



There are several ways to structure a merger. In a forward merger, the target merges into the acquirer's company, and the acquirer is the surviving entity. A forward merger can be for either cash or stock. In addition, a forward merger can be either friendly or hostile.

In a friendly merger, the acquirer and target negotiate the terms of the merger. In a hostile situation, the acquirer does what is called a "tender offer". The acquirer offers certain compensation (cash, stock or a combination of both) to all of the shareholders of the target, regardless of the approval of management or the board of directors. The acquirer can set terms for the completion or closing of the acquisition (such as that a minimum of 75% of the targets shareholders agree). If the terms and conditions to a closing are met, the acquirer takes over the target.

In a reverse merger, the acquirer merges into the target company and the target is the surviving accounting entity with the acquirer is the surviving legal entity. A reverse merger is often the method used for a private operating entity to go public. Generally the public shell receives all of the targets outstanding equity in exchange for stock of the public shell. The newly issued common stock is a controlling interest and can be as much as 95%. The operating business then becomes the surviving legal entity, a public company. Although a reverse merger is a method of going public without filing a registration statement, complete SEC filings, via an initial super 8-K and subsequent 10-Q's and 10-K's are required.

#### Reverse Merger Quick Facts

The following "Quick Facts" section answers the majority of the questions we receive regarding Reverse Mergers.

- The SEC defines a "shell company" as a registrant (i.e. a company that has filed a registration statement under either the Securities Exchange Act of 1934 or the Securities Act of 1933 and is therefore subject to the reporting requirements discussed above) with no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets
- A shell company that is reporting an event that causes it to cease being a shell company must disclose the same type of information that it would be required to provide in a Form 10, on form 8-K within 4 days of the reportable event (a "super 8-K"). Such information includes, but is not limited to, audited financial statements on the operating business, history of the business; backgrounds of the officers and directors; disclosure of any shareholder owning in excess of 5%;

management discussion and analysis, including liquidity and capital resources; risk factors; etc..

- When a private operating business merges into a reporting shell company (either a forward or reverse merger), that private operating business in effect immediately becomes a reporting public company
- A simple change of control of a reporting shell would not be an event “that causes it to cease being a shell company” – a change of control does require the filing of a Form 8-K within 4 days but would not require the information normally included in a Form 10
- All companies – reporting and non reporting shells (and none shells for that matter) – must look to state law of the state they are incorporated in – as to voting rights of shareholders (when shareholders are entitled to vote on a matter; what percentage of shareholders are required to pass on a matter; quorum; notice; actions by consent, etc..)
- In addition to state shareholder voting rights, companies subject to the Reporting Requirements under Section 13 ('34 act filers) must also comply with the proxy rules of the SEC
- Rule 144 is not available until 12 months following the filing of the Super 8-K
- The rules prohibit the use of an S-8 registration statement by shell companies (an S-8 registration statement registers stock plans for employees and consultants)

Even under the best circumstances, mergers and acquisitions are complex. Consequently, it is imperative to retain a law firm that possesses extensive experience in serving over the counter companies (including OTCQB, OTCQX and OTCBB). The attorneys of Legal & Compliance LLC provide the results and service you deserve.