

# MERGERS & ACQUISITIONS

## FINAL EXAMINATION

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### ATTENTION:

**DO NOT TURN TO PAGE 3 UNTIL INSTRUCTED TO DO SO.**

**LOOK UP AFTER YOU HAVE COMPLETED READING THE INSTRUCTIONS AND DO NOT TURN THE PAGE UNTIL INSTRUCTED.**

1. You will have a total of **three (3) hours** to complete both parts of this examination. **You may take the exam in whatever order you prefer.** There is no time limit on a particular part, however, it is suggested that you avoid spending an inordinate amount of time completing questions with a small point value assigned. It is important to pay heed to the point scoring since that is the maximum score that you may receive on a particular question! In light of the numerous questions, you will likely have to move rapidly and decisively.
2. This is an **open book** examination.
3. This exam comprises two main parts for a possible 100-point total.
  - a. **Part One** consists of 25 multiple-choice questions scored at two points each for a total of **50 possible points**. Answer each multiple-choice question by indicating on the ParSCORE form provided, the letter corresponding to the response you believe to be most correct. If you change your answer, place an **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer. If two answers are true, you should select only the best answer. You will receive zero points for questions answered incorrectly; but there is no penalty for guessing, so be sure to answer all of the questions. Certain questions provide for answers such as All are correct, A & B only are correct or None are correct, so make sure to scan the proposed answers to ensure that you haven't missed situations where more than one answer is correct or no answer is correct.

- b. **Part Two** consists of six short-answer questions based upon one fact pattern regarding a proposed merger transaction. This section is also worth a **possible total of 50 points**. Write your answers to this section in one of the blue books provided. In completing Part II, if you should find it absolutely necessary to assume facts, state them. However, it is the intent of the instructor to provide you with enough necessary facts to permit a reasoned initial analysis of the issues raised by the questions, so don't spend too much time assuming additional facts that are unstated. A simple yes or no response, or a mere reference to an apparently applicable case or statute will likely receive no point credit, since it indicates no specific understanding of the issues involved. Your response to each question should be legible and brief, but contain enough detail as if presented to an intelligent, reasonably knowledgeable exam reader.

- c. There is also a short extra credit section at the end of the exam consisting of two short-answer questions worth **five (5) points each**.
4. Write your student examination identification number in the space provided in the upper right corner of every page of this examination; the ParSCORE test form; on your exam envelope; and any used blue books. **Do not use your name, student ID number or Social Security Number on any exam materials.**
5. **You may mark on this examination and/or use it for scratch paper (no such marks will be considered in determining your score), but failure to return this exam with all its pages intact will result in a failing grade.**
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. This examination must be returned. Please do not seal the envelope.
7. **LOOK UP AFTER YOU HAVE COMPLETED READING THE INSTRUCTIONS AND DO NOT TURN TO THE NEXT PAGE UNTIL INSTRUCTED.**

**BEST OF LUCK!**

## PART II

### **The Target: Tally Ho Corporation (T)**

### **The Hostile Acquirer: Andrews Corporation (A)**

On 5/1/06, Susan Andrews, Chief Executive Officer (CEO) and majority shareholder of Andrews Corporation, a Texas publicly held corporation (A), sent a bear hug letter to Joseph Tallman, Board Chairman, CEO and President of Tally Ho Corporation, a Delaware publicly traded corporation (T). A and T are active competitors and both manufacture advanced missile technology parts for the United States Air Force. The letter from Andrews informed Tallman that A would be willing to take either of the following actions with regards to T:

- (1) Form a strategic alliance in a friendly merger, on terms acceptable to A, providing for:
  - \* An agreed upon price per T share valued at up to \$65 per share of T common stock, to be received in the form of A stock and other securities;
  - \* The retention of key T management personnel, including Mr. Tallman (to serve as co-chairman of the combined companies);
  - \* The management retention offer would also allow T=s core management group to continue as core division managers in A, with substantial annual cash awards based on reaching defined productivity and growth targets;
    - \* In addition, Andrews would be willing, as a special accommodation to cause A to make a one-time hello and welcome to the team cash payment of \$250,000 to each inside director and/or member of senior management joining A=s new team and a special \$1 million goodbye payment to each terminated inside board member; and
    - \* A would guaranty payment, on a private purchase basis, of \$85 per share for each share of director=s and management=s insider private, preferred shares held as of the date of Andrews=s letter.

**OR, in the alternative, should the A Board not be willing to proceed as described above:**

- (2) Andrews Corporation will engage in a hostile tender offer for control of T shares, with terms providing for:
  - \* A likely per common share of T offer price substantially lower than the friendly offer (perhaps in the \$30-\$40 per share range);

- \* No tender offer for T preferred shares, just a downstream forced exchange of A common and other securities in the second step freeze-out merger;
- \* A subsequent take no prisoners, freeze-out merger of T into A, and
- \* Upon takeover, the termination from employment of all T senior officers.

Finally, Andrews's letter states that T must respond to her letter by signing an enclosed binding *Letter of Intent* no later than 5/22/06, or else the hostile tender offer will be commenced. The current common stock price of T is \$25 per share.

Mr. Tallman was on vacation at the time the Andrews letter was received by T. Consequently, he did not read the letter or the attached Letter of Intent until 5/19/06. After reading the correspondence, he immediately called for a special meeting of the board of directors of T to discuss the Andrews letter and the Letter of Intent. The meeting is scheduled for 5/23/06.

The T board is comprised of 7 directors, 4 of whom are also officers of T. The other 3 directors are outside directors. T is a New York Stock Exchange listed corporation with one class of publicly traded common stock and two classes of non-traded (private) preferred stock. Currently the inside directors own approximately 30%, or 18 million common shares of the 60 million issued and outstanding shares of common stock of T. The outside directors own an insignificant number of common shares (less than .0001%).

The first class of T preferred stock is voting, redeemable preferred. As such, this class of stock is entitled to vote on an equal basis (one share, one vote) with the common stockholders on all matters that the common shares vote on, and pursuant to the terms pursuant to which this class of preferred was issued, the redeemable preferred may be reacquired by T at any time, in a cash distribution at a per-share purchase price of 125% times the previous month's New York Stock Exchange average daily closing price of the T common stock. The redeemable preferred stock is currently owned privately by nonaffiliated investors who are not controlled by or subject to the influence of either T or A.

The second class of preferred stock is nonvoting except that each share of preferred stock is entitled to vote along with the common shares and redeemable preferred shares on an equal basis (one share, one vote) in a merger or significant asset sale transaction. The preferred stock is entirely owned by the T inside directors and officers, having been issued prior to T Corporation becoming a public company. In summary, the classes and number of shares of T stock outstanding are as follows:

	<u>Outstanding Shares</u>	<u>Authorized Shares</u>
<b>Common Stock:</b>	60 Million shares	100 Million shares
<b>Voting Redeemable Preferred:</b>	20 Million Shares	20 Million Shares
<b>Nonvoting Preferred Stock:</b>	20 Million shares	120 Million Shares
<b>Total Shares Outstanding:</b>	100 Million shares	
<b>Total Shares Owned by T Insiders:</b>	38 Million shares (see footnote below)	
<b>Total Insider Voting Control of T:</b>	38%	

Note that **T** is obligated to numerous classes of bondholders holding unsecured corporate debts of **T** of various mid-term maturities. Further, there are various significant trade accounts payable. In fact, the overall ratio of debt to equity is 3 to 1, the debt securities comprising the most significant aspect of the equity/liability side of **T**'s balance sheet.

**As counsel to the target T, you have been asked by Mr. Tallman to advise the board of your initial views of the following matters:**

**Question 1:** First, assuming the **T** board believes that a merger of **T** into **A** is feasible and appropriate, if the **T** board approves the merger, in addition to the 3 classes of shareholders, will the board likely need to ask bondholders and unsecured trade creditors to ratify the merger transaction? Briefly discuss. (5 points)

**Question 2:** Assume that bondholders and unsecured trade creditors have no voting rights. May the **T** board consider their interests and the interests of other constituencies, such as suppliers, current employees and the local community where **T** conducts business, as relevant factors in deciding to endorse or contest **A**'s takeover plans? Briefly discuss. (5 points)

**Question 3:** Assume that, in response to the **A** bear hug letter, **T**'s board meets and engages in a heated discussion regarding **A**'s proposals. In the course of the board discussion, one of **T**'s consultants (an outside independent certified accountant who was expressly invited to the meeting) announces:

*Given the recent run up in value of **T**'s stock, I would strongly recommend that **T** go forward with a quick merger closing with **A** since it's unlikely that **T** stock will ever reach a value equivalent to **A**'s per share merger offer price in at least 5 years. As the board is no doubt aware, there has never been a better time for **T** shareholders to cash out.*

Based solely upon this advice, T=s board proceeds to quickly sign the binding letter of intent with A. As counsel to T, what concerns might you have with respect to this decisive board approach? Discuss. (10 Points)

**Question 4:** If T chooses to accept A=s friendly merger alternative offer, are there any actual or likely conflicts of interest that the board or senior management have vis a vis T or its shareholders that are problematic? If so, list two conflicts and list one possible solution that you might use to deal with a conflict. (5 points)

**Question 5:** Assuming T accepts A=s merger proposal, list one demand that T may reasonably make of A prior to entering into any meaningful discussions regarding a strategic alliance by merger (the first choice offered by A) and sharing information regarding T with A. Further, in no more than two or three sentences, clearly describe your rationale for making the particular demand. (5 points)

**Question 6:** Assuming that the T board decides to reject the A merger proposal, given the current capital structure of T, briefly provide your views as to the appropriateness of the following shark repellants for consideration to be used by T in avoiding the A takeover:

- A) Issue More Nonvoting Preferred to Assure Control Retention: Immediate resolution of the T board of directors to issue to T management 30 million nonvoting preferred shares authorized but previously unissued, such that T insiders would control 68 million of a total of 130 million issued and outstanding shares of preferred and common stock. Discuss your views. (4 points)
- B) B) Adopt Class Voting to Assure Control Retention: Immediate adoption by the T board of directors of a bylaw amendment requiring that: *in matters involving extraordinary corporate transactions, including mergers and significant asset acquisitions, each class of stock shall be entitled to vote as a class...* Briefly discuss your views. (4 points)
- C) Adopt Shareholder Rights Plan to Thwart Takeover: Immediate adoption by the T board of directors of a *Shareholder Rights Plan* which: *triggers, upon the unapproved acquisition of 20% or more of T common stock or upon the announcement of an unapproved tender offer, the distribution of share rights in a 4 to 1 ratio to all common shareholders not involved in the unapproved acquisition or tender offer....* Briefly discuss. (4 points)

- D) Board Resolution to Redeem Redeemable Preferred to Assure Control Retention: Immediate resolution of the **T** board to redeem the redeemable preferred shares, thereby increasing the **T** management share ownership percentage from 36% (36 million shares/100 million shares) to 45% (36 million shares/80 million shares). Please briefly discuss. (4 points)
- E) Adopt all Plans at Once? Assuming the board of **T** wants to pursue all of the options listed in #6A-D above, do you see any additional legal problem faced by **T** solely because its board of directors chooses to play it safe and adopt all of the shark repellent options? Please discuss in a sentence or two. (4 points)

**10 POINTS OF EXTRA CREDIT QUESTIONS:**

**EC 1:** Briefly, what is the difference between a no shop clause and a no-talk clause in a merger agreement? (5 points)

**EC 2:** Briefly, what is a Revlon duty? (5 points)

**END OF EXAMINATION**

18 MM common shares + 20 MM nonvoting preferred.