

**Overview:** This course exposes participants to the specific considerations involved in structuring a merger transaction, while also synthesizing the concepts discussed in earlier classes, in culmination of the course. Participants will revisit some of the key drafting considerations discussed in the context of an asset or stock purchase and examine how these might differ in a merger context, allowing participants to gain a deeper understanding of these concepts and how to apply them in practice. This course will also introduce participants to the particular nuances involved in a merger, including regulatory and statutory aspects, as well as corporate governance and tax issues. The instructor will illustrate these various concepts by examining actual statutory language and merger agreement provisions, highlighting differences with asset and purchases where significant. Participants will practice drafting and negotiating various provisions clearly and precisely, taking into account buyer and seller concern.

**Objectives:** Upon completion of this course, participants will be able to:

- Identify and explain to a client the relevant statutory requirements for consummation of a merger
- Apply diverse legal and regulatory considerations in determining the appropriate structure
- Draft and negotiate basic terms in a Merger Agreement

**Key Topics:**

- Overview of key regulatory and statutory framework for mergers
  - Delaware merger statute
  - Corporate governance
  - Regulatory considerations (including antitrust, securities, tax)
  - Public vs. private deals
- Structural considerations
  - Alternatives: short-form and 2-step mergers; reverse and forward triangular mergers
  - Consideration
- Mechanics
  - Compliance with merger statute
  - Compliance with corporate governance issues
  - Compliance with securities laws
  - Compliance with pre-merger notification regulations
  - Fiduciary duties
- Key drafting issues for merger agreement
- Bringing it all together

**Supplemental Materials/Additional Resources:**

- Sample Merger agreement
- Sample key provisions
- Various on-line document sources

**Simulation Exercise:** Reviewing Merger Agreement for consistency with terms and preparing summary of mechanics for client.