

STRUCTURAL BUILDING COMPONENTS MAGAZINE

November 2006 Support Document

(The corresponding article appears in the current issue and will be posted December 2006.)

Mergers & Acquisitions Part 4: Closing the Deal

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Terms Used Throughout this 4-part series:

Conditions to Closing - the events that must occur or things that must be in place or true prior to close in order for the buyer to complete the closing.

Covenants - the commitments of the buyer and seller as to how they will conduct themselves, most often regarding the commitments between signing and closing, and sometimes include commitments pertaining to conduct after the closing.

Escrow - arrangement where a portion of the purchase price is held by a third party and is to be released in accordance with instructions from either the buyer or seller or both as negotiated; escrow arrangements can require significant time to negotiate.

Indemnification is tied to the representations and warranties made by you, the other shareholders, or possibly the company. The indemnification section requires those making the representations and warranties to compensate the buyer for any breaches in the representations and warranties or other provisions of the agreement. The indemnification provisions usually include the steps to be followed and terms of the process for resolving claims for which indemnification is sought.

Private Equity Group - money management firms that usually form limited partnerships for the purpose of raising funds from limited partner investors; the management firm pursues investment opportunities which include the purchase of businesses.

Representations and Warranties - the "statements" made by you, the other shareholders, and possibly your company, about the status of your company. These representations are required by the buyer so that it can get a comprehensive understanding of the various aspects of your company, including the financial condition, the status of contracts, the condition of assets, etc.

Right of Offset - the right of the buyer to withhold a future payment or payments held in escrow as a result of a breach of the representations and warranties.

Valuation - the amount agreed upon as the value of the enterprise; there are several methods that can be applied in determining such value.

Valuation Multiples - generally refers to the earnings stream multiple that buyers will apply in valuing a business; i.e., common ranges are 3 to 6 times annualized earnings before interest, taxes, depreciation and amortization (EBITDA) or 6 to 10 times net annualized earnings.