Thursday, November 7th

8:45-9:00am Introduction  
Co-Chair, Richard E. Climan

9:00-10:00am The Basics:  
Acquiring a Privately Held Business for Cash  
This session will address the various ways of structuring acquisitions of  
privately held businesses (including acquisitions of stock, acquisitions of assets, and mergers) and the corporate, tax, and other issues that must be considered in selecting among the alternative transaction structures  
Richard E. Climan, Joel I. Greenberg, Samantha Horn

10:00-10:45am The Basics:  
Acquiring a Privately Held Business for Stock  
This session will focus on the special corporate, tax, securities law, and pricing issues that must be addressed when the acquiring company issues shares of its own stock as part of the purchase price in an acquisition.  
Richard E. Climan, Joel I. Greenberg, Samantha Horn

10:45-11:00am Break

11:00am-12:30pm Negotiating the Acquisition Agreement  
The panelists, in the context of an interactive mock negotiation, will highlight the give and take between the buyer and sellers in the negotiation of the definitive agreement for the acquisition of a privately held company. They will address the negotiation and drafting of purchase price provisions, critical representations and warranties, closing conditions and indemnification provisions, and the interplay among these key provisions. They will also offer their insights on recent trends in the negotiation of escrows, “material adverse change” clauses, “non-reliance” clauses, and “sandbagging” provisions, as well as other issues of current importance to M&A dealmakers.  
David I. Albin, Richard E. Climan, Joel I. Greenberg, Eileen Nugent, Scott T. Whittaker

12:30-1:45pm Networking Lunch
1:45-3:15pm Negotiating the Acquisition Agreement (cont’d)
The panelists, in the context of an interactive mock negotiation, will highlight the give and take between the buyer and sellers in the negotiation of the definitive agreement for the acquisition of a privately held company. They will address the negotiation and drafting of purchase price provisions, critical representations and warranties, closing conditions and indemnification provisions, and the interplay among these key provisions. They will also offer their insights on recent trends in the negotiation of escrows, “material adverse change” clauses, “non-reliance” clauses, and “sandbagging” provisions, as well as other issues of current importance to M&A dealmakers.

David I. Albin, Richard E. Climan, Joel I. Greenberg, Eileen Nugent, Scott T. Whittaker

3:15-3:30pm Break

3:30-4:30pm Negotiating the Acquisition Agreement (cont’d)
The panelists, in the context of an interactive mock negotiation, will highlight the give and take between the buyer and sellers in the negotiation of the definitive agreement for the acquisition of a privately held company. They will address the negotiation and drafting of purchase price provisions, critical representations and warranties, closing conditions and indemnification provisions, and the interplay among these key provisions. They will also offer their insights on recent trends in the negotiation of escrows, “material adverse change” clauses, “non-reliance” clauses, and “sandbagging” provisions, as well as other issues of current importance to M&A dealmakers.

David I. Albin, Richard E. Climan, Joel I. Greenberg, Eileen Nugent, Scott T. Whittaker

4:30-5:30pm Special Issues in Asset Acquisitions
This session will highlight the special considerations that the parties must take into account when they choose to structure their transaction as a purchase of assets, rather than as a stock purchase or a merger. The panelists will address such matters as successor liability, stockholder approval, and fraudulent transfers. They will also discuss the contentious issues that can arise when the assets being purchased comprise a separate division of the seller.

Samantha G. Horn, Michael O’Bryan, George Taylor
Friday, November 8th

8:30-10:00am  Valuation and Purchase Price-Related Issues
This panel, which will include an experienced investment banker, will explain the basic tools, metrics and techniques used by financial professionals in valuing acquisition targets. The panelists will also address issues that arise in the context of negotiating “earn-out” pricing formulations, and various post-closing price adjustment mechanisms.

Joel I. Greenberg, Jennifer Muller, George Taylor, Scott T. Whittaker

10:00-10:15am  Break

10:15-11:15am  Ancillary Documents
The panelists will highlight the issues that arise in drafting and negotiating M&A-related confidentiality agreements, exclusivity agreements and letters of intent.

Samantha G. Horn, George Taylor, Scott T. Whittaker

11:15am-12:15pm  Private Equity Buyers
Private equity buyers – financial sponsors – account for a significant portion of worldwide and domestic M&A volume. This panel will explain the special issues that need to be addressed in M&A transactions involving PE buyers. These issues include use of debt to finance the acquisition, the target company’s remedies in the event of a financing failure, rollover of management equity, potential conflicts of interest faced by management directors, and frequent use of representation & warranty insurance.

David I. Albin, Joel I. Greenberg, Samantha G. Horn

12:30-1:30pm  Networking Lunch

1:30-3:15pm  Acquiring a Public Company
The panelists will describe how acquisitions of public companies differ from acquisitions of privately held companies in the context of cash acquisitions as well as “stock-for-stock” transactions. They will discuss both one-step mergers and two-step acquisition structures involving tender offers, and will provide practical insights into compliance with applicable SEC regulations. A portion of the session will be devoted to advising a board of directors in considering the possible sale of a public company. The panelists will also
review “deal protection” provisions that may be utilized in the acquisition of a public company, including “no-shop/no-talk” provisions, “break-up” fees, “match” rights, and stockholder support agreements.

Richard E. Climan, Joel I. Greenberg, Eileen Nugent, Michael O’Bryan

3:15-3:30pm Break

3:30-4:30pm Ethical Issues in M&A Transactions
This session will examine some of the challenging ethical issues that can arise in the context of M&A transactions. The panelists will discuss issues relating to truthfulness in negotiations, the so-called “anticontact” rule, and conflicts of interest that may exist between various categories of selling stockholders. In this context, the panelists will address Rules 1.7, 4.1, and 4.2 of the Model Rules of Professional Conduct.

David I. Albin, Michael O’Bryan, Eileen Nugent

MCLE
The ABA will seek 13 hours of CLE general credit in 60-minute states, and 15.6 hours of CLE general credit for this program in 50-minute states, including 1 hour of CLE ethics credit in 60-minute states and 1.2 hours of CLE ethics credit in 50-minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Please visit the program website at ambar.org/mergers2019 for program CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA.

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