

**MERGERS & ACQUISITIONS**

Professor John Orcutt  
Spring Semester 2006

**MIDTERM EXAMINATION**

**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 65-minute exam and is worth 80 points.
3. The examination consists of two essay questions The point distribution for the questions is as follows:  
▶ Question No. 1 = 60 points           ▶ Question No. 2 = 20 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 = 48.75 minutes   ▶ Question No. 2 = 16.25 minutes

4. The grading of examinations is anonymous. So, you must write your examination number on the examination and each blue book that you use. **YOU MAY NOT WRITE YOUR NAME ON ANYTHING – YOU MAY ONLY USE YOUR EXAM NUMBER.**
5. Please write your answers in blue books. Remember to write your examination number on each blue book that you use. The only answers that will be graded are the answers written into a blue book. 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. 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.
7. I have tried my best to write and proofread the exam so that there are no distracting typos or other errors – but, I may not have been totally successful. If you believe there is a typo or other error that makes it difficult to answer a particular question, please point out the error in your blue book and any assumption you used to answer the question.

**Good luck on the examination!**

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

**QUESTION NO. 1 (60 points possible):**

This question involves two Delaware corporations: X Corp. ("X") and Y Corp. ("Y"). Both companies are listed on the New York Stock Exchange. For various and valid reasons, the boards of both X and Y think it would be in the best interests of both corporations if the two were to combine. X is by far the larger of the two companies, with an enterprise value of approximately \$100 billion (Y's enterprise value is closer to \$1 billion). It is expected that X will be the acquiring company.

The boards would like to conduct the transaction in the form of a forward triangular merger. Unfortunately, they have run into a few issues for which they need assistance. Y has two classes of equity stock: Common Stock and Series A Preferred Stock. The issues result from Y's Series A Preferred Stock.

- The Series A Preferred Stock for Y carries a mandatory, cumulative dividend that is placing a substantial drain on Y. Moreover, X does not want to pay the mandatory, cumulative dividend following the consummation of the merger.
- Y's Series A Preferred Stock is held by one shareholder – Erin. Erin has indicated that she does not want to renegotiate the terms of her Series A Preferred Stock. She wants to keep her mandatory, cumulative dividend. In fact, Erin is not interested in the potential merger with X and may try to block the transaction. The Series A Preferred Stock does not provide for any special class voting rights. Voting as a class, the holders of Common Stock have 90% of Y's voting power and the Series A Preferred Stock has 10%.

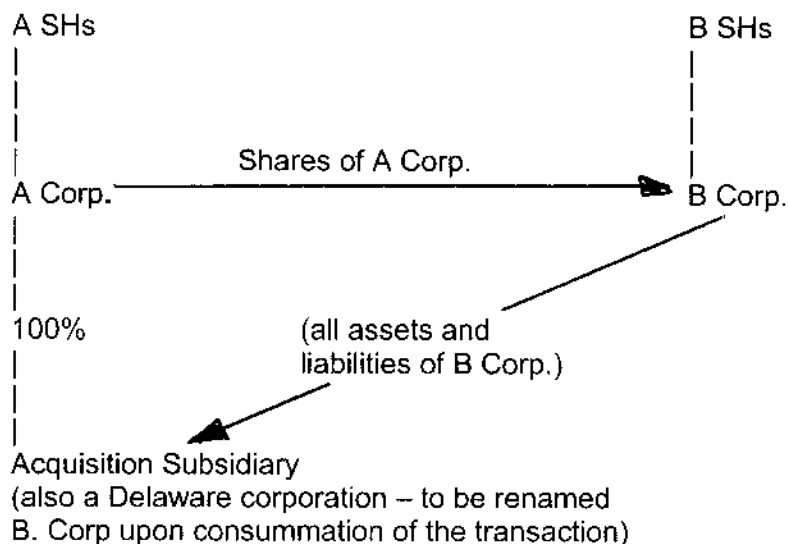
**YOUR ASSIGNMENT:**

- (a) Please provide a diagram of the forward triangular merger between X and Y.
- (b) Please provide a description of the shareholder and board approvals required (or likely to be required) to conduct the forward triangular merger. In answering this question, please discuss whether Erin has the ability to block the merger.
- (c) Can the cumulative dividend for the Series A Preferred Stock be eliminated in the forward triangular merger?

**QUESTION NO. 2 (20 points possible):**

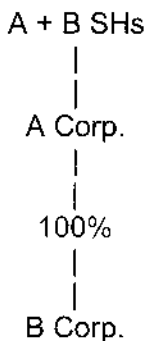
The boards for two private companies (both Delaware corporations) have agreed to conduct the following business combination.

**STEP 1:** A Corp. has agreed to acquire all of the assets and liabilities of B Corp. pursuant to a triangular stock-for-asset acquisition (as set forth below):



**STEP 2:** Not surprisingly, B Corp. intends to conduct a 2<sup>nd</sup>-Step Liquidation following the asset sale whereby B Corp. will dissolve and distribute the A Corp. common stock it receives in the asset sale to the B Corp. shareholders. In fact, a majority of the outstanding shares of B Corp. approved this 2<sup>nd</sup>-Step Liquidation at the same time that they approved the asset sale.

**POST TRANSACTION:**



**YOUR ASSIGNMENT:**

Roughly 20% of B Corp.'s shareholders are opposed to the transaction (the "Dissenting SHs") and would like to exercise appraisal rights. Please discuss whether the Dissenting SHs are entitled to appraisal rights. In answering this question, please discuss the relevance of the *de facto merger doctrine* ("DFMD").

**\*\*\*\*\* END OF EXAM \*\*\*\*\***