



M&A Fundamentals and Trends

July 23, 2019

Presented by:



CAPPELLO
GLOBAL, LLC
INVESTMENT BANKERS

and



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The investment banking professionals of Cappello Global, LLC and the attorneys of Winstead PC are pleased to be invited to speak with the Charlotte Chapter of the Association of Corporate Counsel

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I. Scope of discussion

Scope of Discussion

We appreciate the opportunity to meet with you to discuss M&A fundamentals and trends. In the course of our interactive discussion today, we would like to address the following topics:

Market overview

- U.S. public markets – current and historical perspective
- U.S. capital markets – leverage and private equity trends
- U.S. M&A markets – M&A volume and valuations

Transaction alternatives

- Transaction alternatives – from acquisition through recap and sale
- Transaction alternatives – pros and cons
- Benefits of a partial recapitalization

Pre-transaction preparation

- Understanding owner/company goals and objectives
- Pre-transaction considerations
- Preparing for a competitive transaction process

Transaction considerations

- Transaction process – key steps and timing
- Transaction types and the importance of the LOI
- Key transaction terms

II. Market overview

U.S. Public Stock Market Performance

- The current bull market has lasted 122 months, making it the **longest running bull market in U.S. history**
 - The Wilshire 5000⁽¹⁾ total market index, a broad measure of the U.S. stock market, was recently at a record high of 30,882 compared to the last peak of 15,745 in 2007
- Following the end of the past two bull markets, the Wilshire 5000 index value **dropped 50%** from 2000 to 2002 **and 57%** from 2007 to 2009
 - M&A and financing transaction volumes dropped much deeper and faster
- The Q4 2018 correction in the market, while steep (Wilshire 5000 was down 21%), fell well short of a bull market crash
 - The market has recovered significantly since, with the **Wilshire 5000 index up 28%** from December 2018

Wilshire 5000 Total Market Index Value – 1990 to Present⁽¹⁾



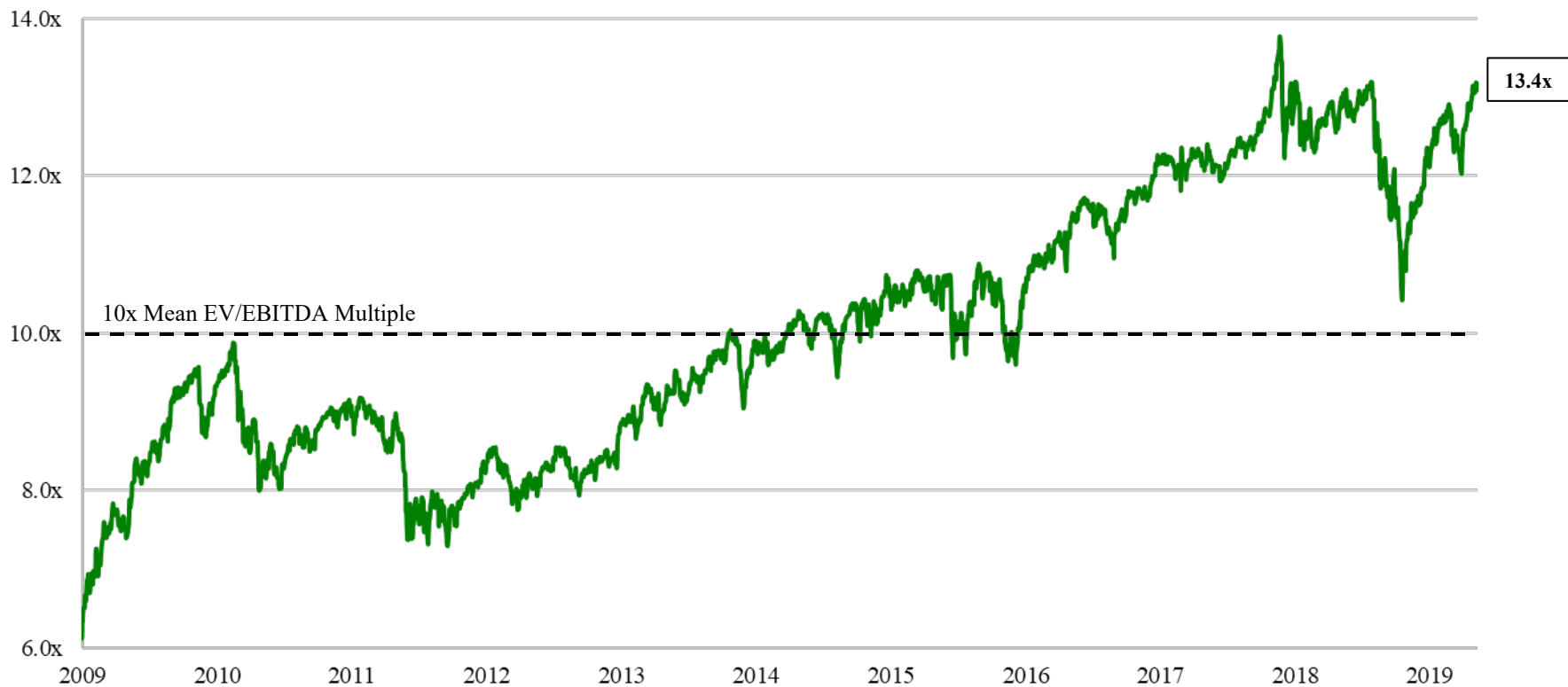
Source: S&P Capital IQ

1) Wilshire 5000 Total Market Index data as of July 17, 2019.

U.S. Public Company Valuation Trends

- S&P 500 companies have enjoyed significant valuation appreciation during the current bull market
 - **EBITDA multiples have more than doubled** from approximately 6.0x in 2009 to 13.4x in 2019, and remain significantly higher than the long-term average

S&P 500 Historical EV/EBITDA Multiple⁽¹⁾

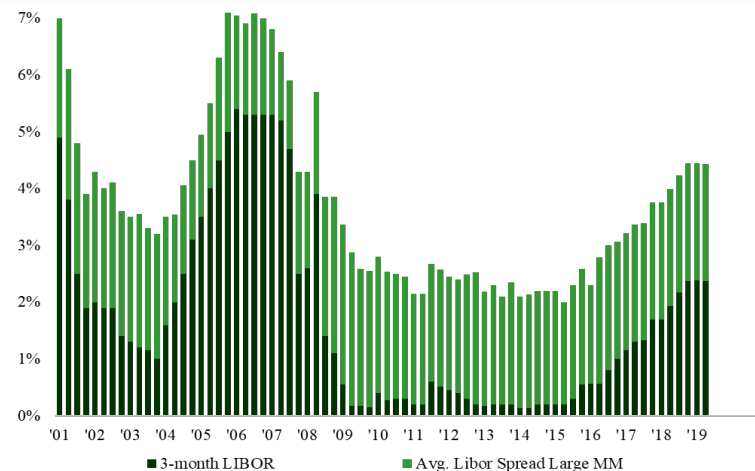


Source: S&P Capital IQ.
 (1) Data as of July 17, 2019.

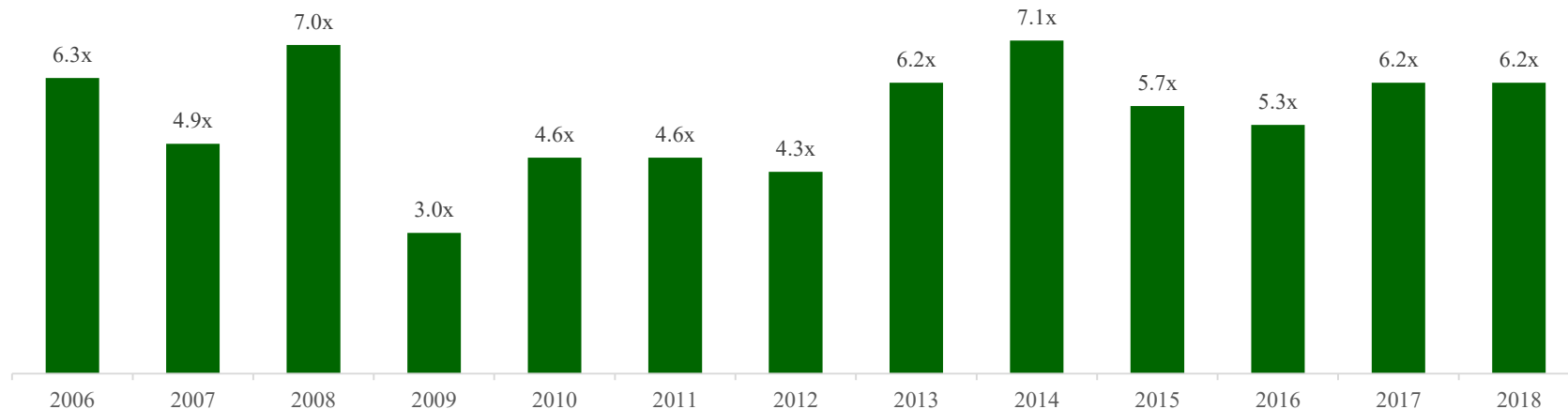
Historically Cheap and Accessible Leverage

- **Unprecedented access to leverage** and record levels of cash on corporate balance sheets and institutional investor/lender dry powder has flooded the public and private capital markets with cash – driving record M&A and financing transaction volumes/valuations
- **Cheap debt and high leverage multiples** are allowing financial investors, like PE funds, to compete aggressively on valuation with strategic investors
- **Borrowing costs are well below historical averages**, even after Fed rate increases in recent years – and are set to drop further as the Fed nears cutting rates

Middle Market Leveraged Loan Costs⁽¹⁾



Historical U.S. Middle Market M&A Debt/EBITDA Multiples (2006 – 2018) ⁽²⁾



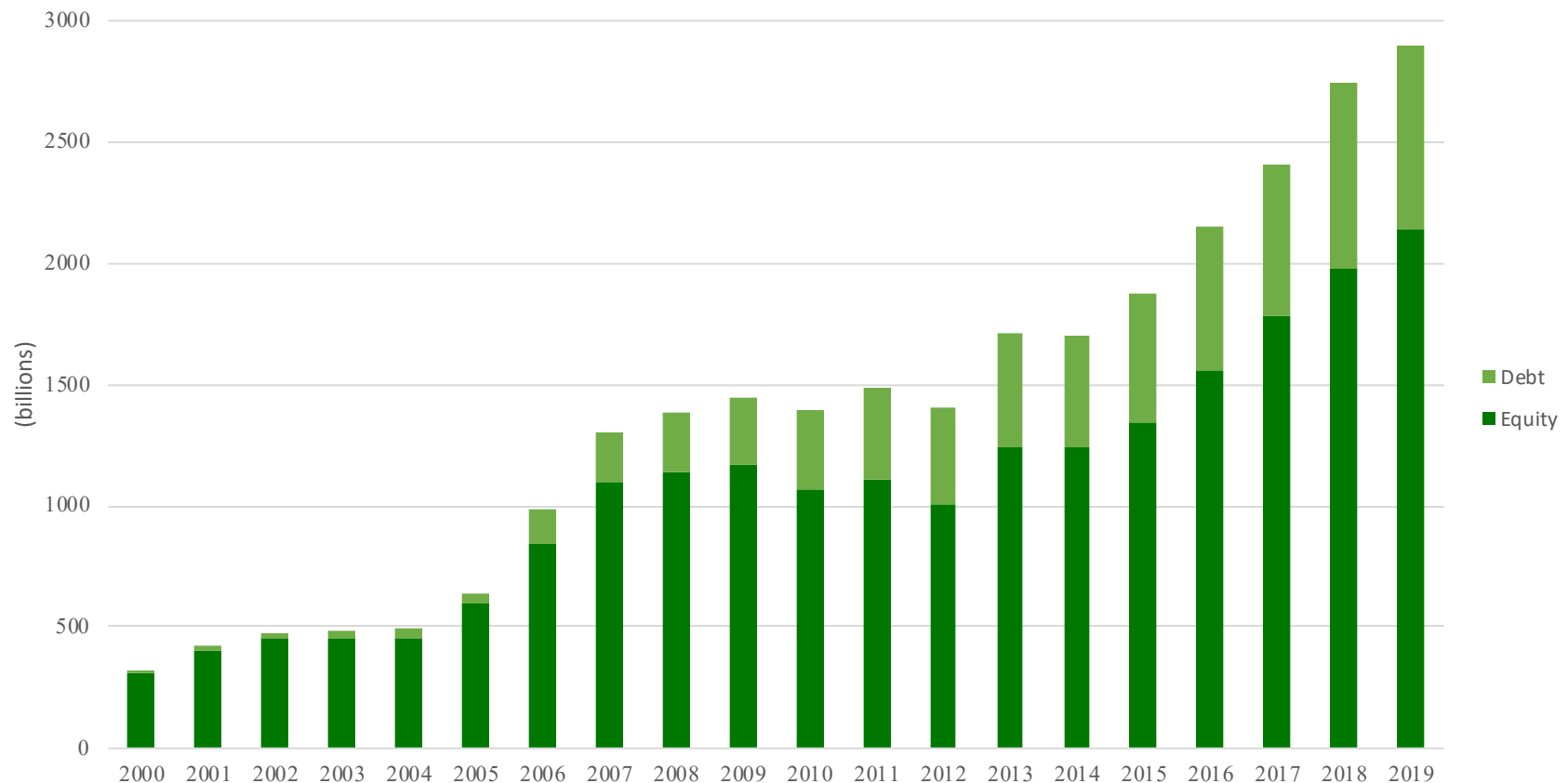
1) Source: S&P LCD

2) Source: PitchBook U.S. PE Middle Market Report 2018; includes LBO deals of companies with less than \$50 million of EBITDA

Record Liquidity in Private Capital Markets

- Private equity assets under management **have increased seven-fold over the last 20 years** and more than doubled since 2012 to over \$2.1 trillion in 2019 – with well over \$1 trillion in dry powder
- Private debt assets under management have **surged to nearly \$800 billion** in 2019

Global Private Equity & Debt Assets Under Management (AUM)

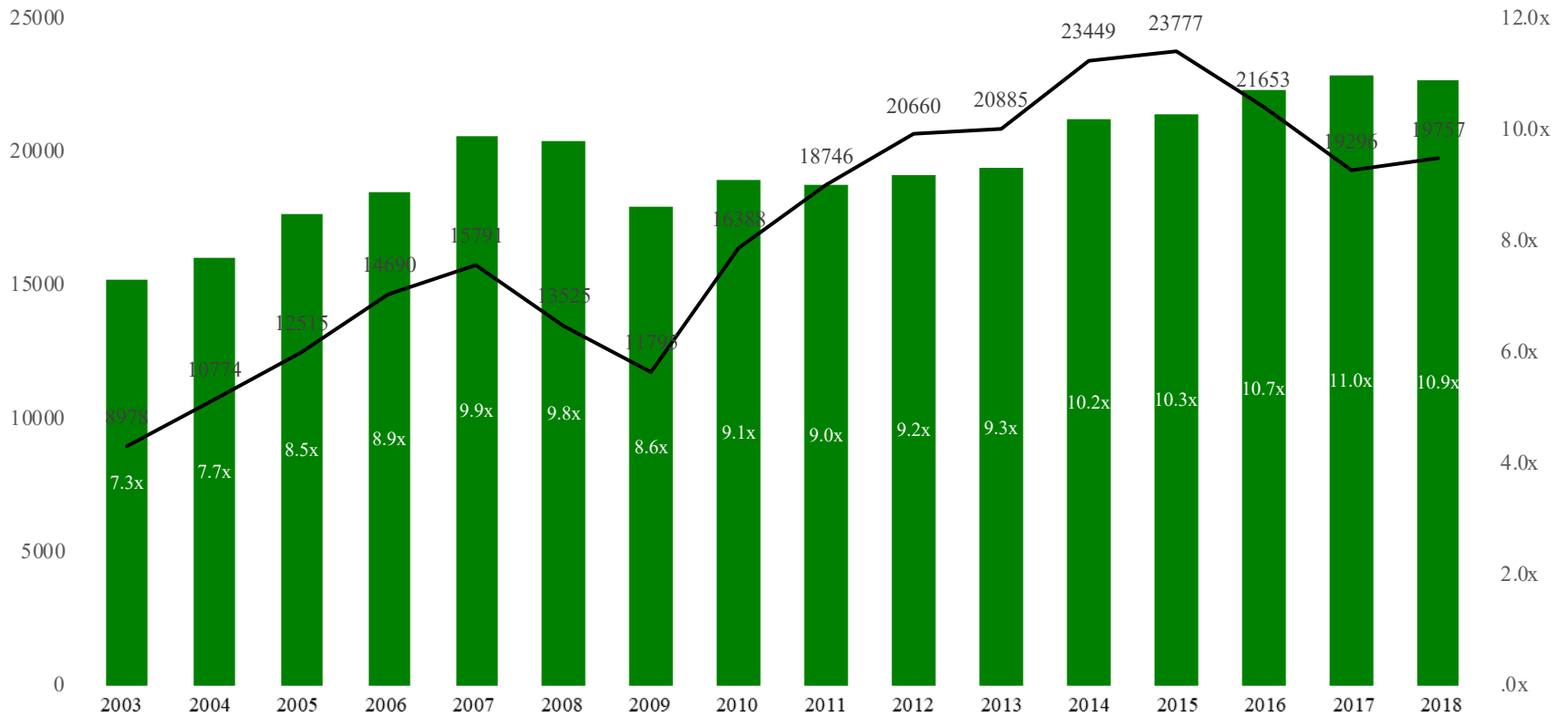


Source: Preqin, April 2019.

U.S. M&A Volume and Valuations are Robust

- **Heavy competition among buyers and investors** for assets and record levels of available debt and equity, has driven strong transaction volume and boosted asset prices
- The average valuation multiple paid in leveraged buyouts in the U.S. has hovered **near record levels at 11x EBITDA** in recent years, well above the peak levels leading up to the global financial crisis

Transaction Volume and Average Multiple Paid in U.S. Leveraged Buyouts



Source: S&P Global Market Intelligence, Bain & Company, February 2019.

III. Transaction alternatives

Overview of Transaction Alternatives

- Most healthy and established companies have the benefit of **multiple financing and strategic alternatives**
 - Viable options include acquisitions, a debt recapitalization, minority or majority equity recapitalization, or a sale
- Execution strategy should be tailored to each company's **unique goals and objectives**
 - A carefully planned series of transactions often deliver the best result

Acquisition	Debt Recapitalization	Equity Recapitalization	Sale of Company
<i>Growth through acquisition</i>	<i>Institutional loan secured solely by Company assets and cash flows, with proceeds available for growth initiatives and/or distributions</i>	<i>Sale of an equity stake in the Company, possibly with a debt financing, with proceeds available for growth initiatives and/or distributions</i>	<i>Full exit of ownership through the sale of the entire Company to a financial or strategic investor</i>
<ul style="list-style-type: none"> ✓ Buy proven products, services or solutions rather than risk building them ✓ Grow market share faster than organically possible ✓ Acquire valuable assets, talent, IP, etc. ✓ Eliminate competitors ✓ Enhance margins ✗ Costs in cash or equity ✗ Multiple integration risks 	<ul style="list-style-type: none"> ✓ Little or no dilution of equity interests ✓ Generate partial liquidity ✓ Non-recourse to partners ✓ Ability to refinance/pre-pay ✓ Fund internal/external growth ✗ Debt service costs ✗ Future principal repayment 	<ul style="list-style-type: none"> ✓ Bring in value-added equity partner ✓ Generate significant liquidity, while retaining a meaningful equity stake ✓ Strengthen balance sheet ✓ Fund internal/external growth ✗ Debt service costs ✗ Partial equity dilution ✗ Possible loss of control 	<ul style="list-style-type: none"> ✓ Access to partner's strategic resources and client base ✓ Generate full liquidity ✓ Possible all cash deal ✗ Limited future upside ✗ Loss of control of business ✗ Full tax hit upfront ✗ Loss of access to high yielding investment in Company

Benefits of a Partial Recapitalization Transaction

Diversification of Net Worth / Risk Reduction

- Unlocks future equity value in business
- Provides liquidity to diversify shareholder/partner net worth
- Leverages current bull market to provide liquidity ahead of downturn

Tax Optimization

- Tax treatment allows partners to keep more of the cash proceeds realized upon sale
- Capital returned through a transaction is usually taxed at a much lower rate than ordinary income
- Transaction proceeds generally taxed at 23.8% versus the current highest income tax bracket of 37.0%⁽¹⁾

Leveraging Robust Capital Markets

- Current equity and debt markets offer unprecedented access to capital at premium valuations and terms
- Strong public equity markets and large cash balances seeking investments are driving record M&A activity
- Wide availability of debt financing offering highly competitive terms, light covenants and low interest rates

Long-Term Value of an Institutional Partner

- The right strategic or financial investor can provide significant value in growing a business
- Ideas for operational improvement, access to new customers, revenue streams, acquisition targets, etc.
- Strategic partners can provide capital to fund future initiatives, like acquisitions and growth investments

¹⁾ Representative example and not intended to be construed as tax advice. Please consult your tax advisor for tax advice.

IV. Pre-transaction preparation

Understanding Transaction Goals and Objectives

Assessing Company/Owner Goals in a Transaction

■ **Motivations of Buyer and Seller:**

- What do the buyer and seller hope to get out of this?
 - For a buyer – depends on the type of buyer (Strategic vs. Financial)
 - For a seller – typically some form of liquidity sought, though market expansion and speed of growth can factors
- What are each party's primary concerns?
 - For a buyer – clear transition of title to key assets (e.g., IP), buyer-seller synergies, customer, contract and employee retention
 - For a seller – certainty and speed of closing (and payment of purchase price), limiting post-closing indemnity
- When does each party want to do this?
 - For a buyer – upcoming conference / earnings call as forum for deal announcement
 - For a seller – timing of payment (e.g., this vs. next tax year)
- What is the proposed process for getting to a signed deal?
 - What approvals are necessary (stockholder, board)?
 - Multi-party process (e.g., auction) vs. bilateral negotiation?

Legal and Employment Pre-Transaction Considerations

- **Pre-Transaction Corporate Structuring**
 - Tax efficiency
 - Cap table maintenance and clean-up
- **Effective Contract Management**
 - Make sure contracts have been documented and appropriately updated
 - Limit bespoke customer contracts
 - Confirm contract assignability; limit third party consent rights in connection with a change of control
 - VDR readiness/familiarity with standard form of Buyer diligence request list
- **Employee Retention Incentives**
 - Equity and equity-like grants
 - Change-in-control bonuses
- **Employment and Contractor Matters**
 - Employee vs. contractor characterization and tax implications
 - Proprietary information, non-compete/solicit and invention assignment agreements
- **Executive team and succession planning**
 - Is the senior management team complete? What is the succession plan?

Financial Pre-Transaction Considerations

■ Financial Performance

- Whenever possible, work to ensure a lookback period of two to three years with strong growth and improving margins
- Identify and track extraordinary expenses to provide visibility to adjusted EBITDA

■ Financial Preparedness

- Working capital clean-up
 - Attention to collections hygiene (i.e., don't pay too early, or wait too long to collect A/R)
 - Failure to get working capital on track well in advance will result in a much higher working capital target, causing seller to leave significant funds on the table

■ Write-offs

- Address as far in advance as possible, ensure operating protocols are revised to eliminate/reduce potential future write-offs

■ Financial Reporting

- Audited or at least reviewed financial statements – importance of GAAP accounting
- Ability to close books monthly and generate clean financials in a matter of weeks
- Be in a position to provide a seller/issuer commissioned third-party QOE during transaction process

Other Pre-Transaction Considerations

- **Sales Tracking and Concentration**
 - Identify and address customer and customer-relationship (e.g. founder-driven sales) concentrations
 - Develop sales and pipeline tracking (the earlier the better; leads to more reliable projections)
- **Supply chain concentration/risks**
 - Identify and find alternatives to sole source suppliers, bring critical development or service resources in-house
- **Related-Party Transactions**
 - Identify related-party transactions and consider moving non-core assets under separate ownership (e.g real estate)
 - Confirm contract assignability; limit third party consent rights in connection with a change of control
- **Benefits of Target Making its Own Acquisitions Prior to a Liquidity Event**
 - Familiarizes with process and develops associated target discipline
 - Establishes target as a proven platform for acquisitions

Benefits of Running a Competitive Auction Process

Competition keeps prospective targets, investors and buyers (“Counterparties”) honest, ensures optimal terms and increases the likelihood of a successful closing

- **A formal transaction process creates competitive tension**
 - A well-managed process is discrete, efficient and effective
 - A carefully targeted group of Counterparties should be considered
 - It is important to note that certain Counterparties may be unavailable to participate in a process, or may not be willing or able to pay, thus making it critical to diversify the pool of potential partners
- **Progressive dissemination of information drives deal momentum**
 - Distributing information methodically to Counterparties and tracking their responses allows you to assess their relative level of interest, which can then be used to qualify proposals
 - Identifying and eliminating poorly qualified Counterparties early in the process allows for greater focus on the most likely partners
- **A disciplined process with clear milestones delivers competitive terms**
 - Requiring Counterparty responses and actions at certain stages in the process ensures that all are advanced in parallel and reinforces the competitive nature of the process
 - Advancing multiple qualified Counterparties provides critical negotiating leverage later in the deal
- **A properly run process with highly qualified Counterparties produces multiple bids**
 - A diversified field of well-educated and qualified bidders provides the leverage needed to negotiate meaningful improvements in valuation and terms
 - The existence of competing bidders also provides a strong incentive for a timely and efficient closing

Value of Engaging an Investment Bank

Seasoned investment bankers play a critical role in the transaction process

- **Experienced negotiators lead the deal**
 - Seasoned investment bankers have the requisite experience to negotiate with Counterparties
 - Direct negotiations may stress relationships between owners/management and their future partners
- **Enables management to maintain operational focus**
 - Operational performance often deteriorates when businesses deal directly with Counterparties
 - Investment banking team plays a key role in due diligence and provides significant leverage for senior management
- **Robust transaction processes require a full team of experienced professionals**
 - Skilled investment bankers prepare a company prior to going to market and perform detailed due diligence, in order to preempt potential Counterparty concerns and issues and ensure a successful transaction
 - The development of detailed financial models, effective marketing materials and managing due diligence over the course of a transaction often requires thousands of man hours from a full team of experienced investment bankers
- **Effective investment banking advisors drive value and get deals closed**
 - Experienced and committed investment bankers know what drives value and they stay very close to the market, which helps them to properly position their clients, quickly assess and qualify bids, and negotiate effectively
 - A well-managed transaction process will optimize valuation, terms, tax impacts and certainty of closing

Be wary of conflicts of interest that exist with investment banks that maintain commercial relationships with corporate buyers and/or institutional debt and equity providers.

V. Transaction considerations

Key Steps in the Transaction Process

There are four important stages in a typical M&A or financing transaction process

Due diligence and materials preparation

- Undertake extensive due diligence to prepare for Counterparty due diligence
- Analyze financials and develop a defensible and detailed financial model
- Develop data driven materials to efficiently educate Counterparties
- Research market and develop carefully targeted prospective Counterparty list
- Develop comprehensive virtual data room to facilitate Counterparty diligence
- Conduct pre-marketing outreach to prime the market and refine positioning

Initial marketing (solicitation)

- Targeted and discrete outreach to carefully-vetted list of potential Counterparties
- Progressive dissemination of information under confidentiality agreement
- Facilitate follow-up calls to assess interest and qualify Counterparties
- Advance Counterparty due diligence in parallel and qualify through tracking
- Set clear expectations, parameters and deadlines for initial bids (IOIs)

Advanced marketing (qualification and negotiation)

- Advance only qualified Counterparties to meet with management
- Host management presentations, ensuring productive and meaningful discussions
- Facilitate advanced business due diligence, utilizing VDR and model
- Set clear deadlines and give detailed instructions for final bids (LOIs)
- Negotiate detailed LOI with selected Counterparty and proceed toward closing

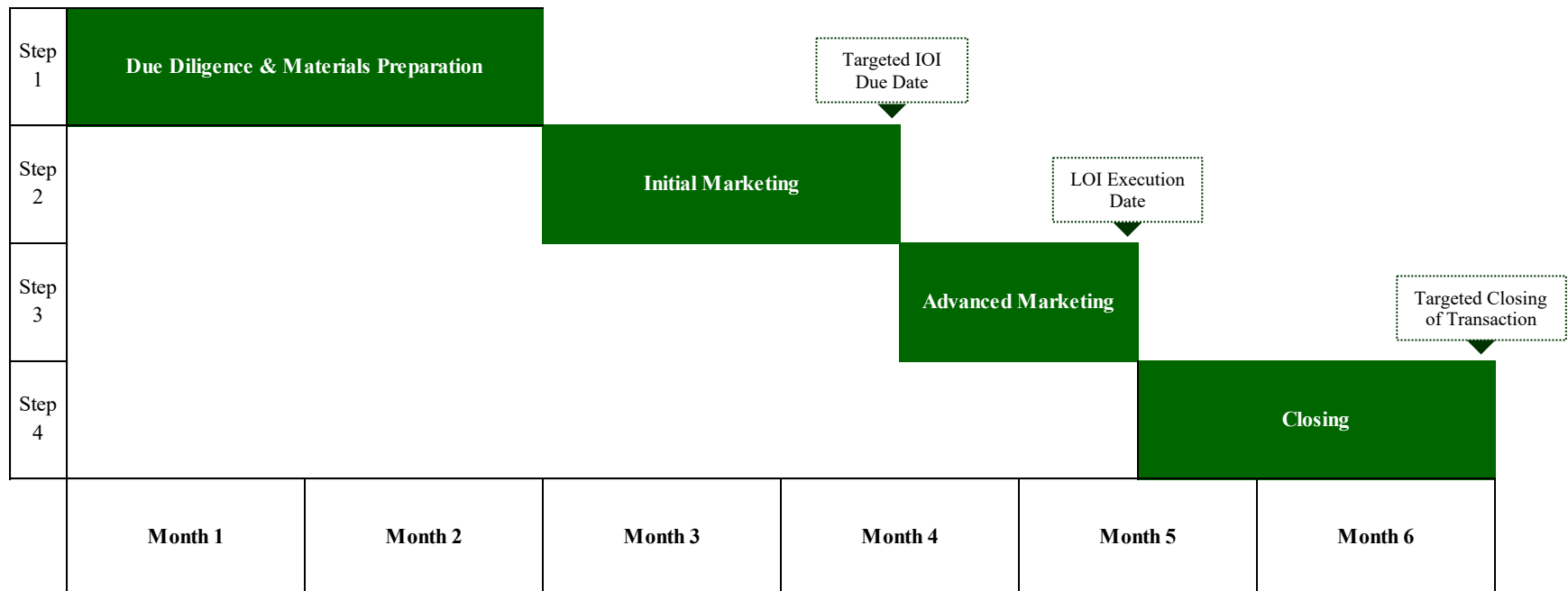
Closing and funding

- Facilitate confirmatory due diligence, which will have been detailed in LOI
- Negotiate and document any transactional adjustment calculations (e.g. working capital or post-closing adjustments), preempting and avoiding surprises
- Work with Counterparty to coordinate integration planning, if relevant
- Develop a detailed flow of funds model to ensure an efficient closing process
- Draft, negotiate and execute balanced and detailed closing documentation

Note: Overview above describes a traditional, two-stage auction process. Process will vary with market conditions, as well as company size, quality and goals.

Illustrative Transaction Process Timeline

- From the launch of the initial marketing phase through closing (and funding, if applicable), a formal transaction process will generally last about four months
 - The speed of the process will depend on the market and the company’s and Counterparty’s ability to respond to comprehensive due diligence requests
 - The process can be accelerated with high performing and well-organized companies and counterparties



Note: For illustrative purposes only. Actual timeline will vary with specific transactions and circumstances.

Types of Transactions: *Asset vs. Stock/Merger*

- Acquisition of Assets - Pros and Cons
 - Buyer
 - Can select specific assets and liabilities
 - No unwanted assets (but risk failing to purchase an important asset)
 - Lower risk of assuming unknown or undisclosed liabilities Often better tax treatment than stock acquisitions
 - Manual transfer of employees to Buyer
 - Dealing with shared services and IP
 - Seller
 - Left with known/unknown liabilities not assumed
 - Often better tax treatment when selling stock
 - More complicated - assigning specific assets, transferring employees, transitional services and shared IP
 - More time consuming - third party consents

Types of Transactions: *Asset vs. Stock/Merger*

- Acquisition of Stock - Pros and Cons
 - Buyer
 - Assumption of all assets and liabilities (known and unknown)
 - Often worse tax treatment than sale of assets
 - Seller
 - Not left with any contingent liabilities
 - Often better tax treatment than sale of assets
 - Not practical if the Target has large number of stockholders - all must agree to sell
 - Negotiations with multiple equity stakeholders can be time consuming
 - Few (or none) statutory requirements for negotiated stock sales
- Merger
 - Three basic structures, all of which involve statutory mergers in which Seller's outstanding stock is converted into the right to receive stock of Buyer, cash or other consideration:
 - Straight Merger/Reverse/Forward
 - Pros and cons

Importance of the LOI - Key Leverage Point

- Why Sign a Letter of Intent?
 - Level of detail and process to get external and internal “buy-in” to deal and the basic terms
 - Either party may want to confront certain issues up front before incurring substantial expense or devoting significant time on due diligence
 - Pre-signing binding covenants
 - Creates “roadmap” for the transaction
 - The Seller sees a level of commitment before disclosing confidential information
 - The Buyer can obtain exclusivity, break-up fee, expense reimbursement provisions
- Contents of a LOI cont.
 - Exclusivity
 - Other binding LOI provisions
 - Conduct of business after execution of LOI
 - Access
 - Expenses
 - Publicity
 - Termination
 - Misc. - governing law, venue, and waiver of jury trial (DO NOT TREAT AS BOILER-PLATE)

Key Transaction Terms: Indemnification

- Who will provide indemnity?
- Scope of indemnity (everything is negotiable)
 - Representations and warranties
 - Breach of covenants (with possibly different treatment for breaches preclosing v. postclosing)
 - Excluded liabilities and assumed liabilities in an asset deal; pre-closing operation of the business versus post-closing operation of the business in an equity deal
 - Specific known liabilities (litigation, environmental, etc.)
 - Industry or deal specific areas (tax, ERISA and benefits claims, product liability claims)
- Recourse is available for indemnity
 - Sue indemnitors personally or any guarantor
 - Escrow or holdback
 - Setoff of deferred consideration
 - Third-party representation and warranty insurance
 - All of the above

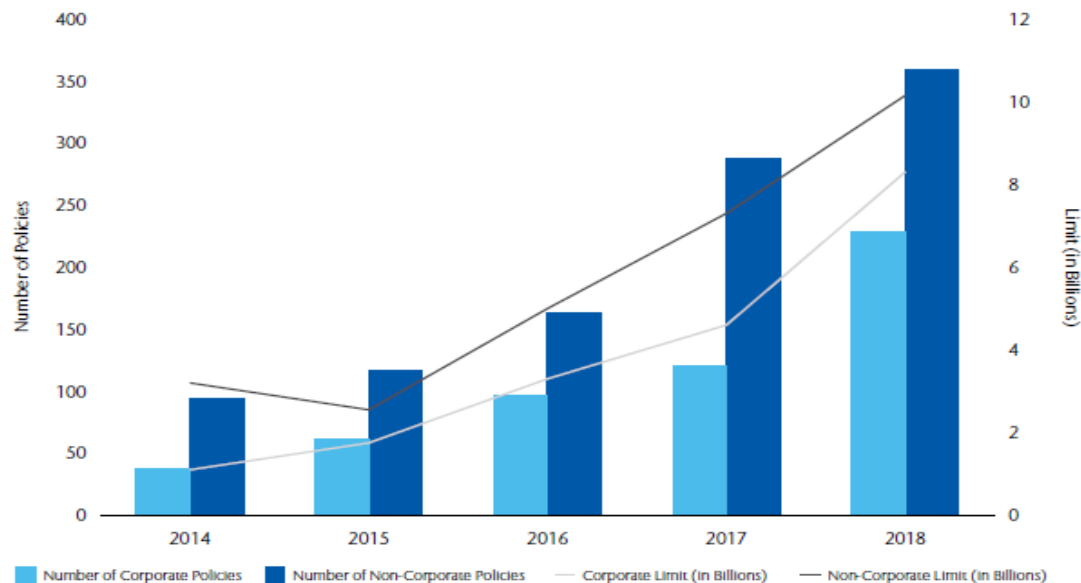
Key Transaction Terms: Indemnification Cont.

- Caps/Limits on indemnity
 - “fundamental reps” typically excluded
 - Per incident/de minimis threshold
 - Basket (true deductible or “tipping basket”?)
 - Cap on liability for representations and warranties
- Interplay with knowledge and materiality qualifiers in representations and warranties and covenants, and use of “materiality scrapes”
 - Use of basket and/or per incident threshold sets materiality threshold and justifies inclusion of “materiality scrape”
 - If materiality is not “scraped” for purposes of determining a breach and/or losses, then need to consider impact of materiality qualifiers on indemnity claims
 - Knowledge is not typically “scraped” and will limit ability to seek indemnification
- Overall cap on liability for claims for indemnification

Representation & Warranty Insurance

- Representation and warranty insurance (or “R&W Insurance”) protects the insured party from unanticipated (unknown) losses that may arise subsequent to the closing
- No longer a niche instrument, gained market acceptance as an M&A instrument
- Generally covers all representations and warranties in the purchase agreement as well as certain tax indemnities
 - Coverage exclusions for known problems or where the insurer is not satisfied with the scope of Buyer’s diligence
- Either buyer or seller can be the insured under the policy
 - Buyer policies typically provide broader coverage (for example, fraud and longer survival periods)

Corporate vs. Non-Corporate M&A Insurance Policy Placement in North America, 2014-18



R&W Insurance: Basics

- Coverage:** Typically covers full set of negotiated reps & warranties relating to the target company and selling shareholders, including tax matters, though more limited policies available (fundamental and tax reps only).
- Capacity:** Limits up to (and in excess of) \$1 billion available in current market.
- Pricing:** Generally 2% to 3.5% of limits in current market (i.e., \$200,000 to \$350,000 per \$10 million in protection), with pricing lowering due to increased market competitors.
- Period:** Typically 3 years for general representations and warranties (up to 6 years for fundamentals).
- Retention:** Minimum 1% to 1.5% of the transaction value on most transactions (drop downs often available after expiration of general survival period (12-18 month anniversary of closing)).
- Fee:** Insurer diligence fee generally between \$25,000 to \$40,000 and payable upon entering underwriting.
- Standard**
- Exclusions:** Forward looking statements and projections, covenants (can be considered in some situations), known or disclosed items (may be addressed via a separate contingency policy), asbestos and PCBs, pension underfunding, collectability of receivables.
- Deal Specific**
- Exclusions:** Exclusions may be proposed at non-binding indication stage (FLSA/Wage & Hour, Cyber/Data Security, Product Liability, Warranty, Recall, S-corp election, Environmental, etc.) or based on diligence findings (identified/known issues or insufficient scope of diligence).

Earn-outs

- Earn-out provisions often used to:
 - Bridge valuation gap
 - Motivate Seller to perform in future
 - Help early stage companies for which value is better represented by future, not past, performance

Benefits for Buyer	Benefits for Seller
Reduce initial purchase consideration	Leverage post-closing synergies and opportunities to increase ultimate purchase price
Minimize risk of overpaying	Potentially defer taxes
Incentivize Seller to support business post-closing	
Drafting Tips for Buyer	Drafting Tips for Seller
Business operation discretion/autonomy	Carefully, expressly address earn-out metrics
Express disclaimer of fiduciary duty to Seller	Covenants not to divert business, operate consistent with past practices, operate to maximize earn-out
Ability to offset indemnity claims (and/or other purchase price adjustments due) against any earn-out	Partial satisfaction vs. "all or nothing"
Reporting frequency/detail/supporting documentation	Information rights

Non-compete Covenants and Management Contracts

- Restrictive Covenants
 - Non-Competition, Non-Solicitation, Confidentiality/Inventions Assignment
- Relevance in M&A Context
 - Current agreements with Seller’s employees
 - Proactive agreements with a seller’s principles
- How to use and evaluate
 - Existing agreements with Seller’s employees should be reviewed for enforceability and liability concerns (e.g. generally not enforceable in California and North Dakota)
 - Diligence reviews should focus on enforceability of restrictive covenants
 - Buyers should be aware of unenforceable restrictive covenants and apprised of the ramifications.
 - Buyers should consider requiring Seller’s key employees to execute agreement with restrictive covenants
 - Agreements for senior management who will transition to Buyer
 - “Sale of Business” style agreements for former principles or key shareholders
 - Consider whether to require employees to sign new confidentiality and inventions assignment agreements

Key Transaction Terms: Seller Representative

- When multiple Seller parties (or equity stakeholders) involved, use of a designated Seller Representative streamlines negotiations and drafting of documents
- Seller Representative appointed by Seller parties and
- Seller Representative serves as communication medium between Buyer and all Seller parties
- Seller Representative eliminates headache of providing notice to all Seller parties (i.e., indemnification)

Key Transaction Terms: Working Capital Adjustments

- Why include working capital adjustments?
 - Means to ensure the value of the target
 - Protection against fluctuations in the value of the target during the period that the target was initially valued and closing
 - Minimum level of operating capital
 - Means to give the Buyer comfort that the target will conduct business in the ordinary course
- Net working capital adjustment provision
 - Provides an adjustment in the event of a difference in working capital from a working capital target (typically the level either at the time a deal is priced or some normalized level)
- Drafting net working capital provisions
 - Confer with client to understand past practices and historic positions taken
 - Specify methodologies for calculations
 - Draft with the client's balance sheet handy
 - Provide illustrations and examples
 - Think through the post-closing process
 - Consider threshold triggering amounts to avoid disputes over small amounts
 - Scope of information exchanges
 - Realism about post-closing timeline

Closing Thoughts/Takeaways

- Market conditions dictate transaction options
 - M&A and capital markets terms and alternatives shift with inevitable turns in the market cycle
- Advance preparation is essential to a successful transaction
 - There is much that can and should be done in advance to ensure an efficient process
- A competitive transaction process led by seasoned advisors is recommended
 - Maximizes valuation, terms and certainty of closing

VI. Appendix – Panelist bios and contact info

Panelist Bios

Sean Kelly, *President – Cappello Group, Inc.*

Sean Kelly joined Cappello in 1998 and was the founder of Cappello's Austin, Texas office in 2007. With over 20 years of transaction experience as an investment banker, he serves as the President of Cappello Group, Inc. and the head of the firm's M&A and Technology investment banking practices. Over the course of his career, he has advised dozens of public and private companies operating in a wide range of industries in the execution of M&A, equity and debt transactions. Mr. Kelly has advised clients across the U.S. and internationally, including Eastern and Western Europe, Latin America, Asia and the Middle East.

Before joining Cappello, Mr. Kelly was an investment banker in the corporate finance group at the Menlo Park office of DMG Technology Group, Deutsche Bank's leading technology investment banking practice, headed by Frank Quattrone. At Deutsche Bank, Mr. Kelly worked primarily with clients in the semiconductor, software and broadband communications industries – the beginning of a career-long focus on advising technology-enabled, high growth companies across industries.

Prior to joining Deutsche Bank, he worked in the mergers and acquisitions group with investment bank Alex. Brown & Sons in San Francisco. At Alex. Brown, Mr. Kelly focused on financial institutions, including commercial banks, real estate investment trusts and specialty finance companies. Earlier in his career, Mr. Kelly worked for Phillips Associates, a management consulting firm specializing in strategic planning and implementing organizational change for Fortune 500 companies, and Pondel Wilkinson, a leading investor relations consulting firm. Mr. Kelly also served honorably in the U.S. Army as a finance specialist, stationed at Fort Dix, New Jersey and Schoefield Barracks, Hawaii.

Mr. Kelly served as a strategic advisor to Waterfall, a leader in mobile marketing software. He served on the board of directors of MMGY Global, the largest travel and hospitality focused digital marketing firm in the U.S. Mr. Kelly has served for 12 years on the board of directors of the Boys & Girls Clubs of the Austin Area, where he has raised over \$10 million in donations, including the largest gift in the 50+ year history of the organization. He previously served on the board of College Forward, a non-profit that provides college access and college persistence services to motivated, economically disadvantaged students. He is a member of The Fifty, a philanthropic affiliate of the Seton Fund, and was the founder of Professional Veterans of America, a non-profit network of veterans helping veterans succeed through mentorship, education and information exchange.

Mr. Kelly earned a Bachelor of Science degree in Business Administration with an emphasis in finance from the University of Southern California Marshall School of Business. He continues to contribute to USC and serve as a mentor and advisor to both undergraduate and graduate students. In his free time, Mr. Kelly enjoys reading, travel, mountain biking, wakeboarding and live music.



Alex Allemann, *Shareholder; Chair, Corporate, Securities/Mergers & Acquisitions Group - Winstead PC*

Alex Allemann concentrates his practice in the areas of mergers and acquisitions, corporate finance, and general corporate and securities matters. Alex has extensive experience counseling issuers, investors and investment banks in public offerings and private placements of debt and equity securities. Alex has also represented buyers, sellers and their financial advisors in a wide variety of transactions, including negotiated and contested public acquisitions, private acquisitions and divestitures, joint ventures and other strategic alliances.

In addition, Alex advises clients regarding general corporate and securities matters, including securities law compliance, corporate governance issues, disclosure issues, stock repurchase programs, shareholder agreements and proxy contests.



- Following his graduation from the University of Texas School of Law, Alex served as law clerk for the Honorable James H. Michael, U.S. District Court for the Western District of Virginia, in Charlottesville, Virginia.
- Co-author of the [WinTech blog](#), which provides legal insight for start-up and established technology businesses.
- **Representative Experience**
 - Public and private equity offerings
 - Corporate governance and securities law compliance
 - Mergers and acquisitions
 - New business formation, development, funding and strategy

Panelist Bios

Ricky Torlincasi, *Associate – Winstead PC*

Ricky Torlincasi is a member of Winstead's Corporate, Securities/M&A Practice Group. Ricky focuses his practice on oil and gas transactions, and represents a wide range of clients in the oil and gas industry, including those in the exploration and production, midstream, and oilfield services sectors. He frequently helps private equity groups, financial institutions, companies (both publically-traded and closely-held), management teams, professional services firms, family offices and high net worth individuals on a multitude of transactional, litigation and regulatory matters.



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