

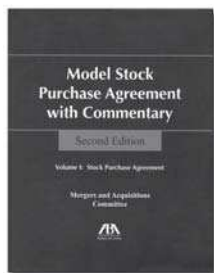
Book Reviews

Model Stock Purchase Agreement with Commentary, Second Edition

Edited by Murray Perelman
648 pp.; \$279.95
American Bar Association, 2010
321 N. Clark St., Chicago, IL 60610-4714
(800) 285-2221; www.ababooks.org

Reviewed by Keith M. Olivia

Keith M. Olivia is a member of Roberts & Olivia, LLC in Boulder, where he represents businesses and individuals in transactional matters—(720) 210-5447, ext. 73, kmolivia@wrrlaw.com.



The second edition of the *Model Stock Purchase Agreement with Commentary (MSPA)* was prepared by the American Bar Association (ABA), and updates and revises the first edition, published in 1995. In addition to the *MSPA*, which addresses stock acquisitions, the ABA published a *Model Asset Purchase Agreement with Commentary* in 2001.

MSPA comprises two volumes. The first volume contains a preliminary note explaining certain issues that are helpful in using the materials. It also provides a short hypothetical fact pattern describing the background assumptions for the model contracts and the stock purchase agreement, sequentially organized in accordance with the provisions frequently found in an acquisition agreement.

The second volume contains forms of sample exhibits and ancillary documents that are used frequently in connection with stock acquisition transactions. This includes a confidentiality agreement to be used at the outset of negotiations; a letter of intent; a promissory note for deferred payments of purchase price by buyer; an escrow agreement governing funds that are held pending resolution of indemnification claims; an earnout agreement governing contingent purchase price arrangements; a contribution agreement that target shareholders can use to share liability for indemnification claims and forms of a release for target shareholders; a disclosure letter that lists exceptions to the representations; and warranties and model legal opinions for both buyer's and sellers' counsel. The exhibits and ancillary documents are drafted in a consistent manner with the stock purchase agreement, which frequently is not the case in a negotiated transaction when various documents are prepared by different attorneys from separate precedent transactions.

The second volume also has several appendices that address certain special situations in stock acquisition transactions, such as the purchase of a subsidiary from a corporate seller; the sellers' receipt of buyer's stock for a portion of the consideration; post-closing employment contracts between the buyer and the sellers; and hypothetical scenarios that describe the rights, obligations, and remedies of the parties for certain breaches under the stock purchase agreement. An accompanying CD-ROM provides files for the stock purchase agreement, the exhibits, and the ancillary documents.

MSPA serves as a guide for buyer's counsel to prepare an initial draft of a stock purchase agreement and certain ancillary documents in connection with the acquisition of the outstanding capital stock of a privately held U.S. target company. The commentary that follows individual provisions within the stock purchase agreement and the ancillary documents explains the meaning of the text of the contractual provisions and the rationale for inclusion; references legal resources interpreting the provisions; and provides a list of likely objections from the sellers' counsel and alternative language that can be used to accommodate such objections.

MSPA is a useful reference tool for both seasoned mergers and acquisitions attorneys, as well as other attorneys who occasionally advise clients in connection with the purchase and sale of a business. The materials can be used on a stand-alone basis or in conjunction with the other leading mergers and acquisitions form books. Buyer's counsel may consider using the forms as a starting point for preparing the initial draft of an acquisition agreement and certain related documents, as opposed to relying on the final documents that were used in a recently completed stock acquisition transaction that was fully negotiated.

The provisions in the stock purchase agreement in general, and the representations and warranties in particular, are comprehensive with respect to topics covered, are rather broad in scope, and are reflective of what may be found in an initial draft of an acquisition agreement before the buyer has completed its due diligence of the target company. Sellers' counsel may use *MSPA* as a reference point to gain a better understanding of the contractual provisions being requested by buyer's counsel and alternatives to such provisions that may be used to negotiate more seller-friendly terms.

MSPA is a cost-effective form book and reference volume that transactional attorneys should consider purchasing for their libraries. The publication reflects endless hours of work by leading mergers and acquisitions attorneys. The well-developed form books will assist buyer's and sellers' counsel in formulating their clients' requests for contractual protections, preparing drafts of acquisition agreements and ancillary documents, and negotiating definitive transaction documents in an organized and cost-effective manner. ■