

# ASK THE EXPERTS WEBINAR

*Managing a Successful Transaction Close*

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**MODERATED BY:**



**Jonathan Ford**

*EXECUTIVE MANAGING DIRECTOR*

**PRESENTED BY:**



**Mike Dunkle**

*DIRECTOR*



**Matthew Kennard**

*LEARNZILLION, CHIEF  
FINANCIAL OFFICER*



**Gary Bedsole**

*MANAGING DIRECTOR*



**Damon Kade**

*MANAGING DIRECTOR*

## KEY REMINDERS

- ▶ Riveron webcasts – past and upcoming
- ▶ 4 polling questions must be answered to obtain CPE
- ▶ If you have questions, feel free to ask in Q&A option in Zoom
- ▶ Webinar evaluation form & CPE certificate will be emailed to you
- ▶ On demand video is not eligible for CPE
- ▶ You will receive a follow up email including:
  - ▶ Access to this webinar recording and deck
  - ▶ The ability to join our Webinars Mailing list to receive future invites
  - ▶ Presenter contact info

# Polling Question #1

What is the likelihood you will be involved in an acquisition or other type of transaction in the next 6 months?

- A. Very likely
- B. Likely
- C. Possible
- D. Unlikely



The background features a large, dark blue geometric shape on the left, resembling a stylized arrow or a folded piece of paper, pointing towards the right. This shape is set against a lighter blue background with a subtle pattern of overlapping triangles. A thin orange line extends from the bottom edge of the dark blue shape, pointing downwards and to the right.

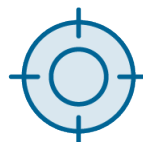
# MANAGING A SUCCESSFUL TRANSACTION CLOSE

### 3 STATISTIC / VISUAL HIGHLIGHT SLIDE HEADLINE



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How specialists are involved in managing a successful transaction close



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Risks inherent in transaction agreements



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Different specialists to mitigate different risks - Our focus will be on common financial, commercial and tax aspects



# WHAT IS THE PURCHASE AGREEMENT (SPA) AND TRANSITION SERVICES AGREEMENT (TSA)?

**SPA - A legal contract that obligates a buyer to buy and a seller to sell & the basis for a transaction**

- ▶ Signing the document formalizes the obligation.
- ▶ Transaction closing enacts the transfer of the company or its assets.
- ▶ Include a combination of legal points and business considerations. They should be balanced, however have increasingly been used as sophisticated tools to manage risk and/or exploit value.

**TSA - A contract between the buyer and seller in a divestiture that provides essential services across various functional areas**

- ▶ Defines the fixed and variable seller support costs charged to the buyer by functional process area for a defined period.
- ▶ Defines the service levels that the seller must provide by functional area.
- ▶ Allows the buyer time to standup business functions for the standalone entity for a smoother transition.

# THE PURPOSE OF SPAS

The SPA does 4 key things:

1

Affects the transfer of ownership from Seller to Buyer

2

Determines the price

3

Allocates risks and protection between Seller and Buyer

4

Legally binds the parties to the above



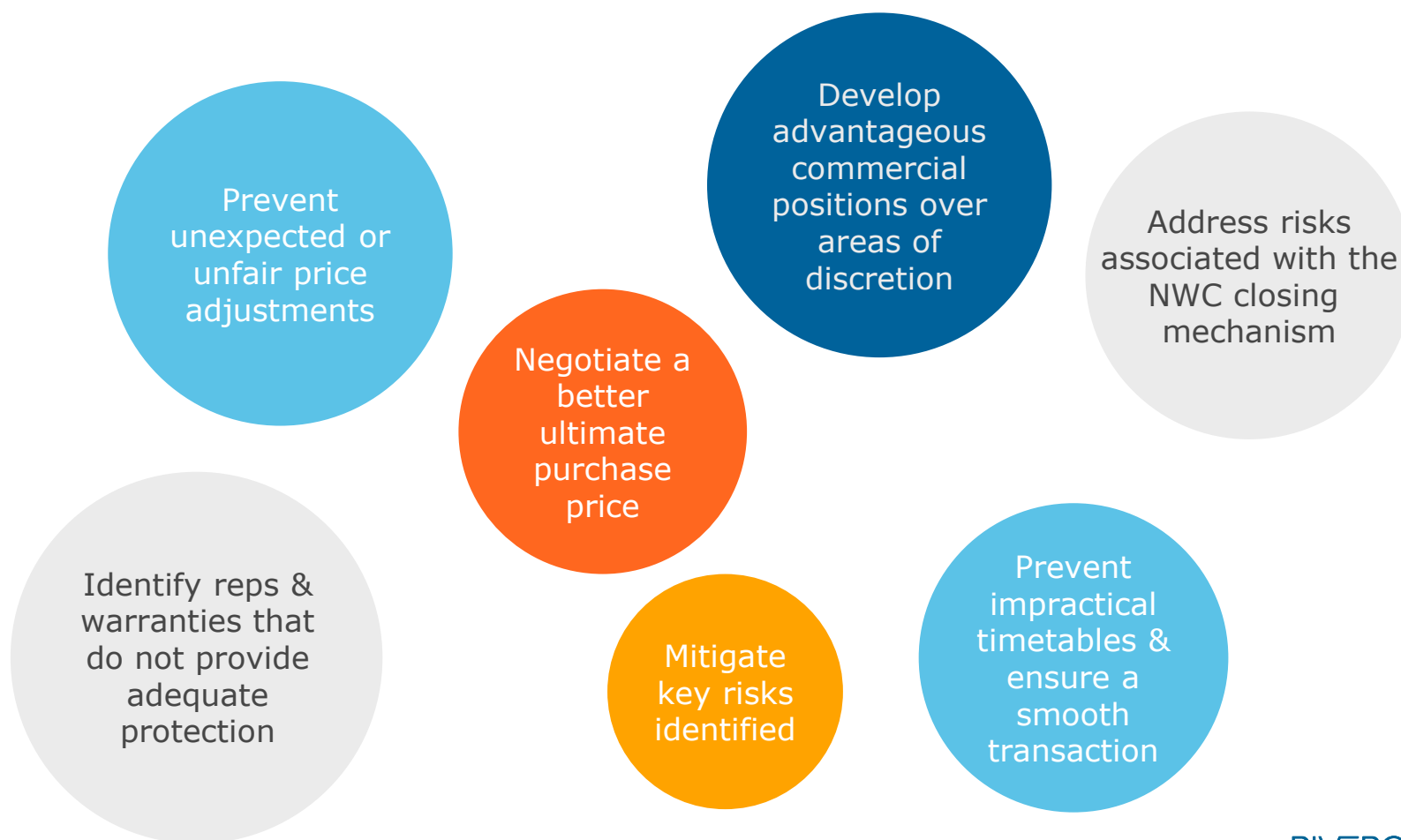
# THE PURPOSE OF SPAS


PLANNING	ANALYSIS & NEGOTIATIONS	POST CLOSING ASSISTANCE
<ul style="list-style-type: none"><li>▶ Review of <b>Offer Letter Terms</b></li><li>▶ Consider inherent deal risks including <b>financial, tax and commercial aspects</b></li><li>▶ Review aspects of the <b>initial draft of the SPA &amp; other agreements</b></li><li>▶ Advise on the appropriateness of <b>mechanisms impacting purchase price, indemnities, and future operations</b></li></ul>	<ul style="list-style-type: none"><li>▶ <b>Preparation and negotiation</b> of the <b>Enterprise to Equity Value Bridge</b>, including analysis of:<ul style="list-style-type: none"><li>▶ Closing vs Target working capital</li><li>▶ Debt and 'debt-like' items</li><li>▶ Cash and 'cash-like' items</li><li>▶ Transaction costs</li><li>▶ Impacts of diligence requiring escrows, etc.</li></ul></li><li>▶ Assisting legal advisors w/ SPA &amp; TSA provisions</li><li>▶ Review of the process for Closing NWC, Indebtedness and other items impacting Closing Consideration</li></ul>	<ul style="list-style-type: none"><li>▶ Assisting in the <b>preparation or review</b> of the draft working capital closing accounts</li><li>▶ <b>Review of funds flow</b> as compared to Enterprise to Equity Value Bridge</li><li>▶ Post-Completion <b>Warranties and Dispute assistance</b></li><li>▶ <b>100 day</b> integration and/or separation plan implementation</li></ul>

## THE PURPOSE OF SPAS AND TSAS

**M&A specialists aim to optimize transaction value and protect their clients.**

**Expertise is used to:**





# FINANCIAL ASPECTS OF CLOSING PROCESSES

# FINANCIAL ASPECTS OF CLOSING PROCESSES

## Key areas of financial impact to the close process

- ▶ Indebtedness (i.e. negotiating “debt-like”)
- ▶ Working Capital target
- ▶ Net cash
- ▶ Definitions & Accounting Principles
- ▶ Seller representations
- ▶ Enterprise value to purchase price bridge
- ▶ Closing process; adjustment mechanisms, timelines and dispute protocols

## Close Process Financial Goals

- ▶ Identify & quantify negotiation drivers
- ▶ Ensure transaction agreement terms protect or benefit our clients
- ▶ Perform a fair finalization of closing consideration (i.e. final purchase price)
- ▶ Plan for potential disputes and uncertainties

# TRANSACTION PROCESS TIMELINE

**The SPA determines price and allocates risks – language is negotiable**



CD = Closing Date, timing is illustrative only

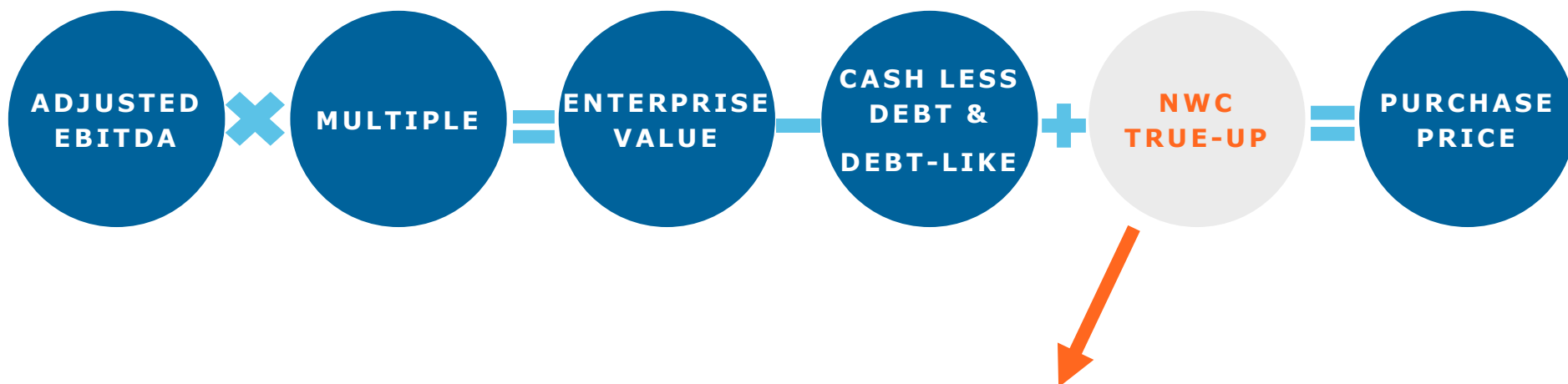
**The SPA & supporting exhibits should define:**

- ▶ The accounting principles to be used in the preparation
- ▶ The applied methodology and process timing
- ▶ Who will have access to information
- ▶ The procedure for resolving disputes

**Definitions rules of thumb:**

- ▶ Tight definitions will minimize disputes
- ▶ Loose definitions are used by both less sophisticated parties, and more aggressive parties

## FINANCIAL ASPECTS – ARRIVING AT PURCHASE PRICE



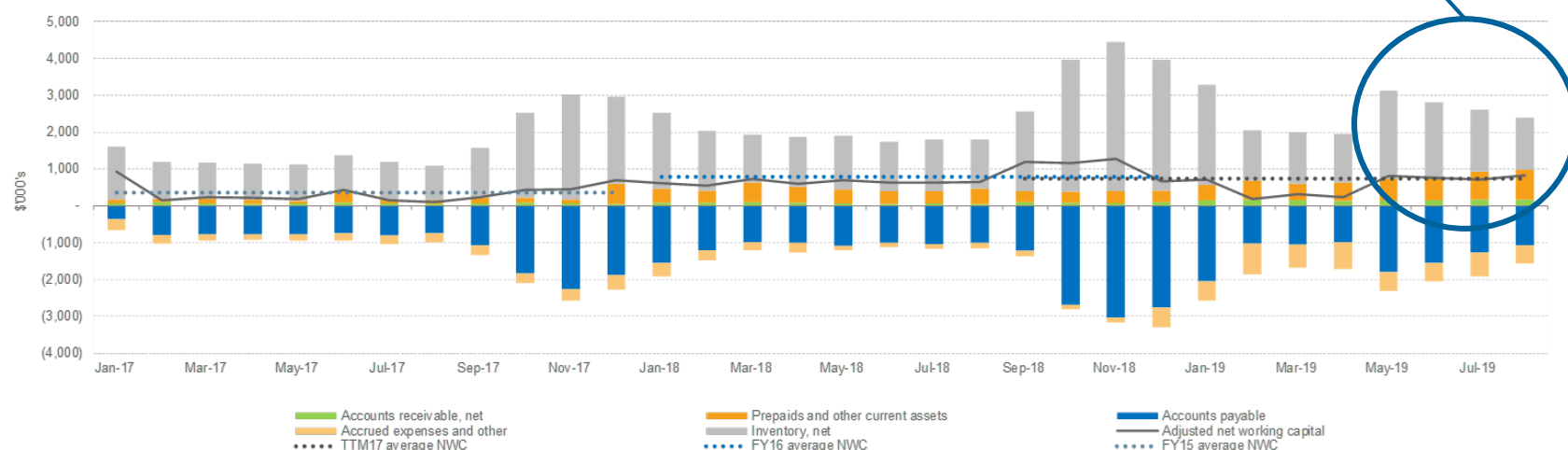
- ▶ **Target level of working capital vs actual at close**
- ▶ Goal is to provide protection & fairness, however **NWC targets are highly negotiated today**

# SETTING A WORKING CAPITAL TARGET

## Adjusted NWC trend outcome goals for target setting:

- ▶ In-line with transaction terms
- ▶ Free of non-operating items
- ▶ Representative of ongoing operations
- ▶ Directly indicative of near-term cash conversion

Adjusted Net Working Capital



**Trends provide insight into expected levels at close**  
**Analysis focus shifts from historical to future**

## AREAS OF COMMON NEGOTIATED INDEBTEDNESS

Off-balance sheet or unrecorded liabilities	Earnouts from prior deals	Management bonuses	Environmental remediation and regulatory obligations	Cost to service collected deferred revenue
Funds held in trust	Accrued legal fees or settlement liabilities	Capital (finance) leases	Transaction costs	Change in control payments
Deferred compensation	Tax exposures	Unremitted sales tax		



# AREAS OF COMMON WORKING CAPITAL DISAGREEMENT

## NWC versus Indebtedness

- ▶ Outstanding checks and negative cash
- ▶ Payments of bonuses and executive compensation
- ▶ Cost to service deferred revenue



## Target Mechanics

- ▶ Average lookback period (e.g. 3, 6, or 12-month average)
- ▶ High growth or significant seasonality
- ▶ Use and magnitude of collars



## Accounting

- ▶ Cash to accrual conversion methodologies
- ▶ Inconsistent or highly variable accounting (e.g., percentage of completion)
- ▶ Timing of physical counts / inventory true-ups
- ▶ GAAP compliance



## GAAP ACCOUNTING IN CLOSING MECHANISMS

Generally Accepted Accounting Principles (GAAP) compliance is required for audited financial statements and other regulatory driven reporting

Working capital as applies to transactions are not regulated and terms are 100% negotiable

Accounting methods and principles used for working capital targets and **closing mechanisms are meant to provide fairness in post-close cash flows** (which often requires being non-GAAP)

Working capital and other aspects of **purchase agreements that require GAAP compliance are often buyer favorable**

Blanket GAAP compliance language sometimes leads to disconnects with historical accounting practices and/or working capital targets, cash reporting, and can have other closing true-up impacts

# PURCHASE AGREEMENT FINANCIAL TERMS

CONTRADICTION WITH GOVERNING SPA LEADS TO  
DELAYS AND DISPUTES

## PURCHASE AGREEMENT

Definition of NWC target  
Accounting principles  
Illustrative exhibit

## TARGET CALCULATION

Advisor analysis  
Client analysis  
Target definition proposed to  
buyer/seller

## CLOSING CALCULATION

Illustrative estimate vs target  
Final vs estimate

## LETTER OF INTENT

General definition of NWC  
to be delivered

## WORKING CAPITAL INDUSTRY IMPACTS

<b>Industrials &amp; Manufacturing</b>	Absorption impact and method/consistency of cost accounting, inventory valuation, and terms according to position in supply chain
<b>Software and Technology</b>	Cash collected upfront and accounted for in deferred revenue prior to services and support being provided
<b>Retail</b>	Inventory heavy with high seasonality, cycle count dependent, returns allowance, and cash on site
<b>Healthcare</b>	Net collectible revenue rates dependent on payer mix, geography and modality, intermediaries and complications in reporting and collecting revenue, supplies not inventoried, regulation impacts
<b>Construction</b>	Percentage of completion billing, job costing methods, use of contractors, and project specific inventory
<b>Food &amp; Beverage</b>	Inventory spoilage, inventory in-transit, often highly decentralized and geographical making analysis difficult

# ILLUSTRATIVE EXAMPLE – ONLINE EDUCATION SAAS

## CHALLENGE

Going to market as a high-growth SaaS provider and developer of online education content looking for a strategic acquirer who would pay a premium.

Accounting challenges included the need for cash to accrual conversion and a limited finance and accounting function.

Additionally, cash flows were becoming tight despite growth due to customer billing seasonality vs immediate needs. **A seller favorable working capital outcome at close was crucial.**

## RESULTS

- ▶ Accelerated deal close with no significant financial terms given up
- ▶ Reduced working capital target and indebtedness exposure by ~73%, or ~5% of total deal value
- ▶ Worked with strategic buyer to ensure final working capital reflected negotiated and intended outcome

## APPROACH

We prepared a case for substantial normalization of historical levels, including those due to inventory requirements, revised vendor payment strategies, and highly seasonal deferred revenue balances. We also proposed to the buyer's attorneys a relatively minimal definition of indebtedness, and developed financial processes to support representations that allowed for robust reps and warranties insurance coverage.

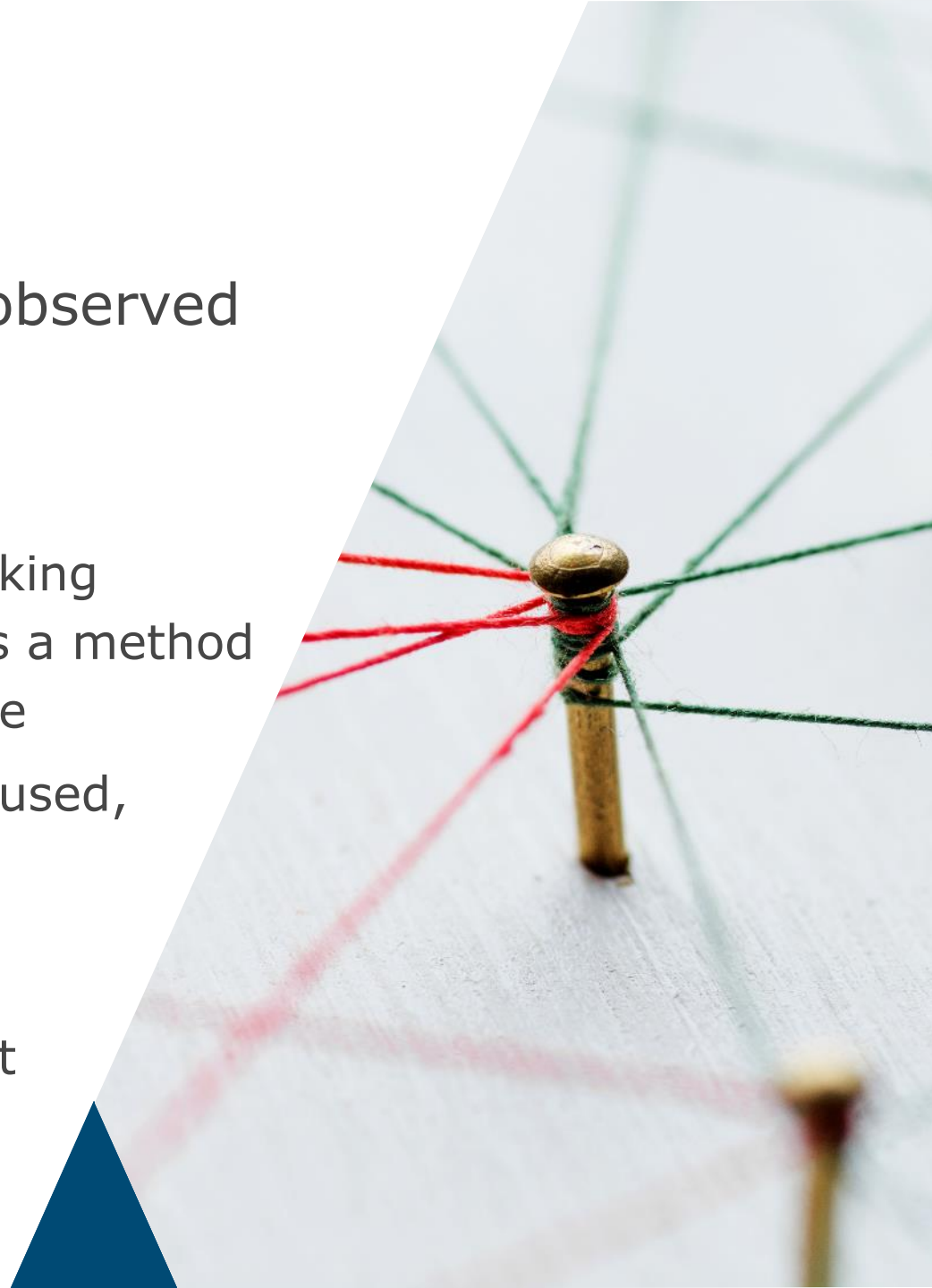
### Steps to success included -

- ▶ Detailed cash conversion, collection, and seasonality trend analysis to support working capital requirements related to annual software pre-billings
- ▶ Modeled costs to service deferred revenue tails and supporting a minimal level defined as indebtedness
- ▶ Forecasted working capital at close and proposed SPA definitions that aligned the run-rate of the company
- ▶ Ensured the buyer agreed to language and schedules supporting the terms and closing mechanism negotiated
- ▶ Served buyer and maintained credibility post-close

## Polling Question #2

What reasons have you observed as increasing transaction disputes?

- A. High deal valuations / working capital negotiation used as a method to extract transaction value
- B. Generic agreement terms used, and/or misunderstanding
- C. Other
- D. I have not observed recent transaction disputes





# **TAX-RELATED PROVISIONS IN PURCHASE AGREEMENTS**

# OBJECTIVES

**Serve various functions, including sharing of tax information and contractually allocating responsibility for the payment of taxes, the filing of tax returns, and control of tax-related claims and other matters**

## BUYER'S OBJECTIVES

- ▶ Maximum amount of information regarding the Target's tax history
- ▶ Flexibility regarding post-closing actions and restructurings
- ▶ Broad indemnification
- ▶ Post-closing involvement and cooperation necessary



## SELLER'S OBJECTIVES


- ▶ Minimize risk that transaction will not close to due to breaches/issues
- ▶ Limit Buyer's ability to take actions after close that could affect Seller's pre-closing tax liabilities
- ▶ Minimize indemnification
- ▶ Post-closing involvement and cooperation necessary






# WORKING CAPITAL

**Working capital (generally defined as current assets minus current liabilities) is a mechanism for adjusting purchase price to account for unknown changes at closing**

- ▶ Determination of targeted and final working capital amount
  - ▶ Make appropriate adjustments to final purchase price
- 

**Current and non-current portion of deferred tax assets and liabilities (income) typically excluded from working capital**

- ▶ Non-income taxes?
  - ▶ Refunds
- 

## PURCHASE PRICE ALLOCATION

Relevant if equity of more than one Target directly acquired and/or assets of Target acquired

- ▶ Special tax treatment – Section 338, disregarded entities

Address methodology for allocating purchase price, mechanism for dispute, and covenant regarding tax reporting by both parties

Consider who prepares the allocation, obligation of the parties to agree, timing to prepare, and how to resolve disputes

Seller versus Buyer tax consequences from allocation

**Example:** An amount equal to the Purchase Price plus the Assumed Liabilities shall be allocated among the Purchased Assets in accordance with Schedule \_\_\_\_\_. The allocation set forth in such schedule is intended to comply with the requirements of Section 1060 of the Code. The Seller and the Buyers agree to file all income Tax Returns or reports, including IRS Form 8594, for their respective taxable years in which the Closing occurs, to reflect the allocation described in Schedule \_\_\_\_\_ and agree not to take any position inconsistent therewith before any Governmental Authority charged with the collection of any Tax or in any other Proceeding.

# ESCROWS

An escrow can serve a variety of purposes

- ▶ Fund purchase price adjustments
- ▶ Source of indemnification



Parties should consider the following:

- ▶ Who is the owner of the escrowed funds? Will seller report gain under the installment method?
- ▶ If escrowed funds include stock, which party will have dividend and voting rights?
- ▶ Will tax distributions be permitted?



Treatment of funds released from escrow:

- ▶ Purchase price and potentially interest
- ▶ Adjustment to purchase price





# TAX REPRESENTATIONS

# TAX REPRESENTATIONS - OVERVIEW

## Purposes of tax representations:



Confirm fundamental assumptions and facts



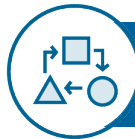
Diligence



Closing condition



Basis for indemnification



Foundation for future tax reporting

## TAX REPRESENTATION EXAMPLES

- ▶ Target has timely filed all Tax Returns [for income Taxes and all other material Tax Returns] required to be filed
- ▶ Tax Returns are complete and accurate [in all material respects]
- ▶ All Taxes due and owing by the Target (whether or not shown on any Tax Return) have been paid
- ▶ Target is not currently the beneficiary of any extension of time within which to file any Tax Return, and Target has not requested any such extension
- ▶ No claim has ever been made by an authority in a jurisdiction in which Target does not file a Tax Return that it is or may be subject to Taxation by that jurisdiction with respect to the Taxes that would be the subject of such Tax Return
- ▶ No deficiencies for Taxes of the Target have been claimed, proposed, or assessed by any taxing authority or other governmental body
- ▶ No pending or threatened audits, assessments, or other actions for or relating to any liability in respect of Taxes ... no matters under discussion with any taxing authority or other governmental body, or known ... with respect to Taxes that are likely to result in an additional liabilities for Taxes



## TAX REPRESENTATIONS EXAMPLES (CONT'D)

- ▶ Target has delivered or made available to Buyer complete and accurate copies of all Tax Returns [for income Taxes and all other material Tax Returns] for all taxable years since \_\_\_\_\_, and complete and accurate copies of all examination reports and statements of deficiencies assessed against Target since \_\_\_\_\_
- ▶ Target has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, and Target has not made any request in writing for any such extension or waiver.
- ▶ Target has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party.
- ▶ There are no Tax sharing agreements or similar arrangements between Target and any other person and Target shall not have any liability or be bound by any such Tax sharing agreements or similar arrangements to which it is a party.
- ▶ Target is not and has not been a member of any consolidated, combined, affiliated, aggregate, or unitary group of persons for purposes of determining Tax liability or filing any Tax Return.
- ▶ All transfer pricing rules have been complied with and all documentation required by all relevant transfer pricing laws has been timely prepared.





# TAX INDEMNITY



## TAX INDEMNITY - OVERVIEW

- ▶ The indemnity provides for recovery for breach of tax representations and/or separate pre-closing tax indemnity.
- ▶ Recovery for breach of tax representations is not co-extensive with a separate pre-closing tax indemnity, as breach of tax representations typically permits recovery for post-closing harm caused by breach
- ▶ Recovery under separate pre-closing tax indemnity does not require a breach of a tax representation
- ▶ The scope of the indemnity and survival of representations typically vary by deal type
  - ▶ Public deal – generally no indemnity or survival of representations
  - ▶ Private equity seller – generally limited indemnity and survival of representations
  - ▶ Other – may have full indemnity, both separate pre-closing tax indemnity and indemnity for breach of representations, which survive the expiration of the statute of limitations plus \_\_\_ days
- ▶ Will deductibles, baskets and cap apply to tax indemnity?
- ▶ Reduce indemnification by amount of tax benefit recognized by Buyer?



## TAX INDEMNITY - EXAMPLE

**Sellers agree to, jointly and severally, indemnify, save, and hold the Buyer harmless from and against all losses incurred in connection with, arising out of, resulting from, or incident to:**

- ▶ Any Taxes of the Target with respect to any Pre-Closing Tax Period
- ▶ Taxes of Sellers or any of their affiliates
- ▶ Taxes attributable to any breach or inaccuracy of any representation in \_\_\_\_\_ or any failure to comply with any covenant or agreement of Sellers
- ▶ Taxes attributable to any restructuring or reorganization undertaken by Sellers, Target or any of its affiliates prior to Closing
- ▶ Taxes for which Target is held liable under Treas. Reg. § 1.1502-6 or any similar provision of state, local or non-US law by reason of Target being included in any consolidated, affiliated, combined, or unitary group at any time on or before Closing
- ▶ Taxes imposed on or payable by third parties with respect to which Target has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to Closing
- ▶ Taxes arising out of or resulting from the payment of Closing Debt





# TAX COVENANTS

# TAX COVENANTS - OVERVIEW



## PRE-CLOSING FILINGS

- ▶ Target or Seller has responsibility; must treat items in manner consistent with past practice; Buyer review and comment

## POST-CLOSING FILINGS FOR PRE-CLOSING PERIODS

- ▶ Responsibility varies by deal; Seller pays taxes to the extent such taxes exceed the accruals on the balance sheet; must treat items in manner consistent with past practice; Buyer review and comment

## POST-CLOSING FILINGS FOR STRADDLE PERIODS

- ▶ Seller pays the taxes allocable to the portion of the straddle period deemed to end of the closing date except for taxes accrued on the balance sheet

## TAX INDEMNITY – STRADDLE PERIOD ALLOCATION

**The portion of any Tax that is allocable to the taxable period that is deemed to end of the Closing Date will be:**

- ▶ In the case of real property, personal property, and similar ad valorem Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period
- ▶ In the case of all other Taxes, determined as though the taxable year of Target terminated at the close of business on the Closing Date



## Polling Question # 3

Were taxes a significant consideration or issue in any M&A transaction that you undertook in the last 24 months?

- A. Yes
- B. No
- C. Not applicable – no M&A transactions



# COMMERCIAL

*Pre-Close Considerations*

# ADDITIONAL PRE-CLOSE CONSIDERATIONS

**When preparing for the transaction to close there are four key areas that should be considered when forming the closing documents/arrangements:**

## 1 COMMERCIAL

- ▶ Sales & marketing transition/support
- ▶ Transferability of contracts, in-progress contract negotiations & customer communication
- ▶ Service level agreements

## 2 MANAGEMENT

- ▶ Executive communications to transitioned employees/customers
- ▶ Functional support commitment
- ▶ Dedicated (Separation Management Office / Integration Management Office)

## 3 BACK OFFICE/IT SUPPORT

- ▶ Back office transition- Finance, Accounting, HR, IT, & Legal
- ▶ Business system support/separation of data through transition period
- ▶ Extraction of data for historical and open transactions/balances

## 4 SUPPLY

- ▶ Operations support
- ▶ Assignment/transition of vendor contracts, negotiation support, & vendor communication
- ▶ Locking in raw material, supplies & transportation rates
- ▶ Credit arrangements

**TSA PLANNING & EXECUTION (IF NEEDED)**



## COMMERCIAL – CONTRACTS, PRICING & SALES/MARKETING

**Customer contracts do not always allow re-assignment due to acquisition or divestiture. This can create a significant workload and risks to revenue.**

COMPONENT	RISKS	MITIGATION TECHNIQUES
<b>CONTRACTS</b>	<ul style="list-style-type: none"><li>▶ Various contracts cannot be re-assigned and need to be re-negotiated</li><li>▶ Legacy contract contains exclusivity agreement</li><li>▶ Large quantity of contracts to negotiate in a short period of time</li><li>▶ Customers need to be re-qualified for credit risk</li></ul>	<ul style="list-style-type: none"><li>▶ Paper new customer contracts with buyer and execute at closing</li><li>▶ Re-negotiate highest-risk contracts first prior to close</li><li>▶ Seller to perform updated credit analysis prior to closing</li></ul>
<b>PRICING</b>	<ul style="list-style-type: none"><li>▶ Lower volume (if carveout) can weight down pricing</li><li>▶ Reduced product portfolio</li><li>▶ Fewer complimentary or support services</li></ul>	<ul style="list-style-type: none"><li>▶ Lock in longer term pricing/volume commitments with seller's customers prior close</li><li>▶ Sustain co-branded sales promotions with seller for defined period</li></ul>
<b>SALES / MARKETING</b>	<ul style="list-style-type: none"><li>▶ Sales team members retention or transition back to seller or go to competitors</li><li>▶ Marketing collateral is branded by seller</li></ul>	<ul style="list-style-type: none"><li>▶ Execute non-compete agreements with the seller and transition current non-competes to buyer</li><li>▶ Seller to allow buyer to leverage branding for a defined period</li></ul>

# MANAGEMENT / BUSINESS CONTINUITY

The continuity of capable leadership is critical to any transaction. This can be achieved through a combination of behavioral/financial incentives and program management structure.

TRANSITION PLAN	DEVELOPMENT PATHS	FINANCIAL REWARDS	PMO / SMO / IMO
<ul style="list-style-type: none"><li>▶ Document management requirements for key departments, projects, and processes</li><li>▶ Identify risk level of each position and individual</li><li>▶ Develop comprehensive risk-mitigation plan, especially for high-risk roles or individuals</li></ul>	<ul style="list-style-type: none"><li>▶ Interview leaders to understand long-term career goals</li><li>▶ Share succession plans with leaders as appropriate</li><li>▶ Specifically highlight expansion or change of responsibilities in alignment with individuals' goals</li></ul>	<ul style="list-style-type: none"><li>▶ Obtain agreements of leaders through a series of retention bonuses</li><li>▶ Provide a larger one-time bonus on or shortly after close</li><li>▶ Consider a final bonus or stock with vesting schedule 1-3 years post-transaction to incentivize long-term retention through employment agreements</li></ul>	<ul style="list-style-type: none"><li>▶ Project Management Office, Separation Management, or Integration Management Office can supplement the Buyer's management until stood-up</li><li>▶ Should serve as an extension of management to ensure policies, processes, tasks, and objectives</li></ul>
Management Team			Separation Focused

# BACK OFFICE / IT SUPPORT

**Systems data, original documents and communications to customers, vendors, and employees will need to be supported by the Seller. Some examples include:**

1

## **Finance**

Bank data/cash cutover, lock boxes, banking signatures, financial reporting, and financial analysis outputs.

2

## **Accounting**

Open customer invoices, payment receipts and open vendor invoices. Seller communication to customers/vendors regarding post close data flow and support for the first month end close.

3

## **Human Resources**

Moving timekeeping and payroll data, employee records, benefits/401K transition, current recruiting efforts, onboarding and training documentation.

4

## **Legal**

Transition contracts, NDAs, policy/procedures, licenses, IP, certificates, company organization documents, support of company name changes/new legal entities

5

## **Information Technology**

Migration of business systems data or cloning systems, transition server/cloud infrastructure, email migration, help desk, website, PC re-imaging, disaster recovery and company cell phone accounts

# SUPPLY

**Vendor contracts and pricing may not always be re-assigned to the seller. It is important to include specific language in the SPA to protect the buyer's inability to ship or provide services because of supply disruptions.**

## Market Conditions

- ▶ Depending on the material or service it may be advantageous to re-negotiate contracts and pricing even if contracts are transferable

## Supply Considerations

- ▶ Ideally the buyer will leverage existing contracts or pricing agreements
- ▶ Seller may have to buy on behalf of the buyer until credit/contracts are established
- ▶ New purchasing volumes will need to be considered within transferred vendor contracts and the seller may need to guarantee certain pricing or buy on behalf of the buyer for a period
- ▶ Facilities of the seller may be required for warehousing and distribution until Buyer can acquire facilities or move inventory/equipment
- ▶ Terms and conditions of purchasing will need to be updated
- ▶ Unbundling of co-mingled seller and buyer inventory will need to be physically counted and accounted for within a SPA schedule

# TSA PLANNING & EXECUTION

A TSA is a contract between the buyer and seller in a divestiture/carve-out that provides essential services across selected functional areas for the business in transition following its legal separation from the seller. These services might include:

- ▶ Finance
- ▶ Accounting
- ▶ Operations
- ▶ Human Resources
- ▶ Sales/Marketing
- ▶ Operations
- ▶ IT
- ▶ Legal
- ▶ Procurement
- ▶ Compliance
- ▶ Quality/Engineering/R&D
- ▶ Tax Services

The TSA is a supplement to a larger Sale and Purchase Agreement (SPA). Where the SPA covers the legal and financial details around the purchase price and other payment provisions, the objective of the TSA is to ensure business continuity for the seller while the buyer executes on its own internal capabilities. The TSA offers financial incentives to the seller to cover functional cost incurred under the TSA on a defined schedule until the new company or buyer can stand-up the TSA functions provided by the seller.

## PEOPLE, SERVICES AND SEPARATION OFFICE - TSA COMPONENTS

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>▶ Operational structure by title and percentage of time committed to the TSA</li><li>▶ Granular TSA variable and fixed costs associated with each function</li><li>▶ Defined functions and processes critical for business continuity during transition period</li></ul> | <ul style="list-style-type: none"><li>▶ Included/excluded services and reporting expectations during transition</li><li>▶ Cadence of TSA period payment agreement for transition services</li><li>▶ Defined Seller separation management governance structure and define responsibilities to support the buyer</li></ul> |
|--|--|

# KEY TSA CONSIDERATIONS

## TSA COMMERCIAL COMPONENTS

### NEGOTIATION SUPPORT

- ▶ Historical sales analytics
- ▶ Assistance negotiating with customers and vendors
- ▶ Assembly of an effective organizational design

### COMMERCIAL & SUPPLY CREDIT

- ▶ Support establishing credit with vendors
- ▶ Establish process **to review all customer lines of credit**
- ▶ Buyer access and oversight of manufacturing/distribution facilities

### SERVICE LEVELS

- ▶ Define expected transaction volumes
- ▶ Key personnel clauses
- ▶ Also include penalties for missed or delayed deliverables

### PRICING / TERM

- ▶ Establish the TSA seller costs based on actual cost to serve
- ▶ Include options for extending the TSA term

### HIGH-QUALITY SUPPORT PERSONNEL

- ▶ Define the named seller supporting team members with significant tenure and industry experience

# Polling Question #4

At what point within a typical transaction process would you engage experts to support various agreements?

- A. After the LOI is executed
- B. Upon initial draft of the agreements
- C. As part of the finalization of closing consideration
- D. Post-closing to manage agreement compliance



The slide features a dark blue geometric pattern on the left and a lighter blue pattern on the right. A solid orange line extends from the bottom of the dark blue section towards the center. The text "Q&A" is displayed in white on the right side.

**Q&A**



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