MERGERS AND ACQUISITIONS BASICS
Negotiation and Deal Structuring

Donald DePamphilis
TABLE OF CONTENTS

Preface ix
Acknowledgments xiii

1. Introduction to Negotiating Mergers and Acquisitions 1
   Key Participants in Negotiating Mergers and Acquisitions 2
      Senior/Operating Management 2
      Investment Bankers 3
      Lawyers 4
      Accountants 4
   Prenegotiation: Profiling the Target Market and Firm 5
      Profiling the Market/Industry 5
      Profiling the Firm 7
      Estimating the Price Range of an Initial Offer 10
         Transactions in Which Synergy Is Believed to Exist 10
         Determining Distribution of Synergy between Acquirer and Target 11
         Transactions Involving a Control Premium 12
   Prenegotiation: First Contact 13
      Confidentiality Agreement 14
      Term Sheet 14
      Letter of Intent 14
   Negotiation 15
      Developing a Negotiating Strategy 16
      Concurrent Activities 18
      Refining Valuation 18
      Deal Structuring 19
         Key Components of the Deal-Structuring Process 20
         Common Linkages within the Deal-Structuring Process 22
      Conducting Due Diligence 24
         Buyer Due Diligence 24
         Seller Due Diligence 27
         Lender Due Diligence 27
      Developing the Financing Plan or Strategy: The Reality Check 28
   A Case in Point: Pfizer Acquires Wyeth in an Attempt to Kick-Start Growth 28
2. Selecting the Form of Acquisition Vehicle and Postclosing Organization 31
   Alternative Acquisition Vehicle and Postclosing Organizational Structures 33
   Corporate Structure 33
   C-Type Corporation 37
   Subchapter S Corporation 38
   Limited Liability Company 39
   Partnership Structures 40
   General Partnership 41
   Limited Partnerships 42
   Equity Partnership or Minority Investment 44
   Employee Stock Ownership Plans 44
   Holding Company 46
   Choosing the Appropriate Acquisition Vehicle 47
   Choosing the Appropriate Postclosing Organization 49
   A Case in Point: Vivendi Universal and GE Combine Entertainment Assets to Form NBC Universal 52

3. Selecting the Form of Payment 55
   Form of Payment or Total Consideration 55
   Cash Payment 56
   Noncash Payment 56
   Cash and Stock in Combination 58
   Managing Risk and Closing the Gap on Price 59
   Postclosing Price Adjustments 59
   Earnouts and Other Contingent Payments 61
   Contingent Value Rights 64
   Distributed or Staged Payouts 65
   Rights, Royalties, and Fees 66
   Using Collar Arrangements to Preserve Shareholder Value 66
   Calculating Share Exchange Ratios 72
   A Case in Point: Boston Scientific Overcomes Johnson & Johnson to Acquire Guidant: A Lesson in Bidding Strategies 73

4. Selecting the Form of Acquisition 77
   Form of Acquisition 77
   Purchase of Assets 78
   Advantages and Disadvantages from the Buyer’s Perspective 83
   Advantages and Disadvantages from the Seller’s Perspective 84
Table of Contents

Purchase of Stock 85
  Advantages and Disadvantages from the Buyer’s Perspective 86
  Advantages and Disadvantages from the Seller’s Perspective 87

Mergers 87
  Statutory and Subsidiary Mergers 88
  Statutory Consolidations 88
  Mergers of Equals 89
  Tender Offers 89
  Board Approvals 90
  Form of Payment 91
  Advantages of Mergers 91
  Disadvantages of Mergers 92

Staged Transactions 92

Acquisition Agreements 93
  Representations and Warranties 93
  Preclosing Covenants 93
  Closing Conditions 94
  Indemnification 94

A Case in Point: Teva Pharmaceuticals Buys Barr Pharmaceuticals to Create a Global Generic Drugs Powerhouse 95

5. Tax Structures and Strategies 99

Taxable Transactions 100
  Taxable Purchase of Target Assets with Cash 101
  Taxable Purchase of Target Stock with Cash 102
  Section 338 Election 102
  Triangular Cash-Out Mergers 103

Tax-Free Transactions 104
  Continuity of Interests and Continuity of Business Enterprise Requirements 107
  Alternative Tax-Free Reorganizations 107
  Expanding the Role of Mergers in Tax-Free Reorganizations 112
  Tax-Free Transactions Arising from 1031 “Like-Kind” Exchanges 115

Other Tax Considerations Affecting Corporate Restructuring Activities 117
  Net Operating Losses 117
  Corporate Capital Gains Taxes 120
  Alternative Corporate Minimum Tax 120
  Greenmail Payments 121
  Morris Trust Transactions 121
  Leveraged Partnerships 122
# Table of Contents

**Legal Form of Selling Entity**

A Case in Point: “Grave Dancer” Takes Tribune Company Private in an Ill-Fated Transaction

## 6. Accounting Considerations

### Limitations of Financial Data

- Generally Accepted Accounting Principles and International Accounting Standards
- Pro Forma Accounting

**Financial Reporting of Business Combinations**

- SFAS 141R: The Revised Standards
  - Recognizing Acquired Net Assets and Goodwill at Fair Value
  - Recognizing and Measuring Net Acquired Assets in Step or Stage Transactions
  - Recognizing Contingent Considerations
  - In-Process Research & Development Assets
  - Expensing Deal Costs
- SFAS 157: The New Fair Value Framework

**Impact of Purchase Accounting on Financial Statements**

- Balance Sheet Considerations
- Income Statement and Cash Flow Considerations

**International Accounting Standards**

Recapitalization Accounting

A Case in Point: JDS Uniphase-SDL Merger Results in Huge Write-off

## 7. Financing Structures and Strategies

### Why Financing Structures Matter

**Financing Strategies: Borrowing**

- Asset-Based or Secured Lending
  - Loan Documentation
  - Pledging Receivables and Inventory
  - Pledging Equipment and Real Estate to Support Term Loans
- Security Provisions and Protective Covenants
- Cash Flow or Unsecured Lenders

Types of Long-Term Financing

- Convertible Debt and Debentures
- Senior and Junior Debt
- Indentures
- Bond Ratings
- Junk Bonds
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leveraged Bank Loans</td>
<td>157</td>
</tr>
<tr>
<td>The “Road Show”</td>
<td>158</td>
</tr>
<tr>
<td><strong>Financing Strategies: Equity and Hybrid Securities</strong></td>
<td>158</td>
</tr>
<tr>
<td><strong>Financing Strategies: Seller Financing</strong></td>
<td>159</td>
</tr>
<tr>
<td><strong>Financing Strategies: Selling Discretionary Assets</strong></td>
<td>161</td>
</tr>
<tr>
<td><strong>Highly Leveraged Transactions</strong></td>
<td>163</td>
</tr>
<tr>
<td><strong>Common Forms of Leveraged Buyout Deal Structures</strong></td>
<td>166</td>
</tr>
<tr>
<td>Lender Commitment Letters</td>
<td>166</td>
</tr>
<tr>
<td>Direct Merger</td>
<td>166</td>
</tr>
<tr>
<td>Subsidiary Merger</td>
<td>167</td>
</tr>
<tr>
<td>Reverse Stock Splits</td>
<td>167</td>
</tr>
<tr>
<td>Legal Pitfalls of Improperly Structured LBOs</td>
<td>167</td>
</tr>
<tr>
<td>Lender Due Diligence</td>
<td>168</td>
</tr>
<tr>
<td>Leveraged Buyout Capital Structures</td>
<td>168</td>
</tr>
<tr>
<td><strong>Estimating the Impact of Alternative Financing Structures</strong></td>
<td>169</td>
</tr>
<tr>
<td>Selecting the Appropriate Capital or Financing Structure</td>
<td>169</td>
</tr>
<tr>
<td>The Importance of Stating Assumptions</td>
<td>171</td>
</tr>
<tr>
<td><strong>A Case in Point: Financing LBOs—The SunGard Transaction</strong></td>
<td>173</td>
</tr>
</tbody>
</table>

8. **The Role of Takeover Tactics and Defenses in the Negotiation Process** | 177  |

**Alternative Takeover Tactics in the Corporate Takeover Market**   | 178  |
| The Friendly Approach                                               | 179  |
| The Aggressive Approach                                             | 180  |
| The Bear Hug: Limiting the Target’s Options                         | 181  |
| Proxy Contests in Support of a Takeover                              | 181  |
| Implementing a Proxy Contest                                         | 182  |
| The Impact of Proxy Contests on Shareholder Value                   | 182  |
| Pre-tender Offer Tactics: Purchasing Target Stock in the Open Market | 183  |
| Using a Hostile Tender Offer to Circumvent the Target’s Board       | 183  |
| Implementing a Tender Offer                                         | 184  |
| Multitiered Offers                                                  | 184  |

**Developing a Bidding or Takeover Strategy**                        | 185  |

**Alternative Takeover Defenses in the Corporate Takeover Market—** | 188  |
| Pre-offer and Post-offer Defenses                                   | 190  |
| Pre-offer Defenses                                                  | 190  |
| Poison Pills                                                        | 190  |
| Shark Repellents                                                    | 192  |
Strengthening the Board's Defenses 193
Limiting Shareholder Actions 194
Other Shark Repellents 195
Post-offer Defenses 197
Greenmail 197
White Knight 197
Employee Stock Ownership Plans 198
Leveraged Recapitalization 198
Share Repurchase or Buyback Plans 199
Corporate Restructuring 200
Litigation 200
Impact on Shareholder and Bondholder Value of Takeover Defenses 200
A Case in Point: Mittal Acquires Arcelor in a Battle of Global Titans 201

Glossary 205
References 213
Index 217
VIEWING NEGOTIATIONS AS A TEAM EFFORT

Negotiating, in essence, is a process in which two or more parties representing different interests attempt to achieve consensus on a particular issue. Although much has been written about alternative negotiating strategies, the process of negotiating mergers and acquisitions (M&A) and structuring M&A deals tends to be described from a somewhat narrow point of view—often that of the investment banker, attorney, accountant, or business manager.

Investment bankers provide strategic and tactical advice to clients; screen potential buyers and sellers; often make the initial contact; arrange financing; and provide negotiation support, valuation, and deal-structuring guidance. Typically, attorneys are intimately involved in structuring the deal, performing due diligence, evaluating risk, negotiating many of the terms and conditions, drafting important documents, and coordinating the timing and sequence of events to complete the transaction. Accountants provide input into M&A negotiating and deal structuring on tax and financial structures and on performing financial due diligence; they also prepare financial statements. The key role of business managers in the negotiation process is to provide the strategic and tactical justification for the proposed business combination, offering their “real-world” operating experience to help everyone understand the practical implications of what is being proposed. Their input is crucial because they are ultimately responsible for executing the acquirer’s business strategy and integrating the target and acquiring businesses to achieve business plan objectives.

The problem with describing the M&A negotiation process by conveying only the specific points of view of these participants is, obviously, that it does not convey the full picture of what is involved.

The Book’s Objective

The overarching objective of this book is to help the reader see M&A negotiations and deal structuring in a way that integrates the perspective of these players. By presenting a “macro” approach, the book demonstrates that the process is a team effort in which the skills of the various participants are combined to achieve consensus among the parties to the negotiation.
Negotiation is a series of highly interactive steps (some of which run in parallel) that involve decisions about what is being acquired (stock or assets), the appropriate form of payment (cash, stock, or some combination), and the appropriate choice of legal structures best suited for acquiring the business and operating the acquired business following closing. The process also entails developing appropriate tax and accounting strategies. Negotiating is a dynamic process; it evolves as new information becomes available. Changes made in one area of a negotiation often will have significant implications for other parts of the negotiation. The failure to understand these feedback effects inevitably leads to inadequate risk assessment and often makes it impossible to complete the transaction.

The Book’s Unique Features
This book achieves a middle ground between those that provide intensive coverage of every aspect of negotiation and deal structuring—often involving abstruse discussions of the legal and tax implications of the deal—and those that “dumb down” the subject matter. These latter texts often provide, at best, a superficial overview of the subject and, at worst, an inaccurate or misleading explanation of a multifaceted topic. Although the book does not require that the reader have significant knowledge of finance, economics, business law, and accounting, a passing acquaintance with these disciplines is helpful.

While reader-friendly, the text also draws on academic studies to substantiate key observations and conclusions that are empirically based. Details of these studies are often found in chapter footnotes.

Each chapter concludes with a section called “A Case in Point” that illustrates the chapter material with a real-world example. These sections include thought-provoking questions that encourage you, the reader, to apply the concepts explored in the chapter.

Who Should Read This Book
This book is intended for anyone interested in understanding how all aspects of M&A negotiations and deal structuring fit together. Buyers and sellers of businesses, as well as business brokers, finders, and investment bankers, should have an interest in this text. Others include individuals directly involved in negotiating transactions, such as accountants, tax experts, and attorneys. CEOs, board members, senior managers, financial analysts, chief financial officers, auditors, lenders, and investors will all benefit from this overview of the process.
In addition, this book may be used as a companion or supplemental text for undergraduate and graduate students in courses on mergers and acquisitions, corporate restructuring, business strategy, management, governance, and entrepreneurship. Supplemented with newspaper and magazine articles, the book could serve as a primary text. Other courses in which this book could be useful include finance, tax, management, negotiation, and governance, and it should be particularly applicable in Executive MBA courses, especially those that are highly focused and less than a semester in duration.

For a more rigorous and detailed discussion on mergers and acquisitions and other forms of corporate restructuring, the reader may wish to see the author’s textbook on the subject, _Mergers, Acquisitions, and Other Restructuring Activities_. The 5th edition (2010) is published by Academic Press. The reader also may be interested in the author’s _Mergers and Acquisitions Basics: All You Need to Know_, also published by Academic Press in 2010.
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