



# 2023 LEGAL SYMPOSIUM

MAY 7-9, 2023 | WASHINGTON, DC



SESSION TITLE

# Basics Track: Franchise-Related Mergers & Acquisitions

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# Speakers

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# Overview

- **Preparing to Sell a Franchise Company**
- **Valuation Considerations**
- **Transaction Process**
- **Post-Closing Considerations**



# Preparing to Sell a Franchise Company

## Assess System Franchise Agreements

- Flexibility to assign?
- M&A friendly provisions?
- Territorial concerns?



# Preparing to Sell a Franchise Company

Organize Franchise Agreements

- Different versions?
- Amendments?

Regulatory Compliance Review



# Preparing to Sell a Franchise Company

## Evaluate Intellectual Property

- Registration?
- Proper Documentation? (TM Assignments & License Agreements)
- Infringers?



# Preparing to Sell a Franchise Company

- Resolve litigation and reduce claims
- Evaluate and update sales process
- Future value enhancement opportunities
- Consultation with M&A advisor



# Assessing Valuation

Royalty Stream

Franchisee Profitability

Same-Store Sales Growth

System Stability

Franchisee Pipeline

Future Expansion Opportunities



# Transaction Process Overview

## NDA and Letter of Intent

### Non-Disclosure Agreement

- Seller may limit access to information
- Identification of deal structure (asset sale/equity sale)

### Letters of Intent are typically non-binding

- Exclusivity period is binding



# Transaction Process Overview

## Due Diligence

Structure of deal affects liabilities assumed

Level of diligence (and length of time to complete)

Buyer and Seller Diligence

## Purchase Agreement

- Negotiations
- Simultaneous sign and close
- Sign and close at a later date



# Franchise Sales Compliance

FDD must be amended in the event of a material change

- Timing can be tricky
- Prepare franchise sales compliance strategy



# Due Diligence

## Establish Goals

Identifying "Red Flags"

Assess system health and stability

Ability to effectuate post-closing growth strategies



# Due Diligence

Stages of Due Diligence

Due Diligence Checklist

Preliminary Due Diligence Calls

Virtual Data Room

Follow Up Due Diligence Calls



# Due Diligence

Material Contracts

Franchise Regulatory Compliance

Franchisees and Sales Issues

Disputes, Litigation and Regulators

Supply and Distribution



# Due Diligence

Ad Fund

Franchise System

Manuals

Training

QA and Audit Reports



# Due Diligence

## IP & IT

Trademarks and Service Marks

Software

Websites and Social Media



# Due Diligence

## Assessment of Franchise and Related Agreements

- Review all versions
- Quality of Drafting
- Special Deals? Oral or Written?
- Assignability



# Due Diligence

## Assessment of Franchise and Related Agreements

- Sufficient Flexibility Going Forward ?
  - Scope of Grant/Reserved Rights
  - Encroachment Issues
  - System Changes Possible?
  - Ability to Re-Brand



# Due Diligence

## Regulatory Compliance Assessment

FDD Review

Consistent Disclosure

Registration State Compliance

Litigation

FPRs



# Due Diligence

## Regulatory Compliance Assessment (continued)

- Franchise Sales Practices
- Pre-Sale Marketing Materials
- Releases



# Due Diligence

## Other Inquiries/Talking to Stakeholders

Franchisees

Landlords

Suppliers

Employees



# Seller's Due Diligence

Buyer Stability/Ability to Close?

Is the Buyer a "Good Fit"?

Will employees be taken care of?

Values and Reputation — Do they matter?

Will there be an ongoing relationship post-close?



# Purchase Agreement Negotiations

- Representations and Warranties
  - R&W Insurance?
  - Knowledge Qualifiers
  - Schedules
  - Survival Periods



# Purchase Agreement Negotiations

- Indemnification
- Purchase Price Adjustments
- Holdbacks
- Escrow



# Purchase Agreement Negotiations

- Roll-Over Equity
- Earn-Outs
- Post-Closing Employment or Consulting Agreements



# Closing

Finalization of Purchase Agreement and Schedules

Closing Statement of Cash Flows

Release of Signed Agreements

Wiring of Funds



# Post-Closing Considerations

- Initial Announcement
- FDD Amendment
- Operational Changes
- Post-Closing Payments; Escrow Release



# Questions?

THANK YOU!

