

Write Your Exam Code Here: _____

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAMINATION CONSISTS OF 8 PAGES, INCLUDING THIS PAGE
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – DECEMBER 2018

LAW 460A
Advanced Corporate Law -
Advising Public Companies

Section 1
Harjit S. Sangra
Rod Talaifar

TOTAL MARKS: 100

TIME ALLOWED: 2.5 HOURS

* * * * *

- NOTE:**
- 1. This is a limited open book examination, and, in addition to the materials provided herein, candidates may refer to their class notes, course text book and course materials. Candidates may not refer to any other materials.**
 - 2. ANSWER ALL QUESTIONS.**

THIS EXAMINATION CONSISTS OF 3 QUESTIONS (1A, 1B AND 2)

QUESTION 1

ITEM 1. FACT PATTERN

Please refer to the Glossary, which appears after this fact pattern, for definitions of certain defined terms used herein.

Players

- "PPI" is a public company whose shares are listed on the TSX and is incorporated under the British Columbia *Business Corporations Act*. It produces widgets, has annual revenues of about \$1 billion, it is cash-flow positive, marginally profitable but is in a capital intensive industry, meaning large amounts of financial resources are required in its business. In addition, PPI carries debt levels that are higher than its industry peers. PPI's share price is currently at \$9 per share. The 52-week trading range for its shares has varied between \$7.25 and \$10. In the past 12 months, PPI has been very active in seeking and considering M&A opportunities, including potential acquisitions of and business combinations with other widget companies. It has utilized I Bank as an advisor on most of these initiatives. However, to date, it has not found a business combination opportunity that would give sufficient value to its shareholders.
- PPI's board of directors – consists of 7 individuals including its CEO as follows:
 - Director A – (also referred to as "PPI Chairman"), non-employee director, Chairman of the Board, senior executive of a private equity firm which owns approximately 9% of the outstanding PPI shares.
 - Director B – non-employee director, past senior executive in the widget business.
 - Director C – non-employee director, past capital markets experience.
 - Director D – non-employee director, senior executive of CC Hedge Fund.
 - Director E – non-employee director, with past broad business experience.
 - Director F – non-employee director, has an affiliated company that provides consulting services to PPI and has provided consulting services to the CC Hedge Fund.
 - Director G – CEO of PPI, one of its founders, significant experience in the widget business, also has other investments in businesses related to the widget business through a private investment company.
- "NCS" is a public company whose shares are also listed on the TSX. It is a direct competitor to PPI in the widget business, it operates in the same geographic locale as PPI and overlapping operations and customers. It is approximately 30 - 40% larger than PPI

in terms of revenues, market capitalization, net income and cash flow. Although the widget business is capital intensive, it has significantly less indebtedness than PPI and thus has more financial flexibility and capital resources.

- "NCS CEO" believes that a business combination of NCS and PPI would create long-term shareholder value, believes that there are a number of synergies that can be realized if the companies are combined, both in the production of widgets, customer service, reducing general and administration expenses through redundant employees, shutting redundant operations and/or selling redundant assets. He has canvassed the NCS board of directors who are all supportive of a proposed business combination with PPI.

Glossary

"**CC Hedge Fund**" means a significant hedge fund that owns approximately 19% of the outstanding shares of PPI. It also has other investments in the widget business in its portfolio of investments. CC Hedge Fund is the single largest shareholder of PPI.

"**I Bank**" means the investment banking arm of a Canadian Chartered Bank, and a long-standing financial advisor to PPI. The commercial banking part of the bank is the largest debt lender to PPI.

"**PPI Institutional Holders**" means 10 large institutional shareholders of PPI who are all unrelated, none owns more than 9% of the outstanding PPI shares but they collectively own approximately 38% of the outstanding PPI shares.

"**TSX**" means Toronto Stock Exchange.

ITEM 2. EVENTS

Day One

NCS CEO reaches out to PPI Chairman to have a preliminary discussion regarding the potential merits of a business combination between NCS and PPI. They discuss the potential merits of a combination, including the potential to realize synergies and to enhance shareholder value. They briefly touch on the "people issues" – there will be redundant senior executives and employees, etc. PPI Chairman states he can see the potential merits of a combination but is not sure how his board would feel about a transaction.

Further he advises that in addition to the people issues, the most significant issue for PPI and its shareholders would be the amount of consideration in any transaction.

He closes the meeting by saying: "if NCS wanted to provide a proposal or indication of interest, he would certainly take it to his board".

Day Three

NCS CEO sends to the PPI Chairman a non-binding expression of interest proposing a potential business combination between the two entities, requesting due diligence access, suggesting that subject to such due diligence the consideration could be in the range of \$10 and \$13 per PPI shares. The consideration would be in the form of cash, NCS shares or a combination thereof.

Day Six

PPI conducts a board meeting to review the proposal. While there is a general consensus amongst the board as to the potential merits of a business combination, there is no agreement as to the value for PPI shares. At the conclusion of the meeting, the PPI board, by a vote of 5 to 2 determines to enter into a confidentiality agreement with NCS for a short period so that both parties may conduct due diligence upon each other to see if the proposal has further merit. Directors D and G were the directors who voted against the resolution.

Each party conducts high level due diligence upon each other for 10 days and is generally satisfied with the results of the same.

Day Seventeen

NCS provides a formal offer letter setting forth a proposal whereby it would be prepared to effect a business combination with PPI whereby it would acquire all of the issued and outstanding shares of PPI in consideration of a price of \$12.00 per PPI share. The consideration would be in the form of cash (subject to a maximum cap), shares of NCS, or a combination of the two. Each PPI shareholder may elect one of these options under the offer. In the event that PPI shareholders are entitled to receive cash in excess of the maximum cap, they would only receive cash up to the maximum cap on a pro rata basis and the balance of the consideration to them would be in the form of NCS shares. The offer letter has been approved by the board of NCS and provides a short time for acceptance by PPI and if accepted, a short period of "exclusivity" for the parties to settle definitive agreements.

QUESTION 1(A):
MARKS

- 45 A. **THE CHAIRMAN OF PPI CALLS YOU AND ASKS YOU TO ACT ON PPI'S BEHALF IN RESPECT OF THE FOREGOING.**

HE ASKS YOU TO PREPARE A MEMORANDUM AS TO WHAT PPI SHOULD DO IN THE CONTEXT OF THE PROPOSAL, WHAT ARE THE POTENTIAL ISSUES, DUTIES OF THE DIRECTORS, AND HOW BEST TO PROCEED. HE TELLS YOU THAT HE EXPECTS THAT THE BOARD MAY BE DIVIDED ON HOW TO PROCEED, BUT THINKS A MAJORITY WILL SUPPORT THE PROPOSAL. HE THINKS DIRECTORS D AND G WILL MOST LIKELY BE AGAINST THE PROPOSAL AND IT IS LIKELY THAT DIRECTOR F WILL FOLLOW THEM IN OPPOSITION. HE SAYS HE BELIEVES A MAJORITY OF THE BOARD BELIEVES IT IS A GOOD TRANSACTION FOR SHAREHOLDERS. HE SAYS HE THINKS IF THEY PROCEED THEY WANT TO ENSURE THE DEAL GETS DONE (ADVISE ON MEASURES THAT COULD HELP GET THIS DONE) AND ARE CONCERNED ABOUT DISSIDENT DIRECTORS AND/OR CC HEDGE FUND ATTACKING OR TRYING TO STOP THE SAME.

QUESTION 1(B):**MARKS****30**

- B. THE NCS CEO CONTACTS YOU AND ASKS YOU TO ACT ON NCS'S BEHALF.**

HE WANTS YOU TO REVIEW HIS OPTIONS AND POTENTIAL STRUCTURES TO EFFECT THE BUSINESS COMBINATION. WHILE HE WANTS TO ACQUIRE PPI, HE HAS HEARD INDUSTRY RUMOURS OF POTENTIAL DIVISIONS AMONGS THE BOARD OF PPI AND EVEN AMONGST ITS SHAREHOLDERS. WHILE HE WANTS TO ACQUIRE PPI, HE WANTS SOME COMFORT THAT THE TRANSACTION WILL GET DONE AND WANTS YOUR ADVICE ON HOW TO MINIMIZE THE RISKS OF A FAILED DEAL. ADDITIONALLY, HE WANTS TO ENSURE THAT HE ACQUIRES 100% OF PPI. HE DOES NOT WANT TO BE LEFT IN THE POSITION WHERE HE TAKES UP 51% OF PPI AND HAS A SIGNIFICANT MINORITY INTEREST AS HE BELIEVES THIS WOULD STOP HIM FROM REALIZING THE POTENTIAL SYNERGIES BETWEEN THE TWO COMPANIES WHICH IS WHAT PERMITS HIM TO PAY THE HIGHER VALUE.

QUESTION 2:**MARKS****25**

Orange, Inc. ("Orange") is a public company with its shares listed on the NASDAQ stock market. Orange is in the consumer electronics business, dominating the market with its innovative personal computers and other electronics. A big factor in Orange's successes has been the direction and guidance of its CEO, SJ, who has led Orange to become one of the most followed companies in North America. SJ has an almost cult-like following amongst fans of Orange's products and investors. SJ is clearly associated by customers and investors as the driving force behind the company and its business. No successor to SJ has been identified by Orange to date.

In its last completed fiscal year, Orange had total revenues of \$43.0 billion, net income of \$8.0 billion and had total assets of \$75.0 billion at the end of such year.

Recently, after extensive testing, SJ was diagnosed with pancreatic cancer. At a regularly scheduled board meeting yesterday, SJ told the board of directors of Orange that he was recently diagnosed with the disease and would be taking a medical leave of absence to pursue therapeutic options. He stated that he would be back at the helm of the company in three to four months. It is not clear whether medical intervention will be successful or whether SJ will survive the disease. However, statistically, 40-50% of people with SJ's diagnosis survive the disease, while the remaining 50-60% would have a survival rate of 2-3 years with extensive treatment. Outside of the board of directors, only a handful of Orange personnel, being SJ's "inside circle", know about his condition.

SJ has a very dominant personality. He is very clear to the board that he does not want to draw attention to his medical condition or his private affairs. Most Orange personnel and the board of directors hold Orange shares and stock options. Further, Orange periodically buys back its own shares in the market and then cancels the same.

QUESTION:

THE GENERAL COUNSEL OF ORANGE CALLED YOU THIS MORNING EXPLAINING THE ABOVE. SHE HAS ASKED YOU TO ADVISE THE BOARD OF DIRECTORS REGARDING WHETHER DISCLOSURE SHOULD BE MADE BY ORANGE OF SJ'S MEDICAL CONDITION AND, IF DISCLOSURE IS REQUIRED, TELL THEM WHAT NEEDS TO BE DISCLOSED. AS THIS IS A SENSITIVE ISSUE WITH SJ, SHE HAS ASKED THAT YOU PROVIDE A DETAILED RESPONSE.

NOTE: FOR THE PURPOSES OF THIS QUESTION, ASSUME THAT ORANGE IS A REPORTING ISSUER IN, AND ONLY SUBJECT TO, BRITISH COLUMBIA SECURITIES LAWS. PRIVACY ISSUES AND OTHER AREAS NOT COVERED IN THE COURSE NEED NOT BE

**CONSIDERED. FURTHER STOCK EXCHANGE RULES NEED NOT BE
CONSIDERED.**

END OF EXAMINATION