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AIJA Double Winter Seminar
"Sector specific M&A on the rise"
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M&A in Financial Industries - Regulatory and Compliance Minefield?

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Moderated by: Antti Säiläkivi, *HPP Attorneys, Helsinki*



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Natalie Bäck is a senior associate in Vinge's M&A department who regularly works with financial regulatory issues.

Natalie predominantly works with domestic and cross-border private M&A, general corporate law, licensing and regulatory issues within the financial services sector – especially relating to alternative investment funds subject to the rules of the Alternative Investment Fund Managers Directive (AIFMD).

Natalie holds an LL.M. School of Business, Economics and Law at the University of Gothenburg and she is a member of the Swedish Bar Association.



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Tarek Houdrouge is a partner in Schellenber Wittmer's Banking and Finance Group and also Corporate and Commercial Group in Geneva.

His main areas are banking and finance, transactions and corporate law, combining a banking and finance expertise with an M&A practice. He advises banks and financial institutions on regulatory matters and clients on financing and on M&A, in particular involving regulated financial institutions.

His practice also covers commercial contracts and commercial transactions, including restructuring, private equity and joint ventures.

Tarek holds a Master of Laws (LL.M.) from Northwestern University School of Law (Chicago) and, in addition to the Swiss Bar, is admitted to the New York State Bar.





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Andy Peterkin advises private banks, asset managers, investment fund managers and non-financial sector institutions on all aspects of UK financial services law and regulation. His practice covers the establishment, management and winding up of regulated firms and investment funds, advising on the regulatory aspects of the sale and purchase of regulated firms, advising non-financial sector institutions such as charities, universities and schools on the impact of financial services legislation on their businesses, and advising issuers and investors on securities regulation.

Andy has particular expertise in advising investment fund managers on the impact of the Alternative Investment Fund Managers Directive (AIFMD) as it affects onshore and offshore fund structures, capital requirements, leverage, relationships with administrators, depositaries and fund marketing.

He also regularly advises private banks, investment managers and fund managers on general Conduct of Business issues including those under the forthcoming Markets in Financial Instruments Directive II (MiFID II), the Approved Persons and Senior Managers and Certification Regime (SMCR), the Market Abuse Regulation (MAR) and FCA and PRA prudential requirements. Andy also advises on issues arising on the sale and purchase of regulated firms, including the FCA's Change in Control Regime.



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Antti Säiläkivi is a partner in HPP's M&A department and leads the firm's corporate advisory practice.

Antti has over 15 years' experience in M&A and Private Equity Transactions and he advises clients in domestic and cross-border M&A transactions, fund formation, banking and regulatory issues as well as corporate law and governance matters.

Antti's clients include Finnish and international private equity funds, banks and other credit institutions as well as publicly listed companies.

In addition to legal practice, Antti has also been appointed to serve as a board member of several portfolio companies of private equity clients.

Antti holds an LL.M. from University of Turku Law School, he is a member of the Finnish Bar Association and MBA studies at the Turku School of Economics and Business Administration.





AGENDA

1. Introduction to Financial Institutions M&A – Sector Trends
2. Specific Challenges Relating to Financial Industry M&A
3. Q&A

1. Introduction to Financial Institutions M&A – Sector Trends

- Ever since the collapse of Lehman and subsequent credit crunch and global financial crisis, most European financial institutions are still trying to cope with the combined effects of:
 - higher regulation;
 - lower interest rates; as well as
 - emergence of new technology and new disruptors,

that are challenging the traditional business models of largest banks, other major financial institutions, asset managers, insurers and other key players in the financial services sector.

1. Introduction to Financial Institutions M&A – Sector Trends

- General upward market sentiment continuing on banking and other (institutional) financial M&A driven by *inter alia*:
 - Run-offs/sales of non-core businesses (also State-aided banks);
 - Stronger capitalisation of banks;
 - Optimism towards lighter regulation post-Brexit (in the UK); as well as
 - Development in FX rates
- However, some banks are still holding back for improved market conditions while others have limited P&L capacity for losses and prefer improving their business before the sale.
- There is also a heavy reliance on central bank liquidity and funding around Europe.
 - However, some government rescue funds may not be large enough to cover existing financial needs.

1. Introduction to Financial Institutions M&A – Sector Trends

- In addition, acquisitions of FinTech Companies continues on growing pace
- Impact of block chain and related technologies
- Emergence of ICO's and Token Sales (*e.g.* Bitcoin)
- Private Credit Funds and Portfolios M&A growing as well.
- The Markets in Financial Instruments Directive II (MiFID II) in force on 3 January 2018, aiming to:
 - extend the transparency of exchange-traded instruments to virtually all OTC markets;
 - strengthen investor protection; and
 - increase market probity through stronger regulatory oversight.



Impact on Financial M&A

2. Specific Challenges Relating to Financial Industry M&A

- i. Share Deal vs Asset Deal
- ii. Due Diligence Issues and Regulatory Priorities
- iii. Typical Reps and Warranties in Financial M&A
- iv. Public Financial M&A - Securities and Capital Markets Aspects
- v. Regulatory Change in Control
- vi. Effects of Financial Crisis: Having the State as a Party
- vii. Transitional Issues
- viii. Cross-border Considerations

2 (i): Share Deal vs Asset Deal

- What is being purchased/sold?
 - A business?
 - A book?
 - Infrastructure?
- Regulatory considerations affecting structure
- Transfer logistics and transition

2 (ii): Due Diligence Issues and Regulatory Priorities

- Swiss banking secrecy and data protection
- Clients' consent re:
 - data transfer (due diligence)
 - transfer of banking relationship (closing)
- Review process of clients files and rejection mechanism
- Regulatory requirements (*e.g.* qualified participation, adequate organization, proper business conduct, capital adequacy, license)

2 (iii): Typical Reps and Warranties in Financial M&A

- Banking [and insurance] regulatory compliance
- Anti-money laundering compliance
- No regulatory inspections
- All clients honorability tested
- Impact on the work of the (Swedish) legal advisor

2 (iv): Public Financial M&A

- Securities and Capital Markets Aspects

- Market abuse regulations
 - prohibitions to operate, preservation of inside information and communications to the market
- Prospectus requirements - in case of issuance and admission of new shares
- Liaison with Stock Market Authorities
- Timing

2 (v): Regulatory Change in Control

- Flows from the EU Acquisitions Directive (2007/44/EC)
- Suspensory in nature
- Generally speaking, catches "qualifying holdings" of "capital and/or voting rights" and "significant influence" – so no relevance to an asset sale
- Thresholds at 10%, 20%, 30% and 50%
- Procedure

2 (vi): Effects of Financial Crisis: Having the State as a Party

- Political considerations and stress:
 - Political calendar may conflict with the maximization of the transaction
- Bureaucratic burdensome :
 - More paperwork and more administrative authorizations
- EU limitations (*e.g.* State-Aid)
- Publicity issues, timing
- Increased counterparty scrutiny

2 (vii): Transitional Issues

- Transfer of assets under the Swiss Merger Act or singular succession
- Clients' consent vs objection right
- AML/KYC and compliance aspects
- Pre or post-closing repapering (onboarding process)?
- Coordination with Swiss Financial Market Supervisory Authority (FINMA) and with prudential auditor

2 (viii): Cross-border Considerations

- Transfer of assets via singular succession
- Different applicable legislations and local/foreign requirements
- Transfer of data abroad and clients' consent
- Coordination with local/foreign supervisory authorities and auditors



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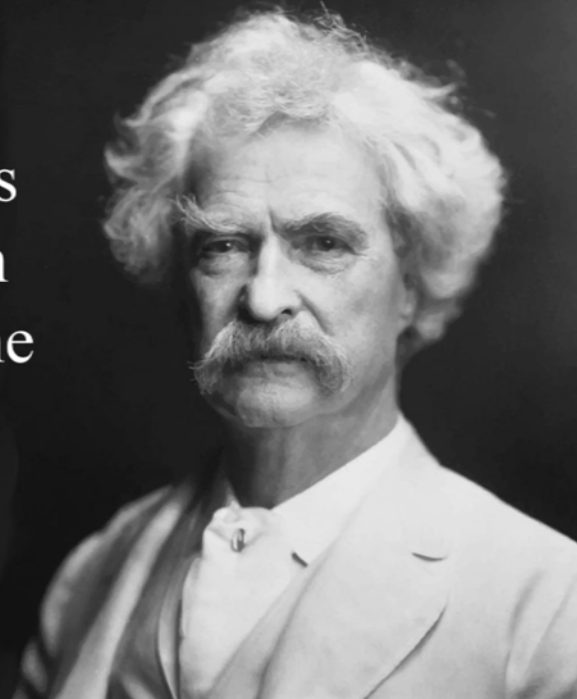
QUESTIONS AND ANSWERS



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A banker is a fellow who lends
you his umbrella when the sun
is shining, but wants it back the
minute it begins to rain.

Mark Twain



Thank you !