**Deal Documents: Where to Find Information About M&A Transactions**

When analyzing M&A transactions, finding the relevant documents is often the hardest part of the job. In an acquisition of a public target, the type of publicly available documents depends on whether the deal is structured as a [merger or a tender offer](https://www.wallstreetprep.com/knowledge/tender-offer-vs-merger/).

**M&A documents in deals structured as mergers**

**Deal announcement press release**

When two companies merge, they will jointly issue a press release announcing the merger. The press release, which will be filed with the SEC as an 8K (likely on the same day), will usually include detail about the purchase price, form of consideration (cash vs stock), the expected accretion/dilution to the acquirer and expected synergies, if any. For example, when LinkedIn was acquired by Microsoft in June 13, 2016, they first broke the news to the public via [this press release](https://s3.amazonaws.com/wsp-blog-images/uploads/2018/02/06173759/MSFT-LNKDN-Announcement-PR1.pdf).

**Definitive agreement**

Along with the press release, the public target will also file the **definitive agreement** (usually as an exhibit to the press release 8-K or sometimes as a separate 8-K). In a [stock sale](https://www.wallstreetprep.com/knowledge/asset-sale-vs-stock-sale/), the agreement is often called the **merger agreement,** while in an asset sale, it’s often called an **asset purchase agreement**. The agreement lays out the terms of the deal in more detail. For example, the LinkedIn [merger agreement](https://s3.amazonaws.com/wsp-blog-images/uploads/2018/02/06173228/LNKD-merger-agreement.pdf) details:

* Conditions that would trigger the break-up fee
* Whether the seller can solicit other bids ([“go-shop” or “no-shop”](https://www.wallstreetprep.com/knowledge/no-shop-go-shop-ma/))
* Conditions that would allow a buyer to walk away ([“material adverse effects”](https://www.wallstreetprep.com/knowledge/material-adverse-change-mac/))
* How shares will be converted to acquirer shares ([when buyer pays with stock](https://www.wallstreetprep.com/knowledge/how-buyers-pay-in-ma-cash-vs-stock/))
* What happens to the seller’s options and restricted stock

**Merger proxy (DEFM14A/PREM14A)**

A proxy is an SEC filing (called the 14A) that is required when a public company does something that its shareholders have to vote on, such as getting acquired. For a vote on a proposed merger, the proxy is called a **merger proxy** (or a **merger prospectus**if the proceeds include acquirer stock) and is filed as a DEFM14A.

A public seller will file the merger proxy with the SEC usually several weeks after a deal announcement. You’ll first see something called a PREM14A, followed by a DEFM14A several days later. The first is the **preliminary proxy**, the second is the **definitive proxy** (or final proxy). The specific number of shares that are eligible to vote and the actual date of the proxy vote are left blank as placeholders in the preliminary proxy. Otherwise, the two generally contain the same material.

**What’s included**

Various elements of the merger agreement (deal terms and consideration, treatment of dilutive securities, breakup fees, MAC clause) are summarized and are more clearly laid out in the merger proxy than in the legal jargon-heavy merger agreement. The proxy also includes critical detail on the [background of the merger](https://www.wallstreetprep.com/knowledge/background-merger-interesting-section-merger-proxy/), the [fairness opinion](https://www.wallstreetprep.com/knowledge/fairness-opinions-whats-dont-really-tell-much/), the seller’s financial projections, and the compensation and post-deal treatment of seller’s management.

Here is LinkedIn’s [merger proxy](https://s3.amazonaws.com/wsp-blog-images/uploads/2018/02/06172556/MSFT-LNKDN-Merger-Proxy-DEFM14A.pdf), filed July 22, 2016, 6 weeks after deal announcement.

**Information statement (PREM14C and DEFM14C)**

Targets in certain mergers will file the PREM14C and the DEFM14C instead of the DEFM14A/PREM14A. This happens when one or more shareholders hold a majority of the shares and are able to provide approval without a full shareholder vote through written consent. The documents will contain similar information to the regular merger proxy.

**M&A documents in deals structured as tender offers and exchange offers**

**The buyer’s tender offer: Schedule TO**

To initiate a tender offer, the buyer will send an “Offer to Purchase” to each shareholder. The target must file a Schedule TO with the SEC, with the tender offer or exchange offer attached as an exhibit. The Schedule TO will contain key deal terms.

In May 2012, GlaxoSmithKline sought to acquire Human Genome Sciences for $13.00 in cash per share in a hostile takeover bid via [this tender offer](https://s3.amazonaws.com/wsp-blog-images/uploads/2018/02/07115218/GSK-Hostile-Schedule-TO.pdf).

**The target board’s response to a tender offer: Schedule 14D-9**

The target’s board must file their recommendation (in a schedule 14D-9) in response to the tender offer within 10 days. In a hostile takeover attempt, the target will recommend against the tender offer. Here is Human Genome’s [14D-9 recommending against the tender offer](https://s3.amazonaws.com/wsp-blog-images/uploads/2018/02/07120304/Human-Genome-GSK-rejection-14D9.pdf).

**IN PRACTICE**

the Schedule 14D-9’s response to unsolicited hostile tender offers is where you’ll see the rare fairness opinion that claims a transaction isn’t fair.

**Prospectus**

When new shares are issued as part of a merger or exchange offer, a registration statement (S-4) will be filed by the acquirer, requesting that the acquirer’s own shareholders approve the issuance of shares. Sometimes, a registration statement will also include the target merger proxy and will be filed as a joint proxy statement/prospectus. The S-4 usually contains the same detailed information as the merger proxy. Like the merger proxy, it is usually filed several weeks after the transaction is announced.

**Prospectus vs merger proxy**

As an example, 3 months after Procter & Gamble announced it was acquiring Gillette, it filed an S-4 with the SEC. It included both the preliminary joint proxy statement and prospectus. The definitive merger proxy was filed by Gillette 2 months later. In this case, since the proxy was filed later, it contained more updated detail, including projections. Otherwise, the material was largely identical.

Generally, you want to go with the most recently filed document, as it contains the most updated information.

**Summary of key M&A documents for finding deal terms of public targets**

| **Acquisition type** | **Document** | **Date filed** | **Best place to find it** |
| --- | --- | --- | --- |
| **Mergers** | Press release | Announcement date | 1. Target (likely also acquirer) will file SEC form 8K (could be in an 8K exhibit)
2. Target (likely also acquirer) website
3.
 |
| **Mergers** | Definitive agreement | Announcement date | 1. Target 8K (often the same 8K that contains press release)
2.
 |
| **Mergers** | Merger proxy | Several weeks after the announcement date | 1. Target PREM14A and DEFM14A
2.
 |
| **Tender/exchange offers** | Tender offer (or exchange offer) | Upon initiation of tender offer | 1. Target Schedule TO (attached as exhibit)
2.
 |
| **Tender/exchange offers** | Schedule 14D-9 | Within 10 days of filing of Schedule TO | 1. Target Schedule 14D-9
2.
 |
| **Mergers and exchange offers** | Registration statement/prospectus | Several weeks after the announcement date | 1. Acquirer Form S-4
2.
 |