

University of Texas Annual Technology Law Conference

Recent Developments in Private Company Mergers and Acquisitions

May 2021

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Topics to be Covered

- Best Practices in Due Diligence
- Trends in M&A Deal Insurance
- Introduction to SPACs
- Questions

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Best Practices in Due Diligence

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Best Practices for DD and Other Topics (Buy Side)

- Determine internal priorities early
 - Know the business/financial model
 - Identify key areas of focus for DD review
 - Determine key topics for agreement preparation
 - Set timeframe and assess risk tolerance
- Understand selling environment
 - Other competitive bids
 - Timing of exclusivity provisions
 - Sellers' motivations and requirements
- Negotiate key terms as early as possible
 - Comprehensive letter of intent terms
 - Maximize exclusivity period and timing for DD/agreement drafting

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- Establish categories of DD issues/agreement protections needed
 - Key financial concerns (tax, AR, customer relationships and revenue/billing practices)
 - Key risks (regulatory, litigation)
- Understand and/or guide internal DD process
 - Level of detail for DD review
 - Who will conduct the review (external/internal; which groups)
 - DD end product (formal memo needed for R & W insurance; needs of other stakeholders)
- Get draft disclosure schedules early in process
 - Schedules key to DD review

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Best Practices for DD and Other Topics (Buy Side) (cont.)

- Establish procedures for limiting access to highly confidential materials early in process
 - Address concerns early to avoid information dearth and delay for DD team
- Establish other key processes
 - Escalating and resolving DD issues
 - Addressing DD issues in the acquisition agreement and disclosure schedules

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[2021 Technology Law eConference](#)

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34th Annual Technology Law Conference session

"Mergers and Acquisitions of Private Companies: Recent Developments in Deal Terms and an Overview of SPAC Transaction Structure"