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Reading 'Background of the Merger' in Merger Proxies

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Why proxy statements are a window into sale processes

Private company sale processes leave almost no public record. Public company sales are different. When a U.S. public company agrees to be acquired and its shareholders must vote, the company files a definitive merger proxy statement (form type DEFM14A on EDGAR), and that document usually contains a long section titled "Background of the Merger." It is a dated chronology of who contacted whom, how many parties signed confidentiality agreements, how many submitted indications of interest, how prices moved, and why the board chose the buyer it chose.

The disclosure has a regulatory basis. Schedule 14A, Item 14(b)(7), calls for "the information required by Items 1005(b) and 1011(a)(1) of Regulation M-A" on past contacts, transactions or negotiations between the parties (17 CFR 240.14a-101). Item 1005(b) in turn requires a description of "any negotiations, transactions or material contacts during the past two years" concerning a merger, consolidation, acquisition and similar events, and its instruction says: "Identify the person who initiated the contacts or negotiations" (17 CFR 229.1005).

The rules set a floor, not a format. The narrative is written by the company's counsel, reviewed by its advisers, and shaped by the knowledge that shareholders (and plaintiffs' lawyers) will read it. That makes it detailed, and also an advocacy document. It should be read the way a diligence team reads a seller's memorandum: as a set of claims, each with a page reference, to be cross-checked.

For deal teams that mostly work in private markets, these sections are still useful. They are the largest public source of real outreach counts, NDA-to-bid conversion and timelines from an actual process run by a sell-side adviser.

What the research says about how firms are sold

Academic work has used the same disclosures. Audra Boone and Harold Mulherin assembled data from SEC filings on the private, pre-announcement part of takeovers in the 1990s. Their abstract reports that the number of public bidders makes the market look uncompetitive, but that public takeover activity "is only the tip of the

iceberg." They find "a highly competitive market where half of the targets are auctioned among multiple bidders, while the remainder negotiate with a single bidder," and that wealth effects for target shareholders "are comparable in auctions and negotiations" (Boone and Mulherin, *Journal of Finance*, 2007).

Two lessons carry over. First, the visible competition (bidders who go public) understates the real competition, which is only visible in the background section. Second, a negotiated sale with one bidder is a normal outcome, not evidence of a flawed process. For the private-market implications of that research, see our page on proprietary deal flow and the evidence on auctions.

How to find the document on EDGAR

SEC EDGAR full-text search "gives you access to the full text of electronic filings since 2001," with filters for filing type, date range and company (SEC EDGAR full-text search). A practical routine:

1. Open full-text search and enter the phrase *Background of the Merger* as the search term.
2. Under filing types, select **DEFM14A** (definitive merger proxy). Preliminary versions are filed as PREM14A, and tender offers use different forms (for example SC 14D9 for the target's response), which have comparable sections under different headings.
3. Narrow by date and, if needed, by the target's state of incorporation or headquarters.
4. Open the main document, find the table of contents, and jump to "Background of the Merger," then to "Reasons for the Merger" (or "Reasons for Our Board's Recommendation") and "Opinion of Financial Advisor."
5. Save the filing's accession number and the URL of the document. Page numbers move between preliminary and definitive versions; the accession number does not.

If you script any of this, the SEC asks automated users to declare a user agent in their request headers and states a current maximum of 10 requests per second (SEC, Accessing EDGAR data). Our SEC EDGAR data-source page covers the wider set of EDGAR records useful for acquisition research.

A worked read: Farmer Bros. Co. DEFM14A (March 27, 2026)

Farmer Bros. Co., a public coffee company, filed a definitive merger proxy dated March 27, 2026 for its acquisition by Royal Cup, Inc., an affiliate of Braemont Capital Management LLC, at $1.29 per share in cash (Farmer Bros. Co. DEFM14A). Every fact below is quoted or paraphrased from that filing. Counterparties other than the buyer are anonymized in the filing as Parties A to D.

Process fact sheet

Date (per filing)	Event	Counts and terms stated
Feb 5, 2025	Board decides to formally evaluate strategic alternatives	
Mar 5, 2025	Board meets the financial adviser (North Point) and outside counsel	

Date (per filing)	Event	Counts and terms stated
Mar 18 to Sep 9, 2025	Broad outreach by the adviser	"50 parties (31 potential strategic buyers and 19 financial buyers)" contacted or entertained interest; 29 signed confidentiality agreements; 23 preliminary management discussions or diligence calls
Sep 10, 2025	Board status meeting	About 50 contacted; 29 NDAs "(12 strategic buyers and 17 financial buyers)"; two written indications of interest (Parties A and B)
Sep 17, 2025	Party C indication of interest	Enterprise value range of about $40 million to $55 million
Oct 28, 2025	Braemont initial indication of interest	$1.89 per share
Nov 5, 2025	Process letter to four bidders	Final proposals with merger agreement mark-ups requested by November 20
Nov 14, 2025	Party D (strategic) asks to join late	NDA signed November 24
Dec 4, 2025	Letters of intent from Braemont ($2.00 per share before transaction expenses) and Party A; new indication from Party D	
Dec 8, 2025	Board review	52 contacted; 31 NDAs; 42 management or diligence sessions
Jan 6, 2026	Company agrees to remove a post-signing go-shop	Reason given: "the broad pre-signing market check"
Jan 26, 2026	Braemont revised letter of intent	$1.65 per share before transaction expenses
Feb 27, 2026	Braemont "best and final"	$1.29 per share after dollar-for-dollar reductions for transaction expenses and bonuses
Mar 3, 2026	Merger agreement signed	

Three things in this chronology are worth noticing because they recur across many proxies.

- **Price moved down after diligence.** The filing explains that Braemont cited findings from confirmatory diligence, including cost-cutting measures it believed were not sustainable and an increased pension deficit, as a basis for revised pricing.
- **The highest indication was not the winning bid.** Party D's indication reflected "an enterprise value of approximately $100 million (implying a price of approximately $3.05 per share before transaction expenses)," but, as the board's reasons section states, Party D had not started due diligence or obtained internal approval. The board weighed actionability over headline value.
- **Bid structure mattered.** The board compared how each offer treated transaction expenses and whether value was fixed as an enterprise value that would fall if debt rose before closing.

Cross-checking the narrative: when the numbers do not match

Read the same proxy in two places and the counts differ. The chronology says the adviser contacted or entertained interest from 50 parties and that 29 signed confidentiality agreements. The board's reasons section says "a total of 52 potential counterparties were contacted or solicited during the company's strategic review process between March 2025 and December 2025," of which 31 executed confidentiality agreements, and that four parties submitted non-binding indications of interest, three submitted letters of intent, and "one additional party (referred to as Party D)" submitted an indication. The March 3, 2026 board meeting summary, meanwhile, refers to five indications of interest and three letters of intent.

Are these errors? Read carefully, they reconcile:

Count	Figure A	Figure B	Reconciliation
Parties contacted	50 (Mar 18 to Sep 9, 2025)	52 (Mar to Dec 2025)	Different windows; later entrants include Party D, which approached in November
Confidentiality agreements	29 (as of Sep 10, 2025)	31 (as of Dec 8, 2025)	Different dates; Party D signed November 24
Indications of interest	Four, plus Party D listed separately (reasons section)	Five (Mar 3 board summary)	Same total, different presentation

The lesson is not that the company made a mistake. It is that every count in a narrative document is a claim with a date, a definition and a location. "Contacted," "contacted or entertained interest" and "contacted or solicited" are not necessarily the same population. A process fact sheet should store each figure with its page reference and the window it covers, and mark it "reconciled," "unreconciled" or "definition differs" rather than silently picking one.

The same discipline applies to court opinions. In the Topps decision discussed below, the opinion's introduction says the banker contacted "more than 100 potential strategic and financial bidders," and the fact section gives the exact number, 107 (*In re The Topps Co. Shareholders Litigation*, Del. Ch. 2007). Consistent, but only one is precise enough to put in a table.

Beyond the chronology: reasons and the adviser's analysis

Two adjacent sections complete the picture.

The board's reasons. This is where the board lists the factors it weighed, positive and negative. It often restates process counts (as in the Farmer Bros. example) and it is also where uncomfortable facts tend to appear. The Farmer Bros. proxy lists, among the "uncertainties, risks and other countervailing factors," that the $1.29 price was a discount of approximately 14.6% to the closing share price on March 3, 2026 (the last trading day before announcement), that Braemont had reduced its price from its highest proposal, and that Party D's indication implied a higher valuation.

The financial adviser's opinion. This section summarizes the valuation work behind the fairness opinion. In the Farmer Bros. filing, the analyses the adviser reviewed with the board on March 3, 2026 are described as a standalone company analysis, a selected public companies analysis, a selected precedent transactions

analysis and a liquidation analysis, and the price is stated to imply an enterprise value of about $61.2 million on a fully diluted basis. For a buyer, these sections show which comparables and methods the seller's side relied on. They are the seller's adviser's work, prepared for the board, and should be read as such.

A reading checklist for any Background section

- Who initiated the first contact with the eventual buyer, and when? (Item 1005's instruction requires this to be identified.)
- When did the board formally start the process, and which adviser ran it?
- How many parties were contacted, how many signed NDAs, how many submitted IOIs and LOIs, and as of which dates?
- Were strategic and financial buyers counted separately?
- Did any party approach late, and how was it handled?
- How did price move between first indication and signing, and what reasons were given?
- Was exclusivity granted, for how long, and to whom?
- Was a go-shop included, removed or never proposed, and why?
- Which conditions (financing, debt levels, voting agreements) did the buyer require?
- Do the counts in the Background, Reasons and adviser sections agree, once windows and definitions are aligned?

Go-shops and post-signing market checks

A go-shop is a provision that lets a target actively solicit competing bids for a set period after signing, usually with a lower break fee for a deal reached during that window. It substitutes a post-signing market check for some or all of a pre-signing auction.

The Delaware Court of Chancery's opinion in *In re The Topps Company Shareholders Litigation* (decided June 14, 2007, Vice Chancellor Strine) describes one in operation. "For a period of forty days after the execution of the Merger Agreement," Topps was authorized to solicit other bids. At the start of the period, its banker "quickly contacted 107 potential strategic and financial bidders. Of those 107 potential bidders, five expressed interest in Topps and began a due diligence review." One, a competitor, continued to pursue a deal and submitted a non-binding indication of interest two days before the period expired. On the preliminary-injunction record, the court described the board's belief "that another failed auction could damage Topps" as "a reasonable one" (Topps opinion).

Farmer Bros. went the other way: the company agreed to remove a go-shop because, in its board's view, a broad pre-signing market check had already been run. Reading both together shows the trade-off boards describe: test the market before signing, after signing, or both. We describe these documents only; whether a given process satisfies a board's duties under current Delaware law is a question for counsel.

Building a process fact sheet

A reusable template, one row per event or count:

Field	What to record
Filing	Company, form type, accession number, filing date
Section and page	For example, "Background of the Merger, p. 27"
Event date	As stated; note if approximate ("in late October")
Event type	Outreach, NDA, IOI, LOI, price revision, exclusivity, go-shop decision, signing
Counterparty	Named or anonymized label as used in the filing
Count or term	Exact figure and its definition ("contacted or entertained interest")
Window	Period the count covers
Cross-reference	Other places the same fact appears
Status	Consistent / reconciled / unreconciled / definition differs

Illustrative example (fictional)

A fictional target, Ridgeview Controls, as an analyst might log it. All values are invented and unrelated to any real filing.

Section, page	Date	Event	Count or term	Window	Status
Background, p. 31	Apr 2	Outreach begins	64 parties contacted	Apr 2 to Jun 30	Consistent
Background, p. 33	Jul 1	NDAs	22 signed	As of Jul 1	Unreconciled: Reasons p. 41 says 24
Background, p. 34	Jul 15	IOIs received	6	As of Jul 15	Consistent
Background, p. 36	Sep 9	LOIs received	2	As of Sep 9	Consistent
Background, p. 38	Oct 3	Exclusivity granted	30 days		Consistent
Reasons, p. 41	n/a	Summary counts	66 contacted, 24 NDAs	Whole process	Definition differs: "contacted or solicited"

Derived metrics, such as the share of contacted parties that signed an NDA or the share of NDA signatories that submitted an indication of interest, should be calculated only from counts with the same window and definition, and labelled with both.

What transfers to private processes (and what does not)

Merger proxies describe public targets, mostly larger than the companies lower-middle-market buyers pursue, sold under disclosure and fiduciary-duty scrutiny that private sellers do not face. Counts and timelines from them are not benchmarks for a private auction run by a regional adviser.

What does transfer:

- **Stage structure.** Outreach, NDAs, IOIs, management meetings, LOIs, exclusivity and confirmatory diligence appear in the same order in most intermediated processes. Our intermediated sale processes page covers that structure from the buyer's side.
- **Price movement after diligence.** Proxies document, in the board's own words, why prices were revised. That is useful when preparing for the same conversation in a private deal.
- **Actionability.** Boards repeatedly favor certain, financed, diligenced bids over higher but conditional ones. A private seller's adviser applies the same logic.
- **Counting discipline.** The habit of storing each count with its window and definition applies to any pipeline report.

What does not transfer: absolute numbers of parties contacted, the presence of go-shops or fiduciary outs, and anything driven by public-market trading prices.

Docket's agents follow the same rule this article recommends: each recorded fact carries the verbatim passage and page it came from, and contradictions are settled or left visibly open.

Source links

Links cited in this article, in order of first appearance. Full addresses are provided for readers using extracted text.

1. https://www.law.cornell.edu/cfr/text/17/240.14a-101
2. https://www.law.cornell.edu/cfr/text/17/229.1005
3. https://ideas.repec.org/a/bla/jfinan/v62y2007i2p847-875.html
4. https://www.sec.gov/edgar/search
5. https://www.sec.gov/os/accessing-edgar-data
6. https://www.sec.gov/Archives/edgar/data/34563/000110465926035700/tm268832-2_defm14a.htm
7. https://courts.delaware.gov/Opinions/download.aspx?ID=93130

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