

## Disclosure of Preliminary Merger Negotiations: A Framework for Future Developments in the Philippine Capital Market

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The Article analyzes the different models of disclosure in the light of the United States Federal Securities laws, with the goal of determining what model will best suit the Philippine securities market. The Author examines the definitions and legal considerations of mergers and acquisitions. In the first part is the soft information, which generally refers to three types of information: 1) information that offers an explicit internal estimate of a corporation's future performance; 2) information that offers estimates of the present value of illiquid assets; and 3) information about merger negotiations in which a corporation is involved.

The Article also takes a look at the anti-fraud provisions of the United States Securities and Exchange Act of 1934, which regulates transactions on securities exchanges and imposes reporting requirements on companies whose stock is listed on national exchanges and to protect the public by providing for full disclosure in securities transactions. It discusses the duty to disclose and the materiality of the facts as a standard in determining whether the obligations imposed under the 1934 Act have been violated. Furthermore, the Article discusses the disclosure of preliminary merger negotiations in the context of Rule 10B-5 as evidenced in *Basic, Inc. v. Levinson*, which is the leading case regarding the duty to disclose preliminary merger negotiations. The aftermath of the ruling in *Basic* is that it merely confronted only one facet of the duty to disclose, i.e., the materiality issue. It actually created more questions than answers regarding disclosure requirements for preliminary merger negotiations.

The Author proceeds to discuss the securities laws in the Philippine context through the examination of the Revised Securities Act and SEC Disclosure Regulations. The recommendation of the Author is to determine the disclosure model for preliminary merger negotiations appropriate for this country by assessing the merits of the different disclosure models proposed by commentators in the U.S. Lastly, the Author recommends the adoption of the last model proposed by American commentators where disclosure is

necessary only upon the occurrence of certain events common to all takeovers.