

The 15th Annual National Institute on

# Negotiating Business Acquisitions

**November  
4-5, 2010**

Mandarin Oriental  
Las Vegas, NV



Presented by

**The American Bar Association  
Business Law Section  
Committee on Mergers & Acquisitions,  
General Practice,  
Solo & Small Firm Division  
and the Center for  
Continuing Legal Education**

Register Online at

[www.abanet.org/cle/programs/nba](http://www.abanet.org/cle/programs/nba)

# The 15th Annual National Institute on Negotiating Business Acquisitions

---

November 4-5, 2010 | Mandarin Oriental, Las Vegas, NV

## Program Description

---

This two-day National Institute will provide you with an expert perspective on negotiating business acquisitions. Panelists include nationally known mergers & acquisitions attorneys who will discuss all facets of the acquisition process, including techniques used in structuring and negotiating M&A deals; the tax and securities law aspects of business acquisitions; and the impact of recent legal and regulatory developments on M&A transactions.

The program will examine both fundamental and cutting-edge issues, with sessions addressing:

- The key business, financial and legal terms of the acquisition agreement
- Special issues in asset acquisitions
- Tax considerations in M&A transactions
- Acquisitions of public companies and related Delaware and securities law considerations
- An investment banker's perspective on M&A trends
- Recent developments, including the impact of private equity buyers on M&A practice
- Ethical issues in M&A transactions

## Interactive Mock Negotiation

---

This National Institute also will include an interactive mock negotiation that will give you valuable insights on negotiating key representations, warranties, closing conditions and indemnification provisions in an acquisition agreement. Advance preparation is not needed for this program.

## Past Participants Have Said

---

"This program featured the best panel and best moderators on the subject of negotiated business acquisitions I have ever heard."

"The mock negotiation of an acquisition agreement was extremely informative—it helped demonstrate the pitfalls to both buyers and sellers in language that is often considered boilerplate."

"Well-organized . . . valuable materials, excellent speakers."

"The panel of speakers is excellent; they are well-versed from a true practical perspective."

"As a practicing CPA, I learned ways to better help my clients in M&A."

"The 'open' discussion between panelists presenting both sides of the issues . . . went beyond the general aspects of fundamentals."

"The program was absolutely excellent from start to finish... The participants were generous with their perspectives and insights."

"Perhaps the best CLE program I've ever attended... loved the mock negotiation format."

"Great for new associates like myself."

"Great refresher for the experienced, great trainer for young attorneys."

"Excellent, experienced speakers who were engaging and informative – content was right to the point."

"I was impressed by the clarity of discussion and how concisely the information was presented."

"Excellent program. I've been doing transactional work for over 20 years and still learned valuable information on current practice tips and recent trends in private and public deals."

"This is the finest seminar I've attended. The back-and-forth exchange during the mock negotiation brought to life the importance of even the most standard contract provisions."

# Institute Co-Chairs

---

**Richard E. Climan**

*Dewey & LeBoeuf LLP*  
East Palo Alto, CA

**Joel I. Greenberg**

*Kaye Scholer LLP*  
New York, NY

**Leigh Walton**

*Bass, Berry & Sims PLC*  
Nashville, TN

## Faculty

---

**David I. Albin**

*Finn Dixon & Herling LLP*  
Stamford, CT

**James R. Griffin**

*Fulbright & Jaworski LLP*  
Dallas, TX

**Frederick H. Alexander**

*Morris, Nichols, Arsht & Tunnell LLP*  
Wilmington, DE

**Diane Holt Frankle**

*DLA Piper*  
East Palo Alto, CA

**Anita Antenucci**

*Houlihan Lokey*  
Washington, DC

**David A. Katz**

*Wachtell, Lipton, Rosen & Katz*  
New York, NY

**Wilson Chu**

*K&L Gates LLP*  
Dallas, TX

**Jennifer Muller**

*Houlihan Lokey*  
San Francisco, CA

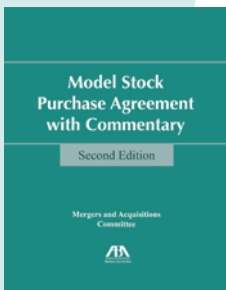
**Byron F. Egan**

*Jackson Walker, LLP*  
Dallas, TX

Special thanks to Houlihan Lokey for helping to defray program expenses.

## Check Out This ABA Web Store Product!

---



**Model Stock Purchase Agreement with Commentary, 2nd Edition**

This new updated second edition is a “must have” for any transactional lawyer. This model agreement is based on the hypothetical acquisition by a single corporate buyer of all of the capital stock of a privately-held U.S. company. Each provision of the agreement is immediately followed by commentary, which reflects the collaborative effort of leading experts in drafting and negotiating acquisition agreements. It also highlights the provisions that are likely to be the subject of negotiation, and explains the rationale for taking more aggressive, or more tempered, positions during the negotiations. A CD-ROM with the text of the agreement comes bound with the *Model Stock Purchase Agreement with Commentary*.

**Product Code: 5070636**

**Visit [www.abacatalog.com](http://www.abacatalog.com) and search by product code 5070636 to order!**

# Program Agenda

## Day One ■ Thursday ■ November 4th

### 8:00 a.m. Registration and Continental Breakfast

### 8:45 a.m. Introduction

Richard E. Climan

### 9:00 a.m. 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, securities law, and other issues that must be considered in selecting among the alternative transaction structures.

**Panelists:** Richard E. Climan  
James R. Griffin  
Joel I. Greenberg

### 10:00 a.m. The Basics (cont'd.): 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.

### 10:45 a.m. Break

### 11:00 a.m. Negotiating the Acquisition Agreement: Earnout Provisions; Representations and Warranties

The panelists, in the context of an interactive mock negotiation, will highlight the potential opportunities and pitfalls for the buyer and seller in negotiating the definitive agreement for the acquisition of a privately held business. 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 with respect to 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.

**Panelists:** Wilson Chu  
Richard E. Climan  
Joel I. Greenberg  
James R. Griffin  
Leigh Walton

### 12:30 p.m. Lunch (Provided by the Mandarin Oriental – details at the event)

### 1:45 p.m. Negotiating the Acquisition Agreement (cont'd): Representations and Warranties; Closing Conditions

### 3:15 p.m. Break

### 3:30 p.m. Negotiating the Acquisition Agreement (cont'd): Indemnification Provisions

### 4:30 p.m. 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.

**Panelists:** David I. Albin  
Frederick H. Alexander  
Joel I. Greenberg  
Leigh Walton

### 5:30 p.m. Adjourn

# Program Agenda

## Day Two ■ Friday ■ November 5th

### 9:00 a.m. 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 review “deal protection” provisions that may be utilized in the acquisition of a public company, including “no-shop” provisions, “break-up” fees and stockholder support agreements. They will also discuss the impact of recent Delaware decisions on the negotiation of these critical provisions.

**Panelists:** Frederick H. Alexander      Joel I. Greenberg  
Richard E. Climan                      David A. Katz  
Diane Holt Frankle

### 10:15 a.m. Break

### 10:30 a.m. Acquiring a Public Company (cont'd)

### 12:30 p.m. Lunch (Provided by the Mandarin Oriental – details at the event)

### 1:45 p.m. The Changing M&A Landscape: Trends and Recent Developments

This panel will review the current state of play in the M&A arena and will analyze the impact of recent legislative, regulatory, and other developments on the way M&A deals are being structured and negotiated.

**Panelists:** Frederick H. Alexander      Joel I. Greenberg  
Anita Antenucci                          David A. Katz  
Richard E. Climan                        Jennifer Muller

### 3:30 p.m. Break

### 3:45 p.m. Ethical Issues in M&A Transactions

#### ETHICS

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 “anti-contact” rule and conflicts of interest that may exist between various categories of selling stockholders.

**Panelists:** David I. Albin                      Byron R. Egan  
Wilson Chu                                  Leigh Walton

### 4:45 p.m. Adjourn

## UNABLE TO ATTEND?



**See registration and order form for the audio package and course materials from this program.**

For more information about this National Institute, the ABA, the Section of Business Law, General Practice, Solo & Small Firm Division, or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit [www.abacle.org](http://www.abacle.org).

# National Institute Information

## Registration Fees

To register, or for additional information, call 800.285.2221 or 312.988.5522. Attend the entire program and network with other registrants and faculty and pay...

### Early Bird Rates (Valid through October 12)

- \$975 for the General Public
- \$875 for an ABA Member (\$100 Savings)
- \$800 for an ABA Business Law Section Member (\$175 Savings)
- \$450 for Government Employees

### Standard Rates (After October 12)

- \$1,125 for the General Public
- \$1,005 for an ABA Member (\$120 Savings)
- \$920 for an ABA Business Law Section Member (\$205 Savings)
- \$520 for Government Employees

**Note:** Course materials for ABA-CLE National Institutes will be provided and distributed via flash drive as part of your registration fee. Hard copy course materials are available for purchase for an additional \$50 fee. Please select the option to purchase hard copy course materials when registering for this program.

## Group and Other Discounts

Register three or more people at the same time to receive an additional \$50 reduction on each program tuition. Larger group discounts and special rates for full-time law students, academics and government employees also are available. **For more information, contact Sabrina Harris at 312.988.6342.**

## MCLE

Mandatory Continuing Legal Education (MCLE) accreditation has been requested from all states which require continuing legal education. **12.75** hours of CLE credit including **1.0** hour of ethics credit have been requested from those states recognizing a 60-minute credit hour and **15.30** hours of CLE credit including **1.20** hours of ethics credit have been requested from those states recognizing a 50-minute credit hour.

**For NY-licensed attorneys:** This transitional CLE program has been approved for all NY-licensed attorneys in accordance with the requirements of the New York State CLE Board of New York MCLE (**15.00** total NY transitional MCLE credits including **1.0** hour of ethics credit).

## Scholarships

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors and solo or small firm practitioners. For more information go to [www.abanet.org/cle/scholarship](http://www.abanet.org/cle/scholarship).

## Services for Persons with Disabilities

If special arrangements are required, please contact Dan Becker at 312.988.5140. Reasonable advance notice is requested.

## In-Person Registration

If you plan to register in person, please call the ABA at least 24 hours in advance to confirm that the program is being held as scheduled and that space is available. Cash payments will **not** be accepted.

## Sponsorship Opportunities

For information on sponsorship opportunities, please contact Sabrina Harris at 312.988.6342

## Cancellations

Cancellations received 5 business days or more before the program will receive a 100% refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call the ABA Service Center at 800.285.2221 or fax your request to 312.988.5850. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the program course materials after the program.

## Program Confirmation

Written confirmation of your registration will be sent to you upon receipt. Please take it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

## Hotel Information

Mandarin Oriental  
3752 Las Vegas Blvd. S  
Las Vegas, NV 89109-4312  
P: 702.590.8888, F: 702.590.8880  
Single/Double: \$299  
*Rate valid until 10/12/2010*

All room rates are subject to city occupancy and sales tax. One night's deposit is required for reservation. Unclaimed rooms will be released 21 days before the program, after which the hotel will accept reservations on a space-available basis only. **Mention this ABA meeting to receive the special discounted rate.**

## Airline Information

Discounted fares are available from ABA Orbitz for Business including ABA negotiated discounts on American and United. To book online, go to [www.abanet.org/travel](http://www.abanet.org/travel). Click under the Orbitz for Business logo at the top of the page, and click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1.877.222.4185.

Discounts can also be obtained directly from the carrier. American: Call 800.433.1790, code A1210SS; United: Call 800.521.4041, code 578IG.

## Standing Committee on Continuing Legal Education

Under the guidance of the Standing Committee on Continuing Legal Education, the Center for Continuing Legal Education administers and produces national institutes, videolaw seminars, teleconferences, other technology-based offerings, and written course materials to assist lawyers continuing legal education efforts.

**David W. Hilgers**, Chair, *Brown McCarroll, LLP*, Austin, TX

## ABA Center for Continuing Legal Education

**Jill Eckert McCall**, Director  
**Ben Wilcox**, Deputy Director  
**Dan Becker**, Associate Director

# Registration and Order Form

## To Register and Order:

 **Online: Visit our secure Web site at**  
[www.abanet.org/cle/programs/nba](http://www.abanet.org/cle/programs/nba) (credit card only)

 **Phone: 800.285.2221 or 312.988.5522** (credit card only)

 **Fax: 312.988.5850** (credit card only)

### Must Include:

MasterCard  VISA  American Express

Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Cardholder Signature Required) (No P.O. Boxes Please)

**Or mail form and payment** (with your check payable to the

**American Bar Association** or with VISA, MasterCard, or American

Express information) to:

**American Bar Association**

**Financial Services, Dept. CENONBA**

**P.O. Box 109078**

**Chicago, IL 60654-7598**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: (No P.O. Boxes Please) \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

## The 15th Annual National Institute on Negotiating Business Acquisitions

November 4-5, 2010 ■ Mandarin Oriental ■ Las Vegas, NV

### Tuition

#### Early Bird Rates (Valid through October 12)

- \$975 for the General Public
- \$875 for an ABA Member (\$100 Savings) ABA # \_\_\_\_\_
- \$800 for ABA Business Law Section Member (\$175 Savings) ABA # \_\_\_\_\_
- \$450 for Government Employees

#### Standard Rates (After October 12)

- \$1,125 for the General Public
- \$1,005 for an ABA Member (\$120 Savings) ABA # \_\_\_\_\_
- \$920 for ABA Business Law Section Member (\$205 Savings) ABA # \_\_\_\_\_
- \$520 for Government Employees

Please provide course materials in a printed book (\$50 additional).

### Product Order Form

#### Order below or online at [www.abacatalog.org](http://www.abacatalog.org)

- Send me the **Audio CD-ROM Package, CEN10NBAC** (Audio CD-ROM and course materials) available three weeks following the presentation (General Public \$875; ABA Members \$785; Section Members \$745) Domestic shipping and handling cost is \$12.95.

- Send me the **Course Materials (CEN10NBAB)** for \$175 for General Public, \$155 for ABA Members, \$145 for **Business Law Section**, plus \$12.95 for domestic shipping and handling.

Illinois residents, add 9.25% sales tax; District of Columbia residents, add 5.75% use tax; before including shipping and handling charges. Shipping and handling charges are subject to change without notice.

### ABA MEMBERSHIP

To join the ABA, please visit <http://www.abanet.org/join>

### SECTION MEMBERSHIP (MUST BE AN ABA MEMBER)

- Enroll me in the Business Law Section. Enclosed is a separate check for \$55.
- Enroll me in the General Practice, Solo & Small Firm Division. Enclosed is a separate check for \$45.

# Upcoming ABA Events

## **Securities Fraud**

October 7-8, 2010 • New Orleans, LA  
[www.abanet.org/cle/programs/securitiesfraud](http://www.abanet.org/cle/programs/securitiesfraud)

## **Investment Management Basics**

October 13-15, 2010 • Boston, MA  
[www.abanet.org/cle/programs/imb](http://www.abanet.org/cle/programs/imb)

## **Banking Law Basics**

October 27-29, 2010 • Boston, MA  
[www.abanet.org/cle/programs/bankinglawbasics](http://www.abanet.org/cle/programs/bankinglawbasics)

**For additional information see the  
calendar at [www.abacle.org](http://www.abacle.org)**

American Bar Association  
Center for Continuing Legal Education  
321 N. Clark Street, Suite 1900  
Chicago, Illinois 60654-7598



NONPROFIT  
ORGANIZATION  
U.S. POSTAGE  
**PAID**  
AMERICAN BAR  
ASSOCIATION

**Register Online:**  
[www.abanet.org/cle/programs/nba](http://www.abanet.org/cle/programs/nba)