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Negotiating Contingent Value Rights in M&A Transactions

Leveraging CVRs to Bridge the Value Gap and Facilitate Deals

A Live 90-Minute Teleconference/Webinar with Interactive Q&A

Today's panel features:

Steven R. Barth, Partner, **Foley & Lardner**, Milwaukee
Timothy Carroll, Principal, Consumer and Retail, **William Blair & Company**, Chicago
Timothy H. Shea, **Foley & Lardner**, Milwaukee

Tuesday, February 9, 2010

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1 pm Eastern

12 pm Central

11 am Mountain

10 am Pacific

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Negotiating Contingent Value Rights in M&A Transactions: Leveraging CVRs to Bridge the Value Gap

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Today's Presenters



Steve Barth
Partner
Foley & Lardner
LLP



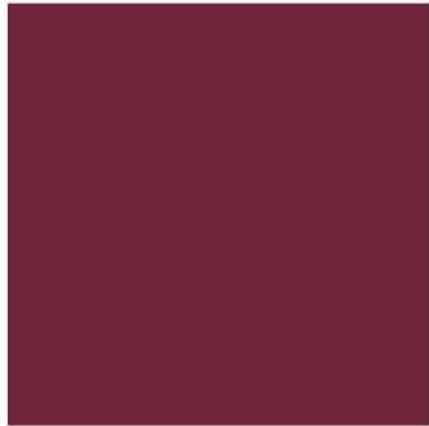
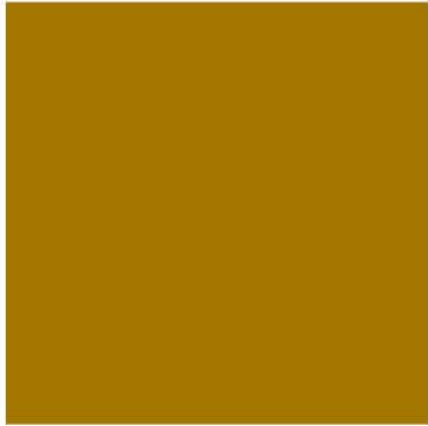
Tim Carroll
Principal
William Blair &
Company



Tim Shea
Associate
Foley & Lardner
LLP

CVRs in M&A Transactions – Agenda

- Contingent Value Rights (CVRs) Overview
 - Key definitions
 - Use and types of CVRs
 - Implications for buyers and sellers
- Deal Considerations
 - Securities law issues
 - Financial issues
 - Tax and accounting issues
- Strategies for Negotiating and Implementing CVRs



Overview - Types of CVRs



- Contingent Events
 - Milestones
 - Regulatory approval
 - Settlement of litigation or other contingent liabilities
- Share-Based CVRs
 - Tied to the post-closing performance of buyer's stock issued as consideration in the transaction

Overview - Mechanics and Advantages

- Utility of Share-Based CVRs
 - Buyers can conserve cash and avoid increasing leverage
 - Buyers can use stock as currency without incurring substantial share dilution
 - Opportunity to bridge the valuation gap
- Mechanics of Share-Based CVRs
 - Buyer issues an equal number of shares and share-based CVRs
 - Provides a “guaranteed value” to seller

Overview - Key Definitions



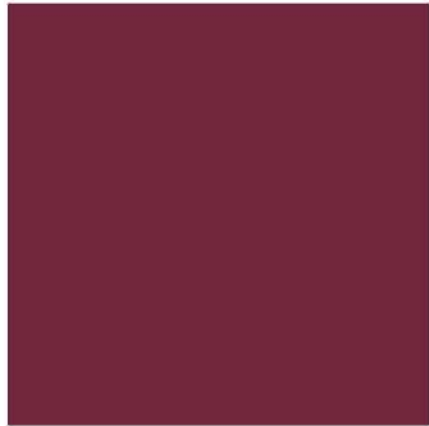
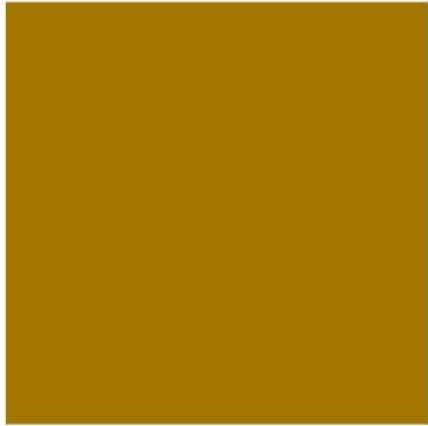
- True-Up Date
- Target Price
- Floor Price
- True Up Value
- CVR Consideration
- Ceiling Price

Overview - Implications for Buyers and Sellers

- Buyers Can Use Stock as Currency Despite Disagreement on:
 - the value of the buyer's stock
 - the value of the target company
- Buyers Can:
 - Conserve Cash
 - Avoid the need to increase debt or renegotiate credit agreements
- Potential for higher multiples for Sellers



Deal Considerations



Deal Considerations - Securities Law Issues

- Attached/Detachable
- Transferability/CVR Certificates
- Registration Issues (Contract right vs. freely tradable security)
- Registration Rights for CVR Consideration in the Form of Stock
- Shareholder Approval in Connection with CVRs Settled in Shares
- Private Company Considerations

Deal Considerations - Financial Issues

- Determining Appropriate Thresholds
 - Floor Price/Target Price tradeoff
- Considering Risk Involved
 - Seller is “leaving skin in the game”
- Liquidity Issues

Deal Consideration - Tax Issues

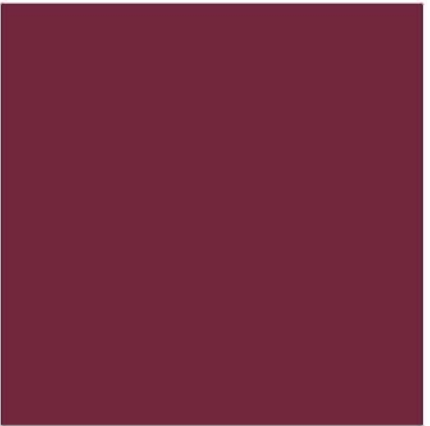
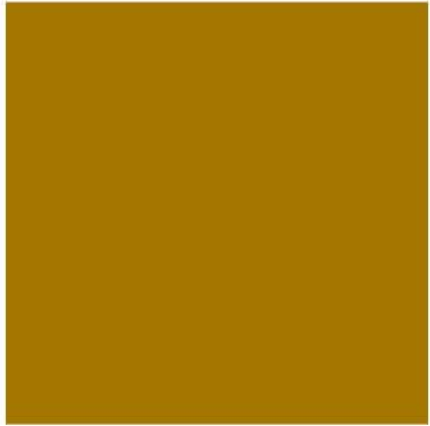


- Variety of Tax Treatments
 - Determined based on the specific terms of the transaction
- Key Issues
 - Timing of gain recognition
 - Character of income

Deal Consideration - Accounting Issues

- “Acquisition Date Fair Value” (Accounting Treatment for the Seller)
- Recognition of Changes in Fair Value
- Valuation Work and Earnings Fluctuations
- Disclosure Requirements
- Earnings Per Share Implications

Strategies for Negotiating and Implementing CVRs



Key Negotiating Terms and Conditions

- Form of Consideration
- Valuation Issues
 - Fair value on the true-up date
 - Value of shares issued as CVR consideration
- Treatment of Dividends
- Floor Price and Ceiling Price
- Resetting Floor

Post Closing Issues



- Ability to Advise on Key Decisions
- Consent Rights for Certain Transactions
- Board Rights
- Change of Control Transactions
- Offset for Seller's Indemnification Obligations

Herman Miller's Acquisition of Nemschoff Chairs

- Creative Transaction Structure
- CVRs Used to Bridge the Value Gap
- Cash constraints for Herman Miller
- Key terms of the Transaction

Conclusion



- Questions?
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