

Letter from the Editors

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MERGERS AND ACQUISITIONS

After the good-byes were said, there were Freddie, Tom Hagen, Moe Greene and Michael Corleone left in the room.

Greene put his drink down on the table and said with barely controlled fury, 'What's this I hear the Corleone Family is going to buy me out? I'll buy you out. You don't buy me out.'

Michael said reasonably, 'Your casino has been losing money against all the odds. There's something wrong with the way you operate. Maybe we can do better.' (The Godfather, by Mario Puzo).

Executing a successful acquisition and sale of a controlling interest in an asset or company at the correct price in a timely manner requires legal, accounting, and finance expertise. Advisors to both the sellers and the buyers must have strategic depth and tactical finesse. In "The Merger and Acquisition Process: A Primer on Getting the Deal Done", Stuart M. Litwin analyzes how the multiple and diverse interests in an corporate acquisition transaction must be addressed, coordinated and satisfied. Mr. Litwin's analysis covers both the legal constraints and economic incentives that determine the overall structure of a corporate acquisition and the content of the contracts that compose the transaction.

David Fredericks gives the reader a rare insider's view of how two acquisitions were initiated, formulated, negotiated, and executed. In his paper, "A Comparison of Cross-Border and Domestic Transactions: The Similarities and the Differences", David Fredericks analyzes how the objectives of each acquiring company and their respective targets were ultimately satisfied, though at times, during the negotiations, valuations and judgements diverged rather than converged. The reader will gain a deeper appreciation of the conditions which should exist and fine points that must be mastered in order to successfully bring a corporate acquisition to closing and beyond.

Corporate control is a negotiable asset. To the extent that insiders believe they have a deeper understanding of company specific assets, markets, and investment opportunities, than do outside investors, there will be a natural tension between the two groups, which will often provoke management to acquire the company or a division. In his paper, "Legal Aspects of Executing Buyouts in the United Kingdom", Derham O'Neill analyzes the unique issues that pertain to arranging and financing a management buyout. Mr. O'Neill examines how the multiple and diverse interests and positions of management, venture capitalists, financiers and banks, make the management buyout distinct from, and relatively more complex than acquisitions by outsiders.

There is a connection between the fact that corporate control sells at a premium to the intrinsic value of a company and the ability and willingness of managers to finance buyouts with significant leverage. Control gives the new management group the opportunity to increase the operating efficiency of the target through a change in corporate strategy, a release from existing managerial and financial constraints, consolidation and selective asset liquidation. Enhanced operating efficiency will serve as the counterweight to the increased financial risk.

Just as insiders may see value not understood by outsiders and initiate a leveraged buyout, directors can realize value for stockholders via a corporate spin-off or carve-out. An interesting decision faced by directors is whether to sell a division or subsidiary through direct negotiations with a prospective buyer or via the stock market. John C. Michaelson and Robin A. Graham have written a detailed analysis of how and when corporate spin-offs and carve-outs can create value for stockholders ("Equity Carve-Outs and Spin-Offs of Technology

Operations”). Their paper covers the strategic, accounting, legal, and economic dimensions of the many possible variations of carve-out and spin-off transactions.

Corporate control may be transferred via a negotiated acquisition or merger agreement or by means of a hostile tender offer or proxy fight. The papers that compose this issue of *The Financier* examine the former. We hope the authors will consider contributing papers to a future issue which examine the battle grounds of hostile takeovers. We thank the authors for investing their time to write this issue of *The Financier*. It has been a privilege to work with such an outstanding group of financiers.

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