

ACQUIRING OR SELLING THE PRIVATELY HELD COMPANY 2018

- IDENTIFY AND RESOLVE SPECIALTY AGREEMENT ISSUES
- DEVELOP SUCCESSFUL NEGOTIATION STRATEGIES
- RECOGNIZE AND MANAGE ETHICAL ISSUES
- MASTER CONTRACTUAL RISK ALLOCATION PRINCIPLES


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BEST PRACTICES FOR PRIVATE COMPANY ACQUISITIONS OR SALES

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.

This program is geared to attorneys in private practice, in-house counsel, and other business professionals who seek a practical overview of key issues that arise in the private acquisition and sale process.

TOPICS INCLUDE

- **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**

SPECIAL FEATURE

- **Earn one hour of Ethics credit**



AGENDA DAY 1

A networking breakfast will be available each day upon your arrival.

Morning Session:

9:00

OPENING REMARKS

SF & WEB: **Brian C. Miner**

CHI: **Michael P. Lee**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& 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 & WEB: **Kevin Iudicello**

CHI: **John J. Herrold**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Benjamin E. Wallace**

10:00

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 & WEB: **Michael S. Dorf**

CHI: **Alexander B. Young**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **TBD**

10:45 Networking Break

11:00

DEALING WITH FINANCIAL SPONSORS OF PRIVATELY HELD COMPANIES

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 & WEB: **TBD**

CHI: **Jason D. Osborn**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **David Leinwand**

11:45

REPRESENTATIONS AND WARRANTIES INSURANCE

- Understanding when you need it
- Determining what it should, and shouldn't, cover
- Buy-side vs. sell-side

SF & WEB: **Steven E. Klein**

CHI: **Daniel Schoenberg**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Joseph Ehrlich**

12:30 Lunch

Afternoon Session:

1:45

SPECIALTY AREAS IN PRIVATE ACQUISITIONS OR SALES

International Aspects

- 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 & WEB: **Catharina Y. Min**

CHI, NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Kimberly A. deBeers, Hugo Dubovoy**

Intellectual Property

A discussion of issues specific to intellectual property:

- Preliminary steps – the IP audit
- Conducting IP diligence
- Issues based on the type of IP
- Data privacy compliance issues (NY & CHI)
- Representations and warranties
- Covenants and closing conditions
- Sale of a division, spin-off, etc.
- Closing and post-closing issues (SF)

SF & WEB: **Joseph Yang**

CHI: **Marcelo Halpern**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Sayoko Blodgett-Ford**

3:15 Networking Break

3:30

SPECIALTY AREAS (CONTINUED)

Labor and Employment

- 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 & WEB: **Heather M. Sager**
CHI: **Bryan M. O'Keefe**
NY, ATL, CLE, IND, MECH, NB, PHI, PITT
& WEB: **Douglas T. Schwarz**

Employee Benefits

- Identifying ERISA liabilities
 - Integrating seller's and buyer's plans
 - Transferring plan assets
 - Utilizing surplus plan assets; ESOPs
- SF & WEB: **Michael T. Frank**
CHI: **Philip L. Mowery**
NY, ATL, CLE, IND, MECH, NB, PHI, PITT
& WEB: **J. Mark Poerio**

5:00 Adjourn

AGENDA DAY 2*

Morning Session:

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 & WEB: **Brian C. Miner**

CHI: **Oscar A. David, Michael P. Lee**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Jack S. Bodner, David W. Pollak**

10:30 Networking Break

10:45

MOCK NEGOTIATION AND ANALYSIS OF FORM OF ACQUISITION AGREEMENT (CONTINUED)

12:00 Lunch

Afternoon Session:

1:00

INDEMNIFICATION ISSUES

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 & WEB: **Brian C. Miner**

CHI: **Pran Jha**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Jennifer L. Chu**

SPECIAL ISSUES INVOLVED IN ACQUIRING DIVISIONS OR SUBSIDIARIES OF LARGER COMPANIES

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 & WEB: **Ari Lanin**

CHI: **Brent E. Williams**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **William B. Sorabella**

2:30 Networking Break

2:45

STRUCTURING AND NEGOTIATING EARN-OUTS

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 & WEB: **Sarah P. Payne**

CHI: **Richard S. Radnay**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Melissa Sawyer**

FIDUCIARY DUTIES OF DIRECTORS AND MAJORITY SHAREHOLDERS

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 & WEB: **TBD**

CHI: **Elizabeth Kitslaar**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Ackneil M. Muldrow III**

4:00

ETHICS IN NEGOTIATING AND DOCUMENTING PRIVATE 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 & WEB: **Nina L. Flax**

CHI: **Jodi A. Simala**

NY, ATL, CLE, IND, MECH, NB, PHI, PITT

& WEB: **Michael S. Sackheim**

5:00 Adjourn

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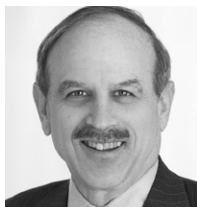
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