

NBA 563 & LAW 649

**“THE IPO PROCESS AND
DEAL STRUCTURE ALTERNATIVES”**

FALL 2006

MON/WED 8:40-9:55AM

SYLLABUS

This course provides an in depth look at initial public offerings and deal structures from a practitioner's point of view. With respect to initial public offerings, the course covers: the applicable statutory framework, pre-offering corporate preparations (such as the implementation of poison pills and stock option plans), the due diligence process, the implementation of corporate governance policies appropriate for a public company, the offering registration process, liability under federal securities laws, the Securities and Exchange Commission review process, underwriting arrangements, selection of a trading forum (i.e., NYSE, NASDAQ, etc.), and the role of securities analysts. Regarding deal structures, the course explores: choosing an appropriate transaction structure (i.e., stock versus asset sale, merger, etc.), deal financing alternatives, due diligence, public company transaction issues (i.e., anti-takeover matters and directors' fiduciary duty concerns), and crucial legal and business aspects of the acquisition, such as caps/collars, letters of intent, successor liability, continuity of employees, and non-competition agreements and reacting to hostile bids.

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COURSE WEBSITE

The website for the course is on Blackboard under NBA 563. The address for Blackboard is <http://www.blackboard.cornell.edu>. All course materials, including this syllabus and the lecture notes, will be posted on the course website. In addition, we will post announcements on the course website from time to time, so please check the website routinely. Also, please be sure to enroll in the course website so that you will receive any course email distributions.

Note: There may be a site on Blackboard under LAW 649. We will NOT use this site as the course website. All students, including law school students, should enroll in and use the NBA 563 site.

PROFESSOR CONTACT INFORMATION AND OFFICE HOURS

Professor Nozell: Sage 401C, jdn23@cornell.edu. Office hours TBA.

Professor Teitelbaum: Sage 401C, jct35@cornell.edu. Office hours TBA.

TEACHING APPROACH

The teaching focus in the class is on practice. Our goal is to impart knowledge that you can use in practice, particularly as an investment banker, CFO or corporate lawyer. Therefore, don't be surprised if the amount of theoretical discussion is minimal.

We will endeavor to make the class as interactive as possible. Additionally, we expect to have a few guest speakers. Therefore it is important to display your NAME CARDS during class, at all times.

The weekly reading assignments in this class are substantial and go beyond what we will discuss in class, which reflects the fact that our goal is to give you broad exposure to the subject matter to enhance your post-graduation work experience. The heavy reading load is offset by minimal problem sets/assignments. **Note that some readings are optional.**

GRADING POLICY

Letter or S/U grade option for MBA and JD students. H/S/U for LLM students.

There will be a midterm exam covering IPOs and a final exam covering deal structures -- each are worth 50% of your grade. The final exam is not cumulative (i.e., it does not cover IPOs). In addition, we will assign (at least) two problem sets. Good work on problem sets and class participation can help a grade. Poor work on problem sets, lack of class attendance, or being unprepared can hurt a grade.

Note to JD students: We will adhere to the law school's mean grade cap for JD students. Accordingly, JD student transcripts will not carry an asterisk next to their grade for this class.

LAPTOP POLICY

Laptop computers are not allowed in class.

COURSE MATERIALS AND WEEKLY READING ASSIGNMENTS

The course materials are comprised of:

1. A course packet, which contains articles and publications that we compiled. The course packet is available for purchase in the Store.
2. David Harding and Sam Rovit, *Mastering The Merger: Four Critical Decisions That Make Or Break the Deal*, Harvard Business School Press, 2004. This book is available for purchase in the Store. We will read approximately half of this book during the deal structuring part of the course. The second half of the book, dealing with post-merger integration issues, will likely prove useful for you as well.

In addition, we ask that you read a few statutes, forms, and other materials which are available online at websites designated in this syllabus.

Note: We may provide additional handouts or post additional readings on the course website from time to time. We will announce any additional readings in class and by posting an announcement on the course website.

Beginning on the next page you will find reading lists for each week of the course. Numbered references are to the materials contained in the texts or the course packet. Unnumbered references are to materials which are available online at designated websites. **The weekly reading assignments are integral to the course. Please read all the required materials.**

**WEEK 1 (8/28 and 8/30) Introduction; What is an IPO; The Parties;
Corporate Governance**

1. The Initial Public Offering Process, Practicing Law Institute -- How to Prepare an Initial Public Offering (1994).
2. Steps in a Registered Offering, Practicing Law Institute -- Understanding the Securities Law (2001), Section 2.4.
3. Deciding to Go Public, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 1.
4. Factors to Consider in Making the Decision to Go Public, Practicing Law Institute -- How to Prepare an Initial Public Offering (2002).
5. Assembling Your IPO Team, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 2.
6. The Roles of the Parties in Preparing the Registration Statement, American Law Institute -- ALI-ABA Course of Study (August 24, 2000).
7. Gearing Up, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 3.
8. Hosting the Organizational Meeting and Management Presentations, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 6.
9. The IPO Process: Views from the CFOs, VC Experts Buzz of the Week (June 8, 2004).
10. The following articles on recent IPOs and the current state of the IPO market:
 - a. MasterCard IPO Priced at \$39, Under Expectations; Set to Debut, WSJ, May 25, 2006.
 - b. Vonage Lacks Voltage in Its IPO, With Weakest Debut in 2 Years, WSJ, May 25, 2006.
 - c. Vonage May Seek Payment From Balking Share Buyers, NY Times, June 1, 2006.
 - d. Vonage Accused in Class Action, Seattle Post-Intelligencer, June 6, 2006.
 - e. IPOs Keep Rolling On, BusinessWeek online, June 14, 2006.
 - f. The War for Start-ups Going Public, CNNMoney.com, June 14, 2006.
 - g. MasterCard Legal Woes Persist, CNNMoney.com, June 19, 2006.
 - h. Stock Offerings Flee Tepid Markets, WSJ, July 17, 2006.

OPTIONAL READING

11. D&O Liability Insurance, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 4.
12. Sample Timetable and Responsibility Schedule for an Initial Public Offering of Common Stock, Practicing Law Institute -- How to Prepare an Initial Public Offering (2002).

Note: A good IPO glossary is available online at <http://www.ipohome.com/newcomer/glossary.asp>.

1. Regulatory Framework of Securities Act Registration, Soderquist on the Securities Laws (5th ed. 2006), Chapter 3.
2. A Breath of Fresh Air: The SEC Adopts Securities Offering Reform Amendments, Covington & Burling Securities Client Advisory (July 26, 2005).

Note: This item summarizes SEC Release No. 33-8591: Securities Offering Reform (July 19, 2005). We recommend students at least skim the release. It is available at <http://www.sec.gov/rules/final/33-8591.pdf>. Technical amendments to the release are available at <http://www.sec.gov/rules/final/33-8591a.pdf>.

3. Will Free Writing Prospectuses Be Used?, Insights, Volume 19, Number 10 (October 2005).
4. Pages 133-147 of Preparing the Registration Statement and Going Effective, Bowne -- The Initial Public Offering (2d ed. 2004), Chapters 8.
5. Registration Statement Drafting and Filing, Practising Law Institute -- Understanding the Securities Law (2001).
6. SEC Proposes Amendments to Executive Compensation and Related Party Disclosure Rules, DLA Piper Rudnick Gray Cary Securities Law Alert (February 8, 2006).
7. Proposed Changes to Executive Compensation Disclosure: What Should Companies Be Thinking About Now, Insights, Volume 20, Number 3 (March 2006).

Note: Items 6 and 7 relate to SEC Release No. 33-8655: Executive Compensation and Related Party Disclosure (January 27, 2006). If you wish to read the release, it is available at <http://www.sec.gov/rules/proposed/33-8655.pdf>.

8. Preparing The New MD&A, ALI-ABA Business Law Course Materials Journal, Volume 30, Number 1 (February 2006).
9. Preparing MD&A: A Practitioner's Checklist, Insights, Volume 17, Number 10 (October 2003).
10. MD&A Trends and Uncertainties - What Should a Company Disclose?, Perkins Coie Corporate Finance Update (April 2, 2004)
11. SEC Urges Management to Pick Up the Drafting Pen: MD&A Drafting Tips Based on New SEC Interpretive Release, Perkins Coie Corporate Finance Update (January 14, 2004).

Note: Item 11 summarizes SEC Release No. 33-8350: Commissions Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations (December 19, 2003). If you wish to read the release, it is available at <http://www.sec.gov/rules/interp/33-8350.htm>.

Securities Act of 1933 – Section 2(a)(10), Section 5, and Rules 134, 135, 153, 163A, 164, 169
(*all statutes and forms at <http://www.law.uc.edu/CCL/index.html>*)

Form S-1 Registration Statement
(*available at <http://www.sec.gov/about/forms/forms-1.pdf>*)

Regulation S-K -- **SKIM** sections referenced in Form S-1
(*all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>*)

OPTIONAL READING

12. A Summary of Sarbanes-Oxley Act of 2002, Covington & Burling (July 26, 2002).
13. The Sarbanes-Oxley Act and IPO Filers, Insights, Volume 17, Number 10 (October 2003).

WEEK 3 (9/11 and 9/13) Due Diligence; Liability

1. Potential Liability and the Role of Due Diligence, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 7.
2. Due Diligence and Securities Act Liability, Understanding the Securities Law (3d ed. 2001), Chapter 6. **(NOTE TO STUDENTS: You may SKIM this item, although we recommend, particularly to the law students, that you read it more carefully.)**
3. Sections 8.3.3, 8.3.4 and 8.5 of Liability for Securities Act Violations, Soderquist on the Securities Laws (5th ed. 2006), Chapter 8.
4. Staying Out of Trouble: Officer and Director Liability in Connection with Registration Statements; How to Draft Documents to Limit Liability, Andrews Corporate Risk Spectrum (November 1999).
5. **Review from Week 2, Item 2:** Pages 16-19 of A Breath of Fresh Air: The SEC Adopts Securities Offering Reform Amendments, Covington & Burling Securities Client Advisory (July 26, 2005) and pages 172-192 of SEC Release No. 33-8591: Securities Offering Reform (July 19, 2005).
6. Claims Under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, Robins, Kaplan, Miller & Ciresi L.L.P. (March 9, 2005).
7. The following articles on due diligence and liability:
 - a. Underwriter Due Diligence in Securities Offerings, NYLJ (May 27, 1999).
 - b. Fifth Circuit Limits Class of Plaintiffs that Can Sue Public Companies under Section 11 of the Securities Act, DLA Piper Rudnick Gray Cary -- Corporate and Securities eAlert (March 4, 2005).
 - c. In re WorldCom, Inc. Securities Litigation: Due Diligence for Underwriters and Directors, Covington & Burling -- Securities Client Advisory (March 7, 2005).
 - d. Underwriter Due Diligence Obligations in the Wake of In re WorldCom, Wall Street Lawyer, Volume 9, Number 1 (June 2005).

Securities Act of 1933 - Sections 11, 12, 15, and 17

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

Securities Act of 1934 - Section 10(b) and Rule 10b-5

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

WEEK 4 (9/18 and 9/20) SEC Review; Pricing; Comfort Letters; Road Show

1. Pgs. 147-158 of Preparing the Registration Statement and Going Effective, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 8.
2. Pgs. 144-154 of Corporate Finance and the Securities Laws, Aspen Law & Business (2d ed. 1997).
3. Understanding Comfort Letters for Underwriters, The Business Lawyer (Volume 34, July 1979).
4. Pgs. 183-188 of Underwriting Arrangements and Marketing, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 9.
5. The following articles on pricing and road shows:
 - a. Why IPOs Still Use the Old Way, WSJ (July 6, 2005).
 - b. IPO Road Shows Should Be Open To All, Silicon Vally.com (June 9, 2003)
 - c. Spinning, Laddering and Shorting (or, What's Wrong With Our IPO System), Techzone.com (February 18, 2004)
 - d. Finance Chiefs May Be Aware of Low IPO Pricing, WSJ, February 16, 2006.
 - e. IPO Roadshows Gain Some Glitter, WSJ, June 19, 2006.

Securities Act of 1933 - Rules 424(b), 430A, and 462

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

OPTIONAL READING

SAS 72: Letters for Underwriters and Certain Other Requesting Parties
(available on the course website under "Course Documents")

WEEK 5 (9/25 and 9/27) Underwriting; Forum Selection

1. Pgs. 159-176 of Underwriting Arrangements and Marketing, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 9.
2. Considerations in Selecting the Managing Underwriter(s) for an Initial Public Offering, Practising Law Institute -- How to Prepare an Initial Public Offering (2002).
3. Offering Economics, Explanation and Analysis, Lazard Client Manual.
4. Underwriting Agreements, Practising Law Institute -- How to Prepare an Initial Public Offering (2002). **(NOTE TO STUDENTS: You should SKIM this item.)**
5. Indemnification and Contribution in Underwritten Offerings, Insights, Volume 17, Number 1 (January 2003). **(NOTE TO STUDENTS: You should SKIM this item.)**
6. Impact of Securities Offering Reform on Underwriting Arrangements, Insights, Volume 19, Number 10 (October 2005).
7. SEC Issues Guidance on Regulation M and IPO Allocations, Shearman & Sterling LLP (April 14, 2005).

Note: Item 7 summarizes SEC Release No. 33-8565: Commission Guidance Regarding Prohibited Conduct in Connection with IPO Allocations (April 7, 2005), which appears immediately following item 4 in the course packet. **Reading the release is OPTIONAL, but we recommend that students at least skim the release.**

8. The SEC Proposed Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings, Simpson Thacher & Bartlett LLP (January 14, 2005).
9. SEC, NYSE, and NASD Propose Rules for Allocation and Distribution of Offering Shares, Aspen Publishers, Inc. (February 2005).

Note: Items 8 and 9 summarize the following documents:

- a. SEC Release No. 33-8511: Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings (December 9, 2003), available at <http://www.sec.gov/rules/proposed/33-8511.htm>.
- b. SEC Release No. 34-50896: Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings (December 20, 2004), at <http://www.sec.gov/rules/sro/nyse/34-50896.pdf>.
- c. NYSE/NASD IPO Advisory Committee Report (May 2003), which is available on the course website under "Course Documents".

Reading these documents is OPTIONAL, although we recommend you read the NYSE/NASD IPO Advisory Committee Report and perhaps skim the releases.

10. New NYSE and NASDAQ Corporate Governance Listing Standards, Covington & Burling (February 12, 2004).

Note: Item 10 summarizes Section 303A of the NYSE Listed Company Manual, which is available at <http://www.nyse.com/audience/listedcompanies.html>, and NASD Rules 4200 and 4350, which are available at <http://nasd.complinet.com/nasd/display/index.html>.

Reading these rules is OPTIONAL, although we recommend students at least skim these rules, and perhaps skim the rest of the NYSE Listed Company Manual, the NASD Conduct Rules, and the NASD Marketplace Rules.

11. The following articles on IPO stock allocation abuses:
- a. Securities and Corporate Governance Litigation Alert, Perkins Coie Corporate Finance Update (March 24, 2004).
 - b. NASD Penalizes Wall Street Firms For IPO Deals, WSJ (May 19, 2004).
 - c. Fund Probe Broadens to IPO Allocations by Money Managers, WSJ (May 27, 2004).
 - d. SEC Release No. 18385 (October 1, 2003) (regarding laddering).
 - e. Firms Close In on Settlement of IPO Inquiry, WSJ (June 22, 2004).
 - f. NASD Fines Spear, Leeds & Kellogg \$1 Million for Concealing Sales of IPO Shares, NASD News Release (March 22, 2005).

OPTIONAL READING

12. NYSE U.S. Standards, NYSE U.S. Fees, and NASDAQ Listing Requirements and Fees.
13. Going Dutch: The Google IPO, Berkeley Technology Law Journal (2005).

Securities Exchange Act of 1934 – Regulation M.

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

NYSE Listed Company Manual

(available at <http://www.nyse.com/audience/listedcompanies.html>)

NASD Conduct Rules (2000-3000) and Marketplace Rules (4000-7000)

(available at <http://nasd.complinet.com/nasd/display/index.html>)

WEEK 6 (10/2 and 10/4) More on Underwriting; Analysts

1. Pgs. 176-183 of Underwriting Arrangements and Marketing, Bowne -- The Initial Public Offering (2d ed. 2004), Chapter 9.
2. Investment Banking Conflicts: Research Analysts and IPO Allocations, North Carolina Banking Institute (April 2003).
3. Global Analyst Research Settlement Joint Press Release (April 28, 2003).
4. New Rules Force Research Analysts to Stay Home When Investment Bankers Hit the Road, Perkins Coie Update (June 15, 2005)
5. Research Analysts and Research Reports, NASD Notice to Members (May 2005).
6. SEC Release No. 34-51593: Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. to Prohibit Participation by a Research Analyst in a Road Show Related to an Investment Banking Services Transaction and to Require Certain Communications about an Investment Banking Services Transaction to Be Fair, Balanced and Not Misleading (April 21, 2005).
7. NYSE Rule 472 (Communication with the Public) and NASD Rule 2711 (Research Analysts and Research Reports).
8. SEC Regulation FD: New Rules for Communicating With Analysts and Investors, Cooley Godward LLP -- Cooley Alerts (October 1, 2000).
9. Analysts Independence, Insights, Volume 17, Number 11 (November 2003).
10. SEC Adopts Final Rule Relating to Analyst Certification, Nixon Peabody LLP (undated).
11. Articles re: Analysts:
 - a. Global Research Analyst Settlement Proving Unsettling for Issuers, Buzz of the Week from VC Experts (June 1, 2004).
 - b. Has Wall Street Changed Its Tune?, NY Times (June 19, 2005).
 - c. N.Y High Court Imposes Fiduciary Duty on IPO Underwriter Goldman Sachs, NYLJ (June 8, 2005).
 - d. Regulation Fair Disclosure After Five Years, Wall Street Lawyer, Volume 9, Number 6 (November 2005).

OPTIONAL READING

Securities Exchange Act of 1934 – Regulation FD
(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

Securities Exchange Act of 1934 – Regulation AC
(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

WEEK 7 (10/9 and 10/11) Fall Break; No Class

Law students are on break this entire week, and non-law students are on break Monday and Tuesday. Thus, THERE WILL BE NO CLASS the entire week.

WEEK 8 (10/16 and 10/18) Insider Trading; Case Study: Too Soon to IPO?

1. **Review Week 3, Item 6: Claims Under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5**, Robins, Kaplan, Miller & Ciresi L.L.P. (March 9, 2005).
2. Primer on Trading on the Basis of Material, Non-Public Information, J. Marston (2004).
3. Insider Trading -- A U.S. Perspective, SEC (September 19, 1998).
4. Section 16(b) Liability for Fund Insiders Selling Shares in a Portfolio Company's IPO, Insights, Volume 18, Number 10 (October 2004).
5. Articles re: Insider Trading
 - a. The Insiders' Magic Way to Sell, WSJ (March 19, 2004).
 - b. Insider Trading: It's A Good Thing, The Boston Globe (March 14, 2004).
 - c. Pequot Hedge Fund Is Probed for Possible Insider-Trading Violations, WSJ (June 24, 2006).
 - d. Insider-Trading Alum Out on Bail, Harvard Crimson (July 7, 2006).
 - e. Ex-Merrill Banker Pleads Guilty to Insider Trading, Reuters (July 14, 2006).

Securities Act of 1934 - Section 10(b) and Rule 10b-5

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

Securities Act of 1934 - Section 16(b) and Rules 16b-3, 16b-6, 16b-7

(all statutes and forms available at <http://www.law.uc.edu/CCL/index.html>)

Deal Structure Charts

(available on the course website under “Course Documents”)

1. Articles on Current M&A Environment:
 - a. IPOs Often Springboard to M&A, The Deal.com (May 24, 2004).
 - b. A Merger? Anyone Tell The Board?, NY Times (June 26, 2005).
 - c. Reverse Mergers Move Into Fashion, WSJ (June 29, 2005).
 - d. Try Before You Buy, CFO.com (May 8, 2006).
 - e. Anadarko to Buy Kerr-McGee and Western Gas, WSJ (June 24, 2006).
 - f. Televisa-Led Group Joins Univision Auction With \$11 Billion Offer, WSJ (June 24, 2006).
 - g. Phelps Dodge Agrees to Buy 2 Canadian Rivals, WSJ (June 26, 2006).
 - h. Studies: Deal Mania Will Continue, CFO.com (July 17, 2006).
2. Confidentiality Agreements for the Sale of a Business, The Practical Lawyer (December 2002).
3. Resales of Stock Acquired in Merger Transactions, Insights, Volume 17, Number 2 (February 2003).
4. SEC Restores Exemption from Section 16(b) Liability in Merger Transactions, Insights, Volume 19, Number 9 (September 2005).
5. D. Harding and S. Rovit, *Mastering The Merger: Four Critical Decisions That Make or Break the Deal*, Harvard Business School Press (2004). **Read Chapters 1 and 2.**
6. America’s Growth Capital “Pitch” Materials. **This is for background only. Good coverage of the current state of M&A market.**
7. Yes, They Can Say No To a Merger, NY Times (June 19, 2005).

WEEK 10 (10/30 and 11/1)

**Due Diligence; Confidentiality Agreements;
Asset vs. Stock Deals – Pros and Cons**

1. Structuring a Taxable Conveyance of a Corporate Business, Texas Bar Journal (June 1989).
2. Market Dictates Boardroom Deals, The HCI Group Ltd (undated).
3. Beware the NDA, The VC Buzz, Joseph Bartlett (May 21, 2002).
4. Due Diligence, Quick and Clean, CFO.com (April 27, 2006).
5. Split-offs Get a Bright-line Test, CFO.com (June 30, 2006).
6. Secrets of the M&A Masters, CFO (September 2005).
7. *Mastering the Merger*. **Read Chapter 3.**

WEEK 11 (11/6 and 11/8)**Key Aspects of M&A Deal**

1. Another Look at Allocating Market Risk in Stock Acquisitions, Insights, Volume 17, Number 8 (August 2003).
2. Model Letter of Intent (2 models). **(NOTE TO STUDENTS: skim this material)**.
3. The Letter of Intent: To Bind or Not to Bind, M&A Monitor, published by US Bancorp Piper Jaffray (April 28, 2003).
4. Caution: Earnout Ahead, CFO (June 2002).
5. The Art of Earnouts, Strategic Finance (June 1, 2003).
6. Deal Breakers, Buyers Are Giving Themselves More Outs By Expanding Material Adverse Change Clauses, CFO.com (October 20, 2003).
7. Note on Material Adverse Change, VC Experts (March 23, 2006).
8. The State of the Art in No Shops, Fiduciary Outs and Termination Rights, Stephen Glover (undated). **(NOTE TO STUDENTS: this is OPTIONAL reading, but it does provide additional analysis that the law students in particular may find useful in practice)**.
9. Holding Out For A Lower Bid, CFO.com (June 1, 2005).

WEEK 12 (11/13 and 11/15) Key Aspects of M&A Deal Continued

1. Pricing Formulations in Stock-for-Stock Mergers, Richard E. Climan (1998).
2. Purchase Price Adjustments, Earnouts, And Other Purchase Price Provisions, ALI-ABA Business Law Course Materials Journal, Volume 30, Number 3 (June 2006).
3. Delaware: New Rules for Special Committees and Fairness Opinions?, Wachtell, Lipton, Rosen & Katz (December 30, 2005).
4. NASD Scrutinizes Conflicts In Bankers' Fairness Opinions, WSJ (June 11, 2004).
5. What's Fair is Fair, Wachtell, Lipton, Rosen & Katz (May 31, 2005).
6. You Can Call It a Fairness Opinion But That Wouldn't Be Fair, NY Times (July 10, 2005).
7. Boston Scientific Leaps Past J&J With \$27 Billion Bid for Guidant, WSJ (January 13, 2006).
8. How Boston Scientific Outdid J&J, WSJ (January 24, 2006).
9. Boston Scientific Faces Pivotal Test After Victory in Fight for Guidant, WSJ (January 26, 2006).

WEEK 13 (11/20 and 11/22) Takeover/Anti-takeover Arena

1. Advising the Board of Directors in Acquiring a Business, Insights, Volume 19, Number 13 (March 2005).
2. Advising the Board of Directors in Mergers and Acquisitions, Securities and Commodities Regulation, Volume 31, Number 7 (April 1, 1998).
3. Delaware Chancery Court Clarifies When a Board of Directors Must Conduct an Auction, Insights, Volume 14, Number 4 (April 2000).
4. Responding to Hostile Takeovers, ALI-ABA Business Law Course Materials Journal, Volume 30, Number 1 (February 2006).
5. ISS Study Finds Companies with Stronger Takeover Defenses Outperform Other Companies, Wachtell Lipton Rosen & Katz (February 24, 2004).
6. Corporate Governance Study Links Bad Boards to Higher Risk and Increased Volatility, ISS Press Release (February 3, 2004).
7. The Embattled Poison Pill, Insights, Volume 19, Number 4 (April 2005).
8. Inside Track with Broc: Bill Lawlor on Poison Pill Developments (January 12, 2005).
9. The following articles on poison pills:
 - a. Takeover Defenses: Yea or Nay, CFO.com (January 29, 2004)
 - b. Where Are All the Poison Pills, WSJ (March 2, 2004)
 - c. Few Refills on Poison-Pill Prescriptions, CFO.com (March 3, 2004)
 - d. Poison pills are drawing more fire, National Law Journal (November 8, 2004).
10. Siebel Strengthens Takeover Defense with Severance, WSJ (May 27, 2005).
11. **Review Week 9, Item 1b: A Merger? Did Anyone Tell The Board?**, NY Times (June 26, 2005).

OPTIONAL READING

12. The Evolving Judicial Review of Squeeze-Out Transactions by Controlling Shareholders, Insights, Volume 17, Number 4 (April 2003).

WEEK 14 (11/27 and 11/29) Case Study: Acquisition of NCS Healthcare, Inc.

1. Acquisition of NCS Healthcare, Inc.

Note: This is a case study that we will discuss in class.

2. Delaware Supreme Court Issues Written Opinion Regarding Its Controversial Lock-Ups Ruling, Faegre & Benson (2003).
3. Delaware Supreme Court on Fiduciary Outs in Merger Agreements, Wachtell, Lipton, Rosen & Katz (2003).
4. Will Your Defensive Line Be Too Strong? Designing M&A Defensive Strategies?, Insights, Volume 19, Number 12 (December 2005).
5. Toys “R” Us: An About Face from the Deal Protection Jurisprudence That Led to Omnicare, Insights, Volume 19, Number 12 (December 2005).