Disclosure, Litigation, and Negotiation
Outcomes in Going Private Transactions*

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Abstract

We examine the links between disclosure, litigation, and the negotiation outcomes of going private transactions. Going private transactions face agency conflicts resulting from concentrating ownership in the hands of insiders. These transactions are subject to deal-specific SEC filings and have a high incidence of litigation. First, we document a trade-off between litigation and the properties of disclosure (i.e., length and tone). When litigation occurs before the initial SEC filings, disclosure is comparatively longer and more pessimistic. In contrast, if litigation has not occurred, there is a negative association between the length of disclosure and subsequent litigation. Second, the length of disclosure is positively related to the likelihood of deal completion, the likelihood of an offer price increase, and the time to complete the deal. Our results suggest that companies providing more information have comparatively higher chances of completing a going private transaction; however, these companies undergo a lengthier negotiation process.

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I. INTRODUCTION

Over the last 20 years, a number of American companies have delisted from public stock exchanges and moved to a private ownership model (Doidge et al., 2017). Going private transactions face agency conflicts resulting from concentrating ownership in the hands of insiders. In these transactions, existing managers have an obligation to negotiate a fair compensation for the shares of minority shareholders, but also have incentives to minimize the cost(s) of taking the company private (DeAngelo et al., 1984). Disclosure and litigation play a disciplinary role in the going private negotiation process between minority shareholders and insiders. The Securities and Exchange Commission (SEC) requires managers to provide detailed information about going private deals through Form SC 13E-3, including, among other disclosures, a determination of the fairness of the transaction, the nature of the negotiation with the acquirer, and key factors considered by the board of directors.

Anecdotal evidence suggests that minority shareholders are increasingly opting to challenge going private transactions through litigation, alleging managers and directors breached their fiduciary duty to negotiate a fair compensation (Cornerstone Research, 2014). Consistent with these claims, we find that approximately 50% of the going private deals in our sample are challenged in court.

We examine how the dynamics between disclosure and litigation influence the outcomes of the negotiation process in going private transactions. Litigation represents a significant friction in these transactions and the minority shareholders’ decision to sue is potentially influenced by (or may influence) disclosure choices. Specifically, we are interested in under-

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1 The term “going private” is commonly used to describe transactions that change a public company’s ownership by reducing the number of shareholders, involving a controlling stockholder or other affiliated person(s), and allowing the company to terminate its public status and its related reporting obligations under the Securities Exchange Act (Leuz et al., 2008).

2 For a more detailed list of the Form SC 13E-3 disclosure requirements, please refer to Appendix B.

3 These litigation rates are considerably larger than the 10b-5 shareholder class action litigation rates, which range between 1.1 and 5.0 percent among public companies (Kim and Skinner, 2012). A recent study by Huang et al. (2016) find an incidence of litigation of 4.56% under the SEC Rule 10b-5.
standing the direction of the association between transaction-specific disclosure and litigation. Prior studies typically examine the association between recurring disclosures (e.g., 10-K form and management forecasts) and low-frequency litigation (e.g., Rule 10b-5 class action lawsuits). Going private deals provide an interesting laboratory to examine the consequences of transaction-specific disclosure in a highly litigious setting, and to determine how litigation and disclosure combined influence economic outcomes. In addition, a salient characteristic of this setting is that although litigation is triggered by the announcement of the deal, it can occur before or after a company files the detailed disclosures in Form SC 13E-3 (70% and 30% of litigated transactions, respectively). We exploit this temporal variation to examine our first two research questions.

First, we investigate whether pending litigation affects the properties of disclosure when firms go private. Prior literature finds that shareholder litigation can influence disclosure choices. For example, Nelson and Pritchard (2007) demonstrate that firms subject to litigation are more likely to use cautionary language in annual reports and Rogers and Van Buskirk (2009) show that firms that have recently faced litigation decrease discretionary disclosure in the form of an earnings-related conference call or issuing an earnings forecast. In the going private setting, it is unclear how litigation occurring before mandatory SEC filings affects the properties of transaction-specific disclosure. If litigation has already occurred, managers may seek to respond to shareholders’ threats with more information to demonstrate transparency and commitment to shareholders’ interests. Alternatively, pending litigation can also motivate insiders to be conservative in providing additional information (Rogers and Van Buskirk, 2009).

Second, we seek to determine whether the properties of disclosure are associated with subsequent litigation. The relation between corporate disclosure and litigation risk has been the subject of several prior studies with mixed results, potentially because this relation is endogenous (Field et al., 2005). For example, transparent disclosure may deter litigation,
specifically when bad news are timely disclosed (Skinner, 1994, 1997; Donelson et al., 2012). However, transparent or optimistic disclosure may attract litigation by uncovering valuation issues or agency problems (Francis et al., 1994; Rogers et al., 2011). Finally, if high litigation rates reflect frivolous legal actions targeting going private deals, we expect a weak association between litigation and disclosure.

Ultimately, our first two research questions have significant tension. Going private transactions constitute a unique setting to extend our understanding of how the timing of litigation is linked to the properties of disclosure. Next, while litigation is an important event related to disclosure, we are also interested in how disclosure is linked to the negotiation outcomes of going private transactions. Our third research question examines whether the properties of disclosure are associated with: (1) the likelihood of deal completion, (2) the likelihood of an offer price increase, and (3) the time to complete the deal (i.e., days between a deal’s announcement and its resolution). Generally, transparent disclosure should reduce information asymmetry between buyers and sellers (Leuz and Verrecchia, 2000). When a firm going private has transparent disclosures, minority shareholders can value the deal with greater precision. However, insiders have incentives to withhold information about the true value of the firm in an attempt to minimize transaction costs (DeAngelo et al., 1984). Therefore, it is an empirical question whether the properties of disclosure affect the negotiation process and the ultimate completion of going private transactions. This question complements a growing literature using textual analysis to examine the drivers and consequences of variation in recurrent corporate disclosures, such as financial statements, earnings releases, and conference calls (e.g., Li, 2010).

We rely on the criteria used by the SEC and also follow prior studies to identify going private deals (Bharath and Dittmar, 2010; Engel et al., 2007). We search all filings of Form SC 13E-3 from 1995 to 2014. We are interested in studying the properties of transaction-specific disclosure, hence we limit our data collection to companies that commit to go private.
and file Form SC 13E-3. In our sample, the median time between a deal’s announcement and
the SEC mandatory disclosure is 42 days. Next, we hand-collect detailed information about
class action and other lawsuits and also retrieve financial information from the Thomson
Reuters’ Securities Data Company (SDC) Platinum and Compustat databases. Our final
sample consists of 487 deals. Finally, we identify whether a lawsuit occurred before or after
filing the Form SC 13E-3 based on whether it references transaction-specific litigation.

We employ two main proxies for the properties of disclosure: length, in terms of the
number of words, and tone of the SEC mandatory disclosure. Length captures the volume
of information provided by management, while tone captures disclosure optimism. Since
the disclosure itself is mandatory, after controlling for deal characteristics and the use of
legal words, we interpret variation in length and tone as capturing variation in discretionary
disclosure. Our proxies are motivated by prior literature, both volume and optimism are
features of disclosure theoretically and empirically tied to litigation (Skinner, 1994; Field
et al., 2005; Rogers et al., 2011).

We document a trade-off between litigation and disclosure. We find a positive association
between pre-filing litigation and disclosure length, which suggests that legal scrutiny prompts
managers to be more forthcoming. We also find a negative association between pre-filing lit-
itigation and tone, which is consistent with legal scrutiny impacting insider’s use of optimistic
language as shown in Rogers et al. (2011). However, when litigation has not yet occurred,
disclosure length is negatively associated with subsequent litigation and we do not find a
relation between tone and subsequent litigation. Taken together, these results suggest that
disclosure, and specifically the volume of disclosure, is a factor significantly associated with
litigation in going private transactions. Further, the direction of the association between
litigation and the volume of disclosure depends on the timing of litigation.

Next, we document a positive association between disclosure length and the likelihood of
deal completion, the likelihood of an offer price increase, and the time to complete the deal.
In contrast, we find little evidence that the tone of disclosure influences deal outcomes. Our findings hold even after controlling for pre- and post-filing litigation, as well as considering additional disclosure properties (i.e., readability, and use of forward-looking sentences). This evidence suggests that litigation prompts an increase in the volume of disclosure that is relevant to investors. Also, while providing more information increases the chances of completing a deal, it increases the intensity of the negotiation process.

Finally, we investigate whether the relation between disclosure and negotiation outcomes varies with the incidence of litigation (i.e., we examine separately the sample of deals with and without litigation). Arguably, disclosure can be a substitute for the disciplinary role of litigation. Our results generally support this notion. We find a comparatively more pronounced positive association between disclosure length and the likelihoods of deal completion and an offer price increase for deals without litigation.

Our study contributes to four literature streams. First, we extend prior studies on the trade-offs involved in going private transactions (Engel et al., 2007; Leuz et al., 2008; Bharath and Dittmar, 2010) by examining how disclosure and litigation allow shareholders to protect their rights in a setting with intense agency problems. Second, we contribute to the literature on disclosure and litigation (Skinner, 1994; Francis et al., 1994) by focusing on a transaction-specific form of mandatory disclosure that has a significant discretionary component. Third, we complement the literature on the textual properties of public company filings and their consequences (Li, 2010; Loughran and McDonald, 2016) by examining non-recurring disclosures. Finally, we contribute to the literature on shareholder litigation and business acquisitions (Krishnan et al., 2012) by extending previous findings to a sample of going private deals.

Our paper is organized as follows: Section II discusses background information and our hypothesis development, Section III outlines our research design, Section IV provides details on our sample selection, Section V presents our main results, Section VI contains our
additional analyses, and Section VII concludes.

II. BACKGROUND AND HYPOTHESES

Background on Going Private Transactions

Going-private transactions involve corporate restructurings that concentrate ownership in the hands of insiders, often including existing management and private equity investors (DeAngelo et al., 1984; Leuz et al., 2008). The pricing of minority shares does not emerge from an arm’s-length negotiation between independent parties and can reflect an inherent conflict in disparate ownership interest (Bates et al., 2006). Going private transactions usually involve legal complexities, such as complying with special SEC disclosure rules and implementing governance safeguards (e.g., obtaining third-party appraisals and forming an independent board committee to assess the acquisition proposal (Engel et al., 2007)). In these transactions, although management owes a fiduciary duty to the existing shareholders to negotiate a fair compensation for their shares, management also has a countervailing incentive to minimize the cost of the transaction (DeAngelo et al., 1984).

There are a number of reasons often cited by academics and practitioners that motivate a public company to go private, including: going private transactions (a) permit the shareholders to realize a better price for their shares by mitigating frictions that can drive a low valuation of certain public companies, such as difficulty in valuing intangible assets and complexity in financial reporting; (b) allow management to focus on long-term objectives rather than short-term profits; (c) save costs and avoid the disadvantages of complying with securities regulations, such as the Sarbanes-Oxley Act of 2002; (d) reorganize the company’s operations and management’s incentive packages without the concerns of public shareholders, particularly in high-risk businesses; (e) generate tax benefits from increasing leverage beyond levels considered acceptable for a public company; and, (f) reduce litigation risk from
dissatisfied public shareholders (Engel et al., 2007; Leuz et al., 2008; Bargeron et al., 2008; Henderson and Epstein, 2009; Officer et al., 2010; Bharath and Dittmar, 2010; Zimmerman, 2016).

Prior studies have examined the incentives behind going private deals, as well as the effect of these deals on the wealth of minority shareholders. Bharath and Dittmar (2010) theorize that when the costs of having low control rights exceed the benefits of liquidity, firms will exit the public markets and go private, and show that firms that go private have a very different information environment and liquidity than those firms that remain public. Leuz et al. (2008) state that going private transactions are often initiated by affiliated parties, who believe the company is inefficiently managed, underleveraged, or undervalued by the market. Relatedly, Engel et al. (2007) examine whether SOX influenced the decision to go private and find that SOX compliance costs are more burdensome for smaller and less liquid firms. However, Bates et al. (2006) provide evidence that does not support the view that potential conflicts of interest result in disproportionate allocations of deal surplus to controlling shareholders.

In this paper, we focus on litigation and disclosure choices and study firms that have signaled their commitment to go private by filing the SEC mandatory disclosure. We consider going private any transaction that is regulated by Rule 13E-3 of the Exchange Act. This Rule applies to all transactions that involve: (1) a purchase of any equity security by the going private company or an affiliate; (2) a tender offer for any equity security by the target or an affiliate; (3) proxy or consent solicitation or distribution of an information statement by the target or an affiliate in connection with a merger (or similar corporate reorganization), an asset sale, or a reverse stock split.\footnote{SEC defines an affiliate as any individual that directly or indirectly through one or more intermediaries controls, is controlled, or is under common control with the target company}
Disclosure Requirements in Going Private Deals

Going private transactions are subject to SEC rules for business acquisitions, but with additional disclosure required by Rule 13-E3 (Schedule 13E-3). Depending on the structure of the transaction, Schedule 13E-3 must be filed together with other forms.\(^5\) In one-step mergers, the target company has to solicit approval of its stockholders by means of a proxy statement that complies with Regulation 14A (Schedule 14A) or with Regulation 14C (Schedule 14C) if proxies are not solicited. In a two-step merger, the bidder has to file a tender offer statement by means of a Schedule TO, while the target company has to file a Schedule 14D-9.\(^6\) When a proxy statement or an offer to purchase is filed, the Schedule 13E-3 has to incorporate by reference the information contained in the Schedule 14A or in the Schedule TO. Notably, this disclosure is not audited by an external accounting firm. We outline the requirements of Schedule 13E-3 in Appendix B.

In a Schedule 13E-3, the company going private has to disclose the purpose of the transaction. Specifically, the company has to describe any alternatives considered and the reason they were rejected, and an explanation of the effects of the transaction on the acquired company, its affiliates, and unaffiliated stockholders. Moreover, Schedule 13E-3 should provide information about the substantive and procedural fairness of the transaction. Finally, Schedule 13E-3 must also provide a description of all reports, opinions, and appraisals from outside parties that are materially related to the price or fairness of the transaction, including a third-party fairness opinion (all reports, opinions, and appraisals have to be filed with the SEC together with the Schedule 13E-3).

The timing to file Schedule 13E-3 depends on the structure of the transaction. In one-

\(^5\)For more details about the going private disclosure see the practical guidance issued by Sanborn and Bohidar (2018).

\(^6\)The main difference between a two-step and a one-step merger is that, in the two-step approach, the buyer does not obtain the whole share capital of the target in the tender offer, and consequently has to acquire the remaining shares of the target in a second-step merger.
step mergers, the form has to be filed at the same time of the proxy statements. In tender offers, the form has to be filed as soon as information about the tender offer is made public. Schedule 13E-3 has to be amended every time the proxy statements or the tender offer are amended in order to reflect additional information. The timing of the transaction may also depend on the SEC’s review and comment on the filings.

**Litigation in going private deals**

Securities class action lawsuits generally involve violations of the Exchange Act, which gives shareholders the right to recover damages caused by securities frauds through private actions in federal courts (Huang et al., 2016). The majority of securities class actions are brought pursuant to Section 10(b) of the Exchange Act, and the SEC Rule 10b-5. These lawsuits are associated with the intentional misstatement or omission of material disclosure. The most common allegations are material misrepresentations regarding the business, failure to warn, and accounting or internal control problems (Kim and Skinner, 2012).

In going private transactions, litigation consists primarily of derivative lawsuits, where the corporation is the functional plaintiff and the allegations are that officers and directors of the company breached their fiduciary duties to the corporation (Erickson, 2010). The objective of derivative lawsuits is to force officers and directors to compensate the firm for the damage they allegedly caused (Bourveau et al., 2017). Specifically, in going private transactions minority shareholders allege that officers and directors did not negotiate adequate compensation for shareholders’ ownership. The majority of the derivative lawsuits end with settlements (Erickson, 2010). Even if directors can protect themselves through liability insurance, these policies do not cover wrongdoings that involve intentional misconduct or breaches where directors have obtained a personal gain (Bourveau et al., 2017). More recently, minority shareholders have used a new form of derivative lawsuit, called “appraisal” lawsuit, where shareholders allege that the fair value of the company going private is higher
than the price offered (see, for example, the case of Dell. Inc. described in Appendix C).
Finally, we note that pending litigation does not interrupt the flow of the deal, unless the
plaintiffs specifically request the court for an injunction.7

Hypotheses Development

Going private disclosure and litigation

There are complex links between going private disclosures, litigation, and the likelihood of a
deal’s success. A primary objective of managers and related insiders is to complete the deal
while reducing the costs of litigation, negotiation, and information production. Litigation
represents a significant friction to go private and the minority shareholders’ decision to
sue is potentially influenced by (or may influence) disclosure choices. Specifically, we are
interested in understanding the direction of the association between deal-specific disclosure
and litigation. We exploit the unique temporal variation in the timing of litigation in going
private deals to develop our first two hypotheses.

We first examine whether litigation occurring before filing the Form SC 13E-3 affects
disclosure choices. Prior literature has found that litigation can influence disclosure, although
the evidence is mixed. Nelson and Pritchard (2007) examine the use of cautionary language
in disclosures and show that firms subject to greater litigation risk use more cautionary
language, update the language more from year-to-year, and use more readable language.
While Bourveau et al. (2017) find that firms increase the frequency of management earnings
forecast following the staggered adoption of universal demand laws across the U.S., which
reduce the threat of derivative lawsuits. Moreover, Rogers and Van Buskirk (2009) examine
how litigation changes subsequent disclosure behavior and find no evidence that firms respond

7In our conversations with practitioners and our review of practitioner literature, we confirm that the
claims in these lawsuits are generally broad and argue that the firm’s officers and directors did not exercise
their fiduciary duty. These lawsuits also request compensations for legal fees. The reviewing court will often
apply an enhanced level of scrutiny, known as entire fairness review.
to litigation by increasing or improving disclosures. Their findings suggest that managers of firms with pending litigation believe that a high level of voluntary disclosure does not reduce the expected cost of litigation. When it comes to optimistic information, Johnson et al. (2001) provide evidence that firms are more willing to make good news disclosures when ex ante class action litigation risk decreases. Similarly, Bloomfield (2008) argues that when firms are attempting to protect themselves from litigation, they are unlikely to include greater emphasis on positive terms. In going private transactions, it is unclear whether litigation occurring before Form SC 13E-3 is filed influences disclosure choices. On one side, managers may seek to respond to shareholders’ threat with more informative disclosure to demonstrate transparency and commitment to their interests. Alternatively, insiders could be wary of providing additional information that may attract undesired attention in a lawsuit (Rogers and Van Buskirk, 2009). Finally, if high litigation rates reflect frivolous legal actions targeting going private deals, we expect a weak association between litigation and disclosure. Therefore, we propose the following hypothesis in the null form:

**Hypothesis 1.** *Ceteris paribus, there is no association between the incidence of litigation before filing the SEC Form SC 13E-3 and the properties of going private disclosure.*

Next, we focus on whether disclosure is associated with the incidence of litigation after filing SEC Form SC 13E-3. Prior studies examining the association between corporate disclosure and litigation risk document mixed evidence. On the one side, transparent disclosures can prevent lawsuits. Skinner (1994) argues that managers have an incentive to disclose bad news early to reduce both the incidence of litigation and the magnitude of estimated damages. Skinner (1997) finds some evidence that more timely disclosure is associated with lower settlement amounts. Using the evolution of consensus analyst earnings forecasts, as a measure of earnings news timeliness, Donelson et al. (2012) also show that earlier disclosure of bad earnings news is associated with lower incidence of litigation. On the other side, it is possible that corporate disclosure including the release of optimistic information-
legal scrutiny and increases litigation risk. However, it is somewhat difficult to determine the true association between endogenous corporate disclosures and litigation risk. Francis et al. (1994) challenge the evidence provided in Skinner (1994) and find no evidence that pre-emptive disclosures deter litigation completely or that a failure to engage in such disclosures inevitably invites litigation. Field et al. (2005) use a simultaneous equations methodology to deal with the endogeneity of disclosure and find no evidence that disclosure triggers litigation. Finally, Rogers et al. (2011) find that the use of optimistic language can increase litigation risk.

In the context of going private transactions, there is a significant tension between deal-specific disclosures and the incidence of subsequent litigation. More detailed information should enable minority shareholders’ to understand a complex deal. Managers have to describe the purpose of the transaction and provide information regarding the substantive and procedural fairness of the transaction on which minority shareholders are required to vote. Managers, therefore, have incentives to provide transparent and readable disclosures to persuade minority shareholders to sell at the offered price, thereby reducing litigation risk. However, additional information could also be subject to increased legal scrutiny, which in turn increases litigation risk. Thus, we propose the following hypothesis in the null form:

Hypothesis 2. Ceteris paribus, there is no association between the incidence of litigation after filing the SEC Form SC 13E-3 and the properties of going private disclosure.

Going private disclosure, litigation, and negotiation outcomes

While litigation is an important event related to disclosure, we are also interested in how disclosure is linked to the negotiation outcomes of going private transactions. Generally, prior literature shows that the properties of disclosure and financial statement information affect stock market participants. Leuz and Verrecchia (2000) argue that transparent disclosure should reduce information asymmetry between buyers and sellers. Li (2008) examines the
information complexity of corporate annual reports and finds that firms with lower reported earnings tend to have annual reports that are more difficult to read. Following Li (2008), other researchers have examined the consequences of information complexity of annual reports on capital investment efficiency (Biddle et al., 2009), retail investors’ stock holding (Lawrence, 2013), and earnings accuracy (Lehavy et al., 2011). Loughran and McDonald (2016) provide a comprehensive review of this literature. More recently, Lo et al. (2017) explore how the information complexity of annual reports varies with earnings management and find that firms most likely to have managed earnings to beat the prior year’s earnings have more complex annual report disclosures. Larcker and Zakolyukina (2012) examine conference calls transcripts to identify linguistic predictors for financial restatements.

A line of related studies examines the role of accounting quality in mergers and acquisitions (M&As). Raman et al. (2013) show that the likelihood of a non-negotiated bid is increasing in the quality of the target’s earnings, and they also find a negative relation between targets’ earnings quality and takeover premia. Their results are consistent with the hypothesis that target firms’ earnings quality affects bidders’ takeover decisions. Skaife and Wangerin (2013) examine whether target firms’ financial reporting quality affects the likelihood that M&A deals will be completed, and find that deals involving low quality financial reporting targets are more likely to be terminated. A related study by Marquardt and Zur (2015) examines whether accounting quality is linked to the decision to complete or terminate a proposed deal, and find a positive association, which suggests that when accounting quality is high it is less likely that new information about the true value of the target firm will emerge between the announcement and completion dates of the transaction. McNichols and Stubben (2015) find that managers of the acquiring firm can bid more effectively and pay less to acquire a target firm that has high quality accounting information because accounting information reduces uncertainty in the value of the target firm by facilitating a more precise valuation.
There is little evidence on the role of disclosure in going private deals. We posit that, when the firm going private has transparent disclosures, the minority shareholders can value the deal with greater precision, which results in a reduction of information asymmetry. However, insiders have incentives to withhold information about the true value of the firm in an attempt to minimize transactions costs (DeAngelo et al., 1984). Finally, it is unclear whether there is a direct (or incremental) effect of disclosure, beyond influencing the likelihood of litigation, on the negotiation of going private deals. In all cases, minority shareholders arguably seek to understand the deal in order to approve the buyer’s proposal. Thus, we propose the following hypotheses in the null form:

**Hypothesis 3.** *Ceteris paribus, there is no association between the negotiation outcomes of going private transactions and the properties of disclosure.*

**Hypothesis 4.** *Ceteris paribus, after isolating the effect of litigation, there is no association between the negotiation outcomes of going private transactions and the properties of disclosure.*

### III. RESEARCH DESIGN

Our empirical analyses are meant to test the three related hypotheses stated above. First, we investigate the association between pre-filing litigation and the properties of disclosure using the following model:

\[
\text{Disclosure}_i = \alpha_i + \beta_1 \text{LitigationPre}_i + \omega \text{Deal Controls}_i + \gamma_1 \text{Industry FE}_i + \gamma_2 \text{Year FE}_i + \epsilon_i. \tag{1}
\]

This model is a cross-sectional OLS regression, where subscript \( i \) corresponds to each going private transaction observation. The outcome variables are disclosure length and tone, and the independent variable is a binary variable equal to one if the deal faced litigation.
prior to the filing of the first Form SC 13E-3, and zero otherwise. Next, we investigate the
association between post-filing litigation and the properties of disclosure using the following
model:

\[ \Pr(\text{Lit}=1) = \alpha_i + \beta_1 \text{Length}_i + \beta_2 \text{Tone}_i + \omega \text{Deal Controls}_i + \gamma \text{Industry FE}_i + \gamma_2 \text{Year FE}_i + \epsilon_i. \] (2)

This model is a cross-sectional logit, where subscript \( i \) corresponds to each going private
transaction observation. The outcome variable \( \text{Lit} \) is a binary variable equal to one when the
deal faces litigation subsequent to the filing of the first Form SC 13E-3, and zero otherwise.
Our two main properties of disclosure are (1) volume of disclosure (\( \text{Disc Length} \)), measured
as the natural log of the number of words in the Form SC 13E-3 and related documents, and
(2) tone (\( \text{Tone} \)), calculated using the Loughran and McDonald (2011) dictionary approach.
These proxies are theoretically and empirically motivated by prior literature examining the
relation between disclosure and litigation (Skinner, 1994; Rogers et al., 2011). For example,
Skinner (1994) finds that firms issue more voluntary disclosure to deter litigation. In our
case, since the disclosure itself is mandatory, we capture the extent of discretionary disclosure
through length, assuming greater length implies greater disclosure. In addition, optimism
(tone) is the measure of interest in Rogers et al. (2011), who find that shareholders target
optimistic language in shareholder lawsuits. To mitigate concerns that variation in length
is directly attributable to the use of litigious words, we control for the number of litigious
words (\( \text{Lit Words} \)), scaled by the total number of words, following the dictionary proposed
by Loughran and McDonald (2011).

In our models, we control for a number of deal and company characteristics that drive
agency conflicts and the incentives for litigation and disclosure: offer size (\( \text{Offer Size} \));
whether the bidder is a company in the same industry (\( \text{Int – Ind Deal} \)); whether the
deal is a hostile bid or unsolicited offer (\( \text{Hostile} \)); whether there are multiple bidders
(Multiple Bidders); whether the bidder has a controlling toe-hold (Squeeze-Out); whether
the bidder has a significant toe-hold (Min Stake); whether the bid is a tender offer
(Tender Offer); whether the offer includes a termination fee (Term Fee); the percent-
age of cash consideration (Perc Cash); the number of forms SC 13E-3 amendments filed
(Deal Rev Filings); the firm ex ante litigation risk (Ex Ante Litigation Risk); the percent-
age takeover premium (Premium); the log of the firm’s total assets as of the most recent
fiscal year (Target Firm Size); the percentage of tangible assets relative total assets as of
the most recent fiscal year (Target Tangibility); the firm’s return on assets as of the most
recent fiscal year (ROA); the firm’s total debt, scaled by total assets, as of the most recent
fiscal year (Target Leverage); and an indicator variable is the deal was initiated post-SOX
(Post SOX). Our list of control variables follows previous studies by Bradley et al. (1988),
Bebchuk et al. (2001), Krishnan et al. (2012), Kim and Skinner (2012), and Servaes and
Zenner (1996). For additional details on the calculation of our variables, please see Ap-
pendix A. Our models include industry (Fama French 30) and year fixed effects in order
to address disclosure, litigation, and deal outcome differences across industries and time.
Standard errors are clustered at the industry level.

Following, we investigate whether the properties of disclosure and the incidence of liti-
gation are associated with the negotiation outcomes of going private transactions using the

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8These proxies reflect several elements of the going private process in the Dell Inc. case described in
Appendix C, such as alternative bidders, changes in offer price, and amendments to SEC filings.
9Prior studies model litigation risk with a combination of industry membership and firm characteristics,
such as market capitalization and stock volatility, and propose using the predicted probability of a 10b-5
lawsuit occurrence as an ex ante litigation risk measure (e.g., (Johnson et al., 2001; Rogers and Stocken, 2005;
Kim and Skinner, 2012; Billings and Cedergren, 2015). We control for the likelihood of litigation prior to the
transaction using the predicted value from the litigation prediction model in Kim and Skinner (2012). This
measure captures target stock returns, volatility, performance, industry and size. We believe this measure
is an important covariate that captures the litigation environment of the target over the 12 months prior to
the transaction.
following models:

\[
\text{Deal Outcome}_i = \alpha_i + \beta_1 \text{Length}_i + \beta_2 \text{Tone}_i + \omega \text{Deal Controls}_i + \gamma \text{Industry FE}_i \\
+ \gamma_2 \text{Year FE}_i + \epsilon_i.
\] (3)

\[
\text{Deal Outcome}_i = \alpha_i + \beta_1 \text{Length}_i + \beta_2 \text{Readability}_i + \beta_3 \text{Litigation Pre}_i + \beta_4 \text{Litigation Post}_i \\
+ \omega \text{Deal Controls}_i + \gamma \text{Industry FE}_i + \gamma_2 \text{Year FE}_i + \epsilon_i.
\] (4)

As mentioned before, we investigate three negotiation outcomes: (1) the likelihood of deal completion (Completed), (2) the likelihood of an offer price increase (Price Revision Up), and (3) the time to complete the deal (Deal Length) (i.e., natural logarithm of the number of days between a deal’s announcement and its resolution). Deal completion captures whether the acquirer closed the transaction successfully. The likelihood of a price revision captures a successful shareholder effort to increase compensation. The number of days between deal announcement and conclusion capture the negotiation’s length and complexity.

Finally, we investigate whether, after isolating the effect of litigation, the properties of disclosure are associated with the negotiation outcomes of going private transactions. For each disclosure property, we estimate Equation 3 separately for deals that faced (not faced) litigation using a simultaneous equations approach. We then compare the coefficients between the two separate samples. If disclosure and litigation are complementary disciplinary mechanisms, we expect no significant difference. However, if they are substitutes, we expect disclosure to be associated with the negotiation outcomes even when there is no litigation.
IV. DATA AND DESCRIPTIVE STATISTICS

Data

Our sample selection procedure is summarized on Table 1. Following prior studies, we begin constructing our sample by identifying 2,145 filings of an initial Form SC 13E-3 in the years from 1995 until 2014 (Engel et al., 2007; Leuz et al., 2008). We note a few important research design choices relevant to our sample selection. The Form SC 13E-3 filing requirement omits firms that may take some initial steps to go private (e.g., talks with private equity investors), but do not proceed with the transaction. Form SC 13E-3 gives the details of the going private deal. In addition, we diverge from prior studies by not conditioning our sample on filing SEC Form 15 and Form 25 indicating the termination of security registration. Our research questions examine the association between litigation, disclosure, and deal outcomes, regardless of whether the deal was completed. Conditioning on Form 15 and 25 truncates deals that were not successful. We instead rely on SDC Platinum’s classification of transactions that were completed or withdrawn.

We match each SC 13E-3 filing with Compustat and CRSP to calculate the Ex Ante Litigation Risk measure from Kim and Skinner (2012). We also match each observation to SDC Platinum’s M&A database to obtain transaction characteristics and outcomes. After conditioning on the requisite data for our control and outcome variables, we have 487 observations.\(^{10}\)

Next, we manually check whether each transaction was challenged through litigation. We use Lexis-Nexis, SEC filings, and Google news searches to identify whether there is

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\(^{10}\)We end our sample in 2014 to ensure we have adequate time post filing to observe ex post deal outcomes and litigation. We are only able to identify completion dates from SDC for our DealLength empirical tests for 427 observations. Our sample size is consistent with Engel et al. (2007) for the period in which our studies overlap. Engel et al. (2007) identified 343 going private transactions with requisite data in that period that match closely to our requirements, where we identify 312. Our sample is smaller because we require many deal characteristics from SDC. We differ from Leuz et al. (2008) because we do not include firms that are not required to file a Form SC 13E-3, such as firms not on national exchanges.
any indication of a lawsuit specifically triggered by the going private transaction. This procedure is consistent with prior studies involving M&A litigation (Krishnan et al., 2012). We identify 251 transactions with litigation, which represent roughly half of our sample. We next determine whether the litigation happened prior to or after the SC 13E-3 form is filed. Transaction-specific litigation is required to be disclosed in the SC 13E-3 form, so we search each disclosure text document for the terms “lawsuit”, “derivative”, and “class action.” For each match, we read the document to determine whether the matched term refers to litigation challenging the going private transaction. We identify 177 cases of litigation occurring prior to disclosure, and 74 cases of litigation occurring after disclosure.11 Typically Form SC 13E-3 discusses pending litigation in a separate sub-section, following is an example of a shareholder litigation disclosure from the SC 13E-3 of Mycogen Corp.:

“In early May 1998, seven putative class action lawsuits were filed in the Superior Court of California for the County of San Diego by various alleged shareholders of the Company (the "plaintiffs") against the Company and the individual directors of the Company (the "defendants"), Parent and TDCC, purportedly on behalf of themselves and a putative class of all other shareholders of the Company, excluding the defendants and any affiliates of the defendants. These cases have been consolidated by the court under the lead case of LESLIE SUSSER V. MYCOGEN CORP., ET AL., Case No. 720255. Each of the class action complaints alleged in substance that the original acquisition price of $20.50 proposed by Parent was inadequate and that it would be a breach of the defendants’ fiduciary duties to the plaintiffs and the members of the putative class to agree to an acquisition at that price. The defendants deny all of these allegations. The lawsuits seek an injunction against the acquisition by Parent, damages and an award of attorneys’ fees and expenses.”

11We rely on public data sources for our identification of litigation cases. We are unaware of a reliable and comprehensive database with information about the claims, plaintiffs, law firms, settlements, and other details about each case.
Finally, we read each Form SC 13E-3 to determine whether the required information was disclosed within the filing, or it was incorporated by reference. Firms are allowed to disclose the information required in accordance with Rule 13e-3 in other filings, such as proxy statements and tender offer documents. If they elect this option, they must identify the exact filing that contains the required disclosure.\textsuperscript{12} We download the text file that contains the going private disclosure for each transaction and use it to calculate our textual measures.

**Descriptive Statistics**

Table 2 presents the descriptive statistics for our sample. Consistent with anecdotal evidence, a large number of going private transactions are the target of litigation (51.5\% in our sample). Most litigation occurs prior to filing the SEC form SC 13E-3 (36.3\% as opposed to after 15.2\%). Further, 28.7\% of firms raise the purchase price during negotiations, and 84.4\% of deals are completed. Going private disclosures are lengthy and typically have a negative tone. The natural log of the average length of the mandatory disclosure (\textit{Disc Length}) is 10.697, which corresponds to approximately 50,000 words. The disclosure tone is $-0.550$, consistent with studies that examine 10-K tone (Loughran and McDonald, 2011). The average deal size is small, approximately $82.1$ million for our sample, but is consistent with prior going private studies (Engel et al., 2007; Leuz et al., 2008). Finally, a typical deal has between four and five revisions to Form SC 13-E3 (mean 4.602), reflecting changes to the terms of the deal as the negotiation process unfolds.

Figure 1 displays the number of going private transactions and the number of going private transactions that were litigated over time. The majority of going private activity occurs around the turn of the century. However, the likelihood of the transactions being challenged by litigation increases significantly over time. After 2010, the majority of deals are litigated. Figure 2 also demonstrates that after 2004 the timing of litigation shifted earlier, before firms

\textsuperscript{12}In our sample, the majority of firms make the required disclosure in a preliminary proxy statement (e.g. PREM 14A, PRE 14A, etc.).
issue the going private disclosure. This highlights the relevance and dynamics of litigation in the going private transaction landscape as well as the importance of understanding the role of disclosure when companies face litigation in going private transactions.

Table 3 presents initial evidence, based on univariate correlations, that disclosure length is positively related to pre-filing litigation but negatively related to post-filing regulation. Disclosure tone has the opposite correlations with pre- and post-filing litigation. However, the opposite signs may be partially attributable to a negative correlation between disclosure length and tone. Regarding the characteristics of the negotiation process, we find a positive correlation between disclosure length and the number of days to complete the deal.

Table 4 shows a partition of our sample in observations with pre-filing litigation (Column A), post-filing litigation (Column B), and no-litigation (Column C). Compared to the no-litigation, the pre-filing litigation sample has a comparatively higher incidence of price revisions (0.395) and is comprised of deals that take longer to complete (5.124), with longer disclosures (10.958), and more negative tone (−6.53), these differences are statistically significant (p < 0.01).

V. RESULTS

Pre-Filing Litigation and Disclosure

Table 5 shows results from testing our first research question, namely whether pre-filing litigation affects disclosure properties when firms go private. Column (1) indicates a positive and significant association between pre-filing litigation and disclosure length (coefficient =0.248, p <0.01). This finding suggests that legal scrutiny prompts managers to be more forthcoming in their disclosures. Other variables significantly and positively associated with the length of disclosure are the relative number of litigious words in the filing, the size of the offer, the existence of a termination fee, and the size of the premium. Also, the disclosure
length increases significantly following the passage of SOX. On the other hand, variables that are significantly and negatively associated with the length of disclosure are the tender offer indicator and the percentage of cash consideration.

Column (2) examines the association between pre-filing litigation and the tone of disclosure. We find a negative and significant association (coefficient = $-0.110$, p $<0.01$), suggesting that legal scrutiny impacts insiders’ use of optimistic language in narrative disclosure. This result is consistent with the findings of Rogers et al. (2011) that optimistic language can increase litigation risk. The tone of disclosures is also negatively and significantly associated with the relative share of litigious words, the ex ante litigation risk, and the leverage of the target firm. In contrast, tone is positively associated with the size of the premium.

**Disclosure and Post-Filing Litigation**

Table 6 shows the results from testing our second research question, namely whether disclosure properties are associated with the incidence of subsequent litigation. Column (1) shows the association between disclosure length and litigation. Column (2) presents the relation between tone litigation. Finally, Column (3) includes both disclosure properties, length and tone, in the same regression. Columns (1) and (3) indicate that longer disclosures are negatively and significantly associated with the likelihood of litigation (Coefficients $=-0.343$ and $-0.331$, corresponding to untabulated odds ratios $=0.710$ and $0.718$, p $<0.05$). Thus, firms might be able to minimize subsequent litigation risk by providing additional details. However, we do not find a significant relation between tone and litigation either in Column (2) or in Column (3). In all three columns, the probability of litigation is positively and significantly associated with the offer size, the presence of a termination fee, and the ex ante litigation risk. This probability also significantly increases for hostile offers and following the passage of SOX. The probability of litigation is significantly lower for tender offer bids,
when the target is larger and more levered, and when the deal has a larger premium.

Taken together, these results suggest that disclosure properties, and particularly the volume of disclosure, are significantly associated with litigation in going private transactions. Further, the direction of the association between litigation and disclosure length depends on the timing of litigation relative to the filing of the initial Form SC 13E-3.

**Disclosure, Litigation and Deal Outcomes**

Table 7 shows the findings from testing our third research question on the relation between disclosure properties and characteristics of the negotiation process. Columns (1) through (3) show the relation without controlling for the timing of the litigation relative to the filing. Columns (4) through (6) include controls for the timing of litigation pre-filing and after-filing.

Overall, our results indicate a positive association between disclosure length and the likelihood of completing a deal, regardless of whether we control for the timing of litigation. The probability of deal completion is also positively associated with the size of the offer, the association of both companies with the same industry and the presence of a termination fee. The deal is more likely to be completed also if the bid is a squeeze-out or a tender offer. The deal is less likely to be completed when it is a hostile offer or there are multiple bidders. The target’s profitability and leverage also decrease the likelihood of deal completion. Finally, the probability of deal completion decreases significantly following the passage of SOX.

While providing more information seems to increase the chances of completing the deal, more extensive disclosures are associated with a comparatively more intense negotiation process. Disclosure length is associated positively and significantly with the likelihood of offer price increases and the length of time to complete a deal. These relations hold even after controlling for pre- and post-filing litigation. In addition to the properties of disclosure a number of other factors are associated with the likelihood of an upward price revision. It becomes more likely with a larger size of the offer, for hostile bids, and those that involve
multiple bidders, for squeeze-outs and min stakes. Upward price revisions are also comparatively more likely when cash represents a higher percentage of the compensation and are associated with more filings. Target characteristics, including tangibility and leverage, are also positively associated with the probability of an upward price revision. It takes longer to complete the deal for larger size offers, for squeeze outs and larger target leverage. The target and bidder being in the same industry decreases the time to complete the deal, as does the case when the deal is a tender offer. It takes significantly less time to complete the deal post-SOX.

In contrast, we find only some evidence that disclosure optimism is associated with deal outcomes. Tone is significantly and positively associated only with the time it takes to complete the deal (Column 3, coefficient = 0.226, p <0.05). The relationship holds after controlling for the timing of litigation as well (Column 6, coefficient = 0.271, p <0.01).

Does Disclosure Matter More or Less When a Transaction Faces Litigation?

In Table 8, we examine whether disclosure matters incrementally to litigation for the negotiation process by partitioning the sample in deals with and without litigation (both pre- and after-filing). First, in Panel A, Columns (1) to (4) we find that disclosure length has a comparatively stronger positive association with the likelihoods of deal completion and upwards price revision when there is no litigation (Coefficients = 1.530 and 1.598 in Columns 2 and 4, respectively). Second, Columns (5) and (6) show that the positive association between disclosure length and deal length is only significant in deals with lawsuits. Third, we find some evidence that tone is associated with the time to complete a deal when there is no litigation (Column 6). Panel B shows that the differences in coefficients between the litigation and no-litigation samples are statistically significant. Overall, these results suggest that disclosure plays an independent disciplinary role in going private transactions, incremental to litigation.
VI. ADDITIONAL ANALYSES

Additional Disclosure Properties

Finally, in Table 9 we control for two more features of disclosure, its readability or complexity, measured using the Fog Index, and the number of forward looking sentences. This Table shows results for the association between the properties of disclosure, litigation, and the outcomes of the negotiation process. We explore additional disclosure attributes because they may also be relevant to going private transaction outcomes. Readability has been shown to influence investor information processing costs, particularly for outsiders and small investors (Lawrence, 2013). Further, investors could perceive less readable disclosure as managers attempting to obfuscate the information to make it less useful. Next, litigation risk may discourage firms from disclosing forward-looking information, because the legal system may not effectively distinguish between forecast uncertainty and bias (Johnson et al., 2001; Baginski et al., 2002; Rogers and Van Buskirk, 2009). However, greater levels of forward-looking information may inform investors as to the fairness of the transaction price.

Our results on disclosure length and tone remain consistent in sign and statistical significance with the results from the main analysis. We find some evidence that our alternative disclosure proxies are related to deal outcomes. The number of forward-looking sentences is positively associated with the likelihood of deal completion and negatively associated with deal length (Columns 1 and 3). This is consistent with the notion that providing more value-relevant information can inform investors more efficiently. The Fog Index is only positively associated with deal length (Column 3), consistent with less readable information adding to the information processing costs of investors.
VII. CONCLUSION

Going private transactions face agency conflicts resulting from concentrating ownership in the hands of insiders. The offer to take the company private often comes from existing managers running the company in combination with blockholders, which have access to private information. The dispersed (minority) shareholders selling their shares rely on the fiduciary duty of existing managers and directors to ensure they are fairly compensated. Resulting from these conflicts, going private transactions are subject to deal-specific SEC filings (Form SC 13E-3) and have a high incidence of litigation.

We focus on litigation and disclosure choices and study firms that have signaled their commitment to go private by filing the SEC mandatory disclosure. More specifically, we examine the links between disclosure, litigation, and the negotiation outcomes of going private transactions. Going private deals provide an interesting setting to examine the consequences of transaction-specific disclosure in a highly litigious environment, and also to determine how litigation and disclosure combined influence economic outcomes.

First, we document a trade-off between disclosure and litigation. When litigation occurs before filing with the SEC, disclosure is comparatively longer and less optimistic. In contrast, if litigation has not occurred, there is a negative association between the length of disclosure and subsequent litigation. Taken together, these results suggest that disclosure properties, and particularly the volume of disclosure, are significantly associated with litigation in going private transactions. Notably, the direction of the association between litigation and disclosure length is dependent upon the timing of litigation relative to the filing of the initial Form SC 13E-3.

Second, the length of disclosure is positively related to the likelihood of deal completion, the likelihood of an offer price increase, and the time to complete the deal. These relations hold even after controlling for pre- and post-filing litigation. We also examine whether disclo-
sure matters incrementally to litigation for the negotiation process, partitioning the sample in deals with and without litigation (both pre- and after-filing). We find that disclosure plays an independent disciplinary role in going private transactions, incremental to litigation.

Overall, our results suggest that companies providing more information have comparatively higher chances of completing a going private transaction; however, these companies undergo a lengthier negotiation process.

This study contributes to prior studies that examine the trade-offs involved in going private transactions. We also contribute to the literature on disclosure and litigation and extend prior studies on shareholder litigation and M&A transactions. Finally, we extend our understanding of textual properties of transaction-specific filings and their economic consequences.
References


## Appendix A: Variable Definitions

This table provides the definitions of the variables used in our empirical analyses.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Definition</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disc Length</td>
<td>The natural log of the number of words in the going private disclosure filing.</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Tone</td>
<td>The number of positive words less the number of negative words, scaled by the total number of words, in the going private disclosure filing. The positive and negative word list follows Loughran and McDonald (2011).</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Fog Index</td>
<td>The Gunning Fog Index of the going private disclosure filing which is computed as follows: ( .4 \times \left( \frac{\text{number of words}}{\text{number of sentences}} \right) + .4 \times \left( \frac{\text{number of words with more than two syllables}}{\text{number of words}} \right) ).</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>FLS</td>
<td>The number of forward looking sentences scaled by the total number of sentences in each going private disclosure filing using the word list from Muslu et al. (2014).</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Lit Words</td>
<td>The number of litigious words scaled by the total number of words in the going private disclosure filing. The litigious word list follows Loughran and McDonald (2011).</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Litigation Pre Filing</td>
<td>An indicator variable equal to one if the going-private transaction is challenged through litigation prior to the filing of the going private disclosure, and zero otherwise.</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Litigation After Filing</td>
<td>An indicator variable equal to one if the going-private transaction is challenged through litigation after the filing of the going private disclosure, and zero otherwise.</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Litigation</td>
<td>An indicator variable equal to one if the going-private transaction is challenged through litigation, and zero otherwise.</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Completed</td>
<td>An indicator variable equal to one if the going private transaction is successfully completed, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Price Revision Up</td>
<td>An indicator variable equal to one if the share price offered for the target is increased from the initial offer for the going private transaction, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Deal Length</td>
<td>The natural log of the number of days between the initial offer and the deal completion or abandonment date.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Offer Size</td>
<td>The natural log of the total consideration paid by the acquirer for the target, less fees and expenses.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Int-Ind Deal</td>
<td>An indicator variable equal to one when the bidder is associated with the same Fama-French 30 industry, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Variable</td>
<td>Definition</td>
<td>Source</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Hostile</td>
<td>An indicator variable equal to one for hostile bids and unsolicited offers, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Multiple-Bidders</td>
<td>An indicator variable equal to one if there are competing offers associated with the going private transaction, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Squeeze-Out</td>
<td>An indicator variable equal to one if the bidder has a toe-hold of 50% or greater in the target firm before the announcement date, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Min Stake</td>
<td>An indicator variable equal to one if the bidder has a toe-hold of at least 5%, but no more than 50%, in the target firm before the announcement date, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Tender Offer</td>
<td>An indicator variable equal to one if the going private bid was a tender offer, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Term Fee</td>
<td>An indicator variable equal to one if there is a provision in the transaction agreement that required the target to pay the bidder a termination fee, and zero otherwise.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Perc Cash</td>
<td>The percentage of total offer consideration that is in cash.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Deal Rev Filings</td>
<td>The number of amended Form SC 13E-3 (SC 13-E3/A) filings associated with the going private transaction.</td>
<td>Self-constructed</td>
</tr>
<tr>
<td>Ex Ante Litigation Risk</td>
<td>The predicted value from the litigation determinants model (Model 2 of Table 7) from Kim and Skinner (2012). This measure is calculated as of the Form SC 13E-3 filing date.</td>
<td>CRSP, Compustat, and SCAC</td>
</tr>
<tr>
<td>Premium</td>
<td>The takeover premium (%) associated with the going private transaction. This corresponds to the offered price per share, less the price per share 1 day prior to the transaction announcement, scaled by the price per share 1 day prior to the announcement.</td>
<td>SDC Platinum and hand collected</td>
</tr>
<tr>
<td>Target Firm Size</td>
<td>The natural log of the total assets for the target firm as of the most recent fiscal year ended prior to the going private transaction announcement.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Target Tangibility</td>
<td>The percentage of tangible assets relative to total assets for the target firm as of the most recent fiscal period ended prior to the going private transaction announcement.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>ROA</td>
<td>The net income of the target scaled by the target’s total assets as of the most recent fiscal year ended prior to the going private transaction announcement.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Target Leverage</td>
<td>The total debt divided by the total assets for the target firm as of the most recent fiscal year ended prior to the going private transaction announcement.</td>
<td>SDC Platinum</td>
</tr>
<tr>
<td>Post Sox</td>
<td>An indicator variable equal to one if the transaction announcement occurs after 2004, and zero otherwise.</td>
<td>Self-constructed</td>
</tr>
</tbody>
</table>

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Appendix B: Going Private Disclosure Requirements and Filings

In this Appendix, we describe the required disclosures associated with going-private transactions (governed under Rule 13-E3). A Rule 13E-3 transaction is defined as follows:

- A purchase of any equity security by the issuer of such security or by an affiliate of such issuer
- A tender offer for or request or invitation for tenders of any equity security made by the issuer of such class of securities or by an affiliate of such issuer
- A solicitation by the issuer of the class of securities or by an affiliate of such issuer, in connection with: a merger, consolidation, reclassification, recapitalization, reorganization or similar corporate transaction of an issuer or between an issuer (or its subsidiaries) and its affiliate; a sale of substantially all the assets of an issuer to its affiliate or group of affiliates; or a reverse stock split of any class of equity securities of the issuer involving the purchase of fractional interests.

Where the definition of an affiliate of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. The SEC requires that each firm undergoing a “going private” transaction must file a Form SC 13E-3. This intent of this schedule is to establish a minimum threshold of required disclosures associated with these transactions. In general, the Form SC 13E-3 is mandated to be filed in association with the following:

- At the time of the release of a Preliminary or Definitive Proxy Statement (e.g. PREM14A, DEF14A, etc.)
- At the time of the release of a Registration Statement
- At the time of the release of a Tender Offer
- At least 30 days before the purchase of securities subject to Rule 13-E3.

The Form SC 13E-3 can reference the aforementioned associated documents (provided they are released prior to or simultaneously with the Form SC 13E-3). At a minimum, the Form SC 13E-3 (or document incorporated by reference) must disclose the following:

- Item 1. Summary Term Sheet
- Item 2. Subject Company Information
- Item 3. Identity and Background of the Filing Person

For our sample, if the Form SC 13E-3 incorporates disclosure by reference to another document, we use the other document as the going private disclosure with which we measure our textual characteristics.
• Item 4. Terms of the Transaction
• Item 5. Past Contacts, Transactions, Negotiations and Agreements
• Item 6. Purposes of the Transaction and Plans or Proposals
• Item 7. Purposes, Alternative, Reasons and Effects
• Item 8. Fairness of the Transaction
• Item 9. Reports, Opinions, Appraisals and Negotiations
• Item 10. Source and Amounts of Funds or Other Consideration
• Item 11. Interest in Securities of the Subject Company
• Item 12. The Solicitation or Recommendation
• Item 13. Financial Statements
• Item 14. Persons/Assets, Retained, Employed, Compensated or Used
• Item 15. Additional Information
• Item 16. Exhibits
Appendix C: Example of a Going Private Timeline - Dell, Inc.

For illustration purposes, we summarize the main facts about a going private transaction that involved Dell Inc., which attracted considerable media attention and was the subject of multiple lawsuits. In July 2012, Michael Dell, founder and largest shareholder of Dell Inc., discussed with Silver Lake Partners, a private investment fund, the opportunity to take the company private, after Southeastern Asset Management (one of the stockholders of the company) pitched him the idea a month before. On August 14, Mr. Dell informed Mr. Mandl, the lead independent director of the company, that he was exploring the possibility of a transaction to take Dell Inc. private. On August 17, Mr. Mandl informed the Board of Dell Inc. and asked the advice of a Delaware counsel firm. On August 20, the Board of Dell Inc. authorized the formation of a Special committee to make a recommendation with respect to the proposed transaction. A couple of months later, on January 11, 2013, media reported the existence of a possible going private transaction. On February 3, Silver Lake, together with Mr. Dell and pool of other investors, including Microsoft Corp. submitted a non-binding proposal with a price of $13.60, which included a premium of 25% above the closing price on January 11, 2013. On February 4, the Special committee recommended that the Board approve the merger agreement. The financial advisor, J.P. Morgan, also rendered its opinion that the proposed merger was fair. The day after, the Board approved unanimously the transaction with a 45 day clause to go shop for other offers and with a higher price of $13.65 per share. Prior to and following the announcement of the execution of the merger agreement, 25 lawsuits challenging the proposed going private transactions were filed. During the go shop window, a group affiliated with Blackstone Group L.P. and activist Carl C. Icahn filed two alternative acquisition proposals. On March 29, Dell Inc. filed a preliminary Form SC 13E-3, which was followed by five subsequent revisions. On April 18, Blackstone withdrew its bid. Later, on September 9, also Carl C. Icahn dropped his bid. Finally, on September 12, the company's stockholders voted to approve a proposal to adopt the Merger Agreement. On October 10, Dell Inc. filed with the SEC the final Form SC 13E-3 with updated terms, including a final price of $13.75 per share. On October 29, Dell filed a Form 25-NSE to delist its securities from exchange and on November 11 Dell Inc. eventually filed a Form 15-12G to terminate registration. Among the 25 lawsuits, the last one to be dismissed by the Delaware Supreme Court (Appraisal of Dell Inc., case number 9322) was a consolidated "appraisal" class of 13 petitioners, including T. Rowe Price & Associates, Inc., Magnetar Capital Master Fund Ltd., and Global Continuum Fund, Ltd., that challenges the price offered by Silver Lake Partners, claiming that the fair value of Dell Inc. at the time of the merger was $17.62 per share, or $3.87 per share more than the merger consideration and generating a gross common fund of $25,225,145 for the plaintiffs.
The figure reports the number of going private deals, and the number of going private deals facing litigation for each year of the study.
Figure 2: Going Private Litigation Timing Relative to Disclosure Over Time

The figure reports the number of transactions facing litigation prior to and after the target’s going private disclosure for each year of the study.
Table 1: Sample Selection

<table>
<thead>
<tr>
<th>Description</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unique Form SC 13E-3s filed between 1995-2014</td>
<td>2,145</td>
</tr>
<tr>
<td>Less missing market or fundamental data for ex ante litigation measure following Kim and Skinner (2012)</td>
<td>-1,315</td>
</tr>
<tr>
<td>Less missing from SDC</td>
<td>-148</td>
</tr>
<tr>
<td>Less missing SDC requisite data</td>
<td>-195</td>
</tr>
<tr>
<td>Going private sample</td>
<td>487</td>
</tr>
</tbody>
</table>

This table shows the construction of the going private transaction sample.
Table 2: Descriptive Statistics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>SD</th>
<th>P25</th>
<th>Median</th>
<th>P75</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation Pre Filing</td>
<td>0.363</td>
<td>0.481</td>
<td>0.000</td>
<td>0.000</td>
<td>1.000</td>
</tr>
<tr>
<td>Litigation After Filing</td>
<td>0.152</td>
<td>0.359</td>
<td>0.000</td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
<td>Price Revision Up</td>
<td>0.287</td>
<td>0.453</td>
<td>0.000</td>
<td>0.000</td>
<td>1.000</td>
</tr>
<tr>
<td>Deal Length</td>
<td>4.934</td>
<td>0.838</td>
<td>4.605</td>
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</tr>
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</tr>
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<td>0.121</td>
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<td>0.181</td>
</tr>
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<td>5.955</td>
</tr>
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<td>0.483</td>
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<td>0.000</td>
<td>1.000</td>
</tr>
<tr>
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<td>0.000</td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
<td>Multiple Bidders</td>
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<td>0.000</td>
<td>0.000</td>
<td>0.000</td>
</tr>
<tr>
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<td>0.232</td>
<td>0.423</td>
<td>0.000</td>
<td>0.000</td>
<td>0.000</td>
</tr>
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<td>Min Stake</td>
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<td>0.000</td>
<td>0.000</td>
</tr>
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</tr>
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<td>0.474</td>
<td>0.000</td>
<td>0.000</td>
<td>1.000</td>
</tr>
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<td>1.000</td>
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<td>3.000</td>
<td>4.000</td>
<td>6.000</td>
</tr>
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<td>3.630</td>
<td>4.314</td>
<td>5.084</td>
</tr>
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<td>0.332</td>
<td>0.170</td>
<td>0.307</td>
<td>0.474</td>
</tr>
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<td>1.740</td>
<td>4.250</td>
<td>5.143</td>
<td>6.546</td>
</tr>
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<td>Target Tangibility</td>
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<td>0.357</td>
<td>0.075</td>
<td>0.301</td>
<td>0.555</td>
</tr>
<tr>
<td>ROA</td>
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<td>0.177</td>
<td>−0.026</td>
<td>0.025</td>
<td>0.061</td>
</tr>
<tr>
<td>Target Leverage</td>
<td>0.188</td>
<td>0.225</td>
<td>0.000</td>
<td>0.095</td>
<td>0.308</td>
</tr>
<tr>
<td>Post SOX</td>
<td>0.318</td>
<td>0.466</td>
<td>0.000</td>
<td>0.000</td>
<td>1.000</td>
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<td>Observations</td>
<td>487</td>
<td></td>
<td></td>
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</table>

This table presents descriptive statistics for variables used in the empirical analyses. Descriptive statistics are calculated whenever there is non-missing data available. All continuous variables are winsorized at the 1% and 99% levels. Variable definitions are available in Appendix A.
Table 3: Correlation Table

<table>
<thead>
<tr>
<th>Lit Pre</th>
<th>Lit Af-</th>
<th>Price Rev Up</th>
<th>Deal Length</th>
<th>Completed/Disc.</th>
<th>Time</th>
<th>Size</th>
<th>Leverage</th>
<th>Perm-</th>
<th>Target ROA</th>
<th>Target Size</th>
<th>Target Leverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation Pre Filing</td>
<td>0.06</td>
<td>&lt;0.10</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
</tr>
<tr>
<td>Litigation After Filing</td>
<td>&lt;0.10</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
<td></td>
</tr>
<tr>
<td>Deal Length</td>
<td>0.26</td>
<td>&lt;0.10</td>
<td>0.02</td>
<td>0.54</td>
<td>&lt;0.28</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
</tr>
<tr>
<td>Completed</td>
<td>0.05</td>
<td>&lt;0.10</td>
<td>0.00</td>
<td>0.39</td>
<td>&lt;0.28</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
</tr>
<tr>
<td>Size</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>0.06</td>
<td>0.39</td>
<td>&lt;0.28</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
</tr>
<tr>
<td>Leverage</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>0.06</td>
<td>0.39</td>
<td>&lt;0.28</td>
<td>1.00</td>
<td>0.06</td>
<td>&lt;0.30</td>
<td>1.00</td>
<td>0.15</td>
<td>&lt;0.30</td>
</tr>
</tbody>
</table>

This table presents the Pearson correlation table for the complexity measures and deal outcome variables. Correlation statistical significance is denoted by * for significance at the 5% level and ** for significance at the 1% level. Variable definitions are available in Appendix A.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Litigation Pre Mean</th>
<th>Litigation After Mean</th>
<th>No Litigation Mean</th>
<th>Litigation Pre v No Litigation Diff. in Means</th>
<th>Litigation After v No Litigation Diff. in Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price Revision Up</td>
<td>0.395</td>
<td>0.270</td>
<td>0.212</td>
<td>0.184***</td>
<td>0.058</td>
</tr>
<tr>
<td>Deal Length</td>
<td>5.124</td>
<td>4.933</td>
<td>4.777</td>
<td>0.347***</td>
<td>0.156</td>
</tr>
<tr>
<td>Completed</td>
<td>0.864</td>
<td>0.811</td>
<td>0.839</td>
<td>0.025</td>
<td>−0.028</td>
</tr>
<tr>
<td>Disc Length</td>
<td>10.958</td>
<td>10.484</td>
<td>10.568</td>
<td>0.391***</td>
<td>−0.083</td>
</tr>
<tr>
<td>Tone</td>
<td>−0.653</td>
<td>−0.484</td>
<td>−0.494</td>
<td>−0.159***</td>
<td>0.010</td>
</tr>
<tr>
<td>FLS</td>
<td>0.156</td>
<td>0.144</td>
<td>0.149</td>
<td>0.007</td>
<td>−0.005</td>
</tr>
<tr>
<td>Fog Index</td>
<td>22.764</td>
<td>21.272</td>
<td>21.304</td>
<td>1.460***</td>
<td>−0.032</td>
</tr>
<tr>
<td>Lit Words</td>
<td>1.871</td>
<td>1.556</td>
<td>1.725</td>
<td>0.145**</td>
<td>−0.169*</td>
</tr>
<tr>
<td>Offer Size</td>
<td>5.295</td>
<td>4.776</td>
<td>3.918</td>
<td>1.376***</td>
<td>0.858***</td>
</tr>
<tr>
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<td>0.350</td>
<td>0.297</td>
<td>0.407</td>
<td>−0.056</td>
<td>−0.109</td>
</tr>
<tr>
<td>Hostile</td>
<td>0.102</td>
<td>0.108</td>
<td>0.051</td>
<td>0.051</td>
<td>0.057</td>
</tr>
<tr>
<td>Multiple Bidders</td>
<td>0.124</td>
<td>0.081</td>
<td>0.102</td>
<td>0.023</td>
<td>−0.021</td>
</tr>
<tr>
<td>Squeeze-Out</td>
<td>0.215</td>
<td>0.257</td>
<td>0.237</td>
<td>−0.023</td>
<td>0.019</td>
</tr>
<tr>
<td>Min Stake</td>
<td>0.266</td>
<td>0.203</td>
<td>0.195</td>
<td>0.071</td>
<td>0.008</td>
</tr>
<tr>
<td>Tender Offer</td>
<td>0.186</td>
<td>0.297</td>
<td>0.292</td>
<td>−0.106*</td>
<td>0.005</td>
</tr>
<tr>
<td>Term Fee</td>
<td>0.429</td>
<td>0.419</td>
<td>0.246</td>
<td>0.184***</td>
<td>0.173**</td>
</tr>
<tr>
<td>Perc Cash</td>
<td>0.891</td>
<td>0.896</td>
<td>0.878</td>
<td>0.014</td>
<td>0.018</td>
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<tr>
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<td>5.068</td>
<td>4.182</td>
<td>0.784**</td>
<td>0.885*</td>
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<tr>
<td>Ex Ante Litigation Risk</td>
<td>4.559</td>
<td>4.588</td>
<td>4.261</td>
<td>0.298**</td>
<td>0.327**</td>
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<tr>
<td>Premium</td>
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<td>0.346</td>
<td>0.398</td>
<td>−0.020</td>
<td>−0.052</td>
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<tr>
<td>Target Firm Size</td>
<td>5.938</td>
<td>5.496</td>
<td>5.075</td>
<td>0.863***</td>
<td>0.420</td>
</tr>
<tr>
<td>Target Tangibility</td>
<td>0.254</td>
<td>0.309</td>
<td>0.302</td>
<td>−0.048</td>
<td>0.008</td>
</tr>
<tr>
<td>ROA</td>
<td>−0.025</td>
<td>−0.009</td>
<td>−0.007</td>
<td>−0.018</td>
<td>−0.002</td>
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<tr>
<td>Target Leverage</td>
<td>0.217</td>
<td>0.153</td>
<td>0.177</td>
<td>0.040</td>
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</tr>
<tr>
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<td>0.429</td>
<td>0.419</td>
<td>0.203</td>
<td>0.226***</td>
<td>0.216***</td>
</tr>
</tbody>
</table>

Observations 177  74  236  413  310

This table presents descriptive statistics for variables used in the empirical analyses partitioned by whether the deal resulted in litigation or not and the timing of the litigation. Descriptive statistics are calculated whenever there is non-missing data available. All continuous variables are winsorized at the 1% and 99% levels. Variable definitions are available in Appendix A.
Table 5: Litigation Prior to Going Private Disclosure

<table>
<thead>
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<th></th>
<th>(1)</th>
<th>(2)</th>
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</thead>
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<td>Disc Length</td>
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<td>−0.110***</td>
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<tr>
<td></td>
<td>(4.59)</td>
<td>(−5.35)</td>
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<tr>
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<td>−0.259***</td>
</tr>
<tr>
<td></td>
<td>(5.11)</td>
<td>(−11.98)</td>
</tr>
<tr>
<td>Offer Size</td>
<td>+0.075***</td>
<td>−0.003</td>
</tr>
<tr>
<td></td>
<td>(3.12)</td>
<td>(−0.42)</td>
</tr>
<tr>
<td>Int-Ind Deal</td>
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<td>0.013</td>
</tr>
<tr>
<td></td>
<td>(−0.37)</td>
<td>(0.51)</td>
</tr>
<tr>
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<td>−0.027</td>
</tr>
<tr>
<td></td>
<td>(0.34)</td>
<td>(−0.75)</td>
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<tr>
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</tr>
<tr>
<td></td>
<td>(−1.62)</td>
<td>(0.04)</td>
</tr>
<tr>
<td>Squeeze-Out</td>
<td>−0.152</td>
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</tr>
<tr>
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<td>(−1.64)</td>
<td>(0.66)</td>
</tr>
<tr>
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</tr>
<tr>
<td></td>
<td>(−0.60)</td>
<td>(0.84)</td>
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<tr>
<td>Tender Offer</td>
<td>−0.133*</td>
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<tr>
<td></td>
<td>(−1.76)</td>
<td>(−0.12)</td>
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<tr>
<td>Term Fee</td>
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<td>−0.024</td>
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<tr>
<td></td>
<td>(2.22)</td>
<td>(−1.53)</td>
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<tr>
<td>Perc Cash</td>
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<td>−0.034</td>
</tr>
<tr>
<td></td>
<td>(−3.41)</td>
<td>(−1.01)</td>
</tr>
<tr>
<td>Deal Rev Filings</td>
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<td>−0.005</td>
</tr>
<tr>
<td></td>
<td>(0.30)</td>
<td>(−1.20)</td>
</tr>
<tr>
<td>Ex Ante Litigation Risk</td>
<td>0.023</td>
<td>−0.026*</td>
</tr>
<tr>
<td></td>
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<td>(−2.01)</td>
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<td>Premium</td>
<td>+0.210***</td>
<td>0.060***</td>
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<td>(3.42)</td>
<td>(2.94)</td>
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<td>Target Firm Size</td>
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<td>0.016</td>
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<tr>
<td></td>
<td>(−0.71)</td>
<td>(1.24)</td>
</tr>
<tr>
<td>Target Tangibility</td>
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<td>−0.053</td>
</tr>
<tr>
<td></td>
<td>(−0.22)</td>
<td>(−1.15)</td>
</tr>
<tr>
<td>ROA</td>
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<td>0.133</td>
</tr>
<tr>
<td></td>
<td>(−1.55)</td>
<td>(1.43)</td>
</tr>
<tr>
<td>Target Leverage</td>
<td>−0.003</td>
<td>−0.094**</td>
</tr>
<tr>
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<td>(−0.02)</td>
<td>(−2.24)</td>
</tr>
<tr>
<td>Post SOX</td>
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<td>−0.094</td>
</tr>
<tr>
<td></td>
<td>(4.14)</td>
<td>(−0.82)</td>
</tr>
</tbody>
</table>

|                      | (1)       | (2)       |
| Industry FEs         | Yes       | Yes       |
| Fyear FEs            | Yes       | Yes       |
| Adj. R²              | .22       | .31       |
| Observations         | 487       | 487       |

* t statistics in parentheses
* p<0.10, ** p<0.05, *** p<0.01

This table presents the OLS regression results examining whether disclosure properties of required going-private filings are associated with transaction litigation when the transaction litigation occurs prior to disclosure. We examine two properties of disclosure as dependent variables – the length (Disc Length) and the tone (Tone) of the Form SC 13-E3 (or referenced filing), respectively. In all specifications, the independent variable is a binary variable equal to one when the deal observation is challenged by shareholder litigation prior to the mandatory disclosure, and zero otherwise. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.
Table 6: Litigation After Going Private Disclosure

<table>
<thead>
<tr>
<th></th>
<th>(1) Litigation After Filing</th>
<th>(2) Litigation After Filing</th>
<th>(3) Litigation After Filing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disc Length</td>
<td>-0.343**</td>
<td>-0.331**</td>
<td></td>
</tr>
<tr>
<td>(−2.03)</td>
<td></td>
<td>(−2.00)</td>
<td></td>
</tr>
<tr>
<td>Tone</td>
<td></td>
<td>0.361</td>
<td>0.225</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.52)</td>
<td>(0.35)</td>
</tr>
<tr>
<td>Lit Words</td>
<td>−0.584</td>
<td>−0.691</td>
<td>−0.547</td>
</tr>
<tr>
<td></td>
<td>(−1.20)</td>
<td>(−1.22)</td>
<td>(−1.10)</td>
</tr>
<tr>
<td>Offer Size</td>
<td>0.467***</td>
<td>0.444***</td>
<td>0.475***</td>
</tr>
<tr>
<td></td>
<td>(3.42)</td>
<td>(2.86)</td>
<td>(3.39)</td>
</tr>
<tr>
<td>Int-Ind Deal</td>
<td>−0.377</td>
<td>−0.407</td>
<td>−0.361</td>
</tr>
<tr>
<td></td>
<td>(−1.10)</td>
<td>(−1.25)</td>
<td>(−1.06)</td>
</tr>
<tr>
<td>Tender Offer</td>
<td>−0.669***</td>
<td>−0.621***</td>
<td>−0.686***</td>
</tr>
<tr>
<td></td>
<td>(−3.56)</td>
<td>(−3.20)</td>
<td>(−3.36)</td>
</tr>
<tr>
<td>Term Fee</td>
<td>0.697***</td>
<td>0.640***</td>
<td>0.705***</td>
</tr>
<tr>
<td></td>
<td>(3.22)</td>
<td>(2.80)</td>
<td>(3.12)</td>
</tr>
<tr>
<td>Perc Cash</td>
<td>0.468</td>
<td>0.590</td>
<td>0.505</td>
</tr>
<tr>
<td></td>
<td>(0.96)</td>
<td>(1.16)</td>
<td>(1.01)</td>
</tr>
<tr>
<td>Deal Rev Filings</td>
<td>0.101</td>
<td>0.098</td>
<td>0.102</td>
</tr>
<tr>
<td></td>
<td>(1.35)</td>
<td>(1.34)</td>
<td>(1.36)</td>
</tr>
<tr>
<td>Ex Ante Litigation Risk</td>
<td>0.396***</td>
<td>0.395***</td>
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* t statistics in parentheses

This table presents the logit regression results examining whether disclosure properties of required going-private filings are associated with ex post transaction litigation. In this model, we require the litigation to occur after the going private disclosure filing date, and condition on no litigation occurring prior to disclosure. In all specifications, the dependent variable is a binary variable equal to one when the deal observation is challenged by shareholder litigation, and zero otherwise. We examine two properties of disclosure, the length (Disc Length) and the tone (Tone) of the Form SC 13-E3 (or referenced filing). In columns (1) and (2) the independent variables of interest are Disc Length and Tone, respectively. Column (3) presents the disclosure properties together. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.
This table presents the regression results examining whether disclosure properties are associated with going private deal outcomes. The dependent variables for columns (1) – (3) and (4) – (6) are the likelihood of deal completion (Completed), the likelihood of a positive price revision (PriceRevisionUp), and the length of the negotiation in days (DealLength), respectively. The independent variables of interest are Disc Length and Tone of the Form SC 13E-3 filing (or referenced document) associated with the going private transaction. In columns (4) – (6) we control for whether the transaction faced litigation. Columns (1) – (2) and (4) – (5) are estimated with logit regressions, and columns (3) and (6) are estimated using OLS regression. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.
This table presents the regression results examining whether disclosure properties are differentially associated with going private deal outcomes based on whether the transaction faced litigation. The dependent variables are the likelihood of deal completion (Completed), the likelihood of a positive price revision (PriceRevisionUp), and the length of the negotiation in days (DealLength), respectively. The independent variables of interest are Disc Length and Tone of the Form SC 13E-3 filing (or referenced document) associated with the going private transaction. Each dependent variable is regressed on the disclosure properties separately for going private transactions facing litigation (Lit = 1) and going private transactions not facing litigation (Lit = 0), then standard errors are estimated jointly using seemingly unrelated regression. Columns (1) - (4) are estimated with logit regressions, and columns (5) and (6) are estimated with OLS regressions. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.

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This table presents the regression results examining whether disclosure properties are differentially associated with going private deal outcomes based on whether the transaction faced litigation. The dependent variables are the likelihood of deal completion (Completed), the likelihood of a positive price revision (PriceRevisionUp), and the length of the negotiation in days (DealLength), respectively. The independent variables of interest are Disc Length and Tone of the Form SC 13E-3 filing (or referenced document) associated with the going private transaction. Each dependent variable is regressed on the disclosure properties separately for going private transactions facing litigation (Lit = 1) and going private transactions not facing litigation (Lit = 0), then standard errors are estimated jointly using seemingly unrelated regression. Columns (1) - (4) are estimated with logit regressions, and columns (5) and (6) are estimated with OLS regressions. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.
## Panel B - Litigation versus No Litigation Test of Coefficients

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* $p<0.10$, ** $p<0.05$, *** $p<0.01$

This table presents the $\chi^2$ statistics and p-values testing whether coefficients are significantly different based on the regression results in Table 8.
Table 9: Additional Disclosure Characteristics and Going Private Deal Outcomes

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<td>Premium</td>
<td>-0.357</td>
<td>0.267</td>
<td>0.196</td>
</tr>
<tr>
<td>(-0.96)</td>
<td>(1.59)</td>
<td>(1.29)</td>
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</tr>
<tr>
<td>Target Firm Size</td>
<td>-0.337</td>
<td>-0.075</td>
<td>-0.018</td>
</tr>
<tr>
<td>(-1.45)</td>
<td>(-0.45)</td>
<td>(0.36)</td>
<td></td>
</tr>
<tr>
<td>Target Tangibility</td>
<td>-0.362</td>
<td>1.966***</td>
<td>0.240</td>
</tr>
<tr>
<td>(-0.51)</td>
<td>(4.37)</td>
<td>(1.56)</td>
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<tr>
<td>ROA</td>
<td>-1.653</td>
<td>0.615</td>
<td>-0.262</td>
</tr>
<tr>
<td>(-1.42)</td>
<td>(0.77)</td>
<td>(1.03)</td>
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</tr>
<tr>
<td>Target Leverage</td>
<td>-1.501***</td>
<td>1.972***</td>
<td>0.231***</td>
</tr>
<tr>
<td>(-3.12)</td>
<td>(3.54)</td>
<td>(3.43)</td>
<td></td>
</tr>
<tr>
<td>Post SOX</td>
<td>-1.494*</td>
<td>1.389***</td>
<td>-0.093***</td>
</tr>
<tr>
<td>(-1.72)</td>
<td>(2.83)</td>
<td>(1.01)</td>
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<td>Industry FEs</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Fyjar FEs</td>
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<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pseudo R²</td>
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<td>.36</td>
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<tr>
<td>Adj. R²</td>
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<td>27</td>
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<tr>
<td>Observations</td>
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<td>487</td>
<td>427</td>
</tr>
</tbody>
</table>

Note: * p<0.10, ** p<0.05, *** p<0.01. 

This table presents the regression results examining whether additional disclosure properties are associated with going private deal outcomes. The dependent variables for columns (1)-(3) are the likelihood of deal completion (Completed), the likelihood of a positive price revision (PriceRevisionUp), and the length of the negotiation in days (DealLength), respectively. The independent variables of interest are Disc Length, Tone, Fog Index and FLS of the Form SC 13E-3 filing (or referenced document) associated with the going private transaction. Fog Index captures the readability of disclosure, while FLS captures the number of forward looking information present in the filing. Columns (1) and (2) are estimated with logit regression, column (3) is estimated using OLS regression. Industry (Fama-French 30) and year fixed effects are included in each specification. Standard errors are clustered by industry in all specifications. Variable definitions are available in Appendix A.