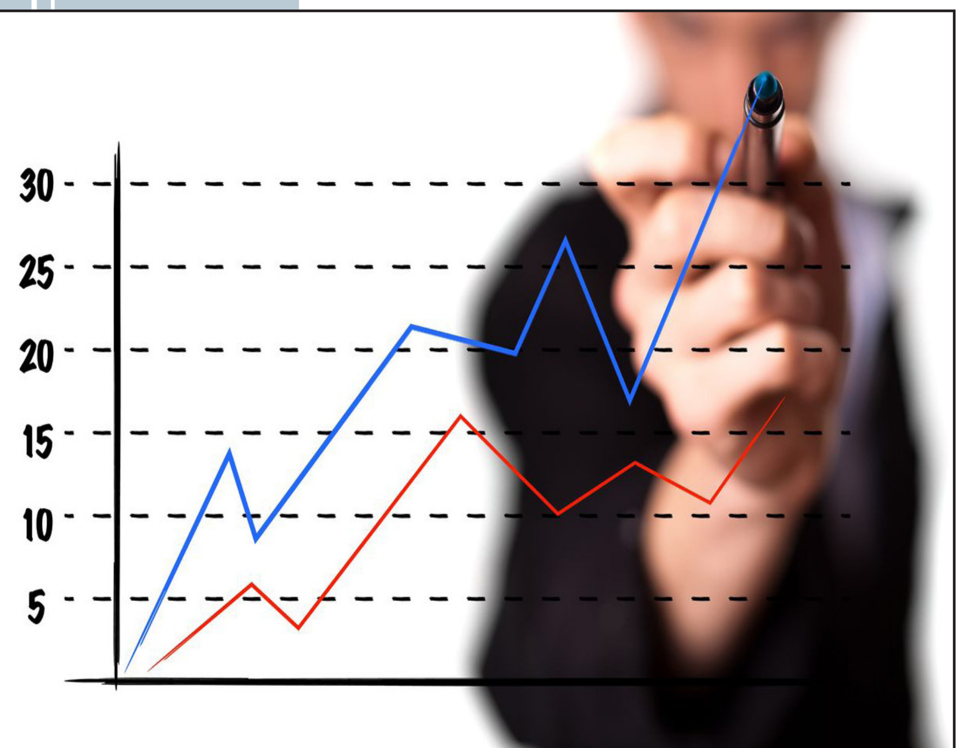
PLDW CORPORATE & BUSINESS

CLIENT ADVISORY:

MERGERS AND ACQUISITIONS INTEGRATION – THE OFTEN OVERLOOKED KEY TO SUCCESS

Background

Many businesses, both public and private, grow the old fashion way, by adding customers, new products or services gradually over time. However, many others chose to grow by acquisition. In many cases, this approach lets the company accelerate the pace of its growth, by adding new technologies, market share or extending its geographical reach.



This approach can be particularly attractive during periods when interest rates are relatively low or private equity financing is readily available to potential buyers.

Completing a successful acquisition is rarely easy. It takes a significant commitment by senior management of the prospective buyer in terms of both time and money. The process typically involves assembling a team of experienced professionals (which should include business people inside the company as well as experienced legal and accounting teams and often an industry consultant and investment banker) and identifying one or more prospective acquisition targets.

After a target is identified, followed by some early discussions and preliminary due diligence, the next step is usually negotiation of a letter of intent ("LOI"). Much of the LOI is usually non-binding, including the preliminary price and terms. Other portions are legally binding, including a standstill or no-shop clause and non-disclosure provisions. Once the LOI is signed, the buyer (and sometimes the seller, if part of the sale price is deferred or payable in equity of the buyer) engage in a thorough and usually expensive due diligence investigation of the seller, it business, legal affairs and finances.

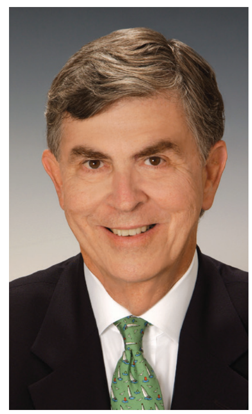
Assuming the parties are satisfied with the results of their due diligence investigation, the parties typically finalize the legal documentation and proceed to a closing of the acquisition. While the process outlined above is typical, it leaves out one extremely important component of a successful acquisition – integration.

Integration

Integration is the term usually applied to the process of successfully combining one company or business organization with another following the closing. All too often it is not given the time and resources it deserves and when mergers and acquisitions turn out to be less successful than hoped, the reason can often be found in a poor integration process.

The key to successful integration is planning and communication, both of which often start before the closing. All acquisitions involve some degree of stress and uncertainty, particularly for employees of the company being acquired. Two companies in the same or similar industries typically have job redundancies and some obvious questions come to mind as soon as the transaction becomes known, which is usually before it actually closes. Will I keep my job? Will my responsibilities be decreased? Will I have to relocate to a different city? All of these need to be addressed, but the greater challenges are often found in differing corporate cultures. The management style in some companies is based on consensus building. Others are more autocratic, where the decision is made at the top and the employees understand "it is management's way or the highway."

The key to successful integration following a merger or acquisition is to set up an integration team, ideally one which includes key employees from both companies; start the process early and communicate regularly. It is axiomatic that the most talented people usually have the most options and if you lose key employees of the target company before or shortly after the closing, you are already off to a bad start.



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William F. Miller is a Partner with Pannone Lopes Devereaux & West LLC and a member of the Corporate & Business Law Team. He is a highly skilled attorney with more than 30 years of experience who focuses his practice on corporate and business law matters, including mergers and acquisitions, angel, venture capital and private equity financing, commercial contract matters, intellectual property protection and licensing, and entity and investment fund formation. Mr. Miller frequently advises early stage technology companies, manufacturers, service and distribution companies as well as investors in such companies.

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