Hostile Takeover Attempt on Twitter

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ABSTRACT

This case discusses Elon Musk's attempt to takeover Twitter and their response. The case explains the different methods available for companies to thwart a hostile takeover and provides examples of previous attempts. The case then discusses how this attempt is unique in that Elon Musk has a great following as a financial genius on social media. Students are encouraged to think critically of a companies use of hostile takeover defense strategies.

Keywords: hostile takeover, Elon Musk, twitter, defense strategy, social media, behavioral finance

INTRODUCTION

Hostile takeovers occur when a company is attempting to acquire another company against the wishes of their management. Often companies cite reasons for acquisition to achieve economies of scale, reduce costs, or increase profits, but with a hostile takeover, the acquirer often believes that the company is not meeting their full value or may have fundamental differences in opinion on strategies implemented. There are two basic methods for an acquirer to obtain control without consent. First, a proxy battle may be implemented where a hopeful acquirer solicits the votes of other shareholders to win a corporate vote. In a takeover attempt, the potential acquirer would attempt to replace board members and management. The second method is a hostile tender offer. A hostile tender offer allows a potential acquirer to make an offer to existing shareholders to purchase their stock, often at a premium above market prices (Armour, et al., 2011).

In an effort to acquire Twitter, Mr. Musk began acquiring shares of stock in the open market on January 31, 2022. According to rules set forth by the Securities Exchange Commission (SEC), one must make a declaration if their ownership stake hits a 5% threshold. That information is then posted to the Electronic Data Gathering and Retrieval System (EDGAR). Mr. Musk became a blockholder (an individual or entity that owns at least 5% of a company) on March 14, 2022. Ten days later, March 24, 2022, Mr. Musk submits his declaration. Because his filing was 10 days late, he was classified as a passive investor. On April 4, 2022, the declaration filed with the SEC is published on EDGAR and Twitter subsequently offers him a position on the board of directors (Twitter, Inc., April 4, 2022).

One day later, Mr. Musk refiles his share declaration and re-classifies himself as an active investor. He then rejects the board position on April 9, 2022 (Twitter, Inc., April 11, 2022). because the board seat carries with it a 14.9% limit on the amount of stock that he'd be able to own (Twitter, Inc., April 4, 2022). Mr. Musk then makes an offer to purchase the entire company.

On April 13, 2022 billionaire Elon Musk delivered a proposal to acquire outstanding shares of Twitter at $54.20/share. This offer of $54.20 was 38% higher than the closing price of the stock the day prior (Twitter, Inc, April 13, 2022). The $43 billion offer was made because "having a public platform that is maximally trusted and broadly inclusive is extremely important to the future of civilization." Mr. Musk also believes that, "the company [Twitter] will neither thrive nor serve this societal imperative in its current form. Twitter needs to be transformed as a private company (Twitter, Inc., April 13, 2022)."

Buyout firm, Thoma Bravo, has since expressed interest in bidding for Twitter (Kosman, 2022). On April 15, 2022, Twitter's board of directors implemented a poison pill defense; a method used to thwart a hostile takeover. The poison pill is generally considered a last-ditch maneuver because it dilutes shareholder value by increasing the number of shares outstanding. With a poison pill, rights to preferred stock are issued to shareholders.

Twitter filed for a limited duration shareholder rights plan with the SEC. This plan significantly reduces the ability of an individual or entity to acquire the company through the open market. The plan becomes effective once any individual owns 15% or more of Twitter in a transaction not approved by the Board. If the rights become exercisable due to the triggering ownership threshold being crossed, each right will allow its holder to purchase additional share with an exercise price at half of its current market price (Twitter, Inc., April 18, 2022).

TAKEOVER MECHANISMS

There are different types of poison pill defenses. The first is a flip-in; it allows all shareholders except the acquirer to purchase additional shares at a deeply discounted price. Conversely, a flip-over allows shareholders the ability to buy deeply discounted shares after the hostile takeover takes place. Twitter is opting for a flip-in. All shareholders except for those who hold 15% or more of the company without board approval will be allowed to purchase additional shares of stock at half the price. This makes a hostile tender offer very expensive (Ruback, 1987). A third type of poison pill is a back-end rights plan that allows employee stock-options plans to immediately vest if the company is taken over. Existing employees may then sell their stocks and will void the company of many talented employees (Shah, 1996).

There have been many examples of poison pill defenses. Netflix opted for a poison pill defense in 2012 after Carl Icahn purchased 10% of the company (Richwine, 2012). Due to the poison pill, he later ditched his efforts. In 2018, Papa Johns swallowed a poison pill when founder John Schnatter attempted to regain ownership. This defense contained a unique 'wolf pack provision' that doubled the cost of each share of stock for anyone who owned more than 31% of the company or 15% without board approval (Hsu, 2018). In 2013 Sotheby's warded off an unwanted takeover by Daniel Loeb. Due to the posion pill, Loeb filed a lawsuit against Sotheby's that he later lost (Davis, 2014).

It is common for a company to employ hostile takeover defenses. In addition to a poison pill, a company may employ a staggered board (also known as a classified board) where only one third of board seats come up for election each year. A staggered board would only allow a bidder the ability to replace a fraction of the board each year, slowing progress and road-blocking potential changes (Ganor, 2008). Super majority votes from shareholders to approve mergers or takeovers are often required. Certain corporate actions may require much more than a simple majority to be implemented. Typically, 80% of a corporation's shareholders must approve amendments to the company's bylaws or articles of incorporation (Papadopoulus, 2019). Fair price defenses waive super majority provisions if the buyer pays all shareholders the same price. All shareholders must be paid the highest prices that it paid for any shares acquired during a certain period of time (Ruback, 1987). Dual class share structures create new classes of equity with varying voting rights. These dual class share structures allow certain classes to obtain voting power in excess of their financial interests. These are usually structured in a way that allows founding families, executives, and early investors a greater number of votes per share of stock (Sridharan, 1997) allowing them to receive financing but not diminish their control.

Although hostile takeovers may be prevented, they're not always stopped. In 2008, InBev attempted to acquire Anheuser-Busch for $65 a share. After fighting the attack, Anheuser-Busch accepted a deal once InBev upped their offer to $70 a share (Anheuser-Bush takeover bid becomes a hostile one, 2008). In 2009, Kraft Foods attempted to acquire Cadbury PLC. The acquisition was not viewed favorably and quickly became hostile. Eventually Kraft upped their offer and Cadbury accepted (Jones D. and Dorman, B., 2010).

SOCIAL MEDIA

Researchers have found that psychological factors, influence from peers, and social networks influence our behavior not only from an interpersonal perspective, but also our finances (Fama, 1970, Odean, 1998, and Fiegenbaum, 1990). Recently, researchers have examined the role social media plays in investing (Piñeiro-Chousa, et al., 2016) and found that social networks influence investor decisions. Moreover, social media coverage increases volatility and turnover (Jiao et al., 2020). Platforms like Twitter, WallStreetBets, Gettr, and Truth Social have played an increasing role in the stock market.

WallStreetBets recently drove stocks like GameStop and AMC to record highs. Speculators collaborated on these platforms to spike prices creating a buying frenzy (Fox, 2021). Individuals with enough followers wield a power to influence stock prices. In 2018, Kylie Jenner tweeted "sooo does anyone else not open Snapchat anymore? Or is it just me…," and the stock price plummeted. In 2013 Carl Icahn stated that Apple was undervalued and the market immediately increased. In 2013, a company Twitter account for Muddy Waters was imitated claiming that they were being investigated by the Department of Justice and their stock price dropped substantially. In 2017, Donald Trump attacked Toyota and stock prices declined. In 2016, Twitter's account was hacked and sent breaking news and the market reacted immediately (Kornblum, 2018)

Mr. Musk is in a unique position to impact stock prices. Mr. Musk is active on social media and has a long history demonstrating his ability to swing market prices. In 2018, he tweeted that he may have the funding to make Tesla a privately owned company, causing stock prices to increase. Similarly, Mr. Musk tweeted that Tesla's stock price was to high in 2020 causing prices to dip (Vercoe, 2021). Dogecoin stock price skyrocketed after Mr. Musk tweeted "Dogecoin is the people's crypto." (How tweets by Tesla's Elon Musk have moved markets, 2021). It is evident that Mr. Musk possesses acumen that investors are willing to heed, and markets react swiftly to his opinions. Mr. Musk's image as a financial expert and his ability to sway public opinion and, therefore, stock prices (at least in the short-term) may impact his ability to acquire Twitter. StockPulse, a German based data analytics company, specializes in mining 'Emotional Data Intelligence.' They use this information from social media sources to deliver insights for trading surveillance to clients such as the Nasdaq's US Market Surveillance team. They assign social media posts from financial experts and renowned news agencies such as Elon Musk, Warren Buffet, and the Bloomber news higher metrics because their posts typically have a greater impact on markets (How does social media influence financial markets? 2019).

THE FUTURE OF THE DEAL

The board of Twitter are attempting to thwart Mr. Musk's acquisition of the company. The primary point of the poison pill is to buy the board time. Time to absorb the offer, examine all aspects, wait for possible offers from others (like Thoma Bravo) and provide due diligence for the shareholders. The board may decide that Mr. Musk's offer is not in the best interest of shareholders and never waiver or they may cave and provide approval. It is important to note that Mr. Musk can still obtain Twitter, but it would be much easier to do with approval from the board. The board would likely require additional premium to shareholders from Mr. Musk. Mr. Musk may still purchase shares of stock and may even pursue a tender offer, but because of the poison pill, the price will be much higher without board permission.

Another question begs to be answered: what role will social media play in this acquisition? Will Mr. Musk successfully use his social media influence to acquire Twitter? His past statements on social media have proven to immediately impact markets.

DISCUSSION QUESTIONS

1. Should board members be able to employ techniques to ward off acquirers or should that decision be left to shareholders?
2. What are the benefits to shareholders if Elon Musk is successful?
3. How is social media affecting this takeover attempt? Will Mr. Musk successfully use his social media influence to acquire Twitter?
4. Do poison pills diminish the need for shareholder governance in corporations?
5. Are poison pills detrimental to shareholder value as the offers typically come with a financial premium?

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