

Master Class: Overview of M&A: Structuring the Deal

Overview: This course introduces students to the concept of M&A in broad terms. It starts by examining what constitutes an M&A transaction and what drives typical M&A deals. The instructor will use examples of recent M&A deals to illustrate these concepts. The course then moves on to the practical aspects of identifying and differentiating between the different structural alternatives available for an M&A transaction, highlighting the advantages and disadvantages of each in a given context, including corporate, tax, liability, and other considerations.

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

- Identify and differentiate between structural alternatives for an M&A transaction
- Articulate the considerations in selecting a structure for a given transaction
- Apply these considerations to determine appropriate structure

Key Topics:

- Understanding the big picture
 - What is M&A?
 - What are the key drivers of M&A Deals?
- Structural Alternatives for an M&A Deal
 - Introduction to the three main structural alternatives: mergers, asset purchases, and stock purchases
 - Why structure matters/considerations in selecting a structure
 - Fundamental characteristics of each structure
 - Parties
 - What is being acquired
 - Consequence
 - Implications of each structure
 - Liabilities
 - Subsidiaries
 - Corporate formalities
 - Employees
 - Asset selection and transferability
 - Consents and approvals
 - Tax
 - Weighing the different considerations (pros and cons of each structure)
 - Exercise identifying implications of each structure and weighing different considerations
- Recap

Supplemental Materials/Additional Resources:

- News article describing M&A deals for discussion
- Article describing differences between stock and asset purchases
- Sample SEC filings

Simulation Exercise: Preparing a brief memo to the client outlining the available structural alternatives for a proposed acquisition, briefly summarizing the relevant considerations, and recommending appropriate structure.

Master Class: The M&A Deal Process: Managing the Closing Checklist

Overview: This course is designed to provide a deeper understanding of the overall M&A process, from inception to closing of a deal. The course starts by providing an overview of the practical steps, key considerations, and documentation that are involved at each stage of the deal process, and then leads participants through preparing a closing checklist with an emphasis on learning how to identify relevant considerations and documentation. Particular focus will be given to the junior associate and in-house counsel role in the process; to exemplify, participants will work through a short exercise in which they are asked to assume the role of a junior associate in preparing and coordinating the closing checklist, taking into account the various considerations discussed in the group session.

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

- Understand the various stages and components of the M&A deal process such that participant is able to meaningfully contribute to each stage
- Prepare a comprehensive closing checklist for a private M&A transaction
- Manage the logistics of the deal process

Key Topics:

- The five stages of a typical M&A Deal Process
 - Initial approach
 - Start of negotiations
 - Due diligence and drafting
 - Approvals and closing
 - Post-closing
- Discussion of the specific documents and actions required in stages 3 through 5
 - Distinctions in documentation between stock and asset purchases
 - Distinctions in corporate formalities for stock, asset, and merger deals
- Closing checklists: purpose, format, content
 - Use of precedent forms
 - Structural considerations
 - Using the definitive agreement and due diligence as a guide
 - Tips for ensuring all necessary documents and actions are incorporated
- Interplay between deal process and closing checklist
- Organizing and managing the closing checklist and closing process

Supplemental Materials/Additional Resources:

- Sample S-4 to illustrate deal timeline
- Sample SPA closing checklist
- Sample SPA/APA exhibit list
- Term sheet

Simulation Exercise: Preparing a closing checklist using a form precedent and the information gleaned from the initial scenario and a term sheet for the proposed acquisition.

Master Class: Drafting and Negotiating Asset Purchase Agreements

Overview: This course introduces participants to the specific terms typically negotiated in the context of an asset purchase. Using an actual asset purchase agreement, participants will (i) gain an understanding of the practical reasons behind various provisions, (ii) learn to recognize pro-buyer and pro-seller terms, (iii) observe how each provision connects to others in the agreement, and (iv) practice how to reflect diligence and other issues in the agreement. Particular focus will be given to assignment and change of control issues in asset purchases. Participants will practice negotiating specific terms in the agreement, with a focus on clarity and precision. Practice tips will include how to approach preparing the first draft of an agreement. While certain provisions will be discussed in more detail, the aim of this course is to give the participant a broad understanding of the transaction document as a whole so that he or she feels comfortable reviewing, drafting, and negotiating this type of document.

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

- Interpret LOIs and term sheets
- Demonstrate a broad understanding of APAs and comfort level reviewing an APA
- Draft and negotiate basic terms in an APA

Key Topics:

- Review of asset purchase characteristics
- Review of standard contract building blocks
- Key areas for negotiation:
 - Money – Price/Value protection
 - Deal protection/risk allocation devices:
 - Reps & Warranties
 - Covenants
 - Conditions
 - Standards:
 - Qualifiers
 - Carve-outs
- The interplay between deal protection mechanisms and remedies
- Discussion of simultaneous vs. delayed closing
- Drafting process:
 - Translating the term sheet and using precedent
 - Incorporating due diligence
 - Pro-seller vs. pro-buyer language

Supplemental Materials/Additional Resources:

- Sample APA
- Term sheet
- Various on-line document sources

Simulation Exercise: Drafting specific provisions of an APA using a term sheet, pro-buyer form precedent, and additional information received from the client.

Master Class: Drafting and Negotiating Stock Purchase Agreements

Overview: This course has students explore the differences between a stock purchase and an asset purchase, with particular focus on operative provisions and representations and warranties. The instructor will use an actual stock purchase agreement to exemplify key provisions and drafting considerations, highlighting differences with asset purchases where significant. Participants will practice drafting and negotiating various provisions clearly and precisely, taking into account buyer and seller concerns. Practice tips for redlining and commenting on drafts will also be discussed in context. While certain provisions will be discussed in more detail, the aim of this course is to give the participant a broad understanding of the transaction document as a whole so that he or she feels comfortable reviewing, drafting, and negotiating this type of document.

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

- Identify and explain to a client the differences between an asset purchase and a stock purchase
- Recognize pro-buyer and pro-seller language
- Draft and negotiate basic terms in an SPA

Key Topics:

- Review of stock purchase characteristics vis-à-vis asset purchases
- Compare and contrast key provisions:
 - Operative Provisions
 - Deal protection/risk allocation devices:
 - Reps & Warranties
 - Covenants
 - Conditions (including MAC clauses)
 - Introduction to additional deal-protection devices and remedies:
 - Termination
 - Indemnification
 - Miscellaneous provisions, signatures, exhibits, and schedules
- Drafting process:
 - Modifying standard provisions for stock purchase agreement
 - Key areas for negotiation
 - Incorporating due diligence
 - Pro-seller vs. pro-buyer language

Supplemental Materials/Additional Resources:

- Sample SPA
- Sample key provisions
- Various on-line document sources

Simulation Exercise: Reviewing Seller comments on an APA form and revising to reflect SPA format.

Master Class: Drafting and Negotiating Merger Agreements

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.