Overcoming Stakeholder Challenges in Mergers & Acquisitions

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In previous articles, we described two important preparatory steps that must be taken if your firm's strategic plan includes mergers and acquisitions:

1. Assembling a "merger binder" that contains the critical information firms you're hoping to bring into the fold will want to examine. In addition to its obvious value as a marketing tool, putting together this binder will also help ensure that governance and stakeholder processes are properly documented and are in good working order.
2. Creating a recruiting process to identify and attract the firms you want to merge with or acquire.

In this article, we'll look at some of the issues that typically arise in the merger process, and help you determine what your responses will be before you're faced with these challenges.

What Are Shareholders' Primary Concerns?

Stakeholders in both organizations have significant concerns when they come to the merger table. Two of the most common are the number of shares to be received in the transaction and the stakeholder compensation system.

How Do You Address Share Allocation?

Firms with a merger/acquisition strategy must have a clear valuation methodology to apply to the retirement of existing owners. Whatever the method of valuation used by the acquiring firm, the same methodology must be used for the firm being acquired/merged in. This allows the acquisition to occur without reducing the value to existing owners. After the target firm is valued using this methodology, the acquiring firm can determine the number of units or

shares to be allocated to the target firm's owners.

Once the total number of units has been set, the acquiring firm needs to step away and let the stakeholders in the target firm determine how to allocate these units. If the target firm stakeholders can't accomplish this themselves, back away from the deal. Significant issues clearly exist within the stakeholder group, and you don't want to be sucked into the drama of this battle. Remain friends until the target firm can work out its issues and then come back to the table.

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What About Shareholder Compensation?

Often the stakeholder compensation systems of the two firms are different. The methodology of the acquiring firm should be discussed thoroughly with the stakeholders of the target firm. The acquiring firm may choose to modify its compensation processes; if so, the changes should apply to all owners in the combined group. If no changes are planned, we highly recommend that the stakeholders of the target firm be allowed to maintain their own compensation system for up to three years with some guarantees based on performance following the acquisition/merger. At the conclusion of the transition period, the acquired stakeholders should be fully integrated into the existing compensation system.

How Do You Determine Leadership Roles?

Another significant issue is how best to integrate stakeholders from the target firm into leadership roles in the combined firm. There will undoubtedly be some very talented individuals in the pool of new owners, and the transaction will come together much more quickly if stakeholders from the target firm are placed in key positions that allow them to integrate rapidly with existing consulting and administrative staff in the combined firm. The

quicker you can get people referring to the goals, objectives, and processes of the combined firm, the sooner expressions of "us" and "them" will disappear. Depending on the relative sizes of the two firms, members of the target firm might be allocated a certain number

of positions on the executive committee or board of directors of the combined firm. As part of their merger strategy, acquiring firms should consider making changes to their governance documents that provide for the addition of seats at the table based on the size of the target firm compared to the acquiring firm.

Is a "No-Fault" Clause a Good Idea?

A final note of caution: stakeholders are often attracted to a "no-fault" clause in the agreement that allows the transaction to be unwound if things don't work out between the two firms. We find this troubling. It's still a divorce, and it's very difficult to put things back the way they were even if you have an agreement that allows for it. A "no-fault" clause may simplify some of the legal issues, but only if it's very clear what happens if a client or staff member wants (when the deal is undone) to go with a firm different than his/her original firm. It's far better to enter into transactions such as these with the most critical issues already worked out, a written plan in hand, and a solid commitment to work through the inevitable difficulties and make the merger work.

There may well be casualties within the ownership or staff groups of both firms, but that's no reason to undo the deal for everyone. The "Three Cs" to success in any merger or acquisition are commitment, communication, and cooperation. If these are solidly in place, you'll be able to find healthy ways to work through whatever challenges may arise.

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