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Cases and Materials on
CORPORATE MERGERS
AND ACQUISITIONS

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Cases and Materials on
**Corporate Mergers
and Acquisitions**



Peter V. Letsou

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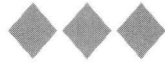
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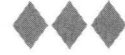
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To my mother, Helen Valacellis Letsou, and my late father,
Dr. Vasilios G. Letsou, for their tireless guidance and
support in all my endeavors,

and

To my wife, Felicity, and our children, William, Christina and
Theodore, whose patience and encouragement
made this project possible.



Preface

This book covers the *corporate* and *securities* laws aspects of merger and acquisitions. In general, it focuses on the M&A-related aspects of corporate and securities law that are considered briefly, if at all, in basic business organizations and securities regulation classes. Although prior completion of an introductory course in the law of business organizations is presumed, prior completion of a class in securities regulations is not.

This book has four principal features that distinguish it from other casebooks. First, it is designed to focus exclusively on *corporate* and *securities* laws aspects of corporate M&A transactions. Accordingly, it includes detailed coverage of such topics as: the legal procedures for mergers, consolidations, and assets sale; the state law appraisal remedy; federal regulation of stock purchases and tender offers under the Williams Act; state antitakeover legislation; and state and federal duties related to takeover defenses, sales of corporate control, and freeze outs of minority shareholders. It does not, however, include detailed materials on other M&A-related topics, such as finance theory, antitrust law, tax and accounting concerns, foreign investment restrictions, and bankruptcy reorganization. It avoids these alternative topics because time and space limitations do not permit a full treatment of all M&A-related topics in a single course and text, and the omitted topics generally receive extensive treatment in other law school classes.

Second, this book provides comprehensive coverage of M&A-related aspects of the federal securities laws, coverage that is fully integrated with the related state law materials. In most M&A casebooks, materials on the federal securities laws appear very late in the text and in separate chapters devoted exclusively to that subject. In addition, these materials usually focus on tender offer regulation under the Williams Act, but touch briefly, if at all, on other equally important M&A-related aspects of the federal securities laws, such as the special disclosure, timing, and other requirements for M&A transactions (whether or not involving tender offers) under the Securities Act of 1933; the federal proxy rules; and the Securities and Exchange Commission's going-private rules. This book remedies these omissions and in the process underscores the central role that the federal securities laws play in regulating *all* types of M&A transactions, not just those involving tender offers. Further, this book's comprehensive coverage of the federal securities laws facilitates a detailed discussion of topics beyond the reach of other texts, including the differing disclosure rules that apply to different forms of corporate acquisitions; the operation of such recent regulatory innovations as Regulation M-A which, among other things, implements a more uniform

disclosure system for tender offers and mergers; and the relationship among various SEC rules designed to facilitate communications with shareholders in *all* business combination transactions, not just those involving tender offers.

Third, unlike any other existing casebook, this book relies heavily on edited excerpts from filings under the federal securities laws. Accordingly, when federal disclosure requirements under the Securities Act of 1933, the federal proxy rules, or the Williams Act are introduced, excerpts from filings on the appropriate federal forms (e.g., Schedule 14A, Form S-4, Schedules 13D, 13G, TO, and 14D-9) are included. SEC disclosure documents are also used to explain such devices as shark repellent charter amendments, poison pills, no-shops, and termination fees. Studying excerpts from filings under the federal securities laws gives students a clearer understanding of how the federal securities laws operate. Moreover, these excerpts provide glimpses at the work of transactional lawyers in contrast to the litigation perspective that dominates most law school courses and casebooks.

Finally, this book integrates into the text edited versions of state and federal statutes, rules, and forms, eschewing the traditional reliance on unedited statutory supplements. By placing statutory and regulatory materials in separate supplements, we mistakenly (if unintentionally) convey the notion that such materials are of secondary importance. Also, by reproducing long, complicated provisions without editing or explanation, we often fail to provide students with the guidance they need to understand complex statutory and regulatory schemes. As a result, many students fail to read complicated statutes and regulations closely or at all. Reading and understanding statutes, rules, and forms is a crucial skill for the M&A lawyer, as it is for any lawyer. Accordingly, to facilitate a more complete understanding of statutory and regulatory materials, this book: (1) includes the relevant statutes, rules, and forms at the appropriate points in the casebook; (2) edits these materials so students can spend their time understanding the most important parts of the statutory or regulatory scheme; and (3) explains the excerpted provisions in related notes and questions.

One final note: This book relies heavily on primary materials, including case excerpts, statutes, regulations, SEC forms, and filings under the federal securities laws. Explanatory materials, including original text, notes, and questions, are included only to the extent necessary to explain the primary materials.

Peter V. Letsou, January 2006



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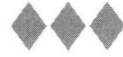


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