

# Mergers & Acquisitions

LECTURE 2: REGULATORY ENVIRONMENT

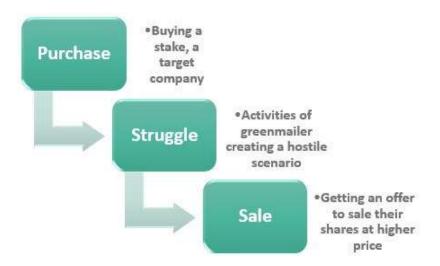
CASE STUDY: CROSS-BORDER ACQUISITION

### Understanding Federal Securities Laws

- Securities Act of 1933 governing Primary Market
  - ➤ Protection of Investors (disclosure, registration)
- Securities Act of 1934 governing Secondary Market
  - ➤ Protection of Investors (trading practices, manipulation, Inside Trading)
  - ➤ On-going reporting (10k, 10q, 8k)
  - ➤ Proxy Solicitations

# Understanding Federal Securities Laws

- The Williams Act: Regulation of Tender Offers (1968) Regulation TO
  - ➤ Regulation 13(D) and 13(G)
  - ➤ Regulation 14 D) Acquisition and tender offer rules



# Understanding Federal Securities Laws

- ➤ The Sarbanes-Oxley Act of 2002 ("SOX")
  - Financial Disclosure, auditing practices, corporate governance
  - **≻**Responsibility

### **ENRON CASE:**

Enron scandal, series of events that resulted in the bankruptcy of the U.S. energy, commodities, and services company Enron

- Mark-to-Market accounting
- Transfer trouble assets to Special purpose entities



# Understanding Federal Securities Laws

- Fair Disclosure (Regulation FD)
  - **≻**Manipulation

### ELON MUSK/TESLA CASE:

Social Media announcement

➤ Taking Tesla private at \$420 per share



## Understanding Antitrust Legislation

- The Sherman Act (1890)
  - ➤ Prohibits new business combination resulting in monopolies (Primary Market)
  - Existing firms growing to a dominance position
- ➤ The Clayton Act (1914)
  - ➤ Price discrimination
  - ➤ Tying of Contracts
  - ➤ Prohibits one company from buying the stock of another company if their combination results to reduced competition.

## Understanding Antitrust Legislation

- The Hart-Scott-Rodino Act (1976)
  - Acquisitions involved companies of specific size cannot be completed until certain information is supplied to federal government and specified waiting period has elapsed.
    - ➤ Based on Size of transaction (Assets)
    - ➤ Based on Size of parties' test (Sales)
    - ➤ Based on Size of the acquisition
    - ➤ Waiting Period (30 days and 15 days for cash tender)

## Understanding Antitrust Legislation

### HORIZONTAL MERGERS

### **Market Share**

Testing HH Index Formula

i.e. – 5 firms:

30%, 25%, 20%, 15%, 10%

 $(30^2 + 25^2 + \dots) = 2250$ 

70%, 10%, 5%...

 $(70^2 + 10^2 + ...) = 5075$ 

Based on 10,000 (100%)

### **VERTICAL MERGERS**

**Supply Chain Control** 

### M&A USE CASE:

- DRIVERS
- NATURAL PROGRESSION
- BENEFITS
- CHALLENGES



### Drivers of Cross Border M&A

Globalization and openness of financial markets

Geographical diversification

Deregulation of markets

Company efficiency

Hedging on Trade and Tariffs

Increase production

Technology and Innovation boom across cultures

# Natural progression for a growth company

Companies started a domestic production

Companies started to export to the foreign markets

Companies established a subsidiary in overseas market

Companies started strategic alliances – customer acquisition

Companies started a Greenfield project – build manufacturing facility

• Companies started to acquire other companies in foreign markets

### Benefits of cross boarder M&A

Acceleration of business

Accessing capital

Synergies

Technology

Tax planning

Mitigation of trade and foreign exchange costs

Legal – Stricter laws than local mergers/acqusitions

Accounting

Strategic

**Technology** 

Integration

**Human Resources** 

Cultural

### Legal Issues

- Acquirer need to understand all the legal provisions of the foreign country
- After understanding the local laws, the acquirer many find that these provisions are incompatible, resulting to lengthy process and company policy changes
- Ex-pat and HR laws / Visa issues
- Labor laws
- Sarbanes & Oxley Laws on publicly traded companies

### Accounting Issues

- Merging entities have different internal controls
- Absence of uniformity of internal controls could lead to mismanagement
- Accounting Standards (International Vs US GAAP)
- Merger accounting adjustments to the Balance Sheet could result to overvalue or undervalue

### **Technological Differences**

Integration challenges due to different technology platforms

### Strategic Issues

- Achieving synergies can be challenging including
  - cost savings
  - plant rationalization
  - Labor issues
  - IT integration
  - marketing integration
  - management changes

### **Cultural Differences**

- Corporate Governance
- Job Security
- Regular and external environments
- Customer Expectations
- Operating styles due to different backgrounds
- Country culture and different values

#### **Human Resources Issues**

- Motivation & Morale
- Layoffs and voluntary leave
- Employee stress due to uncertainty
- Career paths of each employee could be ultered
- Organizational changes