

**Business Would Clip the Wings of CEOs in M&A Situations:
Reduce Bonuses, Empower Boards and Shareholders,
Put Breaks to Break Fees, Stop Direct Non-Compete Fees**

**BDO Dunwoody Weekly CEO/Business Leader Poll by COMPAS in the
Financial Post for Publication July 9, 2007**



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1.0 Introduction

The COMPAS business panel, consisting mainly of CEOs and senior management of private companies, would clip the wings of the CEOs of public companies in M&A situations. That is the main general finding from this week's web survey of members of the COMPAS panel of CEOs and business leaders on good laws and good practices to govern merger & acquisition situations.

Specific findings include:

- Overwhelming opinion that senior managers of selling firms are receiving bonuses that are too generous or definitely too generous;
- Strong majority opinion that senior managers of a firm being sold should be allowed to receive bonuses for success in achieving the sale only by vote of the shareholders of the selling firm;
- A slight majority of the panel believes that M&A discussions should be led by the Board rather than the CEO; and
- Only a minority (32%) believe that the senior managers of a firm selling off subsidiaries should be allowed to receive non-compete fees (i.e. for not competing with the subsidiary being sold) directly from the purchaser—45% panelists believe that senior managers should receive non-compete fees only from their employer while 19% believe that such fees should not be legal.

Panelists were asked about break fees – compensation if shareholders vote to merge with or sell to a different party (i.e. hostile bidder) than the one recommended by the board of directors. They were divided about whether the break fees should be limited to proven costs or subject to negotiation or legal in the first place.



These are the key findings from the past week's web survey of the COMPAS CEO and business leader panel undertaken for *The Financial Post* under sponsorship of BDO Dunwoody LLP.

2.0 Clip the Wings of CEOs/Senior Managers Arranging Sales

In the setting of the BCE sale, there has been much discussion of where the leadership for such M&A discussions should be located—the CEO or senior management as opposed to the Board and its committees. The panel is divided on the issue with an edge going to those who would place the Board in the leadership position, as shown in table 2A.

Table 2A; (Q1) There has been a great deal of discussion in the media about how the leadership of a public traded company should conduct itself during a merger or acquisition. The debate centers on the roles and rights of the CEO, the Board, and shareholders. Please indicate which of the following statements best represents your point of view about negotiations with potential suitors: RANDOMIZE

	%
The Board or special committees should be completely autonomous and the CEO should not be able to over-ride their recommendations	53
The CEO should lead all discussions with input from the Board	35
The Board should lead all discussions but the CEO should be able to over-ride its recommendations	8
Don't know or no opinion	5



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Much concern was expressed about what the panel perceives as excessive and unjustified generosity, as shown in table 2B. In practice, 72% believe the bonuses to be too generous, 1% not generous enough. Among those with strong opinions, 41% believe that the bonuses paid in such situations are definitely too generous while not one believes that such bonuses are definitely not generous enough.

A clear majority believes that such bonuses should be determined solely as a result of a vote of the shareholders of the selling firm, as shown in table 2C.

*Table 2B: (Q3) From what you have heard, do you think
that the bonuses paid to senior managers
in such situations are...*

	%
Definitely too generous	41
Too generous	31
About right	18
Not generous enough	1
Definitely not generous enough	0
Don't know or no opinion	10

The following are some volunteered opinions on these inter-related issues:

Excess compensation should be avoided and shareholders should be empowered to stop the practice.

I think that with the exception of the benefit of maintaining management due to a lack of skill base by the buyer, buyers should not be able to provide bonuses to the management of the acquisition. Bonuses or benefits should be awarded by the board of the acquired company only.



Table 2C: (Q2) Using a 7 point scale where 7 means agree strongly and 1, the opposite, please indicate how much you agree with the following opinions about bonuses, options, or other payments awarded to senior leadership of the selling firm for its role in the sale to the acquiring or newly merged firm.

RANDOMIZE

Top executives of the selling firm should be allowed to receive such benefits only as a result of a vote of the selling shareholders								
Mean	7	6	5	4	3	2	1	DNK
5.0	29	22	12	11	4	7	9	7
The only law affecting such payments should be a requirement to inform by mail all shareholders well before the proposed merger or sale								
Mean	7	6	5	4	3	2	1	DNK
4.2	23	14	12	5	7	12	20	6
Top executives of the selling firm should be prohibited by law from receiving any benefits from the acquiring or merged firm if the acquisition takes place								
Mean	7	6	5	4	3	2	1	DNK
3.9	22	12	5	8	15	12	23	4

3.0. Break Fees—Negotiated Fees Backed by a Minority

Panelists were asked for their views about special compensation in the event of a hostile bid, if shareholders vote to merge with or sell to a different party than the one recommended by the board of directors. About a third favour negotiated fees, a third support limiting the fees to covering expenses, and a quarter advocate making break fees illegal, as shown in table 3.



Table 3: (Q5) Some potential suitors negotiate special compensation – called break fees – if shareholders vote to merge with or sell to a different party than the one recommended by the board of directors. Which statement best reflects your point of view? NO ROTATION

	%
Break fees should be automatically included in all contracts but limited to covering the expenses incurred by the potential buyer	34
The amount of break fees should not be limited and should be established by negotiation	32
Break fees should be illegal	25
Don't know or no opinion	9

4.0. Majority Opposes Direct Payment of Non-Compete Fees

Panelists were asked about non-compete fees paid to the executives of a public company by the firm purchasing a subsidiary of the former. Panelists were divided in their thoughts with a minority (32%) in favour of allowing the practice, as shown in table 4. A plurality (45%) thought that any such fees should be paid to the corporate seller for the purpose of binding its executives from competing. About a fifth (19%) believed that senior managers of public companies should not be allowed to receive non-compete fees beyond their normal bonuses.



Table 4: (Q4) Suppose a public company sold its subsidiary and the acquiring firm wanted to be sure that the public company's managers did not launch a new enterprise in competition with the subsidiary being sold. Which of the following opinions is closest to your own. RANDOMIZE

	%
The acquiring company should be allowed to pay the public company a fee on condition that it bind its senior managers from competing against the subsidiary being sold	45
The acquiring company should be allowed to pay non-compete fees to the senior managers of the public company	32
Senior managers of public companies should not be allowed to receive non-compete fees beyond their normal bonuses	19
Don't know or no opinion	4

5.0. Methodology

The COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted July 4 – 6, 2007. Respondents constitute an essentially hand-picked panel with a higher numerical representation of small and medium-sized firms.

Because of the small population of CEOs and business leaders from which the sample was drawn, the study can be considered more accurate than comparably sized general public studies. In studies of the general public, surveys of 131 are deemed accurate to within approximate 8.6 percentage points 19 times out of 20. The principal and co-investigator on this study are Conrad Winn, Ph.D. and Tamara Gottlieb.

