

15th Annual Mergers and Acquisitions Institute

Dealmaking Differences Between
Strategic and Private Equity Players:
A Deeper Dive into Processes and Provisions

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Moderator:

- David Rex, Prophet Equity

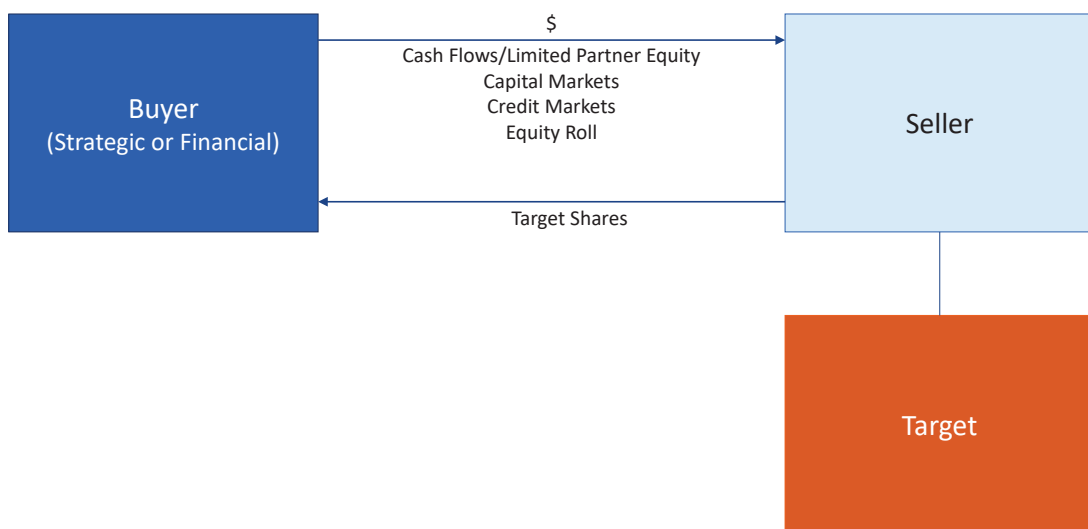
Panelists:

- Dawud Crooms, 7-Eleven, Inc.
- Jeremiah Gordon, CapitalG
- Kirsten J. Jensen, Simpson Thacher & Bartlett LLP
- Sean T. Wheeler, Kirkland & Ellis LLP

Today's Focus

- **Who is the Buyer?**
 - Strategic vs. Financial Buyer
- **Who are the other Parties?**
 - Target/Seller
- **How do the Parties involved affect deal processes and deal terms?**
 - Reps and Warranties and Rep and Warranty Insurance
 - Indemnification
 - Antitrust
 - Termination

Transaction Structure - General



Overview of Differences Between Strategic Buyers and Financial Buyers

| | Strategic Buyer | Financial Buyer |
|-----------------------|--|---|
| General | <ul style="list-style-type: none"> A public or private company often already operating in Target's industry | <ul style="list-style-type: none"> Private equity firms (also known as sponsors) Venture capital firms Hedge funds Family offices High net worth individuals |
| Identity of Buyer | <ul style="list-style-type: none"> Strategic buyers are likely to have a creditworthy entity directly party to purchase agreement. | <ul style="list-style-type: none"> PE buyers often use shelf entity, supported by a limited guarantee to backstop certain of its obligations. |
| Objective | <ul style="list-style-type: none"> Objective for acquiring Target is to improve, change, or expand own operations | <ul style="list-style-type: none"> Objective is to make a minimum rate of return over a fixed period (usually three to seven years) before exiting investment |
| Strategic Rationale | <ul style="list-style-type: none"> May value operational and financial synergies over other concerns because of lower leverage/cost of capital and absence of "exit" requirements | <ul style="list-style-type: none"> Given exit requirements and high leverage, Target must generate financial returns as a stand-alone business (as opposed to generating operational or financial synergies for the Buyer) Bolt-on and buildup strategies that permit realization of synergies are increasingly popular |
| Form of Consideration | <ul style="list-style-type: none"> May use its equity securities (particularly if actively traded) or cash or a combination of both as consideration for acquisitions | <ul style="list-style-type: none"> Uses cash as consideration for acquisitions |

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Overview of Differences Between Strategic Buyers and Financial Buyers

| | Strategic Buyer | Financial Buyer |
|-------------------|--|--|
| Funding | <ul style="list-style-type: none"> Cash flow from operations Capital markets Credit markets | <ul style="list-style-type: none"> Equity from limited partners Credit markets Equity roll |
| Timing | <ul style="list-style-type: none"> Usually takes longer than Financial Buyer to sign up deal <ul style="list-style-type: none"> Active Strategic Buyers have begun to develop deal capabilities similar to Financial Buyers | <ul style="list-style-type: none"> Typically acts faster than Strategic Buyer because of efficiencies in bidding, due diligence and internal approval processes <ul style="list-style-type: none"> Perception that Financial Buyers are more comfortable with taking calculated risks based on more limited information |
| Deal Sourcing | <ul style="list-style-type: none"> Industry knowledge | <ul style="list-style-type: none"> Networks of advisors and businesses |
| Scope of Activity | <ul style="list-style-type: none"> Limited to existing industry unless diversification is sought, which can be risky | <ul style="list-style-type: none"> Opportunity limited only by financial returns and reputational risks |
| Due Diligence | <ul style="list-style-type: none"> Deep knowledge of industry and trends Reliance of internal personnel Focus on high value opportunities and synergies, in addition to financial metrics | <ul style="list-style-type: none"> Limited knowledge of industry Reliance on advisors Focus on financial metrics as a stand-alone enterprise Financial due diligence experts |
| Personnel | <ul style="list-style-type: none"> Often uses own personnel to operate Target | <ul style="list-style-type: none"> Relies on a management team to operate Target (often incumbents) |

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