

# 2011 Mergers and Acquisitions Institute

## October 20-21, 2011 • Ritz-Carlton • Dallas, TX

### Thursday Morning, Oct. 20, 2011

#### Presiding Officer:

**Larry E. Glasgow**, Gardere Wynne Sewell LLP - Dallas, TX

8:00 am	<b>Registration Opens</b>  Includes continental breakfast.
8:50 am	<b>Welcoming Remarks by Institute Co-Chairs</b>  Wilson Chu, K&L Gates LLP, Dallas, TX Larry E. Glasgow, Gardere Wynne Sewell LLP, Dallas TX
9:00 am 0.83 hr	<b>Corporate Dealmakers Roundtable</b>  <p>With large stockpiles of cash, relatively strong stock valuations, and the availability of credit at low rates, U.S. companies are expected to turn to the M&amp;A market for growth, especially in our sputtering global economy. This panel of leading corporate development officers discusses M&amp;A as a corporate development strategy and as a key driver of M&amp;A activity. In addition, the panel addresses the challenges faced by strategic buyers in sourcing opportunities, pricing deals, performing due diligence, and competing with private equity.</p> <p>Moderator:  David Hallett, Lazard Middle Market LLC - Minneapolis, MN  Panelists:  Russell L. Hartz, SAP AG - Newtown Square, PA  Panelists:  Chris Ruggeri, Deloitte Financial Advisory Services LLP - New York, NY  Panelists:  Stenning Schueppert, Total Safety U.S., Inc. - Houston, TX</p>
9:50 am 1.00 hr	<b>That's So 2007! A Look at What's New for the Buyout Boom and the New Normal Financing Terms for Today's Deals</b>  <p>Many deal terms and structures deployed in 2007 buyout transactions have re-emerged in 2011—but not entirely in the same form as we previously witnessed. This panel discusses the state of the debt markets, financing structures, and trends in how private equity firms are consummating deals in today's environment.</p> <p>Moderator:  Hendrik F. Jordaan, Morrison &amp; Foerster LLP - Denver, CO  Panelists:  Nicholas V. Beare, Stephens Inc. - Dallas, TX  Panelists:  Thomas B. Mayrhofer, The Carlyle Group - Washington, DC  Panelists:  Craig A. Menden, Cooley - Palo Alto, CA  Panelists:  Ian Schnider, Fortress Investment Group LLC - Los Angeles, CA</p>
10:50 am	<b>Break</b>

11:10 am 0.75 hr	<p><b>Developments in Public Company M&amp;A</b></p> <p>As the public company deal landscape continues to evolve, a panel of experienced public company M&amp;A practitioners discuss the latest public company deal trends as well as the hot-button issues currently being negotiated in acquisitions of public companies.</p> <p>Moderator: James R. Griffin, Dewey &amp; LeBoeuf LLP - East Palo Alto, CA</p> <p>Panelists: Andrew T. Calder, Simpson Thacher &amp; Bartlett LLP - Houston, TX</p> <p>Panelists: Lou R. Kling, Skadden, Arps, Slate, Meagher &amp; Flom LLP - New York, NY</p> <p>Panelists: Justin Silber, Deloitte Corporate Finance LLC - Atlanta, GA</p>
11:55 am 0.50 hr	<p><b>New Investment Horizons: Agriculture and Water</b></p> <p>A private equity perspective of the global demand themes, investment environment, and challenges and opportunities within the agriculture and water sectors.</p> <p>Brian Minnehan, NGP Global Adaptation Partners, L.P. - Irving, TX</p>
12:25 pm	<b>Break</b>
12:30 pm	<p><b>Networking Luncheon</b></p> <p>Join leading M&amp;A professionals, sponsors, and speakers, including investment bankers, private equity investors, corporate investors, hedge fund managers, and other legal and financial practitioners for a networking luncheon.</p>
1:20 pm	<b>Networking Luncheon Concludes</b>

## Thursday Afternoon, Oct. 20, 2011

### Presiding Officer:

**P. Gregory Hidalgo**, K&L Gates - Dallas, TX

1:30 pm 0.83 hr	<p><b>Getting Directors Ready for the Sale Process</b></p> <p>With U.S. and foreign companies sitting on unprecedented balances of cash, and with billions in private equity capital waiting to be invested, public company merger and acquisition activity has increased and that trend is expected to continue. Companies may deploy cash for strategic acquisitions. Private equity firms are looking at financial acquisitions, which may include financing MBOs or “going private” transactions. Is the board of directors prepared to manage a company-initiated sales process, much less an uninvited offer or external pressure to sell? This panel of public company directors, an investment banker and Delaware counsel discusses what a board of directors needs to know, what questions directors should ask, and what steps the Board must take in order to prepare for and manage a sale process.</p> <p>Moderator: Randall G. Ray, Gardere Wynne Sewell LLP - Dallas, TX</p> <p>Panelists: Raymond C. Hemmig, Buffet Partners, L.P. - Plano, TX</p> <p>Panelists: Rick A. Lacher, Houlihan Lokey - Dallas, TX</p> <p>Panelists: Craig Lentzsch, University of Denver and Dynamex, Inc. - Dallas, TX</p> <p>Panelists: Mark A. Morton, Potter Anderson &amp; Corroon LLP - Wilmington, DE</p>
2:20 pm 1.25 hrs 0.75 hr ethics	<p><b>Contractual Limitations on Seller Liability in M&amp;A Agreements</b></p> <p>The panelists discuss recent case law and perspectives on how to limit contractual and extra-contractual liabilities in mergers and acquisitions and other transactions, with a focus on sources of extra-contractual liabilities, how to protect parties and their affiliates through the auction and negotiating processes and through exclusive remedy and extra-contractual representation waiver provisions, and related ethical issues in the contracting process.</p> <p>Moderator: Byron F. Egan, Jackson Walker L.L.P. - Dallas, TX</p> <p>Panelists: Patricia O. Vella, Morris, Nichols, Arsht &amp; Tunnell LLP - Wilmington, DE</p> <p>Panelists: Glenn D. West, Weil, Gotshal &amp; Manges LLP - Dallas, TX</p>
3:35 pm	<p><b>Break</b></p>
3:55 pm 1.00 hr	<p><b>State-of-the-Art Deal Protection</b></p> <p>The possibility of bidding contests and "topping" bids makes deal protection measures even more critical in today's M&amp;A market. This session covers various types of deal protections, including "no-shop/no-talk" provisions, Board recommendation covenants, break-up fees and stockholder support agreements, and also addresses the fiduciary duties imposed on a target company's directors when they consider these arrangements.</p> <p>Richard E. Climan, Dewey &amp; LeBoeuf LLP - East Palo Alto, CA Keith A. Flaum, Dewey &amp; LeBoeuf LLP - East Palo Alto, CA</p>

4:55 pm 0.83 hr	<p><b>In-House M&amp;A Counsel Roundup</b></p> <p>A panel of in-house M&amp;A attorneys shares strategies and approaches in teaming with outside counsel to plan and execute strategic acquisitions and divestitures.</p> <p>Moderator: Debbie Bartlett, Texas Instruments Incorporated - Dallas, TX</p> <p>Panelists: Jeffrey D. Firestone, United Parcel Service of America, Inc. - Atlanta, GA</p> <p>Panelists: Jennifer L. Kercher, Google Ventures - Mountain View, CA</p> <p>Panelists: Mark E Mouritsen, Dell - Austin, TX</p>
5:45 pm	<p><b>Adjourn to Reception</b></p>

## Friday Morning, Oct. 21, 2011

### Presiding Officer:

**Cookie F. Munson**, Selman Munson & Lerner P.C. - Austin, TX

8:00 am	<p><b>Conference Room Opens</b></p> <p>Continental breakfast included in conference registration fee.</p>
8:30 am 0.83 hr	<p><b>Developments in Distressed Asset Sales and Purchases: Cutting Deals with Senior Lenders and Co-Opting the Sale Process</b></p> <p>In distressed M&amp;A, one of the fundamental acquisition techniques is to buy the senior secured debt of the target and/or the highest ranking debt of the target that is impaired in a bankruptcy. This debt typically eclipses the enterprise value of the target and can be purchased at a discounted price which reflects either a fair price for the target or a bargain price for the target. The panel discusses the finer points of this acquisition technique, often overlooked by "healthy" M&amp;A practitioners.</p> <p>Moderator: Leon V. Komkov, Longroad Asset Management, LLC - Austin, TX</p> <p>Panelists: Rafael M. Anchia, Haynes and Boone, LLP - Dallas, TX</p> <p>Panelists: Keith Williams, McKinsey &amp; Company - Dallas, TX</p>

9:20 am 0.83 hr	<p><b>Private Equity Roundtable</b></p> <p>Private equity funds are competing for deals, although the market has changed dramatically over the past few years. A panel of private equity investors discusses the challenges they face in executing deals and how they work through these issues. The panel also reviews how they differ from strategic investors and how these differences can pose challenges but in other ways help them compete.</p> <p>Moderator: Cliff W. Vrielink, Vinson &amp; Elkins LLP - Houston, TX</p> <p>Panelists: Paul M. De Lisi, The CapStreet Group, LLC - Houston, TX</p> <p>Panelists: Andrew Rosen, HM Capital - Dallas, TX</p> <p>Panelists: Peter Stein, Trinity Hunt Partners - Dallas, TX</p>
10:10 am	<b>Break</b>
10:30 am 0.83 hr	<p><b>Finding the Fault Line: The Role of Investment Bankers in M&amp;A Deals</b></p> <p>Investment banks perform a variety of roles in connection with M&amp;A transactions: they act as a source of market intelligence and ideas for potential transactions; as a transaction broker; as a potential source of financing; and as a financial advisor, which may include providing a fairness opinion. The panel discusses recent decisions of the Delaware Courts which continue to closely scrutinize potential conflicts of interest and disclosure relating to investment banks in M&amp;A transactions.</p> <p>Moderator: Kevin Miller, Alston + Bird LLP - New York, NY</p> <p>Panelists: Hon. Jack B. Jacobs, Supreme Court of Delaware - Wilmington, DE</p> <p>Panelists: Stephen M. Kotran, Sullivan &amp; Cromwell LLP - New York, NY</p>
11:20 am 0.83 hr	<p><b>Say What? A Litigator's Look at Deal Provisions</b></p> <p>Shareholder suits in the wake of a merger announcement have become the rule rather than the exception. This panel discusses how deal provisions are being challenged in litigation and how courts are addressing those claims in Texas, Delaware, and other jurisdictions, with a focus on how M&amp;A attorneys can minimize litigation risk.</p> <p>Moderator: Noelle M. Reed, Skadden, Arps, Slate, Meagher &amp; Flom LLP - Houston, TX</p> <p>Panelists: Hon. Jack B. Jacobs, Supreme Court of Delaware - Wilmington, DE</p> <p>Panelists: William Savitt, Wachtell, Lipton, Rosen &amp; Katz - New York, NY</p>
12:10 pm 0.83 hr 0.25 hr ethics	<p><b>Mock Negotiations of Key Deal Terms</b></p> <p>Highlighting developing issues being negotiated in today's M&amp;A climate, this panel—consisting of seasoned M&amp;A attorneys from across the U.S.—stages an interactive "mock" negotiation to illustrate the "give and take" between the parties in an acquisition of a publicly traded or privately held company.</p> <p>Wilson Chu, K&amp;L Gates LLP - Dallas, TX Richard E. Climan, Dewey &amp; LeBoeuf LLP - East Palo Alto, CA Keith A. Flaum, Dewey &amp; LeBoeuf LLP - East Palo Alto, CA</p>
1:00 pm	<b>Adjourn</b>

**Friday Afternoon, Oct. 21, 2011**

5:00 pm 1.00 hr	<b>Additional Materials</b>
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