UF | Warrington College of Business Administration
UNIVERSITY *of* FLORIDA

Mergers and Acquisitions

FIN 6496

Spring 2017

Faculty Contact Information

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Course Objectives

The primary objective of this course is to survey the process of mergers and acquisitions ("M&A"), develop your skills in the design and evaluation of these transactions, and expose you to the key tactical issues typically confronted in M&A transactions. Specifically, upon completion of the course students will:

1. ***Master the language and processes of M&A.*** Basic knowledge about the field of M&A is the foundation for effective work in a wide range of fields including corporate development and strategic planning, investment banking, consulting, private equity, managing family businesses, and entrepreneurship. Class discussions, the course materials, and the practical experience of the instructor (*aka* "war stories" ☺) will help you master the basics.
2. ***Identify M&A issues worthy of attention.*** The next stage of professional competency is to develop an instinct for the problems and opportunities in an M&A situation. This course highlights elements in the structure and process of M&A transactions that deserve professional awareness and scrutiny.
3. ***Analyze an M&A transaction rigorously.*** Valuation analysis is a core skill in M&A. The course will exercise your analytical comprehension of methodologies presented in the core finance curriculum.
4. ***Appreciate the multi-dimensional complexity and integrated nature of M&A.*** "The deal is a system." There is no better example of a cross-functional, interrelated business challenge than M&A. Finance, Accounting, Strategy, Law, Tax, and even Organizational Behavior play critical roles in determining the success or failure of a transaction. This course will attempt to incorporate elements of these business disciplines using the M&A transaction process as the vehicle.

Prerequisite: For MBA: Fin 5437 (Finance I) and Fin 5439

(Finance II); For MSF – Investment Banking and Corp Financial Modeling

Course Materials

Required:

1. Course pack with cases, articles and technical notes. The course pack is available for download at the HBS site at the following link:

   https://cb.hbsp.harvard.edu/cbmp/access/43526518

2. Various materials posted online and via links at the course website. Check the course site for regular updates, announcements and postings

Optional / Recommended:

I do not require a text in this class, but the following two are useful references. I will have a few on reserve in the Library, but you may also consider buying one of these for personal reference. The Bruner book is very comprehensive and useful if you are serious about a career in M&A. The Sherman and Hart book is a better reference for the professional who is likely to be involved in M&A from time to time, but not on a full time basis.

1. Robert F. Bruner, Applied Mergers & Acquisitions, John Wiley & Sons, Inc. (2004)

2. Andrew J. Sherman and Milledge A. Hart, Mergers & Acquisitions from A to Z,

Grading

There will be three grading points: maximum of two quizzes (40%), Group Project (30%) and Class Participation (30%). Students are expected to come to class prepared and ready to discuss the material assigned and analyses performed.

Class Attendance and Other

Class attendance is required and included in the class participation grade. Excused absences must be cleared in advance and an absence does not excuse the homework due for the class. Exams and or Quizzes will be announced in advance (see outline below for tentative dates) and make-ups are only allowed for pre-arranged excused absences. Make-up work for unforeseen accidents or illnesses will be arranged on a case-by-case basis.

Students requesting classroom accommodation must first register with the Dean of Students Office. The Dean of Students Office will provide documentation to the student who must then provide this documentation to the Instructor when requesting accommodation.

Information on current UF grading policies for assigning grade points can be found at: https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx

Mergers and Acquisitions: Topical Outline

Class 1 & 2

Topic: Acquisition Strategy

Materials: Hugh McColl and NationsBank: Building a National Footprint Through M&A (UVA-F-1398M)

Study Questions

1.	Consider the personality and management style of Hugh McColl. How did his style influence NationsBank's corporate culture?
2.	What competitive forces (at the time of the cases) were affecting the industry? Use a familiar framework such as Porter's Five Forces to structure your response.
3.	What are/were the critical success factors to survive and thrive in this industry?
4.	What were the strategies employed by NationsBank to address these changes. Be specific in associating the strategy with the market change(s).
5.	What role did M&A play in NationsBank's overall strategy? Characterize NationsBank's acquisition strategy.

Background Reading:

1. "The Acquisition Process", Praxis Partners

Reference:

1. Chapters 6 and 7, Bruner
2. Chapters 1 and 3, Sherman and Hart

Class 3

Topic: M&A Valuation Issues

Materials: Nations Bank Case
Valuation Problem Set - online

Study Questions:

1. Review the Deal Summaries in the Hugh McColl Case for First Republic, C&S, and Boatman's, and address the following:
   a. Was the deal friendly or hostile?
   b. How good is the strategic fit? Why?
   c. How good is the organizational fit? Why?
   d. Who wins, who loses?
   e. Identify terms in the deal summary that you do not fully understand.
   f. Was this a successful deal for NB? Explain your rationale.

- Note: this is a required deliverable. Please post your responses directly to the course site.

2. Review your notes from previous classes on discounted cash flow valuations. The assigned readings are also intended to be a general review of Valuation topics we will be using over the next couple of weeks. If you need practice, prepare the Valuation problem set in the resource folder. There is no required deliverable for this assignment.

Background Reading:

1. "Pasta – and Meatballs", Wall Street Journal (June 17, 2003)
2. "Discounted Cash Flow Model – From Theory to Practice", Praxis Partners
3. "Delaware Law and WACC", O'Melveny & Myers
4. "Comparable Companies Analysis", pp 5-6 and 14-16, Praxis Partners

Reference:

1. Bruner Chapters 9 and 11
2. Sherman and Hart Chapter 8

"An optimist sees an opportunity in every calamity; a pessimist sees a calamity in every opportunity." – Sir Winston Churchill

Class 4

Topic: M&A Valuation / Strategy

Materials:

1. General Foods Case, Project Duck Soup. HBS 286071-PDF-ENG
2. Genfood.xls, case exhibits in excel format (attached)
3. GF Comp Exhibit (attached)

Study Questions:

1. How is the “fit” between Entenmann’s and General Foods?
2. What is the value of Entenmann’s to General Foods? Please incorporate the following assumptions into your analysis and support your conclusions with both DCF and Benchmark valuations:
    - Depreciation expense is estimated to be about 6% of beginning-of-year gross fixed assets
    - Working capital will remain at 6% of sales for the forecast period
    - The long-term government bond at the time of the case was trading at a yield of 10.31.
    - The cost of debt for General Foods and Entenmann’s is 12%.
    - General Foods Beta =1.
3. Will the acquisition of Entenmann’s create value for General Foods?
4. You do not have to submit your complete analysis but post the maximum price you recommend that GF should bid for Entenmann’s.

Background Reading:

1. “Comparable Companies Analysis”, Praxis Partners

“Success is going from failure to failure without losing your enthusiasm.” – Sir Winston Churchill

Class 5

Topic: M&A Investment bankers, regulators, and deal structure

Materials: The Best Deal Gillette Could Get? KEL183

Study Questions:

1. What were the possible synergies and forces propelling the merger between P&G and Gillette – as well as the history of other takeover attempts for Gillette?
2. Was James Kilt's compensation reasonable? Was his pay package in the best interest of shareholders?
3. Evaluate the P&G offer. Make a list of the positive and negative aspects of receiving shares from both the prospective of P&G and Gillette shareholders?
4. Compare the valuation analyses in Case Exhibits 6 and 7. Why are they different? Support and defend the validity of using each valuation method.
5. Are there conflicts of interest for the investment bank in an M&A transaction where the same firm that writes the fairness opinion in support of the deal stands to be paid a large fee if the transaction is completed?
6. Should investment bankers and companies spend their time appeasing politicians worried about the effects of possible mergers? Are politicians representing the interests of the American public when they question the merits of a deal? Also evaluate the role played by federal and international regulators. Is there any better solution to the complicated regulatory process?

Background Reading:

Reference:

1. Chapter 28, Bruner

Class 6

Topic: M&A Valuation: Using Stock as Consideration

Materials: Time Inc.'s Entry into the Entertainment Industry (A) –HBS 9-293-

Study Questions:

7. How attractive is the merger of Time with Warner?
8. What are the value enhancement opportunities?
9. Is the proposed exchange ratio of 0.465 of Time shares for each Warner share attractive?
10. What prompted Paramount's interest in Time?
11. What legal, financial, and restructuring options does Time have to combat the Paramount bid?
12. What would you do as Mr. Munro?
13. How would you explain a decision to reject the Paramount offer at the annual shareholders' meeting?

Background Reading:

1. "Stock or Cash? The Trade-offs for Buyers and Sellers in Mergers and Acquisitions." HBR Reprint 99611

Reference:

1. Chapter 20, Bruner

"However beautiful the strategy, you should occasionally look at the results." – Sir Winston Churchill

Class 7

Topic: Tax and Legal Issues in M&A

Materials: None

Study Questions:

None

Background Reading:

1. "Legal and Tax Issues in Structuring Acquisitions", Praxis Partners

Reference:

1. Bruner Chapter 19
2. Sherman and Hart Chapter 7

Class 8

Topic: Legal Structures

Materials: KGB Corporation Case

File:

Study Questions: Develop a proposed solution to the case

Background Reading:

1. "Legal and Tax Issues in Structuring Acquisitions", Praxis Partners

Reference:

1. Bruner Chapter 19
2. Sherman and Hart Chapter 7

Class 9

Topic: 1. Purchase Agreements:

Price, Seller Financing, Earnouts, Escrows and Holdbacks

2. Tax and Legal Structures

Materials:

1. Sample Purchase and Sale Agreement: Article 1 – Article 4, excluding Sections 4.4 and 4.5 – in resources folder
2. Clothes Horse Case - attached

Study Questions: for Purchase and Sale agreement

	Line(s)	**Question**
1.	308-336	What is the transaction being described? (Draw the transaction diagram, identifying each of the entities/groups that are party to the transaction.)
2.	342	How is the purchase price adjusted? Why is the purchase price adjusted?
3.	886-888	How is the target's cash and (third party) indebtedness handled in the transaction?
4.	950	Map out payment of purchase price calculation as if you were explaining (to the client) what is actually received (pre-tax) at the closing
5.	1191	Why might the Seller object to the asset allocation? That is, why should the Seller even care about the purchase price allocation?

Background Reading:

1. "M&A Executive Insights: April 2006", Nixon Peabody, pp 10-13
2. "Private Target M&A Deal Points Study", American Bar Association (2009), pp 20-25

Reference:

1. Chapters 18, 19 and 22, Bruner
2. "Sample Earnout Clauses", Praxis Partners

Class 10

Topic: Purchase Agreements: Risk Identification and Allocation and Conditions to Close

Purchase Price Adjustments and Representations and Warranties

Materials: Sample Purchase and Sale Agreement: Sections 4.4 and 4.5, Article 5 and Articles 6, 7, 12

Study Questions:

Part A: Risk identification and allcoation

	Line(s)	**Question**
1.	970	Why is there a Pre-Closing Purchase Price Adjustment? What does it accomplish? How does it work?
2.	990	What is the purpose of this sub-paragraph (c)?
3.	1029	Why is there a Post-Closing Purchase Price Adjustment? What does it accomplish?
4.	1842-1860	Why is it important that this rep be here? i.e., that there is none of items (i)-(iii), other than what is disclosed. Give an example of a “bad” thing that might occur to Buyer if this representation is not included.
5.	1979	Note that taxes payable on profits earned prior to close, must be accrued. How does this requirement impact the Seller’s net proceeds?
6.	2292	Why does the purchaser also need to make reps and warranties?
7.	2584	What is happening in this section (7.10)? Why is this important to include in the agreement?
8	2656	What is happening in this section (7.13)? How does this work? Why do you think the target company's indebtedness was handled this way?
9.	2669	What is happening in this section (7.15)? Why is this important to include in the agreement?
10	2747-2772	Why did the Seller’s attorneys insist on the addition of these two sections? What do these sections accomplish?
11	2981	What does this section (12.1) mean? Why is this section significant?
12(a).	3027	How does this section (12.4) work? What is its purpose?

12(b).	3028	What kind of a basket is this? Hint: reference the Deal Points Studies below for additional background.
12(c).	3042	How does this indemnity cap compare to "market", i.e., the average, or typical transaction? Hint: the background reading will be helpful here.

Part B: Conditions precedent to Close and deal protection

	Line(s)	**Question**
1	2778	What is the effect of this section (8.1)? Why is this important to the Purchaser?
2	2791	What is the effect of this section (8.4)?
3	2847	What is the HSR Act? How and when does it apply? i.e., what are the key deal characteristics that require an HSR filing?
4	2817	What does this section mean (8.14)? Why is this potentially a major point of negotiation in deals? *Hint: the background reading will be helpful here.*
5	2949	Under what conditions can the deal be terminated (use your own words, and *summarize* please)? What happens if the deal is terminated in a manner that is ***not*** consistent with this article (Article 11)?
6	3504	What is the significance of this section (15.18)? What are the implications to "Each Seller"?

Reference:

1. Chapter 29: "Definitive Agreement", Bruner
2. "Public Target M&A Deal Points Study", American Bar Association (2009), pp 7-70
3. "Private Target M&A Deal Points Study", American Bar Association (2009), pp 11-19, 26-51, and 52 -55.
4. Covenants, Conditions For Closing, Indemnification, Termination and Deal Protection", Praxis Partners

Class 11

Topic: Definitive Agreements – Pre-Planning

Materials: Haney Systems Inc.

Study Questions – Please post your solutions by group to your group folder on Sakai:

What key issues and problems can you identify that should be addressed in these negotiations and in the Definitive Agreement? Be specific in developing your list. Be prepared to present your issues list to the class.

Consider the potential issues in areas such as:

- Economics (e.g., price and related factors, form and structure of consideration)
- Legal (e.g., transaction structure, protection from liabilities, transaction execution risk)
- Tax (e.g., transaction structure, form and structure of consideration, Buyer v. Selling Company v. Seller considerations)
- Organizational (e.g., management and employee concerns, control, cultural issues)

Background Reading:

1. “Twenty Considerations in Preparing for an M&A Transaction”, Cooley Godward Kronish (May 2007)
2. “Quick Tips for Negotiating a Great Letter of Intent”, Arter & Hadden (June 2001)

Reference:

1. Chapters 18 and 19, and 29: “First-Round Documents”, Bruner

Class 12

Topic: Purchase Agreements:

Materials: Haney Systems B Case

Study Questions: Review the draft definitive agreement for the Haney deal and address the following:

1. How are the deal issues raised in the last class resolved in the agreement? Are there any issues that are not addressed? If not, is it advantageous to the buyer or seller that they are ignored in the agreement?
2. Does the agreement as drafted generally favor the buyer or seller? Be specific – cite specific language that you believe is advantageous to either party.
3. Specifically review the earn-out provision in the agreement and compare and contrast with the examples in the assigned reading. What are the pros and cons to the draft earn-out provision in your opinion?

Background Reading:

1. "Sample Earnout Clauses", Praxis Partners (in ref tab, merger agreements folder)

Class 13

Topic: Q&A, Final Thoughts, and Course Recap

Materials: None

In today's class, we will consolidate the results of the negotiations and recap the course.

Study Questions

1.	Peter Atkins gives several pieces of practical advice for board members. How might these also apply to a business owner/entrepreneur?
2.	How do Peter's thoughts on deals and deal making compare (or maybe even contrast) with the key points of this course?
3.	How do James Freund's "Top Ten Commandments" compare and complement Peter's advice?

Background Reading:

1. "M&A Today – Practical Thoughts for Directors and Deal-Makers", Peter Atkins, Skadden Arps (August 2005), ***especially pp. 10-13***

2. "Remembrances of (M&A) Things Past: Plus, My Ten Commandments for Negotiating Deals", James Freund, Skadden Arps (October 2005), ***especially pp. 5-7***

"The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man." – George Bernard Shaw