FROM THE CHAIR  Mark Morton

Thank you. For the past three years, I have had the privilege to chair our Committee. Now, at the conclusion of our Chicago meeting, my tenure ends and I pass the leadership reins to a southern gentleman (and talented lawyer), Scott Whittaker. With enough time, a bigger brain and a better memory, perhaps I would be able to acknowledge everyone to whom I am indebted. However, so constrained (and with an apology in advance to anyone whom I have overlooked), I would like to acknowledge, and express my appreciation of, the contributions of the following:

The Committee membership. We remain one of the largest and most active committees within the entire ABA. At each meeting, you attend in mass, produce great programming, prompt stimulating discussions that enrich the experience for everyone in attendance and you push forward the many great initiatives of the Committee.

The Committee leadership. For the past three years, my Vice-Chairs, Jen Muller, Wilson Chu, Keith Flaum and Scott Whittaker, have been a reliable source of sage counsel and support. As our Committee continued its dramatic growth, it revealed a deepening bench of talented lawyers and bankers on whom I could rely. Over the past three years, dozens of members have stepped forward to share their time, energy and commitment while leading our many subcommittees and task forces.

A dedicated and talented ABA team. For three years, I have had an opportunity to work with (and lean on) many members of the ABA team, including the indefatigable Mark Page, Nicole Nikodem and too many others to mention. The ABA team works incredibly hard behind the scenes to secure great locations, plan and organize our meetings, facilitate our programming and dinners and, in their down time, to address my countless emails and your many questions and requests.

Committee mentors. I have been an active member of this Committee since 1995. For the better part of two decades, Rick Climan, Joel Greenberg, Leigh Walton, Nat Dollner, Vince Garrity (all prior chairs) and many others have mentored me (and others), encouraged our active engagement with the Committee and entrusted many of us with leadership responsibilities.

The Delaware judiciary. For the better part of two decades, members of the Delaware judiciary have shared their time and many talents with our Committee. When members of our Committee walk into a task force meeting or one of our CLE programs, they stand a good chance of sitting down beside a leading light of the Delaware judiciary. That opportunity is unique to our Committee.

I look forward to working with Scott and the rest of the Committee’s leadership in the years to come.

Now, on to the details for our meeting in Chicago. At the end of this issue of Deal Points, you will find a complete schedule of the Committee’s activities. In addition, for those of you who will not be able to attend this weekend’s meeting in person, you will find the dial in information for our meetings.

If you have not purchased tickets to our Committee luncheons and dinners, please do so when you arrive and register at the ABA desk. As we go to press, we still have seats open for our Committee dinner on Saturday at Osteria Via Stato.

A special note of thanks to Duff & Phelps, LLC, our sponsor for Saturday’s dinner. If you see a member of the Duff & Phelps team, please thank them for their generous support.

Full Committee Meeting

Our full Committee will meet on Saturday from 3:00 to 5:15 pm. During the meeting, we will have a number of presenters, including Bob Bartell, Global Corporate Finance Division Leader of Duff & Phelps, who will provide an update on international and cross border M&A, and Kevin Ryan, Executive Director of Escrow Services for J.P. Morgan, who will present the results of their annual M&A Holdback Study.

Task Force and Subcommittee Meetings

In addition to our normal slate of subcommittee and task force meetings, in Chicago we are kicking off the Private Company Target Merger Agreement Task Force, chaired by Leigh Walton. Leigh’s new task force will highlight the unique issues raised in merger transactions involving private companies. Please consider joining this new task force!

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

When we last drafted a message to you, the baseball season was just beginning and we were predicting a rematch of the 1986 World Series. Alas, the Red Sox did not hold up their end of the bargain. But by the time you read this, the Mets should be ten games up on the Nationals on their way to their first World Series victory in 29 years. But we digress...

This will be the last issue of Deal Points that we publish together. At the request of incoming Committee chair Scott Whittaker, Eric is assuming a co-chair position on the Task Force on Two-Step Auctions, and Ryan will be captaining the ship with a new co-editor, to be announced shortly. We thank Mark Morton for suggesting two years ago that we work together on Deal Points, as we each made a new colleague and friend. We hope you have enjoyed the new format and new electronic availability we have introduced over these two years.

Finally, we would be remiss if we did not provide a more general thank you to Mark. One thing we learned in continuously putting together this Committee newsletter is simply how impressive this Committee is. It really is amazing the substantive discussions, formal work product, and connections that this Committee offers at each and every meeting. We simply cannot imagine the amount of work that goes in to leading this Committee, let alone doing so in the fantastic way Mark has. Thank you, Mark, for all you have done. We appreciate it.

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Feature Article

Delaware Appraisal Case Reaffirms Valuation Premium for S Corporations

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Task Force Reports

Joint Task Force on Governance Issues in Business Combinations
Task Force on Financial Advisors
Task Force on Two-Step Auctions
Task Force on Legal Project Management
Task Force on Women in Mergers and Acquisitions
Task Force on the Revised Model Asset Purchase Agreement
Joint Task Force on M&A Litigation
Task Force on the Revised Model Stock Purchase Agreement
Task Force on a Private Company Target Merger Agreement

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Subcommittee Reports

Acquisitions of Public Companies Subcommittee
International M&A Subcommittee
Membership Subcommittee
M&A Jurisprudence Subcommittee
Private Equity M&A Subcommittee

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Deal People

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Committee Meeting Materials
In a recent appraisal case, the Delaware Court of Chancery reaffirmed that S corporations enjoy a valuation premium relative to C corporations. Further, contrary to defense arguments raised at trial, this article demonstrates that the premium persists even when corporate earnings are retained to reinvest in the business. In his June 17th opinion in Owen v. Lynn Cannon, et al., Chancellor Bouchard found that the fair value of the subject company, an S corporation, was nearly twice that of the value proffered by the defendant’s expert. Chancellor Bouchard identified the tax rate differential between an S corporation and a C corporation as one of the primary factors driving his valuation conclusion. The adherence to the so-called Kessler model, and its demonstrated persistence even with reinvestment, should settle the long-standing debate among valuation experts as to whether an S corporation shareholder is entitled to a valuation premium in the context of an appraisal action.3

Application of the Kessler Model in Cannon

Under the IRS code, a Subchapter S corporation generally pays no entity-level corporate income taxes.4 Instead, income earned by an S corporation is “passed through” and imputed to the corporation’s shareholders. The imputed income, whether distributed or not, is taxed at the shareholder’s individual income tax rates. This is often referred to as a single level of taxation.

In contrast, earnings of a C corporation are taxed twice, once at a corporate level and a second time at dividend tax rates when earnings are distributed to the company’s shareholders. This favorable tax treatment for S corporations was recognized as a distinct element of value by Delaware’s then-Vice Chancellor Strine in his Kessler decision. Vice Chancellor Strine reasoned in Kessler that “[a]n S corporation structure can produce a material increase in economic value for a stockholder and should be given weight in a proper decision.” The Court thus concluded that “when minority stockholders have been forcibly denied the future benefits of S corporation status, they should receive compensation for those expected benefits and not an artificially discounted value that disregards the favorable tax treatment available to them.”5 To quantify the differential value of an S corporation, Vice Chancellor Strine developed what has come to be known as the Kessler model.6

The Kessler model starts with the assumption that important inputs used in business enterprise valuation models7 reflect data from C corporations. These inputs, which are consistent with the double taxation of a C corporation, underestimate the value of an S corporation. The Kessler model aims to correct this underestimation. It does so by assuming a hypothetical S corporation for which corporate income is subject to double taxation. The second level of taxation is identical to that of a C corporation; it is the dividend tax rate that is applied upon distribution of corporate income to shareholders. However, the first level of taxation, the corporate income tax rate, is typically lower for the hypothetical S corporation than it would be for a C corporation.8 When valuing an S corporation using a discounted cash flow methodology, the lower, hypothetical S corporation income tax rate is used in place of a C corporation tax rate. The lower corporate tax rate results in a greater business enterprise value for the S corporation.

In Cannon, Chancellor Bouchard employed the Kessler model and, in doing so, rejected the defendant’s conclusion that Energy Services Group, Inc. (ESG), should be valued using a corporate tax rate that was at least as great as a C corporation tax rate.9

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1 Yvette Austin Smith and Torben Voetmann are Principals at The Brattle Group. David McKnight is a Senior Associate. The Brattle Group was retained by the plaintiff in Owen vs. Lynn Cannon et al. and Ms. Austin Smith testified as a valuation expert at trial.
3 This article focuses on the valuation of an S corporation in the context of an appraisal action. A broader consideration of the value of an S corporation is beyond the scope of this article. This article also does not fully address an S corporation that previously converted from a C corporation.
4 Among other requirements, an S corporation can have no more than 100 allowable shareholders.
6 The Kessler model was also recently discussed and endorsed by the Court in Zutrau v. Jansing, 2014 WL 3772859, at *36 (Del. Ch. July 31, 2014), and it has been lauded by other Courts and commentators, e.g., Bernini v. Bernini, 873 N.E. 2d 216, 230-31 (Mass 2007) (adopting “[t]he Kessler Court’s trenchant analysis”); Hamelink v. Hamelink, 2013 WL 6839700, at *5 (Miss. App. Dec. 30, 2013) (recognizing the wisdom of the Kessler approach, but holding that the trial court’s application of a 0% tax rate was not an abuse of discretion); D. Tinkelman et al., Sub S Valuation: To Tax Effect, or Not to Tax Effect, Is Not Really the Question, 65 Tax Law. 555, 585 (2012) (“Delaware Open MRI has met with considerable approval.”).
7 Most prominently, the cost of equity.
8 In the Kessler model it can be shown that the first level of taxation is equal to the S corporation’s single tax rate less the dividend tax rate that quantity divided by one minus the dividend tax rate.
Based on the facts in Cannon, Chancellor Bouchard found that ESG should be valued using a hypothetical corporate income tax rate of only 22.71%, much less than the typical 40% tax rate assumed when valuing a C corporation. As shown in the table above, 22.71% is the tax rate at which an S corporation shareholder would be indifferent to the application of double taxation on the S corporation’s earnings. Said another way, the Kessler model mathematically solves for the hypothetical tax rate (in Cannon, 22.71%) such that a shareholder of a (hypothetical) S corporation with double taxation would receive the same after-tax cash flow as a shareholder of an S corporation with a single level of taxation. As shown, in both cases the S corporation shareholder receives a distribution of $52.75. This exceeds the $38.90 distribution to the C corporation shareholder.

**Expanding the Kessler-based Valuation Model to Multi-Periods**

At trial, defendants argued for a rejection of the Kessler model due to its purported inability to properly account for reinvested earnings. The defendants argued that the valuation differential between an S corporation and a C corporation decreased for every dollar of earnings reinvested in the company. Chancellor Bouchard’s opinion did not directly address the defendants’ argument as the Chancellor found that ESG retained, but did not actually reinvest, earnings in the company. However, contrary to the defendants’ arguments, the Kessler model can be expanded to accommodate reinvestment over multiple periods. Relying, once again, upon the facts in Cannon but assuming that 25% of earnings are reinvested in the company, it can be shown that Chancellor Bouchard’s hypothetical 22.71% tax rate still applies. The hypothetical tax rate, as determined by the Kessler model, is independent of whether, and the amount by which, a company reinvests its earnings. Due to the lower (hypothetical) corporate income tax rate, the S corporation continues to enjoy a valuation premium, relative to a C corporation, even assuming reinvestment.

A full mathematical proof is possible but beyond the scope of this article. However, the intuition that the Kessler-derived tax rate does not vary with reinvestment can be easily explained. If earnings are reinvested in a C corporation, the shareholder does not pay tax on the reinvested earnings right away. This is because the earnings are not distributed as dividends. At this point, the C corporation earnings have only been taxed once, at the corporate income tax rate. However, the C corporation earnings cannot permanently escape the second level of taxation. The C corporation shareholder will pay a dividend tax upon the eventual distribution of the company’s earnings and the shareholder will face capital gains tax upon a future sale of the C corporation shares. The expectation is that the company’s stock will increase in value due to the reinvestment, thus generating the capital gains.

By contrast, the S corporation earnings will virtually always escape a second level of taxation. When S corporation earnings are reinvested in the company, the shareholder must still pay ordinary income tax on the reinvested earnings during the current tax year. As with a C corporation, the expectation is that the S corporation’s stock will increase in value due to the reinvestment of earnings. However, unlike in the case of a C corporation, a future sale of the S corporation shares will not result in taxable gain for the S corporation shareholder. This is because the reinvested earnings will allow the S corporation shareholder to adjust the basis (generally, the amount of capital investment in an asset for tax purposes) in the shares. By adjusting (in this case increasing) the basis in the shares, the shareholder will avoid recording a taxable gain upon the future sale of the shares. Even with reinvestment, the S corporation income remains subject to only a single level of taxation.

**Implication of Chancellor Bouchard’s Opinion on Future Appraisal Valuation of S Corporations**

The Kessler model provides a balanced and well-reasoned approach to quantifying the tax benefit of an S corporation when determining fair value in the context of an appraisal action. Delaware courts have repeatedly adopted the Kessler model in favor of either applying a C corporation income tax rate (typically, approximately 40%) or applying a 0% tax rate (an approach that has been accepted by some tax courts). As shown in Cannon, the tax rate used to value an S corporation can have a significant impact on the determination of fair value.
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 19 chapters. We have reorganized and consolidated several chapters, and will be discussing the reorganized handbook in detail at our Chicago meeting. We have drafts of 11 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 want to have all our content submitted by December 2015 so that we can go to 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 San Francisco:

- Rolin Bissel lead a discussion on the issues relating to board consideration of jumping bids, including a discussion of the recent Family Dollar decision; and
- Tom Mullen and Brad Davey lead a discussion on current trends in negotiating deal lockup terms.

At our Chicago meeting, Lewis Lazarus will lead a discussion on the recent Dole decision. 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 Chicago!

ANNUAL MEETING INFORMATION

Friday, September 18, 2015 • 1:30PM - 2:30PM
Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 6550809121
Co-Chairs: Diane Frankel, Michael Halloran, Larry Hamermesh, Patricia Vella

TASK FORCE ON FINANCIAL ADVISORS

We are looking forward to the next meeting of the Financial Advisor Task Force. The FATF will meet with the Joint Task Force on M&A Litigation during the upcoming annual meeting of the Business Law Section in Chicago. At the meeting there will be a panel presentation and discussion of recent developments concerning disclosure-only settlements in the Delaware Court of Chancery, and the issues board’s consideration of the application of Section 203.

As announced, we’ve moved into our editorial phase, and now have several persons leading revisions on the various parts of the Model Agreement. If you’d like to help finalize the document, or have a favorite tender offer issue, let us know!

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 San Francisco:

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- Tom Mullen and Brad Davey lead a discussion on current trends in negotiating deal lockup terms.

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We hope to see you all in Chicago!

ANNUAL MEETING INFORMATION

Saturday, September 19, 2015 • 9:00AM - 10:00AM
Picasso, Bronze Level, West Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 3199473460
Co-Chairs: Eric S. Klinger-Wilensky, Mike O’Bryan

TASK FORCE ON TWO-STEP AUCTIONS

The Task Force on Two-Step Auctions will be meeting during the Annual Meeting in Chicago. Eric Klinger-Wilensky is stepping up as co-chair, along with Mike O’Bryan, in place of Rick Alexander. Please join us in thanking Rick for helping us get this far.

As announced, we’ve moved into our editorial phase, and now have several persons leading revisions on the various parts of the Model Agreement. If you’d like to help finalize the document, or have a favorite tender offer issue, let us know!

ANNUAL MEETING INFORMATION

Saturday, September 19, 2015 • 11:30AM - 12:30PM
Regency Ballroom C&D, Gold Level, West Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 5884742049
Co-Chairs: Yvette Austin Smith, Steve Kotran
TASK FORCE ON LEGAL PROJECT MANAGEMENT

The Task Force on Legal Project Management held an interesting and interactive session at the Business Section Spring Meeting in San Francisco. The meeting featured a presentation by Ian Palm of Gowlings in Toronto on a firm-wide LPM initiative called “Gowlings Practical”. Ian’s presentation featured a video developed by the firm that captured the distinct advantages of legal project management in serving clients.

At the meeting, we also discussed updates to a number of ongoing projects, including the following:

- **Due Diligence Deal Killers**: This is a checklist of issues that prospective buyers should prioritize in conducting due diligence; some issues often spell death for a deal and should be identified at an early stage. Task Force member Jim Doub summarized several updates to this checklist.
- **Post-Matter Assessment Checklist**: This is a checklist for conducting both internal and external meetings to discuss and assess what went well (and not so well) on a particular transaction. Task Force member Jack Bostelman discussed an appendix of procedural suggestions for conducting such debriefings.

The LEDES Oversight Committee (“LOC”) is actively reviewing the M&A phase billing codes that the Task Force under Aileen Leventon’s leadership developed. (The LOC works with vendors and in-house legal departments to set the standards for e-billing and codes sets. [https://ledes.org/](https://ledes.org/)) We expect that the LOC will complete its work later this year. Securing LEDES endorsement of our billing codes would be a major accomplishment and endorsement of our work.

At the Chicago meeting, we will be discussing the following:


4. Future Work of the Task Force—Brainstorming:
   - Adoption of New Tools and Approaches;
   - LPM in M&A Education and Training;
   - Use of framework for other types of transactions; and
   - Other ideas?

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 late this year/early next year and would welcome all input to improve them.

Many thanks to outgoing M&A Committee Chair Mark Morton for his support of the work of our Task Force and our congratulations to him for the many new initiatives launched under his leadership as Committee Chair.

We look forward to seeing many of you in Chicago.

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**ANNUAL MEETING INFORMATION**

**Friday, September 18, 2015 • 11:00AM - 12:00PM**

Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 6550809121
Co-Chairs: Byron Kalogerou, Dennis J. White
Project Manager: Aileen Leventon

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TASK FORCE ON WOMEN IN MERGERS AND ACQUISITIONS

At our upcoming Task Force meeting, we will have a discussion with Dr. Arin Reeves about her book, “One Size Never Fits All: Business Development Strategies Tailored for Women (and Most Men)”. Women are achieving equality in professional service firms by many metrics, but they continue to trail their male counterparts in making it to the very top leadership positions. While the public conversations have largely focused on women’s concerns about work-life balance and their hesitation to lean in for opportunities, research demonstrates that the ability to develop business within current firm models is a greater obstacle for women’s success than any other reason. We will have an in-depth discussion with Dr. Reeves, who will discuss her findings, provide some practical solutions, and answer questions. Complimentary copies of her book will be available at the meeting (up to 50).

Please join us for drinks following the meeting at the American Craft Kitchen & Bar (in the Lobby of the Hyatt) from 5:00 - 6:00pm. Dr. Reeves will be there to answer any additional questions and sign books. In furtherance of our law school initiative, several Taskforce members (Rita-Anne O’Neill, Samantha Horn, Pam Millard and Jen Muller) will be speaking on a panel at Northwestern Law School on Thursday, September 17, regarding Women in M&A. We will provide a report at the Taskforce meeting as well as an update on identifying Champions at each of the top law schools in North America.

We have encouraged Northwestern’s law students to attend the M&A Committee Meetings (law school students can attend at no cost). If you happen to meet one of them, please extend a welcome.

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**ANNUAL MEETING INFORMATION**

**Friday, September 18, 2015 • 4:00PM - 5:00PM**

Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 6550809121
Co-Chairs: Jen Muller, Leigh Walton
TASK FORCE ON THE REVISED MODEL ASSET PURCHASE AGREEMENT

The Task Force on the Revised Model Asset Purchase Agreement had a productive meeting during the Spring Meeting of the Business Law Section in San Francisco in April. The Task Force continues to make good progress towards our goal of having a full first draft of the revised agreement with commentary by the time of the Committee’s stand-alone meeting in 2016.

At our meeting in Chicago, we expect to have presentations from several of 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 always welcome! Feel free to contact either of the Co-Chairs.

ANNUAL MEETING INFORMATION

Friday, September 18, 2015  •  12:30PM - 1:30PM

Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 6550809121
Co-Chairs: John Clifford, Ed Deibert

JOINT TASK FORCE ON M&A LITIGATION

The Joint Task Force on M&A Litigation will be meeting jointly with the M&A Committee’s Financial Advisor Task Force during the upcoming annual meeting of the Business Law Section in Chicago. At the meeting there will be a panel presentation and discussion of recent developments concerning disclosure-only settlements in the Delaware Court of Chancery and their implications for M&A deals, disclosures, and litigation. The panelists include Vice Chancellor Travis J. Laster of the Delaware Court of Chancery, Professor Sean Griffith of Fordham University School of Law, and Beth Flaming of Sidley Austin. Vice Chancellor Laster has issued several of the central rulings on disclosures, fee awards, and disclosure-only settlements. Professor Griffith has written extensively about disclosure-only settlements and recently objected to such a settlement pending before the Delaware Court of Chancery. Ms. Flaming regularly advises public companies on M&A transactions and disclosure matters.

We hope you will be able to attend.

ANNUAL MEETING INFORMATION

Saturday, September 19, 2015  •  11:30AM - 12:30PM

Regency Ballroom C&D, Gold Level, West Tower
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 5884742049
Co-Chairs: Michael Pittenger, Hon. Myron T. Steele

TASK FORCE ON THE REVISED MODEL STOCK PURCHASE AGREEMENT

Despite our 8:00 a.m. start time in San Francisco last April, we had a well-attended second meeting of our Task Force, including some who attended by conference call. We have now put most of our administrative and process decisions behind us and have begun the task of producing product. We expect some of our authors to be presenting actual product or issues for discussion when we meet in Chicago.

We still need more volunteers. Our update Task Force is a great opportunity to get involved during the early days of a new project.

The Task Force wishes to recognize the leadership of Mark Morton under whose chairmanship our Task Force was formed. Thank you Mark for your leadership and vision. We are looking forward to working with Scott Whittaker as our next Mergers & Acquisitions Committee Chair.

We expect to publish our product during his term, but only if he lets us escape our continuing 8:00 a.m. meeting time slot.

ANNUAL MEETING INFORMATION

Saturday, September 19, 2015  •  8:00AM - 9:00AM

Regency Ballroom C&D, Gold Level, West Tower
(866) 646-6488 (US and Canada)  (707) 287-9583 (International)
Conference Code: 5884742049
Chair: Murray J. Perelman
TASK FORCE ON A PRIVATE COMPANY TARGET MERGER AGREEMENT

We invite you to the first meeting of the M&A Committee’s newest Task Force—“Task Force on A Private Company Target Merger Agreement.” I will lead this new Task Force with our two new Vice Chairs—Melissa DiVincenzo from Morris, Nichols, Arst & Tunnell, and Amy Simmons from Wilson Sonsini Goodrich & Rosati.

There are challenging, unique issues in drafting an effective merger agreement for the sale of a private company to either a private or a public company. While asset or stock acquisitions are often the structure of choice, these structures have advantages and disadvantages for a acquisitions of private targets that have a number of noninsider stockholders. In such circumstances, the parties may conclude that a merger structure best meets their business needs.

The M&A 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 a private company target merger agreement. Most of the elements of this template will be applicable regardless of whether the acquiror is a private or a public company.

The preliminary factual assumptions are that a private equity-backed firm is acquiring a U.S.-based private company through a reverse triangular merger 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 acquiror.

Some of the issues include:
- Valuation issues and the form of consideration, post-closing adjustments and earnouts.
- Whether the merger mechanics are consistent with the waterfall to avoid post-closing issues.
- The nuances of the acquiror’s purchase of reps and warranties insurance—what is covered by the policy; what about the gap between signing and closing; what about excluded reps?
- The approval mechanics and termination conditions, including whether a fiduciary out is appropriate.
- The 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?
- Whether the escrow provisions are enforceable as to a shareholder not a party to the escrow or shareholder representative agreement?
- Causing 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.
- Statute of limitations and survival period issues.
- Fraud and anti-reliance issues.

There is room for many experienced M&A practitioners. And for new members—there is nothing more fun than seeing a project progress from the very beginning to publication. We hope you will join us in person or by phone at our meeting in Chicago.

ANNUAL MEETING INFORMATION

Saturday, September 19, 2015 • 2:00PM - 3:00PM
Regency Ballroom C&D, Gold Level, West Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 5884742049
Chair: Leigh Walton
Vice Chairs: Melissa DiVincenzo, Amy Simmons

ACQUISITIONS OF PUBLIC COMPANIES SUBCOMMITTEE

Our Subcommittee meeting in San Francisco during the ABA Business Law Section Spring Meeting was well attended. Bill Savitt from Wachtell, Lipton, Rosen and Katz joined us and discussed his experience in the litigation and settlement of the Freeport-McMoRan matter, highlighting a number of issues arising out of that litigation for buy-side public company M&A lawyers. Jim Melville also moderated an excellent panel with Anthony Magro from Evercore and Suresh Advani from Sidley Austin discussing 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 are fortunate that Chief Justice Leo Strine will be joining us at our Subcommittee meeting in Chicago to discuss his views on the role of advisors in the deal process as referenced in his recently released article “Documenting the Deal: How Quality Control and Candor Can Improve Boardroom Decision-making and Reduce the Litigation Target Zone.” We expect this to be an interactive and lively discussion with the Chief Justice—you won’t want to miss it. In addition, Jen Fitchen, Joel Greenberg and Jay Bothwick will lead a discussion on “Recent Deal Point Negotiations in Public Company M&A” focusing on some novel negotiating points that have come up in recent public company transactions. 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.

Due to the overwhelming favorable reviews of last year’s dinner in Chicago, we are once again having our Subcommittee dinner at Mastro’s Steakhouse—Chicago on Friday evening. Cocktails begin at 6:30pm with dinner beginning at 7:00p.m. I hope to see many of you there.

ANNUAL MEETING INFORMATION

Friday, September 18, 2015 • 2:30PM - 4:00PM
Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 6550809121
Chair: Jim Griffin
Vice Chairs: Jen Fitchen, Jim Melville
INTERNATIONAL M&A SUBCOMMITTEE

The International M&A Subcommittee met from 10:30 a.m. to 12:00 p.m. on Saturday, April 17, 2015, in connection with the Business Law Section Spring Meeting in San Francisco, California.

Introductions

As the three co-chairs of the Subcommittee were unable to be present, Daniel Rosenberg introduced himself as their nominated chair for the meeting, passed along their regrets for not being able to attend and welcomed the participants. The Subcommittee members then proceeded to introduce themselves. The main business of the meeting comprised the following two presentations.

Pitfalls for Directors in M&A Transactions

The panel was chaired by Joerg Lips (CMS, Leipzig) and comprised Donald Wolfe (Potter Anderson, Delaware), Christiaan de Brauw (NautaDutilh, Amsterdam), Alexandra Rohmert (CMS, Paris) and Geoff Belsher (Blakes, New York). The panel compared the main issues that directors need to deal with when involved in M&A transactions in Germany, the United States, the Netherlands, France and Canada, covering issues such as directors’ duties (including duties of good faith in negotiations), conflicts of interest and worker consultation duties.

Deferred Compensation in M&A Transactions

The panel presenting this topic was comprised of Diane Frankle (Kaye Scholer, Silicon Valley) and Hermann Knott (Luther, Cologne, Germany) and discussed international aspects of earnout consideration viewed from a US perspective and a European Continental perspective. Issues covered included the contexts in which earnout provisions are appropriate, common issues arising in negotiating earnouts, and some observed differences between US and EU earnout provisions (including the types of metrics used as earnout targets, the different standards required in relation to buyer behavior post-closing during the earnout period, the impact of implied covenants of good faith and fair dealing and dispute resolution procedures) and consideration of some sample wording from earnout provisions on either side of the Atlantic.

Materials on Website

- The Committee’s website at http://apps.americanbar.org/dch/committee.cfm?com=CL560002 includes:
  - The presentation notes of Joerg Lips, Donald Wolfe, Christiaan de Brauw, Alexandra Rohmert and Geoff Belsher on Pitfalls for Directors in M&A Transactions.
  - The presentation notes of Diane Frankle and Hermann Knott on Deferred Compensation in M&A Transactions.
  - Details of the Subcommittee’s publications, future meetings, other work-in-progress and other past program materials.

MEMBERSHIP SUBCOMMITTEE

In this issue, as we are already facing yet another change in the leadership of the M&A Committee at the end of 2015, we thought a review of our membership numbers from last August up to September 2015 would be appropriate, but even more so, motivating!

Membership increased across the board by approximately 15%! The M&A Committee is now comprised of 5,255 members. We have seen an increase of 13% in both our “Associate Members” and “In-House Counsel Members” and this is a great accomplishment as it was two of the top priorities of the Committee.

We wish for their continued involvement and we will be looking for new ideas to attract more members. Do you have an idea or an initiative you would like to put forth? Contact us now or directly at mireille.fontaine@gowlings.com.

A word on our Subcommittees: The M&A Trends Subcommittee is still our largest group with 1,637 members followed by the Private Equity Subcommittee with 1,389 members. Both remained stable since the end of August 2014. With their great meetings and publications we encourage you to join if you have not done so already. These subcommittees are ever evolving and we welcome the active involvement of new members!

The Women in M&A Subcommittee grew by 33% and the Women in M&A Subcommittee has continued to raise the bar, increasing from 2 to 37 the number of its members in the last year (an increase of 1,750%). Their initiatives, events and topics continue to attract both men and women, asking the tough questions and giving members sound advice and the appropriate tools to “make it” in the “business of law”, as women in law face some of the hardest challenges so far seen in our market in constant evolution.

A further notable increase can be found within the Law Project Management category which saw a huge increase of 32% from 97 to 128 members and the Governance Issues in Business Combinations rising from 238 members to 258 members.

The Model Stock Purchase Agreement Revisions’ Task Force is another very active task force with 735 members, seeing an increase of 4% in its membership since August of 2014.

We believe these increases are a clear indication of the radical changes in the “market of law” is facing. The need for better understanding of the “alternative fee arrangements” certainly creates awareness for all lawyers, hence the wonderful increase in the “Law Project Management” Subcommittee. But other Subcommittees are also...
focusing on new topics, new ways to attract members. To name a few, here are some of the subcommittees and their membership results since the end of August 2014 as at September 2015:

- Financial Advisor Disclosures 145 members (8% increase)
- Governance Issues in Business Combination 258 members (8% increase)
- Two-Step Auction 128 members (20% increase)

Unfortunately, other extremely important subcommittees have seen slight decreases in their membership:

- Acquisitions of Public Companies 835 (down 2%)
- Dictionary of M&A Terms 620 (down 3%)

Overall, we can proudly say that the past 12 months have been a broad success and thank all the members for their recruitment efforts but also for the valuable and interesting work the subcommittees continue to put forward. This Committee is so proud of the continued efforts ... Let’s keep it up and be innovative to create new subcommittees and task forces to enhance our membership but most of all, to be able to respond to our members requests.

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

Mireille Fontaine, Tatjana Paterno
Co-Chairs

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<th>M&amp;A JURISPRUDENCE SUBCOMMITTEE</th>
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The M&A Jurisprudence Subcommittee congratulates Mark Morton for his excellent leadership of the M&A Committee throughout his tenure as Committee Chair. The M&A Committee has achieved many accomplishments over its three years under Mark’s leadership, including becoming the largest Committee of the ABA Business Law Section, with over 5,000 members. We extend to Mark our heartfelt thanks, and look forward to his continuing contributions to our Section, with over 5,000 members. We extend to Mark our heartfelt thanks, and look forward to his continuing contributions to our Committee in the years to come.

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 was 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 fifteen memoranda, and we expect to post several more to the Library in the near future. The most recent addition is the memo by Brian North, Glenn West and Nate Cartmell on Jurisdictional Differences in M&A Jurisprudence, dated January 23, 2015, which is 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.

- The Damages Project Group is preparing a comprehensive analysis of the types of damages that are recoverable in common M&A litigation contexts, and the methods that courts have used, or allowed the parties to use, to calculate damage awards.

- The M&A Lawyers’ Library Publication Project Group is compiling the contents of the M&A Lawyers’ Library into an ABA Publication.

At our meeting in Chicago we will discuss as many recent court decisions as we can get to in our allotted time. We will also discuss the Memo by Gesta Abols and Michael Partridge on “double materiality” carveouts in bringdown conditions.

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...
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 swhittaker@stonepigman.com, Jon Hirschoff at jhirschoff@fdh.com, or Mike O’Brien at mobryan@mofo.com, or simply come to the Subcommittee meeting in San Francisco.

ANNUAL MEETING INFORMATION
Friday, September 18, 2015  •  8:00 AM - 9:30 AM
Riverside Center East, Purple Level, East Tower
(866) 646-6488 (US and Canada) (707) 287-9583 (International)
Conference Code: 6550809121
Chair - Annual Survey Working Group: Michael G. O’Bryan
Chair - Judicial Interpretations Working Group: Jon T. Hirschoff
Project Group Chairs: Rikki L. Bagatell – Library Index Project
Brian S. North – Jurisdictional Project
Lisa J. Hedrick – Damages Project

The Private Equity M&A Subcommittee met in San Francisco, CA on Friday, April 17, 2015 in conjunction with the ABA Business Law Section’s Spring Meeting. The Subcommittee reviewed recent trends and developments in Private Equity that had occurred since the Subcommittee last gathered in February 2015, including with respect to the evolving market environment for Private Equity and M&A, dealmaking techniques, and legal developments. The Subcommittee received presentations and materials on the following topics from the referenced parties:

1. The Current Market Environment for Private Equity and M&A
   After a strong 2014, M&A pacing continued in Q1 2015, with U.S. M&A activity reportedly having its largest first quarter since 2000. Financial sponsor activity, meanwhile, continued to be driven by exits and secondary buyouts as opposed to primary platform deals and take-privates, as sponsor deal flow continued to be constrained by high valuations. To review the current market environment and the drivers behind the activity in greater detail, put the latest data and observations in perspective, discuss how the trends were affecting dealmaking techniques, and look at what to expect for the remainder of 2015, the Subcommittee received a report from David I. Luwisch, Managing Director, Credit Suisse Securities (USA) LLC (L.A. and S.F.).

2. Blockholder Directors and Private Equity
   The Subcommittee also engaged in a discussion with The Honorable J. Travis Laster, Vice Chancellor, Delaware Court of Chancery and John Mark Zeberkiewicz, Director, Richards, Layton & Finger (Del.) with respect to the recent article they had published in the then-current edition of the ABAs ‘Business Lawyer,” entitled “The Rights and Duties of Blockholder Directors.” In the article, the authors largely review Delaware’s board-centric system of corporate governance and the rights and duties of blockholder directors (those elected or appointed by or at the direction of a particular class or series of stock or group of stockholders), and reviewed the legal implications of certain common practices that are observed in the marketplace that involve board designees and the blockholder appointing them, including as pertains to financial sponsors and their designees.

3. M&A Litigation Trends
   Given M&A litigation is a regular feature in public company transactions, regardless whether strategic buyers or financial sponsors are involved, and given the implications this trend has for deal planners in transaction processes, the Subcommittee also received reports from representatives of two of the leading groups that have led the research and analysis on M&A litigation trends generally. Sasha Aganin, Ph.D., Vice President, Cornerstone Research (Menlo Park, CA), and Matthew D. Cain, Ph.D., Financial Economist, Division of Economic and Risk Analysis, SEC (Wash., D.C.) (and formerly Assistant Professor of Finance at Mendoza College of Business at Notre Dame, and who publishes research in this area with Professor Steven Davidoff Solomon (Berkeley Law)), discussed the similarities and differences around the findings of their respective studies on M&A litigation trends.

The Subcommittee meeting was well-attended, and thanks all participants and Subcommittee members for contributing to the session.
In this issue of Deal Points, we continue to introduce new members of the M&A Committee.

Chauncey Lane is a senior associate in the Austin, Texas office of Husch Blackwell. Prior to joining Husch Blackwell, he worked in the Division of Corporate Finance of the U.S. Securities and Exchange Commission. Chauncey focuses his practice on domestic and cross-border mergers and acquisitions and capital market transactions for public and private clients throughout the United States, Canada and the United Kingdom. He has particular expertise advising clients in the energy, healthcare, and technology industries.

When not working on deals, Chauncey can be found at the gym – he weight trains six days a week starting at 5:00am – or running or cycling on one of Austin’s many trails and paths. Although some people think he’s training for a body building contest, Chauncey says his commitment to fitness is “just a great way to live healthy and to get a momentary distraction from my practice”.

Chauncey is on the Board of Directors for the Central and South Texas Chapter of Make-A-Wish and Chair’s its Membership Committee. He proudly noted to me that the Chapter granted more than 235 wishes last year to kids with life threatening conditions. The Chapter recently raised over $500,000 for Austin-area children through its annual event called Over-the-Edge (granted more than 100 wishes), where participants raise money for Make-A-Wish and the top fundraisers are allowed to rappel down a high rise in downtown Austin. This year’s high rise was the W, Hotel Austin – 38 stories – which Chauncey is rappelling down in the picture. (yikes!)

Like many of us, Chauncey joined the M&A Committee because he wanted to broaden his knowledge of the M&A space by pulling on the collective knowledge and experiences of the Committee members. He also saw joining the Committee as an opportunity to share his own personal knowledge and experience with other Committee members and to get involved in ABA leadership. Little did Chauncey know that his being a connoisseur of Italian red wines from the Montepulciano and Montalcino regions of Italy and a lover of Italian food would put him in great company with other Committee members!

Chauncey’s first M&A Committee meeting was at the 2014 Annual Meeting in Chicago. He says that his “experience with the Committee has been incredible. The members are welcoming of new faces and encourage involvement by all – not just the few who stand out due to their professional affiliations or connections. The Committee has also been a great place to learn – each Committee meeting includes valuable presentations on market trends and relevant jurisprudence that are helpful to my practice.”

Chauncey plans to attend the Annual Meeting in Chicago. I encourage you to say hello when you see him there.

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
Scott Whittaker (a partner of Stone Pigman Walther Wittmann LLC in New Orleans) will become Chair of the M&A Committee at the end of the September 2015 Annual Meeting. His Southern charm and years of thoughtful contribution to the work of the Committee are known by many. In addition to being a great deal lawyer, Scott is a passionate outdoorsman and kayaker.

Scott has always enjoyed the outdoors. He did a lot of hunting and fishing from boyhood, and took up wilderness backpacking in college. But those pursuits became more and more difficult to fit in with the demands of a growing family and career. About 20 years ago, Scott and his wife, Wendy, built their current home on the shore of Lake Pontchartrain in Kenner, a suburb of New Orleans. Shortly after they got settled in, Scott bought a sea kayak, as a way to experience the outdoors without taking time away from home. He got hooked.

If you've had the pleasure of being in a sea kayak, you will know that you sit very low in the water, and most of your steering is done through a combination of body lean and paddle strokes. Scott observes that this makes him feel very connected with the water and the elements: "100 yards offshore, you are completely away from it all. And the good part is I can fit in a kayak 'trip' in the morning and still have the whole day for whatever I need to do." He has also used M&A Committee meetings as a jumping off point for some kayak adventures, such as San Francisco Bay (pictured), Seattle and Vancouver.

About 15 years ago, Scott bought a canoe, as a way to introduce his daughters to paddling as an outdoor activity. There are a number of scenic bayous within an hour's drive from New Orleans. Scott describes his many dad-daughter canoe outings over the years as "great experiences", and he and his youngest daughter, Jenna, continue to go canoeing whenever they can.

Oh, and I of course would be remiss if I did not mention Scott's other great passion.... the New Orleans Saints football team. He has season tickets, and he attends all the home games with his oldest daughter, Rachel, who inherited her dad's love of the Saints. Scott has followed the Saints since the team was formed in 1967, when he was a young boy. The highlight of his "Saints journey" (so far) was when they won the Super Bowl in Miami in 2010.

Please join me in congratulating Scott on his becoming Chair of the M&A Committee. If he can't be easily found, perhaps look for him at the closest jumping-off point for water adventures.

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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
Chicago, IL - September 18-19, 2015

Please note that times listed are CENTRAL 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>
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<tbody>
<tr>
<td>Riverside Center East, Purple Level, East Tower</td>
<td>(866) 646-6488</td>
<td>(707) 287-9583</td>
<td>6550809121</td>
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<tr>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
<td>(866) 646-6488</td>
<td>(707) 287-9583</td>
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Friday, September 18, 2015

8:00 am – 9:30 am
M&A Jurisprudence Subcommittee
Chair: Scott T. Whittaker
Riverside Center East, Purple Level, East Tower

8:30 am – 10:00 am
Co-Sponsored CLE (sponsored by the Environmental Committee):
Good Environmental Due Diligence: What It Is
Chair: Mary Ellen Ternes
Water Tower, Bronze Level, West Tower

9:30 am – 11:00 am
Private Equity M&A Subcommittee
Chair: John K. Hughes
Riverside Center East, Purple Level, East Tower

10:30 am – 12:30 pm
Co-Sponsored CLE (sponsored by the Corporate Counsel Committee):
Ethics and Privilege Issues Which Confront Inside and Outside Corporate Counsel
Chair: Robert L. Haig
Columbus KL, Gold Level, East Tower

11:00 am – 12:00 pm
Task Force on Legal Project Management
Co-Chairs: Byron Kalogerou and Dennis J. White
Riverside Center East, Purple Level, East Tower

12:30 pm – 1:30 pm
Task Force on the Revised Model Asset Purchase Agreement
Co-Chairs: John Clifford and Ed Deibert
Riverside Center East, Purple Level, East Tower

1:30 pm – 2:30 pm
Joint Task Force on Governance Issues in Business Combinations
Co-Chairs: Diane Frankel, Michael Halloran, Larry Hamermesh and Patricia Vella
Riverside Center East, Purple Level, East Tower

2:30 pm – 4:00 pm
Acquisitions of Public Companies Subcommittee
Chair: Jim Griffin
Riverside Center East, Purple Level, East Tower

4:00 pm – 5:00 pm
Task Force on Women in Mergers and Acquisitions
Co-Chairs: Jen Muller and Leigh Walton
Riverside Center East, Purple Level, East Tower

5:00 pm – 5:45 pm
Subcommittee and Task Force Chairs Meeting
Riverside Center East, Purple Level, East Tower
# Saturday, September 19, 2015

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<thead>
<tr>
<th>Time</th>
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<tr>
<td>8:00 am – 9:00 am</td>
<td>Task Force on the Revised Model Stock Purchase Agreement</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Chair: Murray Perelman</td>
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<tr>
<td>8:00 am – 10:00 am</td>
<td>Sponsored CLE (co-sponsored by the International Business Law and Middle Market and Small Business Committees): Managing Legal Risks in Multijurisdictional M&amp;A Transactions</td>
<td>Columbus KL, Gold Level, East Tower</td>
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<td>Chair: Michel Gélinas</td>
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<td>9:00 am – 10:00 am</td>
<td>Task Force on Two-Step Auctions</td>
<td>Picasso, Bronze Level, West Tower</td>
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<td>Co-Chairs: Eric S. Klinger-Wilensky and Mike O’Bryan</td>
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<td>10:00 am – 11:30 am</td>
<td>Market Trends Subcommittee</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Chair: Hal Leibowitz</td>
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<td>11:30 am – 12:30 pm</td>
<td>Combined Meeting of the Task Force on Financial Advisors/Joint Task Force on M&amp;A Litigation</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Co-Chairs: Yvette Austin Smith and Steve Cotran/Michael Pittenger and Myron T. Steele</td>
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<tr>
<td>12:30 pm – 2:00 pm</td>
<td>International M&amp;A Subcommittee</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Co-Chairs: Keith Flaum, Freek Jonkhart and Franziska Ruf</td>
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<td>2:00 pm – 3:00 pm</td>
<td>Task Force on a Private Company Target Merger Agreement</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Chair: Leigh Walton</td>
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<td>3:00 pm – 5:15 pm</td>
<td>Mergers and Acquisitions Committee Meeting</td>
<td>Regency Ballroom C&amp;D, Gold Level, West Tower</td>
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<td>Chair: Mark A. Morton</td>
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<tr>
<td>7:00 pm – 10:00 pm</td>
<td>Mergers and Acquisitions Committee Dinner</td>
<td>Osteria Via Stato, 620 N. State</td>
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The Mergers and Acquisitions Committee thanks Duff & Phelps LLC for sponsoring the Annual meeting.
American Bar Association, Section of Business Law, Mergers and Acquisitions Committee. The views expressed in the Mergers and Acquisitions Committee Newsletter are the authors’ only and not necessarily those of the American Bar Association, the Section of Business Law or the Mergers and Acquisitions Committee. If you wish to comment on the contents, please write to the Mergers and Acquisitions Committee, Section of Business Law, American Bar Association, 321 N. Clark Street, Chicago, Illinois, 60610.