15.617, Spring 2004
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Lecture 10: 3/8/04

Guests: Stu Cable and Jim Matarese, Partners, Goodwin Procter

- Public company M&A transactions
- The process by which a public company (pc) transaction gets done.
- PCs have institutional investors, regular scrutiny, and media attention. (Different from private M&A).

PC: the threat of litigation is very palpable. Increased transparency of PC.
There are many constituents waiting to be critical of you.

- Perhaps contact Board of Directors.
- Counsel should gather more information about a possible acquisition deal.

- You have two corporations, A and B.
- Usually there is a mating dance between A and B.
- B should talk to non-executive Director
- You don't' want to go formal, until you are much further along the process.
- Be low key!
- Confidentiality agreements (imperfect world)
- Remember: there is no exclusivity.
- You are not required to disclose IP, sensitive information, customer lists, etc.
- Need ways to protect underbidding.
- Standstill provision: if we are going to talk to you guys, "you won't buy more than 1-2% of securities." "I will call you → you won't' call me." (Usually 12-24 months). You will not engage in conversations with other bidders.
- The confidentiality agreement does not obligate you.
- Being Board chairmen requires common sense. Has the issue advanced enough to warrant issue of the entire Board?
- Board of Directors is concerned about process. The Board of Directors needs to show that they fulfilled their duty of care.
- The best CEOS reach out to their Board. Never hide.
- Best CEOS have lots of meetings.
- CEOS can't see their Board as a rubberstamp.
- A CEO needs to ask lots of questions.
- Duty of care
- Duty of law
- In public company, the dynamic of management and the Board is becoming more hands-on.

- If you sell shares, capital gains (one level of taxes)
- Threshold for taxes: 40%.
- 50% if conservative.
- Then the entire thing is taxed.
- If 40% is in stock, then its taxable, only to the extent of cash received.
- I bankers do the negotiating (economic and social terms)
- Always maximize value of the shareholders.
- How do you know if the price is the best?
- If a 3rd bidder comes in, the I banker shouldn't say anything specific.
- After 45 days, look at intrinsic value of the company. It doesn't matter if the stock value goes up.
- Is there a legal obligation to solicit other bids?

A. You can take pre-emptive offer.
B. Check to see if that's good.
C. Identify the likely bidders.
D. Conduct a full scale evaluation.
E. Put out an option, that we are taking Investment Bank A.

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* Market check: looking around for better offers.
* Ring fence: keep the person out, because of conflict of interests.