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### **Mergers and Acquisitions**

## **Mechanics Of A Merger - Preliminary Steps**

### **Insider Trading**

1. Insider trading occurs when a company insider buys or sells securities while in possession of material non-public information
2. Prohibition applies to everyone in company - including messengers, tellers, secretaries - as well as the officers and directors
3. Also will apply to anyone to whom the insider gives this information - a tippee - hence prohibition could reach to spouses, children, casual acquaintances - anyone who receives inside information, knows it is inside information and trades in securities on the basis of the information
4. In the case of a merger - prohibition against trading applies to stock of both companies - that is, target insider should not buy or sell stock of target or acquiror and acquiror insider should not buy or sell stock of acquiror or target
5. Law - the anti-fraud provisions of the Securities Exchange Act of 1934 - Rule 10b-5
  - a. applies to both publicly held stock and non-public stock
  - b. greater opportunity in publicly held stock
6. Bank should adopt clear internal policies - that should be circulated to everyone in the bank - explaining what inside information is and setting forth a policy prohibiting trading while in possession
7. In the event of insider trading, the party involved will be required to disgorge the profits
8. Bank may also be held liable if it has failed to implement proper policies prohibiting
9. Final word on insider trading - be extremely careful to avoid - even the smallest trades can draw attention of SEC and cause embarrassing adverse publicity. See news articles in seminar notebook.