• SunTrust director as Lead Director until 3/12/2022, then BB&T director as Lead Director for no less than 2 years<br>• SunTrust CEO on board | • Chair of Executive Committee chosen by majority of full board | • BB&T CEO for 2 years, then SunTrust CEO<br>• SunTrust CEO to initially serve as President and COO | • Truist Financial Corporation<br>• Merger of equals<br>• 7% unaffected premium<br>• New HQ (hubs at BB&T HQ and SunTrust HQ) | • Requires 75% supermajority board vote to change governance terms, CEO succession plan or HQ location for 3 years after closing<br>• For 3 years after closing, a majority of BB&T directors fill BB&T director vacancies and a majority of SunTrust directors fill SunTrust director vacancies<br>• Governance terms set forth in bylaws |
| Fiserv<br>First Data<br>January 2019<br>July 2019<br>$39B | 58% Fiserv<br>42% First Data<br>6 Fiserv<br>4 First Data | • Fiserv CEO as Chairman<br>• Fiserv director as lead director until second annual meeting of shareholders after closing<br>• First Data CEO on board | • At least 1 First Data director on each committee | • Fiserv CEO<br>• First Data CEO to serve as President and COO | • Fiserv<br>• Acquisition<br>• 29% premium to First Data stock price (5-day VWAP)<br>• Fiserv HQ | • Requires 70% supermajority board vote to change governance terms prior to second annual meeting of shareholders after closing<br>• Until second annual meeting after closing, Fiserv directors fill Fiserv director vacancies and First Data directors fill First Data director vacancies<br>• Governance terms set forth in merger agreement and bylaws |
| Harris<br>L3 Technologies<br>October 2018<br>June 2019<br>$19B | 54% Harris<br>46% L3<br>6 Harris<br>6 L3 | • Harris CEO as Chairman for 3 years, then L3 CEO<br>• L3 CEO to initially serve as Vice Chairman<br>• L3 director as Lead Independent Director | • At least 2 Harris and 2 L3 directors on each committee (if more seats keep ratio equal)<br>• 2 Harris and 2 L3 committee chairs | • Harris CEO for 2 years, then L3 CEO<br>• L3 CEO to initially serve as President and COO | • L3Harris Technologies<br>• Merger of equals<br>• No stated premium<br>• Harris HQ | • Requires 75% supermajority board vote to fill new board spots or change CEO transition plan<br>• Governance terms set forth in merger agreement, bylaws and certificate of incorporation |
| INC Research<br>inVentiv Health<br>May 2017<br>August 2017<br>$4B | 53% INC<br>47% inVentiv<br>5 INC<br>5 inVentiv | • inVentiv CEO as Executive Chairperson until 2019<br>• Lead Independent Director approved by majority of non-affiliated directors | • 2 independent directors, 1 THL and 1 Advent director on both Gov. and Compensation Committees4 | • INC CEO | • INC Research/inVentiv Health (later changed to Syneos Health)<br>• Merger<br>• N/A (inVentiv was a private company) | • After 2019 annual meeting, Executive Chairperson from inVentiv will resign and board will be comprised of 9 directors<br>• If inVentiv CEO ceases to serve as Executive Chairperson prior to 2019 annual meeting, |

[1] For consistency, the company with the larger post-close estimated ownership (if any) is listed first.

[2] ThomsonOne calculates Target Enterprise Value at Announcement Date "by multiplying the number of target actual shares outstanding from the most recent source available by the offer price and then by adding the cost to acquire convertible securities, plus short-term debt, straight debt, and preferred equity minus cash and marketable securities."

[3] If premiums are not stated in signing press release, the "unaffected premium" was used. The "unaffected premium %" is "the difference between the current Price Per Share offered as consideration in the transaction and the Unaffected Price, reflected as a percentage. The Unaffected Price is the target's closing stock price on the date identified as the Unaffected Date, which is the date that is one calendar day prior to the first public disclosure regarding a potential deal involving the target and on which the target's stock price was unaffected by the news of the deal." If there is no stated premium in the signing press release and the unaffected premium is less than 5%, then "no stated premium" is indicated.

[4] THL and Advent were private equity sponsors who would hold approximately 24% and 21%, respectively, of the outstanding shares of INC immediately after the merger. Each received 2 board seats for so long as such investor beneficially owned at least 16.5% of the then-outstanding shares of common stock (and would receive 1 board seat for so long as such investor beneficially owned at least 5%, but less than 16.5% of the then-outstanding shares of common stock).

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|---|---|---|---|---|---|---|
| | (reduced to 9 total following 2019 annual meeting) | | • 3 directors selected by board majority on Audit Committee (expected to be 3 INC)<br>• 1 THL/Advent chair, 1 non-affiliated director chair, 1 chair selected by majority of board | | • New HQ (near INC HQ) | THL/Advent directors have right to designate Executive Chairperson<br>• After 2019 annual meeting, board majority to determine whether to have a Lead Independent Director (and if so, select Lead Independent Director by majority board vote)<br>• Governance terms set forth in THL and Advent stockholders' agreements |
| Praxair<br>Linde<br>June 2017<br>October 2018<br>$48B | 50% Praxair<br>50% Linde<br>6 Praxair<br>6 Linde | • Linde Chairman as Chairman<br>• Upon initial Chairman's resignation, removal, death or disability, vacancy filled as follows: if Praxair CEO serving as CEO, Chairman replaced with Linde director; if a former executive officer of Linde serving as CEO, Chairman replaced with Praxair director; if the CEO is from neither company, 2/3 board vote to select Chairman | • 3 Praxair and 3 Linde on each committee (or 2 Praxair and 2 Linde on Executive Committee)<br>• 2 Praxair and 2 Linde committee chairs | • Praxair CEO | • Linde<br>• Merger of equals<br>• 22% unaffected premium<br>• Praxair HQ (operations split between Praxair and Linde locations) | • Requires 75% supermajority board vote to override certain provisions of the business combination agreement, including initial board composition, nomination and removal of Chairman and CEO and management committee composition and responsibilities<br>• Unanimous board vote required to remove director during 3-year integration phase<br>• Until third anniversary of closing, majority of board to fill director vacancies, but if vacancy not filled within 3 months, then Praxair directors fill Praxair director vacancies and Linde directors fill Linde director vacancies<br>• Governance terms set forth in business combination agreement |
| Envision Healthcare<br>AmSurg<br>June 2016<br>December 2016<br>$8B | 53% Envision<br>47% AmSurg<br>7 Envision<br>7 AmSurg | • Envision CEO as Executive Chairman for 1 year, then non-Executive Chairman for 2 years | • 2 Envision and 2 AmSurg directors on each committee<br>• 2 Envision and 2 AmSurg committee chairs | • AmSurg CEO | • Envision Healthcare<br>• Merger<br>• No stated premium<br>• Dual Envision and AmSurg HQ | • For 3 years after closing, requires 75% supermajority board vote to: change the total number of board seats, modify split between Envision and AmSurg directors (within 1 year of closing), replace CEO or Chairman, decide not to re-nominate Chairman or determine not to have AmSurg CEO be a director<br>• Governance terms set forth in certificate of incorporation, bylaws and corporate governance guidelines |
| IHS<br>Markit<br>March 2016<br>July 2016<br>$6B | 57% IHS<br>43% Markit<br>6 IHS<br>5 Markit | • IHS CEO as Chairman<br>• Markit director as Lead Director | • Equal number of IHS and Markit directors on each committee | • IHS CEO until 12/31/2017 (18 months), then Markit CEO<br>• Markit CEO to initially serve as President | • IHS Markit<br>• Merger of equals<br>• 6% unaffected premium<br>• Markit HQ | • Requires 75% supermajority board vote to remove initial CEO, remove initial Chairman, change HQ location, total number of directors or allocation of directors between parties<br>• If IHS-appointed Chairman/CEO unable to serve as director, the number of directors reduced to 10 (with each party appointing 5 directors)<br>• Until IHS CEO is no longer Chairman and CEO (but no later than 12/31/2017), replacement of IHS or Markit director requires majority board vote of IHS or Markit directors, respectively |

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|---|---|---|---|---|---|---|
| | | | | | | • Governance terms set forth in merger agreement and bylaws |
| Johnson Controls<br>Tyco International<br>January 2016<br>September 2016<br>$28B | 56% JCI<br>44% Tyco<br>6 JCI<br>5 Tyco | • JCI CEO as Chairman for 18 months and Executive Chairman for 12 months, then Tyco CEO as Chairman<br>• JCI director as Lead Director | • Not specified | • JCI CEO for 18 months, then Tyco CEO<br>• Tyco CEO to initially serve as President and COO | • Johnson Controls<br>• Merger<br>• 13% premium to Tyco stock price (30-day VWAP)<br>• Tyco HQ (JCI HQ for North America HQ) | • Until 3 months after JCI CEO ceases to serve as Executive Chairman (or 12 months after JCI CEO ceases to serve as combined company CEO, if earlier), requires 75% supermajority board vote to appoint, remove or replace the CEO, Chairman, Executive Chairman, President or COO<br>• Governance terms set forth in merger agreement and articles of association |
| Dow Chemical<br>E. I. du Pont de Nemours<br>December 2015<br>August 2017<br>$70B | 52% Dow<br>48% DuPont<br>(50-50 if preferred stock excluded)<br>8 Dow<br>8 DuPont | • Dow CEO as Executive Chairman (with some CEO-like responsibilities)<br>• 1 Dow and 1 DuPont co-Lead Directors | • 3 advisory committees established at closing to oversee business lines in preparation for intended separations<br>• Executive Chairman and CEO served on all 3 advisory committees | • DuPont CEO (sharing certain duties with Executive Chairman) | • DowDuPont<br>• Merger of equals<br>• 6% unaffected premium<br>• Dual Dow and DuPont HQ | • Cessation of service by a continuing Dow or DuPont director will be followed by a replacement director elected by a majority of the remaining continuing directors from the same side still in office, even if less than a quorum, or by a sole remaining continuing director<br>• Merger agreement specifies individuals to fill other top 6 executive roles<br>• In the event Dow CEO on signing date is unwilling or unable to serve as Executive Chairman, the then-current Dow CEO at the effective time will serve as Executive Chairman<br>• In the event DuPont CEO on signing date is unwilling or unable to serve as CEO of combined company, the then-current DuPont CEO at the effective time shall serve as CEO of the combined company<br>• Governance terms set forth in merger agreement and bylaws |
| Chambers Street Properties<br>Gramercy Property Trust<br>July 2015<br>December 2015<br>$3B | 56% Chambers<br>44% Gramercy<br>5 Chambers<br>5 Gramercy | • Chambers Chairman as Chairman | • Equal number of Chambers and Gramercy trustees on each committee<br>• 2 Chambers and 2 Gramercy committee chairs | • Gramercy CEO | • Gramercy Property Trust<br>• Merger<br>• No stated premium<br>• Gramercy HQ | • Chambers Interim CEO served as Head of Transition for the combined company<br>• Requires 70% supermajority board vote of disinterested trustees to remove CEO or Chairman in first 2 years<br>• Governance terms set forth in merger agreement, bylaws and committee charters |
| Willis Group<br>Towers Watson<br>June 2015<br>January 2016<br>$8B | 50% Willis<br>50% TW<br>6 Willis<br>6 TW | • Willis Chairman as Chairman | • Not specified | • TW CEO<br>• Willis CEO served as President and Deputy CEO | • Willis Towers Watson<br>• Merger of equals<br>• -7% unaffected premium<br>• Willis HQ | • Governance terms set forth in merger agreement |

| **Parties[1]**<br>**Signing Date**<br>**Closing Date**<br>**Value[2]** | **Ownership**<br>**Board** | **Chairman / Lead Independent Director** | **Board Committees** | **CEO** | **Company Name**<br>**Description**<br>**Premium[3]**<br>**Headquarters** | **Notable Governance Provisions** |
|---|---|---|---|---|---|---|
| H.J. Heinz<br>Kraft Foods<br>March 2015<br>July 2015<br>$55B | 51% Heinz<br>49% Kraft<br>6 Heinz (3 3G Capital, 3 Berkshire Hathaway)[5]<br>5 Kraft | • Heinz Chairman as Chairman<br>• Kraft CEO as Vice Chairman | • 2 Heinz (1 3G Capital and 1 Berkshire Hathaway) and 1 Kraft director (chair) on Operations and Strategy Committee<br>• Kraft director is Audit Committee chair | • Heinz CEO | • Kraft Heinz<br>• Merger<br>• 46% unaffected premium<br>• Dual Heinz and Kraft HQ | • Charter to provide for removal of directors (a) with cause by majority vote of outstanding stock entitled to vote or (b) without cause by (i) affirmative vote of at least 2/3 of outstanding stock entitled to vote or (ii) if such removal is recommended by at least 2/3 of board, by affirmative vote of majority of outstanding stock entitled to vote<br>• Governance terms set forth in charter and bylaws |
| Alliant Techsystems<br>Orbital Sciences<br>April 2014<br>February 2015<br>$4B | 54% ATK<br>46% Orbital<br>*Until at least the 2016 Annual Meeting:* 9 Orbital (incl. CEO)<br>7 ATK<br>*After the 2016 Annual Meeting:*<br>8 Orbital<br>7 ATK<br>1 CEO | • ATK Chairman as Chairman at least until 2016 annual meeting | • Equal representation on audit, governance and compensation committees<br>• Majority Orbital membership on markets and technology committee | • Orbital CEO | • Orbital ATK<br>• Merger of equals<br>• 135% unaffected premium<br>• Orbital HQ | • Requires 2/3 supermajority board vote to remove Chairman, CEO, CFO or COO in first 12 months<br>• No succession provisions for Chairman or CEO<br>• Until the 2016 Annual Meeting, replacement of Orbital or ATK director requires majority board vote of Orbital or ATK directors, respectively<br>• Governance terms set forth in merger agreement |
| Publicis<br>Omnicon<br>July 2013<br>Terminated May 2014<br>$19B | 51% Publicis<br>49% Omnicom<br>8 Publicis<br>8 Omnicom | • Omnicom Chairman as Chairman and Publicis Chairman as Vice Chairman until 2015 annual meeting<br>• Roles to reverse at 2015 annual meeting, and again annually until Publicis-appointee becomes Chairman again | • Equal number of Publicis and Omnicom directors on each committee<br>• 2 Publicis and 2 Omnicom committee chairs | • Publicis and Omnicom CEOs in co-CEO role for 30 months<br>• After 30 months, Omnicom CEO to become sole CEO | • Publicis Omnicom<br>• Merger of equals<br>• No stated premium<br>• Publicis HQ | • Equal representation on Board until the later of (i) 2019 annual meeting and (ii) affirmative 2/3 supermajority board vote to modify governance structure<br>• For initial board term (no earlier than the 2019 annual meeting), Publicis directors to nominate candidates for Publicis seats and Omnicom directors to nominate candidates for Omnicom seats<br>• Governance terms set forth in merger agreement, articles of association and board rules |
| ProLogis<br>AMB Property<br>January 2011<br>June 2011<br>$15B | 60% ProLogis<br>40% AMB<br>6 ProLogis<br>5 AMB | • AMB CEO as Chairman<br>• ProLogis director as Lead Independent Director | • 1 AMB and 2 ProLogis on each of Audit and Compensation Committees; 2 AMB and 1 ProLogis on Gov. Committee; 2 AMB and 2 ProLogis directors on Exec. Committee<br>• 2 AMB and 2 ProLogis committee chairs | • AMB and ProLogis CEOs in co-CEO role<br>• AMB CEO to become sole CEO (and remain as Chairman) on 12/31/2012 | • ProLogis<br>• Merger of equals<br>• No stated premium<br>• AMB corporate HQ; ProLogis operations HQ | • Requires 75% supermajority board vote to: remove AMB CEO prior to 12/31/2014, remove ProLogis CEO prior to 12/31/2012, change CEO or Chairman transition plan, fail to nominate AMB or ProLogis CEO as director prior to 12/31/2014 or 12/31/2012, respectively, or materially alter or curtail authority granted to CEO, co-CEOs or Chairman under the bylaws prior to 12/31/2014<br>• Governance terms set forth in bylaws |

[5] 3G and Berkshire Hathaway were the private equity sponsors of Heinz.

| Parties[1]<br>Signing Date<br>Closing Date<br>Value[2] | Ownership<br>Board | Chairman / Lead Independent Director | Board Committees | CEO | Company Name<br>Description<br>Premium[3]<br>Headquarters | Notable Governance Provisions |
|---|---|---|---|---|---|---|
| Duke Energy<br>Progress Energy<br>January 2011<br>July 2012<br>$26B | 63% Duke<br>37% Progress<br>11 Duke<br>7 Progress | • Duke CEO as Executive Chairman<br>• Duke will designate the Lead Independent Director (following reasonable consultation with Progress) | • At least 1 Progress designee will serve on each committee<br>• Progress will designate chairs of Compensation Committee and Audit Committee<br>• Duke will designate the chairs of the other board committees | • Progress CEO6 | • Duke Energy<br>• Merger<br>• 7% premium to Progress stock price (20-day average closing price)<br>• Duke HQ | • No specific voting thresholds for replacing Chairman or CEO<br>• Merger agreement specifies individuals to fill other top 9 executive roles<br>• Special transition committee to be co-chaired by Progress CEO and Duke CEO<br>• Governance terms (including CEO and Executive Chairman responsibilities and employment agreement term sheet for Duke CEO) set forth in merger agreement |
| Northeast Utilities<br>NSTAR<br>October 2010<br>April 2012<br>$7B | 56% Northeast<br>44% NSTAR<br>7 Northeast<br>7 NSTAR | • Northeast CEO as Chairman for 18 months, then NSTAR CEO as Chairman (in addition to CEO)<br>• Northeast director as lead trustee | • Equal number of Northeast and NSTAR trustees on each committee<br>• 3 Northeast (including Executive Committee) and 2 NSTAR committee chairs | • NSTAR CEO | • Northeast Utilities<br>• Merger of equals<br>• No stated premium<br>• Dual Northeast and NSTAR HQ | • Committee charters amended to reflect powers and responsibilities of each committee, as set forth in an exhibit to the merger agreement<br>• Governance terms (including roles of Chairman and lead trustee) set forth in merger agreement |
| UAL (United)<br>Continental Airlines<br>May 2010<br>October 2010<br>$7B | 55% United<br>45% Continental<br>7 United<br>7 Continental<br>2 union reps | • United CEO as Chairman for 2 years, then Continental CEO as Executive Chairman (in addition to CEO) | • Executive Committee comprised of Chairman, CEO and chairs of other committees<br>• Equal number of United and Continental directors on each committee | • Continental CEO | • United Continental (branded United Airlines)<br>• Merger of equals<br>• 11% unaffected premium<br>• United HQ; Continental Operations Center | • Integration Steering Committee co-chaired by Chairman and CEO<br>• Governance terms set forth in merger agreement and bylaws |
| Mirant<br>RRI Energy<br>April 2010<br>December 2010<br>$2B | 54% Mirant<br>46% RRI<br>5 Mirant<br>5 RRI | • Mirant CEO as Chairman until 2013 retirement | • 2 RRI and 2 Mirant directors on each committee<br>• 2 RRI and 2 Mirant committee chairs | • Mirant CEO until 2013 retirement, then RRI CEO<br>• RRI CEO to initially serve as President & COO | • GenOn Energy<br>• Merger of equals<br>• No stated premium<br>• RRI HQ | • Requires 2/3 supermajority board vote of independent directors to remove Mirant CEO or RRI CEO for 3 years after closing<br>• Governance terms set forth in merger agreement and bylaws |
| Stanley Works<br>Black & Decker<br>November 2009<br>March 2010<br>$4B | 51% Stanley<br>49% B&D<br>9 Stanley<br>6 B&D | • B&D CEO as Executive Chairman for 3 years<br>• Stanley director to be appointed Lead Independent Director | • Not specified | • Stanley CEO | • Stanley Black & Decker<br>• Merger<br>• 22% premium to B&D stock price (closing price on preceding trading day)<br>• Stanley HQ | • For duration of B&D CEO's service as Executive Chairman, requires 80% supermajority board vote to remove B&D Executive Chairman or Stanley CEO (otherwise, requires majority board vote)<br>• Integration Steering Committee co-chaired by B&D Executive Chairman and Stanley CEO<br>• At first annual meeting after closing, Stanley required to cause the 6 continuing B&D directors to be nominated for election |

[6] Majority Duke board replaced the Progress CEO shortly after closing with former Duke Energy CEO.

| Parties[1]<br>Signing Date<br>Closing Date<br>Value[2] | Ownership<br>Board | Chairman / Lead Independent Director | Board Committees | CEO | Company Name<br>Description<br>Premium[3]<br>Headquarters | Notable Governance Provisions |
|---|---|---|---|---|---|---|
| | | | | | | • Governance terms set forth in merger agreement and charter |
| CVS<br>Caremark Rx<br>November 2006<br>March 2007<br>$25B | 54% CVS<br>46% Caremark<br>7 CVS<br>7 Caremark | • Caremark CEO as Chairman | • Equal number of CVS and Caremark directors on Executive Committee<br>• Caremark Audit Committee chair<br>• CVS Compensation and Governance Committee chairs | • CVS CEO | • CVS/Caremark<br>• Merger of equals<br>• 27% unaffected premium<br>• CVS HQ | • Requires 75% supermajority board vote to remove CVS CEO prior to January 2010 or change HQ location for 3 years<br>• Prior to first annual meeting after closing, requires majority board vote of other CVS directors to remove or replace a CVS director and requires majority board vote of other Caremark directors to remove or replace a Caremark director<br>• Governance terms set forth in merger agreement and bylaws |
| FPL Group<br>Constellation Energy<br>December 2005<br>Terminated October 2006<br>$15B | 60% FPL<br>40% Constellation<br>9 FPL<br>6 Constellation | • Constellation CEO as Chairman<br>• Until at least second anniversary of closing, chair of governance and nominating committee (FPL) to serve as presiding director | • Committee membership in proportion to representation on entire board<br>• Until second anniversary, FPL chair of audit, finance & investment and governance & nominating committees; Constellation chair of compensation and nuclear power committees | • FPL CEO | • Constellation Energy<br>• Merger<br>• 15% premium to Constellation stock price (20-day average closing price of both companies)<br>• Dual FPL and Constellation HQ | • Until second anniversary of closing, requires 70% board vote to alter the board distribution<br>• Until at least second anniversary of closing, no executive committee of board<br>• Until second anniversary of closing, replacement of FPL director filled by person designated by FPL directors and replacement of Constellation director filled by person designated by Constellation directors<br>• Governance terms set forth in merger agreement, charter and bylaws |
| Regions Financial<br>Union Planters<br>January 2004<br>July 2004<br>$11B | 59% Regions<br>41% Union Planters<br>13 Regions<br>13 Union Planters | • Regions CEO as Chairman until July 2006, then Union Planters CEO as Chairman | • Not specified | • Regions CEO until July 2005, then Union Planters CEO<br>• Union Planters CEO to initially serve as President and CEO-Designate of combined company | • Regions Financial<br>• Merger<br>• No stated premium<br>• Regions HQ (with Union Planters HQ for broker-dealer and investment services and mortgage banking units) | • Until 6/30/2007, a majority of Regions directors fill Regions director vacancies and a majority of Union Planters directors fill Union Planters director vacancies<br>• During each year following closing, board to hold at least 2 regular meetings in the city of each HQ<br>• Directors to be apportioned among the 3 classes of the board in a manner as equal as possible<br>• Changes to succession and certain other corporate governance provisions must be approved by affirmative vote of 2/3 of full board<br>• Governance terms set forth in bylaws |

**Compensation Terms**

| **Parties**<br>**Signing Date**<br>**Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
|---|---|---|---|---|
| BB&T<br>SunTrust<br>February 2019<br>Share split: 57% BB&T / 43% SunTrust<br>Board split: 11 BB&T / 11 SunTrust<br>CEO: BB&T CEO for 2 years, then SunTrust CEO | • Retention awards granted to certain SunTrust executives, including 2 NEOs but excluding the SunTrust CEO, in the form of cash and RSUs.<br>• Retention awards granted to certain BB&T executives, including 4 NEOs but excluding the BB&T CEO, in the form of cash. | • SunTrust CEO cash severance multiplier increased to 3x and length of in-kind benefit continuation increased to 3 years (to match BB&T CEO).<br>• Certain BB&T executives entered into amendments to employment agreements to provide that cash severance will be calculated based on the higher of (i) pre-merger compensation and (ii) compensation at the termination date, provide for a pro rata bonus upon a qualifying termination before 1/1/2022 and eliminate the non-compete following a qualifying termination following the closing date. | **BB&T**: equity awards were not adjusted or otherwise accelerated under the merger agreement (definition of "Change of Control" in BB&T equity awards contained a carve-out for a "Merger of Equals")<br>**SunTrust**: converted into BB&T equity awards, subject to double trigger vesting | • BB&T CEO and SunTrust CEO agreed to a "Good Reason" waiver for the agreed succession plan.<br>• Certain SunTrust executives, including 2 NEOs, agreed to a "Good Reason" waiver under executive severance plan and equity awards for 2-year period before CEO succession date, with opportunity to reevaluate "Good Reason" rights at that time; if "Good Reason" triggered, would receive cash severance calculated based on the higher of (i) pre-merger compensation and (ii) compensation on termination date.<br>• Notice of non-renewal given to BB&T NEOs (other than BB&T CEO) under evergreen employment agreements in order to fix term to the 36-month period ending 3/1/2022.<br>• Certain BB&T executives, including 2 NEOs, agreed to a "Good Reason" waiver under employment agreements until 2 window periods (1 before and 1 after CEO succession date), with opportunity to reevaluate "Good Reason" rights at that time. |
| Fiserv<br>First Data<br>January 2019<br>Share split: 58% Fiserv / 42% First Data<br>Board split: 6 Fiserv / 4 First Data<br>CEO: Fiserv CEO | • One-time $30M integration award ($15M RSUs and $15M PSUs) to First Data CEO.<br>• Fiserv and First Data to establish a retention program and may grant integration equity awards after closing. | • First Data CEO received $9.5M cash CIC payment (in lieu of existing severance entitlement) and retained his pre-existing Section 280G gross-up solely with respect to pre-closing compensatory entitlements. | **Fiserv**: equity awards were not adjusted or otherwise accelerated under the merger agreement<br>**First Data**: time-vested awards granted at or prior to IPO: single trigger; performance-vested awards granted at First Data IPO: converted into Fiserv equity awards that vest on satisfaction of adjusted performance condition; awards granted after IPO: converted into Fiserv equity awards subject to double trigger vesting | • First Data CEO agreed not to exercise his "Good Reason" rights for the agreed succession plan and waived all single-trigger vesting of his outstanding equity awards.<br>• Converted First Data equity awards subject to double-trigger vesting upon a termination without cause and, for an undisclosed amount of awards in the First Data CEO's discretion, without good reason. |

| **Parties<br>Signing Date<br>Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
|---|---|---|---|---|
| Harris<br>L3 Technologies<br>October 2018<br>Share split: 54% Harris / 46% L3<br>Board split: 6 Harris / 6 L3<br>CEO: Harris CEO for 2 years, then L3 CEO | • One-time $7.5M integration award (1/3 PSUs + 2/3 performance options) to each of the Harris CEO and L3 CEO. | • Harris CEO cash severance multiplier increased to 3x and length of in-kind benefit continuation increased to 3 years (to match L3 CEO).<br>• 4-year CIC severance protection period for L3 CEO (extending 2 years after agreed succession). | **HARRIS**: single trigger<br>**L3**: single trigger (with a pro rata portion of PSUs converted into double trigger RSUs) | • Harris CEO and L3 CEO agreed to a "Good Reason" waiver for the agreed succession plan. |
| INC Research<br>inVentiv Health<br>May 2017<br>Share split: 53% INC / 47% inVentiv<br>Board split: 5 INC / 5 inVentiv<br>CEO: INC CEO | • After closing, 4 NEOs (Chairman, CEO and direct reports) granted special performance-based RSUs with aggregate grant date fair value of $5M to incentivize integration and retention. | • For INC COO (new President of Clinical Development), vesting of outstanding equity awards and payment of a portion of severance, equal to $1.2M (base salary + 2x target bonus).<br>• inVentiv CEO (new Chairman of combined company) entitled to $2.6M plus interest in cash severance (increased from $1.25M in prior employment agreement) upon qualifying termination prior to the earlier of the 2019 annual meeting or 5/10/2019, or upon any termination of employment after such date. | **INC**: options granted on or after 6/30/2015: double trigger; options granted prior to 6/30/2015: single trigger; RSUs: double trigger; PSUs: performance deemed met at target and converted into time-vested RSUs, subject to double trigger vesting<br>**INVENTIV**: options: single trigger (if performance goals are met for performance options; otherwise forfeited); RSUs: single trigger (if pursuant to preexisting terms) | |
| Praxair<br>Linde<br>June 2017<br>Share split: 50% Praxair / 50% Linde<br>Board split: 6 Praxair / 6 Linde<br>CEO: Praxair CEO | • Cash retention and incentive awards for Praxair and Linde critical employees up to an agreed upon (undisclosed) limit, but no retention or incentive awards to NEOs have been disclosed. | None. | **PRAXAIR**: converted into Linde awards, subject to double trigger vesting<br>**LINDE**: portion paid in cash upon completion of the exchange offer (immediately prior to closing) and remaining portion replaced with Linde options or RSUs, subject to double trigger vesting | |
| Envision Healthcare AmSurg<br>June 2016<br>Share split: 53% Envision / 47% AmSurg<br>Board split: 7 Envision / 7 AmSurg<br>CEO: AmSurg CEO | • $3M equity grant awarded to the Envision CEO (who was Executive Chairman of the combined entity after closing). | • New senior management severance and retention program became effective at closing, which covered each of Envision's executive officers (other than the Envision CEO) and provided for a severance multiplier of 1, 1.5 or 1.75x, a pro rata bonus and accelerated vesting of outstanding equity (with PSUs at target). | **ENVISION**: double trigger<br>**AMSURG**: double trigger; director awards single trigger | |
| IHS<br>Markit<br>March 2016<br>Share split: 57% IHS / 43% Markit<br>Board split: 6 IHS / 5 Markit | • One-time $6M PSU award to each of Markit CEO and IHS CEO after closing.<br>• After closing, the CFO (former IHS CEO) received $5M in RSUs in exchange for relinquishing preexisting severance protections.<br>• The EVP of Resources, Transportation and CMS (former IHS NEO) received 3 special | • CIC severance protections for IHS participants in new Executive Severance and Transition Framework generally extended from 15 to 24 months after closing.<br>• Markit CEO's employment agreement amended to add a "succession trigger," such that if he was not appointed CEO as contemplated in succession plan, | **IHS**: converted into Newco equity awards, subject to double trigger vesting<br>**MARKIT**: amendments adopted in connection with the merger provide for double trigger vesting | |

| Parties<br>Signing Date<br>Deal Terms | Transaction Awards | Enhancements | Treatment of Outstanding Equity Awards | Other |
|---|---|---|---|---|
| CEO: IHS CEO until 12/31/2017 (18 months), then Markit CEO | PSU awards with an aggregate grant date value of $3.2M and an RSU award with a grant date value of $3.2M, in exchange for relinquishing certain preexisting severance protections.<br>• The EVP of Financial Markets (former Markit executive) received 3 special PSU awards with an aggregate grant date value of $5M.<br>• IHS was permitted to grant transitional cash awards to IHS NEOs equal to 1x base salary. | he could resign and receive the CIC severance and equity award vesting he would have received upon a qualifying termination. | | |
| Johnson Controls<br>Tyco International<br>January 2016<br>Share split: 56% JCI / 44% Tyco<br>Board split: 6 JCI / 5 Tyco<br>CEO: JCI CEO for 18 months, then Tyco CEO | • JCI CEO permitted to grant awards designed to promote retention and reward extraordinary effort. For NEOs, awards were expected to be in the form of RSUs subject to 3-year cliff vesting (for 2 other executive officers, awards vested on 12/31/2016) subject to continued employment, with accelerated vesting upon a qualifying termination.<br>• Special retention program RSU awards totaling $13.5M for 4 JCI executive officers participating in deferred compensation plans to partially offset lost deferral opportunity for amounts that vested upon the CIC and the lost opportunity to earn additional supplemental benefits as a result of the merger.<br>• Cash Retention and Recognition Program with awards totaling $2M for 4 Tyco executive officers. | • The amended employment agreement with JCI CEO provided for an RSU inaugural equity grant with a grant date value of $20M, vesting 30 months after closing, in addition to his existing CIC severance rights in effect for 24 months after closing.<br>• Agreement with Tyco's then CEO provided for 3x severance multiplier, a prorated bonus, a cash payment equal to the value of additional pension benefits and benefits continuation for 3 years upon a qualifying termination.<br>• Tyco offer letter with GC provided for a grant of $2.4M of RSUs. | **JCI**: converted into double trigger equity awards of the combined company (other than certain single trigger JCI RSUs under the 2011 Restricted Stock Plan)<br>**TYCO**: adjusted to double trigger equity awards of the combined company | |
| Dow Chemical<br>E.I. du Pont de Nemours<br>December 2015<br>Share split: 52% Dow / 48% DuPont (50-50 if preferred stock excluded)<br>Board split: 8 Dow / 8 DuPont<br>CEO: DuPont CEO | • Both Dow and DuPont permitted to grant retention awards in the form of cash or shares to employees, including executive officers (other than the 2 CEOs). Awards do not appear to have been made to NEOs. | • PSUs (with target values ranging from $3M to $10M for the CEO) granted to certain key executives, including the NEOs, of the combined company.<br>• Prior to closing, Dow permitted to adopt an executive severance plan with terms substantially comparable to the DuPont Senior Executive Severance Plan (other than for individuals already party to CIC agreements). | **DOW**: converted into DowDuPont equity awards, subject to double trigger vesting<br>**DUPONT**: converted into DowDuPont equity awards, subject to double trigger vesting | |
| Chambers Street Properties<br>Gramercy Property Trust<br>July 2015<br>Share split: 56% Chambers / 44% Gramercy<br>Board split: 5 Chambers / 5 Gramercy<br>CEO: Gramercy CEO | • None disclosed. | • Gramercy permitted to amend terms of outstanding restricted shares and RSUs to provide for double trigger vesting during the 12 months following the merger.<br>• Amended 3 Gramercy NEO employment agreements to provide, upon a qualifying termination, for increased severance (3x for the CEO or 2.5x for the President of average annual base salary plus highest annual bonus during the 3 years prior to termination (or the most recent bonus | **CHAMBERS**: equity awards of Chambers remain outstanding as equity awards of combined company, with certain awards subject to double trigger vesting; director awards single trigger<br>**GRAMERCY**: converted to Chambers awards with permitted amendment to provide for double trigger vesting (certain awards already had double trigger protection); director awards single trigger | |

| **Parties<br>Signing Date<br>Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
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| | | for 1 NEO) and a prorated annual bonus). For the CFO, a lump sum cash payment of 24 months base salary and 2x annual bonus for the year prior to termination, and a prorated bonus for the year prior to termination. For the CEO, upon a qualifying termination, all unvested restricted shares and RSUs would be credited with 12 months of additional service. | | |
| Willis Group<br>Towers Watson<br>June 2015<br>Share split: 50% Willis / 50% TW<br>Board split: 6 Willis / 6 TW<br>CEO: TW CEO | • None disclosed. | • Upon a qualifying termination within 2 years of the merger, amended employment agreements for Willis executive officers (other than the CEO) provided for 2x lump sum severance, pro rata target bonus, continued benefits for 12 months, waiver of service-based vesting requirements for outstanding equity awards and extended option exercise period.<br>• Amendments to employment agreement with Willis CEO provide for enhanced benefits upon a qualifying termination, including 2x lump sum severance, bonus for year of termination (prorated if termination before 12/31/2015), waiver of service-based vesting requirements for outstanding equity awards, and reimbursement of reasonable relocation costs within 12 months of termination.<br>• A pro rata bonus may be paid to TW employees, including executive officers, upon a qualifying termination. | **WILLIS**: equity awards were not adjusted or otherwise accelerated under the merger agreement (but awards held by NEOs subject to double trigger vesting, with performance awards at target or, if greater, actual performance)<br>**TW**: double trigger (with performance awards at target or, if greater, actual performance) | |
| H.J. Heinz<br>Kraft Foods<br>March 2015<br>Share split: 51% Heinz / 49% Kraft<br>Board split: 6 Heinz / 5 Kraft<br>CEO: Heinz CEO | • $5M cash retention award for Kraft Chairman and CEO.<br>• Cash retention awards totaled $2M for 2 other Kraft executive officers.<br>• Kraft also approved make-whole payments to employees, including executive officers, with an expected aggregate value of $16.2M (including $11.1M for the CEO). | • Approximately 600,000 total special stock options granted (for 4 NEOs of the combined company, including the CEO). | **HEINZ**: double trigger<br>**KRAFT**: restricted shares, RSUs, deferred compensation units and options: double trigger; performance share awards: a pro rata portion paid no later than 30 days following closing, based on the number of months elapsed in the performance period; remainder paid at the first anniversary of closing (with accelerated vesting upon a qualifying termination) | |
| Alliant Techsystems Orbital Sciences<br>April 2014<br>Share split: 54% ATK / 46% Orbital<br>Board split: *Pre-2015/16*: 9 Orbital / 7 ATK; *2015/16 on*: 9 Orbital / 7 ATK / 1 CEO<br>CEO: Orbital CEO for 1 year | • Cash retention bonuses for ATK NEOs and other executive officers ranged from $150K to $650K subject to the consummation of the merger and continued employment, with accelerated vesting upon termination without cause.<br>• Special awards of an aggregate of 105,000 Orbital RSUs (valued at $3M based on average Orbital stock price over the first 5 business days following the merger announcement) to executive officers on 7/21/2014. | • After the closing, the combined company established a new Income Security Plan to provide for severance benefits upon certain terminations after a CIC for any new officers who did not already participate in the existing Income Security Plan. | **ATK**: stock options: double trigger (converted into options in Vista Outdoor, the simultaneously spun-off entity); restricted shares: converted into Vista Outdoor awards with a portion vesting on the spin and the remainder vesting on the first anniversary of the date of grant; PSUs: converted into time-vesting, double trigger RSUs; deferred share units and phantom stock units: converted into deferred share units or phantom stock | |

| **Parties<br>Signing Date<br>Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
|---|---|---|---|---|
| | • Special awards of Orbital RSUs on 7/21/2015 (half of which vested 1 day after closing and half of which vested on the first anniversary of such date), though no awards appear to have been made to NEOs. | | units, as applicable, of both the combined company and Vista Outdoor<br>**ORBITAL**: options and RSUs: generally converted into ATK equity awards, subject to the same terms and conditions, with a portion of RSUs vesting single trigger and grants of special RSUs vesting in 2 equal tranches the day after closing and on the first anniversary of such date; director awards single trigger | |
| Publicis<br>Omnicon<br>July 2013<br>Share split: 51% Publicis / 49% Omnicom<br>Board split: 8 Publicis / 8 Omnicom<br>CEO: Publicis and Omnicom CEOs in co-CEO role for 30 months<br><br>Note: Deal terminated May 2014 | • None disclosed. | • Not applicable, as transaction was terminated prior to closing. | **PUBLICIS**: converted into awards over Holdco common stock with preexisting terms<br>**OMNICOM**: PRSUs granted in 2012: single trigger; other equity awards: converted into awards over Holdco common stock with preexisting terms (generally not subject to accelerated vesting) | |
| ProLogis<br>AMB Property<br>January 2011<br>Share split: 60% ProLogis / 40% AMB<br>Board split: 6 ProLogis / 5 AMB<br>CEO: AMB and ProLogis CEOs as co-CEOs; AMB CEO to become sole CEO on 12/31/2012 | • Restricted stock grants of 20,000 shares (value of $700K) to each of 3 AMB NEOs (not including the CEO).<br>• New deferred compensation plan established for AMB participants to defer compensation equal in value to the shares or cash withheld to pay taxes as a result of distributions from the old NQDC plans (which vested and paid on closing) to compensate participants for the early payment of such taxes. New NQDC plan provides for $30M in aggregate grants of combined company stock units or cash credits for AMB executive officers and non-employee directors.<br>• Grant of 75,000 RSUs (valued at approximately $2.5M) to ProLogis GC, with award converted to 33,480 RSUs in the combined company. | • CIC agreements with AMB executive officers amended to provide for double trigger (rather than single trigger) equity vesting and severance protections upon a qualifying termination within 24 months of closing.<br>• Upon a qualifying termination or expiration of the agreement, new employment agreement with ProLogis CEO provided for salary through the end of 2012, $6M 2x cash severance, target bonus (except upon expiration of agreement), vesting and payment of 2012 incentive award without proration and vesting of incentive awards for prior periods, subject to satisfaction of performance conditions (with no proration). Upon a qualifying termination prior to 1/1/2012, provides for $7.3M lump sum payment (salary, target bonus and target LTI), in addition to severance entitlements under prior agreement. | **AMB**: equity awards were not adjusted or otherwise accelerated under the merger agreement (after giving effect to executive officers' waiver of single trigger equity vesting in exchange for double trigger vesting)<br>**PROLOGIS**: converted into combined company equity awards, subject to double trigger vesting | |
| Duke Energy<br>Progress Energy<br>January 2011 | • Duke and Progress each permitted to grant discretionary cash bonus awards (including to executive officers), up to an aggregate value of $20M for each company. | • Term sheet with Progress CEO, pursuant to which upon a qualifying termination within 2 years of closing, he would be entitled to severance benefits pursuant to either the Progress Energy Management Change-In-Control Plan or CIC Plan, except that no | **DUKE**: equity awards were not adjusted or otherwise accelerated under the merger agreement | • Duke CEO and Progress CEO agreed to a "Good Reason" waiver for the agreed succession plan. |

| **Parties Signing Date Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
|---|---|---|---|---|
| Share split: 63% Duke / 37% Progress<br>Board split: 11 Duke / 7 Progress<br>CEO: Progress CEO | • Duke permitted to establish retention and/or project specific bonus plans, up to an aggregate value of $15M. | tax gross-up will be provided. Upon a qualifying termination between the second and third anniversaries of the closing, entitled to the severance benefits under prior agreement.<br>• Upon the Progress CEO's subsequent termination as President and CEO of the combined company the day after closing, he entered into a separation agreement and was entitled to the benefits corresponding to a "Good Reason" resignation, including a $7.4M cash severance payment (3x base + bonus), a cash payment of $1.4M (target bonus for 2012) and accelerated vesting of all equity awards. Also eligible to receive a lump sum payment equal to the lesser of (i) $1.5M or (ii) the portion of $1.5M that, aggregated with other CIC payments, would not be an "excess parachute payment" under Section 280G. If not entitled to the additional payment in the preceding sentence, he was entitled to a 280G gross-up and an additional $500K payment. | **PROGRESS**: converted into Duke Energy equity awards, subject to double trigger vesting | • For Progress CEO, required relocation and changes to total incentive compensation opportunity after the merger were disregarded. |
| Northeast Utilities<br>NSTAR<br>October 2010<br>Share split: 56% Northeast / 44% NSTAR<br>Board split: 7 Northeast / 7 NSTAR<br>CEO: NSTAR CEO | • Northeast Utilities granted make-whole RSU awards equal to the value of the executive officer's performance units outstanding at target immediately before closing that are attributable to the applicable performance periods after completion of the merger.<br>• Special award of 76,406 RSUs (value of $2.6M) granted to Northeast Utilities' Chairman, President and CEO.<br>• Northeast Utilities established a retention pool in aggregate amount of $10M of RSUs to be allocated to key employees, including some or all executive officers. In November 2010, a total of 192,309 RSUs (value of $6M) were granted to 4 executive officers (including the GC, CAO and COO).<br>• NSTAR approved and allocated a retention pool in an aggregate amount of $10M for awards to key employees, including some of the executive officers (but not the CEO). Awarded a total of 149,100 deferred NSTAR common shares (value of $5.5M) to 4 executives. | • None disclosed. | **NORTHEAST UTILITIES**: options: already fully vested and remain outstanding pursuant to their terms; RSUs held by employees and trustees: double trigger; performance awards: double trigger (performance measured up to closing and payment of PSUs on a pro rata basis, with portions attributable to performance periods after the merger forfeited, but full vesting of PSUs at target for executive officers who experienced a qualifying termination prior to closing)<br>**NSTAR**: options: converted into single trigger Northeast Utilities options; PSUs and deferred stock awards granted prior to signing: converted into single trigger Northeast Utilities awards; stock-based awards granted after signing: converted into double trigger Northeast Utilities equity awards | |

| **Parties**<br>**Signing Date**<br>**Deal Terms** | **Transaction Awards** | **Enhancements** | **Treatment of Outstanding Equity Awards** | **Other** |
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| UAL (United)<br>Continental Airlines<br>May 2010<br>Share split: 55% United / 45% Continental<br>Board split: 7 United / 6 Continental / 2 union reps<br>CEO: Continental CEO | • During the integration planning process and in preparing for closing, UAL granted discretionary one-time cash bonuses to former executive officers for extraordinary leadership. | • UAL CEO waived cash severance and equity award acceleration and agreed to a prorated cash long-term incentive award (rather than payment in full) in exchange for a grant of 207,157 restricted shares (grant date value of $5.1M) immediately following the closing and a prorated 2009 target incentive award.<br>• In exchange for waiving single trigger equity vesting, UAL entered into Management Retention Agreements with its executive officers other than the CEO. Upon a qualifying termination within 2 years after closing, the executive officer would receive an annual incentive bonus (either in full or prorated depending on the date), vesting of long-term incentive awards, severance, and separation benefits including medical and dental benefits, travel privileges and executive outplacement services.<br>• Continental terminated its Executive Severance Plan and NEOs entered into employment agreements providing for enhanced severance for 2 years after closing.<br>• Relocation benefits for certain Continental executives included temporary accommodations, reimbursement of certain costs (including home sales and up to $200K reimbursement of losses on home sales) and a tax gross-up for home sales and purchases. | **UAL**: single trigger (long-term cash incentive awards deemed achieved at target and paid out on a prorated basis); for CEO and other executive officers party to Management Retention Agreements: double trigger (each waived accelerated vesting of equity based awards upon completion of the merger) with restricted shares and RSUs converted into a fixed amount in cash and performance under long-term cash incentive awards deemed to have been achieved at target, to be paid in full upon vesting<br>**CONTINENTAL**: options: converted into UAL options (and certain legacy awards single trigger vested pursuant to their terms); LTIP awards: double trigger (with performance deemed met at the "stretch" performance level); profit based RSUs: double trigger (performance deemed satisfied at 150%); restricted stock and other stock based awards granted to non-employee directors: converted into equivalent UAL awards, subject to the same terms and conditions | |
| Mirant<br>RRI Energy<br>April 2010<br>Share split: 54% Mirant / 46% RRI<br>Board split: 5 Mirant / 5 RRI<br>CEO: Mirant CEO until 2013 retirement, then RRI CEO | • Mirant permitted to establish a retention pool in an aggregate amount not to exceed $10M to be allocated to key employees, including potentially some of its executive officers.<br>• Each of the CEO and President and COO granted RSUs with a value equal to 2x annual base salary and annual target bonus in effect prior to closing (1,220,432 and 1,022,100 RSUs with values of $4.5M and $3.7M, respectively), in exchange for relinquishing Section 280G gross-ups, CEO's waiver of "Good Reason" to resign as a result of relocation, and COO's waiver of "Good Reason" to resign related to the change in his position. | • If the President and COO not appointed as CEO by the third anniversary of closing (or, if earlier, 10 days after the Mirant CEO ceases as CEO), if terminated without cause or removed from, not nominated or re-elected to the board other than for cause, he would be entitled to severance under his CIC Agreement.<br>• For Mirant CEO (CEO of combined company), vesting of all equity awards at closing and certain relocation benefits. Equity awards also vest upon "retirement" (termination for any reason on or after the third anniversary of closing, other than a termination by him in anticipation of a termination for cause) or other qualifying termination following closing.<br>• For Mirant head of asset management, entitled to vesting of all equity awards at closing, reimbursement of relocation expenses and paid a cash retention bonus equal to the amount of severance she would have received under the CIC | **RRI ENERGY**: single trigger<br>**MIRANT**: single trigger | • Certain executives with ongoing roles entered into amendments to their existing CIC Agreements, which eliminated Section 280G tax gross-ups. |

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| | | Severance Plan on the second anniversary of closing. She waived her rights under the CIC Severance Plan, except for Section 280G gross-up.<br>• For the Mirant CFO, entitled to vesting of all equity awards at closing and paid a retention bonus equal to the amount of severance he would have received under the CIC Severance Plan. Upon a qualifying termination after a CIC, he was eligible for 3x cash severance and his Section 280G gross-up. | | |
| Stanley Works<br>Black & Decker<br>November 2009<br>Share split: 51% Stanley / 49% B&D<br>Board split: 9 Stanley / 6 B&D<br>CEO: Stanley CEO | • For B&D CEO, after executive chairman agreement becomes effective, entitled to a grant of $1M stock options. On third anniversary of closing, eligible to receive a cost synergy bonus up to $45M (actual amount based on cost synergy level attained). | • For Stanley CEO, granted RSUs with a value, as of the closing, of an option to purchase 1.1M shares of Stanley common stock ($18.7M).<br>• For Stanley COO, granted RSUs with a value, as of the closing, of an option to purchase 675,000 shares of Stanley common stock ($11.5M).<br>• After closing, as performance metrics for existing long-term incentive awards would not be met, RSUs granted to certain employees (including NEOs). In addition, off-cycle RSU grants were made to certain executive officers and eligible continuing employees. | **STANLEY**: equity awards were not adjusted or otherwise accelerated under the merger agreement<br>**B&D**: restricted stock and RSUs: converted into single trigger Stanley equity awards (for CEO, converted and remain subject to current terms and conditions); options: converted into double trigger Stanley options (for executive officers who were party to severance agreements, single trigger, and for CEO, converted and remain subject to current terms) | • B&D CEO waived accelerated equity vesting, severance payments and Section 280G gross-up in his existing agreement in exchange for the cost synergy bonus and new grant of stock options.<br>• Stanley CEO agreed to a "Good Reason" waiver for transactions contemplated by the merger agreement and arrangements contemplated by the agreement with the B&D CEO. |
| CVS<br>Caremark Rx<br>November 2006<br>Share split: 54% CVS / 46% Caremark<br>Board split: 7 CVS / 7 Caremark<br>CEO: CVS CEO | • At closing, the COO and GC received special RSU awards with grant date values of $1.5M and $750,000, respectively.<br>• Caremark adopted a Synergy-Achievement Supplemental Bonus Plan equal to $5.3M for executive officers. All targets were met at the time of the proxy statement, with payment in 2 installments, subject to continued employment. If the merger closed early, the second payment would be accelerated and Caremark would make a gross-up payment for excise taxes incurred with respect to the bonus.<br>• Caremark adopted a limited retention program in an aggregate amount up to $10M for key employees below the level of SVP following closing (executive officers not entitled to participate). | • Combined company established a deferral account for the certain executives of Caremark to be credited with the amount of all severance benefits which the executive would have been paid under his or her existing employment agreement upon a qualifying termination following the CIC. | **CVS**: equity awards were not adjusted or otherwise accelerated under the merger agreement<br>**CAREMARK**: options: single trigger, adjusted to reflect special cash dividend and converted into CVS/Caremark options | |
| FPL Group<br>Constellation Energy<br>(12/18/2005)<br>Share split: 60% FPL / 40% Constellation | • FPL established a retention bonus plan of up to $70M for employees (including executive officers). As of the date of the merger proxy, maximum potential retention bonuses for the 2 participating executive officers were $.5M and $.6M.<br>• Constellation established a Senior Management Retention Program up to $75M in the aggregate | • FPL executive retention employment agreements were amended to provide that the merger would not constitute a CIC under the agreements, though such amendments could be rescinded by all executive officers except the CEO under certain | **FPL**: converted into corresponding Constellation equity awards with preexisting terms<br>**CONSTELLATION**: stock options: single trigger (certain already-vested options cashed out and others adjusted and remained outstanding); restricted stock and RSUs: generally single trigger | |

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| Board split: 9 FPL / 6 Constellation<br>CEO: FPL CEO<br><br>Note: Deal terminated October 2006 | for senior managers (including executive officers), other than executives with CIC Severance Agreements. Based on Constellation's subsequent public filings, it appears that no retention awards were granted to NEOs pursuant to the program.<br>• Constellation executive officers without CIC Severance Agreements would receive "replacement" options (for options cashed-out in the merger) with the same terms and conditions as those awarded pursuant to the Amended CIC Severance Agreements, except that the replacement options do not have good reason vesting protection. | circumstances.7 Thus, the FPL CEO would not be entitled to any payments or benefits under his executive retention employment agreement in connection with the merger (but was entitled to termination benefits under his employment agreements).<br>• Amended CIC Severance Agreements with 8 Constellation executive officers (including the CEO) (i) extended protection period from 6 months to 2 years, (ii) provided 2-3 years of service credit for supplemental retirement calculations and (iii) provided for a grant of "replacement options" with the same terms and expiration date as options that were cashed out in the transaction.<br>• The Constellation CEO (remaining as Chairman for 3 years) waived his right to 3x CIC cash severance for RSUs equal to the waived severance amount ($13.5M). On a qualifying termination within 1 year of closing, he would receive a lump sum payment of $15M; upon such a termination after the first and before the third anniversary of closing, he would receive a lump sum payment of $5M; in each case less the aggregate amount of salary and bonus paid to him since closing. The CEO would not be entitled to severance upon a termination after the third anniversary of closing.<br>• Constellation CEO would be entitled to a favorable calculation of future supplemental retirement benefits. | (certain grants in full and certain grants pro rata based on number of months elapsed, with the remaining portion continuing to vest in accordance with their terms); performance units: single trigger on a pro rata basis, with forfeiture of portion that did not vest on closing; Constellation had the right to grant additional equity awards in the ordinary course that would not vest or be subject to cash-out or cancellation upon completion of the merger | |
| Regions Financial<br>Union Planters<br>January 2004<br>Share split: 59% Regions / 41% Union Planters<br>Board split: 13 Regions / 13 Union Planters<br>CEO: Regions CEO until July 2005, then Union Planters CEO | • None disclosed. | • Union Planters CEO employment agreement was amended to eliminate his right to resign for any reason after the merger with 90 days' notice and receive severance, but retained his Section 280G gross-up. If he was not appointed as CEO or Chairman and CEO at the designated times, or was removed as CEO prior to becoming Chairman and CEO, he would be entitled to CIC rights under his preexisting employment agreement.<br>• Amendments to the employment agreements of other Union Planters executive officers generally provided for lump sum severance (equal to 1x base | **REGIONS**: converted into awards over shares of the combined company (board took action to prevent accelerated vesting of equity awards as a result of the merger)<br>**UNION PLANTERS**: single trigger, with options converted to New Regions options | • The Regions CEO (continuing as Chairman and CEO of the combined company) waived all rights and benefits under his CIC agreement that would have been triggered by the merger. |

[7] The other NEOs would generally only be entitled to rescind the amendments and become entitled to payments if, within 2 or 3 years (depending on the NEO) after closing, (i) the NEO was terminated without cause, (ii) the NEO's base salary, annual target bonus or LTI opportunity was reduced, (iii) the NEO was required to relocate, (iv) the FPL CEO ceased to serve as CEO prior to closing or following the merger, (v) there was a material diminishment of the NEO's assigned duties or responsibilities, or (vi) there was a material diminution or adverse changes in the NEO's duties, responsibilities or reporting requirements. The CFO's amendment could be rescinded as a result of events (i)-(iv) above within 3 years after the merger or if, as of the 1-year anniversary of the merger, there was a material diminution or change to his titles, duties, responsibilities or reporting requirements. If rescinded due to one of these triggers, the executive would become entitled to payments automatically upon completion of the merger and other payments if employment was terminated without cause or upon a resignation for good reason prior to the second or third anniversary of the merger.

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| | | salary for 2 NEOs, 2x base salary and prorated bonus equal to 75% of base salary for 1 NEO, 1x base salary and bonus for 1 NEO, 3x the sum of base salary and highest bonus received in the prior 3 years for 1 NEO) upon termination without cause or for good reason within some period (within 1-3 years) after the date on which a CIC occurs. 1 NEO also received an excise tax gross-up. | | |