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The First International Merger Wave (and the Fifth and Last U.S. Wave)

BERNARD S. BLACK*

ABSTRACT

This article presents international evidence on takeover activity, and uses that evidence to argue that the current takeover wave can fairly be called the first-ever international merger wave, as much or more than it can be called the fifth U.S. merger wave. I also discuss the factors that contribute to the strength of the current takeover wave and why the takeover boom has engendered so little political concern.

Mergers & acquisitions (M&A) activity seems to come in waves. As Joseph Flom documents in the lead article for this conference, we are in the middle of a major takeover wave, with announced U.S. takeovers at a record $1.8 trillion in 1999 and announced worldwide takeovers at a record $4.4 trillion.[1] A billion-dollar deal is now small potatoes — there were almost 200 acquisitions over this size last year in the United States alone.

The current wave is considered the fifth U.S. takeover wave of the twentieth century. In fact, however, it makes increasingly less sense to see takeover booms and busts as national phenomena. The current wave can be considered, at least as accurately, to be the first truly international takeover wave. Conversely, the current wave will likely be the last that can be considered, even crudely, a U.S. wave. A growing percentage of takeovers are cross-border; major stock markets are increasingly linked; and U.S.-only takeover activity in 1999 was only about 40% of the worldwide total measured by transaction value, and 30% measured by number of transactions.

I also speculate on some questions raised by the current frenzy of merger activity: why now, why so much, and how long will the wave last? One reason for why so much: the political climate for takeovers is as favorable, along many dimensions, as we have seen for a long time. The current merger wave will surely end, perhaps when it is killed by a stock market crash. But it will not end because it was sabotaged by a political counterattack.

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1. Joseph H. Flom, *Mergers and Acquisitions: The Decade in Review*, 54 U. MIAMI L. REV. 753 (2000). Flom reports somewhat lower numbers than I do because his data is based on *completed* transactions, rather than *announced* transactions.

I. THE FIRST INTERNATIONAL MERGER WAVE

A. *Characteristics of the Current Takeover Wave*

The current takeover wave (call it 1993-present) can be called the fifth in U.S. history. The first four waves, with rough dates, were:[2]

- 1895-1903: The creation of the great oil, steel, and other trusts, sometimes called the "merging for monopoly" wave.
- 1920-1929: Consolidation in many industries, sometimes called the "merging for oligopoly" wave.
- 1960-1973: Emergence of conglomerate firms and other diversifying acquisitions, sometimes called the "conglomerate merger" wave.
- 1978-1989: The fourth wave isn't neatly captured in a single phrase, but included large components of hostile takeovers, bust-up and refocusing of conglomerate firms, and leveraged buyouts.

These four waves can fairly be called U.S. takeover waves. Perhaps comparable takeover booms occurred in other countries at about the same times (or at other times), but if so, no scholar has mentioned this, to my knowledge. Cross-border transactions were a distinct minority. We do not know what proportion U.S. takeover activity was of the world total during the prior waves — no one kept good international data. But the failure to collect data is telling — apparently there was not enough activity to justify collecting it.

In contrast, the current wave has a distinctly international flavor. Many of the signature transactions — including Daimler's acquisition of Chrysler to form DaimlerChrysler and Vodafone's acquisition of Mannesmann — were either entirely outside the United States or involved a non-U.S. party. The $180 billion Vodafone-Mannesmann transaction, between two non-U.S. firms, is the largest in history. Autos, telecoms, telecom and Internet equipment, airlines, oil, and metals (notably copper and aluminum) are examples of industries where worldwide consolidation is driving intensive takeover activity. In banking, the mergers mostly remain domestic (perhaps because banking is highly regulated), but domestic consolidation is increasingly driven by international competition.

European takeover activity, fueled by the adoption of a true single market with a single currency, has soared to $630 billion in announced transactions in 1998 and $1.6 trillion in 1999. It would not surprise me if European takeovers in 2000 exceeded U.S. takeovers in dollar volume — probably for the first time ever.

Writ broad, the increasingly international flavor of takeovers is an

2. For expanded discussion of the first four waves, *see* RONALD J. GILSON & BERNARD S. BLACK, THE LAW AND FINANCE OF CORPORATE ACQUISITIONS ch. 1 (2d ed. 1995 & Supp. 2000).

inevitable accompaniment to the international growth of securities markets. The U.S. economy is a shrinking portion of the world economy and the U.S. stock market, as strong as it has been, is a shrinking part of the world market, measured by market capitalization. No surprise, then, that U.S. takeovers are a shrinking share of the worldwide total.

The international flavor of merger activity will almost surely be even more prominent in the next wave, whenever that may be. By then, I expect, it will no longer make sense to talk about U.S. merger waves at all. Instead, we will come to see the current wave as the first international merger wave, and its predecessor (the fourth wave) as the last distinctly U.S. merger wave.

B. *Data on International Takeover Activity*

These broad claims need to be supported with data. Figure 1 shows the percentage of worldwide, announced acquisitions that involved at least one U.S. party and also the percentage that involved two U.S. parties, from 1985 through 1999. I could not find good worldwide data before 1985.[3]

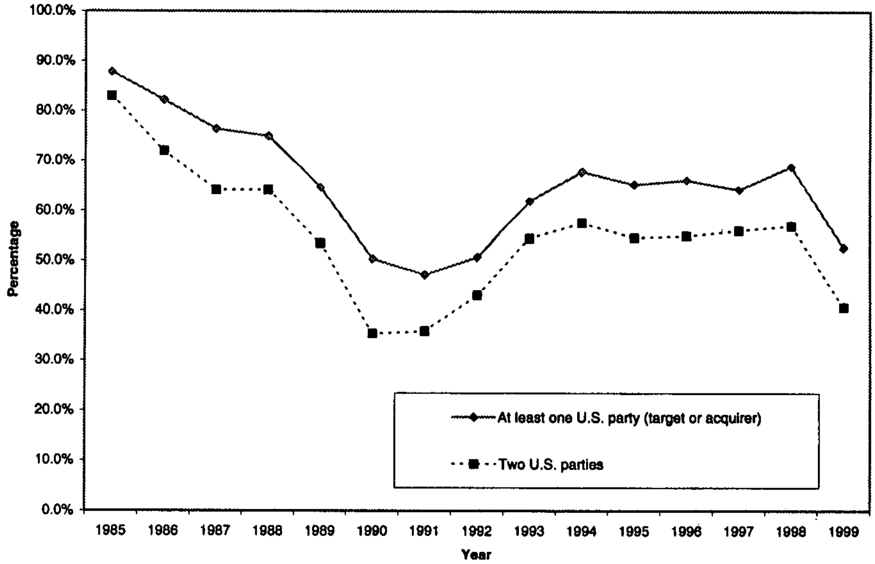
The broad trend is clear. Measured by dollar value, takeovers involving at least one U.S. party have declined from 88% of the worldwide total in 1985 to 53% last year. The drop in U.S.-only takeovers is even sharper — from 83% in 1985 to 41% last year. Conversely, cross-border takeovers, involving one U.S. party but not two, have jumped from 6% of the one U.S.-party total in 1985 to 23% in 1999.

Data on takeover activity measured by *number of transactions*, rather than *dollar value*, tells a similar story. U.S.-only takeovers rose from 2600 in 1985 to 11,400 in 1999. Despite this rapid growth, U.S.-only takeovers shrank over this period from 72% of the world total in 1985 to only 30% in 1999. To be sure, the U.S. percentage of world takeovers by transaction value is still marginally higher than in 1990-1991. But those years were the bottom of the trough following the fourth U.S. wave, while 1999 is a boom year.

If U.S. takeovers are a declining share of the world total, then takeovers elsewhere must be increasing. Figure 2 shows where the increase is concentrated — in Europe. Takeovers involving at least one European party have grown from 11% of the world total in 1985 to 47% in 1999, measured by transaction value. European takeovers are running at a high pace in 2000 as well, as the common Euro-zone currency fuels

3. Appendix I contains the data underlying the figures in text, as well as data and corresponding figures for takeover activity measured by number of transactions.

FIGURE 1. VALUE OF U.S. ACQUISITIONS, AS A PERCENTAGE OF VALUE OF WORLDWIDE ACQUISITIONS



Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

consolidation within Europe across a broad range of industries.[4]

U.S. and European takeovers still dominate the world totals. But Asia is growing rapidly, from a paltry 1% of the world total in 1985 to 6% of a much larger total in 1999, measured by transaction value, and 14% of the world total measured by number of transactions. Asian takeovers have grown 70-fold in dollar value over this period, from $4 billion in 1985 to $281 billion in 1999.

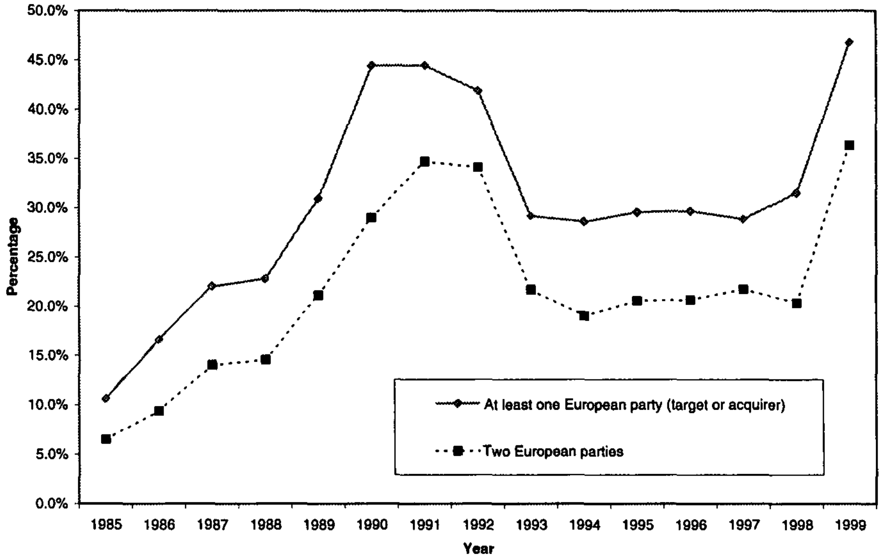
The growth in Asian takeovers is highly likely to continue. Future growth in Asian takeovers will be fueled by a combination of: rapid economic growth in the region; ongoing liberalization of capital markets in most of the major Asian economies; and the transition from control by first-generation founders, for whom selling one's company was often unthinkable, to professional managers who may flounder, forcing a sale, coupled with block ownership by a family that has weaker emotional ties to the firm and may want to sell for financial reasons.

C. *U.S. and World Stock Market Growth*

I claimed above that the decline in the U.S. share of world take-

4. For an overview of recent European takeover activity, *see Mariage à la Mode*, ECONOMIST, Apr. 29, 2000, at 8.

FIGURE 2. VALUE OF EUROPEAN ACQUISITIONS, AS A PERCENTAGE OF VALUE OF WORLDWIDE ACQUISITIONS



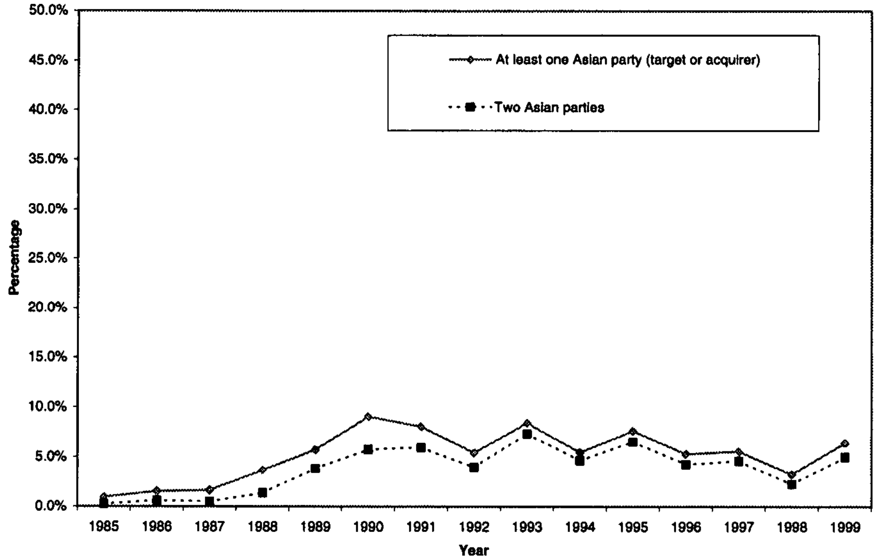
Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

overs reflects a decline in the U.S. share of world stock market capitalization. That claim also deserves support. Figure 4 reports the market capitalization, in billions of 1998 U.S. dollars, of:
(i) the major American stock exchanges (American, NASDAQ, New York);
(ii) the major European stock exchanges (Amsterdam, Athens, Barcelona, Brussels, Budapest, Copenhagen, Frankfurt, Helsinki, Italy, Lisbon, London, Luxembourg, Madrid, Oslo, Paris, Prague, Stockholm, Switzerland, Vienna, Warsaw);
(iii) the major Asian exchanges (Hong Kong, Jakarta, Korea, Kuala Lumpur, Mumbai, Philippines, Singapore, Taipei, Thailand, Tokyo); and
(iv) all major world exchanges combined.
This data is reported at the end of each year from 1975 through 1998. To avoid counting the same company twice, we count for each market the capitalization of domestic listed companies, and exclude foreign companies (most of which are also listed on an exchange in their home country).[5]

U.S. stock market capitalization grows substantially over this

5. The data underlying Figures 4 and 5 is reported in Appendix II. Separate data on domestic and total market capitalization was not available for all markets for all years. When separate data was not available, we used total stock market capitalization.

FIGURE 3. VALUE OF ASIAN ACQUISITIONS, AS A PERCENTAGE OF VALUE OF WORLDWIDE ACQUISITIONS



Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

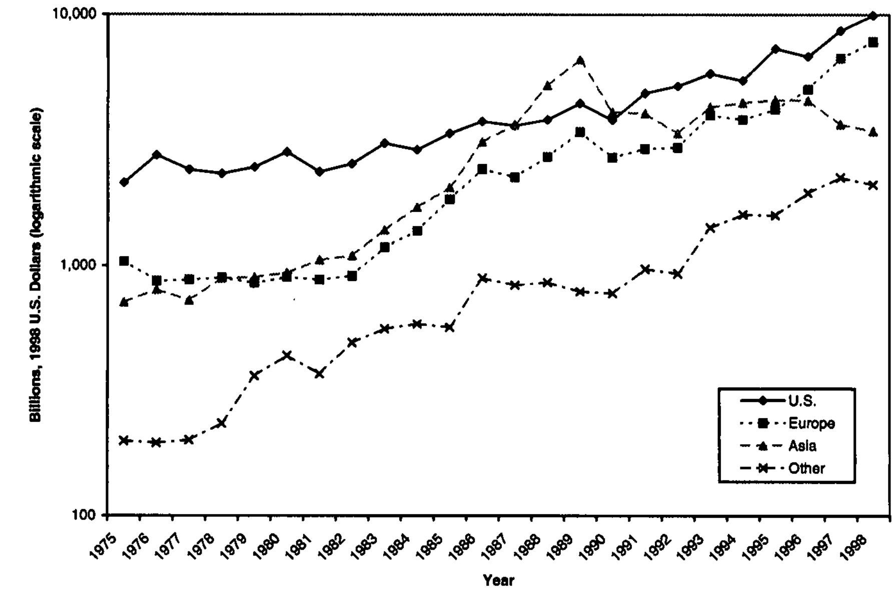
period, from $2.2 trillion in 1975 to $9.9 trillion in 1998. Even so, this growth is slower than in Europe, which expands from $1.0 trillion to $6.7 trillion in stock market capitalization over this period.

Asian stock market capitalization also grows faster than the United States over the entire period, from $0.7 trillion in 1975 to $3.5 trillion in 1998. But Asia shows two distinct periods: rapid growth from 1975 through 1989, when Asian market capitalization, dominated by the Tokyo Stock Exchange, peaks at $6.6 trillion, followed by a decline to the current level, driven by the collapse of Japanese stock prices after 1989 and, more recently, by the 1997-98 Asian financial crisis.

Figure 5 translates the dollar capitalization data in Figure 4 into percentages of the world total. The U.S. has dropped from 60% in 1976 to 42% in 1999. Conversely, Europe has grown from 19% in 1976 to 33% in 1999. Asian market capitalization grew from 17% in 1976 to 43% in 1989, but has collapsed since to 15% in 1998. Other markets have grown from 4% in 1976 to 11% in 1997, before retreating to 9% in 1998.[6]

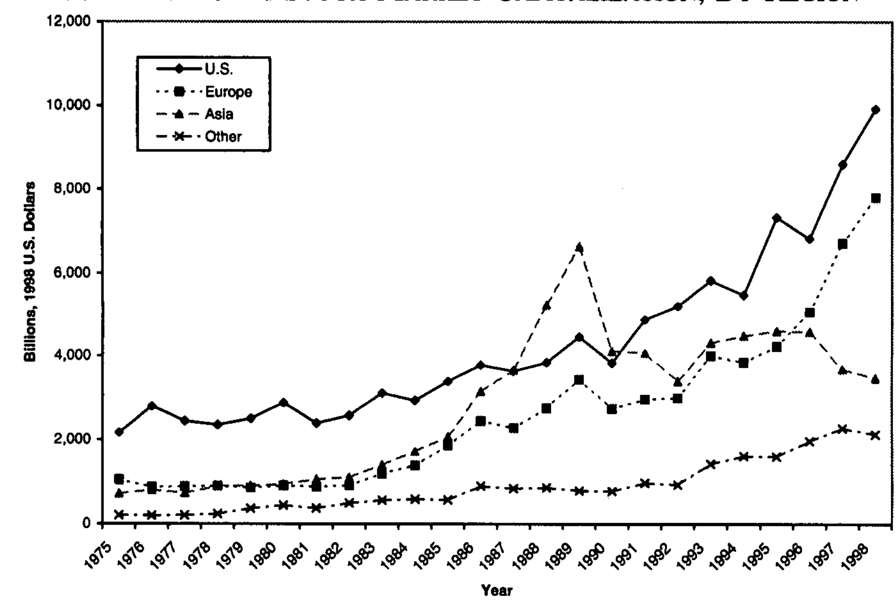
6. I use 1976 as the base year for the comparisons in text, even though data for 1975 was available, because U.S. percentages in 1975 were much lower than in 1976 and 1977, due to the severe 1974-75 U.S. bear market.

FIGURE 4. DOMESTIC STOCK MARKET CAPITALIZATION, BY REGION



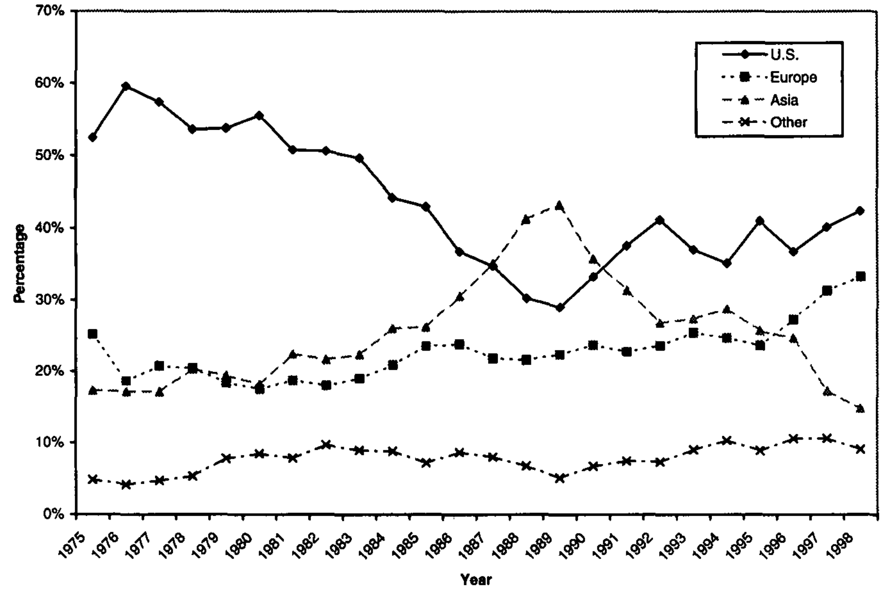
Source: World Stock Exchange Fact Book 1999

FIGURE 4A. TOTAL STOCK MARKET CAPITALIZATION, BY REGION



Source: World Stock Exchange Fact Book 1999

FIGURE 5. DOMESTIC STOCK MARKET CAPITALIZATION, AS PERCENTAGE OF WORLD TOTAL



Source: World Stock Exchange Fact Book 1999

D. *Takeover Activity Relative to Market Capitalization*

The final step is to relate takeover activity to market capitalization. Figure 6 reports the level of U.S., European and Asian takeover activity, as a percentage of year-end U.S. market capitalization, from 1985 through 1998.

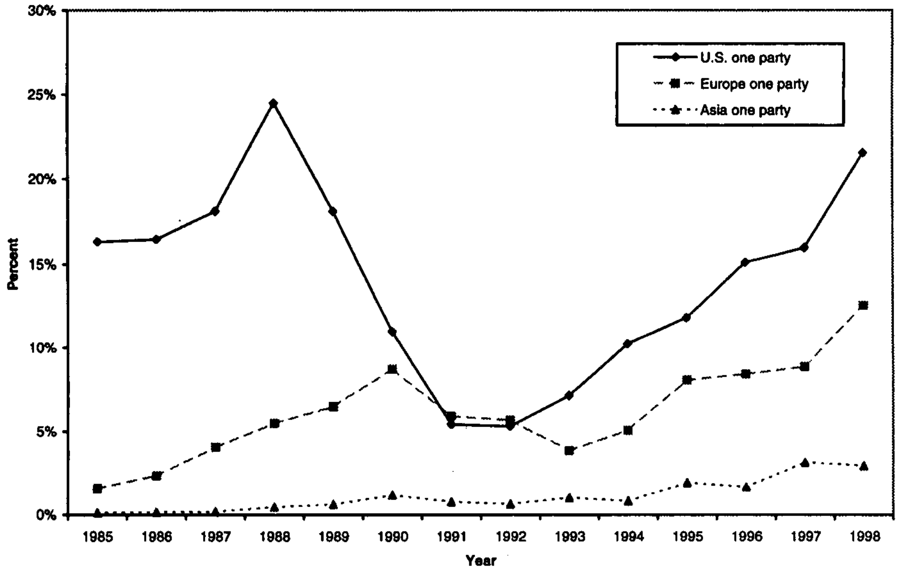
Figure 6 shows the substantial rise from 1985 through 1998 in European and Asian takeover activity, as a percentage of market capitalization. By this measure, the United States is still the most takeover-intensive region, but Europe is catching up. This would be even more apparent if Figure 6 included 1999, which is not shown because we had market capitalization data only through 1998. Asia is also rising from a very low base.

II. THE POLITICAL AND CULTURAL CLIMATE FOR TAKEOVERS

In the lead article for this conference, Joseph Flom discusses some factors that make the political climate friendly to takeovers.[7] I offer below my own, partly overlapping list of factors. A caveat: This Article

7. Flom, *supra* note 1, at 774-75.

FIGURE 6. REGIONAL TAKEOVER ACTIVITY AS PERCENTAGE OF REGIONAL MARKET CAPITALIZATION



is long on assertions, and short on citations to the data that support the assertions. Much of the support can be found in Ronald Gilson's and my book, *The Law and Finance of Corporate Acquisitions.*[8]

1. *Low unemployment:* Takeovers can produce layoffs. In the United States, however, labor complaints about layoffs are muted, and hard to take seriously when made, when we have a 4% unemployment rate. An underlying macroeconomic problem is that our unemployment rate may be unsustainably low. Most people understand that anyone who is willing to show up for work, on time and sober, can get a job, even if it is not always a great job.

2. *Many takeovers are in sectors with weak unions and strong job opportunities:* A high proportion of the takeovers are occurring in the new economy of technology and communications, where labor unions are weak, growth is strong so layoffs are smaller, and employees who are displaced have strong job prospects, because the industry as a whole is growing.

3. *Golden parachutes and stock options:* Top U.S. managers now own enough stock and stock options to mute their resistance to takeovers. They will get rich if their company is acquired, so they do not fight as often, as hard, or as loudly, even if they are likely to lose their jobs in the process, as indeed they are. The trend toward generous,

8. *See* GILSON & BLACK, *supra* note 2.

stock-based compensation of top executives is spreading worldwide. For example, Germany recently changed its rules to permit stock-option compensation; perhaps France will be next.

4. *Breakdown of the, old antitakeover coalition:* The U.S. antitakeover coalition of the 1980's consisted of managers and labor, both scared about losing their jobs, opposing hostile takeovers. Empirical research shows that friendly takeovers have just as large an effect on employment as hostile deals. Friendly deals, however, were never seriously restricted because only labor opposed them, and labor by itself lacked the political strength to persuade state legislatures to build strong barriers.

Today, neither side of that old antitakeover coalition opposes takeovers as vigorously, for the reasons suggested above. When they do fight a particular bid, state legislatures sometimes side with the bidder and reject the target's proposed antitakeover law. In the 1980's, targets uniformly won these battles.

It helps that labor's concerns were never that strong — there is little evidence that takeovers produce significant layoffs on the shop floor. They do cause layoffs at the target's headquarters, but that is where stock options are especially prevalent and likely to mute opposition.

5. *Similar trends in Europe:* We can see similar trends in Europe, albeit weaker. Unemployment concerns are higher in Europe, because unemployment rates are much higher. Labor unions are stronger, albeit weakening there too. Strong European unions can and do chill takeovers in shrinking industries. In growing industries, however, workers' concern for their jobs is muted and that is important to the success of takeover bids.

Consider the Vodafone hostile takeover of Mannesmann, for an astonishing $180 billion in Vodafone stock. A socialist German government was eerily silent. Why? Partly because Mannesmann's workers weren't screaming. They were quiet for good reason — this was a merger for growth, not for consolidation, and even if they were laid off, other telecom companies would need their skills.[9]

We still see proposed cross-border bids that fail because the target's government blocks the transaction, to stop a major company from falling into foreign hands. France and Spain are the worst offenders. But they have become the exceptions to a more liberal general rule.

6. *Hostile takeovers are not too hard legally:* Under U.S. law as a

9. On the Vodafone-Mannesmann transaction, *see Bidding for the Future*, ECONOMIST, Feb. 12, 2000, at 71.

whole, hostile takeover bids are hard, but not ridiculously so. Hostile bids occasionally get made and, when made, they succeed a decent percentage of the time. Perhaps more importantly, the threat of a hostile bid must be taken seriously. The target's board may have the right (the definitive Delaware case has not been decided) to sit behind a staggered board and a poison pill and make an acquirer win two consecutive proxy contests to acquire control. In practice, however, few boards behave this way. The only two cases of such behavior are Moore's bid for Wallace (abandoned when Wallace's stock price rose through the bid price) and U.S. Surgical's bid for Circon (abandoned when Tyco acquired U.S. Surgical).[10]

The lack of a legislative or judicial move toward stronger defenses mirrors public unconcern about takeovers. If anything, recent Delaware Supreme Court decisions point in the opposite direction (see part III of this Article).

Outside the United States, hostile takeovers have long been common in Great Britain, and are increasingly viewed as politically feasible in other European countries. In much of Europe, we increasingly realize that purely legal barriers were never that strong. The barriers, now falling, were mostly political. The European Union is reportedly close to adopting a takeovers directive (the Thirteenth Company Law Directive) that is loosely patterned on the takeover-friendly British rules.[11]

7. *Tolerable taxes on income from capital:* The globalization of capital markets makes it harder for countries to levy heavy taxes on income from capital, lest the capital simply move elsewhere. Gradually, this hard truth is affecting tax rates. Taxes on income from capital are dropping in the countries where they had been highest. This smooths the path for takeovers by reducing their tax cost.

8. *Globalization:* The huge scale of many recent takeovers reflects the decades-long growth in international trade as a percentage of GDP in almost every country, and the parallel trend towards competition becoming global, not just national. Many mergers are intended to achieve world-scale or to consolidate a worldwide, not just a national industry.

9. *Low Inflation:* Inflation rates in the developed world peaked in 1979-81 and have been generally dropping since. This trend is not likely to reverse anytime soon, given the swift punishment that international investors impose on an errant government through higher borrow-

10. For the related litigation, see Moore Corp. v. Wallace Computer Servs., 907 F. Supp. 1545 (1995); *In re* Circon Corp. Shareholders Litig., No. CIV. A. 15223 1998 WL 409166 (Del. Ch. July 6, 1998).

11. *See* EDDY WYMEERSCH, THE ANTI-OPA DEFENSES AFTER THE THIRTEENTH DIRECTIVE (Financial Law Inst. Working Paper No. 2000-01, 2000).

ing rates. Since most debt pays interest at a nominal (rather than real) rate, lower inflation means lower interest rates, which let acquiring companies pay higher prices and to be more patient in waiting for an acquisition's hoped-for synergies to emerge. Lower nominal interest rates also seem to correlate with higher stock prices — leaving aside theoretical quibbles about whether they ought to.

10. *The connection between stock markets and prosperity:* Most of the U.S. population understands, more or less, the connection between the soaring stock market and overall prosperity; as well as the connection between stock market gains and overall prosperity on the one hand, and large government surpluses on the other hand, when only a few years ago we expected large deficits. Most people also understand that takeover activity, and the expectation of more, is an important driver of stock prices.

11. *Less fear of concentrated wealth:* Perhaps because so much telecoms and technology wealth is new, one doesn't sense the public distrust of bigness and concentrated wealth that, as recently as a generation ago motivated antitrust attacks in the United States on big mergers or political attacks on strong banks. Bill Gates is still more hero than villain, despite having accumulated unseemly amounts of both wealth and power. I do not even know if concentration of economic power is rising or falling. No one is publicizing that data, though someone, somewhere, must be studying it.

12. *The ascendancy of market economics:* Every thinking person understands, and most politicians at least crudely understand, that capitalism has triumphed over socialism — that governments cannot micromanage economies or run businesses. This understanding has fueled a worldwide privatization and deregulation trend. Those regulatory changes directly fuel takeover activity in particular industries, including banking, airlines, and telecoms. The broad trend toward capitalism as the dominant market paradigm also contributes to a political mindset that government shouldn't interfere too much with large takeovers either – that the market knows best.

13. *Startups meant to be bought:* Some startup companies are begun with the hope of growing big. But a surprising number are begun by entrepreneurs who understand that the eventual exit is a takeover by a major player. That exit might be before an initial public offering or after it, but both the entrepreneurs and the venture capitalists who fund them plan explicitly for that exit.

Telecom and Internet equipment offers a good example. Build a nice piece of hardware or software that solves a current need, and Lucent or Cisco or Nortel will come knocking at your door, offering a handsome exit price for a one-product company that could never survive on its own and was never meant to.

14. *The growing importance of time-to-market:* In the high-tech industries that form a large part of overall market capitalization, time-to-market is critical. The traditional buy-versus-build choice is often no choice at all, if it would take a year to build what you could buy next week. The only questions are price and whom you buy (if there is a choice) to fill a hole in your product line. For example, Intel and Microsoft each make dozens of acquisitions per year to fill holes in their product lines. Those acquisitions are small for them, but sometimes involve a nine or even a ten-digit payoff for the target.

III. We Still Need Hostile Takeovers

Hostile takeovers are a modest percentage of overall takeover activity. Yet they remain a lightning rod for public criticism of takeover activity generally, even if that criticism is not as loud today as in the 1980's. In my judgment, takeover bids remain an important safety valve. Most boards of directors act in shareholders' interests, but a minority is willing to part with astonishing amounts of shareholder money in a quest for continued independence, or for a combination with preferred bidder *A* instead of interloper *B*.

As long as that minority exists, there remains a role for hostile takeovers. As long as we have boards of directors like Warner-Lambert's, that try desperately to hold onto a friendly deal when another bidder is willing to pay more (American Home Products was an equally plausible partner who was offering an extra $15 billion to shareholders), we need a way for a bidder to take its case directly to the target's shareholders.[12]

So too with Vodafone's acquisition of Mannesmann. The business combination made lots of sense. Whether Vodafone bought Mannesmann or vice versa mattered to their respective chairmen, but probably did not much affect the efficiency gains from the combination. Both companies were well-run, and they are likely worth more together than apart. But when Mannesmann resisted, Vodafone needed a way to bring its offer directly to the Mannesmann shareholders.

I doubt that we need many hostile takeovers, as long as the threat of

12. When I presented this Article, a lawyer for one of the parties to this takeover battle commented afterward that Warner-Lambert may have resisted partly for tactical reasons — to get a higher price from American Home Products. That's plausible, but such a tactical decision must be placed in the context of takeover rules that block preclusive lockups. With a preclusive lockup not available, American Home Products was willing to make a superior bid, after which everyone understood that the lower-valued Pfizer deal was dead because Warner-Lambert's shareholders wouldn't vote for it. It is anyone's guess what Warner-Lambert's board would have done if a preclusive lockup with Pfizer was permitted.

one can help to bring managers to the negotiating table, as happens today in a nontrivial but unknowable number of cases. But we need some hostile offers. So, I am delighted that there is no trend to making hostile bids even harder, and that they are possible in most countries.

Increasingly, managers seem to accept that there should be some role for hostile takeovers. There is no move away from Delaware, which recently banned dead-hand poison pills, to other states that allow them. Indeed, the Delaware Supreme Court's dead-hand pill decision in *Quickturn Design Systems v. Mentor Graphics Corp,*[13] before that, its cap on lockups in *Paramount Communications v. QVC Networks,*[14] and more generally, its backtracking in *QVC* and other cases from the 1990 pro-defense highwater mark of *Paramount Communications v. Time Inc.*,[15] were possible, without a backlash from managers, partly because of a general social sense that takeover defenses are strong enough and should not be bulletproof. So too with the recent Delaware Chancery Court decisions that suggest that the target's board can't bind itself too tightly not to talk to another potential bidder.[16]

I do not want to suggest that the Delaware Supreme Court consults *only* the political tea leaves in deciding cases. But only the naive would fail to understand that the Delaware courts are politically sensitive institutions.[17]

IV. Conclusion: Takeovers are Mostly Good for Society

A good way to close this Article may be to reaffirm that takeovers are mostly good for society. Intensive empirical study over the last twenty years has taught us a lot about the net social benefits of takeovers. If, as is usually the case, the bidder's and the target's shares together are worth more than before the bid was announced, that is evidence of a net social gain and a crude measure of the amount of the gain.

I am more skeptical than most academics about the benefits of many takeovers to the acquiring firm. My first professional article was

13. 721 A.2d 1281 (Del. 1999).

14. 637 A.2d 34 (Del. 1994).

15. 571 A.2d 1140 (Del. 1990).

16. *See* ACE Ltd. v. Capital Re Corp., 747 A.2d 95 (Del. Ch. 1999) (refusing to enforce no-talk provision in merger agreement against target's board); Phelps Dodge Corp. v. Cyprus Amax Minerals, No. CIV. A. 17398, 1999 Del. Ch. LEXIS 202, (Del. Ch. Sept. 27, 1999) (expressing doubts about validity of no-talk provision); *In re* IXC Communications, Inc. Shareholders Litig., No. CIV. A. 17334, 1999 Del. Ch. LEXIS 210, (Del. Ch. Oct. 27, 1999) (suggesting some remaining validity for no-talk clauses).

17. For an argument that manager and public opposition to hostile takeovers may have contributed to the *Paramount-Time* decision, *see* Jeffrey N. Gordon, *Corporations, Markets, and Courts*, 91 Colum. L. Rev. 1931 (1991).

titled *Bidder Overpayment in Takeovers*[18] and there continues to be evidence that overpayment is distressingly common.[19] In a world of partial anticipation of bids, on both the bidder and target side, it is hard to untangle how much of the net stock price gains from takeovers reflect investor anticipation of future cash flow gains. There is compelling evidence, however, that a significant amount of the net shareholder gains — mostly on the target's side — does reflect investor expectation of a net wealth gain. The apparent percentage gains are smaller in the stock-for-stock deals that predominate today, but the evidence for significant net gains is still strong.

Wealth transfers from others cannot explain much of the net gains to shareholders. Surely, as Joseph Flom suggests in his article for this conference, shareholder gains should be measured after tax. But *social gains* include the taxes that the shareholders pay. The distinction he draws between gains to different classes of shareholders — long-term versus short-term, and within short-term holders, between arbitrageurs and others — seem nonsensical to me. Maybe a practicing lawyer still needs to cover his tracks. Maybe Flom needs to claim that there is a defensible case to be made for a burn-all-bridges defense, as long as there are some clients who want to hire Skadden Arps to mount such a defense.

Academics, however, do not have to worry about such things. So I want to close by stating my own position: there are many bad takeovers that should not happen at all and are motivated by the empire-building instincts of the acquirer's CEO. There are many good combinations, where 100% or more of the net gains go to the target's shareholders, because the acquirer has paid too much. And there are many wonderful takeovers that create huge amounts of value for both the acquirer's and the target's shareholders. On average, there is a lot of value creation.

Short-term stock price studies show that. Long-term studies confirm that the short-term reactions are decent estimates of the long-term outcomes. I wish I knew a good way to cut down on the bad takeovers while preserving the good ones. I do not. The friendly/hostile distinction certainly does not distinguish good takeovers from bad. If anything, the evidence suggests that the average hostile deal is more likely than the average friendly deal to create value. So, we have to take the good with the bad.

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18. Bernard Black, *Bidder Overpayment in Takeovers*, 41 STAN. L. REV. 597 (1989).

19. *See, e.g.*, MARK SIROWER, THE SYNERGY TRAP: HOW COMPANIES LOSE THE ACQUISITION GAME (1997).

APPENDIX I: DATA ON WORLDWIDE TAKEOVERS, 1985-1999

All data reported below is from Securities Data Company and is based on *announced transactions,* not all of which were completed. Transaction value reflects only transactions where a transaction amount was available, and includes the target's net debt. Percentages are of the world total. Dollar amounts are in millions of U.S. dollars.

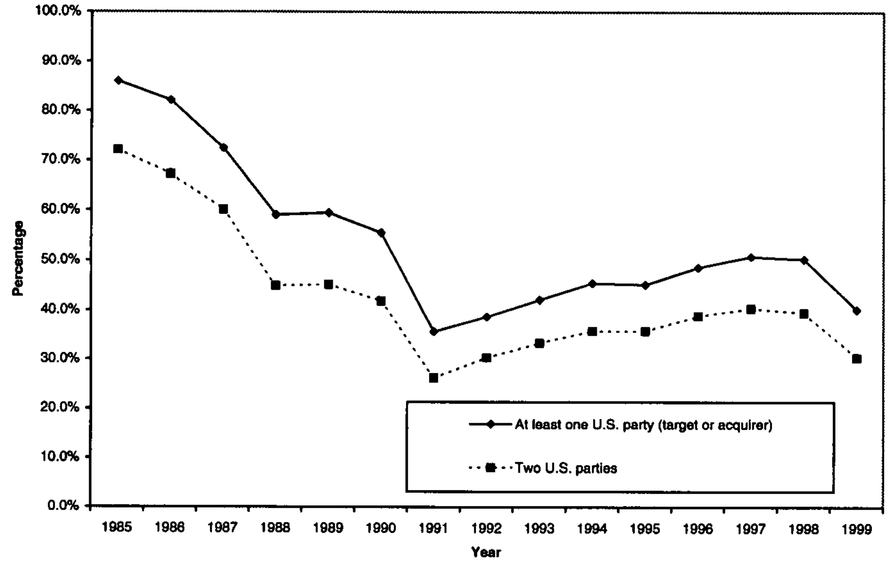
Transaction value (announced transactions with value available)							
Year	**U.S. only**	**World**	**Percent**	**Europe only**	**Percent**	**Asia only**	**Percent**
1985	$344,724	$415,301	83.0%	$26,998	6.5%	$1,107	0.3%
1986	366,671	509,414	72.0	47,674	9.4	3,050	0.6
1987	385,611	600,896	64.2	84,263	14.0	3,085	0.5
1988	584,901	911,578	64.2	132,769	14.6	12,313	1.4
1989	507,615	949,351	53.5	200,653	21.1	36,320	3.8
1990	236,780	668,562	35.4	193,658	29.0	38,405	5.7
1991	168,513	469,790	35.9	162,997	34.7	27,935	5.9
1992	202,597	469,806	43.1	160,190	34.1	18,580	4.0
1993	325,118	596,645	54.5	129,380	21.7	43,783	7.3
1994	433,061	751,797	57.6	143,074	19.0	34,862	4.6
1995	675,851	1,237,088	54.6	254,212	20.5	80,749	6.5
1996	824,348	1,499,299	55.0	309,993	20.7	63,950	4.3
1997	1,180,464	2,103,902	56.1	457,511	21.7	96,857	4.6
1998	1,770,558	3,103,391	57.1	632,050	20.4	69,905	2.3
1999	1,791,645	4,400,488	40.7	1,599,185	36.3	218,962	5.0
Year	**One U.S. party**	**World**	**Percent**	**One European party**	**Percent**	**One Asian party**	**Percent**
1985	364,906	415,301	87.9%	44,080	10.6%	3,959	1.0%
1986	418,848	509,414	82.2	84,730	16.6	7,746	1.5
1987	459,219	600,896	76.4	132,324	22.0	9,778	1.6
1988	683,385	911,578	75.0	207,725	22.8	33,291	3.7
1989	614,334	949,351	64.7	293,590	30.9	54,228	5.7
1990	336,674	668,562	50.4	297,161	44.4	60,492	9.0
1991	221,703	469,790	47.2	209,044	44.5	37,840	8.1
1992	238,182	469,806	50.7	196,830	41.9	25,366	5.4
1993	369,826	596,645	62.0	173,929	29.2	50,289	8.4
1994	510,332	751,797	67.9	214,710	28.6	40,851	5.4
1995	808,717	1,237,088	65.4	365,446	29.5	94,475	7.6
1996	993,275	1,499,299	66.2	444,665	29.7	79,213	5.3
1997	1,353,167	2,103,902	64.3	606,475	28.8	116,752	5.5
1998	2,139,738	3,103,391	68.9	977,568	31.5	101,008	3.3
1999	2,318,814	4,400,488	52.7	2,058,996	46.8	281,243	6.4

Number of Transactions							
Year	U.S. only	World	Percent	Europe only	Percent	Asia only	Percent
1985	2567	3559	72.1%	263	7.4%	29	0.8%
1986	3529	5248	67.2	554	10.6	56	1.1
1987	4228	7028	60.2	1323	18.8	84	1.2
1988	4296	9575	44.9	2851	29.8	156	1.6
1989	6046	13395	45.1	3614	27.0	316	2.4
1990	6235	14899	41.8	3499	23.5	546	3.7
1991	5500	20933	26.3	7725	36.9	1088	5.2
1992	6042	19895	30.4	7826	39.3	685	3.4
1993	6901	20737	33.3	6855	33.1	1073	5.2
1994	8293	23201	35.7	7340	31.6	1385	6.0
1995	9878	27633	35.7	8279	30.0	2095	7.6
1996	11368	29260	38.9	7329	25.0	2520	8.6
1997	11892	29431	40.4	7217	24.5	2407	8.2
1998	13463	34059	39.5	8369	24.6	2395	7.0
1999	11436	37671	30.4	12203	32.4	3731	9.9

Year	One U.S. party	World	Percent	One European party	Percent	One Asian party	Percent
1985	3062	3559	86.0%	532	14.9%	84	2.4%
1986	4311	5248	82.1	955	18.2	162	3.1
1987	5092	7028	72.5	1903	27.1	194	2.8
1988	5654	9575	59.0	3851	40.2	373	3.9
1989	7966	13395	59.5	5052	37.7	624	4.7
1990	8274	14899	55.5	5827	39.1	981	6.6
1991	7454	20933	35.6	11210	53.6	1485	7.1
1992	7693	19895	38.7	10688	53.7	937	4.7
1993	8725	20737	42.1	9492	45.8	1458	7.0
1994	10534	23201	45.4	9795	42.2	1903	8.2
1995	12466	27633	45.1	11340	41.0	2672	9.7
1996	14212	29260	48.6	10390	35.5	3228	11.0
1997	14952	29431	50.8	9953	33.8	2985	10.1
1998	17120	34059	50.3	11643	34.2	3411	10.0
1999	15122	37671	40.1	16162	42.9	5132	13.6

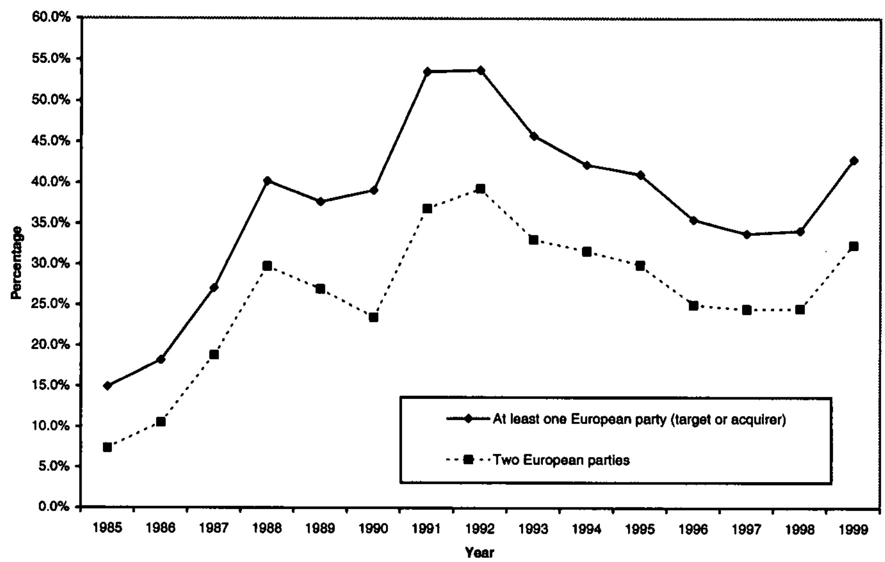
The data on transaction value is reported in the text in graphical form. The parallel data based on number of transactions for the United States, Europe and Asia, is reported in Figures A-1, A-2, and A-3 below.

FIGURE A-1. NUMBER OF U.S. ACQUISITIONS, AS A PERCENTAGE OF WORLDWIDE ACQUISITIONS



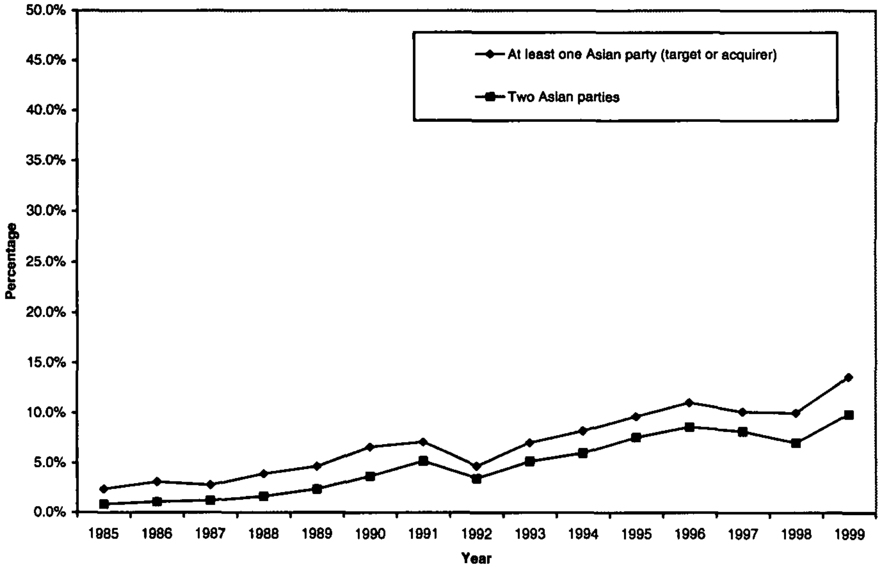
Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

FIGURE A-2. NUMBER OF EUROPEAN ACQUISITIONS, AS A PERCENTAGE OF WORLDWIDE ACQUISITIONS



Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

FIGURE A-3. NUMBER OF ASIAN ACQUISITIONS, AS A PERCENTAGE OF WORLDWIDE ACQUISITIONS



Source: Securities Data Co. (based on announced transactions, value includes target's net debt)

APPENDIX II: DATA ON WORLD STOCK MARKET CAPITALIZATION, 1975-1998

All data reported below is for total market capitalization at the end of the indicated years, and is reported in billions of 1998 U.S. dollars. Data is based on domestic capitalization for each market where available, and on total market capitalization when separate domestic capitalization is not available. Data is from WORLD STOCK EXCHANGE FACT BOOK 1999 (Meridian Securities Markets).

U.S. markets are: American, NASD, New York.

European markets are: Amsterdam, Athens, Barcelona, Brussels, Budapest, Copenhagen, Frankfurt, Helsinki, Italy, Lisbon, London, Luxembourg, Madrid, Oslo, Paris, Prague, Stockholm, Switzerland, Vienna and Warsaw.

Asian markets are: Hong Kong, Jakarta, Korea, Kuala Lumpur, Mumbai, Philippines, Singapore, Taipei, Thailand and Tokyo.

Other major stock markets are: Australia, Bogota, Buenos Aires, Caracas, Istanbul, Johannesburg, Mexico, Montreal, New Zealand, Rio de Janeiro, Santiago, Sao Paolo, Tel Aviv and Toronto.

Year-End Stock Market Capitalization										
Year	**U.S.**	**World**	**Percent**	**Europe**	**Percent**	**Asia**	**Percent**	**Other**	**Percent**
1975	2166	4127	52.48%	1040	25.19%	712	17.26%	200	4.83%
1976	2783	4671	59.59	869	18.61	799	17.11	196	4.19
1977	2438	4244	57.46	880	20.73	725	17.08	201	4.74
1978	2352	4389	53.58	896	20.42	891	20.29	234	5.34
1979	2495	4643	53.75	852	18.35	900	19.39	362	7.79
1980	2864	5156	55.55	901	17.48	935	18.14	436	8.45
1981	2390	4704	50.80	879	18.69	1053	22.39	369	7.84
1982	2570	5075	50.63	911	17.95	1098	21.63	491	9.68
1983	3099	6240	49.66	1185	18.99	1392	22.30	558	8.93
1984	2923	6615	44.19	1381	20.88	1721	26.02	583	8.81
1985	3386	7880	42.97	1855	23.54	2065	26.21	565	7.17
1986	3783	10284	36.79	2450	23.82	3142	30.55	892	8.68
1987	3634	10442	34.81	2278	21.81	3666	35.11	836	8.01
1988	3845	12707	30.26	2741	21.57	5241	41.25	857	6.75
1989	4457	15358	29.02	3436	22.37	6641	43.24	785	5.11
1990	3832	11496	33.33	2724	23.70	4115	35.80	773	6.72
1991	4882	12986	37.59	2952	22.73	4075	31.38	969	7.46
1992	5209	12649	41.18	2987	23.61	3393	26.83	930	7.35
1993	5836	15754	37.05	4008	25.44	4316	27.39	1423	9.03
1994	5481	15587	35.17	3849	24.69	4485	28.78	1606	10.31
1995	7334	17890	40.99	4229	23.64	4598	25.70	1596	8.92
1996	6827	18557	36.79	5063	27.28	4580	24.68	1968	10.61
1997	8597	21418	40.14	6716	31.36	3684	17.20	2273	10.61
1998	9921	23410	42.38	7802	33.33	3467	14.81	2127	9.08