

University of Illinois College of Law

Examination Cover Sheet

Mergers & Acquisitions

Professor Amitai Aviram

Spring Semester 2020

Administrative assistant: Kelly Downs (kdwns@illinois.edu)

Number of Pages: 3 (including this page)

Exam Instructions

1. **Accessing and submitting the exam**
 - a. The exam form (this document) will be e-mailed to you by my administrative assistant, at 10am CST on Tuesday, May 5 (Reading Day).
 - b. Save your exam answer as a PDF or DOC file, with the file name being your 4-digit exam number.
 - c. Submit the exam by e-mailing it as an attachment to my administrative assistant Kelly Downs (kdwns@illinois.edu). **You must submit the exam by 9:59am CST on Monday, May 11.**
2. **Permissible material:** This is an open book exam. Subject to Instruction 3 (confidentiality), you may use any written materials you want, whether in hardcopy or electronic format.
3. **Confidentiality:** Once you receive this exam form, you are not allowed to discuss the exam with anyone until after the exam period. Students enrolled in this course are not allowed to solicit or receive information about the exam if the source of the information (directly or indirectly) is a person who has seen the exam.
4. **Anonymity:** The exams are graded anonymously. Do not put in your exam answer anything that may identify you, except for your 4-digit exam number.
5. **Factual basis:** You may construct the factual basis for your answer from any public source that is freely accessible to U of I law students, though you should cite the highest quality (most authoritative) source available. When you state facts that were not in the exam question you should pinpoint cite, in a footnote, the source of that fact. If necessary facts are not publicly available, you should say with specificity what facts you need the client to provide, and how these facts would affect your analysis.
6. **Applicable law:** Assume that business entities are incorporated in Delaware, even if in real life they incorporated in another jurisdiction.
7. **“Fact” patterns are fiction:** The “facts” presented in this exam are not necessarily true in real life.

<p>Note: This exam does not have a model answer, because practical problems (like the question in this exam and unlike issue spotter problems) have numerous equally correct ways of being addressed.</p>
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Note: The effective date for this question is April 20, 2020. In answering this question, please disregard any real-world information that came out after the effective date.

Exam question

From: Wendy I. Zeller [mailto:Ms.WIZ@work.com]
Sent: Tuesday, May 5, 2020 10:00 AM
To: Ms. WIZ Mailing List
Subject: CONFIDENTIAL – Project Payback

You've been assigned to work with me on Project Payback. Our client is HP Inc. (NYSE: HPQ). As you may know if you followed the business news earlier this year, Xerox Holdings Corp. (NYSE: XRX) made an unsolicited bid to acquire HPQ, which HPQ's board rejected multiple times. XRX turned hostile, announcing a tender offer for HPQ stock and attempting to line up financing for the acquisition. However, the Coronavirus epidemic froze the high-yield debt market, XRX could not raise the money it needed, and on the last day of March 2020, XRX abandoned its attempt to acquire HPQ.

It's time for payback. HPQ's board has become convinced that there are significant synergies from a merger with XRX. But it makes much more sense for the larger HPQ to acquire XRX, rather than the other way around as Xerox wanted.

Such a deal faces obstacles. HPQ's investment bankers are fairly confident that a majority of XRX's shareholders would sell their shares for \$25/share in cash. But they are also certain that XRX's current board will reject being acquired by HPQ at that price. Financing the deal is also a challenge. The Coronavirus epidemic froze the high-yield debt market, so HPQ cannot borrow the money by issuing junk bonds or raising leveraged loans. Therefore, HPQ will not take on debt for this transaction. HPQ would have liked to make an all-stock offer to avoid spending any cash. But XRX's (failed) offer for HPQ was mostly in cash, so the XRX shareholders the investment bankers spoke with insisted that at least a portion of the compensation to come in cash. At the advice of the investment bankers, HPQ's board decided that at the front end, a tender offer would buy 50.1% of XRX's shares for \$25/share in cash, while at the back end, a freezeout merger would pay the remaining shareholders the equivalent of \$25/share, but in HPQ shares rather than cash.

To supply the needed cash at a time that debt markets are virtually shut, HPQ's investment bankers have lined up a consortium (the "financiers") made of Barclays plc, BlackRock Inc., Mr. Carl Icahn, NXP Semiconductors N.V., Panasonic Corp., and The Vanguard Group, Inc. The financiers signed an agreement that includes two elements. First, if any of these parties own XRX shares (some, but not all of them, do), they will tender all of their XRX shares in HPQ's tender offer (and if a back-end freezeout merger comes up for an XRX shareholder vote, they would vote any XRX shares they have in support of the merger), as long as the price is \$25/share or more. Second, the financiers will supply the cash needed for the acquisition, by purchasing from HPQ a new series of cumulative non-voting preferred stock (which would need to be created) that will pay a 10% annual dividend. This is an extremely high dividend rate, but it's the best available at current market conditions. The investment bankers had conducted throughout the entire month of April an exhaustive search for parties willing to finance the deal, and the terms of the above agreement were the best they could obtain.

HPQ retained our firm to advise them how to execute the planned acquisition of XRX. How should HPQ proceed, from its first move to the point of (hopefully) signing an acquisition agreement? Consider in your analysis how XRX's board might respond to thwart HPQ's acquisition (assume that they would take the strongest measures they are legally allowed in order to prevent the acquisition), and what HPQ can do to counter that. If any actions create a risk of legal liability that might cause a judge to enjoin the deal or subject HPQ's directors or the financiers to damages, analyze this liability and advise what can be done to minimize these legal risks.

Tailor your advice to the specific circumstances of the relevant companies. For example, if you advise HPQ's board to form a committee, say which existing board committee would be appropriate (or, if a special committee is needed, say which directors could serve on that committee). If you advise that HPQ's board, committee or shareholder meeting take some action, spell out the exact details of what they need to do (e.g., what is the exact task?; what will be the quorum and support needed for an action to be valid, and would any director/shareholder be disqualified from that particular vote?).

HPQ's plans to acquire XRX are currently only known to its board members, their advisers (such as us) and a handful of others. Because the plans must remain a secret, you may not contact the client for information, but must gather all required facts from public sources (EDGAR is the most reliable source). If you can't obtain necessary information from a public source, mention in the memo specifically what facts you need the client to provide, and how these facts would affect your analysis.

This is a high-stakes assignment, which normally a very experienced partner would do. However, as you know, our law firm of Williams, Orb, Randall and Kelly (WORK) prides itself in having a very low associate to partner ratio, which allows a high percentage of associates to eventually become partners and spend their entire career at our firm. With the Coronavirus epidemic raging, our firm's executive committee determined that we must do everything we can to prevent partner deaths, as this would devastate our associate to partner ratio (conversely, associate deaths have a silver lining in the form of an improved ratio). Therefore, our law firm's executive committee required that I and all other partners will shelter in our country homes and not do any work until the epidemic subsides (since work-related stress may weaken our immune systems).

The memo to HPQ is due by 9:59am (CST; i.e., Champaign, IL time zone) on Monday, May 11, and should be submitted as a PDF or DOC attachment to an e-mail to Kelly Downs (kdwns@illinois.edu). Thanks, and stay safe (the firm's reputation and profitability now ride on your shoulders!).

-- Ms. WIZ