



Monday, October 20
2:30 pm-4:00 pm

206 M&A for the Non-M&A Lawyer

Scott P. Bates

Division General Counsel and Vice President
Georgia Gulf Corporation/Royal Group, Inc.

Joseph J. Humke

Partner
Lindquist & Vennum

Manik K. Rath

Vice President, General Counsel, and Corporate Secretary
Logistics Management Institute

Faculty Biographies

Scott D. Bates

Scott D. Bates, division general counsel and vice president of Royal Group, Inc./Georgia Gulf Corporation, one of North America's largest manufacturer of vinyl-based home improvement, consumer and construction products and of two chemical lines, chlorovinyls and aromatics. He is a director of several of the company's foreign operations, manages asset acquisition and divestiture programs, the real estate portfolio, and the company's intellectual property affairs. He has played the leading role in managing and resolving several complex pieces of litigation, including securities and antitrust class actions and litigation involving extensive internal investigations. He has also directed significant equity and debt financings and sale-leaseback programs.

Mr. Bates began his career at Osler, Hoskin & Harcourt and Borden & Elliott. He then joined Royal as associate counsel and later became general counsel of Royal. Following the acquisition of Royal by Georgia Gulf Corporation, Mr. Bates relocated from Toronto to the Georgia Gulf head office in Atlanta.

Scott holds a BA from the University of Toronto (Victoria College), a LLB from Queen's University, and an MBA from the University of Western Ontario (Richard Ivey School of Business).

Joseph J. Humke

Joseph J. Humke is a partner at Lindquist & Vennum LLP. In his position there, he advises public and private clients on corporate, finance, and securities-related matters, with a focus on mergers and acquisitions. He has represented buyers, sellers, and financial advisors—from Fortune 500 companies to family-owned businesses, private equity funds, and investment banking firms—in connection with public and private mergers and acquisitions across a broad array of industries.

Before joining Lindquist & Vennum, Mr. Humke practiced at Mayer, Brown & Platt (now Mayer Brown LLP) in Chicago. He also served as a law clerk to the Honorable John L. Coffey on the United States Court of Appeals for the Seventh Circuit.

In addition to routinely working with inside general counsel, Mr. Humke also serves as outside general counsel to a number of companies, providing continuing advice on, among other things, corporate governance issues, structural matters, and financings.

Mr. Humke received his JD, summa cum laude, from Marquette University Law School and holds a BBA with honors from the University of Wisconsin—Madison.

Manik K. Rath

Manik K. Rath works for Logistics Management Institute (LMI) as vice president, general counsel, and corporate secretary. He is responsible for all of the legal affairs of the company, as well as for coordinating the business of the board of directors. He is also vice president of administration, in which capacity he supervises the departments of humanr and administration.

Before joining LMI, he was vice president, deputy general counsel, and secretary of Alion Science and Technology Corporation. He also served on the board of directors and acted as secretary to two of Alion's subsidiaries and was general counsel to one subsidiary. Previously, he was an attorney with the law firms of McGuire Woods and Baker & McKenzie.

He is currently president-elect of the Washington Metropolitan Association of Corporate Counsel (WMACCA), and serves on other boards. Mr. Rath has advised companies, both as outside counsel and as in-house counsel, on numerous deals, including mergers and acquisitions, leveraged buyouts, public offerings, debt and corporate finance deals, and securities law. Mr. Rath has written several articles and spoken before numerous conferences on various corporate law issues, including mergers and acquisitions, and has been quoted extensively in national media outlets. The *Washington Business Journal* recently named him one of the Top Washington Lawyers.

He has a JD and BA from the University of Virginia, where he graduated with honors from Phi Beta Kappa.

M&A for the Non-M&A Attorney

October 20, 2008

Table of Contents

Presentation Slides


1. An M&A Primer.....	3
2. Planning for an M&A Transaction.....	8
3. Going to Market.....	9
4. Letters of Intent.....	12
5. Due Diligence.....	26
6. Purchase and Sale Agreements.....	29
7. Closing the Deal.....	35
8. Integrating an Acquired Business.....	38

Written Materials Outline

1. An M&A Primer.....	48
2. Planning for an M&A Transaction.....	59
3. Going to Market.....	62
4. Letters of Intent.....	67
5. Due Diligence.....	95
6. Purchase and Sale Agreements.....	102
7. Closing the Deal.....	110
8. Integrating an Acquired Business.....	116

Accompanying Forms


Form of Nondisclosure Agreement.....	126
Form of Asset Purchase Letter of Intent.....	132
Form of Stock Purchase Letter of Intent.....	140
Form of Preliminary Due Diligence Request List.....	145



Outline

1. An M&A Primer
2. Planning for an M&A Transaction
3. Going to Market
4. Letters of Intent
5. Due Diligence
6. Purchase and Sale Agreements
7. Closing the Deal
8. Integrating an Acquired Business
9. Questions and Answers

3



Accompanying Forms

- Preliminary Legal Due Diligence Request List
- Nondisclosure Agreement
- Letter of Intent for Stock Purchase
- Letter of Intent for Asset Purchase

4

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1. An M&A Primer

Mergers vs. acquisitions

5

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Transaction Structures

- Asset purchase
- Stock purchase
- Merger

7

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Why Engage in M&A Activity?

- Strategic reasons ("strategic buyers")

1 + 1 = 3

- Investment reasons ("financial buyers")


6

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Factors in Determining Structure

1. Tax considerations
2. Assumption or non-assumption of liabilities
3. Acquisition of entire company vs. line of business


9

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Principal Differences Among Structures

- Asset purchase
- Stock purchase
- Merger


11

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Factors in Determining Structure (cont.)

4. Assignments of licenses, permits, contracts, etc.; third-party consents
5. Acquisition of private vs. public company
6. "Negotiated" vs. "hostile" acquisition

10

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Principal Players

1. Buyer
2. Seller
3. Buyer's and seller's outside counsel
4. Buyer's lender
5. Lender's outside counsel
6. Investment banker or business broker
7. Buyer's and seller's independent accountants and tax advisors
8. Buyer's special consultants
9. Regulatory authorities (SEC, DOJ, etc.)

12

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Rules Governing Transactions

1. Jurisdictional business statutes
2. Tax laws
3. Securities laws and listing requirements
4. Antitrust laws and local restraint-of-trade regulations (e.g., state laws)

13

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Acquiring Public vs. Private Companies

- Timing
- Remedies
- Securities-law compliance and reporting obligations

15

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Rules Governing Transactions (cont.)

5. Federal and state employment laws
6. Industry regulations, including permitting and licensing regulations
7. Common law (including the common law of contracts)

14

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2. Planning a Transaction

- Sellers
 - Define reasons for sale
 - Define financial objectives for sale
 - Identify tax issues
 - Value company
 - Identify non-monetary objectives
 - Identify disclosure obligations
 - Board
 - Lenders
 - Investors and shareholders
 - Self-diligence – "corporate clean-up"
 - Corporate books and stock ledgers
 - Legal compliance
 - Financial documentation
 - Corporate strategy and business plan

16

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Planning a Transaction (cont.)

- Buyers
 - Identify objectives for acquisition
 - Strategic
 - Capability diversification
 - Geographic expansion
 - Customer expansion
 - Market share consolidation
 - Vertical integration with suppliers or customers
 - Financial
 - Revenue accretion
 - Share price accretion
 - Define screening criteria
 - Identify necessary disclosures
 - Board
 - Investors

17

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Agent Sales Marketing Process

1. Agent announcement
2. Press releases, if required
3. Marketing materials designed and approved
4. Confidentiality agreement approved
5. Website posting

19

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3. Going to Market

- Agent selection
 - RFP/deal packages provided to agents
 - Agent often appropriate for buyer
 - Initial meeting with one or more prospective agents
 - Agent agreement executed

18

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Agent Sales Marketing Process (cont.)

6. Installation of signage as appropriate
7. E-marketing campaign developed; initial launch
8. Due diligence package complete
 - Procedure, terms and conditions of sale
 - Confidentiality agreement

20

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Proactive Marketing Period

- Identify buyer prospects
- Facility tours (as necessary)
- Phone contact with active prospects
- Internet marketing campaign to prospects
- Extensive follow-up with prospects

21

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Negotiation Action Items

- Buyer selection
- Recommended offer date
- Best and final (as necessary)
- Buyer deposits money as appropriate

23

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Proactive Marketing Period (cont.)

- Seller information packages offered to approved prospects
- Extensive follow-up with prospects
- Weekly verbal market updates with buyers
- Biweekly agent delivery of written progress reports to seller

22

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4. Letters of Intent

- Reasons for Using LOIs
- Types of LOIs
- Elements of an LOI
 - Binding and non-binding elements
 - Parties
 - What is being purchased
 - Consideration
 - Deal structure
 - Timing
 - Contingencies
 - Due diligence
 - Covenants on operation of seller
 - Working capital, cash, inventory, and debt
 - No-shop and breakup fees
 - Non-solicitation
 - Confidentiality
 - Standard contract clauses

24

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Reasons for Using a Letter of Intent

- Set forth the parties' mutual understandings of the deal discussions
- Serve as a blueprint for constructing the definitive deal documents
- Disincentive the parties from changing deal terms or revisiting issues already agreed on
- Opportunity for buyer to reduce to writing its interest to acquire

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Elements of Letter of Intent

- Binding and non-binding elements
 - A letter of intent should make clear that it is a non-binding expression of interest

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Types of Letters of Intent

- Preliminary Letters of Interest
 - Often used where an investment bank or broker is attempting to reduce the number of parties with which it will deal
 - May specify only a broad valuation, rather than a specific purchase price
 - Generally, a letter of interest contains non-binding terms, and is heavily conditioned
- Letters of Intent
 - Should contain a specific offer
 - Should be non-binding but also contain some binding terms
 - Should seek counter-signature from the seller

26

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Binding and non-binding elements (cont.)

- However, the drafter should be very aware that letters of intent have been enforced
 - If all of the material terms have been agreed on, and the words and actions of the parties indicate an intent to form a deal, the courts may enforce the LOI
 - See, e.g., Pennzoil's proposed acquisition of Getty Oil in an LOI. Getty Oil's board contemplated a better offer from Texaco, whereupon Pennzoil sued. The court enforced the LOI, looking also at actions and press releases to conclude an intent to form a deal had been evidenced. The court awarded Pennzoil \$10.6 billion (in 1985 dollars) for Texaco's interference.

28

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Binding and non-binding elements (cont.)

- Letter should utilize “intends to... subject to” language
- Letter should clearly segregate binding clauses, including:
 - Non-disclosure
 - No-shop
 - Breakup fee

29

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Elements of Letter of Intent

- What is being purchased
 - LOI should clearly convey whether assets or stock is being acquired (or membership interests in case of LLCs, partnership interests, etc.)
 - LOI should state how much is being acquired (all, 75%, 51% etc.). If it is uncertain, using language such as “up to 75% of the stock” evidences the non-binding nature of the agreement, and leaves open for future discussion how much of the company is being sold.

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Elements of Letter of Intent

- Parties
 - LOI should clearly set forth who is the purchaser and seller
 - Sellers should include, when appropriate, any minority shareholders, trusts, partners, and investors
 - Buyers should include both parent corporations, and when appropriate, acquisition corporations

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Elements of Letter of Intent

- What will be the consideration
 - Will contingent payments be necessary? If so, structure for the “earnout” should be set forth in LOI
 - Will cash, stock, or other consideration be paid?
 - Will payment be contingent on financing?

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Elements of Letter of Intent

- Structure of the deal
 - In addition to the basic terms, the LOI should set forth how the deal will be structured—will consideration be paid in tranches, what conditions need to be met for earnouts to be paid, how will the acquired entity be integrated into the buyer, etc.

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Elements of Letter of Intent

- Contingencies
 - Financing
 - The buyer may wish to have an explicit right to terminate the deal if financing is not closed
 - Financing contingencies provide some safety for the buyer, but are unattractive to sellers, particularly in an auction environment where a seller may have multiple suitors
 - Execution of a definitive agreement
 - This contingency should be attractive to both parties, as it essentially distinguishes the LOI from an enforceable purchase agreement

35

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Elements of Letter of Intent

- Timing
 - Both the buyer and seller should perceive value in clearly setting forth how long
 - Due diligence will last
 - The no-shop provision will last
 - When the LOI terminates without further action
 - When the definitive purchase agreement will be signed
 - When the acquisition will close
 - Speed is critical to the likelihood of closing. Both parties should be motivated to set out an expeditious timetable in the LOI.

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Contingencies (cont.)

- Execution of other key agreements
 - Non-competition agreements
 - The buyer may consider seeking an agreement from both the seller and its key leaders to not compete for some period following closing. Such “deal non-competes” are generally more robust than non-competes where mere employment is offered as consideration.
 - Stock sale agreements
 - If the buyer will require shares to be tendered from minority shareholders who are not a party to the LOI, this should be set forth in the LOI as a pre-condition to closing

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Contingencies (cont.)

- Due diligence
 - The buyer should always make a successful diligence review a pre-condition to signing the purchase agreement

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Contingencies (cont.)

- Board approval
 - Both parties may seek this contingency in the letter of intent
 - However, in a competitive acquisition environment, such clauses are generally unattractive to the other party, as they are perceived to eviscerate the "disincentive to alter the deal terms" function of LOI's

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Contingencies (cont.)

- Valuation
 - In the case of privately held companies, companies owned by trusts, or employee-owned companies, a valuation and/or fairness opinion may be required before the seller can sell. Similarly, in some situations, such as where a buyer is an employee-owned company or is using stock as consideration, a buyer may seek this contingency.

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Contingencies (cont.)

- Assignment or novation of contracts
 - Where the buyer perceives the seller's contracts are critical to the success of the acquisition, assignment or novation should be a contingency to closing

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Contingencies (cont.)

- Hiring of employees
 - Seller issues
 - The seller may seek assurance that all or substantially all of its employees are hired by the acquirer. The LOI is the first opportunity to address this.
 - Buyer issues
 - The buyer may wish to clarify that certain redundant employees will not be a part of the acquisition. It may be worthwhile to include this in the LOI, particularly if the buyer wishes to impose the termination requirement on the seller.
 - In acquisitions of services companies, on the other hand, the buyer may wish to make closing contingent on retention of all or substantially all of the employees.

41

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Elements of Letter of Intent

- Covenants on operation of company
 - The buyer should consider asking for an agreement that the seller will not undertake any unusual or extraordinary activities between countersigning the LOI and closing the deal

43

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Elements of Letter of Intent

- Due diligence
 - The LOI should set forth the key elements of what the buyer and seller agree will occur in the due diligence review.
 - Seller issues
 - The seller may wish to limit diligence review to reasonable times, places, documents and people
 - The seller may want to restrict the buyer from accessing customers until the completion of the diligence review
 - Buyer issues
 - The buyer should specify those things that it considers particularly important to review
 - Diligence should include access to facilities, operations and customers. This should be set forth in the LOI

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Elements of Letter of Intent

- Cash, inventory, other fungible assets, and debt
 - Seller issues
 - The seller should consider what is being purchased, and whether it is economically sensible to distribute excess cash reserves to shareholders, sell excess inventory, and otherwise position the company so as not to confer excess benefit to the buyer

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Cash, Inventory, Other Fungible Assets, and Debt (cont.)

- Buyer issues
 - Conversely, from the buyer's perspective, the letter of intent should specify the levels of cash needed to sustain operations during the transitional period, working capital levels, debt levels, and inventory levels, to ensure the company is transitioned in approximately the state contemplated.

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No shop and breakup (cont.)

- Breakup fees are almost always cash, but it can be structured as stock.
- A stock breakup fee might involve an option on the stock. For instance, if the seller is valued or trading at \$10 per share, the buyer may get an option on the number of shares it had proposed to buy at a strike price of \$10. Thus, if the seller backs out to pursue a richer offer, for example, of \$12 per share, the ersatz buyer would get \$2 per share on the options.

47

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Elements of Letter of Intent

- No-shop and breakup
 - The buyer should insist on a no-shop provision that bars the seller and its control group from seeking or discussing alternative proposals during some period. This should be coupled with an agreement to injunctive relief and specific performance.
 - The seller should seek a breakup fee, in case the buyer decides not to close. A mutual breakup fee charges the party at fault, and permits the other party to recover the fee.


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Elements of Letter of Intent

- Non-solicitation and non-proselytization
 - The seller should seek an agreement that the buyer will not solicit the seller's customers or seek to hire the sellers employees
 - If reverse due diligence is being conducted (where the seller diligences the buyer), the buyer should seek these same protections


48



Elements of Letter of Intent

- Confidentiality, non-disclosure and non-use of information
 - An LOI should have a non-disclosure agreement that restricts use of data shared to the purposes of the contemplated deal


49



5. Due Diligence

- Gathering and evaluating information about a target to help buyers
 - Understand what they're really buying
 - Identify risks to be mitigated
 - Integrate the target
 - Avoid post-deal surprises
 - Make a go/no-go decision


51



Elements of Letter of Intent

- Standard contract clauses
 - Merger clause
 - Governing law
 - Interpretation
 - Termination


50



Approach

- Avoid relying on a checklist
 - Each deal is different
 - Deals involve law, accounting, taxes, HR, IT, operations, sales, procurement...
- Consider non-financial and non-legal areas (customers, culture, IT...)


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Approach (cont.)

- Craft plan in advance to suit specifics
 - Develop a timeline, assign duties, hold regular meetings
- Remember electronic data rooms


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Business Issues

- Legal team often focuses on liabilities
- Drivers also includes sales, costs, and profits
- Validate your team's assumptions and expectations
- Acquisition agreement can't make business better—but can reduce buyer's liabilities

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Purpose

- Goal: develop knowledge to foster acquisition and integration or help buyer pass on the deal
- Prepare for integration by identifying risks, synergies, critical issues, key players
- Advisors and consultants can bring broader perspectives

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Meet Target's Team

- People are a key source of information
- Process should address management and culture issues
- Try to gain access to people besides senior executives

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Due Diligence Isn't Exciting...

- ...but it's critical
 - Targets may be "dressed up"
 - Identify assumptions about target, and test them
 - Synergies may be overestimated
 - Don't let due diligence become only a "legal" area

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Typical Agreements

1. Identify the parties
2. List defined terms
3. Describe what is being bought and sold
4. Describe liabilities being assumed and excluded
5. Indicate purchase price and payment method
6. Set forth seller's representations and warranties (usually lengthy)
7. Set forth buyer's representations and warranties (usually short)

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6. Purchase and Sale Agreements

- Simultaneous sign-and-close
- Staggered sign-and-close

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Typical Agreements (cont.)

8. Include pre-closing and post-closing covenants
9. Include closing deliveries and conditions to close
10. Describe indemnification obligations
11. Set forth termination rights
12. Include disclosure schedules and exhibits

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Most Heavily Negotiated Sections

- Representations and warranties
- Indemnification

61

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Limits on Indemnification (cont.)

2. Period of time in which buyer may make claim (i.e., survival period of representations and warranties)
 - a. Fundamental representations and warranties
 - b. Operating representations and warranties
 - c. Tax, environmental, and employee benefit representations and warranties

63

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Limits on Indemnification

1. Types of things for which seller will indemnify buyer
 - a. Asset purchase
 - b. Stock purchase


62

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Limits on Indemnification (cont.)

3. Amount for which buyer may be indemnified by seller
 - a. Cap
 - b. Basket (tipping/deductible)

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Limits on Indemnification (cont.)

4. Other
 - a. Individual claim thresholds
 - b. Net of insurance recovery and tax benefits
 - c. Who is providing indemnity


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Ancillary Agreements

1. Letter of intent (at beginning)
2. Nondisclosure agreement (at beginning)
3. Escrow agreement
4. Noncompetition and nonsolicitation agreements
5. Employment agreements

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Disclosure Schedules

- Just as important as provisions in purchase and sale agreement
- Sellers usually want broad disclosures; buyers, specific ones

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Ancillary Agreements (cont.)

6. Consulting agreements
7. Assignment and assumption agreement and bill of sale
8. Intellectual property assignments
9. Transition services agreement
10. Voting agreements

68

7. Closing the Deal

- Simultaneous sign-and-close
- Staggered sign-and-close

69

Required Approvals and Consents

1. Buyer's and seller's boards of directors
2. Seller's shareholders
3. Buyer's shareholders (merger only)
4. Governmental authorities
5. Third parties under contracts

71

Preparing for Closing

- Create closing checklist


Item	Responsible Party	Doc. #	Signatures	Status/ Comments
1. Sellers to deliver stock certificates representing sold shares (Purchase Agreement, § 1.2)	Seller's counsel	1234567	<input type="checkbox"/> John Smith <input type="checkbox"/> Jane Doe	All parties approved form per 10/1/08 conference call

70

Pre-Closing

1. All documents finalized
2. All documents executed and held in escrow
3. Detailed funds-flow statement finalized and approved

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On the Closing Date

1. Hold bring-down conference call or meeting
2. Confirm all conditions have been satisfied and all parties are ready to close
3. Wire transaction consideration; confirm receipt
4. Release executed documents from escrow
5. Issue press release


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8. Integrating an Acquired Business

- Business planning should occur during negotiation stage
- Relationships developed before negotiation are key
- After negotiations, buyer must commit resources to integration

75

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Avoiding Pitfalls

- Wire transaction consideration early enough for funds to hit seller's account
- Avoid closing on Monday or Friday

74

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Integrating an Acquired Business (cont.)

- Audience for pre- and post-deal communications
 - Management, employees, shareholders, suppliers, customers, regulators, media...
 - Determine top team early (some players will change)

76

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Vision and Mission

- Vision
 - To be what?

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Values

- Ethical behavior
- Results orientation—top and bottom lines
- Cost-consciousness
- Collaboration
- Teamwork
- Personal accountability
- Addressing of cultural differences

79

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Vision and Mission (cont.)

- Mission
 - Efficiency and integration
 - Growth
 - Continuous improvement
 - Long-term returns
 - Meaningful work for employees
 - Regard for environmental safety and well-being of local communities

78

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Acquisition

- “Integrated” company
- Leading market positions in key products
- Greater asset base
- Product expertise and innovation
- Leader in what?

80

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Acquisition Equals...

- Initial improvements
- Increased shareholder value
- Significant cash-flow growth
- Improved earnings
- Larger scale

81

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Strategy	<ul style="list-style-type: none"> • Profitable growth in markets • Leading supplier of key products
Raw Materials	<ul style="list-style-type: none"> • Optimize production/external supply • Improve and reduce excess • Strategic sourcing/increase leverage
Operations	<ul style="list-style-type: none"> • Maximize asset utilization • Rationalize redundant facilities • Transfer best practices across sites
Footprint	<ul style="list-style-type: none"> • Efficient scale sites close to end use markets • Integration
Sales & Marketing	<ul style="list-style-type: none"> • Company sales force • Cost to serve analysis • Review sales channels
Accounting & Finance	<ul style="list-style-type: none"> • Develop accounting systems and internal controls • ERP System

83

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Implementation Plan

- Set short- and long-term targets

82

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Acquisition Is Compelling

- Set out vision
- Significant benefits from integration of combined resources
- Proceeds from divestiture of assets
- Significant cost savings
- Positioned to grow business

84



Going Forward

- Be one team with one message
- Maintain positive work environment
- Support change
- Exhibit sense of urgency
- Collaborate to improve businesses and support functions
- Invest capital wisely

85

Agenda

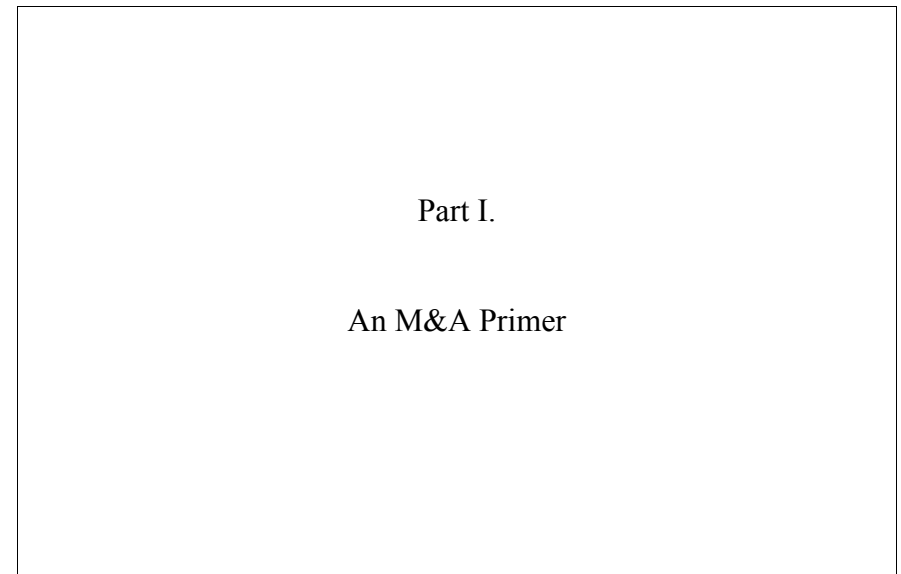
- I. An M&A Primer
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- V. Due Diligence
- VI. Purchase and Sale Agreements
- VII. Closing the Deal
- VIII. Integrating an Acquired Business
- IX. Question and Answer Period

Accompanying Materials

Forms of the following documents accompany the materials being presented:

- Preliminary legal due diligence request list
- Nondisclosure Agreement
- Letter of Intent for a stock purchase transaction
- Letter of Intent for an asset purchase transaction

While there is no "one size fits all" approach to drafting these documents, you should feel free to use the forms provided as a reference for future transactions. You should not assume that these forms address all of the issues that may be important to you or are relevant to the transaction on which you are working.



What are Mergers and Acquisitions?

The terms, "merger" and "acquisition," are oftentimes used interchangeably to generically mean one company's purchase of another company, or the combination of two companies into a single company. For our purposes, when we use the term "mergers and acquisitions" – or "M&A" – we are referring to this more general definition. However, technically speaking, there are subtle differences between a merger and an acquisition.

- 6 -

Why do companies engage in M&A activity?

Some buyers purchase a company for strategic reasons. These are called "strategic buyers," and they are most often established operating companies that may be attempting to expand their footprint, complement an existing line of business or vertically integrate their supply chain. Other buyers purchase a company for investment purposes – that is, they intend to grow the value of the acquired business and later sell it for a profit. These are called "financial buyers."

- Strategic buyers may be willing to pay a premium for the seller, relative to the value that a financial buyer might pay. This is due to the fact that strategic buyers are more likely to realize immediate synergies from an acquisition. A strategic buyer's guiding principle to acquiring a company is to create shareholder value that exceeds that of the sum of the combined companies.

$$1 + 1 = 3$$

- Financial buyers are generally more inclined to be interested in the seller's cash flow and their ability to exit the investment at some point in the future. They look for well-managed companies that have a track record of consistent earnings, prospects for growth and leverageable assets and cash flows. Because financial buyers typically do not manage the day-to-day operations of their investments, they frequently rely on the managerial expertise of the seller following the acquisition.

- 7 -

How is an M&A transaction most often structured?

The three (3) most common ways in which to structure an acquisition are:

1. Purchase of Assets
2. Purchase of Stock
3. Merger

There are a variety of other transaction structures, many (if not most) of which include at least one of these three (3) components.

- 8 -

What factors determine the structure of an M&A transaction?

A variety of factors can drive the structure of an acquisition:

1. Tax Considerations
 - As a general rule, a deal structure that favors the buyer from a tax perspective normally is detrimental to the seller's tax situation, and vice versa.
 - Generally, buyers want to buy assets and sellers want to sell stock.
 - The critical inquiry, from a seller's perspective, is not what the gross purchase price is, but rather what the seller's after-tax net proceeds will be from the transaction.
2. Assumption/Non-Assumption of Liabilities
 - An asset purchase allows the buyer to selectively assume certain liabilities of the seller and to exclude others.
3. Acquisition of Entire Company versus Acquisition of Line of Business
 - The acquisition of a line of business must necessarily include a transfer of the assets of that business either to the buyer or to another entity that the buyer subsequently purchases.
4. Assignments of Licenses, Permits, Contracts, Etc.; Third-Party Consents
 - Because an asset purchase involves the assignment of licenses, permits, contracts and the like, more third-party consents will likely be required than in the case of a stock purchase.
5. Private versus Public Company Acquisition
 - A "negotiated" acquisition of a public company is most often structured as a merger.

- 10 -

6. "Negotiated" versus "Hostile" Acquisition

- This is relevant in the context of the acquisition of a public company. If a potential seller rejects a buyer's proposal, the buyer may resort to a tender offer, a proxy contest, etc.

What are the principal differences between the general structures?

1. Under an asset purchase structure:
 - The seller is the entity that owns the assets being sold, and the seller retains all of the ownership of the entity through which the sold business is conducted.
 - The assets of the sold business are transferred to the buyer, and the buyer assumes agreed-upon liabilities.
 - For tax purposes, the buyer records the purchased assets at the fair value assigned to them as part of the transaction. This allows the buyer to "step up" its basis in the assets and take a larger depreciation expense on those assets going forward. The seller (i.e., the selling entity) recognizes a gain or loss based on the difference between the sale price (including liabilities assumed) and the tax book value of the assets.
2. Under a stock purchase structure:
 - The sellers are the shareholders of the company being sold.
 - The sellers sell all or part of the ownership of the entity through which the sold business is conducted.
 - The buyer "steps into the shoes" of the shareholders. All of the assets and liabilities of the business are retained in the entity being purchased.
 - The assets and liabilities of the business are not adjusted incident to the transaction. Rather, they continue to be carried and depreciated in the same manner as before the transaction. The selling shareholders recognize a gain (or a loss) based on the difference between the sale price and their basis in the shares being sold. The parties may make a "338(h)(10) election," which has the general effect of treating a stock purchase the same as an asset purchase for tax purposes.
3. Under a merger structure:
 - One entity (i.e., the "non-survivor") merges with and into another entity (i.e., the "survivor"), with the survivor surviving the merger. The existence of the non-survivor ceases, and the survivor holds all of the assets and liabilities of the non-survivor following the merger. Therefore, all of the assets and liabilities of the non-survivor reside in the survivor following closing.

Who are the principal players in an M&A transaction?

Depending upon the nature of the transaction, there can be any number of participants:

1. Acquirer
2. Target
3. Acquirer's Outside Counsel
4. Target's Outside Counsel
5. Acquirer's Lender
6. Lender's Outside Counsel
7. Investment Banker or Business Broker
8. Acquirer's Independent Accountants and Tax Advisors
9. Target's Independent Accountants and Tax Advisors
10. Acquirer's Special Consultants
11. Regulatory Authorities (e.g., Securities Exchange Commission, Department of Justice, etc.)

- 13 -

What rules govern an M&A transaction?

One of the attractive features of an M&A transaction is that, depending on the type of transaction, there is a great deal of flexibility and creativity inherent in the M&A process. Of course, there are some concrete rules by which the parties must abide. However, one will find that there is very much a "market" versus "non-market" discussion surrounding the negotiations on many deal points.

1. Business statutes of the jurisdictions in which the buyer and seller are organized (e.g., merger statutes, anti-takeover statutes, etc.)
2. Tax laws
3. Securities laws/Listing Requirements
4. Antitrust laws and local restraint of trade regulations (e.g., state laws)
5. Federal and state employment laws
6. Regulations (including permitting and licensing regulations) of specific industry
7. Common law

- 14 -

What are the primary differences between acquiring a private company versus a public company?

The issues involved in negotiating and completing acquisitions of private companies generally are different than those involved in public company acquisitions. These materials will focus on the acquisition of privately-held companies, although we will touch upon some public company issues as we go along.

Timing

As a general matter, private company acquisitions tend to close more quickly than public company acquisitions. Much of this can be attributed to the fact that, in the private company context, there are fewer shareholders from whom approvals must be sought, those approvals can often be obtained via written notice and all interested parties are usually intimately involved in the process.

The acquisition of a public company is generally structured as a "staggered" sign-and-close (i.e., the acquisition agreement is signed and the closing occurs on a later date). The acquisition of a private company may often be structured as either a "simultaneous" or "staggered" sign-and-close.

Remedies

In a private company acquisition, the seller typically makes a whole host of representations and warranties, all of which generally "survive" the closing for a negotiated period of time (and, in some cases, indefinitely). If the seller breaches a representation or warranty prior to its expiration, the buyer will usually be entitled to seek and receive indemnification for the breach. Therefore, the terms of the purchase and sale agreement in a private company acquisition, especially in regards to representations and warranties and indemnification, are heavily negotiated.

In a public company acquisition, the seller also makes a whole host of representations and warranties. However, they generally do not "survive" the closing. Rather, their accuracy serves as a condition to closing. Once the closing occurs, the buyer generally does not have recourse for breaches of representations and warranties. As such, the representations and warranties have become more standardized and typically are not as heavily negotiated, and there generally is no indemnification right. On the other hand, there tends to be quite a bit of focus on the conditions to closing, the fiduciary "out" and the termination provisions.

Securities Law Compliance and Reporting Obligations

While all companies, both public and private, must comply with federal and state securities laws, there are generally more formalized reporting requirements for public companies. For example, when shareholder approval is sought in connection with the acquisition of a public company, a proxy statement or other disclosure document must be filed for review by the SEC.

Part II.

Planning for an M&A Transaction

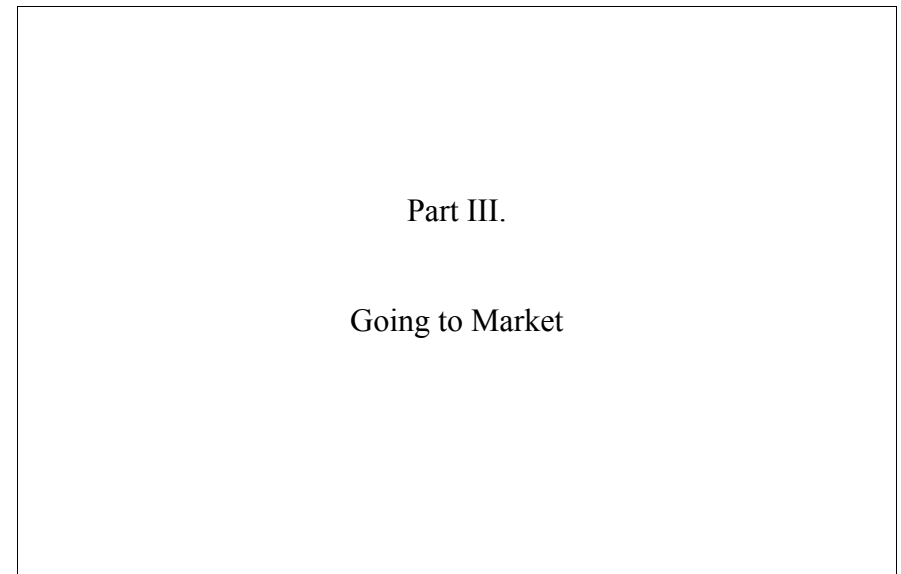
- Define reasons for sale
- Define financial objectives for sale
- Identify tax issues
- Valuate company
- Identify non-monetary objectives
- Identify disclosure obligations
 - Board
 - Lenders
 - Investors and shareholders
- Self-diligence – “corporate clean-up”
 - Corporate books and stock ledgers
 - Legal compliance
 - Financial documentation
 - Corporate strategy and business plan

Sellers

Buyers

- Identify objectives for acquisition
- Strategic
 - Capability diversification
 - Geographic expansion
 - Customer expansion
 - Market share consolidation
 - Vertical integration with suppliers or customers
- Financial
 - Revenue accretion
 - Share price accretion
- Define screening criteria
- Identify necessary disclosures
 - Board
 - Investors

- 19 -



- 20 -

Going to Market

- Agent Selection
 - RFP/deal packages provided to agents
 - An agent is often appropriate for a buyer to use
 - Initial meeting with one or more prospective agents
 - Agent agreement executed

- 21 -

Agent Sales Marketing Process

- Agent Announcement
- Press releases if required
- Marketing Materials Designed and Approved
- Confidentiality Agreement Approved
- Website Posting
- Installation of Signage as appropriate
- E-marketing campaign developed/initial launch
- Due Diligence Package Complete:
 - Include procedure, terms and conditions of sale
 - Confidentiality agreement

- 22 -

Proactive Marketing Period

- Identify Buyer Prospects
- Facility Tours (as Necessary)
- Phone Contact with Active Prospects
- Internet Marketing Campaign to Prospects
- Extensive Follow-Up with Prospects
- Seller Information Packages Offered to Approved Prospects (green, yellow and red light prospects)
- Extensive Follow-Up with Prospects
- Verbal Market Updates with Buyers every Week
- Agent delivers Written Progress Reports to Seller Biweekly

- 23 -

Negotiation Action Items

- Buyer Selection
 - Recommended offer date
 - Best and Final (as necessary)
 - Buyer Deposits Money as appropriate

- 24 -

Part IV.
Letters of Intent

- 25 -

Reasons for Using LOIs

- Types of LOIs
- Elements of an LOI
- Binding and non-binding elements
 - Parties
 - What is being purchased
 - Consideration
 - Deal structure
 - Timing
 - Contingencies
 - Due diligence
 - Covenants on operation of seller
 - Working capital, cash, inventory, and debt
 - No-shop and breakup fees
 - Non-solicitation
 - Confidentiality
 - Standard contract clauses

- 26 -

Reasons for Using a Letter of Intent

- Set forth the parties' mutual understandings of the deal discussions
- Serve as a blueprint for constructing the definitive deal documents
- Disincentive the parties from changing deal terms or revisiting issues already agreed on
- Opportunity for buyer to reduce to writing its interest to acquire

- 27 -

Types of Letters of Intent

- Preliminary Letters of Interest
 - Often used where an investment bank or broker is attempting to reduce the number of parties with which it will deal
 - May specify only a broad valuation, rather than a specific purchase price
 - Generally, a letter of interest contains non-binding terms, and is heavily conditioned
- Letters of Intent
 - Should contain a specific offer
 - Should be non-binding but also contain some binding terms
 - Should seek counter-signature from the seller

- 28 -

Elements of Letter of Intent

- Binding and non-binding elements
 - A letter of intent should make clear that it is a non-binding expression of interest

Binding and non-binding elements (cont.)

- However, the drafter should be very aware that letters of intent have been enforced
 - If all of the material terms have been agreed on, and the words and actions of the parties indicate an intent to form a deal, the courts may enforce the LOI
 - See, e.g., Pennzoil's proposed acquisition of Getty Oil in an LOI. Getty Oil's board contemplated a better offer from Texaco, whereupon Pennzoil sued. The court enforced the LOI, looking also at actions and press releases to conclude an intent to form a deal had been evidenced. The court awarded Pennzoil \$10.6 billion (in 1985 dollars) for Texaco's interference.

Binding and non-binding elements (cont.)

- Letter should utilize "intends to... subject to" language
- Letter should clearly segregate binding clauses, including:
 - Non-disclosure
 - No-shop
 - Breakup fee

- 31 -

Elements of Letter of Intent

- Parties
 - LOI should clearly set forth who is the purchaser and seller
 - Sellers should include, when appropriate, any minority shareholders, trusts, partners, and investors
 - Buyers should include both parent corporations, and when appropriate, acquisition corporations

- 32 -

Elements of Letter of Intent

- What is being purchased
- LOI should clearly convey whether assets or stock is being acquired (or membership interests in case of LLCs, partnership interests, etc.)
- LOI should state how much is being acquired (all, 75%, 51% etc.). If it is uncertain, using language such as "up to 75% of the stock" evidences the non-binding nature of the agreement, and leaves open for future discussion how much of the company is being sold.

- 33 -

Elements of Letter of Intent

- What will be the consideration
 - Will contingent payments be necessary? If so, structure for the "earnout" should be set forth in LOI
 - Will cash, stock, or other consideration be paid?
 - Will payment be contingent on financing?

- 34 -

Elements of Letter of Intent

- Structure of the deal
 - In addition to the basic terms, the LOI should set forth how the deal will be structured—will consideration be paid in tranches, what conditions need to be met for earnouts to be paid, how will the acquired entity be integrated into the buyer, etc.

- 35 -

Elements of Letter of Intent

- Timing
 - Both the buyer and seller should perceive value in clearly setting forth how long
 - Due diligence will last
 - The no-shop provision will last
 - When the LOI terminates without further action
 - When the definitive purchase agreement will be signed
 - When the acquisition will close
 - Speed is critical to the likelihood of closing. Both parties should be motivated to set out an expeditious timetable in the LOI.

- 36 -

Elements of Letter of Intent

- Contingencies
- Financing
 - The buyer may wish to have an explicit right to terminate the deal if financing is not closed
 - Financing contingencies provide some safety for the buyer, but are unattractive to sellers, particularly in an auction environment where a seller may have multiple suitors
- Execution of a definitive agreement
 - This contingency should be attractive to both parties, as it essentially distinguishes the LOI from an enforceable purchase agreement*

- 37 -

Contingencies (cont.)

- Execution of other key agreements
 - Non-competition agreements
 - The buyer may consider seeking an agreement from both the seller and its key leaders to not compete for some period following closing. Such "deal non-competes" are generally more robust than non-competes where mere employment is offered as consideration.
 - Stock sale agreements
- If the buyer will require shares to be tendered from minority shareholders who are not a party to the LOI, this should be set forth in the LOI as a pre-condition to closing

- 38 -

Contingencies (cont.)

- Due diligence
 - The buyer should always make a successful diligence review a pre-condition to signing the purchase agreement

- 39 -

Contingencies (cont.)

- Valuation
 - In the case of privately held companies, companies owned by trusts, or employee-owned companies, a valuation and/or fairness opinion may be required before the seller can sell. Similarly, in some situations, such as where a buyer is an employee-owned company or is using stock as consideration, a buyer may seek this contingency.

- 40 -

Contingencies (cont.)

- Board approval
 - Both parties may seek this contingency in the letter of intent
 - However, in a competitive acquisition environment, such clauses are generally unattractive to the other party, as they are perceived to eviscerate the "disincentive to alter the deal terms" function of LOI's

- 41 -

Contingencies (cont.)

- Assignment or novation of contracts
 - Where the buyer perceives the seller's contracts are critical to the success of the acquisition, assignment or novation should be a contingency to closing

- 42 -

Contingencies (cont.)

- Hiring of employees
- Seller issues
 - The seller may seek assurance that all or substantially all of its employees are hired by the acquirer. The LOI is the first opportunity to address this.
- Buyer issues
 - The buyer may wish to clarify that certain redundant employees will not be a part of the acquisition. It may be worthwhile to include this in the LOI, particularly if the buyer wishes to impose the termination requirement on the seller.
 - In acquisitions of services companies, on the other hand, the buyer may wish to make closing contingent on retention of all or substantially all of the employees.

Elements of Letter of Intent

- Due diligence
 - The LOI should set forth the key elements of what the buyer and seller agree will occur in the due diligence review.
- Seller issues
 - The seller may wish to limit diligence review to reasonable times, places, documents and people
 - The seller may want to restrict the buyer from accessing customers until the completion of the diligence review
- Buyer issues
 - The buyer should specify those things that it considers particularly important to review
 - Diligence should include access to facilities, operations and customers. This should be set forth in the LOI

Elements of Letter of Intent

- Covenants on operation of company
- The buyer should consider asking for an agreement that the seller will not undertake any unusual or extraordinary activities between countersigning the LOI and closing the deal

- 45 -

Elements of Letter of Intent

- Cash, inventory, other fungible assets, and debt
- Seller issues
 - The seller should consider what is being purchased, and whether it is economically sensible to distribute excess cash reserves to shareholders, sell excess inventory, and otherwise position the company so as not to confer excess benefit to the buyer

- 46 -

Cash, Inventory, Other Fungible Assets, and Debt (cont.)

- Buyer issues
- Conversely, from the buyer's perspective, the letter of intent should specify the levels of cash needed to sustain operations during the transitional period, working capital levels, debt levels, and inventory levels, to ensure the company is transitioned in approximately the state contemplated.

- 47 -

Elements of Letter of Intent

- No-shop and breakup
- The buyer should insist on a no-shop provision that bars the seller and its control group from seeking or discussing alternative proposals during some period. This should be coupled with an agreement to injunctive relief and specific performance.
- The seller should seek a breakup fee, in case the buyer decides not to close. A mutual breakup fee charges the party at fault, and permits the other party to recover the fee.

- 48 -

No-shop and breakup (cont.)

- Breakup fees are almost always cash, but it can be structured as stock.
- A stock breakup fee might involve an option on the stock. For instance, if the seller is valued or trading at \$10 per share, the buyer may get an option on the number of shares it had proposed to buy at a strike price of \$10. Thus, if the seller backs out to pursue a richer offer, for example, of \$12 per share, the ersatz buyer would get \$2 per share on the options.

Elements of Letter of Intent

- Non-solicitation and non-proselytization
 - The seller should seek an agreement that the buyer will not solicit the seller's customers or seek to hire the sellers employees
 - If reverse due diligence is being conducted (where the seller diligences the buyer), the buyer should seek these same protections

Elements of Letter of Intent

- Confidentiality, non-disclosure and non-use of information
 - An LOI should have a non-disclosure agreement that restricts use of data shared to the purposes of the contemplated deal

- 51 -

Elements of Letter of Intent

- Standard contract clauses
 - Merger clause
 - Governing law
 - Interpretation
 - Termination

- 52 -

Part V.

Due Diligence

Due diligence is the gathering and evaluation of information about a target company in order to help the purchaser:

- Understand what it is really buying
- Identify risks to be mitigated by deal terms or otherwise
- Aid in the successful integration of the target
- Avoid post-deal surprises
- Make a go/no-go decision

Approaching Due Diligence

- Avoid simply relying on a template check list
- Each deal differs with the nature of the target is different and rationale for the deal
- Due Diligence is a multidisciplinary process and will involve: parties with experience in - Law, Accounting, Tax, HR, IT, Operations, Sales, Procurement and other areas particular to your business
- Remember to consider the non financial and non-legal issues and areas such as customers, culture and IT systems during due diligence process
- Craft your due diligence plan in advance to suit the specifics of the deal – develop a timeline and assign duties to team members and have regular team reporting sessions
- Remember electronic data rooms

– 55 –

Purpose of Due Diligence

- Due diligence goal is to either to develop knowledge that will assist with negotiating a successful acquisition and in carrying out the post-deal integration or to help the purchaser come to the decision to walk away from the deal.
- The due diligence process should be used to assist in preparing for post deal integration by identifying risks, synergies, critical issues and key players in order to help craft an integration plan.
- Other third party advisors/consultants can assist in due diligence and may bring broader perspectives than that of your internal deal team.

– 56 –

Business Issues in Due Diligence

- The legal team often focuses on liabilities
- BUT the drivers for any deal also includes the sales, costs and profits considerations
- Validate your own team's assumptions and expectations of the target and its business model
- The acquisition agreement cannot make the target's business any better but it can reduce the liabilities assumed by the buyer

- 57 -

Meet the Target's Team

- People are a valuable source of due diligence information and should be the subject of due diligence
- Due diligence needs to deal with management and culture issues
- Knowledge in a target company does not only reside with the senior executives – try to gain access to others in and outside the target's organization

- 58 -

Due Diligence Is Critical

- Due diligence is critical but not often exciting
- Targets may be “dressed up” and you need to discover any major issues and problems before the deal is done
- Identify your assumptions about the target and test them
- Synergies may be overestimated
- Do not let due diligence become only a “legal” area for your deal team – you need the participation of others in your organization and senior management needs to be aware of the results

– 59 –

Part VI.

Purchase and Sale Agreements

– 60 –

There are two (2) general approaches to addressing the timing of closing relative to the timing of entering into the purchase and sale agreement, which can impact the drafting of the purchase and sale agreement:

1. Simultaneous sign-and-close.
 - As the name suggests, the parties close on the transaction on the same date that they enter into the purchase and sale agreement.
 - While this approach makes drafting the purchase and sale agreement somewhat easier (since the parties do not need to address what is to occur between signing and closing), it is not always practicable (for example, between signing and closing, licenses and permits may need to be transferred, third-party consents may need to be obtained, financing may need to be arranged, etc.).
2. Staggered sign-and-close.
 - The parties enter into the purchase and sale agreement on one date and close on the transaction on a later date (much like purchasing a piece of residential property).
 - This is the approach most often used when acquiring a public company.

This distinction is important insofar as it will dictate whether the purchase and sale agreement needs to address the parties' respective pre-closing obligations, closing conditions and termination rights.

- 61 -

What is the general format of a purchase and sale agreement?

While there are myriad different transaction structures, most purchase and sale agreements contain the same general elements:

1. Identify who the parties are.
2. Contain a lengthy list of defined terms used elsewhere in the agreement.
3. Describe what is being bought and sold (e.g., assets versus stock).
4. In the case of a purchase of assets, describe what liabilities are being assumed and excluded.
5. Indicate what the purchase price is and how it is to be paid.
6. Set forth the seller's representations and warranties (usually lengthy).
7. Set forth the buyer's representations and warranties (usually short).
8. If a staggered sign-and-close, set forth the parties' respective pre-closing covenants.
9. Set forth post-closing covenants.
10. If a staggered sign-and-close, set forth the parties' respective conditions to close.
11. Set forth the parties' respective closing deliveries.
12. Describe the parties' respective indemnification obligations.
13. If a staggered sign-and-close, set forth the parties' respective termination rights.
14. Attach disclosure schedules and any exhibits.

- 62 -

What are the most heavily negotiated sections of a purchase and sale agreement?

The seller's representations and warranties and the seller's indemnification obligations typically are the most heavily negotiated sections of a purchase and sale agreement.

- The representations and warranties of the seller provide the primary basis for the buyer to get comfortable that the business it is actually buying is the business that it believes it is buying. Because the seller's breach of its representations and warranties will typically give the buyer a right to seek indemnification following closing (at least, in the acquisition of a private company), the seller will attempt to "dilute" the representations and warranties to, in turn, limit its indemnification obligations.
- Most often, indemnification will be the buyer's sole remedy against the seller following closing in connection with an M&A transaction. Because the seller will seek to limit its exposure following closing, the seller will attempt to build as many limitations on indemnification as possible into the purchase and sale agreement. At the same time, the buyer will want to ensure that the indemnity is sufficiently broad to protect it against unwanted liabilities, etc.

- 63 -

What generally are the limitations on indemnification?

There are a number of ways to limit a buyer's right of indemnification, some of the most common ones being the following:

1. Limit the types of things for which the seller will indemnify the buyer following closing.
 - In an asset purchase transaction, the seller will typically indemnify the seller for breaches of representations and warranties, breaches of covenants, excluded assets and excluded liabilities, and the operation of the acquired business before the closing.
 - In a stock purchase transaction, the seller will typically indemnify the seller for breaches of representations and warranties, breaches of covenants and "special" indemnification matters (e.g., litigation, taxes, etc.).
2. Limit the period of time following closing within which the buyer may make an indemnification claim for breaches of representations and warranties.
 - Generally, the representations and warranties will "survive" the closing for a specified period of time, and the buyer will be entitled to be indemnified for breaches of the representations and warranties during the survival period. In a public company acquisition, the representations and warranties typically do not survive the closing.
 - "Fundamental" representations and warranties (e.g., the purchase and sale agreement is enforceable, the seller owns its assets, etc.) typically survive forever.
 - "Operating" representations and warranties (e.g., relationships with the seller's customers, litigation, etc.) typically survive 12-24 months. The buyer will want to get through at least one audit cycle before these representations and warranties expire.
 - Tax, environmental and employee benefits representations generally survive for the applicable statute of limitations period.
3. Limit the amount for which the buyer may be indemnified by the seller following closing.

- 64 -

- An indemnification “cap” is the maximum amount, in the aggregate, for which the seller must indemnify the buyer following closing. Indemnification caps oftentimes only apply to the buyer’s right of indemnification for breaches of the seller’s “operating” representations and warranties (and not to breaches of other representations and warranties, excluded assets and liabilities, etc.). The amount of the indemnification cap is a negotiated term and frequently ranges from as little as 5.0%-100.0% of the purchase price, depending upon the nature of the acquired business, the parties’ negotiating leverage and the buyer’s risk profile.
- An indemnification “basket” is really a materiality threshold – the buyer must first incur indemnifiable losses in excess of an agreed-upon amount (i.e., the basket amount) before the buyer may seek indemnification from the seller. Once the buyer has incurred indemnifiable losses in excess of the agreed-upon amount, then the buyer may be indemnified by the seller from the buyer’s first dollar of losses (often called a “tipping” basket) or the buyer may be indemnified by the seller for amounts in excess of the amount of the basket (called a “deductible” or “skip” basket). Again, baskets usually only apply to the buyer’s right of indemnification for breaches of the seller’s “operating” representations and warranties.

4. Other Limitations

- Individual claim thresholds.
- Net of insurance recovery and tax benefits to the seller.
- The provider of the indemnity can be limited. Typically, in an asset purchase transaction, the entity selling the assets and its shareholders will be jointly and severally liable for indemnifying the buyer.

What are disclosure schedules, why are they important, who prepares them, and when should they be prepared?

Disclosure schedules are attached to the purchase and sale agreement and, among other things, set forth exceptions to the seller’s representations and warranties. A seller generally will not be required to indemnify a buyer for matters set forth on the disclosure schedules. As such, disclosure schedules are a way for a seller to limit its liability under the purchase and sale agreement.

Disclosure schedules not only serve to modify the representations and warranties in the purchase and sale agreement – they are, in fact, part of the purchase and sale agreement. They are just as important as the provisions contained in the purchase and sale agreement.

The seller and its counsel will usually be responsible for preparing the seller’s disclosure schedules. The seller should have those persons within its organization responsible for the areas of disclosure carefully review the disclosure schedules.

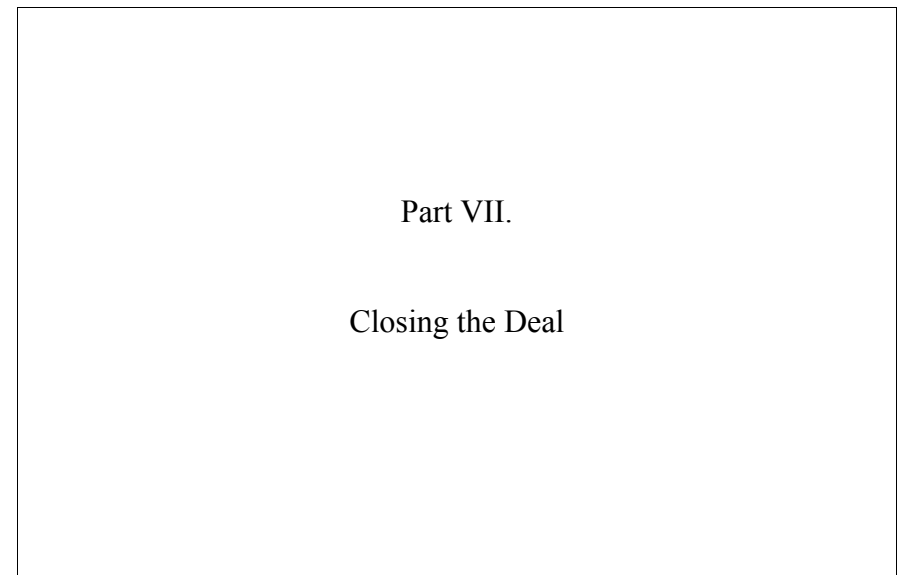
Preparation of the disclosure schedules should not be delayed until the last minute. Once the purchase and sale agreement begins to take shape, the seller and its counsel should begin the process.

Sellers will typically try to include very broad, catch-all disclosures within their disclosure schedules, since broad disclosure will arguably limit their liability more so than narrow disclosure. Buyers will typically want sellers to be very specific in making disclosures in an effort to gain more certainty as to what their exposure is on the matters being disclosed. For this reason, disclosure schedules are oftentimes negotiated to much the same extent as the provisions of the purchase and sale agreement.

What are some of the ancillary agreements that are entered into in connection with an M&A transaction?

- Letter of Intent (at the beginning of the process)
- Nondisclosure Agreement (at the beginning of the process)
- Escrow Agreement
- Noncompetition/Nonsolicitation Agreements
- Employment Agreements
- Consulting Agreements
- Assignment and Assumption Agreement and Bill of Sale
- Intellectual Property Assignments
- Transition Services Agreement
- Voting Agreements

- 67 -



- 68 -

When does the closing occur relative to signing the purchase and sale agreement?

Depending upon whether the transaction is structured as a staggered sign-and-close or a simultaneous sign-and-close, and further depending upon whether the target is a private or a public company, the dynamics of closing will vary.

Simultaneous Sign-and-Close

The parties will negotiate right up until closing. Since the purchase and sale agreement will not be signed unless the closing occurs, there is no agreement unless and until the parties close. By the same token, there typically are no conditions to closing included in the purchase and sale agreement.

Staggered Sign-and-Close

The parties will negotiate the purchase and sale agreement and the ancillary agreements (e.g., non-competition agreements, escrow agreement, etc.) and enter into the purchase and sale agreement, with the forms of ancillary agreements attached as exhibits to the purchase and sale agreement. The purchase and sale agreement will contain closing conditions that, once satisfied, will trigger the parties' respective obligations to close. Quite often, the purchase and sale agreement will contain a "drop dead" dead, whereby either party may terminate the transaction if the closing has not occurred by that date.

What should one do to prepare for closing?

Because there is a significant administrative and logistical component to closing an M&A transaction, being organized (and being able to manage the process) is of critical importance.

Prepare a very comprehensive, detailed closing checklist – for both internal use and for use by the entire working group – well in advance of closing. Prepare file folders for each checklist item, and label them to correspond to the closing checklist.

The buyer's outside counsel will typically prepare the initial draft checklist. A well-drafted closing checklist should:

1. Identify the action item.
2. Identify the section of the purchase and sale agreement (or ancillary agreement) giving rise to the action item.
3. Identify who is responsible for completing the action item.
4. Identify the document number of the document at issue.
5. Include a status column.
6. Include a necessary signatories column.

	Item	Responsible Party	Doc. #	Signatures	Status/Comments
1.	Sellers to deliver stock certificates representing Sold Shares (Purchase Agreement, § 1.2)	Seller's Counsel	12345678 v. 3	<input type="checkbox"/> John Smith <input type="checkbox"/> Jane Doe	All parties approved form per 10/1/08 conference call.

What kinds of approvals and consents are required for closing?

The approvals that are required to close a transaction depend, to a certain extent, upon how the transaction is structured.

1. Approval of the buyer's and seller's respective Boards of Directors.
2. Approval of the seller's shareholders (in the case of a sale of all or substantially all of the seller's assets and in the case of a merger). In a stock purchase transaction, a shareholder vote is not required, but the selling shareholders are implicitly approving the transaction by selling their shares.
3. Approval of the buyer's shareholders (in the case of a merger). Most often, the buyer will form a subsidiary for the sole purpose of completing the merger. The buyer will generally be the sole shareholder of this "merger sub" and, therefore, the buyer's shareholders typically will not have the opportunity to vote on the merger.
4. Approval of governmental authorities (e.g., approvals under Hart-Scott-Rodino Antitrust Improvements Act, approval of the SEC, approvals for transfers of government permits, etc.).
5. Consents of third parties under contracts.

- 71 -

What is a pre-closing?

While not necessary, a pre-closing can significantly reduce unforeseen issues (and, in turn, anxiety) on the closing date, and prevent closing delays. A pre-closing is essentially a "dry run" at closing that takes place the day before closing. Typically, if the closing is "in-person," the pre-closing will be, as well. Given advances in technology and the ability to circulate documents and signature pages electronically, in-person closings (and pre-closings) are becoming less common.

The logistics of the pre-closing and the closing should be discussed in advance. Walk through the closing checklist beforehand so each person knows what he or she is to bring to the pre-closing.

1. All documents should be finalized.
2. All documents should be executed and held in escrow pending closing.
3. A detailed funds flow statement should be finalized and approved by the parties.
4. The parties should leave the pre-closing with little more to do than have a bring-down conference call/meeting, deliver the transaction consideration and release the closing documents from escrow.

- 72 -

What happens at the Closing?

The best closing is an uneventful closing. If the parties have had an effective pre-closing, there should be little to do on the closing date:

1. Have a bring-down conference/meeting to confirm no changes in the business, etc.
2. Confirm that all conditions to closing have been satisfied and that all parties are in a position to close.
3. Wire transaction consideration and confirm receipt.
4. Release executed documents from escrow.
5. Issue press release.

Avoid closing date timing pitfalls:

- Wire the transaction consideration sufficiently early in the day for funds to hit the seller's account.
- Avoid closing on a Friday. If closing "slips" or if funds are wired and do not hit the seller's account by the close of business, issues of ownership in interest over the weekend arise.
- Avoid closing on a Monday. It is more difficult to have an effective pre-closing over a weekend, especially if bank financing is necessary to fund the transaction.

Part VIII.

Integrating an Acquired Business

- Planning for the business after the deal has been completed should occur while negotiations are carried out
- In many situations the relationships developed between the two teams during the pre-negotiation will be key to successful integration
- Once the deal has been negotiated, the Buyer must commit the resources (personnel and financial) to see the integration through
- Determine the audience for pre and post –deal communications:
 - Management, employees, shareholders, suppliers, customers, regulators, media, etc...
- Determine the top team early on although some players will change

Set Out and Communicate a Vision and Mission

- Vision
 - To be what?
- Mission
 - Efficient and integrated
 - Growth
 - Continuous improvement
 - Long-term returns
 - Meaningful work for employees
 - Highest regard for environmental safety and well-being of our local communities

Values

- Ethical Behavior
- Results Orientation – Top and Bottom Line
- Cost Consciousness
- Collaboration
- Teamwork
- Personal Accountability
- Address cultural differences

- 77 -

Acquisition

- “Integrated” company
- Leading market positions in key products
 - Greater asset base
- Product expertise and innovation
 - Leader in what?

- 78 -

Acquisition Equals

- Initial improvements
- Increased shareholder value
 - Significant cash flow growth
 - Improved earnings
- Larger scale

Implementation Plan: Set Short-Term and Long-Term Targets

Strategy	<ul style="list-style-type: none"> • Profitable growth in markets • Leading supplier of key products
Raw Materials	<ul style="list-style-type: none"> • Optimize production/external supply • Improve and reduce excess • Strategic sourcing/increase leverage
Operations	<ul style="list-style-type: none"> • Maximize asset utilization • Rationalize redundant facilities • Transfer best practices across sites
Footprint	<ul style="list-style-type: none"> • Efficient scale sites close to end use markets • Integration
Sales & Marketing	<ul style="list-style-type: none"> • Company sales force • Cost to serve analysis • Review sales channels
Accounting & Finance	<ul style="list-style-type: none"> • Develop accounting systems and internal controls • ERP System

Acquisition Is Compelling

- Set out the vision
- Significant benefits from integration of combined resources
- Proceeds from divestiture of assets
- Significant cost savings
- Positioned to grow our businesses

- 81 -

Going Forward We Need To:

- Be one team with one message to all employees
- Maintain a positive work environment
- Support change
- Exhibit a sense of urgency
- Collaborate to improve the businesses and support functions
- Invest capital wisely

- 82 -

Form of Nondisclosure Agreement

NON-DISCLOSURE AGREEMENT

_____, 2008

Re: Non-Disclosure Agreement

Dear _____:

Selling Corporation, Inc. (the "Seller") is interested in commencing discussions regarding a potential acquisition (the "Potential Transaction") of the Seller by Buying Corporation, Inc. (the "Buyer"). In connection with the consideration of the Potential Transaction between the Buyer and the Seller, the Seller is prepared to furnish to the Buyer information concerning the Seller's business, all of which is deemed confidential and proprietary (collectively, "Evaluation Material"), subject to the exceptions and terms outlined below and herein. This Non-Disclosure Agreement may be referred to herein from time to time as this "Agreement."

1. Confidentiality

To maintain the confidentiality of the Evaluation Material, the Buyer agrees:

a. not to use any Evaluation Material or notes, drawings, reproductions, extracts, summaries, or other material derived from the Evaluation Material (collectively, the "Notes") except to determine whether the Buyer wishes to propose to enter into the Potential Transaction with the Seller and the terms of the Potential Transaction;

b. not to disclose any Evaluation Material or Notes, other than to those of the Buyer's (and the Buyer's affiliates') officers, directors, employees, advisors and representatives (collectively, "Representatives") with a need to know the information for the purpose of evaluating the Potential Transaction (it being further understood that such Representatives will be informed by the Buyer of the confidential nature of the Evaluation Material and will be directed by the Buyer to treat such information accordingly);

c. that the Buyer shall be responsible for any disclosure of Evaluation Material by the Buyer's Representatives that would constitute a breach of this Agreement; and

d. not to disclose that the Evaluation Material has been made available, that the Buyer or the Buyer's Representatives have inspected any Evaluation Material, or that the Buyer and the Seller may be considering a Transaction or have had, are having, or propose to have any discussions with respect thereto.

Remember

- Communicate regularly with your leaders
- Don't fall "in love" with the "deal"
- Network inside and out
- Be visible
- Keep planning for your own future

2. Non-Disclosure by the Seller

The Seller agrees not to disclose that the Evaluation Material has been made available to the Buyer, or that the Buyer may be considering the Potential Transaction, or that discussions or negotiations are taking or have taken place with the Buyer concerning the Potential Transaction unless the disclosure is required by law or regulation.

3. Termination by the Seller

The Seller may elect at any time to terminate further access by the Buyer to Evaluation Material. Within ten (10) days after being so requested by the Seller, except to the extent the Buyer is advised by legal counsel that complying with such a request would be prohibited by law or regulatory authority, the Buyer will return (or, at the Buyer's option, destroy) all Evaluation Material, except Notes, and cause all Notes to be destroyed regardless of the medium in which such information is stored, including material in electronic form. The Buyer will confirm to the Seller in writing that all of the Evaluation Material and Notes have been returned or destroyed in compliance with this Agreement. Any Evaluation Material that cannot be returned or destroyed (such as oral Evaluation Material) shall remain confidential, subject to the terms of this Agreement. Compliance with this paragraph will not relieve the Buyer or the Buyer's Representatives of any obligations under this Agreement.

4. Exceptions

This Agreement does not apply to any Evaluation Materials that:

- i. becomes generally available to the public other than as a result of a disclosure by the Buyer or the Buyer's Representatives in violation of this Agreement,
- ii. was available to the Buyer or the Buyer's Representatives on a non-confidential basis or was already in the public domain prior to its disclosure to the Buyer by the Seller or its representatives,
- iii. becomes available to the Buyer or the Buyer's Representatives on a non-confidential basis from a source other than the Seller or its representatives, if the source is not prohibited from disclosing the information to the Buyer by a contractual, legal, fiduciary, or other obligation to maintain confidentiality to the Seller or its representatives,
- iv. as demonstrated by reasonable proof, was developed by or on behalf of the Buyer or the Buyer's Representatives independent of and without reference to the Evaluation Material.

5. Required Disclosure

If the Buyer or the Buyer's Representatives are requested, legally compelled, or required (by oral questions, interrogatories, requests for information, subpoena, civil investigative demand, or similar court or governmental process) to disclose any Evaluation Material or Notes, the Buyer agrees that the Buyer will provide the Seller with prompt written notice of the request

so that the Seller may seek an appropriate protective order or waive the Buyer's compliance with the provisions of this Agreement. The Buyer agrees to reasonably cooperate with the Seller (at the Seller's sole expense) in obtaining an appropriate protective order. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Buyer or the Buyer's Representatives are, in the opinion of the Buyer's (or the Buyer's Representatives') counsel, as the case may be, required or compelled to disclose Evaluation Material or Notes, the Buyer may disclose only that portion of the information that is legally required without liability hereunder if the Buyer agrees to exercise the Buyer's reasonable efforts (at the Seller's sole expense) to obtain assurance that confidential treatment will be accorded that information.

6. Non-Solicitation

For a period of two (2) years following the date of this Agreement, the Buyer will not, directly or indirectly, solicit for employment or hire any then-current officer, director, or employee of the Seller or any of its subsidiaries with whom the Buyer has had contact or who became known to the Buyer in connection with the Buyer's consideration of the Potential Transaction, except that the Buyer will not be precluded from hiring any employee who (i) responds to any public advertisement or general search placed by the Buyer (including by a search firm, so long as such firm is not directed by the Buyer to target employees of the Seller), or (ii) has been terminated by the Seller or its subsidiaries prior to commencement of employment discussions between the Buyer and the officer, director, or employee.

7. No Representations

The Buyer understands and agrees that none of the Seller or the Seller's affiliates or representatives makes any representations or warranties, express or implied, with respect to any of the Evaluation Material, except as is explicitly set forth in the Evaluation Material. The Buyer also agrees that none of the Seller or the Seller's affiliates or representatives will have liability to the Buyer or the Buyer's Representatives resulting from the selection or use of the Evaluation Material by the Buyer or the Buyer's Representatives.

8. No Definite Agreement

The Buyer agrees that no contract or agreement providing for the Potential Transaction will be deemed to exist between the Buyer and the Seller unless and until the Buyer and the Seller execute and deliver a final definitive agreement (a "Transaction Agreement"). The Buyer also agrees that unless and until the Buyer and the Seller have executed and delivered a Transaction Agreement, neither the Buyer nor the Seller will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement, except for the matters specifically agreed to in this Agreement. The Buyer further acknowledges and agrees that the Seller reserves the right, in its sole discretion, to reject any and all proposals made by the Buyer or the Buyer's Representatives with regard to the Potential Transaction, and to terminate discussions and negotiations with the Buyer at any time. The Buyer further understands that the Seller will be free to establish and change any process or procedure with respect to the Potential Transaction as the Seller in its sole discretion may determine (including, without limitation, negotiating with any other interested party and entering into a final definitive agreement relating to a transaction with any other party without prior notice to the Buyer or any other person).

9. Injunctive Relief

The Buyer further understands and agrees that money damages may not be a sufficient remedy for any breach of this Agreement and that the Seller will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach. This remedy will not be deemed to be the exclusive remedy for breach of this Agreement but is in addition to all other remedies available at law or equity to the Seller.

10. Severability

If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being invalidated.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

12. Notice

All notices, demands, and requests required or permitted to be given under this Agreement must be in writing and directed to the addresses indicated below, or such other address as indicated by the parties. Each notice or other communication will be deemed given (a) when personally delivered or sent by facsimile transmission to the party to be given the notice or other communication at the address indicated below, or (b) on the business day following the business day that the notice or other communication is sent by overnight courier or next day delivery, to the address indicated below.

If to the Buyer:

If to the Seller:

13. Entire Agreement

This Agreement embodies the entire understanding and agreement between the parties relating to the subject matter hereof, and supersedes any and all prior agreements and

understandings relating thereto. No change, modification, alteration, or addition to any provision of this Agreement will be binding unless agreed to in writing by an authorized representative on behalf of each party to this Agreement.

14. General

The parties understand and agree that no failure of delay by the other party in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or future exercise of any right, power, or privilege hereunder.

The Buyer's obligations under this Agreement shall remain in effect for a period of three (3) years from the date hereof; provided, however, that with respect to Evaluation Material which constitutes a trade secret under applicable law, the Buyer's obligations pursuant to this Agreement shall survive so long as the Evaluation Material remains a trade secret.

* * * * *

If the Buyer is in agreement with the foregoing, please sign and return one copy of this Agreement, it being understood that all counterpart copies will constitute but one agreement with respect to the subject matter hereof.

Very truly yours,

SELLING CORPORATION, INC.

By: _____
Its: _____

Accepted and agreed to as of the date first above written by:

BUYING CORPORATION, INC.

By: _____
Its: _____

Form of Asset Purchase Letter of Intent

_____, 2008

CONFIDENTIAL

Re: Letter of Intent

Dear _____:

This letter (the "Letter") is intended to set forth our mutual understanding and intent regarding the basic terms and conditions of a proposed transaction (the "Transaction") between Buying Corporation, Inc., a Delaware corporation (the "Buyer"), and Selling Corporation, Inc., a Delaware corporation (the "Seller"), and its shareholders (the "Shareholders"), under which Buyer would be willing to purchase substantially all of the assets of Seller used in the business of Seller (the "Business").

1. **Purchase Price.** The aggregate purchase price (the "Purchase Price") for the Assets (as defined in Paragraph 2(a) below) would be \$_____, subject to adjustment pursuant to the working capital test described in Paragraph 1(c) below. The Purchase Price would be paid as follows:

- (a) \$_____ would be paid in cash at the Closing (as defined in Paragraph 3 below), less the amount of any liabilities assumed and subject to adjustment under Paragraph 1(c) below.
- (b) \$_____ would be delivered to and held in escrow by a mutually-agreeable escrow agent to support Seller's and Shareholders' indemnification obligations. The funds would be held in escrow for a period of twelve (12) months.
- (c) The Purchase Price would be increased or decreased to the extent that net working capital at the Closing is greater than or less than a minimum level of net working capital to be determined by the parties and based on historical practices of Seller with respect to the Business.

2. **Assets and Liabilities.**

- (a) *Acquired Assets.* Buyer would purchase from Seller substantially all of the assets owned or used by Seller in connection with the Business, including, without limitation, _____ ("the Assets"). The Assets would be transferred free and clear of any liens or other encumbrances.
- (b) *Excluded Assets.* The Assets included in the proposed Transaction would specifically exclude the following: _____.

(c) *Non-Assumption of Liabilities.* Except as agreed upon by the parties in the Definitive Asset Purchase Agreement (as defined in Paragraph 6 below), Buyer would assume no liabilities of Seller of any kind whatsoever and would be indemnified and held harmless by Seller and the Shareholders from and against any non-assumed liabilities. It is expressly understood that, without limitation, Buyer would not assume:

- (1) *ERISA Plan Liability.* Any pension liability, retiree medical liability or any liability under ERISA, ERISA plans or any benefit plans with respect to employees or former employees of Seller which arise as a result of employment by Seller prior to the Closing irrespective of whether such employees become employees of Buyer; or
- (2) *Other Liabilities.* Any other liability arising out of or by virtue of the conduct of the Business by Seller and involving (i) product liability or general liability claims or goods or services manufactured or sold prior to the Closing, (ii) occupational safety and health claims, including those for workers' compensation, (iii) employment termination or discrimination claims, or (iv) environmental claims.

3. **Closing.** Subject to the negotiation and execution of the Definitive Asset Purchase Agreement, we would anticipate that the closing of the Transaction (the "Closing") would occur on or before _____ (the "Target Date"). If the Closing is delayed beyond the Target Date, the date would be extended by mutual, written consent (which will not be unreasonably withheld).

4. **Other Agreements to be Executed at Closing.**

- (a) *Employment Agreement.* Jane Doe would sign a full-time employment agreement (the "Employment Agreement") with Buyer to work as _____ for Buyer for a period of three (3) years beginning on the date of Closing. Salary for Ms. Doe would be commensurate with her existing salary. The terms of the Employment Agreement would be negotiated in good faith between Buyer and Ms. Doe.
- (b) *Consulting Agreement.* John Smith would enter into a consulting agreement with Buyer for a period of two (2) years following the Closing to provide consulting services relating to the operation of the business of Seller (the "Consulting Agreement"). Mr. Smith's principal effort would be _____, the further definition of his responsibilities to be as mutually agreed. Smith would receive an annual consulting fee of \$_____, paid ratably in monthly installments on the last day of each month.
- (c) *Noncompetition Agreements.* Seller and each of the Shareholders would execute a noncompetition agreement in favor of Buyer and its affiliates (the "Noncompetition Agreements"). The Noncompetition Agreements would provide that Seller and the Shareholders may not directly or indirectly compete with Buyer within a 250-mile radius of the Seller's current facility, for a period beginning on the Closing date and ending three (3) years after the Closing.

(d) *Real Estate.* Buyer would lease from Seller the facilities presently occupied by Seller for a term of two (2) years, each at fair market rent. The terms of the lease would be negotiated in good faith between Buyer and Seller.

5. **Employees.** At and after the Closing, Buyer would agree to interview each employee who was a full-time and actively engaged (or otherwise on authorized leave) employee of Seller immediately prior to the Closing, and would endeavor to retain as many of Seller's employees as determined solely by Buyer and subject to Buyer's customary employee retention policies. In particular, Buyer would agree to use best efforts to retain those key employees of Seller as identified by Seller during the due diligence process. For employees of Seller who are hired by Buyer, Buyer would provide compensation and benefits which are, in the aggregate, comparable to the compensation and benefits such employees received immediately prior to the Closing. At and after the Closing, Buyer would credit employees with any service to Seller prior to the Closing for purposes of determining any available employee benefit plan, including the vacation rate each employee would earn under Seller's vacation policy in effect at Closing.

6. **Definitive Asset Purchase Agreement.** Buyer and Seller will negotiate in good faith to execute a mutually acceptable definitive asset purchase agreement as soon as is reasonably practicable, containing terms consistent with the terms of this Letter, including customary covenants, representations and warranties, closing conditions, provisions for indemnification, survival and other terms customary in transactions of this nature (the "Definitive Asset Purchase Agreement").

7. **Indemnification.**

(a) *Joint and Several.* Seller's and the Shareholders' indemnification obligations would be joint and several.

(b) *Survival Generally.* Representations and warranties generally would survive for a period of twelve (12) months following the Closing.

(c) *Survival of Fundamental Representations.* Representations and warranties regarding the following matters (the "Fundamental Representations") will survive for the applicable statute of limitations: (i) organization of Seller, (ii) authority of Seller and the Shareholders, (iii) capacity of the Shareholders, (iv) no undisclosed liabilities, (v) tax matters, (vi) title to property and ownership of Seller, (vii) environmental matters, (viii) ERISA and employee benefits and (ix) no brokers.

(d) *Tipping Basket and Cap.* Except as set forth in Sections 6(e) and 6(f) below, Seller's and the Shareholders' indemnification obligations with respect to breaches of representations and warranties would be (i) subject to a tipping basket of \$ _____ (the "Tipping Basket") and (ii) subject to a cap of \$ _____ (the "Cap").

(e) *Carve Outs from Tipping Basket.* The Tipping Basket would not apply with respect to (i) breaches of or inaccuracies in the Fundamental Representations, (ii) breaches of covenants, (iii) liabilities that are not assumed and (iv) fraud or intentional misconduct.

(f) *Carve Outs from Cap.* The Cap would not apply to breaches of or inaccuracies in the Fundamental Representations, with respect to which the cap would be the Purchase Price. There would be no cap on liability with respect to (i) breaches of covenants or agreements, (ii) liabilities that are not assumed and (iii) fraud or intentional misconduct.

8. **Conduct of Business.** During the period from the Signing Date (as defined in Paragraph 10 below) until the signing of a Definitive Asset Purchase Agreement (if a Definitive Asset Purchase Agreement is signed), Seller will:

(a) conduct business in a manner substantially consistent with past practice;

(b) manage its working capital substantially consistent with past practice;

(c) use all reasonable efforts to maintain its existing business relationships with employees, customers, suppliers, creditors and others transacting business with Seller; and

(d) not enter into any transaction other than in the ordinary course of business, any long-term commitments or any transaction which is not at arm's length with unaffiliated persons or entities.

9. **Closing Conditions.** Conditions precedent to closing of the proposed Transaction would include:

(a) the negotiation and execution of a mutually acceptable Definitive Asset Purchase Agreement;

(b) execution of appropriate employment, consulting, noncompetition, and real estate agreements containing the terms described in Paragraph 4 above;

(c) absence of material adverse change, prior to Closing, in Seller's assets, financial condition, operating results, customer relations, employee relations and cash flow;

(d) receipt of all contractual, governmental, and material third party consents and approvals necessary in connection with the Transaction;

(e) accuracy in all material respects, as of the Closing, of Seller's and Buyer's representations and warranties contained in the Definitive Asset Purchase Agreement;

(f) Buyer's satisfaction with the business, environmental, legal and accounting due diligence investigations and review of Seller performed by Buyer's attorneys, accountants and other representatives;

(g) approval of the Transaction by the Shareholders; and

(h) the obtaining by Buyer of financing for the Transaction on terms and conditions acceptable to Buyer in its sole discretion.

10. **Access.** During the period from the date this Letter is signed by Seller and Buyer (the "Signing Date") until the earlier of (a) the Target Date or (b) the date on which the Buyer agrees Seller with written notice that negotiations toward a Definitive Asset Purchase Agreement are terminated (the "Termination Date"), Seller will afford to Buyer and its financing sources and their respective representatives and advisors reasonable access to the Seller, its personnel, properties/offices, contracts, books and records, and all other documents and data. Such access will be at reasonable times and on reasonable notice to the Seller. Furthermore, Buyer agrees to conduct such access in a manner so as not to unreasonably disturb the operations of Seller.

11. **Fees and Expenses.** Buyer, Seller, and Shareholders will be responsible for and bear any and all of their own respective costs and expenses (including any broker's or finder's fees and the expenses of its attorneys and other representatives) incurred at any time in connection with pursuing or consummating the Transaction.

12. **Exclusivity.** During the period from the Signing Date until the Target Date (or if earlier, the Termination Date), Seller and its affiliates will not, directly or indirectly, through any officer, director, representative, affiliate or agent, (i) solicit, initiate, encourage or assist in the submission of any inquiries, proposals or offers from any corporation, partnership, person or other entity or group relating to any form of recapitalization transaction involving Seller or any sale, merger, consolidation, business combination, spin-off, liquidation or similar transaction involving Seller (each an "Acquisition Proposal"); (ii) participate in any discussion or negotiations regarding an Acquisition Proposal or furnish to any person or entity any information concerning Seller, the fact that Seller is engaged in discussions with Buyer or the Transaction contemplated hereby; or (iii) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other person to make or enter into an Acquisition Proposal. Should any inquiry, proposal or offer to enter any transaction of the type referred to in clauses (i), (ii) or (iii) above be received by Seller or any of its affiliates, Seller agrees to promptly inform Buyer in the event it receives such an inquiry, proposal or offer.

13. **Public Announcements and Statements.** Except as and to the extent required by law, without the prior written consent of the other party, neither Buyer, nor Seller, nor the Shareholders will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise to disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this letter. If a party is required by law to make any such disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that such disclosure is required by law and the time and place that the disclosure will be made.

14. **Cooperation.** During the period from the Signing Date until the Target Date (or if earlier, the Termination Date), Buyer, Seller, and the Shareholders will cooperate with each other and proceed promptly as is reasonably practical toward the completion of the proposed Transaction.

15. **Approval of Shareholders.** By signing below, Seller and the party signing on behalf of the Shareholders represent and warrant to Buyer that this Letter has been approved by each of the Shareholders.

16. **Governing Law.** This Letter shall be governed by and construed according to the laws of the State of Delaware, without regard to conflicts of laws or rules thereof. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this letter may be brought against any of the parties in the courts of the State of _____, _____ County (or, if it has or can acquire jurisdiction, in the United States District Court for the District of _____). Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

17. **Counterparts.** This Letter may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. This Letter may be executed by facsimile signatures.

18. **Non-Binding.** It is expressly understood and agreed that this is a letter of intent only and that no liability or obligation of any nature whatsoever is intended to be created between the parties hereto; provided that the parties do intend to be legally bound by the provisions of Paragraphs 8, 10, 11, 12, 13, 14, 15, 17, 18 and 19 (the "Binding Provisions").

19. **Entire Agreement.** The Binding Provisions constitute the entire agreement between the parties, and supersede all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties on the subject matter hereof. Except as otherwise provided herein, the Binding Provisions may be amended or modified only by a writing executed by all of the parties to this agreement.

If the foregoing meets with your approval, please indicate your concurrence by returning a signed copy of this Letter to the undersigned.

Sincerely,

BUYING CORPORATION, INC.

By: _____
Its: _____

The above proposal is accepted and agreed to in all respects this _____ day of _____, 2008 by:

SELLING CORPORATION, INC.

By: _____
Its: _____

_____, 2008

CONFIDENTIAL

Re: Letter of Intent

Dear _____:

We are pleased to deliver this letter of intent (the "Letter"), which sets forth our mutual understanding and intent regarding the principal terms and conditions of the proposed acquisition (the "Acquisition") by Buying Corporation, Inc., a Delaware corporation (the "Buyer"), of 100.0% of the equity interests and voting rights (the "Stock") of Selling Corporation, Inc., a Delaware corporation (the "Company"). For the purposes of this Letter, the Seller's shareholders are collectively referred to as the "Sellers."

The proposed terms of the Acquisition are as follows:

1. Basic Transaction. The Sellers would sell all of the issued and outstanding Stock to the Buyer at the price (the "Purchase Price") set forth below in Paragraph 2, free and clear of all liens, security interests and other encumbrances. This assumes that there are no other issued and outstanding equity interests of the Company, and there are no outstanding or contingent rights to acquire equity interests of the Company.
2. Purchase Price. Buyer would buy the Stock for an aggregate amount equal to \$_____, less any outstanding indebtedness of the Company, transaction expenses incurred by the Company but not paid, plus any cash and cash equivalents on hand as of the closing (the "Purchase Price"). The Purchase Price would be payable entirely in cash pro rata to the Sellers.
3. Conditions to Closing. The closing of the Acquisition would be subject to the satisfaction of various conditions, including:
 - (a) the parties shall have negotiated and executed the Definitive Agreement (as hereinafter defined) and any other documents described in this Letter;
 - (b) the completion by the Buyer and the Buyer's representatives of its due diligence review and investigation of the Company and its assets;
 - (c) the absence of any material adverse change in the business, condition or prospects of the Company (financial or otherwise), or its relationships with customers, vendors and independent consultants/contractors prior to the closing;

_____, 2008

(d) the receipt of all contractual and governmental consents and approvals necessary (if any) in connection with the Acquisition; and

(e) the receipt of all required corporate approvals of the Acquisition.

4. Other Agreements to be Executed at Closing. In addition to the Definitive Agreement (as defined in Paragraph 11), the following agreements would be entered into at the closing (in each case in form and substance satisfactory to the parties thereto):

(a) Each Seller would execute a non-compete agreement in favor of Buyer; and

(b) The Company's President would enter into an employment agreement with the Company.

5. Exclusive Dealing. During the period from the date that this Letter is executed by the Sellers (the "Signing Date") and through and including the date that is 120 days after the Signing Date (the "Target Date"):

(a) neither the Company nor the Sellers will, directly or indirectly, through any representative or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept, or consider any proposal of any other person relating to the acquisition of the Stock or the Company, the assets or business, in whole or in part, whether directly or indirectly, through purchase, merger, consolidation, or otherwise;

(b) the Company and the Sellers will immediately notify the Buyer regarding any contact between the Sellers, the Company or its respective representatives and any other person regarding any such offer or proposal or any related inquiry; and

(c) the Company and the Sellers will inform any such interested party that the Company and the Sellers are unable to entertain any offer during such period.

6. Access. During the period from the Signing Date through and including the earlier of (a) the Target Date or (b) the date on which the Buyer provides the Sellers with written notice that negotiations toward a Definitive Agreement are terminated (the "Termination Date"), the Sellers will afford the Buyer, and its employees, agents, representatives, accountants, actuaries, consultants, and counsel, access to their property, books, records, documents, premises, employees, customers, suppliers, and independent accountants for the purpose of a due diligence investigation. Such access shall be at reasonable times during normal business hours, with reasonable prior notice to the Sellers and the Company. Buyer will work cooperatively with the Sellers and the Company to conduct such investigation in as efficient manner as is reasonably possible to permit the Company to continue to operate in the ordinary course with limited interruptions. Buyer shall not contact any employee, customer or other business relation of the Company without the prior written consent of the Sellers.

_____, 2008

7. Conduct of the Business. During the period from the Signing Date through and including the Termination Date, the Sellers shall cause the Company to operate the business in the ordinary course, consistent with past practice, and to refrain from any extraordinary transactions.

8. Cooperation. During the period from the Signing Date through and including the Target Date (or if earlier, the Termination Date), the Buyer, the Company and the Sellers will cooperate with each other and proceed in good faith toward the completion of the proposed transaction described herein.

9. Disclosure. Except as and to the extent required by law, without the prior written consent of the other party, neither the Buyer nor the Sellers will make, and each will direct its representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise to disclose or to permit the disclosure of the existence of discussions regarding, a possible transaction between the parties or any of the terms, conditions, or other aspects of the transaction proposed in this Letter. If a party is required by law to make any such disclosure, it must first provide to the other party the content of the proposed disclosure, the reasons that such disclosure is required by law and the time and place that the disclosure will be made.

10. Costs. The Buyer and the Sellers will be responsible for and bear all of their own respective costs and expenses (including any broker's or finder's fees and the expenses of its attorneys and other representatives) incurred at any time in connection with pursuing or consummating the Acquisition. Each party shall indemnify and hold harmless the other from expenses related to brokerage or finder's fees or agent's commissions and any similar charges in connection with the transaction for which such party is responsible. All transaction related expenses incurred by the Company shall be the responsibility of the Sellers.

11. Definitive Agreement. Upon execution of this Letter, the Buyer and Sellers mutually agree to proceed in good faith toward negotiation and execution of a definitive agreement (the "Definitive Agreement"), which will provide for the Acquisition, and contain representations, warranties, and indemnifications customary for transactions of this nature. This letter is intended to be a guide in drafting the Definitive Agreement and should not be construed to preclude other provisions that are consistent with the terms specified in this Letter.

_____, 2008

12. Governing Law; Jurisdiction; Venue. This Letter will be governed by and construed under the laws of the State of Delaware without regard to conflicts of laws principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Letter may be brought against any of the parties in the courts of the State of _____, _____ County (or, if it has or can acquire jurisdiction, in the United States District Court for the District of _____). Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

13. Non-Binding. It is expressly understood and agreed that this is a letter of intent only and that no liability or obligation of any nature whatsoever is intended to be created between the parties hereto; provided that the parties do intend to be legally bound by the provisions of Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 (the "Binding Provisions").

If you are in agreement with the foregoing, please sign and return one copy of this Letter to the undersigned, which thereupon will constitute our agreement with respect to its subject matter. If you do not return a signed copy to the undersigned on or before _____, 2008, this letter shall terminate and be without further force or effect.

This Letter may be executed in one or more counterparts, each of which will be deemed to be an original copy of this letter and all of which, when taken together, will be deemed to constitute one and the same agreement. This letter may be executed by facsimile signatures.

Very truly yours,

BUYING CORPORATION, INC.

By: _____
Its: _____

Acknowledged, accepted and agreed to this ____ day of _____, 2008, by:

PRELIMINARY
DUE DILIGENCE REQUEST LIST

This Preliminary Due Diligence Request List has been prepared in connection with the proposed acquisition (the "Proposed Acquisition") by Buying Corporation, Inc., a Delaware corporation ("Buyer"), of the stock of Selling Corporation, Inc., a Delaware corporation, from the existing shareholders of Selling Corporation, Inc. ("Sellers"). Sellers may also be receiving supplemental due diligence request lists from Buyer, Buyer's accountants, legal counsel, environmental specialists and other representatives, as Buyer deems appropriate.

Please provide copies of the indicated documents or the information requested to our office at the address below. As used herein, the term "Company" encompasses Selling Corporation, Inc. and Sellers and also includes subsidiaries and other entities in which Selling Corporation, Inc. may have a material ownership interest. Accordingly, any request for information made in respect of "the Company" includes a request for such information in respect of Selling Corporation, Inc. and all subsidiaries and other entities in which Selling Corporation, Inc. has a material ownership interest. The requests for information contained herein should be considered continuing requests. To the extent that documents or other information not originally provided comes to the attention of Sellers or reflect later agreement or events, such documents and information should be forwarded to Buyer and its counsel at the address below. The requests in this Preliminary Due Diligence Request List should be read broadly. To the extent documents or information not specifically requested are material to the Proposed Acquisition, such documents and information should be forwarded to Buyer and its counsel.

Please provide the information requested herein to:

Please organize information provided in accordance with the numbering system employed herein. If documentation for a particular item is not yet available, please so indicate and set forth when such documents will be forwarded. If a particular item is not applicable, please mark the appropriate box and provide any explanatory information necessary. Please return this list, as marked, with your responses.

Please note: if any of the requests below are duplicative of the items in other request lists, you need not provide them again. Please note on the table below which items have been provided to another party, the party receiving the item and the date on which the item was provided.

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(A) CORPORATE				
A1	Copies of all minutes of directors, committees of directors, and stockholders, including copies of notices of all such meetings where written notices were given, and copies of all written consents for the last three (3) years and stock record books of the Company and each subsidiary.			
A2	Articles (or Certificate) of Incorporation or Certificate of Partnership, as amended to date, for the Company and each subsidiary.			
A3	Bylaws (as amended) or Partnership Agreement for the Company and each subsidiary.			
A4	List of all states and foreign countries in which the Company and its subsidiaries are qualified to do business, have applied for qualification to do business, have substantial contacts (e.g., real or personal property owned or leased, employees, sales representatives, etc.) or in which their trade names are registered.			
A5	List of any subsidiaries of the Company.			
A6	List of all shareholders and partners (general and limited) of the Company and each subsidiary, and number of shares, options, warrants, partnership interests and other securities held by each.			
A7	List of any agreements regarding ownership of the Company, including any of the following:			
(a)	List of all options currently outstanding, including names and addresses of option holders, number of options held by each, grant date, expiration date and exercise price.			
(b)	Representative copies of stock certificates, option certificates, warrants and any other outstanding securities.			
(c)	Voting trust, stockholder agreement, buy/sell agreements, partnership agreement or other similar agreement covering any portion of the Company's securities.			
(d)	All communications with stockholders/partners for the last five (5) fiscal years, including annual reports to stockholders.			
(e)	Stock (or partnership interest) option plans and forms of option agreements which have been used.			
(f)	Purchase agreements which have been used for sale of equity securities.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(g)	Any other agreements relating to sales of securities by the Company.			
(h)	Any other agreements relating to registration rights in respect of securities.			
(i)	Warrant agreements and outstanding warrants.			
(j)	All proxy and information statements for last five (5) years.			
A8	List of the current officers and directors of the Company and each subsidiary, including divisions, business units, subsidiaries or other affiliates, which depicts the management structure of the Company.			
A9	Organizational charts of corporate structure, including subsidiaries.			
A10	Description of the company's business activities outside the boundaries of the United States, including foreign subsidiaries and contracts with foreign agents.			
A11	Name and position of all employees of the Company.			
A12	Schedule of all interests owned by the Company or any subsidiary in another Person.			
A13	Venture capital financing documents.			
A14	All private placement memoranda, offering circulars, investment letters, questionnaires and other documents relating to the offer or sale of debt or equity securities by the Company since its inception (whether or not such offering was consummated). Include copies of all documents filed with every state and federal authority in connection with any such offering of securities. Please explain how the proceeds from any offerings of securities have been used to date.			
A15	Documents related to material acquisitions and divestitures for the past five (5) years.			
(B) FINANCIAL STATEMENTS & AUDIT-RELATED DOCUMENTATION				
B1	Audited balance sheets and income statements for the Company and its subsidiaries for the past three (3) fiscal years.			
B2	Most recent unaudited financial statements.			
B3	Description of depreciation policy.			
B4	Any correspondence with any securities exchange.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
B5	Description of prepaid or deferred income and expenses.			
B6	Copy of any sales projections and estimates, and copy of current budget and any budget projections.			
B7	Description of any change in accounting policies or procedures during past three (3) years.			
B8	Management letters from auditors regarding internal accounting controls and compliance with Foreign Corrupt Practices Act issued in connection with all audits since the Company's inception.			
B9	All letters which have been sent to the Company in connection with all audits since the Company's inception.			
B10	Copies of all internal audit reports for the last three (3) fiscal years, including, without limitation, Audit Committee reports to the Board of Directors.			
B11	Copies of FAS 109 and FIN 48 audit workpapers for the past three (3) fiscal years.			
B12	Description of accounting procedures of the Company.			
(C)	TAX MATTERS			
C1	Copies of all federal, state, local and foreign income, franchise, payroll, excise and sales/use tax or information returns filed by the Company and its subsidiaries for the past three (3) years.			
C2	Description of all tax elections filed by the Company that are binding with respect to any preceding or future years.			
C3	List of all jurisdictions, foreign or domestic, in which the Company or any subsidiaries have, in any of the last three (3) years, filed a tax return.			
C4	Current good standing certificates from each state in which the Company conducts business operations.			
C5	Any inquiries, notices of audit or assessment, revenue agents' reports, etc. from federal, state or local tax/revenue authorities.			
C6	All closing letters or other materials relating to the initiation or termination of a dispute with relevant governmental authorities (foreign or domestic) regarding matters of taxation.			
C7	Any agreements or arrangements of the Company to indemnify or pay for the tax liability of its shareholders/partners.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
C8	List of the Company's "open" tax years by jurisdiction (federal, state & local).			
C9	Schedule of ongoing or recently completed (within the previous three (3) years) tax examinations. This schedule should reflect federal and state income taxes, franchise tax, payroll tax, sales/use tax, excise tax and property tax.			
C10	A copy of the Information Document Requests ("IDRs") and Revenue Agent Reports ("RARs") for any ongoing or recently completed tax examinations.			
C11	List of any state tax amnesty petitions the Company has filed or considered in the last three (3) years.			
C12	Copies of any IRS determination letters for all periods for which the statute of limitations has not run.			
C13	List identifying any other applicable taxes or tax information.			
(D)	EMPLOYEES, BENEFIT PLANS AND LABOR DISPUTES			
D1	List of all labor union contracts and collective bargaining arrangements to which the Company or any subsidiary is a party, and any information relating to "labor unrest," unfair labor practices, pending or threatened requests for arbitration, grievance proceedings, labor disputes, strikes, work stoppages, etc., including internal documents, correspondence and memoranda.			
D2	Copies of all employee benefit plan documents (ex. profit sharing, 401(K), health, dental, life, long-term disability, golden parachute, COBRA), including the plan documents, summaries provided to employees, vendor contracts, audited financial statements, and governmental filings (ex. Forms 5500, IRS determination letters and applications for determination letters). In addition, provide the same information for any employee benefit plans terminated or frozen with the past four (4) years.			
D3	Information as to unfunded liabilities under any employment, bonus or consulting agreement, or any pension, profit sharing, deferred compensation, retirement, medical reimbursement, life insurance, disability or similar plan.			
D4	Description of all "prohibited transactions" (within the meaning of the Internal Revenue Code and ERISA) and "reportable transactions"			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
	(within the meaning of ERISA) that occurred at any time during the preceding five (5) plan years with respect to any of the Company's employee benefit plans, including a description of the transaction, the date of the transaction and the excise tax paid, if any.			
D5	Copies of all investment management agreements for any employee benefit plan in effect at any time during the preceding five (5) plan years.			
D6	Other Employment Related Information:			
(a)	List of all employees who received compensation and benefits exceeding \$25,000 in the last fiscal year, including for each employee, the amount of compensation and benefits received.			
(b)	Description and copies of all written or oral employment agreements to which the Company or any subsidiary is a party or bound.			
(c)	Description of all secrecy, non-competition or similar agreements between the Company and any of its present or former owners, employees, consultants, directors, or prospective acquirers.			
(d)	Description of all independent contractor, consulting and management agreements, arrangements or understandings to which the Company or any subsidiary is a party.			
D7	Copies of all employee handbooks and personnel policies, and any communications to employees regarding employee benefits.			
D8	Description of all incentive compensation programs.			
D9	Description of all development, training or apprenticeship programs for employees of the Company.			
D10	Description of all affirmative action programs undertaken or maintained by the Company, as well as any documentation concerning any internal compliance review or governmental audit of such programs.			
D11	Description of policies and procedures for drug and substance abuse testing, treatment and discipline, including any documentation evidencing compliance with applicable federal and state law.			
D12	List of any obligations imposed by governmental authorities to employ a minimum number of employees.			
D13	Copies of any WARN compliance documentation.			
D14	Copies of any HIPAA compliance documentation, including copies of privacy notices issued to employees in the past three (3) years.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
D15	List of all workers' compensation claims filed in the last three (3) years.			
D16	Copies of all employee Form I-9's.			
D17	Description of any Conflict of Interest policy between the Company and its officers, directors and key employees.			
D18	Copies of all indemnification contracts or similar arrangements for officers and directors of the Company.			
D19	Description of claims or charges past or pending against, or investigations of, the corporation, its affiliates, officers, directors, or employees alleging or relating to potential violations of any governmental law or rule.			
(E) PROPERTIES; LEASES; INSURANCE				
E1	List of all owned real estate and copies of the following:			
(a)	Legal descriptions of each location.			
(b)	Surveys of each location.			
(c)	Deeds of conveyance for each parcel purchased by the Company.			
(d)	Title policies for each location.			
(e)	Easements, covenants and restrictions of records, and any other underlying documents affecting the real estate and/or the title policies.			
(f)	Copies of any engineering, physical and other inspection reports and/or third-party reports for each Owned or Leased Property, including mechanical, elevator, sprinkler, electrical, geotechnical, roof, and parking lot inspections.			
(g)	Copies of all Schedule B Documents for current title commitments for all owned and leased facilities.			
(h)	Current Alta "As-built" surveys for all owned and leased facilities.			
(i)	Copies of all existing leases and subleases for all owned and leased facilities.			
(j)	Estoppel Certificates from landlords on all leased facilities.			
(k)	Estoppel Certificates from tenants on all facilities with leases to third			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
	parties.			
(l)	Subordination non-disturbance agreements as applicable to facilities.			
(m)	Title Policies to be issued at closing for all owned and leased facilities with appropriate endorsements.			
(n)	Most recent tax bills for all owned and leased facilities and proof of payment.			
(o)	All written agreements regarding leases and/or the real estate.			
(p)	All unrecorded easements.			
(q)	Any verbal understandings regarding leases, subleases and/or the real property.			
(r)	The use of property and facilities located on each parcel of real estate (e.g., corporate offices, manufacturing, storage, distribution, etc.).			
(s)	Copies of appraisals completed in the past five (5) years.			
E2	List of all leased real estate and copies of all leases in connection therewith.			
E3	Property rights of the Company and related information:			
(a)	List of fixed assets, machinery and equipment (whether owned or leased), giving for each material asset or group of assets cost, depreciation reserve, method of depreciation, insured value, estimated remaining useful life, condition, suitability for use and appraised value, together with a list and description of all warranties and maintenance contracts, encumbrances or restrictions against transfer relating to such assets, machinery and equipment.			
(b)	List of all automobiles, trucks and other registered equipment, giving a brief description of equipment and lease provisions, if any, state of registration, registration number, cost, estimated or remaining useful life, and insured value.			
(c)	List of all patents, trademarks, trade names, domain names, copyrights, etc. (including applications pending) owned or used in the business of the Company or its subsidiaries, giving a brief description of use, registration number and date of issuance of registration, name and address of any person to or from whom such patent, trademark, trade name, copyright, etc. is licensed, and description of any arrangements or agreements relating thereto.			
(d)	Copies of all patent, trademark, trade name, copyright and other			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
	proprietary right licenses to which the Company is a party as licensor, licensee or otherwise.			
(e)	Procedures for protecting all patents, trademarks, trade names and copyrights.			
(f)	Identification of trade secrets, confidential information and methods of protecting the same.			
(g)	Documents relating to any trademark or prior-art searches.			
(h)	Agreements with third-party IT service providers regarding privacy policies and website terms and conditions.			
(i)	List of all significant computer software used in the operations of the Company or developed by the Company (or any director, officer, employee, shareholder or independent contractor of the Company).			
(j)	Policies on confidentiality, employee work product, assignment of inventions and copyrights and a list of reports filed thereunder.			
(k)	Agreements with third parties under which intellectual property was created, including all employee assignments and employee confidentiality agreements.			
(l)	Copies of all sales brochures and promotional materials.			
(m)	List and brief description of all liens, UCC filings, security interests or mortgages on the property of the Company.			
(n)	Copies of all material leases of or security agreements for personal property, including conditional sales contracts, equipment leases, chattel mortgages, accounts receivable financing agreements and factoring agreements.			
E4	Material building or construction agreements for construction or alteration of property, plant or equipment.			
E5	List of all insurance policies naming the insurance company, policy number, property or risk covered, appraisal value of covered property, extent of coverage, annual premium and amount of premiums which are prepaid or are unpaid from prior years.			
E6	Correspondence from insurers for the past three (3) years rejecting or accepting current and past claims.			
E7	Description of policies and procedures pertaining to data backup, storage and recovery and document retention and destruction.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(F) CONTRACTS & ARRANGEMENTS				
F1	Copies of all contracts with advertising or public relations agencies.			
F2	Description of contractual or customary credit terms available from suppliers, and copies of all agreements with suppliers.			
F3	Copies of joint venture or partnership agreements to which the Company or any subsidiaries are a party.			
F4	Description of any contracts restricting the ability of the Company or any subsidiaries to compete in any line of business with any person, or committing the Company or any subsidiaries to continue any line of business.			
F5	Any facts or circumstances which may give rise to the cancellation or termination of, or claim for damages or loss under, any agreement, arrangement or understanding.			
F6	Copies of any contracts or agreements with customers or suppliers in excess of \$10,000.			
F7	List and description of the Company's contracts, leases, security agreements, etc., which may require the consent of any third party to the proposed transaction.			
F8	Copies of purchase agreements for the purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and any and all documents related thereto.			
F9	Copies of all letters of intent, commitments or term sheets for the purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and any and all documents related thereto.			
F10	Copies of all communications (whether written or oral) regarding the potential purchase of the stock (or ownership units) or business assets of any companies by the Company (or any subsidiary) and the proposed terms thereof.			
F11	Copies of all contracts, agreements, cost-sharing or management services agreements or other documents relating to any transaction between the Company and directors, officers or owners of more than 5% of the stock of the Company or their affiliates.			
F12	Copies of other material agreements.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(G) LEGAL & LITIGATION. Documentation relating to pending of threatened litigation, assessments or claims, including:				
G1	Schedule of litigation, administrative proceedings or governmental investigations or inquiries, pending or threatened, involving the Company, any principal shareholder, officer, director, principal, partner or member of the Company as a plaintiff or defendant, including names and telephone numbers of outside counsel retained to represent the Company in these matters within the last five (5) years.			
G2	Copies of documentation relating to <u>any</u> lawsuit and related pleadings.			
G3	List and description of all outstanding judgments, decrees or orders.			
G4	Auditor litigation correspondence regarding threatened or pending litigation, contingent liabilities, assessments or claims for the past five (5) years.			
G5	Correspondence, memoranda or notes concerning inquiries from federal or state environmental officials.			
G6	Correspondence, memoranda or notes concerning any dispute with suppliers, competitors, or customers regarding any claim for an amount in excess of \$10,000, or which may otherwise have a material impact on the Company.			
G7	Correspondence, memoranda or notes concerning inquiries from federal or state tax authorities.			
G8	Correspondence, memoranda or notes concerning inquiries from federal or state occupational safety and hazard officials.			
G9	Correspondence, memoranda or notes concerning inquiries from federal or state authorities regarding equal opportunities violations.			
G10	Correspondence, memoranda or notes concerning inquiries from federal authorities regarding antitrust violations.			
G11	Correspondence, memoranda or notes concerning inquiries from federal or state agencies regarding potential violations of any other law, rule or regulations.			
G12	Correspondence, memoranda or notes concerning any litigation involving a key supplier, distributor or customer which may have a material impact on the Company.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
G13	A list of any settlement of litigation made for the past five (5) years to which the Company is a party or involving any person in his capacity as a shareholder, officer, director, principal, partner, member of employee of the company or any waiver or agreement canceling any claim or rights of substantial value involving the same, including related documents.			
G14	Attorneys' opinion letters to auditors in connection with audits.			
G15	Attorneys' opinion letters to Company concerning the potential effects of any significant proposed or pending changes in any state or federal law, rule or regulation.			
G16	Summary and description of material customer, supplier or competitor complaints in the past three years.			
G17	Description of events or circumstances which may give rise to litigation in the future.			
(H) LIABILITIES				
H1	List and description of all long and short-term indebtedness of the Company and each subsidiary and copies of all loan agreements, indentures and other relevant documents.			
H2	List of guarantees or indemnity undertakings given by the Company or its subsidiaries.			
H3	List of banks or other lenders with whom Company has a financial relationship (briefly describe nature of relationship-lines of credit, etc.).			
H4	Bank acquisition and development loans, construction loans and lines of credit.			
H5	Lender correspondence including any compliance reports submitted by the Company or its independent public accountants.			
H6	Other loan agreements with non-banks, officers, directors or employees.			
(I) LICENSES				
I1	List of all domestic and foreign governmental permits, licenses and approvals either held or required to be held by the Company or its subsidiaries for the conduct of their businesses. Copies of all			

12

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
	applications and documentation relating thereto.			
I2	List of all governmental agencies that have jurisdiction over the operations of the Company and description of any notices or citations from such agencies.			
(J) RECEIVABLES				
J1	Brief description of customary sales credit terms.			
J2	Brief description of aging of accounts receivable, giving collections since aging date and brief statement of reasons for receivables in excess of \$5,000 past due.			
J3	Names of customers owing in excess of \$5,000.			
J4	Description of basis of establishing bad debt reserve.			
J5	Current accounts receivable aging report.			
(K) ENVIRONMENTAL & REGULATORY				
K1	Copies of all environmental studies, reports, assessments and audits with respect to any properties or assets of the Company and any hazardous or toxic substances, including pesticides, petroleum, asbestos and PCBs located at the Company's facility or in soil or groundwater at such facility.			
K2	List of any hazardous substances used or stored by the Company.			
K3	Copies of all waste-disposal contracts.			
K4	List of all machinery and equipment which uses or discharges any hazardous substances.			
K5	All correspondence, reports, records or other documents submitted to or received from any foreign, federal, state or local regulatory agency within the past five (5) years with respect to environmental and OSHA matters at the Company's facility, including permits, variances, notices of violations, reports of incidents or other issues regarding compliance with laws or regulations related to hazardous or toxic substances, pesticides, asbestos, PCBs, OSHA, air or water quality, or other types of environmental, health and safety regulation.			

13

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
K6	A listing of all pending or threatened environmental proceedings, zoning proceedings, condemnation proceedings or other matters affecting the Company or its property, including a listing of any Superfund sites as to which the Company may be a potentially responsible party.			
K7	An inventory of all underground and above ground storage tanks currently or previously operated at the Company's facility, including the size, capacity, location, age, contents, tank material, leak monitoring or detection devices, spill information release control measures taken, removal dates and conditions, and other relevant information concerning the condition and use of the tanks.			
K8	All claims made to insurance companies by the Company or any of its predecessors pertaining to any environmental matter at the Company's facility.			
K9	A list of knowledgeable persons, including consultants retained by Company, regarding environmental, health and safety issues at the Company's facility.			
K10	All records regarding self-monitoring and compliance history with environmental permits at the Company's facility, including air, water, waste, and sewer permits under federal, state, or local government rules and regulations. Set forth any new events known of non-compliance with permits or other environmental regulations.			
K11	List of all transporters and sites historically or currently used by the Company for transfer, storage, treatment, recycling, or disposal of wastes.			
K12	A description of any past or current disposal of hazardous or solid waste at the Company's facility.			
K13	Information regarding the use of any drywells and/or septic tanks at the Company's facility.			
K14	An index of current Material Safety Data Sheets at the Company's facility.			
K15	A list of all oil filled electrical equipment and a confirmation that it is PCB-containing, PCB-contaminated or PCB free.			
K16	A description of any spill events and a description or documentation of their clean-up.			
K17	Copies of Company's environmental, health and safety policies and programs.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
K18	All applications, filings, findings, reports, registration statements, correspondence, complaints, consent decrees, determinations, orders, etc. relating to federal regulatory agencies and all foreign, state and local agencies performing similar functions. Include all exhibits for all filings, unless duplicative of material otherwise requested herein.			
(L) MARKETING, SALES & OPERATIONS				
L1	List and summary description of all products currently manufactured and/or sold by the Company and a list of all products manufactured and/or sold by the Company in the past ten years.			
L2	List and summary description of all services currently sold or planned to be sold by the Company.			
L3	Provide annual sales figures for each product or service for the past five (5) years.			
L4	Standard forms used in connection with the sale of products or services, including without limitation purchase orders, sales orders and quotation forms.			
L5	All warranties with respect to products manufactured or distributed or services provided by the Company.			
L6	Copies of all relevant sales literature, price lists and descriptive materials referring to the business and products being acquired.			
L7	Lists of ten (10) largest suppliers and customers.			
L8	List of five (5) largest competitors for each significant product or service sold by the Company.			
L9	All sales representative, independent contractor, distribution agreements and franchise agreements (written or oral) relating to the business being acquired.			
L10	Copies of all quality assurance and quality control policies and reports, and copies of all internal and external compliance reviews.			
L11	Summary of all products or initiatives currently under research and development.			
L12	Description of exporting initiatives and any related documentation, including policy manuals, decision matrices and personnel charged with ensuring compliance with internal and external policies pertaining to exports, including U.S. export controls, embargoes, boycotts, etc.			

NO.	ITEM DESCRIPTION	DELIVERED (DATE DELIVERED)	DATE TO BE DELIVERED	NOT APPLICABLE
(M) MISCELLANEOUS				
M1	List of surveys, appraisals and similar reports and market studies.			
M2	List of memberships and trade associations to which the company or any officer, director or key employee belongs.			
M3	All internal compliance memoranda and reports regarding state or federal environmental and employee safety compliance.			
M4	Copies of all business plans of the Company for the previous three years.			
M5	List of all bank and investment accounts and safe deposit boxes, including the name and location of each financial institution, the account numbers and names of authorized signatories.			
M6	Press clippings, news releases and brochures issued by or relating to the company.			
M7	Analysts' reports and industry surveys (by brokerage houses, technical experts, management consultants, etc.) concerning the Company.			
M8	List of parties whose consent to the proposed transaction will be required.			
M9	UCC, tax lien and judgment searches for each county and state in which the Company conducts business for the Company and for each shareholder selling stock in the Company.			
M10	Any other documents or information which, in your judgment, are significant with respect to the business being acquired, including without limitation any agreement as to which a default may occur as a result of the proposed transaction.			