

**CORPORATE FINANCE**  
**Fall 2010**

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**Substantial Written Project - Request for Proposals re. Writing Assignment #2**

It is time to start planning for your substantial written project in this course. This assignment represents the beginning of our communication and thought process about this project. I also am posting guidelines from me that will assist you in preparing your actual written work for submission to me in November (**November 15, 2010**).

General Information

As the course syllabus indicates, the project consists of (a) final draft financial instrument and/or agreement provision(s) tailored to a specific transaction within the scope of this course (which typically will be about a page of text altogether) and (b) a memorandum explaining the drafting choices you made in constructing the instrument and/or agreement provision(s), including a legal analysis and changes you made to any forms you used in your drafting (which typically will be about five pages of text). A reminder—45% of your grade in this course is based on this final written project.

In an effort to ensure the success of your project and encourage *early and efficient work* on the project, you are required to submit to me a proposal outlining the financial instrument or agreement provision(s) you would like to draft. **Proposals must be typewritten and are due to me on the class Web site or in my faculty mailbox on the third floor at 5:00 p.m. on Tuesday, September 7, 2010.** (You also may hand or transmit your proposal to me if you can catch me.) **A late proposal will result in a reduction in your grade on the project.** Specifically, your project is worth 45 points toward your course grade, and each day that the proposal is late will result in a one-point reduction in your project grade. (*E.g.*, handing the proposal in between 5:01 p.m. on Tuesday, September 7, 2010 and 5:00 p.m. on Wednesday, September 8, 2010 will reduce your maximum possible grade on the project from 45 points to 44 points.) I will review each proposal and, as necessary or (in my discretion) desirable, suggest modifications to it. You are not bound by this proposal, but it should represent your best effort. I also suggest that we meet to discuss the proposal to review the proposal at your convenience. My goal is to ensure that all of you have a solid idea of what you will be working on by the end of September.

Set forth below are some guidelines and suggestions for use in submitting your proposal.

## Proposal Guidelines and Suggestions

I have attached a Proposal Template for use in preparing your proposal. It is **not** important that you strictly follow the structure of the Proposal Template, but it is essential that your proposal include the requested information, appropriately labeled. The content is what I am after. (Specifically, I have included some bracketed “e.g.” references to enable you to see the type of thing I am looking for, and these need not be included in your proposal submission to me.)

A successful proposal (i.e., a proposal that will be useful to you and to me in laying the groundwork for your project) will be sufficiently detailed. What is most important is that I get a good idea of the transactional problem you are trying to solve with your financial instrument and/or provisions. ***This will require that you devote some research time to assembling the necessary information for this proposal.***

I also have attached a glossary of terms, defined by me, that may help you in reviewing this request for proposals and in constructing your proposal. ***Please let me know if anything is unclear to you at any time in the process.*** A solidly researched, well-written proposal will make the rest of the process significantly more efficient.

Please contact me right away if you are having trouble coming up with either a sufficiently focused idea or appropriate precedent transaction documents for an idea that you have. In terms of ideas, you may want to review the course outline and the first chapter of our case book to get your creative juices flowing. Also, cases and transaction documents that we have read and will read often supply good ideas; feel free to thumb through the casebook and skim some of the cases that attract your interest. Perhaps you came across something in a summer job (or in an internship or former paralegal position) that you want to pursue?! Of course, *The New York Times* and *The Wall Street Journal* (which I do recommend that you regularly read), are terrific sources of current transaction issues. In addition, the College's business law journal, *Transactions: The Tennessee Journal of Business Law*, has published some student work done in this class. I commend that work to each of you, now and later (when you sit down to draft your project).<sup>1</sup> Successful ideas from past projects include:

- A debt or preferred stock redemption provision to address client facts indicating a particular need for a specific kind of redemption (in whole, in part; cash or sinking fund; optional or mandatory; etc.) during the term of the instrument (e.g., a "put" option—redemption at the option of the holder's representative after a holder's death);
- An antidilution provision in a corporate finance instrument/agreement that helps to preserve a client's financial or voting position upon the occurrence of a possible or anticipated future event that may occur during the time the instrument is outstanding;

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<sup>1</sup> Student work from past Corporate Finance classes can be found in the Spring 2007, Spring 2006, Spring 2005, Fall 2004, and Spring 2004 books of *Transactions*. The law school Web site makes .pdf versions of these issues available electronically. Click “Publications” and the link to the journal to find them that way. Of course, they also are available electronically on Lexis or Westlaw and in hard copy in the basement of the law library.

- An antidestruction (or other) provision that helps to preserve a client's reasonable expectations with respect to conversion rights in the event of a merger, asset acquisition, or stock acquisition involving the issuer;
- Voting provisions (e.g., class voting, supermajority voting, dual class voting, cumulative voting) for preferred stock as a means of addressing a client's desired voting rights;
- A provision allowing holders of preferred stock to elect one or more directors of the issuer at certain times when dividends are in arrears (accrued, but unpaid);
- Pay-in-kind dividend provisions for preferred stock (addressing issuer cash constraints); and
- Conversion/exchange provisions for convertible or exchangeable securities (perhaps involving some of the above or other issues).

Some students like to draft on a topic that they also present in class during their class expert experience. That's worth a thought . . . . If all else fails, let me know, and I can suggest some ideas.

One major bit of advice: **don't get too fancy**. This is a basic course on corporate finance in a legal context. I want you to learn the basics before you branch out into more sophisticated derivative instruments and swaps. Stick to debt, preferred stock, convertibles, exchangeables, options, warrants, and other purchase or sale rights.

Precedent transaction documents are actual transaction documents (e.g., a note, an indenture, a certificate of incorporation or a certificate of designation providing the terms of preferred stock, a stock purchase agreement). These documents usually can be found electronically through Lexis and Westlaw and on the World Wide Web. Our in-class Web-based research training session, scheduled for 8:30 a.m. on **Friday, August 27**, is designed to give you some helpful hints on how to use the Web and some of the databases we have available to us here at the College of Law (including Lexis and Westlaw) to locate these documents and otherwise formulate your proposal. Also, I have a lot of transaction documents available in hard-copy format in my office. You are welcome to borrow these for on-site or off-site use.

This proposal is hard work and requires some creativity, but **try to have fun with it!** Do call me, send me an e-mail message, or come to see me in my office if you have any questions (or if you feel like you are stuck at any point), but please do not wait until the last minute. My availability (like yours) always is somewhat limited on a last-minute basis, and I do not want to leave you out there with no support on this.

Good luck.

# PROPOSAL TEMPLATE

Name: \_\_\_\_\_

Preferred e-mail address: \_\_\_\_\_

Financial instrument and/or agreement provisions to be drafted [e.g., voting provisions to be included in a certificate of designation constituting a series of preferred stock for a Delaware corporation, Heminway, Inc.]:

Transactional (situational) context in which the financial instrument and/or agreement provisions are to be used, **including the party being represented** [e.g., Heminway, Inc., a corporation with both common stock and preferred stock authorized and only common stock issued and outstanding, desires to designate a series of preferred stock under blank check authority and sell it to a single investor; the investor desires the right to vote on a merger or acquisition in which Heminway, Inc. is to be acquired]:

Manner(s) in which the financial instrument and/or agreement provisions address the transactional context [e.g., the terms of the new series of preferred stock will include provisions allowing the investor and its transferees the right to vote on mergers and acquisitions in which Heminway, Inc. or its business and operations would be acquired; key components of the drafting will include (a) defining what a merger or acquisition is in this context and (b) providing for any related voting procedures]:

Applicable precedent transaction documents reviewed to prepare this proposal (at least three), identified by parties and date, at a minimum, together with an indication of any precedent expected to be used as a drafting model [e.g., certificate of designation of XYZ Corp., filed as Exhibit 3.1 to XYZ's Form 10-K dated December 31, 2007 (voting provisions in part C; expected to be used as a drafting model)]:

# GLOSSARY

## FOR USE IN REVIEWING THE REQUEST FOR PROPOSALS AND IN CONSTRUCTING YOUR FINAL WRITTEN PROJECT

(Please let me know if you need more!)

**Agreement:** A contract between/among two or more parties forming a part of or relating to a transaction.

**Antidestruction provision/adjustment:** A mechanism that provides for an automatic adjustment in the type of security or other benefit received upon exercise of an option or conversion or exchange right in a finance instrument. (E.g., an option agreement would provide that the holder of an unexercised option to purchase one share of common stock of ABC Inc. automatically gets the right to purchase a share of common stock of Joan Corp. after ABC Inc. merges with and into Joan Corp. (with Joan Corp. surviving), where each outstanding share of common stock of ABC Inc. automatically converts into a share of Joan Corp. in the merger.)

**Antidilution provision/adjustment:** A mechanism that automatically modifies an existing economic or voting element of a financial instrument to reflect the occurrence of an event after issuance of the financial instrument. (E.g., an option agreement would provide that the holder of an unexercised option to purchase one share of common stock of ABC Inc. automatically gets the right to purchase two shares of common stock of ABC Inc. after ABC Inc. pays a dividend of one share of common stock on each outstanding share of common stock.)

**"Blank check" preferred stock:** A class of equity security provided for in the corporate charter, carrying a preference over the common stock as to dividends or liquidation or both, the terms and provisions of which are not set forth in the charter but are instead to be determined by action of the corporation's board of directors. The board of directors may set up one or more series of preferred stock under this authority, each of which may have different terms and provisions.

**Certificate of amendment:** A document filed with the office of the Secretary of State in the jurisdiction of incorporation to amend a prior filing. (This term is used in Delaware; other terms (e.g., articles of amendment) are used elsewhere.)

**Certificate of designation:** A document filed with the office of the Secretary of State in the jurisdiction of incorporation to designate a series of preferred stock and its terms and provisions in circumstances where the corporate charter authorizes "blank check" preferred stock. The certificate is considered a charter amendment in most circumstances. (This term is used in Delaware; other terms are used elsewhere.)

**Certificate of incorporation:** A document filed with the office of the Secretary of State of a jurisdiction to organize a corporation in that jurisdiction. (This term is used in Delaware; other terms (e.g., charter, articles of organization or incorporation, etc.) are used elsewhere.)

**Certificate of Merger:** A document filed with the office of the Secretary of State in the jurisdiction of incorporation to provide for the statutorily permitted merger of the corporation with another or other corporation(s). (This term is used in Delaware; other terms (e.g., articles of merger) are used elsewhere.)

**Debenture:** A financial instrument evidencing a debt obligation (obligation to repay loaned funds); also a form of debt unsecured debt obligation generally having a maturity date > 5 years after the date of issuance.

**Financial instrument:** A document evidencing the terms and provisions of a debt obligation (bond, debenture, note, indenture), class or series of equity security (certificate of incorporation, certificate of amendment, or certificate of designations, as applicable for common or preferred stock), option, or warrant. The document may be bilateral or unilateral.

**Indenture:** A contract between an issuer and a trustee providing for the terms of transferable debt obligations (debentures, notes, bonds) held by multiple investors.

**Option agreement or warrant agreement:** A contract providing for the purchase of securities (generally, equity securities) for specified consideration (cash, securities, or other property) at specified times and under specified conditions.

**Precedent transaction documents:** Forms of documents used as drafting models—in effect, samples of what you intend to draft.

**Provision:** A document section or subsection including related terms (representations, obligations or other agreements, rights, other relevant information).

**Shareholder (or stockholder) rights agreement:** Also known as a “poison pill,” this agreement is used by a corporation as an anti-takeover device. It provides for significant dilution to the common stock holdings of a putative acquiror if the acquiror buys a certain percentage of the corporation's common stock (or, in some cases, engages in other transactions).

**Stock purchase agreement (or share purchase agreement):** A contract that provides for the acquisition of equity securities (stock) in exchange for consideration in the form of cash, securities, or other property.

**Transaction:** For these purposes, an arrangement involving or relating to a corporation and another party that affects one or more of the corporation's financial instruments.

**Transactional context:** The set of facts and circumstances surrounding a transaction.