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Acquiring and Selling the Privately Held Company 2016

- Mock negotiation – learn strategies and techniques essential to successful negotiations
- Recognize ethical issues that arise during the negotiation and documentation of transactions, as well as fiduciary duties
- Understand the special issues involved in acquiring divisions or subsidiaries of larger companies, and that arise when a private equity firm or other financial sponsor is the seller or buyer
- Properly structure and negotiate earn-outs
- Identify and resolve potential trouble spots that can arise under international, IP, employee benefits, and labor and employment law

San Francisco, May 19-20, 2016

Chicago, May 31-June 1, 2016

New York City, June 13-14, 2016

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Acquiring and Selling the Privately Held Company 2016

Why You Should Attend

At this perennial favorite, our experienced faculty will walk you through all of the steps associated with acquiring and selling a privately held company, whether it is a large independent corporation, a division or subsidiary of a large public company, or a smaller venture capital-backed or family-owned entrepreneurial enterprise. You will learn about the special issues that apply when a private equity firm is the buyer or owns the target company, and about the techniques and strategies that are essential to successful negotiations. You will also gain an understanding of the key employee benefits, labor and employment, and intellectual property issues that arise and how to address them. Plus you will learn about special diligence concerns involving international deals, including FCPA, AML, tax and labor issues.

You Will Learn How to

- Analyze the terms of an acquisition agreement
- Develop successful negotiation strategies
- Use letters of intent to maximize strategic advantage
- Structure and negotiate earn-outs and critical risk allocation provisions
- Spot and deal with the key issues that arise in non-corporate law areas, such as:
 - Employee benefits
 - Labor and employment
 - Intellectual property
- Cope with the special problems associated with acquisitions of divisions or subsidiaries
- Understand the fiduciary duties of directors and majority shareholders in a sale transaction
- Understand the special issues relating to financial sponsors
- Recognize ethical issues that arise during the negotiation and documentation of transactions
- Avoid common drafting pitfalls when non-U.S. laws govern part or all of a deal

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Kirkland & Ellis LLP
New York City

PROGRAM SCHEDULE

Day One: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:30 p.m.

9:00

Introduction

SF: Brian C. Miner

CHI: Michael P. Lee

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

David W. Pollak

9:15

General Business Considerations

Brief summary of the financial and business considerations applicable to the acquisition or sale of a privately held company, including:

- Valuation analysis
- The art and science of the sale process
- The role of a financial adviser and financing issues

SF: Richard A. Juarez

CHI: Michael Macakanja

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Marshall Heinberg

10:15

Letters of Intent and Other

Preliminary Considerations

- The elements and purposes of a letter of intent
- Advantages and disadvantages in using a letter of intent
- Impact on negotiating strategy and bargaining leverage
- Early deal considerations and planning issues

SF: Ingrid Rechten

CHI: Alexander B. Young

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Peter A. Laveran-Stiebar

11:15 *Networking Break*

11:30

Dealing with Financial Sponsors

A review of the key issues that arise when a private equity firm, hedge fund, sovereign wealth fund or other financial sponsor is the buyer or seller of the privately held company, including:

- Financing commitments
- Capital structure
- Management equity participation
- The effects of a finite fund life on indemnification

SF: Michael N. Peterson

CHI: Michelle L. Moore

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Matthew P. Salerno

12:30 *Lunch Break*

Afternoon Session: 1:45 p.m. – 5:00 p.m.

1:45

Specialty Areas:

A. International Aspects [45 minutes]

- Special diligence concerns, including FCPA, AML, tax and labor issues
- Structuring to acquire (and perhaps later sell) a non-U.S. company
- Common drafting pitfalls when non-U.S. laws govern part or all of a deal
- Dispute settlement alternatives in the cross-border context
- Execution formalities in certain jurisdictions and why they matter

SF: Catharina Y. Min

CHI: Kimberly A. deBeers, Hugo Dubovoy

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Alyssa A. Grikscheit

B. Intellectual Property [45 minutes]

A discussion of issues specific to intellectual property:

- Preliminary steps – the IP audit
- Conducting IP diligence
- Issues based on the type of IP
- Representations and warranties
- Covenants and closing conditions
- Sale of a division, spin-off, etc.
- Closing and post-closing issues

SF: Joseph Yang

CHI: Marcelo Halpern

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Brandon C. Gruner

3:15 *Networking Break*

3:30

Specialty Areas (Continued)

C. Labor and Employment [45 minutes]

- Key employment/labor differences in stock vs. asset transactions
- Business restructuring: discrimination issues, severance pay, and waivers/releases
- Contracts, non-compete agreements, and employee benefits
- Union issues
- WARN notice issues
- Risks/liabilities – what to watch for

SF: William J. Bettman

CHI: Matthew D. Keiser

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Douglas T. Schwarz

D. Employee Benefits [45 minutes]

- Identifying ERISA liabilities
- Integrating seller's and buyer's plans
- Transferring plan assets
- Utilizing surplus plan assets; ESOPs

SF: Michael T. Frank

CHI: Philip L. Mowery

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

J. Mark Poerio

5:00 *Adjourn*

Please plan to arrive with enough time to register before the conference begins.
A networking breakfast will be available upon your arrival.

Day Two: 9:00 a.m. – 5:00 p.m.

Morning Session: 9:00 a.m. – 12:00 p.m.

9:00

Mock Negotiation and Analysis of Form of Acquisition Agreement

- Analysis of form of agreement and principal sections from both the buyer's and seller's perspectives
- Representations and warranties
- Conduct of business prior to closing
- Conditions precedent to closing
- Seller's disclosure schedules
- Key differences between stock and assets purchase agreements

SF: Brian C. Miner

CHI: Michael P. Lee, Robert F. Wall

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

David W. Pollak

10:45 *Networking Break*

11:00

Mock Negotiation and Analysis of Form of Acquisition Agreement (Continued)

12:00 *Lunch Break*

Afternoon Session: 1:00 p.m. – 5:00 p.m.

1:00

A. Indemnification [45 minutes]

Techniques and issues in negotiating indemnification provisions:

- "Baskets"
- "Caps"
- Partial indemnification
- "Sandbagging"
- Survival of warranties
- Control of defense of claims
- Director protective provisions
- Exclusive or nonexclusive remedy
- Symmetry

SF: Brian C. Miner

CHI: Pran Jha

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Edward A. Davis

B. Special Issues Involved in Acquiring Divisions or Subsidiaries of Larger Companies [45 minutes]

The key issues to address when acquiring or selling divisions or subsidiaries of larger companies, including:

- The need for separate financial statements
- Allocating shared assets, facilities and services
- Identifying parent company's role in division or subsidiary business's success (including recruiting key executives, generating business, financing growth, etc.)
- Insurance

SF: Ari Lanin

CHI: Brent E. Williams

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

William A. Sorabella

2:30 *Networking Break*

2:45

A. Structuring and Negotiating Earn-Outs [30 minutes]

The problems that arise in the context of structuring and drafting contingent consideration, or earn-out, arrangements in a transaction

- Formulas
- Disputes
- Accounting and tax issues
- Effect on indemnification

SF: Sarah P. Payne

CHI: Amit Mehta

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Melissa Sawyer

B. Fiduciary Duties of Directors and Majority Shareholders [45 minutes]

A discussion of the duty of controlling and majority stockholders to minority holders in:

- Business combinations/sales/mergers
- Squeeze outs
- Transactions with affiliated entities

SF: C. James Levin

CHI: Elizabeth Kitslaar

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

Ackneil M. Muldrow III

4:00

Ethics in Negotiating and Documenting Transactions

- Understanding who the client is and addressing recurring conflicts of interest
- Candor in negotiations: advocacy, deceit and fairness
- Disclosing confidences and secrets
- Inadvertently disclosed information
- Communicating with represented parties
- Recording phone calls or meetings

SF: Nina L. Flax

CHI: Jodi A. Simala

NYC, ATL, CLE, PHI, PITT, MECH, NB & WEB:

TBD

5:00 *Adjourn*

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