



# Welcome to the Atlanta Chapter April Program

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## Going Private in the Public Eye: Risks and Rewards

April 19, 2017



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HOULIHAN LOKEY



## Upcoming Events – Save the Dates

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**17  
May**      **Shareholder Activist Boot Camp: PREPARE  
to Respond**

**13  
Sept**      **Save the Date – Kickoff Reception**

**1-4  
Oct**      **Global Board Leaders’ Summit –  
RE:*defining*VALUE**

**11  
Oct**      **Save the Date – Lunch Meeting**

**8  
Nov**      **Save the Date – Lunch Meeting**

# New World Order: Post-Election Planning



April 19, 2017



**John K.  
Morgan**

Former Chairman,  
President and CEO  
Zep, Inc.



**Tom Elward**

Director  
Federal Mogul  
Holding  
Corporation



**Russ B. Richards**

Senior Partner  
King & Spalding  
Corporate Practice  
Group



**Andy Stull**

Managing Director  
Houlihan Lokey

# NACD Take-Private Panel

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# Overview of Take-Private Transactions

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- Take-Private Transaction – all public company shareholders are cashed out through a purchase by an affiliate shareholder or third party financial buyer typically using leverage
- Types of Take-Private Transactions:
  - Leverage Buyout
    - Affiliate Shareholder or Management-led Buyer (13e-3)
    - Third Party Buyout by a Financial Sponsor
  - Controller Buyout
- Inherent conflicts in take-private transactions place a premium on the deal process and pose risks for fiduciaries
- Key drivers for take-private transactions include:
  - Company no longer benefits from being a public filer in terms of the cost and access to capital
  - Company underperforms its peer group and/or is undergoing significant strategic changes
  - Pressure by activists or large block holders to explore alternatives
  - Control shareholder's desire to consolidate and simplify ownership



# Trends in Take-Private Deals

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- The number of take-private transactions has trended higher in the last several years
- The observed mean/median acquisition premium paid over the unaffected share prices range from 25% to 30%
  - Controller buyout transactions tend to have lower premiums paid
- The observed valuation multiples on take-private transactions are generally at a discount to valuations observed for strategic M&A deals
- Litigation risk remains high for these transactions
  - While M&A litigation has declined recently, take-private transactions remain an attractive target for the plaintiff bar.
  - Breach of fiduciary duty cases focus on flaws in the process, conflicted parties and self-dealing
  - Take-privates are a favorite target for appraisal arbitrage, which, if successful, can be costly to the new owner

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# Public Company M&A Transactions Fundamental Guidelines

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- Fiduciary Duties
  - Duty of Care
  - Duty of Loyalty
- Confidentiality
- Insider Trading
- D&O Indemnification/Insurance
- Process

# "Cash Out" M&A Transactions

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- All Fundamental Guidelines Apply
- Revlon Duty
- Judicial Review
  - Enhanced Scrutiny
  - Business Judgment Rule
    - Benefit of Majority Vote of Stockholders

# Going Private Transactions Lead by Controlling Stockholder or Management

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- Judicial Review Standards
  - Entire Fairness
  - Business Judgment Rule
- To qualify for Business Judgment Rule
  - "Up-Front" Terms of Offer:
    - Formation and Empowerment of Independent Special Committee
    - Conditioned on Non-Waivable:
      - Approval of Special Committee
      - Approval of Vote of Majority of the Minority Stockholders
  - Market Check
    - Controlling Stockholder – Limited Recommended
    - Management Lead-Revlon Duty
  - Full and Fair Disclosure to Minority Stockholders

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# Zep Taken Private by New Mountain

## Involved Parties

### Target: Zep, Inc. (“Zep”)

- Zep produces and markets cleaning and maintenance chemicals, and related products and services for the commercial, industrial, and institutional markets in North America and Europe. It offers anti-bacterial and industrial hand care products, cleaners, degreasers, deodorizers, disinfectants, floor finishes, sanitizers, pest- and weed-control products, air-care products and delivery systems, and various automotive maintenance chemicals, as well as equipment repair and maintenance products. Zep Inc. was founded in 1937 and is based in Atlanta, Georgia.

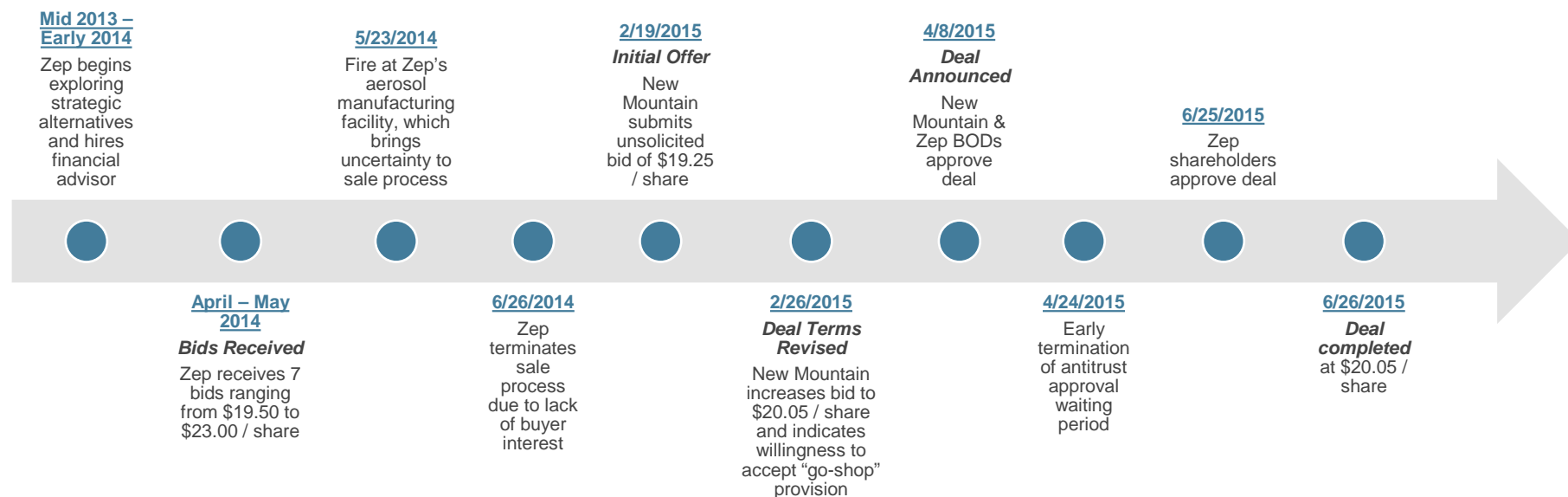
### Acquirer: New Mountain Capital, LLC (“New Mountain”)

- New Mountain is a private equity firm specializing in investments in buyouts, growth capital, add-on acquisitions, and middle market. It also invests in debt securities at various levels of the capital structure. It focuses on making investments in defensive growth companies in North America with enterprise values between \$100 million and \$1 billion. New Mountain Capital, LLC was founded in January 2000 and is based in New York, New York.

## Transaction Overview

Announced Date	4/8/2015
Closing Date	6/26/2015
Percent Sought	100.0%
Per Share Consideration to Shareholders	\$20.05
Implied Enterprise Value (in mm)	\$692.0
LTM EV / EBITDA Multiple	11.8x
Premium to Unaffected Stock Price	17.3%
Special Features:	Leveraged Buyout; Go Shop Provision; Subject to Antitrust Regulations; Subject to Court Approval

## Transaction Timeline



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# Federal-Mogul Taken Private by Icahn Enterprises

## Involved Parties

### Target: Federal-Mogul Holdings Corporation (“FM”)

- FM supplies various components, accessories, and systems to the manufacturers and servicers of vehicles and equipment worldwide. It operates through two segments, Powertrain and Motorparts. The company serves original equipment manufacturers and servicers of automotive, light, and medium and heavy-duty commercial vehicles; and off-road, agricultural, marine, rail, aerospace, power generation, and industrial equipment markets, as well as various distributors, retail parts stores, and mass merchants. FM was founded in 1899 and is headquartered in Southfield, Michigan.

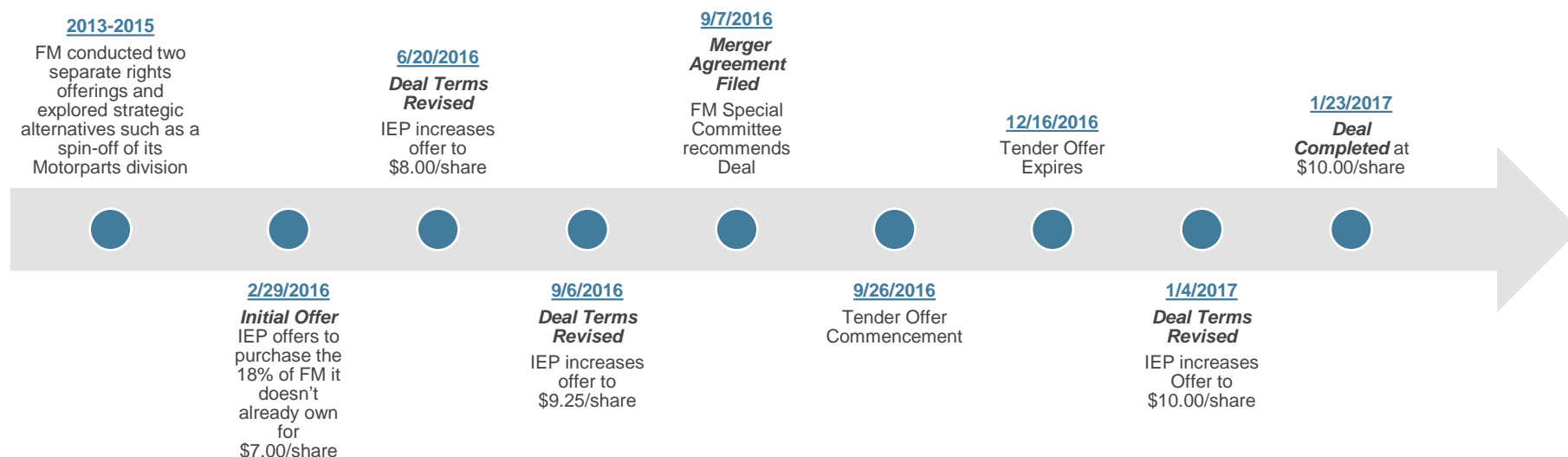
### Acquirer: Icahn Enterprises L.P. (“IEP”)

- IEP, through its subsidiaries, operates in investment, automotive, energy, metals, railcar, gaming, mining, food packaging, real estate, and home fashion businesses in the United States, Germany, and Internationally. IEP was founded in 1987 and is headquartered in New York, New York.

## Transaction Overview

Announced Date	2/29/2016
Closing Date	1/23/2017
Percent Sought	18.0%
Per Share Consideration to Shareholders	\$10.00
Implied Enterprise Value (in mm)	\$4,557.4
LTM EV / EBITDA Multiple	6.1x
Premium to Unaffected Stock Price	100.8%
Special Features:	Majority Shareholder Purchasing Remaining Shares; Majority of the Minority Provision; Tender Offer

## Transaction Timeline



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