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NAVIGATING THE NUANCE: PRESSING ISSUES IN M&A LAW AND PRACTICE

Michael R. Siebecker*

INTRODUCTION

Mergers and acquisitions (M&A) transactions set new records in the past year. In 2015, combined transactions exceeded \$4.7 trillion in value with an incredibly high percentage of deals exceeding \$5 billion.¹ Access to cheap debt financing, ardent pressure from shareholders to improve profitability, and consistently positive stock market reactions to business combinations represent just a few factors that fuel such unprecedented deal-making activity.²

New complexities in deal structures accompany the boom in M&A value and volume. As deals become larger and more international in scope, special challenges arise regarding due diligence, fiduciary obligations of directors, information security, deal protection devices, tax planning, and regulatory compliance. For instance, the international acquisitions market recently experienced a spike in corporate inversions—a novel tax driven strategy in which a consolidated entity relocates to a more a favorable tax jurisdiction.³ Despite the popularity of corporate inversions, the controversial deal structure faces stiff regulatory opposition in the United States with the Securities & Exchange Commission and U.S. Treasury Department promulgating new rules to thwart the practice.⁴ Regardless of the particular combination structures involved, lawyers who negotiate and plan acquisition transactions must be prepared to address strategically the full panoply of special concerns and choices corporate clients face. Failure to tackle the complexities associated with the supercharged market for M&A risks leaving business clients woefully underserved.

This special issue of *DLR Online* is dedicated to exploring some of the most interesting recent developments in mergers and acquisitions.

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1. Leslie Picker, *A Standout Year for Deals, in Volume and Complexity*, N.Y. TIMES (Jan. 3, 2016), http://www.nytimes.com/2016/01/04/business/dealbook/a-standout-year-for-deals-in-volume-and-complexity.html?_r=0.

2. Jeff Golman, *Four Reasons 2016 Will Be a Strong Year For M&A*, FORBES (Jan. 11, 2016, 9:28 AM), <http://www.forbes.com/sites/jeffgolman/2016/01/11/four-reasons-2016-will-be-a-strong-year-for-ma/#7a24671b4d49>.

3. Richard Rubin and Liz Hoffman, *New Rules on Tax Inversions Threaten Pfizer-Allergan Deal*, WALL ST. J. (April 4, 2016, 8:28 PM), <http://www.wsj.com/articles/u-s-treasury-unveils-new-steps-to-limit-tax-inversions-1459803636>.

4. *Id.*

The following articles—written by law students in the context of an advanced M&A seminar at the Sturm College of Law—address a host of important issues, including non-prosecution agreements under the Foreign Corrupt Practices Act, special concerns for franchise acquisitions, trends in deal protection devices, tax and fiduciary duty concerns in corporate inversions, clandestine due diligence, new proxy rules for gaining deal approval, and cyber insurance for data security breaches. Although the articles address with great nuance some highly technical issues, the collection offers easily accessible and practical guidance that will help lawyers, judges, policy makers, and academics understand more clearly the rapidly changing world of M&A law and practice.