



The Thomson Reuters Legal Executive Institute & The Daily Journal

*present*

## The 6<sup>th</sup> Annual Western M&A Forum

October 22, 2015

The Palace Hotel  
2 New Montgomery Street  
San Francisco, CA 94105

Co-Chairs:

**David W. Healy**, *Partner & Co-Chair, Mergers & Acquisitions Group*, Fenwick & West LLP  
**Gregory Wolski**, *Partner, Fraud Investigation & Dispute Services*, Ernst & Young LLP

Agenda (all times local)

**8:00am – 8:55am**

**Registration & Breakfast**

**8:55am – 9:00am**

**Opening Remarks**

**9:00am - 10:00am**

**2015 Tech M&A Trends and 2016 Outlook**

Even though global M&A was up 27% YoY in 2014, 2015 M&A activity is already up substantially over 2014 levels. This panel will address leading factors driving the current M&A market, including rising CEO confidence (as to both the global economy and the predictability of corporate earnings), market receptivity to synergistic acquisitions, availability of funds, cross-border activity (and increase in foreign buyers), relatively stable valuations, stockholder activism, competitive factors, industry consolidation, emergence of well capitalized private companies as serial acquirers and the need for innovative investment to fuel growth. We will also discuss M&A pressures resulting from increasing competition for assets related to smart mobility, cloud computing, social networking, big data analytics and semiconductor technologies.

Moderator:

**Craig Menden**, *Partner*, Cooley LLP

Panelists:

**Liana Baker**, *M&A Correspondent*, Reuters News

**Brenon Daly**, *Research Director, M&A*, 451 Research

**Jim Reinhart**, *Managing Director, US Technology*, Ernst & Young Capital Advisors, LLC

**Colin Ryan**, *Managing Director*, Goldman, Sachs & Co.

**Michael Wyatt**, *Managing Director*, Morgan Stanley

**10:00am – 10:15am**      **Break**

**10:15am – 11:15am**      **Transformational Deal Activity in China**

Despite recent market volatility, China's growth continues to spur substantial deal activity, from going-private deals with arbitrage potential *vis-à-vis* US/China capital markets valuation differentials, acquisitions funded by China IPO proceeds or government financial assistance, China joint ventures as a funding mechanism for private U.S. companies, and other partnerships with Chinese companies (especially those affiliated with state owned enterprises (SOEs) to gain better access to the China domestic market). According to one report, M&A activity in China, both in value and number of transactions, surged by 55% last year. China has the world's fastest-growing market for semiconductors, which is sure to inspire further consolidation. The Chinese government has introduced measures to encourage outbound acquisitions by Chinese companies, particularly targeting companies with intellectual property assets. Many Silicon Valley companies are investing in China's tech sector to preserve access to the country's vast markets. This discussion offers an interesting look at a new driver of M&A and JV activity.

Moderator:

**Gordon K. Davidson**, *Partner*, Fenwick & West LLP

Panelists:

**Kate Merrill**, *Associate General Counsel, Mergers & Acquisitions*, Intel Corporation

**Rishi Varma**, *Senior Vice President, Deputy General Counsel – Corporate Securities and M&A*, Hewlett-Packard Company

**Jackie Yang**, *Co-Founder & Managing Director*, TransLink Capital

**Linda Zhou**, *Partner*, K&L Gates LLP

**11:15am – 11:30am**      **Break**

**11:30am – 12:30pm**      **The Evolving Face of Risk: Navigating Data Security and Identifying Cyber Liabilities as Part of the M&A Process**

As noted above, CEO confidence remains strong and has helped propel the mid-market M&A environment to new heights since 2008. A vibrant wave of start-ups entering the market has complimented the diverse economic conditions fueling strong interest in cross-border deals. But along with opportunity comes an elevated amount of risk, including risk surrounding the volatile currency and commodity markets, increased global and regional political instability and, especially given many targets' heavy reliance on technology and digital assets and their customer-facing business models, the escalating specter of liability from ineffective cybersecurity practices.

Cybersecurity has emerged as a core business issue that must be managed as part of the deal making process. Risks include damage to IT infrastructure, business continuity impacts, theft of employee and customer data and trade secrets, financial fraud and reputational damage. This critical conversation takes a deep dive into some of the most difficult challenges facing dealmakers today:

- How to protect critical data and intelligence through proven cybersecurity measures;
- Key tips for conducting diligence on cyber security and privacy issues;
- Understanding key considerations in seller cyber liability;
- Structuring considerations, cultural considerations and corruption concerns for cross borders deals; and
- Use of cyber-insurance and other measures to manage risk.

Moderator:

**Gregory Wolski**, *Partner, Fraud Investigation & Dispute Services*, Ernst & Young LLP

Panelists:

**Mark Egan**, *Partner*, The StrataFusion Group

**Lauri Floresca**, *Senior Vice President & Partner; Co-Chair, Cyber Liability Team*, Woodruff-Sawyer & Co.

**Christine E. Lyon**, *Partner*, Morrison & Foerster LLP

**Tyler G. Newby**, *Partner*, Fenwick & West LLP

**12:30pm – 1:30pm**

**Luncheon**

**1:30pm – 2:30pm**

**Dispositions and Divestitures – Unique Issues**

In part driven by activist investors and capital market premiums for “pure play” companies focused on their core competencies, public companies are increasingly evaluating their business activities to determine optimum allocation of capital. Increasingly, this is resulting in divestitures to optimize asset portfolios, with both strategic and financial investors among the buyers. We will evaluate these trends and the unique legal and business issues raised by divestitures, including:

- Identification and separation of assets and liabilities;
- Assignment, licensing and license backs of necessary intellectual property and related exclusivity and non-compete issues;
- Transition services agreements and related scope, term, pricing and liability issues;
- Dealing with lack of standalone or audited financials;
- Deal specific representation, warranty and indemnity considerations
- Employee and employee benefits issues; and
- Issues associated with divestitures involving management buy-outs.

Moderator:

**David W. Healy**, *Partner & Co-Chair, Mergers & Acquisitions Group*, Fenwick & West LLP

Panelists:

**Jack D. Capers, Jr.**, *Partner*, King & Spalding LLP

**Gregory King**, *Senior Vice President, Legal*, Symantec Corporation

**Sergio Letelier**, *Vice President & Associate General Counsel, Corporate Securities and Mergers & Acquisitions*, Hewlett-Packard Company

**Ann Mao**, *Senior Vice President, M&A*, McKesson Corporation

**Mark A Schmidt**, *Partner, Transaction Advisory Services*, Ernst & Young LLP

**2:30pm – 2:45pm**

**Break**

**2:45pm – 4:15pm**

**Private Company Acquisitions**

Acquisitions of private companies typically involve negotiated valuations, tension between the buyer and the target’s VC over remedies (and sometimes value re-allocation to ensure retention), deal certainty terms, and diligence issues and risks that

are far more material relative to the target valuation. This conversation highlights a number of potential roadblocks commonly encountered throughout the acquisition process. A sample of topics to be covered includes:

- Approaching Indemnification – What are best practices during the negotiation process? How do you assess and mitigate inherent risk?
- Employees & Retention – What considerations exist for stemming employee attrition? What are critical considerations when drafting restrictive covenants for key employees?
- The Importance of Being Earned Out– Why do buyers and sellers like or dislike earnouts? What is the best way to structure an earnout? What are the advantages and disadvantages of earnout alternatives? What is an appropriate response for handling disputes around provisions? Are there unintended consequences to keep in mind?

Moderator:

**Matthew R. Stewart**, *Partner*, King & Spalding LLP

Panelists:

**John-Paul Bogden**, *Partner*, Blake, Cassels & Graydon LLP

**Alan F. Denenberg**, *Partner*, Davis Polk & Wardwell LLP

**Michael S. Dorf**, *Partner*, Shearman & Sterling LLP

**Sean Edgett**, *Senior Director, Legal*, Twitter, Inc.

**Kiki Haar**, *Senior Vice President & General Counsel*, Informatica Corporation

**4:15pm – 5:15pm**

**Networking Reception**