

University of Texas
44th Annual Corporate Counsel Institute
Houston, Texas

**Putting Together the Deal: Navigating Deal Structure and
Use of Representation and Warranty Insurance**

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Moderator:

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Panelists:

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Topics to be Covered

- Basic M&A Structures
- Principal M&A Agreements
- Corporate Approvals/Fiduciary Duties
- Representation and Warranty Insurance
- Questions

Basic M&A Structures

Basic M&A Structures

- Stock Purchase
- Asset Purchase
- Statutory Merger
- Joint Venture

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Stock Purchase

- **Description**
 - Buyer purchases stock of another company directly from the stockholders
- **Primary Use**
 - Frequently used when target stock is not widely held (*e.g.*, acquisition of closely held company or subsidiary of another company)
- **Advantages**
 - Buyer acquires all of the assets of the target - no need to specifically identify and define all acquired assets necessary to continue operating target business
 - Generally target liabilities isolated in target and do not become buyer liabilities
 - Generally target contracts remain in place without consent of third parties (unless a contract contains a "change of control" provision)
 - May not require target board approval
 - Does not trigger appraisal rights
- **Disadvantages**
 - Buyer indirectly inherits all liabilities of the target (although isolated within target)
 - Must obtain agreement from every selling stockholder
 - No "step up" in tax basis of target assets (unless 338 election made)

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