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The Role of The Board of Directors During M&A Deal Making

Beyond The CEO's Field of Vision

It is human nature that CEOs, CFOs, and General Counsels get consumed by the deal making process. It is the responsibility of the Board to stand back and look beyond horizon of the CEOs field of vision.

According to one expert in the field, the odds of shareholders seeing success in M&A transaction are less than the odds of winning at Las Vegas. This article discusses the discrepancy between M&A deal making and M&A integration, with a particular emphasis on the role of the Board of Directors in aggressively focusing on asking detailed questions about integration. The Chief Executive Officer, the Chief Legal Officer, and the Chief Financial Officer are a powerful corporate troika whose field of vision can easily get narrowed during M&A deal making discussions. It is often left to the Chief HR Officer and the Chief Information Science Officer to worry about integration issues. And they lack the power of the troika. The Board can improve shareholder value by asking the right questions about M&A integration , thus forcing the CEO to enlarge the field of vision at time when that field might be restricted by an obsession with completing the deal.

I had lunch with a partner at one of the world's most respected law firms specializing in M&A transactions. During this meeting, I asked if he had seen the research done by a Big Four CPA firm suggesting that most M&As fail to achieve acquirers' expectations three years post acquisition. His response was:

"We do transactions. What happens after the transaction is not our responsibility."

His comment was both blunt and honest. Those deeply involved in the drama of M&A transactions can get so focused on the deal completion, they may only give brief attention to integration issues. In corporations, the troika of the Chief Executive Officer, the Chief

Financial Officer, and the Chief Legal Officer can get easily consumed by deal completion. The Chief HR Officer, and the Chief Information Officer may have the institutional responsibility for M&A integration, but their roles are not as powerful as the troika.

Given the poor track record of shareholder value for acquirers in M&A deals, the Board of Directors might be less emotionally invested in deal completion. Here, we discuss three issues where the interests of M&A integration and M&A deal completion may collide. We discuss the role of the Board in bringing up these conflicts to the surface.

The conflicts revolve around:

1. Calling the transaction by the right name
2. Allowing employees to mourn and
3. Underpromising/overdelivering.

What Shall We Call It?

Is this an acquisition or a "merger of equals?" Sometimes, talk about "merger of equals" is initiated by investment bankers to make the subject more appealing to targets. Once the investment banker begins the discussion with the word "merger," it is hard to back away from it. Sometimes targets ask that the deal be clothed as a merger to provide institutional face-saving for leaders.

CEOs can get so caught up in the drama of deal completion, granting the desire to call it a merger seems like an inexpensive proposition.

When the board is asked to consider a merger, what are the governance implications?

From a corporate governance perspective, once the term "merger" is used, how can one fail to integrate members of the board of directors from the merged "partner?" And does this bigger board provide more value?

Another option is to create a "new" company with a "new name" and a "new Board" that contains Directors from the two companies. This is what happened when Nextel and Sprint "merged." And it would have happened had Sprint merged with T-Mobile.

If the Board wishes to keep the size of the Board at a reasonable level, calling the deal a "merger" may result in the loss of services of effective members of the acquiring company Board only to have them replaced by ineffective Board members of the acquired company.

We recommend to our client Boards that they fight on the front end of the deal for the right to call the transaction an acquisition. Once it is defined as an acquisition, there is no justification to bring in Board members from the acquired company.

Our best clients do not give the investment bankers the authority to use the "merger" word. Having insisted on calling the deal an acquisition, we then

Laurence Stybel
is Vice President of Board Options, Inc., a retained search firm specializing in finding Directors for global companies. He also is Executive in Residence at the Sawyer Business School at Suffolk University in Boston. Dr. Stybel is on the Board of a venture capital backed SaaS company, the Advisory Board for a South Korean University, and the former Board member of the National Association of Corporate Directors New England Chapter. He received his Doctorate in Organization Behavior at Harvard University and is a Fellow of the Institute for Career Coaching International.

recommend that Boards engage in classic Under Promise/Over Deliver: Selectively invite one or two members from the acquired company to become Directors.

Shareholders benefit if at the conclusion of the transaction there is a competent, unified Board to oversee the CEO's efforts with M&A integration.

It's Ok to Mourn

Many cultures have transition rituals for community members to mourn the passing of the old while accepting the inevitability of the new. Common transition rituals include college commencements, Bar and Bat Mitzvahs, weddings, and funerals. Ceremonies for letting go of the old before embracing the new is a basic human need.

Such critical human rituals are seldom permitted in business.

We speculate that one reason the rituals are not permitted is that in a Merger deal, the public statement must be:

We are pleased to announce a merger of equals. Our new company will combine the strengths of both entities for better customer service and more shareholder value. It should be a time to celebrate! Why should you need to mourn?

Acquisitions, on the other hand, can allow for mourning rituals to take place:

One of our clients was acquired by a large bank. The day before the old sign was to go down from the building, the President the President hired a Dixieland Band and staged a Dixieland-type Funeral at the Bank. Another client booked the hall at a local Church and held a memorial service for the company on the day before the transaction was to go into effect. People came up and spoke about how the old company had been such an important part of their lives. Tears were shed. Next day, the employees moved on to a new chapter in their lives.

During the final stages of deal completion, troika working so hard are not likely to give much thought to the post-acquisition emotional reactions of those who have been acquired. Even Human Resources may think some sort of stay bonus is all that is required to get commitment.

The Board should be the one to ask the right questions and plant the idea.

Underpromise and Over Deliver

One of the best managed integrations we observed could never have taken place under a Merger framework:

On the first day after the acquisition deal was signed, a senior officer of the acquiring company came and gave a talk to all employees of the acquired company. He informed the audience that within twelve months only 30% of employees in the room would still be employed by the company. By the end of twelve months, the IT systems would be replaced by the acquiring company's IT systems. By the end of twelve months, the forms, operations, and approach would all look like the acquired company. While the employees in the room were sad to hear this news, they were not surprised. The official merely confirmed employees' worst fears.

By the end of twelve months, there was a high morale among the employees of the acquired company: 60% of employees were still with the company; the acquiring company had adopted some of the components of the acquired company's IT systems; middle managers had meaningful roles on integration task forces; and some of operations used by the acquired company were adopted.

This was classic Under Promise/Over Deliver. It can be done in an Acquisition. But it is hard to do in a Merger.

Look Beyond The Horizon of The Ceo's Field of Vision

Tom Herd is Managing Director responsible for mergers and acquisitions capabilities within Accenture's Strategy practice. In 2010 the company examined M&As where shareholder value had been created two years after the agreement was signed.

Herd concluded that

1. CEOs bet their careers every time they do an M&A and
2. Even after studying successful M&As, CEOs "may still find better odds at the tables in Vegas."

It is human nature that CEOs, CFOs, and General Counsels get consumed by the deal making process. It is the responsibility of the Board to stand back and look beyond horizon of the CEOs field of vision. We have suggested some practical steps that Boards might take.

Shareholders benefit if at the conclusion of the transaction there is a **competent, unified Board to oversee the CEO's efforts with M&A integration**

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