

December 1, 2017

### M&A in the Boardroom

Recent financial, regulatory and legal developments have called attention to the practices of boards of directors in considering M&A matters. The following are matters that should be reviewed by a board with management and advisors when considering a significant M&A transaction:

- Competence and independence of advisors.
- Price and value, including the negotiating history and valuation analyses undertaken by advisors and management (discounted cash flow, comparable transactions, etc.) to evaluate fairness, including the underlying assumptions.
- Directors' fiduciary duties in evaluating the transaction, including implications of any actual or potential conflicts of the board, management or advisors (and the related potential advisability or necessity of independent committees, independent advisors, etc.).
- Strategic and financial rationale and available alternatives considered (standalone and M&A).
- Integration planning and path to achieving synergies.
- Threats posed by potential interlopers or activist investors.
- Key transaction terms and conditions, including termination rights, termination fees, efforts required to obtain regulatory approvals (antitrust, CFIUS, industry-specific approvals) and their implications for timing and certainty of closing.
- Financing plans and certainty and anticipated capital structure and leverage.
- Rollout and communications plan with investors, regulators, customers, ratings agencies and other key constituencies.
- Effect on corporate culture.
- Management of the combined company – roles, compensation and succession planning.

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- Impact on stakeholders – employees, communities, customers, suppliers and creditors – and ESG, CSR and other sustainability considerations.
- Due diligence and any key risks identified (FCPA, compliance, IP, cyber, technology, consequences under major contracts, etc.).
- Transaction process and structure – private vs. public, auction vs. a single or limited number of bidders; litigation risk (including appraisal).

Martin Lipton  
Edward J. Lee  
Zachary S. Podolsky