

MERGERS & ACQUISITIONS: *A MANAGEMENT PERSPECTIVE*





*Mergers & Acquisitions:
A Management Perspective*

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Introduction

- Polsinelli
 - A national law firm
 - 670+ attorneys
 - 17 offices
- Presenters
 - Tracey Ginn
 - Lisa Greer Quateman
 - Bill Swart

Overview

- Tonight we will discuss M&A transactions from the unique perspective of management, focusing on deal points as they affect the managers of a business.
- We will review the stages of a transaction and the issues relevant to management, including deal structure, equity participation, representations and warranties, employment terms and benefits, bonus arrangements, restrictive covenants, board composition, and benchmarking against market norms.
- Management Considerations
 - What is management's role in the deal?
 - How can managers protect their interests?

Stages of a Transaction

- 1) Before the deal
 - Initial considerations
 - Letter of Intent (LOI)
- 2) Doing the deal
 - Due diligence
 - “Papering the deal”
- 3) After the deal
 - Post-closing

(1) Before the Deal - Initial Considerations

- Strategic vs. Financial Buyer
 - Implications for Management
- Key Advisors
 - Counsel - In-house and/or outside
 - Investment bankers
- Confidentiality Agreement/NDA

(1) Before the Deal - Letter of Intent

- Deal structure
 - Assets or stock
 - Newco
- Purchase Price
- Conditions
- Confidentiality
- Exclusivity
- Timeframe
- But, not management deal

(1) Before the Deal - Retention of Management

- Stay Agreements
 - To retain management post-closing
 - Closing bonus provisions
 - Due diligence cooperation
 - Termination provisions, severance, vesting
 - Cleanup: release, non-competition, non-solicitation, waiver of change of control triggers, termination (“good reason” and disability)
- Existing Employment Agreements

(2) Doing the Deal – Due Diligence

- Management's role
 - Responsibility
 - Information
 - Time
 - Liability

(2) Doing the Deal – Management Side

- Conflicts
 - Timing of negotiations with management
- Separate management representation
 - Conflicts among management
- Role of general counsel
- Equity rollover and/or bonus
- Board representation in new vehicle
- Benchmarking

(2) Doing the Deal – “Management’s Deal”

- Structure
 - Equity participation
 - Bonus structure
 - Employment terms
 - Board participation
- Timing

(2) Doing the Deal - “Papering the deal”

- Transaction Documents
 - Purchase Agreement
 - Equity documents
 - Employment Agreements
- Representations and Warranties
 - Disclosures
- Liability
 - Management Certificates

(3) After the Deal

- Long Term Incentive/Carried Interest Plans
 - Distinguish from short term incentive and equity rollover
 - Typically non-voting class of equity securities that participates in distributions after the investor has received certain thresholds of returns
 - Fixed percentage to be shared by existing team or possible dilution
 - Vesting/forfeiture

(3) After the Deal

- Thresholds: IRR and cash on cash return
 - return of investment and minimum IRR
 - making management plan returns
 - exceeding management plan returns
- Life in the new regime
 - Projections and targets
 - Merger integration
 - Reporting chain
 - Board composition in new vehicle

Q & A

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- **Polsinelli**

Polsinelli is a business and litigation law firm with more than 680 attorneys in 17 offices spanning the country from Los Angeles to New York. Serving corporations, institutions, entrepreneurs, and individuals, our attorneys build enduring relationships by providing legal counsel informed by business insight to help clients achieve their objectives. This commitment to our clients' businesses has helped us become the fastest-growing law firm in America.



Polsinelli People



- **Tracey Ginn – Principal**

During her more than 20 years of experience as a corporate lawyer, Tracey has developed significant deal experience and likes nothing better than deftly advising clients throughout the transaction process. She works efficiently and effectively alongside clients to navigate the legal process and negotiate on the client's behalf – and always aims to meet the client's goals. Tracey also counsels companies on the variety of legal issues that arise in the course of doing business. Her broad experience includes working with many industries and types of business structures in the United States and other jurisdictions and advising on novel and complex structures. Tracey's clients include public and privately held companies, nonprofit organizations, limited liability companies, and partnerships in market sectors such as technology, health care, investment advisory, public relations, restaurants, and professional services firms.

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- **Lisa Greer Quateman – Managing Partner, Los Angeles**

Lisa Greer Quateman is the Managing Partner in Polsinelli's Los Angeles office. She represents domestic and multi-national companies and individuals doing business in a wide range of industries. Clients and prospective clients seek out Lisa for her expertise and capabilities in transactions and regulatory matters. Her practice encompasses transactional and advisory work in the fields of finance, banking, mergers and acquisitions, including real estate and corporate acquisitions, international, municipal and corporate law. She serves as outside counsel for numerous large and middle market companies, financial institutions and federal, state and local governmental entities.

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- **Bill Swart – Principal**

Bill Swart is a shareholder in the Corporate and Transactional practice of Polsinelli. His practice is focused on mergers and acquisitions and transactions with private equity firms. His experience includes the structuring and documenting of portfolio company investments, acquisition financing, and equity incentive plans for management. In addition, when difficult internal issues and conflicts need to be addressed within private equity firms, Bill works with the firms or their partners to achieve negotiated goals, such as the withdrawal of partners or the restructuring of ownership or compensation of the partners or other stakeholders within the private equity firms. He regularly counsels boards of directors and executive officers in connection with governance issues, as well as in connection with corporate duties and crisis management matters. Bill's client relationships span a variety of industries, including health care, energy, manufacturing, consumer products, and financial services. His style of client representation reflects his belief that understanding a client's business is critical to developing a legal strategy that accomplishes the client's goal.

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