

MERGERS & ACQUISITIONS

R. Drew Ogden
Scott E. Pueschel

**MIDTERM EXAMINATION
SPRING 2007****Instructions:**

1. This is an open-book examination. You may bring any materials you wish to the examination with the exception of computers, telephones or other electronic devices. Calculators, however, are permitted.
2. This is an 80-minute exam and is worth 50 points.
3. The examination consists of two essay questions. The point distribution for the questions is as follows:
 - ▶ Question No. 1 will be worth 20 points
 - ▶ Question No. 2 will be worth 30 points

It is your responsibility to apportion your time appropriately between the two questions. If you base your time on the number of possible points per question, the time apportionment should be:

- ▶ Question No. 1 = 32 minutes
- ▶ Question No. 2 = 48 minutes

You are not required to use separate blue books for each answer. Remember to write your examination number on each blue book that you do use. The only answers that will be graded are the answers written into blue books. While you are free to use scratch paper, answers written on scratch paper, or anything else other than a blue book, will not be read and will not be counted for any credit. Please write only on the front side of the pages in the blue book.

5. Please remember that organization, persuasiveness, neatness and legibility all count in determining your grade on an answer. To improve the organization of an answer, you may wish to quickly outline the answer on a separate sheet of paper prior to writing your full answer in the blue book.
6. Should you find it necessary in answering a question to assume a fact not given in the problem as stated, you may do so. However, you should clearly indicate that you are making an assumption and you should explain why you consider it a reasonable assumption to make.

Good luck on the examination!

**DO NOT TURN TO PAGE 2 UNTIL THE PROCTOR TELLS
YOU TO BEGIN**

QUESTION NO. 1 (20 points possible)

March 15, 2007: Concord Company ("Concord") manufactures specialty 3D surround sound components. Concord is a very small company that was only recently formed in 2003. Concord is a privately held company – its only shareholders are the founder and members of her immediate family. The core of Concord's technology is derived from a non-exclusive patent license with RealSound Inc. ("RealSound") of certain of RealSound's most critical 3D sound technology (the "License Agreement"). RealSound is the leading developer of 3D surround sound systems in the world. At the time of the License Agreement, it was important to RealSound that Concord was a very small company and not a material competitor.

Manchester Inc. ("Manchester") is a major competitor of RealSound. Recently, Manchester is considering acquiring Concord as a means of getting access to the key patented technology that Concord is licensing from RealSound. The License Agreement is silent regarding transferability. Manchester's only desire for acquiring Concord is to gain access to the patented technology covered by the License Agreement. Concord has informed Manchester that it would be interested in being acquired by Manchester. It is believed that RealSound will not consent to any transfer of the License Agreement to Manchester.

Please assume that you are legal counsel representing Manchester. Manchester has asked you whether a deal could be structured with Concord that would allow Manchester to acquire the License Agreement without RealSound's consent. Please advise Manchester.

If Concord had invested in an exclusive License Agreement, would your advice be different?

QUESTION NO. 2 (30 points total)

March 15, 2007: Media Corp. ("Media") is a Delaware corporation and is listed on the NASDAQ Exchange. Media is a leading provider in the United States of movie and game entertainment rentals, with approximately 5,000 stores. Media has also recently launched an online rental subscription service. The competitive landscape of the retail home video industry has changed significantly over the past few years and is projected to continue to change in the future. New home entertainment alternatives, delivery options and format choices have been introduced into the market and have provided consumers with more options for home movie and game entertainment, which has placed substantial pressure on Media's business.

In response to this changing environment, Media decided to acquire Entertainment Corp. ("Entertainment"). Entertainment, which is a Delaware corporation and is listed on the NASDAQ, is also a rental retailer of movies and games with stores throughout the U.S. Entertainment has approximately 1,000 such stores. Media believes that a combination of Media and Entertainment will provide a number of benefits to the combined company. Specifically, Media believes the combination will generate a significant amount of operational efficiencies and cost savings from (a) significant overhead and operational synergies through elimination of duplicative management and functions; (b) the streamlining of the combined distribution network; and (c) more efficient advertising spending.

Media approached Entertainment about a possible business combination in July 2006. The board of directors of Entertainment informed Media that they were not interested in a business combination with Media. Media decided to take the matter directly to Entertainment's shareholders and launched a two-stage acquisition.

STAGE 1: In Stage 1, Media launched a tender offer (the "Tender Offer") for all of the outstanding stock of Entertainment. Entertainment has one class of equity stock, which is common stock. Pursuant to the Tender Offer, which was completed in late 2006, Media offered to exchange for each outstanding share of Entertainment common stock that was validly tendered a combination of Media common stock and cash that was equal to

\$20.00. Media conducted the Tender Offer through a drop-down acquisition subsidiary, which is also a Delaware corporation.

STAGE 2: In Stage 2, Media intends to conduct a cash-out merger (i.e., the only merger consideration offered by Media would be cash) to eliminate any remaining shareholders who did not participate in the Tender Offer.

Upon completion of the Tender Offer, Media had acquired 92% of the outstanding stock of Entertainment. Media is now ready to conduct the Stage 2 cash-out merger.

Your Assignment:

- a. Media will conduct the Stage 2 cash-out merger pursuant to an upstream §253 transaction. Please provide a diagram of the two-stage business combination between Media and Entertainment. **(5 points possible – 8 minutes)**
- b. Please provide a description of the shareholder and board approvals required (or likely to be required) to conduct each stage of the business combination. For purposes of this question, you are not to consider the impact of Delaware's anti-takeover legislation (which we have not yet discussed, but will cover later in this semester). **(13 points possible – 21 minutes)**
- c. Will Media be required to offer appraisal rights to Entertainment shareholders in either Stage 1 or Stage 2? **(12 points possible – 19 minutes)**

END OF MIDTERM