TAKEOVERS, MERGERS AND ACQUISITIONS
LAWG/J-700-09

Georgetown University Law Center
Professors Daniel F. Duchovny and Joseph E. Gilligan

Spring Semester 2016

TIME/LOCATION: Tuesdays 7:55 - 9:55 pm, McDonough 200

COURSE MATERIALS:

1. Reading Materials (provided on Courseware)

2. Federal Securities Law, Selected Statutes, Rules & Forms, Coffee and Seligman (Rulebook only)

3. Delaware General Corporation Law


READING ASSIGNMENTS:

Each section of the course outline has assigned reading material. Announcements will be made during each class on the materials we expect to cover the following week. Every effort should be made to read the assignments before class.

We will be discussing current transactions and news relating to the course during each class session. We strongly encourage reading the Wall Street Journal, the New York Times, or the Financial Times on a regular basis during the semester. We also encourage you to keep up with related blogs (e.g., http://www.deallawyers.com/blog/; http://blogs.wsj.com/deals/; and http://dealbook.blogs.nytimes.com).

EXAM: The exam will be in class and approximately 2-3 hours.

Students will be allowed to bring into the exam only their personal copies of #1, #2 and #3 from the Course Materials list above (i.e., class Reading Materials, Federal Securities Law, Selected Statutes, Rules & Forms, Coffee & Seligman and the Delaware General Corporation Law) and his/her personal notes and outlines in printed form (i.e., no electronic copies or materials). These materials may be marked with the student’s notes, cross-references and other comments as well as highlighting, tabbing and similar notations.

No other documents, literature, materials or aids will be permitted in the exam. Students
may use their laptop computers during the exam solely as typing devices. Accessing the internet or using information or materials stored on the student’s laptop / hard drive / external storage device is prohibited. No smartphones or other portable electronic devices are allowed to be used during the exam, including iPhones, iPads, Blackberrys, cell phones or similar devices.

**GRADE:** Your grade will be based on the final examination, with a possible upward adjustment for class participation. We strongly encourage class participation.

**OFFICE HOURS:** We may be reached any time during business hours at the following telephone numbers and e-mail addresses:

Professor Duchovny: [redacted]

Professor Gilligan: [redacted]
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<th>Class</th>
<th>Topic</th>
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<tr>
<td>1. January 19</td>
<td>Course Introduction; M&amp;A Overview and History, M&amp;A Mechanics</td>
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<td>2. January 26</td>
<td>M&amp;A Mechanics (cont’d); Disclosure of Preliminary Merger Negotiations</td>
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<td>3. February 2</td>
<td>The Williams Act: Beneficial Ownership Reporting</td>
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<td>4. February 9</td>
<td>The Williams Act: Tender Offers</td>
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<td>* February 16</td>
<td>No Class</td>
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<td>5. February 23</td>
<td>The Williams Act: Tender Offers</td>
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<td>6. March 1</td>
<td>Proxy Contests to Influence Control</td>
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<td>* March 8</td>
<td>Spring Break – No Class</td>
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<td>7. March 15</td>
<td>Proxy Contests to Influence Control</td>
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<td>8. March 22</td>
<td>Defending Against a Hostile Takeover</td>
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<td>9. March 29</td>
<td>State Corporate Law Considerations</td>
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<td>10. April 5</td>
<td>State Corporate Law Considerations</td>
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<td>11. April 12</td>
<td>Going Private Transactions</td>
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<td>12. April 19</td>
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<td>13. April 26</td>
<td>Cross-Border Business Combination Transactions; Semester Review</td>
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<td>* Final Exam Week</td>
<td>(May 3 – May 17)</td>
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Course Outline

I. Course Introduction; M&A Overview and History (Class 1)

A. History
   1. Takeover/Consolidation Waves
   2. Stock Market Correlation

B. Legal Overview
   1. State corporate law
   2. Federal securities laws
      i. Securities Exchange Act of 1934
      ii. Securities Act of 1933
      iii. Regulation M-A
   3. Stock exchange listing standards and NASD rules
   4. Tax
   5. Antitrust
   6. Regulated Industries (e.g., banking)
   7. Accounting

C. Regulators
   1. U.S. Securities and Exchange Commission
   2. New York Stock Exchange/NASDAQ.
   3. Financial Industry Regulatory Authority (FINRA)

II. M&A Mechanics (Classes 1 & 2)

A. Overview of Acquisition Methods
   1. Open Market/Privately Negotiated Stock Purchases
   2. Merger
   3. Tender Offer
      i. Third party
      ii. Issuer
4. Exchange Offer
5. Sale of Assets/Division
6. Spin-offs
7. Going-Private Transactions
8. Hostile v. Friendly

B. Documentation
1. The Letter of Intent/Confidentiality Agreements
2. The Merger/Acquisition Agreement
3. Employment and other compensation arrangements
4. Disclosure schedules

C. Due Diligence and Market Considerations
D. Disclosure of Preliminary Merger Negotiations

III. Beneficial Ownership Reporting, Tender Offers and the Williams Act (Classes 3, 4 & 5)
A. History of Federal Regulation of Takeovers
B. Beneficial Ownership Reporting Provisions
1. The Statute and Rules
2. Group Theory
C. Regulation of Tender Offers
1. What is a “Tender Offer?”
2. Disclosure Framework and Procedural Safeguards
3. Trading Practice Rules
D. Offers Implicating the Proxy Rules and/or the Securities Act
1. Mandated Disclosure to Shareholders
2. Rule 145/Form S-4
3. Registered and Exempt Offers
4. Regulation M-A
5. Rules 801 & 802
6. Rule 425 & Rule 14a-12 Communications

IV. Proxy Contests to Influence Control (Classes 6 & 7)

A. Interaction between State and Federal Law
B. Action by Consent versus Shareholder Meeting
C. Mechanics of a Shareholder Meeting
D. Definition of “Solicitation”
E. Filing and Dissemination Requirements
   1. Information Statements v. Proxy Statements
   2. Exemptions
F. Shareholder Communication Provisions; Rule 14a-8 Proposals; Proxy Access
G. Contested Solicitations
   1. Strategy and Tactics
   2. Regulatory Parameters: State and Federal
   3. Defenses
   4. Facilitating a Takeover through a Proxy Contest
H. Corporate Governance

V. Defending Against a Hostile Takeover (Class 8)

A. Pre-Offer Planning
B. Tactics During a Takeover
C. The Poison Pill / Stockholder Rights Plan
D. Regulatory Defenses

VI. State Corporate Law Considerations (Classes 9 & 10)

A. Overview of Delaware Corporate Law/Other Corporation Codes
B. Directors’ Duties in Applying Defensive Tactics
   1. Rights Plans
   2. “Just Say No” Campaigns
   3. Other Defenses
C. Directors’ Duties in Selling the Company
   1. Business Judgment Rule
   2. Revlon Duties

D. Directors’ Duties in Conflicted Transactions
   1. Types of Conflicted Transactions
   2. Entire Fairness Standard

E. State Anti-takeover Statutes

F. Shareholders Right of Appraisal

VII. Going Private Transactions (Classes 11 & 12)
   A. State Regulatory Scheme
   B. Federal Regulatory Scheme
   C. Disclosure Requirements

VIII. Cross-Border Business Combination Transactions (Class 13)
   A. Foreign Bidders; Special Disclosure Issues
   B. Foreign Target Companies: Extraterritorial Reach of the Williams Act
   C. Steps Toward Regulatory Harmonization: Cross-Border Tender Offer Exemptions
Reading Materials

M&A Mechanics (Classes 1 and 2)

Acquisition Structuring and Process

Statutory reading: Securities Act §5 and Rule 145
Form S-4 (briefly review; do not outline)


3. Sample Confidentiality Agreement (briefly review; do not outline)


Disclosure of Preliminary Merger Negotiations

Statutory reading: Form 8-K, Items 1.01, 1.02, 2.01, 5.01 and 5.02
Schedule 14D-9 (Cover page and Item 7 only)
Exchange Act §10(b) and Rule 10b-5
Securities Act Rule 165, 166


Beneficial Ownership Reporting, Tender Offers and the Williams Act (Classes 3, 4 and 5)

**Beneficial Ownership Reporting and the Williams Act**

Statutory Reading: Exchange Act §§13(d) and (g)
- Regulation 13D-G
- Schedules 13D and 13G


**Tender Offers**

Statutory Reading: Exchange Act §§13(e), 14(d) and 14(e)
- Regulation 14D
- Regulation 14E
- Rule 13e-4
- Schedule TO
- Securities Act §5 and Rule 145

19. *Regulation of Takeovers and Security Holder Communications*, Securities Act Release No. 7760 (October 22, 1999). *(Note: Parts I and II and related footnotes, only)*


22. *SEC v. Carter Hawley Hale*, 760 F.2d 945 (9th Cir. 1985).


Proxy Contests to Influence Control (Classes 6 & 7)

Statutory Reading:

- Exchange Act §14(a)
- Regulations 14A and 14C
- Schedules 14A and 14C
- Delaware §§211, 212, 222 and 228

27. **SEC v. Okin**, 132 F.2d 784 (2nd Cir. 1943).


Defending Against a Hostile Takeover (Class 8)

and

State Corporate Law Considerations (Classes 9 & 10)

Statutory Reading:

- Delaware §109
- Exchange Act Rule 13e-1; Schedule 14D-9
- Sample Form 8-A (Handout)


**Going Private Transactions (Classes 11 & 12)**

Statutory Reading: Exchange Act Rule 13e-3
Delaware §253

54. *In Re Pure Resources*, 808 A.2d 421 (Del. Ch. 2002).
55. *In re CNX Gas Corporation Shareholders Litigation*, C.A. No. 5377-VCL, 2010 WL
2291842 (Del. Ch. May 25, 2010).


Cross-Border Business Combination Transactions (Class 13)

Statutory Reading: Securities Act Rules 801 and 802
Exchange Act Rules 14d-1(c), (d) and (e); Rule 13e-4(h)(8) and (h)(i); Rule 13e-3(g)(6)

59. Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions, Securities Act Release No. 8957 (September 19, 2008). (Briefly review; do not outline.)

60. Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Securities Act Release No. 7759 (October 22, 1999). (Briefly review; do not outline.)


63. Consolidated Gold Fields v. Minorco, 871 F.2d 252 (2nd Cir. 1989). (Briefly review; do not outline.)

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