

Case 24-4c

Who Acquired Whom

Union Street Entertainment (“Union Street”) is an SEC registrant that operates 16 network-affiliated media companies in the United States. Union Street’s common stock is listed on the New York Stock Exchange, and the company had assets of \$650 million as of December 31, 20X0. In addition, Union Street had revenue of \$400 million and net income of \$125 million for the year ended December 31, 20X0.

Tolerable Media Inc. (“Tolerable”) is a private entity that operates 10 network-affiliated media companies in the United States. Tolerable had assets of \$750 million as of December 31, 20X0, and revenue of \$300 million and net income of \$145 million for the year ended December 31, 20X0.

On June 5, 20X1, Union Street and Tolerable entered into an agreement and plan of merger (the “Merger Agreement”), providing for an all-stock business combination transaction between Union Street and Tolerable. At the close of the transaction in November 20X1 (the “Closing Date”), Union Street will acquire all of the outstanding equity securities of Tolerable and as a result, Tolerable will become a wholly owned subsidiary of Union Street.

As part of the merger, Union Street will issue approximately 25 million shares of Union Street’s common voting stock (the “Merger Consideration”) to the shareholders of Tolerable’s issued and outstanding common stock (the “Tolerable Shareholders”).

After the Closing Date:

- It is estimated that (1) immediately following the closing of the transaction, the Tolerable Shareholders will own 57.5 percent of the issued and outstanding shares of Union Street common stock, on a fully diluted basis, and (2) the shareholders of Union Street immediately before the transaction (“Union Street Shareholders”) will own 42.5 percent of the issued and outstanding shares of Union Street common stock, on a fully diluted basis.
- The largest former Tolerable shareholder will hold approximately 28 percent of the combined company, and the largest former Union Street shareholder will hold approximately 10 percent of the combined company.
- From the Closing Date until the annual meeting in March 20X2, the board of directors will consist of seven former Union Street directors and five former Tolerable directors. Decisions are made by majority vote except for certain decisions that require approval by at least one board member appointed by Union Street and one appointed by Tolerable (e.g., annual budgets; hiring, terminating, or setting the compensation of senior management; mergers; change in board size; change in executive officers) until the 20X2 annual meeting.

At the 20X2 annual meeting, the board of directors will be reduced to eleven members:

- Four appointed by former Union Street Shareholders.
- Five appointed by former Tolerable Shareholders.

- Two independent directors selected by the nominating committee, which consists of three Tolerable directors and two Union Street directors. Selection of the independent board members requires a simple majority vote of the nonindependent members.
- The senior management of the combined company will include the former Union Street CEO as the continuing CEO, the former Union Street CFO as the continuing CFO, and the former Tolerable CEO as the COO.
- On the basis of the valuation of the Merger Consideration, neither party appears to have received a premium over fair value in the merger.
- The combined company will operate under the Union Street name and have corporate headquarters in the current Union Street location.
- Neither company is a variable interest entity.

Additional Fact

The merger was proposed by investment bankers who had been engaged by Union Street to identify potential strategic investments.