FROM THE CHAIR  Mark Morton

Before you depart this week for our Spring meeting in the city by the bay, please take a moment to read this issue of Deal Points. In addition to great content, you will find helpful reports from each subcommittee and task force and a complete schedule for our meetings this week. If you are unable to join us in San Francisco, consider participating by phone. Dial in information is set forth at the end of Deal Points. Finally, if you have not purchased tickets yet for our Committee dinner, please plan to do so when you arrive and register at the ABA desk as we still have seats available.

Once again, we are fortunate to have Practical Law/Thompson Reuters as our sponsor - this time for our dinner Saturday at One Market. If you meet a member of the Practical Law/Thompson Reuters team during your stay in San Francisco, please thank them for their generous support.

Full Committee Meeting
Our full Committee will meet on Saturday from 3:00 to 5:00 pm. During the meeting, we will have a number of presenters, including Alex Tsarnas of SRS Acquiom, who will discuss how M&A escrows are being affected by changing banking regulations. In addition, as chair of our newest task force, Leigh Walton will report on the next steps for the Private Company Target Model Merger Agreement Task Force. The PCTMMA Task Force will have its first meeting at the fall meeting in Chicago, but Leigh is already looking to enlist volunteers so please reach out to her if you are interested.

Task Force and Subcommittee Meetings
In San Francisco, our Task Forces and Subcommittees will host a number of substantive programs and discussions. On Friday afternoon, our Women in M&A Task Force is co-sponsoring a program (with a reception to follow). I hope to see many of you at the program and reception. Please see all the subcommittee and task force reports in this issue of Deal Points for a full list of meeting times and locations.

Planning for Chicago
As a reminder, we will be heading to Chicago this fall for our fall meeting. Details to follow, but mark your calendars now. Our meetings will be held from Friday, September 18th to Saturday, September 19th.

Incoming Chair
As I sat down this week to write my report, I was reminded how quickly three years can fly by. Our meeting in Chicago, for which planning is already well underway, will be my last one to Chair. In order to allow our next Chair an opportunity to participate in the planning effort, I recently asked Scott Whittaker to agree to serve as the Committee’s next Chair. I am pleased to report that Scott has agreed, effective at the conclusion of the Chicago meeting, to become the Committee’s Chair. For many years Scott has been an active member and leader of our Committee, including serving as Chair of the M&A Jurisprudence Subcommittee and, most recently, as Vice Chair of the M&A Committee. Scott will do a great job as Chair and I look forward to working with him. If you see Scott, please congratulate him.

If you have any questions concerning our upcoming meetings, please email or call me. I look forward to seeing all of you. - Mark Morton, Chair
FROM THE CO-EDITORS Eric S. Klinger-Wilensky and Ryan D. Thomas

The loveliness of Wilmington seems somehow sadly gay
The glory that was Nashville is of another day
I've been terribly alone and forgotten in Manhattan
I'm going home to my city by the bay.

actually, Wilmington and Nashville are terrific, but we couldn't resist a Tony Bennett reference as we get ready to head to San Francisco. don't hate us if we've given you an earworm as you read this edition of Deal Points.

As we continue to update Deal Points, we are happy to introduce a new feature (or, better said, an expanded feature). John Clifford, the author of Deal People, had the terrific idea of profiling both a long-term and a new member in each issue of Deal Points. thank you, John! New member Jim Black is profiled in this edition, along with long-standing member Tracy Bradley. although Jim will not be in San Francisco, we welcome him to the Committee.

There are not many perks that come with the job of editing Deal Points. But we will now take advantage of one of them. With this big stage, we leave you with two thoughts as winter gives way to spring. let's go Mets and let's go Red Sox! see you and them in the fall.

Feature Articles

New Regulations Will Shake Up the M&A Escrow Landscape ................................................................. 3
Proposed Amendments to Delaware Appraisal Statute Attempt to Curb, Not End, Appraisal Arbitrage ................................................................. 5

Task Force Reports

Joint Task Force on Governance Issues in Business Combinations ................................................................. 7
Task Force on Financial Advisors ................................................................. 7
Task Force on Legal Project Management ................................................................. 8
Task Force on Two-Step Auctions ................................................................. 8
Task Force on Women In Mergers And Acquisitions ................................................................. 8
Task Force on The Revised Model Asset Purchase Agreement ................................................................. 9
Task Force on The Revised Model Stock Purchase Agreement ................................................................. 9
Joint Task Force on M&A Litigation ................................................................. 9
Task Force on A Private Company Target Merger Agreement ................................................................. 10

Subcommittee Reports

Acquisitions of Public Companies Subcommittee ................................................................. 10
International M&A Subcommittee ................................................................. 11
Membership Subcommittee ................................................................. 11
M&A Jurisprudence Subcommittee ................................................................. 12
M&A Market Trends Subcommittee ................................................................. 13
Private Equity M&A Subcommittee ................................................................. 13

Deal People ................................................................. 14

Committee Meeting Materials ................................................................. 16
New Regulations Will Shake Up The M&A Escrow Landscape

Paul Koenig

There has not been a lot of news or change around M&A escrows for decades. Hundreds of billions are invested annually into off-the-shelf products that generally meet the investment criteria of the merger parties. That is about to change. An industry in which established investment options were never given much thought is being shaken up in a way that many deal professionals have yet to consider, but will soon become apparent.

Overview

Four objectives generally govern the investment of M&A escrows:

- principal protection;
- liquidity when needed under the acquisition agreement;
- low cost and burden of administration; and
- the best yield available, provided the above objectives are met.

These objectives have guided most escrow dollars into money market deposit accounts and money market funds because they generally satisfy the first three objectives. Yield in money markets has been virtually nonexistent in recent history, but merger parties have accepted it given a lack of alternatives.

New regulations, including Dodd-Frank and Basel III, are designed to mitigate the systemic risks of the financial industry and will present greater challenges to the transaction parties in setting up escrows than a search for higher yield. Under these rules M&A parties may soon find that traditional escrow options may no longer meet the parties’ investment criteria, and may, in some cases, become unavailable altogether.

For example, banks are pruning the types of deposits they take, and on what terms, due to increased collateral they will need to maintain against certain types of deposits. As a bellwether of changes among large banks, J.P. Morgan Chase & Co., one of the largest M&A escrow servicers, recently made headlines with the news that they will charge large institutional clients to hold the types of deposits most affected by the new rules. This could include escrows deposited into money market deposit accounts, currently the most common escrow vehicle. These deposits are likely to be accepted on less favorable terms going forward, if at all.

Money market funds, the second-most common vehicle for M&A escrows, will be adversely affected by rules that introduce a “floating NAV” and allow the fund to return less than the principal amount when it has suffered losses or has insufficient liquidity. This means that deal parties will face a heightened risk of loss of principal in money market funds. The rules also pose restrictions on redemption that could impact liquidity, the second fundamental objective that deal parties seek.

The new regulations affecting deposit accounts went into effect January 1, 2015 and phase in over the next year and a half. SEC regulations affecting money market funds become fully effective in October 2016. Thus, attention is required now because the typical M&A escrow duration is 12–24 months, with possible extensions if indemnification claims are made under the merger agreement. As regulations phase in, escrows invested today could be negatively impacted during the escrow period.

Facing these impacts – risks to principal protection, liquidity constraints, increased fees, and decreasing yields – deal parties and their attorneys will need to think more carefully about the management of escrows than has been historically necessary.

New Rules

The changes affecting M&A escrows are due to a web of regulations enacted in response to the 2008 financial crisis, developed by regulators attempting to ensure the stability of large banks and the overall financial system. The result is a complex matrix of new rules governing financial institutions and financial products. Understanding these laws and their implications is difficult because they are not under a single regulatory regime.

Nevertheless, there is one net result: money market funds have new protections to avoid mass redemptions while banks must now consider the stability of the types of deposits they take and ensure there is sufficient liquidity against those deposits to meet the more stringent requirements.

Bank Deposits

The amount of liquid assets that banks are required to carry against their deposits is governed by Liquidity Coverage Ratio (LCR) regulations. New regulations took effect January 1, 2015, with increasingly high reserve requirements being phased in throughout the upcoming year. To meet the LCR rules, banks are required to classify the deposits they take and, based on the characterization of such deposits, limit the types and maturities of assets in which they invest. These requirements could be especially stringent for deposits that represent nonoperating account balances from corporations (typically accounts other than those supporting payroll and accounts receivable/payable activities).


1 Mr. Koenig is an attorney and co-founder of SRS Acquiom. The views expressed herein are those of the author alone.

2 Applicable laws include Basel III, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and proposed or actual regulations from the SEC, European Central Bank, Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Financial Stability Board.


and deposits from alternative investment companies, such as private equity and hedge funds.6

The largest banks – those defined as Systemically Important Financial Institutions are subject to more stringent rules due to the greater threat a failure of such a bank would present to the overall banking system and economy. These are sometimes referred to as the “too big to fail” institutions and are among the largest servicers of M&A escrows.

Banks are therefore narrowing the deposits they will take and/or will offer less attractive terms.7 Other large banks are expected to follow J.P. Morgan’s lead on deterring certain types of deposits. Because M&A escrows require immediate liquidity for reasons set forth in the acquisition agreement and can be moved at any time, banks or their regulators may determine the duration of such deposits to be uncertain. They are likely to become more expensive and less desirable for the banks in light of the new LCR rules, and the economic terms on deposits offered to deal parties could be substantially worse due to a combination of reduced yields and higher fees.

To address this, many escrow banks likely will encourage customers to start moving escrow deposits to off-balance-sheet products. Money market funds historically have been the most common off-balance-sheet alternative to money market deposit accounts, but they too are now saddled with new rules that will likely make them an unsuitable investment option for many transactions.

Money Market Funds

On July 23, 2014 the SEC adopted a new set of rules governing the structure and operation of money market funds.8 New regulations are phasing in now, with the most significant changes occurring on October 14, 2016. The new rules could subject escrows invested in these products to the possibility of principal loss and liquidity limits.

Institutional money market funds will be forced to change how they report asset values and the manner in which corporate investors record them. These changes apply only to institutional money market funds, and not to retail funds (those limited to natural persons and therefore not applicable to most M&A escrows) or to governmental funds (those investing at least 99.5% in cash and government securities, which are addressed in the next section below).

With respect to principal protection, these regulations present two issues. First, institutional funds will be required to change the investment and redemption price from a fixed rate to prices based on the daily net asset value (NAV) of the fund’s portfolio, known as a “floating NAV.” Historically, money market funds were allowed to price purchases and redemptions at a stable value, typically $1.00 per unit. When investors sold or redeemed their interest in the fund, they generally received a return of their investment plus accrued interest, even though the NAV of the underlying portfolio changed on a daily basis. The risk in the difference between the NAV and the fixed $1.00 price was assumed to be minimal given the short-term and relatively safe nature of the underlying assets in the fund. In 2008, however, one money market fund, the Reserve Fund, “broke the buck.” In other words, the market value of the fund’s assets dropped sufficiently below the book value of those assets that the fund could not meet the regulatory requirements to maintain the stable $1.00 price for investment and redemption purposes. Other funds also “broke the buck” but were propped up with injections of capital by their sponsors as to not impact customers.9

With the upcoming change to a floating NAV regime, merger parties could suffer a loss of principal if the NAV on the redemption date is lower than the NAV on the date the fund was purchased. This affects decision-making today because a full return of principal can no longer be assured for any institutional money market fund investment that could have all or a portion of the deposit released after the implementation of floating NAV rules.

The second, and potentially more problematic, challenge is that money market funds can impose liquidity fees of up to two percent of the amount of any redemptions beginning in October 2016 if the ratio of the fund’s weekly liquid assets (assets redeemable for cash within the week) to total assets falls below a certain level. Therefore, M&A parties could be at risk of principal loss based on the independent dynamics of the fund in which they invest—dynamics that are unrelated to the M&A transaction itself.

This combination of floating NAV and liquidity fees means that investors in institutional money market funds likely will no longer be sufficiently certain of receiving a return of 100 percent of principal that is required to meet the investment parameters for most M&A escrows. Should a money market fund suffer a loss, investors are not protected against any such loss by the government or, in most cases, by a guarantee from any other organization or entity. If there is a loss on the account so that the deal parties do not receive a return of the full escrow deposit, they will have to determine who suffers that loss.

Further, accounting rules will require some fund investors to account for the fluctuations in the value of escrowed funds in their internal books and records, potentially increasing the administrative burden of investing escrows in these products.

In additional to risks of loss of principal, money market funds will have new restrictions on their ability to guarantee immediate liquidity when required under the acquisition agreement. Beginning in October 2016, money market funds may suspend redemptions for up to ten days if a fund’s weekly liquid assets fall below 30 percent of total assets. This means that liquidity might not be available when needed.

Finally, as a result of these new regulations, available yields with money market funds are likely to be lower in the future. Fund managers will have an incentive to manage the portfolio more conservatively by

Proposed Amendments to Delaware Appraisal Statute
Attempt to Curb, Not End, Appraisal Arbitrage

Nicholas D. Mozal

When a corporation is acquired for cash in a merger, Delaware, the corporate home of many public companies, generally provides stockholders with appraisal rights. Appraisal allows dissenting stockholders who comply with the requirements set forth in Section 262 of the Delaware General Corporation Law to seek a judicial determination of the “fair value” of their shares. Since 2004, the number of appraisal petitions has increased markedly. Although some petitions are filed by smaller stockholders who seek to extract the nuisance value of their holdings, a more notable trend has been the rapid spike in petitions filed by so-called “appraisal arbitragers.” Appraisal arbitrage typically involves investment funds purchasing shares after a merger is announced with the goal of pursuing an appraisal action and a ruling that the “fair value” is above the merger price.

Opponents of appraisal arbitrage have argued for changes that would dramatically curtail this practice. The proposed amendments currently before the Delaware legislature, however, touch upon but do not directly address the practice. Specifically, the amendments contain two changes: one that would reduce the pre-judgment interest corporations pay to petitioners, and another that would require the dismissal of smaller petitions.

Since 2007, interest on appraisal petitions accrues at 5% over the Federal Reserve discount rate from the effective date of the merger through the entry of judgment. Designed to compensate stockholders for having their capital stuck in the post-merger entity, many believe this change contributed to the growth of appraisal arbitrage by guaranteeing a significant rate of return. The proposed amendments would allow corporations to pay cash to petitioners, “[a]t any time before the entry of judgment in the proceedings.” After the payment, interest will continue to accrue at the statutory rate only on the difference between the amount paid and the fair value determined by the Court of Chancery. This change would reduce the settlement leverage of appraisal petitioners previously armed with the knowledge that their claim would be more valuable in the future.

Importantly for corporations responding to appraisal petitions, the bill’s synopsis provides that such a payment would not result in an inference that the amount paid “is equal to, greater than, or less than the fair value of the shares to be appraised.” Corporations thus need not worry that a payment would be used as evidence of fair value in the appraisal proceeding.

The second proposal would impose a de minimis requirement on appraisal petitions for stock listed on a national securities exchange. If enacted, the Court of Chancery would be required to dismiss appraisal petitions where less than 1% of the outstanding shares of the class or series entitled to appraisal actually perfect their appraisal rights, and, the value of the consideration provided in the merger or consolidation”

1 Mr. Mozal is an associate at Ross Aronstam & Moritz LLP. The views expressed in this article are not necessarily those of Ross Aronstam & Moritz LLP or its clients.
for the shares with perfected appraisal rights was less than $1 million. These provisions would not apply to certain short-form mergers under Sections 253 and 267 of the DGCL. The bill’s synopsis states that this proposal would minimize the risk that an appraisal petition “will be used to achieve a settlement because of the nuisance value of discovery and other burdens of litigation.”

Whereas the proposed amendment relating to the accrual of interest would affect the incentives of every stockholder in evaluating whether to bring an appraisal petition, the de minimis requirement is unlikely to significantly affect appraisal arbitrage. Data collected by Professor Charles R. Korsoo of the Case Western Reserve University School of Law and Professor Minor Myers of the Brooklyn Law School indicates that the mean value of appraisal disputes between 2004 and 2013 was approximately $30 million. The professors also identify numerous appraisal arbitrage funds that file petitions valued in the millions of dollars, so these funds should meet the requirement. Consequently, the de minimis requirement will not deter the most frequent arbitragers from continuing their practice.

Notably, the proposed amendments come in the wake of two recent decisions by the Court of Chancery that refused to heighten standing requirements on appraisal petitioners. Although opponents of appraisal arbitrage urged the Delaware legislature to impose the stricter standing requirements rejected in those decisions, the proposed amendments do not address the issue.

Overall, the proposed amendments are unlikely to radically change the existing practice of appraisal arbitrage. At most, they would curb incentives for arbitrage to a limited extent. And if adopted, the amendments would not affect existing petitions or pending transactions, as they would apply only to transactions consummated on or after August 1, 2015.

---

JOINT TASK FORCE ON GOVERNANCE ISSUES IN BUSINESS COMBINATIONS

Our Task Force is preparing a handbook covering the governance issues that arise in business combination transactions. Our goal is to provide practical advice for all deal participants (counsel, bankers, management and boards) about the most common governance issues that arise in deal-making and mitigate risks from governance problems. As of publication, we plan a handbook with 20 chapters. We have reorganized and consolidated several chapters, and will be discussing the reorganized handbook in detail at our San Francisco meeting. We have drafts of 12 chapters in hand in various stages of editing, and also detailed outlines of another 3 chapters. More than 30 authors are working on Handbook chapters now. We are in conversations with all our authors and making good progress toward our completion. We are looking for one or two co-authors, so let us know if you want to take on this role.

We want to have all our content submitted by December 2015 so that we can go to the Editorial Board next year. Authors, please take note of this upcoming deadline – of course we need our chapters to be submitted for initial comments before the December cutoff so we would love to see your drafts as soon as possible!

Topics include practical issues like the issues boards confront in the use of an NDA or standstill, the negotiation of deal lockups, the issues boards should think about in the engagement of bankers, and the board’s consideration of the application of Section 203. There is always room for more help both in drafting and in the editorial process. Please let us know if you would like to get involved!

Our Task Force meetings are now devoted to discussing current governance issues and the practical concerns that are arising for us as practitioners in understanding and implementing key decisions. At our meeting in Laguna:

- Frederic Smith lead a discussion about the definition of “minority stockholders” in connection with his work on Chapter 20, Majority of Disinterested Stockholder Vote;
- Nate Cartmell discussed the recent Nine Systems case and its relevance to Chapter 24 on Private Company Issues and Vice Chancellor Laster provided some additional comments on the case; and
- We had an update on the status of the Handbook.

At our San Francisco meeting, Rolin Bissel will lead a discussion on the issues relating to board consideration of jumping bids, including a discussion of the recent Family Dollar decision. Tom Mullen and Brad Davey will lead a discussion on current trends in negotiating deal lockup terms. We will also provide a detailed update on the status of our handbook.

Please join us whether to learn or to offer your own experiences – it all goes into the mix!

We hope to see you all in San Francisco!

TASK FORCE ON FINANCIAL ADVISORS

Please join us for our next meeting of the Financial Advisor Task Force. The meeting will feature a one-hour panel presentation on the evolving landscape of aiding and abetting claims. We are very pleased that Vice Chancellor J. Travis Laster will join us, as the panelists discuss topics such as: potential exposure to aiding and abetting claims for various professionals, including financial advisors, lenders, attorneys and accountants; how the concept of “knowing participation” might vary depending on context; whether exceptions to the doctrine of in pari delicto exist with respect to aiding and abetting claims (and whether the answer depends based on what law governs); and how financial and other advisors can and are responding to the recent focus on such claims. We have a wonderful group of panelists and are looking forward to a robust and informative discussion. The panelists are:

- Vice Chancellor J. Travis Laster, Delaware Court of Chancery
- Joel Greenberg, Senior Corporate Partner, Kaye Scholer, New York
- Scott Widen, Senior Counsel, O’Melveny & Myers, New York
- Moderator: Eric S. Klinger-Wilensky, Morris, Nichols, Arsh & Tunnell, Wilmington

We look forward to seeing everyone in San Francisco.

SPRING MEETING INFORMATION

Saturday, April 18, 2015  •  1:00PM - 2:00PM

InterContinental - Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 1709224607
Co-Chairs: Diane Frankel, Michael Halloran, Larry Hamermesh, Patricia Vella

SPRING MEETING INFORMATION

Saturday, April 18, 2015  •  2:00PM - 3:00PM

InterContinental, Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 1709224607
Co-Chairs: Yvette Austin Smith, Steve Kotran
At our upcoming meeting in San Francisco, we will be discussing Force on this important undertaking.

qlexconsulting.com, who is serving as the point person for the Task be most welcome. Feel free to contact Aileen Leventon, aileen@wishes to provide input into the LEDES process, participation would billing codes would be a huge win. If you or someone in your firm work in the fall of this year. Securing LEDES endorsement of our agreed to review our model codes. The LOC expects to commence

We have some exciting, breaking news to report regarding the codes we developed last year to track the cost of phases of M&A transactions. Some members of the Task Force and other law firms have in fact already begun using these codes to improve the data they use to budget and price legal work. Last fall, TyMetrix approached the Task Force leadership about working with the LEDES Oversight Committee (“LOC”) to more broadly promulgate the codes. The LOC works with the vendors and in-house legal departments to set the standards for e-billing and code sets. The LOC has agreed to review our model codes. The LOC expects to commence its review of our model codes very soon and hopes to complete its work in the fall of this year. Securing LEDES endorsement of our billing codes would be a huge win. If you or someone in your firm wishes to provide input into the LEDES process, participation would be most welcome. Feel free to contact Aileen Leventon, aileen@paleyconsulting.com, who is serving as the point person for the Task Force on this important undertaking.

At our upcoming meeting in San Francisco, we will be discussing updates to a number of ongoing projects, including the following:

- *Due Diligence Deal Killers* – a checklist of issues that prospective buyers should prioritize in conducting due diligence; some issues can often spell death for a deal and should be identified at an early stage.
- *Post-Matter Assessment Checklist* – a checklist for conducting both internal and external meetings to discuss and assess what worked well (and not so well) on a particular transaction. Among other things, the goal of such checklists is to further develop, refine and institutionalize best practices.

As always, if you utilize any of the Task Force tools in actual transactions, please be sure to share any suggestions with us as to how they might be improved. We remain on track to publish our materials later this year and would welcome all input to improve them.

We look forward to seeing many of you in San Francisco!

---

**SPRING MEETING INFORMATION**

**Friday, April 17, 2015  •  4:00PM - 5:00PM**

InterContinental, Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 1709224607
Co-Chairs: Rick Alexander, Mike O’Bryan

---

**TASK FORCE ON**

**TWO-STEP AUCTIONS**

The Task Force on Two-Step Auctions will meet on Friday, April 17, from 4:00 to 5:00 (Cal. time), in the Grand Ballroom of the InterContinental (we’re meeting a little later than originally scheduled to avoid a conflict with a presentation panel). Revised text will be distributed before the meeting. We’ll also check in on other drafting and set a schedule.

Eric Klinger-Wilensky will discuss some of the feedback the Section 251(h) committee of the Council of the Corporation Law Section of the Delaware State Bar Association has been getting on the current iteration of 251(h).

We will move into an editorial phase shortly. If you’d like to help complete the project please come to the meeting or let Rick or me know.

See you in San Francisco!
Our Task Force is preparing an update of the Model Stock Purchase Agreement (Second Edition) originally published in 2010. The inaugural meeting of our Task Force was a well-attended early morning meeting in Laguna Beach. We are aiming to produce a booklet, the premise of which is that the practice of M&A is dynamic and not static, and is influenced by new case law, evolving views of what is “market,” new business and legal methods, and new technologies. We want to produce a booklet which we intend would serve as a compendium of things that have happened in the last five years that impact the Model Stock Purchase Agreement. At the same time, we are updating the actual commentary, draft provisions and seller’s response in the Model Stock Purchase Agreement itself.

At our meeting in San Francisco, we will receive reports from the small groups that are drafting specific sections of the updated model agreement and related commentary on the status of their work. New volunteers interested in joining working groups drafting commentary are welcome!

Our Task Force is a perfect opportunity to get involved with a brand new project. We have volunteers now for all but one Exhibit but, in a number of cases, those who have stepped forward do need additional assistance. Even if you are not coming to San Francisco but would like to become involved in the project, please get in touch with me.

See you in San Francisco!
TASK FORCE ON A PRIVATE COMPANY TARGET MERGER AGREEMENT

The Mergers & Acquisitions Committee is creating a new Task Force – one that I hope will interest you. Mark Morton has asked me to chair a project tentatively called the “Private Company Target Merger Agreement Task Force.” Rolls off the tongue, doesn’t it?

There are challenging, unique issues in drafting an effective merger agreement by which a private company is sold to either a private or a public company. While asset or stock acquisitions are often the structure of choice, each form of transaction has advantages and disadvantages for acquisitions of private targets that have a number of noninsider stockholders. The parties may conclude that a merger best meets the parties’ business needs.

The Mergers & Acquisitions Committee believes that the expertise of our members can be improved by access to a scholarly yet practical model agreement that highlights the special issues that arise in drafting the private company target merger agreement. Most of the elements of this template will be applicable regardless of whether the acquirer is a private or a public company.

The preliminary factual assumptions are that a U.S.-based private company is being acquired through a reverse triangular merger by a private equity-backed firm for $500 million cash, plus potential additional consideration through an earnout. The acquiror is purchasing representations and warranty insurance to cover some but not all of the representations and warranties made by the target in the merger agreement. The target has 50 shareholders, two of which are private equity firms, and many of which are current and former target employees. Some shareholders are senior management members who are expected to roll their equity into the acquirer.

Some of the issues include:

• Consider valuation issues and the form of consideration, post-closing adjustments and earnouts.
• Assess termination conditions, including whether a fiduciary out is appropriate.
• Carefully craft post-closing adjustments and indemnification provisions, including whether these provisions can bind nonsignatory shareholders of the target? Does it matter if the shareholder signs a transmittal letter or does not vote in favor of the merger?
• Are the escrow provisions enforceable as to a shareholder not a party to the establishment of the escrow?
• How does one successfully cause shareholders of the target to release all claims they may have against the target and the acquiror?
• The basics as well as the nuances of an earnout used to bridge valuation.

We will have our organization meeting at our fall gathering. Please let me know at this meeting if you are interested in participating on this Task Force or contact me at lwalton@bassberry.com. There is room for many experienced M&A practitioners. And for new members – there is nothing more fun that seeing a project progress from the very beginning to publication. I hope you will consider participating as well.

ACQUISITIONS OF PUBLIC COMPANIES SUBCOMMITTEE

Our Subcommittee meeting in Laguna Beach during the M&A Committee’s Stand-Alone Meeting was well attended. During our meeting, Tricia Vella updated the Subcommittee on recent Delaware court decisions that are important to public company M&A practitioners. Eric Klinger-Wilensky and Brad Davey led a discussion on “Appraisal Rights – What Public Company M&A Lawyers Need to Know,” which highlighted a number of current issues around appraisal rights (and related litigation) in Delaware. In addition, Jay Lefton reviewed with the Subcommittee some key trends in public company M&A deal terms noted in the recently-released Strategic Buyer/Public Company Target Deal Point Study prepared by the Market Trends Subcommittee.

Our Subcommittee meeting in San Francisco during the ABA Business Law Section Spring Meeting is currently scheduled to be held on Friday, April 17, 2015, from 1:00PM to 2:30PM. We are fortunate that Bill Savitt from Wachtell, Lipton, Rosen and Katz will be joining us. Bill will discuss his experience in the recent litigation and settlement of the Freeport-McMoRan matter and, in particular, will discuss a number of issues arising out of that litigation that are important to buy-side public company M&A lawyers. Jim Melville has also organized a timely discussion on spin-off transactions. We are fortunate that Anthony Magro from Evercore and Suresh Advani from Sidney Austin will head up this panel and discuss the recent increase in spin-off transactions, as well as a number of considerations and various issues that arise with respect to acquisitions of spun companies. We will also hear from the leaders of our various Task Forces – Financial Advisor, Corporate Governance in M&A Transactions, and the Two-Step Task Force – as to the status of their projects. For those of you unable to attend the meeting in person, the dial in information for the Subcommittee meeting is below.

Our Subcommittee dinner during our San Francisco meeting will be held later on Friday, April 17, 2015 at Boulevard, a San Francisco institution. Cocktails begin at 6:30pm, with dinner starting at 7:00pm. I hope to see many of you there.

SPLRING MEETING INFORMATION

Friday, April 17, 2015  •  1:00PM - 2:30PM
InterContinental, Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 1709224607
Chair, Jim Griffin
Vice Chairs: Jen DiNucci, Jim Melville
INTERNATIONAL M&A SUBCOMMITTEE

The International M&A Subcommittee met from 10:30 a.m. to 12:00 p.m. on Friday, January 30, 2015, in connection with the ABA Business Law Section Mergers & Acquisitions Committee Stand-Alone Meeting in Laguna Beach, California.

1. Introductions
   The two of the three co-chairs of the Subcommittee present at the meeting, Freek Jonkhart and Franziska Ruf, introduced themselves, welcomed the participants and passed along the regrets of the third co-chair, Keith Flaum, for not being able to attend the meeting. The Subcommittee members then proceeded to introduce themselves.

2. International Annex to MAPA
   Freek Jonkhart briefly described the new project consisting in developing a new and updated international questionnaire to accompany the ABA Model Asset Purchase Agreement that was published recently. One international member of the Subcommittee had already been named to act as co-chair of this new project and one additional US or Canadian member of the Subcommittee was being sought to co-chair the project. Volunteers were invited to contact Freek Jonkhart directly in case of interest in participating in this project.

3. Anti-Corruption Issues in an International M&A Context
   The panel presenting this topic was composed of Nick Hanna (Gibson Dunn, Los Angeles), Vassily Rudomino (Alrud, Moscow) and Daniel Rosenberg (Charles Russell Speechlys, London). The panelists commenced by providing a brief overview of the anti-corruption regimes in the United States, Russia and the United Kingdom, together with a description of certain of the more recent enforcement proceedings in each jurisdiction. The panelists also touched on the importance of conducting a very focused due diligence review in the context of an acquisition in order to identify and avoid any successor liability issues. It was noted that the regulators will look not only at the due diligence conducted prior to the acquisition, but also to that conducted in the context of the post-closing integration phase. The importance of vendor due diligence to identify and attempt to cure any violations prior to disclosure to a buyer or, at the least, prior to closing was also highlighted. It was noted that any such process would require a close collaboration among the financial, tax and legal due diligence teams to uncover any complex structures and potential violations. Interviews with senior officials of the target also constitute a very useful tool in the process.

4. The Government’s Role in M&A Deals
   This panel was moderated by Piyasena (Piya) Perera (Anderson Mori & Tomotsune, Tokyo) and comprised of Joel Greenberg (Kaye Scholer, New York) and Franziska Ruf (Davies Ward Phillips & Vineberg, Montreal). The panelists compared and contrasted the role of the US government in connection with foreign investment reviews by CFIUS under the Exxon-Florio provision with that of the Canadian government by Investment Canada under the Investment Canada Act. It was noted that the Canadian regime covered both a general “net benefit” review test and a national security review, whereas the US regime dealt only with national security concerns.

5. Subcommittee Website
   Our website at http://apps.americanbar.org/dch/committee.cfm?com=CL560002 contains:
   - M&A Activity and Anti-Bribery: Current Law, Enforcement Trends, and Practice Tips for Transactional Lawyers and In-House Counsel
   - Details of the Subcommittee’s publications, future meetings, other work-in-progress and other past program materials.

SPRING MEETING INFORMATION

Saturday, April 18, 2015 • 10:30AM - 12:00PM
InterContinental, Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 1709224607
Co-Chairs: Keith Flaum, Freek Jonkhart, Franziska Ruf

MEMBERSHIP SUBCOMMITTEE

Membership numbers increased across the board over the past 3 months (since our stand alone meeting in January) which is indicative that our subcommittees and the ABA membership team as a whole have done great work to recruit new names and were able to maintain our membership at a relatively stable pace.

A word on our subcommittees: The market trends subcommittee is still our largest group with 1,748 members (up from 1,635 members), immediately followed by the private equity subcommittee with 1,484 members (up from 1,424 members). Both remained stable since January, 2015. The diversity and women in M&A subcommittees still our largest group with 1,748 members (up from 1,635 members), another notable increase can be found within the Legal Project Management category which saw a steady increase up to 132 members from 102 members one year ago, and the Governance Issues in Business Combinations category rising from 245 members to 274 members.

Another notable increase is the number of members from 115 members (up from 245 members) and “Two-Step Auction” (129 up from 115 members).

It certainly looks like we have our work cut out for us and need to be innovative to continue to attract new members which should not be so difficult considering the wide number and variety of subcommittees and all the great events and task forces being put in place.

We thank you for your involvement and look forward to seeing you all in San Francisco.

Co-Chairs: Tracy Washburn Bradley, Mireille Fontaine, Tatjana Paterno

Details of the Subcommittee’s publications, future meetings, other work-in-progress and other past program materials.
M&A JURISPRUDENCE SUBCOMMITTEE

The M&A Jurisprudence Subcommittee is currently comprised of the following two working groups and three project groups:

- The Annual Survey Working Group identifies and reports to the Committee on recent decisions of importance in the M&A area, and prepares the Annual Survey of Judicial Developments Pertaining to Mergers and Acquisitions, which is published annually in The Business Lawyer. After publication, the Annual Surveys are posted in an on-line library, called the M&A Lawyers’ Library, which members of the Mergers and Acquisitions Committee can access from the Committee’s home page on the ABA website (http://apps.americanbar.org/dch/committee.cfm?com=CL560000). The thirteenth Annual Survey of Judicial Developments Pertaining to Mergers and Acquisitions will be published in the February 2015 issue of The Business Lawyer.

- The Judicial Interpretations Working Group examines and reports to the Committee on judicial interpretations of specific provisions of acquisition agreements and ancillary documents, looking not only for recent M&A cases of special interest, but also examining the entire body of case law on the specified type of provision. The work product of the Judicial Interpretations Working Group consists of memoranda summarizing our findings regarding these acquisition agreement provisions and M&A issues. The memoranda are posted in the M&A Lawyers’ Library. Currently, the Library contains fourteen memoranda, and we expect to post several more to the Library in the near future. The most recent addition is the memo by Satira Nair on Enforceability of Letters of Intent, dated June 19, 2014.

- The Jurisdictional Project Group has prepared a comparative analysis of the jurisprudence in the federal and state courts of Delaware, New York, California and Texas, concerning some of the more commonly litigated topics in M&A jurisprudence. We believe this will be a very instructive and useful tool for M&A practitioners who are involved in multi-jurisdictional transactions, and we are looking forward to its debut.

We welcome all interested M&A Committee members to join our Subcommittee. The M&A Jurisprudence Subcommittee is a good way to become involved in the Committee, especially for younger Committee members, because extensive M&A transactional experience is not necessary. Not only can our working groups and project groups use additional help on current projects, but we also have a virtually unlimited pool of topics to work on in the future.

We are also asking all members of the M&A Committee to send us significant judicial decisions for possible inclusion in the survey. Submissions can be sent by e-mail either to Scott Whittaker at swwhittaker@stonepigman.com or to Mike O’Bryan at mobryan@mofo.com. Please state in your email why you believe the case merits inclusion in the survey. We need you to help identify cases!

The first criterion for inclusion is that the decision must involve a merger, an equity sale of a controlling interest, a sale of all or substantially all assets, a sale of a subsidiary or division, or a recapitalization resulting in a change of control. The second criterion is that the decision must (a) interpret or apply the provisions of an acquisition agreement or an agreement preliminary to an acquisition agreement (e.g., a letter of intent, confidentiality agreement or standstill agreement), (b) interpret or apply a state statute that governs one of the constituent entities (e.g., the Delaware General Corporation Law or the Louisiana Limited Liability Company Law), (c) pertain to a successor liability issue, or (d) decide a breach of fiduciary duty claim. We are currently excluding cases dealing exclusively with federal law, securities law, tax law, and antitrust law. But if you feel a case dealing with an M&A transaction is particularly significant please send it, even if it does not meet the foregoing criteria.

To join the M&A Jurisprudence Subcommittee, please email either Scott Whittaker at swwhittaker@stonepigman.com, Jon Hirschoff at jhirshoff@fdh.com, or Mike O’Bryan at mobryan@mofo.com, or simply come to the Subcommittee meeting in San Francisco.

SPRING MEETING INFORMATION

Friday, April 17, 2015 • 8:00AM - 9:30AM

InterContinental, Grand Ballroom, Third Floor
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 1709224607

Subcommittee Chair: Scott T. Whittaker
Chair – Annual Survey Working Group: Michael G. O’Bryan
Chair – Judicial Interpretations Working Group: Jon T. Hirschoff
Project Group Chairs: Nikki L. Bagatell – Library Index Project
Brian S. North – Jurisdictional Project
Lisa J. Hedrick – Damages Project

At our meeting in San Francisco, we plan to discuss as many recent court decisions as we can get to in our allotted time. We will also discuss the comparative analysis of M&A jurisprudence of Delaware, New York, California and Texas, which has been prepared by the Jurisdictional Project Group, comprised of Brian North, Nate Cartmell and Glenn West. This promises to be a very instructive and useful tool for M&A practitioners who are involved in multi-jurisdictional transactions, and we are looking forward to its debut.

We welcome all interested M&A Committee members to join our Subcommittee. The M&A Jurisprudence Subcommittee is a good way to become involved in the Committee, especially for younger Committee members, because extensive M&A transactional experience is not necessary. Not only can our working groups and project groups use additional help on current projects, but we also have a virtually unlimited pool of topics to work on in the future.

We are also asking all members of the M&A Committee to send us significant judicial decisions for possible inclusion in the survey. Submissions can be sent by e-mail either to Scott Whittaker at swwhittaker@stonepigman.com or to Mike O’Bryan at mobryan@mofo.com. Please state in your email why you believe the case merits inclusion in the survey. We need you to help identify cases!

The first criterion for inclusion is that the decision must involve a merger, an equity sale of a controlling interest, a sale of all or substantially all assets, a sale of a subsidiary or division, or a recapitalization resulting in a change of control. The second criterion is that the decision must (a) interpret or apply the provisions of an acquisition agreement or an agreement preliminary to an acquisition agreement (e.g., a letter of intent, confidentiality agreement or standstill agreement), (b) interpret or apply a state statute that governs one of the constituent entities (e.g., the Delaware General Corporation Law or the Louisiana Limited Liability Company Law), (c) pertain to a successor liability issue, or (d) decide a breach of fiduciary duty claim. We are currently excluding cases dealing exclusively with federal law, securities law, tax law, and antitrust law. But if you feel a case dealing with an M&A transaction is particularly significant please send it, even if it does not meet the foregoing criteria.

To join the M&A Jurisprudence Subcommittee, please email either Scott Whittaker at swwhittaker@stonepigman.com, Jon Hirschoff at jhirshoff@fdh.com, or Mike O’Bryan at mobryan@mofo.com, or simply come to the Subcommittee meeting in San Francisco.
The Private Equity M&A Subcommittee met in Laguna Beach, CA on Friday, January 30, 2015 in conjunction with the M&A Committee’s annual stand-alone meeting being held there. At the session, the Subcommittee reviewed recent trends and developments in Private Equity that had occurred since the Subcommittee last gathered in September 2014, including with respect to the evolving market environment for Private Equity and M&A generally, dealmaking techniques, and legal developments. The Subcommittee received presentations and materials on the following topics from the referenced parties:

- **The Current Market Environment for Private Equity and M&A.** 2014 was the best year for M&A since the financial crisis, with deal volumes and values hitting post-2007 highs. To put those developments in perspective and context, the Subcommittee received a report from Anton Sahazizian, Managing Director of Moelis & Company (NYC), who reviewed the latest data and the drivers behind the changing market conditions for Private Equity and the broader M&A markets generally, and who also discussed how the trends are affecting dealmaking techniques and what might be expected for the remainder of 2015.

- **Deal Insurance Strategies in the Current Market.** With the heated M&A markets generally, M&A deal-related insurance has emerged as a more viable tool in the past several years to address the needs of deal participants – including its use by financial sponsors seeking competitive advantages in bidding strategies and auctions without resorting to other indemnification arrangements. To address these developments, the Subcommittee received a report from Craig A. Schioppo, Managing Director of Transactional Risk, Marsh USA Inc. (NYC), and Kimberly Patlis Walsh, President & Managing Director, Corporate Risk Solutions, LLC (NYC), on the latest trends and drivers related to such insurance, the utility and strategic benefits of these products along with diligence aspects, and the process, negotiation, and timing needed to put such policies in place.

- **Delaware Litigation Matters.** With M&A litigation trend lines continuing unabated, the Delaware courts have continued to speak on matters from M&A sales processes generally, to certain deal features specifically, to judicial standards applicable in different contexts. Given the increasing number of Private Equity-backed portfolio companies, and the fact that the public component of sponsors’ portfolios is comprising an ever-increasing percentage of their overall holdings, Private Equity also is finding itself involved in litigation more often as well. To report on certain recent Delaware decisions that hold lessons and insights for financial sponsors and strategic buyers alike, William Lafferty and Eric Klinger-Wilensky, both Partners at Morris Nichols Arsht & Tunnell (Del.), reviewed recent selected rulings from the Delaware courts.

The Subcommittee meeting was well-attended, and we thank all participants and Subcommittee members for contributing to the session.

The agenda for our meeting in San Francisco includes:

- A review of recent and pending publications;
- An update on the state of the M&A market;
- A presentation on trends in life sciences M&A;
- A “Tales from the Trenches” presentation; and
- A presentation on the implications on the decision in Cigna v. Audax on market practice.

I look forward to seeing you in San Francisco.

---

**PRIVATE EQUITY M&A SUBCOMMITTEE**

The Private Equity M&A Subcommittee met in Laguna Beach, CA on Friday, January 30, 2015 in conjunction with the M&A Committee’s annual stand-alone meeting being held there. At the session, the Subcommittee reviewed recent trends and developments in Private Equity that had occurred since the Subcommittee last gathered in September 2014, including with respect to the evolving market environment for Private Equity and M&A generally, dealmaking techniques, and legal developments. The Subcommittee received presentations and materials on the following topics from the referenced parties:

- **The Current Market Environment for Private Equity and M&A.** 2014 was the best year for M&A since the financial crisis, with deal volumes and values hitting post-2007 highs. To put those developments in perspective and context, the Subcommittee received a report from Anton Sahazizian, Managing Director of Moelis & Company (NYC), who reviewed the latest data and the drivers behind the changing market conditions for Private Equity and the broader M&A markets generally, and who also discussed how the trends are affecting dealmaking techniques and what might be expected for the remainder of 2015.

- **Deal Insurance Strategies in the Current Market.** With the heated M&A markets generally, M&A deal-related insurance has emerged as a more viable tool in the past several years to address the needs of deal participants – including its use by financial sponsors looking for competitive advantages in bidding strategies and auctions without resorting to other indemnification arrangements. To address these developments, the Subcommittee received a report from Craig A. Schioppo, Managing Director of Transactional Risk, Marsh USA Inc. (NYC), and Kimberly Patlis Walsh, President & Managing Director, Corporate Risk Solutions, LLC (NYC), on the latest trends and drivers related to such insurance, the utility and strategic benefits of these products along with diligence aspects, and the process, negotiation, and timing needed to put such policies in place.

The Subcommittee meeting was well-attended, and we thank all participants and Subcommittee members for contributing to the session.

---

**SPRING MEETING INFORMATION**

**Saturday, April 18, 2015**  •  **9:00AM - 10:30AM**

InterContinental, Grand Ballroom, Third Floor  
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)  
Conference Code:  1709224607  
Chair: Hal Leibowitz
In this issue of Deal Points, we continue to introduce new Committee members to the M&A Committee.

Jim Black is a partner in the Washington, DC office of Smith, Gambrell and Russell, LLP. He’s a deal lawyer, with a particular focus on advising clients from Germany, Austria and Switzerland on their cross-border transactions and legal matters relating to their U.S. operations. Jim attended his first M&A Committee meeting in January 2015, at the Stand-alone meeting in Laguna Beach (a pretty decent start!).

The international focus of Jim’s law practice grew out of a love of language and travel, but he never would have developed his specialty if it weren’t for a fortuitous call from a headhunter some years ago. Jim grew up in a small town in the Midwest and started studying German in the 9th grade. This led to a scholarship to attend a German high school at age 17, and then the study of German, Japanese, Russian, Latin and French in college. During college, Jim had the chance to spend two years studying in the German college towns of Erlangen and Regensburg, where he gained fluency in the language and an intimate knowledge of the local pubs and beer gardens. After finishing college, Jim travelled to Prague … with no plan and little money … to witness history unfold shortly after the Velvet Revolution. He taught English, struggled to learn Czech, played semi-professional basketball, devoted substantial efforts to familiarizing himself with the many watering holes and breweries of the Czech capital and countryside, and eventually returned to the US to attend law school (what a letdown!).

Jim worked on privatization deals for the German Federal Finance Ministry in Berlin for a year after law school, then settled in Washington, DC, where he worked at large firms doing cross-border M&A and capital markets deals for over seven years. His contact to Germany waned as he focused on building his career in Washington, and he feared that he would never have a chance to use his German skills in his professional life. That all changed when, shortly before Jim was to be up for partner at his Washington firm, a headhunter called out of the blue asking if he would like to join the US-law practice in the Frankfurt office of a Magic Circle firm. Jim jumped at the chance (luckily with the full support of his wife, who was happy to be closer to her family in Barcelona), and that decision put him on the path that has defined his career since. Now back in Washington since late 2013, Jim continues to work mainly for clients from German-speaking countries, whom he frequently advises on US legal matters in the German language, and he travels back across the pond monthly to visit clients and develop new business.

Jim joined the M&A Committee because he wanted to reconnect with US M&A practitioners after working so long abroad, and because he enjoys interacting with other M&A lawyers who bring different experiences to the table. Jim observed that the M&A Committee meeting in Laguna Beach was a great introduction to the Committee and its work, and Jim strongly encourages M&A lawyers of all stripes to get involved. Jim has long been an ABA member and has contributed to the Deal Points Studies in the past, and he is deepening his involvement in the Committee by participating in the project to produce a supplement to the Model Stock Purchase Agreement.

Unfortunately, Jim won’t be in San Francisco, but I encourage you to say hello when you see him at a future meeting.
As we get set to spend time together at the upcoming M&A Committee meetings in San Francisco, I thought it appropriate to profile a California resident member of the Committee, Tracy Bradley (formerly Washburn). Tracy has been an active member of the M&A Committee since 2004 and currently is Co-Chair of the Committee’s membership subcommittee.

Based in LA, Tracy is Vice President at JP Morgan Chase where she focuses her time on growing the West Coast M&A escrow practice for the bank. She is primarily responsible for new business generation through legal, financial, and corporate channels from San Diego to Seattle.

When she is not traveling up and down the California coast assisting deal lawyers with their holdback escrows, you can find Tracy teaching indoor cycling classes at least six times a week at several Los Angeles locations of Equinox Fitness. What once was a hobby has become a passion for Tracy, and she explains that coaching her riders through a vigorous and fun class is a highlight of her day. She started teaching classes around the time that she joined JP Morgan Chase because she couldn’t find a decent spin class in downtown LA. So, she got herself certified, told one of the local gyms that she could do better than any of their current instructors, tried out, and, as they say, “the rest is history”. Tracy teaches completely for her own enjoyment (and the complimentary club membership that goes with it), and she says that it is a wonderful balance to the stress of her “day” job and her love of California wine.

Now how did a former bartender at the W in San Diego from a small town in Nebraska end up at one of the largest banks in the world working on some of the country’s most sophisticated M&A deals? With a lot of drive and ambition! Tracy is the first woman in her family to achieve an undergraduate degree (B.A. Sociology, Minor in Italian from the University of California, Santa Barbara). She is the first person in her entire family to receive a Masters Degree (MBA, Finance & Strategy, University of Southern California). And, she was the first person in her family to take residence abroad and live in Siena, Italy from 2000-2001. Out of that experience came her deep love of travel.

Perhaps we should invite Tracy to lead a spin class prior to the full M&A Committee meeting, to energize us for the presentations and discussion!

Perhaps we should invite Tracy to lead a spin class prior to the full M&A Committee meeting, to energize us for the presentations and discussion!

About Deal People

Deal People is a feature in Deal Points that highlights members of the Mergers and Acquisitions Committee and things that interest them, other than doing deals. Ideas for future features in Deal People are welcomed.

John F Clifford  |  McMillan LLP  |  Toronto, Canada  |  john.clifford@mcmillan.ca
# COMMITTEE MEETING MATERIALS

**Calendar and Dial In Information for Committee Meeting, Subcommittee Meetings, Task Force Meetings, and Sponsored or Co-Sponsored Events**

**San Francisco, CA - APRIL 17-18, 2015**

Please note that times listed are **PACIFIC TIME**
No Dial In Is Available For CLE's CLE Programs Are Highlighted In **YELLOW**

<table>
<thead>
<tr>
<th>Meeting Room</th>
<th>Toll-Free US Number</th>
<th>International Number</th>
<th>Conference Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grand Ballroom</td>
<td>(866) 646-6488</td>
<td>(707) 287-9583</td>
<td>1709224607</td>
</tr>
</tbody>
</table>

## Thursday, April 16, 2015

- **2:30 pm – 4:30 pm**
  - Co-Sponsored CLE (With Corporate Compliance Committee): International Trade Compliance For The Business Lawyer
  - Intercontinental, Ballroom B, Fifth Floor

- **2:30 pm – 4:30 pm**
  - Co-Sponsored CLE (With Young Lawyers Committee): Roadmap of a M&A Transaction
  - Marriott Marquis, Golden Gate Ballroom C2, B2 Level

## Friday, April 17, 2015

- **8:00 am – 10:00 am**
  - Co-Sponsored CLE (With Business and Corporate Litigation Committee): Ethical Thickets and Pitfalls in Major Corporate Transactions and Litigation
  - Marriott Marquis, Salon 10 & 11, Yerba Buena Ballroom, Lower B2 Level

- **8:00 am – 9:30 am**
  - M&A Jurisprudence Subcommittee Chair: Scott T. Whittaker
  - Intercontinental, Grand Ballroom, Third Floor

- **9:30 am – 11:00 am**
  - Private Equity M&A Subcommittee Chair: John K. Hughes
  - Intercontinental, Grand Ballroom, Third Floor

- **10:30 am – 12:30 pm**
  - Co-Sponsored CLE (With Dispute Resolution Committee): Designing the Process for Resolution of Post-Merger & Acquisition Disputes
  - Marriott Marquis, Salon 3 & 4, Yerba Buena Ballroom, Lower B2 Level

- **11:00 am – 12:00 pm**
  - Task Force on Revised Model Asset Purchase Agreement Co-Chairs: John Clifford and Ed Deibert
  - Intercontinental, Grand Ballroom, Third Floor

- **12:00 pm – 1:00 pm**
  - Task Force on Legal Project Management Co-Chairs: Byron Kalogerou and Dennis J. White
  - Intercontinental, Grand Ballroom, Third Floor

- **1:00 pm – 2:30 pm**
  - Acquisition of Public Companies Subcommittee Chair: Jim Griffin
  - Intercontinental, Grand Ballroom, Third Floor

- **2:30 pm – 4:30 pm**
  - Co-Sponsored CLE (with Diversity and Inclusion Committee): Women in the Law: From Visible Invisibility to Visibly Successful: Strategies for Women Attorneys
  - Intercontinental, Ballroom A, Fifth Floor
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>4:00 pm – 5:00 pm</td>
<td><strong>Task Force on Two-Step Auctions</strong>&lt;br&gt;Co-Chairs: Rick Alexander and Mike O’Bryan</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>4:30 pm – 6:00 pm</td>
<td><strong>Women in the Law Reception</strong></td>
<td>Intercontinental, Union Square, Third Floor</td>
</tr>
<tr>
<td>5:00 pm – 5:30 pm</td>
<td><strong>Meeting of the Committee Chair and Vice Chairs, Subcommittee, Task Force and Working Group</strong>&lt;br&gt;Chair: Mark A. Morton</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
</tbody>
</table>

**Saturday, April 18, 2015**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:00 am – 9:00 am</td>
<td><strong>Task Force on Revised Model Stock Purchase Agreement</strong>&lt;br&gt;Chair: Murray J. Perelman</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>8:00 am – 10:00 am</td>
<td><strong>Co-Sponsored CLE (with Cyberspace Law Committee): Getting Your Evidence in at Trial and Using it Effectively in a Business Case</strong></td>
<td>Marriott Marquis, Salon 1 &amp; 2, Yerba Buena Ballroom, Lower B2 Level</td>
</tr>
<tr>
<td>8:30 am – 10:00 am</td>
<td><strong>Co-Sponsored CLE (with Private Equity and Venture Capital Committee): Deal Point Considerations in Venture Backed M&amp;A</strong></td>
<td>Intercontinental, Ballroom B, Fifth Floor</td>
</tr>
<tr>
<td>9:00 am – 10:30 am</td>
<td><strong>Market Trends Subcommittee</strong>&lt;br&gt;Chair: Hal Leibowitz</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>10:30 am – 12:00 pm</td>
<td><strong>International M&amp;A Subcommittee</strong>&lt;br&gt;Co-Chairs: Keith Flaum, Freek Jonkhart and Franziska Ruf</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>12:00 pm – 1:00 pm</td>
<td><strong>Joint Task Force on M&amp;A Litigation</strong></td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>1:00 pm – 2:00 pm</td>
<td><strong>Joint Task Force on Governance Issues in Business Combinations</strong>&lt;br&gt;Co-Chairs: Diane Frankel, Michael Halloran, Larry Hamermesh and Patricia Vella</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>2:00 pm – 3:00 pm</td>
<td><strong>Task Force on Financial Advisors</strong>&lt;br&gt;Co-Chairs: Yvette Austin Smith and Steve Kotran</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>3:00 pm – 5:00 pm</td>
<td><strong>Merger and Acquisitions Committee Meeting</strong>&lt;br&gt;Chair: Mark A. Morton</td>
<td>Intercontinental, Grand Ballroom, Third Floor</td>
</tr>
<tr>
<td>7:00 pm – 10:00 pm</td>
<td><strong>Mergers and Acquisitions Committee Dinner</strong></td>
<td>One Market</td>
</tr>
</tbody>
</table>

The Mergers and Acquisitions Committee would like to thank Practical Law for sponsoring the San Francisco meeting.