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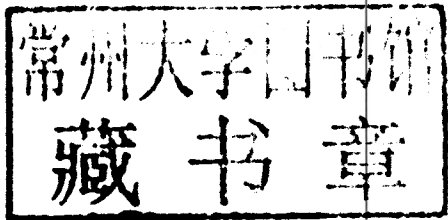
Law & Business

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***MERGERS AND
ACQUISITIONS:
LAW AND FINANCE***

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Wolters Kluwer

Law & Business

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To my family — Dottie, Blake, Beth, Hunter, Adrienne, Lucy, and
Isaiah, who have made this journey enjoyable

PREFACE

This book focuses on mergers and more particularly on how lawyers create value in a transactional setting. As befitting a course that typically comes late in one's law school education, this material moves the focus from case analysis to understanding the deal. We study not only the legal rules but also the economic and financial principles that shape the strategy of lawyers in this area and the clients they advise. Experience has shown that lawyers with knowledge of these adjacent fields create greater value in transactions.

Examples of this broadened focus include these:

- The first item that follows each case is most often a note entitled "The Deal." This structure asks you to understand who the parties were, but also what they were trying to accomplish, where the value would come from in the deal, and the choices available to planners because of those sources of value. In the *Revlon* case, for example, it makes a difference that what had been a grocery store company (albeit one with a raider at its helm) was making a hostile run at the sophisticated cosmetic giant Revlon.
- There is a separate chapter on the "poison pill" that both illustrates this entrepreneurial lawyerly innovation and provides a template for understanding defensive tactics that are a key part of the mergers and acquisitions landscape. The legal case is placed within the context of the specific problem that the lawyers needed to solve — to create a barrier against one of the few things that shareholders are permitted to do under corporate law that could undercut directors' control of the corporation — and shows how the poison pill did that in a creative and unusual way. Later parts of the chapter trace how the provision continued to evolve and how the strategies and techniques morphed with each new deal, an evolutionary pattern that prospective lawyers will want to understand throughout the study of mergers and acquisitions.
- The book begins by asking what planners are trying to accomplish in an acquisition, in financial terms of how new value is created, and in legal terms of the law's contribution to value added through use of legal forms and entities.

- Valuation is crucial to understanding deals and this book contains a rich but accessible introduction of the core principles that underlie how courts and finance experts value companies. Specific merger cases in the appraisal setting are then used to provide a way to work through the principles just introduced.
- Insider trading and the wonderful cases that populate the area that arise most often in a takeover setting are put within a broader discussion of the economic value of information.

Students come to a mergers course with a variety of prior experiences in corporate law. The pedagogical challenge is to get everyone to the same foundational level as quickly as possible. Thus, in Chapter 5, core principles of corporate governance are presented in a way that both jogs the memory of those who have dealt with these legal issues in other courses and sets the stage for a richer exploration of these principles in the context of mergers and acquisitions. My approach is informed by a decade of co-teaching mergers to a class made up of both law and business students that provided an ongoing laboratory in working through the most effective way to teach finance to law students and law to business students without simultaneously having the other half of the class tune out the discussion. I am grateful to my law and management students at Vanderbilt who have regularly improved the presentation of ideas covered in this book. I am particularly grateful to my co-teacher in those classes, Ron Masulis, an energetic and distinguished finance professor, whose curiosity is broad, whose questions are precise and right-on, and whose willingness to make things better is tireless. In those classes and elsewhere, I have also benefited from distinguished practitioners in both finance and law who have been willing to share their insights, including particularly, Delaware jurist Leo Strine, New York practitioner David Katz, and Nashville's Jim Cheek, who regularly co-taught a follow-on course for students interested in mergers.

I gratefully acknowledge Wachtell, Lipton, Rosen & Katz for granting permission to reprint The Wachtell Lipton Share Purchase Rights Plan.

I welcome comments, questions, and suggestions at thompson@law.georgetown.edu.

Robert B. Thompson

May 2010

Washington, D.C.

***MERGERS AND
ACQUISITIONS:
LAW AND FINANCE***

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