
Book Review: NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS, by Lou R. Kling and Eileen T. Nugent

Reviewed by Stuart M. Vogt • Wood & Porter • San Francisco

Lou R. Kling and Eileen T. Nugent, partners at Skadden, Arps, Slate, Meagher & Flom in New York, have issued yet another update to their NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS practice guide book. While the title of this practice guide book may seem focused on one particular area of corporate transactions, do not be put off by the title. This two-volume loose-leaf set covers most kinds of corporate transactions that a practitioner is likely to face.

The authors' purpose of this book is to provide lawyers with a broad overview of mergers and acquisitions and to provide insightful guidance on dealing with every topic critical to successful transaction execution. It does the sorts of things you want. Most significantly, it goes through the structure of a purchase agreement, comments on all of the clauses and explains the regulatory and tax issues. It is plainly written, updated often and has chapters dedicated to leveraged buyouts and spin-offs.

Practice Driven

In this guide book, a practitioner can learn many of the “shop secrets” behind negotiating corporate transactions. This is an excellent resource that brings you an analysis of the relevant law with a healthy dose of practical insights—*i.e.*, how to structure deals, negotiate agreements, analyze issues and solve the real problems that are likely to arise. Veterans of numerous corporate transactions, the authors provide expert practical advice, from the planning stages to post-closing.

NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS is divided into four parts:

1. Planning the corporate transaction and structuring the deal
2. General provisions of the acquisition agreement
3. Special provisions of the acquisition agreement
4. Special topics, such as leveraged buyouts and troubled companies

Each part is further subdivided into more detailed topics.

You will find everything from basic corporate, tax and accounting considerations to detailed analysis of representations, warranties, covenants and closing conditions. Novices as well as experienced practitioners will benefit from the book's discussion of mergers of equals, cash election mergers, fairness opinions and special committees of disinterested directors. You will also learn about the latest developments, including techniques for handling economic uncertainty and stock market instability. The guidance and the tools found in this two-volume reference create a framework for considering every detail of a transaction.

It's All in the Updates

The authors update their guide book regularly by issuing loose-leaf updates for the reader to replace with pages in the book. In the most recent update, Release #24, the authors focus on special due diligence issues relating to intellectual property and include a detailed checklist of intellectual property considerations. Intellectual property issues have become increasingly important, as the value of IP assets have become a more central

focus of many acquisitions. Today, technology and other propriety rights are often critical to a buyer's ability to continue to operate a business and maintain a competitive position post-acquisition. A thorough due diligence review of intellectual property assets has become a critical element in the corporation transaction world. Kling and Nugent do an admirable job of covering this important topic.

Release #24 also addresses a number of important intellectual property licensing issues (as they relate to corporate transactions):

- Issues that arise when a reverse subsidiary merger results in the licensee violating an anti-assignment clause when it becomes a wholly owned subsidiary of the licensor's competitor
- The transfer of intellectual property licenses
- The seller's representations and warranties with respect to the existence, scope and status of its intellectual property

This book is recommended for any professional that will be involved in any type of corporate transaction. The authors' expertise is diverse and their guide book is thorough and helpful, going far beyond the kind of issue-spotting on which many books rest. This book is available for \$395 from Law Journal Press (www.lawcatalog.com or (800) 603-6571).