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SERIES**

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Practical Guide and Forms to Navigate, Negotiate and Draft a Successful M&A Exit Deal



Brand New!

First Comprehensive Resource

**Christopher D. Dillon
and Brett A. Pletcher**

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP

An Important New Addition to the Mergers and Acquisitions Literature:

The First Comprehensive Publication Focusing on the M&A Exit for Emerging Growth Companies.

This volume is intended to provide practical guidance to those involved in an M&A exit transaction in: (i) identifying **solutions** to the relevant **legal issues**, (ii) **executing the transaction** from start to finish and using the **forms** included in this work.

As the editors note, the M&A exit transaction is an important event in the life cycle of a successful emerging growth company and its investors, and often represents an “opportunity for an acquirer to accomplish strategic objectives.” This volume will jump start the analytical process necessary to carry out a successful transaction.

How a Deal Comes Together from Beginning to End

This book is based on the editors’ experience in negotiating, drafting and closing M&A exit transactions. It offers explanations, checklists and transaction-tested forms for the M&A exit and is the first volume to focus exclusively on these important deals.

Closing the Deal: The Right Forms for the Right Result

The annotated forms introduce, explain, and illustrate approaches for dealing with the full range of issues in an M&A transaction. The CD-ROM allows the user to put the forms to work in his/her computer.



At a Glance...Why This Unique Publication is Essential

- *Developed as a working tool to help you navigate and negotiate all aspects of a transaction.*
- *Provides a framework to understand, analyze and deal with the substantive issues and process challenges.*
- *Practical advice on the steps you need to take to close a transaction.*
- *A practical guide to the design and execution of an M&A transaction.*
- *Practice-tested forms and practical resources.*

About the Editors

CHRISTOPHER D. DILLON is based in Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP’s Menlo Park, CA office, where he heads the firm’s Mergers & Acquisitions practice. He currently serves as a member of the Board of Editors of The M&A Lawyer. He represents private and public acquirers and target companies, as well as clients engaged in strategic partnering transactions, spin-offs, leveraged buyouts and other restructurings. Mr. Dillon regularly advises boards of directors on corporate governance matters and also represents the technology and telecom mergers and acquisitions groups of a number of investment banks.

BRETT A. PLETCHER is a senior associate with Gunderson Dettmer. Mr. Pletcher’s practice is focused on providing corporate, securities and transactional services to emerging growth public and private companies and venture capital investors. Mr. Pletcher holds a J.D. from the University of California, Berkeley (Boalt Hall School of Law). He received B.A. degrees in Economics and Political Science from the University of California, Riverside. Prior to attending law school, he worked for several years as a consultant in the Management Consulting Services Group at Price Waterhouse (now PriceWaterhouseCoopers).

Highlights of Chapters

- 1. Introduction...** an *introduction* to the process and how this publication is organized to benefit the user.
- 2. Poised for the M&A Exit...** a *detailed description of a hypothetical successful emerging growth company* poised for a liquidation event including its capital structure, employees and product development. This information provides “real world” context for issues discussed throughout this volume.
- 3. The M&A Exit Transaction Process...** describes the *various documents* that the parties may enter into or prepare early in the transaction, such as a Non-Disclosure Agreement, Exclusivity Agreement, Term Sheet and Letter of Intent, and includes sample forms.
- 4. The Due Diligence Review...** covers a key element of any M&A exit transaction.
- 5. Structuring the M&A Exit Transaction...** provides an analytical framework for addressing the two threshold inquiries in structuring the transaction: *what will acquirer purchase* (i.e., the assets or stock of target) and *what form of consideration* will acquirer use to pay for the purchase (i.e., cash, stock of acquirer or a combination of cash or stock). Tax considerations relevant to this analysis also are reviewed.
- 6. Issuing Acquirer’s Stock as Consideration...** discusses the *securities laws issues* associated with the use of acquirer’s stock as the acquisition currency. Securities laws (and exemptions) can significantly impact the structure and timing of a transaction.
- 7. Employee Matters in an M&A Exit Transaction...** reviews employee matters, including legal issues, arising in connection with retaining and incenting employees of the emerging growth company.
- 8. Intellectual Property Matters...** analyzes the acquisition of *intellectual property rights* belonging to an emerging growth company.
- 9. An Overview of the Merger Agreement...** describes the *definitive merger agreement*, the core of the transaction.
- 10. Ancillary Agreements...** examines *main ancillary agreements* typically entered into in an M&A exit transaction. The accompanying forms provide annotated examples of these agreements.
- 11. Selected Regulatory, Statutory, and Stock Exchange Issues...** review *key elements* of the transaction.
- 12. Closing Mechanics...** offers *practical advice on the logistics of closing* an M&A Exit transaction

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