Syllabus for

Negotiating Corporate Transactions

Purpose of the Course: This course will introduce the student to the basics of transaction practice by focusing on two transactions: an acquisition and a securities offering. The focus will be on the core legal and commercial issues lawyers face in such transactions and the drafting and negotiation skills needed. The course will be conducted by a combination of lecture, discussion, student role-play and teamwork.

Requirements: Class attendance will be critical to the learning process and required absent a medical excuse. Time will need to be devoted regularly by every student to readings and out-of-class negotiation and drafting exercises. There are no particular pre-requisites for the course, but students should have taken two of Corporations, Securities or Mergers.

Written Assignments: These must be emailed to the Professor before class by deadlines that will be specified each week. All assignments are "open book" in the sense that you are not restricted from consulting whatever sources you like, except you are not to consult with other members of the class on the homework other than your team member, when you have been assigned one and, for negotiating exercises, your "adversaries". In addition, you may not ask anyone (whether or not classmates) for assistance in actually drafting your homework. From time to time you may not understand a homework assignment or may need it clarified. If you cannot puzzle this out yourself, please email your question to the Professor. Often such questions and the answers will then be sent by the Professor to the entire class, without identifying the questioner.

Collaboration and In-Class Negotiation: Most of the out-of-class work will involve working with (or opposite) others in the class. Students are expected to be flexible to accommodate each other's schedules to allow these meetings to occur. Every student will negotiate in class approximately two times, and following each such negotiation there will be a critique of each student's performance.

Office Hours: Office hours will be immediately following each class and email queries will also be answered as promptly as practical. My email address is david.pollak@morganlewis.com.

Grading: Each weekly assignment will be graded. The overall grade will be 65% based on the weekly homework, 15% based on class participation and 20% based on the final exam.

Day 1 – Introduction – January 22

Introduction – Purpose of Course
Grading
Why acquire a business?
Why go public instead?
Role of the Lawyer

Readings for this class:
64 Business Lawyer 280-286, 309-321
BNA, Negotiated Acquisitions, A-3-9, and A27-A32
DB1/ 75440075.9
Day 2 – Preliminary Documents – January 29

Review and critique homework
Preliminary documents – Non Disclosure Agreement; Letters of Intent; Engagement Letter
Introduction to Kumar's Klocks Inc.

Readings for this class:
BNA, Negotiated Acquisitions, A23-26
Waryjas, Letters of Intent
Seegal, Maximizing Leverage in Future Negotiations
670 F.Supp. 490 – 506

Homework for this class:
Draft a Confidentiality Letter

Day 3 – Basics of the Stock Purchase Agreement – February 5

One group of four negotiates in class

Review and critique homework
Stock Purchase Agreement – Part 1

Readings for this class:
Freund, Anatomy of a Merger, 229-248
Stock Purchase Agreement: Articles I, II and III
Blassberg and Bet-Mansour, Asset Purchase Agreement, Articles I, II and III

Homework for this class:
Draft and negotiate a Letter of Intent

Day 4 – Representations and Warranties – February 12

One group of four negotiates in class

Review and critique homework
Stock Purchase Agreement – Part 2
Auctions

Readings for this class:
Freund, Anatomy of a Merger, 285-297
Stock Purchase Agreement: Articles IV – VIII
Blassberg and Bet-Mansour, Asset Purchase Agreement, Articles IV - VI

Homework for this class: Draft and negotiate an Engagement letter
Day 5 – Conditions and Covenants – February 16

Guest lecturer
Stock Purchase Agreement – Conditions and Covenants

Readings for this class:
Freund, Anatomy of a Merger, 363-388
Jha, Indemnification Provisions
Blassberg and Bet-Mansour, Asset Purchase Agreement, Article VIII

Day 6 – Indemnification – February 26

One group of four negotiates in class
Stock Purchase Agreement – Indemnities

Homework for this class: Draft and negotiate closing conditions.

Day 7 – Earn-Outs – March 5

One group of four negotiates in class
Review and critique homework
Earn-Outs
Opinions

Readings for this class:
BNA, Negotiated Acquisitions, A51-52
Waryjas, Earn-outs: One Solution to a Valuation Impasse
Voxman, Structuring and Negotiating Earn-outs

Homework for this class: Draft and negotiate indemnity provisions

Day 8 – Employment Agreements; Stockholder Agreements; Financing - March 19

One group of four negotiates in class
Review and critique homework
Employment Agreements
Stockholder Agreements
Financing

Readings for this class:
Freund, Anatomy of a Merger, 399-414

Homework for this class: Draft and negotiate earn-out provisions
**Day 9 – Fiduciary Obligations – March 26**

One group of four negotiates in class

Review and critique homework
Fiduciary Obligations
Private Equity Buyers

**Readings for this class:**
BNA, *Negotiated Acquisitions*, A59-62
Frankle, *Fiduciary Duties of Directors*

**Homework for this class:** Draft and negotiate a stockholders agreement

**Day 10 - Overview of an IPO – April 2**

One group of four negotiates in class

The controlling shareholders and Board are considering raising capital in the form of an initial public offering. During the next five classes we will walk through the major aspects of an IPO, including documentation, the process and the negotiating aspects of an IPO.

1. Who are the players?
2. What are the critical documents?
3. What is the process?
4. Basic securities law structure
5. Timeline

This part of the class will provide a general overview of the components of an IPO in order to give the student some basic grounding in how the deal is put together and some of the documentation that will be discussed in later classes.

Overview of IPO
Timeline of IPO

**Readings for this class:**
D. Westenberg: Ch. 1 "An Introduction to the IPO Market"
Ch. 9 "Assembling the IPO Team"
Ch. 10 "An Overview of the IPO Process"

**Homework for this class:** Draft and negotiate an Employment Agreement.
Day 11 - Due Diligence – April 9

Review of homework:

1. What is the securities law reason for due diligence?
2. Who conducts it and why?
3. Documentary vs. Management
4. "Materiality"

This class will discuss the importance of due diligence. It will cover what is entailed in due diligence and what the lawyer is looking for. It will also address the legal reasons behind the need for due diligence and some of the implications of not conducting proper due diligence. The class will have an opportunity to draft a due diligence request list as well as management due diligence questions.

Due Diligence

Readings for this class:
D. Westenberg: Ch. 12 "Potential Liability and Purposes of Due Diligence"
BNA, Initial Public Offerings, A105-128, A129-148

Homework for this class: Underwriting Agreement

Day 12 - Prospectus – April 16

Review of homework:

1. Outline of main sections of a Prospectus
2. Securities law reason for a Prospectus
3. Risk Factors
4. Business description

We will discuss what a prospectus is and what it is used for. We will also begin to discuss some of the most important sections of a prospectus. The class will have an opportunity to draft some of these sections.

Prospectus

Readings for this class:
D. Westenberg: Ch. 4 "Accounting Preparation"
    Ch. 13 "Preparing the Form S-1"
Reg S-K: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=17:2.0.1.11&idno=17

Homework for this class: Draft Risk Factors
Day 13 - Underwriting Agreement – April 23

Review of homework
Critical terms of underwriting arrangements
Underwriting Agreements

Readings for this class:
D. Westenberg: Ch. 19 "Demystifying the Underwriting Process"
BNA, Initial Public Offerings, A77-102

Homework for this class: Summary or “Box”

Day 14 – Ethics – April 30

Ethics in Negotiating and Documenting Transactions
Closing Dinner