

The 16th Annual National Institute on

# Negotiating Business Acquisitions

**November  
10-11, 2011**

The Ritz-Carlton,  
South Beach  
Miami Beach, FL



Presented by

**The American Bar Association  
Business Law Section Mergers and  
Acquisitions Committee,  
General Practice,  
Solo & Small Firm Division,  
and the Center for  
Continuing Legal Education**



Register Online at [ambar.org/nba2011](http://ambar.org/nba2011)

# The 16th Annual National Institute on Negotiating Business Acquisitions

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November 10-11, 2011 | The Ritz-Carlton, South Beach Miami Beach, FL

## Program Description

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This two-day National Institute will provide you with an expert perspective on negotiating business acquisitions. Panelists include nationally known mergers & acquisitions attorneys who will discuss all facets of the acquisition process, including techniques used in structuring and negotiating M&A deals; the tax and securities law aspects of business acquisitions; and the impact of recent legal and regulatory developments on M&A transactions.

The program will examine both fundamental and cutting-edge issues, with sessions addressing the following:

- The key business, financial, and legal terms of the acquisition agreement
- Special issues in asset acquisitions
- Tax considerations in M&A transactions
- Acquisitions of public companies and related Delaware and securities law considerations
- An investment banker's perspective on M&A trends
- Recent developments, including the role of private equity buyers
- Ethical issues in M&A transactions

## Interactive Mock Negotiation

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This National Institute includes an extensive mock negotiation that will give you valuable insights on negotiating key representations, warranties, closing conditions and indemnification provisions in an acquisition agreement. Advance preparation is not needed for this program.

## Past Participants Have Said

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"This program featured the best panel and best moderators on the subject of negotiated business acquisitions I have ever heard."

"The mock negotiation of an acquisition agreement was extremely informative—it helped demonstrate the pitfalls to both buyers and sellers in language that is often considered boilerplate."

"Well-organized...valuable materials, excellent speakers."

"The panel of speakers is excellent; they are well-versed from a true practical perspective."

"As a practicing CPA, I learned ways to better help my clients in M&A."

"The 'open' discussion between panelists presenting both sides of the issues . . . went beyond the general aspects of fundamentals."

"The program was absolutely excellent from start to finish... The participants were generous with their perspectives and insights."

"Perhaps the best CLE program I've ever attended...loved the mock negotiation format."

"Great for new associates like myself."

"Great refresher for the experienced, great trainer for young attorneys."

"Excellent, experienced speakers who were engaging and informative – content was right to the point."

"I was impressed by the clarity of discussion and how concisely the information was presented."

"Excellent program. I've been doing transactional work for over 20 years and still learned valuable information on current practice tips and recent trends in private and public deals."

“This is the finest seminar I’ve attended. The back-and-forth exchange during the mock negotiation brought to life the importance of even the most standard contract provisions.”

“This is a great program. It has already saved me a quarter million dollars in a pending transaction.”

“This was a much better program than the competition and better value added.”

“Program was an amazing blend of basics and special situations/practice advice. . . . [L]oved all the speakers! Great group.”

“Best CLE presentation that I have ever attended.”

## Institute Co-Chairs

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**Richard E. Climan**  
*Dewey & LeBoeuf LLP*  
East Palo Alto, CA

**Joel I. Greenberg**  
*Kaye Scholer LLP*  
New York, NY

**Leigh Walton**  
*Bass, Berry & Sims*  
Nashville, TN

## Faculty

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**Jennifer Fonner DiNucci**  
*Cooley LLP*  
Palo Alto, CA

**Eileen Nugent**  
*Skadden, Arps, Slate, Meagher & Flom LLP*  
New York, NY

**Nathaniel L. Doliner**  
*Carlton Fields, P.A.*  
Tampa, FL

**Michael O’Bryan**  
*Morrison & Foerster LLP*  
San Francisco, CA

**Mark J. Gentile**  
*Richards, Layton & Finger*  
Wilmington, DE

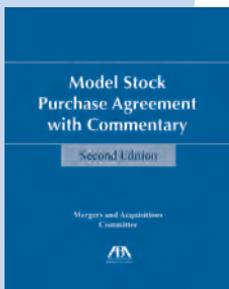
**Julie Silcock**  
*Houlihan Lokey*  
Dallas, TX

**David A. Katz**  
*Wachtell, Lipton, Rosen & Katz*  
New York, NY

**Scott T. Whittaker**  
*Stone Pigman Walther Wittmann LLC*  
New Orleans, LA

## More ABA Titles at ABABooks.org

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### Model Stock Purchase Agreement, 2nd Edition

This new and updated second edition of the bestselling *Model Stock Purchase Agreement with Commentary* is a “must have” for any transactional lawyer. The model agreement, which is based on the hypothetical acquisition by a single corporate buyer of all of the capital stock of a privately-held U.S. company, is designed as a buyer’s first draft. Each provision of the agreement is immediately followed by instructive commentary, which reflects the collaborative efforts of leading experts in drafting and negotiating acquisition agreements. The commentary explains the purpose of each provision, and, where applicable, contains a brief discussion of the law relevant to that provision. It also highlights those areas that may prompt objections by the sellers, and describes the rationale for taking more aggressive, or more tempered, positions during

the negotiations. In many cases, the commentary also sets forth the sellers’ potential response to a provision proposed by the buyer. This edition also includes an extensive collection of helpful exhibits, ancillary documents, and appendices. A CD-ROM with the text of the agreement comes bound with the *Model Stock Purchase Agreement with Commentary*.

**Product Code: 5070636**

**Price: \$229.95**



# Program Agenda

## Day Two ■ Friday ■ November 11th

### 9:00 a.m. Acquiring a Public Company

The panelists will describe how acquisitions of public companies differ from acquisitions of privately-held companies in the context of cash acquisitions as well as “stock-for-stock” transactions. They will discuss both one-step mergers and two-step acquisition structures involving tender offers, and will provide practical insights into compliance with applicable SEC regulations. A portion of the session will be devoted to advising a board of directors in considering the possible sale of a public company. The panelists will also review “deal protection” provisions that may be utilized in the acquisition of a public company, including “no-shop/no-talk” provisions, “break-up” fees, “match” rights, and stockholder support agreements. They will also discuss the impact of recent Delaware decisions on the negotiation of these critical provisions.

**Panelists:** Richard E. Climan  
Mark J. Gentile  
Eileen Nugent

Joel I. Greenberg  
David A. Katz

### 10:15 a.m. Break

### 10:30 a.m. Acquiring a Public Company (cont'd)

### 12:15 p.m. Lunch

### 1:30 p.m. The Changing M&A Landscape: Trends and Recent Developments

This panel will review the current state of play in the M&A arena and will analyze the impact of recent legislative, regulatory, and other developments on the way M&A deals are being structured and negotiated.

**Panelists:** Richard E. Climan  
David A. Katz  
Julie Silcock

Joel I. Greenberg  
Eileen Nugent

### 2:45 p.m. Acquisitions by Private Equity Buyers

After a period of relative inactivity, private equity buyers are once again playing a key role in the M&A marketplace. This session will examine how the transactions in which they participate differ from acquisitions by strategic buyers. The panelists will discuss financing structures (and their implications for deal structure), equity rollovers, “shell” buyers, and the need to accommodate exit strategies in the acquisition process.

**Panelists:** Joel I. Greenberg  
David A. Katz

Mark J. Gentile  
Eileen Nugent

### 3:30 p.m. Break

### 3:45 p.m. Ethical Issues in M&A Transactions

#### Ethics Credit Requested

#### ETHICS

This session will examine some of the challenging ethical issues that can arise in the context of M&A transactions. The panelists will discuss issues relating to truthfulness in negotiations, the so-called “anti-contact” rule, and conflicts of interest that may exist between various categories of selling stockholders. In this context, the panelists will address Rules 1.7, 4.1 and 4.2 of the Model Rules of Professional Conduct.

**Panelists:** Michael O’Bryan  
Nathaniel L. Doliner

Jennifer Fonner DiNucci  
Scott T. Whittaker

### 4:45 p.m. Adjourn

## UNABLE TO ATTEND?



See registration and order form for the audio package and course materials from this program.

For more information about this National Institute, the ABA, the Section of Business Law, General Practice, Solo & Small Firm Division, or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit [www.americanbar.org](http://www.americanbar.org)

# National Institute Information

## Registration Fees

To register, or for additional information, call 800.285.2221 or 312.988.5522. Attend the entire program, network with other registrants and faculty, and pay...

### Early Bird Rates (Through 10/7/2011)

- \$975 for the General Public
- \$875 for an ABA Member (\$100 Savings)
- \$800 for an ABA Business Law Section Member (\$175 Savings)
- \$450 for Government Employees

### Full Tuition (Effective 10/8/2011)

- \$1,125 for the General Public
- \$1,005 for an ABA Member (\$120 Savings)
- \$920 for an ABA Business Law Section Member (\$205 Savings)
- \$520 for Government Employees

**Note:** Course materials for ABA-CLE National Institutes will be provided and distributed via flash drive as part of your registration fee. Hard copy course materials are available for purchase for an additional \$50 fee. Please select the option to purchase hard copy course materials when registering for this program.

## Group and Other Discounts

Register three or more people at the same time to receive an additional \$50 reduction on each program tuition. Larger group discounts and special rates for full-time law students, academics and government employees also are available. **For more information, contact Kyle Gilbert at 312.988.6216.**

## MCLE

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 14.25 CLE credit hours (including 1.0 ethics hours) in 60-minute-hour states, and 17.10 credit hours (including 1.2 ethics hours) in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit [ambar.org/nba2011](http://ambar.org/nba2011).

## Scholarships

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors, and solo or small firm practitioners. For more information go to [www.americanbar.org/groups/cle/scholarship](http://www.americanbar.org/groups/cle/scholarship).

## Services for Persons with Disabilities

If special arrangements are required, please contact Courtney Anderson at 312.988.6210. Reasonable advance notice is requested.

## In-Person Registration

If you plan to register in person, please call the ABA at least 24 hours in advance to confirm that the program is being held as scheduled and that space is available. Cash payments will **not** be accepted.

## Sponsorship Opportunities

For information on sponsorship opportunities, please contact Courtney Anderson at 312.988.6210

## Cancellations

Cancellations received 5 business days or more before the program will receive a 100% refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call the ABA Service Center at 800.285.2221 or fax your request to 312.988.5850. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the course materials after the program.

## Program Confirmation

Confirmation of your registration will be sent to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at 800.285.2221 at least 24 hours in advance to confirm that your registration was received and that the program is being held as scheduled.

## Hotel Information

The Ritz-Carlton, South Beach  
One Lincoln Road  
Miami Beach, FL 33139  
P: 786-276-4000/800-228-9290  
F: 786-276-4100  
Single/Double: \$289  
*Rate valid until 10/19/2011*

All room rates are subject to city occupancy and sales tax. One night's deposit is required for reservation. Unclaimed rooms will be released October 19, 2011, after which the hotel will accept reservations on a space-available basis only. **Mention this ABA meeting to receive the special discounted rate.**

## Airline Information

Discounted fares are available from ABA Orbitz for Business including ABA negotiated discounts on American and United. To book online, go to [americanbar.org/travel](http://americanbar.org/travel), click under the Orbitz for Business logo at the top of the page; then click on the appropriate link in the Travel Paid by Staff box. For assistance with online or offline reservations, call toll free 1.877.222.4185.

Discounts can also be obtained directly from the carrier. American Airlines: Call 800.433.1790, code A1911SS; United Airlines: Call 800.521.4041, code 578IG.

## Standing Committee on Continuing Legal Education

Under the guidance of the Standing Committee on Continuing Legal Education, the Center for Continuing Legal Education administers and produces National Institutes, videolaw seminars, teleconferences, other technology-based offerings, and written course materials to assist lawyers continuing legal education efforts.

**David W. Hilgers**, Chair, *Brown McCarroll, LLP*, Austin, TX

## ABA Center for Continuing Legal Education

**Jill Eckert McCall**, Director  
**Yolanda Muhammad**, Associate Director

# Registration and Order Form

## To Register and Order:

 **Online: Visit our secure web site at [ambar.org/nba2011](http://ambar.org/nba2011)**  
*(credit card only)*

 **Phone: 800.285.2221 or 312.988.5522** *(credit card only)*

 **Fax: 312.988.5850** *(credit card only)*

### Must Include:

MasterCard  VISA  American Express

Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Cardholder Signature Required) (No P.O. Boxes Please)

**Or mail form and payment** (with your check payable to the

**American Bar Association** or with VISA, MasterCard, or American

Express information) to:

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**Financial Services, Dept. CEN1NBA**

**P.O. Box 109078**

**Chicago, IL 60654-7598**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: *(No P.O. Boxes Please)* \_\_\_\_\_

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Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

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- \$520 for Government Employees
- Please provide course materials in a printed book (\$50 additional).

### Product Order Form

#### Order below or online at [www.abacatalog.org](http://www.abacatalog.org)

- Send me the **Audio CD-ROM Package, CEN11NBACDR** (Audio CD-ROM and course materials) available approximately three weeks following the presentation (General Public **\$875**; ABA Members **\$775**; Section Members **\$700**). Domestic shipping and handling cost is \$12.95
  - Send me the **Course Materials (CEN11NBACOR)** for \$225 for General Public, \$205 for ABA Members, **\$195 for Business Law Section Members**, plus \$12.95 for domestic shipping and handling.
- Illinois residents add 9.75% sales tax; District of Columbia residents add 6% use tax before including domestic shipping and handling charges. Price is subject to change after 11/14/2011.

### ABA MEMBERSHIP

To join the ABA, please visit <http://www.abanet.org/join>

### SECTION MEMBERSHIP (MUST BE AN ABA MEMBER)

- Enroll me in the Business Law Section. Enclosed is a separate check for \$55.
- Enroll me in the General Practice, Solo & Small Firm Division. Enclosed is a separate check for \$45.

# Upcoming ABA Events

**Sixth Annual National Institute on  
Securities Fraud**  
November 3-4, 2011 | New Orleans, LA  
[ambar.org/sifr2011](http://ambar.org/sifr2011)

**Gaming Law Minefield 2012**  
February 23-24, 2012 | Las Vegas, NV  
[ambar.org/glm2012](http://ambar.org/glm2012)

**26<sup>th</sup> Annual National Institute on  
White Collar Crime**  
February 29 – March 2, 2012 | Miami Beach, FL  
[ambar.org/wcc2012](http://ambar.org/wcc2012)



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Center for Continuing Legal Education  
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