

# **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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## Title search: Recent Developments in Private Company Mergers and Acquisitions

Also available as part of the eCourse

[Mergers and Acquisitions of Private Companies: Recent Developments and Post-Acquisition Integration](#)

First appeared as part of the conference materials for the  
34<sup>th</sup> Annual Technology Law Conference session

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