

Roche's \$47 Billion Purchase of Genentech Tops California Deals

By Jill Redhage

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Back in 2008, two California law firms squelched Roche Holding's surprise offer to buy out Bay Area biotechnology company Genentech Inc. for \$43.7 billion. That year, Wilson Sonsini Goodrich & Rosati lawyers advised Genentech and its board of directors and Latham & Watkins attorneys counseled a special committee of the board to dismiss the Swiss pharmaceutical company's unsolicited offer because it undervalued the company. The bid was also challenged through shareholder litigation.

But in 2009, those lawyers squeezed more money out of Roche, sealing the deal for \$46.8 billion and making it the year's largest acquisition in California.

Wilson Sonsini chairman Larry Sonsini led the deal team for South San Francisco-based Genentech and its board, with the help of Martin Korman, who heads the firm's mergers and acquisitions group, and San Francisco M&A partner Michael Ringler. Sonsini said the merger wasn't just one of the largest he's handled during his long and busy career, but also one of the most unusual.

"You were dealing with a majority stockholder who already owned a large portion [of the company], and you were also dealing with a unique company with a unique science and a unique culture," Sonsini said.

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LARRY SONSINI
WILSON SONSINI CHAIRMAN

Genentech is credited with founding the biotech industry. Its researchers manipulate the human body's proteins and modify DNA in search of treatments for serious medical conditions.

The lawyers structured the transaction as a short-form merger, through which Genentech became a wholly-owned subsidiary of the Roche Group. Roche already owned 55.7 percent of Genentech when it made a tender offer for the rest of the company's publicly held shares on March 25. By day's end it had bought another 395.7 million shares at a cost of \$95 each, bringing its ownership stake up to 93.2 percent. The company sold Roche



Larry Sonsini (left) and Martin Korman

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3 percent of the remaining shares the next day. Because it had at least a 90 percent interest in Genentech, Roche was able to compel a short-form merger under Delaware law.

Peter Kerman, chair of Latham's corporate practice, worked alongside Charles Nathan, co-chair of Latham's M&A group, and San Francisco partner John Newell to represent Genentech's special committee of the board, which vied for the interests of minority shareholders in the transaction.

"The key protection for the minority was that the decision to sell or not was truly a voluntary one made by each stockholder after full disclosure. Also, the deal had to be accepted by a majority of the public stockholders," Newell wrote in an e-mail.

New York-based Davis Polk & Wardwell corporate partners Arthur Golden, John Butler and Christopher Mayer made the match for Roche.

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